

JOHANNESBURG BAR COUNCIL

SOCIETY OF ADVOCATES OF SOUTH AFRICA (WITWATERSRAND DIVISION)

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Administration of the professional sub-committee

1. Attached hereto is a diagram of the administrative procedure that the professional sub-committee adopted.
2. The following is an explanation of the diagram.
Distinction should be drawn between complaints made against members (or non-members), requests for urgent advice, formal rulings and complaints.
3. Urgent advice:
 - 3.1 Any member who urgently requires advice on a professional matter may seek such advice from any member of the professional sub-committee ("PSC"). The advice is not binding on the professional committee and is merely the expression of an opinion. Should the matter that the advice is sought on be complex or not have a clear answer, the member should be invited to seek a formal ruling. Urgent advice given telephonically or during informal meetings should be recorded in e-mails sent to the other members of the PSC.
4. Formal rulings:
 - 4.1 The member (or non-member) requesting the ruling must set out the problem and the question on which a ruling is sought in writing.
 - 4.2 The request must be sent to the Bar Secretariat, who must record the request and give it a distinctive number.
 - 4.3 The request must be forwarded to the Chairman (together with all supporting documentation).
 - 4.4 The Chairman must consider the matter and if he is satisfied that there is a clear solution, the Chairman must make an ad hoc ruling, without giving reasons. The ruling must be in writing addressed to the person asking for the ruling.
 - 4.5 If the solution is unclear, the Chairman must refer the matter to the secretary of the professional sub-committee.
 - 4.6 The secretary must allocate the query to a member for consideration and proposal.

- 4.7 The member must consider the matter and prepare a written proposal which must be placed on the agenda for the next meeting of the professional sub-committee for discussion and decision.
5. Complaints:
- 5.1 All complaints and all correspondence relating to complaints, must be referred to the Bar Secretariat (presently Pam Irvine). No correspondence from any member of the professional sub-committee to anyone else or from anyone else to a member of the professional sub-committee should bypass the Secretariat. All correspondence must be on letterheads of the Johannesburg Bar Council and identified with the reference number allocated by the Secretariat when first it receives a complaint, request for advice or a ruling.
- 5.2 Should a member or some other person write directly to a member of the professional sub-committee on a matter being dealt with by that member, the member of the professional sub-committee must ensure that a copy, in hard copy format, of the communication is delivered to Pam Irvine, who must ensure that it gets filed in the correct file.
- 5.3 The Bar Secretariat must reflect the allocated number of correspondence and ensure that a copy of each piece of correspondence is filed in a master file kept by the Bar Secretariat.
- 5.4 Copies of all correspondence, whether the correspondence be a hard copy letter, in electronic format, a telefax or a handwritten note, must be delivered by the Bar Secretariat to the chambers of the Chairman at 10:00 every Friday morning and, if a Friday is a public holiday, the business day before that Friday.
- 5.5 The Chairman must consider each new complaint and must consider whether the complaint has any merit.
- 5.6 Should the Chairman be of the view that a complaint has no merit, the Chairman must refer the matter to the Ombud who must conduct such informal enquiries into the matter as may be necessary and if it appears him that there is no reason to proceed with the matter, the Ombud must finalise the matter and inform the Bar Secretariat to close the file. Should, however, the Ombud not be able to close the file, the matter must be referred back to the Chairman.
- 5.7 The Chairman will refer all matters that merit further investigation to the secretary of the professional sub-committee who is in charge of the administrative process to as soon as possible obtain answers and responses to complaints made. The secretary must ensure that a suite of pro forma letters are prepared and must ensure that they provide for the following:
- 5.7.1 The recordal of the complaint and the notification of the complainant that the matter will be dealt with as expeditiously as possible, that the matter will be dealt with in confidence, that the Society of Advocates is a voluntary association, that the professional sub-committee does not give reasons for its decisions but

that it informs both the complainants and the members involved of its decisions.

- 5.7.2 At the same time, a letter must be addressed to the member to which a copy of the complaint must be attached together with the letter to the complainant referred to above. The member must be requested to answer the complaint within two weeks.
- 5.7.3 Upon receipt of the answer, the response of the complainant should be invited and two weeks should be given for that purpose.
- 5.8 Once the correspondence referred to above has been exchanged and there is a version of the complainant, an answer by the member and a response by the complainant, the Chairman will allocate the matter to a member of the professional sub-committee to consider the complaint as presented on paper and to make a proposal concerning the complaint to the professional sub-committee.
- 5.9 The member so allocated must prepare a short (not longer than one page) memorandum identifying the problem and setting out the member's view as to what should happen with the matter and this must be placed on the agenda for the next meeting of the professional sub-committee.
- 5.10 The secretary of the professional sub-committee must ensure that all matters are dealt with expeditiously and are placed on the agenda for decision as soon as possible.
- 5.11 The following broad categories of proposals as to what the professional sub-committee should decide to do in any given matter may be made:
 - 5.11.1 An application for the striking-off of the member or non-member should be brought. In such a case the matter should be handed to attorneys to prepare the necessary application and one or more members should be appointed to prepare and move the application. The attorneys that have thus far assisted in such matters are Mr Tim Gordon Grant of Bowman Gilfillan and his assistants. Counsel act pro bono in such matters whilst the attorneys do render fee lists.
 - 5.11.2 The second possibility is to convene a disciplinary enquiry which requires the appointment of a chairperson and a pro forma prosecutor. The administration of all disciplinary committees will be overseen by the Enquiries Administrator to ensure that disciplinary enquiries are dealt with as expeditiously as possible and the Administrator must report to the professional sub-committee any untoward delays in the finalising of enquiries. Disciplinary committees must forward their final reports to the Administrator and the Administrator must forward them to the Chairman. The PSC must consider the report and make a recommendation to the Bar Council and the Bar Council must decide whether to accept or reject the PSC's recommendation and the Bar Council imposes sanctions, if any.

- 5.11.3 In matters that are not of adequate importance to warrant a disciplinary enquiry, the member investigating the matter may propose that steps be taken against the member, on paper, such as a reprimand.
- 5.11.4 The member may also propose that no further steps be taken and that the matter be closed.
- 6. All findings and sanctions proposed by disciplinary committees shall be considered by the PSC and any recommendation for the striking off, expulsion or suspension of a member shall be referred to the full bar council.