

This guide to the Society's disciplinary procedure offers only a general overview and is not intended to be a substitute for the provisions of the Attorneys Act 53 of 1979 and/or the Rules, insofar as they relate to disciplinary matters. Members are urged to have regard to the provisions of the Act and the Rules regarding disciplinary matters if they are uncertain as to the procedure to be followed.

The Society is required to investigate and to consider all allegations of misconduct by attorneys. Where there is evidence of misconduct, the Society is duty bound to take appropriate disciplinary steps. This may involve the imposition of a fine in terms of section 72 of the Attorneys Act or, if the misconduct complained of is sufficiently serious, application to court for the striking of a member's name from the roll or his/her suspension from practice or the imposition of such other sanction as may be appropriate.

Rules 39 to 49 deals with professional conduct but is not exhaustive of the categories of misconduct of which an attorney may be guilty. Rule 50 sets out the procedure for investigation and consideration of complaints.

In general, the Society requires complaints to be put in writing. However, the Society is entitled, and indeed required, to itself follow up any allegations of misconduct against an attorney.

If the complaint, on the face of it, describes misconduct, it will be put to the member concerned, who will usually be given a copy of the complaint and be asked to report on the conduct of the matter. If the initial complaint contains sufficient particularity for specific charges of misconduct to be put, this will be done and the member will be requested to furnish an explanation. In either case, the Society will proceed in terms of the Rules and will not merely engage attorneys in correspondence.

The Society may, in addition, require the attorney to address any other queries or furnish further information relevant to the complaint. It should be borne in mind that the courts have held that attorneys are expected to co-operate in the investigation of complaints against them and that a failure to so co-operate in itself constitutes misconduct.

It is most important that reports by attorneys, or well motivated requests for extensions of time for reports to be furnished, be submitted to the Society within the period specified. When writing to the Society please ensure that -

- a) the Society's reference is correctly and completely quoted;
- b) the attorney responsible for the matter responds personally. If a complaint relates to the conduct of a candidate attorney, both the candidate attorney and principal should sign the written explanation;
- c) all issues raised and all aspects of the complaint are fully canvassed.

On receipt of an attorney's explanation, the matter will be referred to the Disciplinary Committee, for its consideration.

The Disciplinary Committee considers matters, in terms of Rules 50.6 to 50.11, on a summary basis. Members are not generally required to appear before the Committee. The Committee may, in its discretion, postpone any matter for the purpose of further investigation.

Should the Disciplinary Committee require that an attorney appear before it, the interview is conducted 'with prejudice'.

The Disciplinary Committee has the power to dismiss a complaint or, if it is of the view that an attorney has acted in an unprofessional, unworthy or dishonorable manner, likely to bring the profession into disrepute, will recommend that such a finding be made by Council. The Committee meets mid-month and its recommendations are considered by the Council during its month-end meetings. Council may confirm, reject or amend any recommendation from the Disciplinary Committee.

An attorney found guilty of professional misconduct is notified by the Society of the finding and is then called on, if this has not already taken place, to make such representations as he/she wishes regarding the sanction to be imposed. Again, such representations are to be made in writing, as there is no entitlement on the part of the attorney to appear personally. If a fine is imposed or other action is required, a time period for payment of the fine and the taking of such action is set.

In all cases, the attorney is notified of the right to call for a formal Disciplinary Enquiry within 21 days in terms of Rule 50.12. The attorney is also advised that should the formal Disciplinary Enquiry Committee find him/her guilty of the charge(s), even if the penalty is reduced, the attorney is obliged to pay the cost of the enquiry, in terms of the Rules. If an attorney calls for a formal Enquiry, the operation of any penalty imposed is suspended. A Disciplinary Enquiry

Committee of at least two practising attorneys is constituted. A formal charge is served on the member and the Enquiry is conducted in terms of Rules 50.13 to 50.25, inclusive.

If no Enquiry is called for, the sanction becomes final and is entered against the member's record. All penalties imposed, save for warnings, reprimands and fines of less than R6 000, are published. Any member of the public may request, in writing, details of any sanction imposed against an attorney within the preceding 24 months.

