
STATUTORY INSTRUMENTS

1994 No. 288

The Solicitors (Disciplinary Proceedings) Rules 1994

PART III

General

5. Before fixing a day for any hearing the Tribunal may require the applicant to supply such further information and documents and copies thereof relating to the Application as it thinks fit.

6. Upon the receipt of an Application and after the finding by the Tribunal of a prima facie case where these Rules require the Tribunal shall fix a day for the hearing and the Clerk shall serve notice thereof on the parties at least 42 days before the date of the hearing. The Clerk shall give notice to the respondent in Form 5 and a copy shall be sent to the applicant.

7.—(1) Service of an Application and statement or affidavit pursuant to the provisions of Rules 4 and 6 shall be:

(i) personally, or

(ii) by first class post with Recorded Delivery and Advice of Delivery, in the case of a solicitor, to his last known place of business appearing in the Register (commonly known as the Practising Roll kept by the Society) or to his last known place of abode and in every other case to the last known place of business or abode of the person to be served and such service shall be deemed to have been effected on the second business day after the letter was despatched, or

(iii) in such other manner as the Tribunal may direct.

(2) Any notice or document other than an Application and statement or affidavit in support may as well as being served under the provisions of part (1) of this Rule also be served

(i) by leaving the document at an address prescribed in part

(1) of this Rule

(ii) where a solicitor either agrees to accept service through a document exchange or advertises a document exchange number on his letter heading, by leaving the document at that document exchange or at a document exchange that transmits documents every business day to that document exchange. In this Rule “Document Exchange” means any document exchange for the time being approved by the Lord Chancellor for the purposes of Order 65, Rule 7, of the Rules of the Supreme Court. Any document so left shall be deemed to have been served on the second business day following the day on which it is left.

8. The Tribunal may in its discretion require the parties to attend before it or at its offices before the Clerk for a pre-hearing review to facilitate the listing of the hearing of any Application.

9. The Tribunal may of its own motion or upon the application of any party adjourn or postpone the hearing upon such terms as the Tribunal may think fit.

10. The Tribunal may give directions to the parties. Set out in the Second Schedule to these Rules is a summary of time limits contained in the Rules which shall apply to all Applications unless in a particular Application the Tribunal at the request of any party or of its own motion amends or adds to them.

11. Each party shall furnish to the Clerk and to every other party at least 21 days before the day fixed for the hearing, unless the Tribunal direct otherwise, a paginated bundle of copies of all documents on which he intends to rely unless the documents intended to be relied upon have been exhibited to the statement in support of the application or to any affidavit filed with the Tribunal.

12. Prior to the hearing any party may inspect the documents included in a bundle furnished by any other party three days after notifying that other party of that requirement.

- (a) (a) Subject to paragraphs (b) (c) of this Rule the Tribunal shall hear all Applications in public.
- (b) Any party applying that a hearing shall be in private shall notify the Clerk and the other party to the proceedings at least 21 days before the date fixed for the hearing and unless at least 10 days before that date any other party to the proceedings objects thereto the Tribunal may consent to hear the Application in private. In the event of an objection the Tribunal shall at the hearing determine in private whether the hearing is to be in public or in private.
- (c) Notwithstanding paragraphs (a) (b) of this Rule if it appears to the Tribunal that any person would suffer undue prejudice from a public hearing or that for any other reason the circumstances and nature of the case make a public hearing undesirable the Tribunal may direct that the public shall be excluded either from the whole or any part of the hearing.
- (a) (a) An applicant may file a supplementary statement containing further allegations and/or a summary of the facts in support of the application at any time after the service of the original Application but not later than 30 days before the date fixed for the hearing when the procedure set out in Rule 4(3)(4)(7) and

(8) shall be followed. The Tribunal shall notify the applicant that a prima facie case has been established thereby and the applicant shall serve the same upon the respondent.

- (b) If upon the hearing it shall appear to the Tribunal that the written allegations or statement require to be amended or added to, the Tribunal may permit such amendment or addition and may note any correction of the subject matter of any affidavit. If in the opinion of the Tribunal such amendment, addition or correction shall be such as to take any party by surprise so as to prejudice the conduct of his case the Tribunal shall grant an adjournment of the hearing upon such terms as to costs or otherwise as the Tribunal shall think fit.

15. In the discretion of the Tribunal:

- (a) a tape recording of the proceedings may be made on behalf of the Tribunal and a copy of such recording will be made available to any party to the proceedings who requests one within three months of the hearing day and reimburses the Tribunal with the cost of supplying the same.
- (b) the Tribunal may order that a shorthand or stenographic note of the proceedings be taken and the shorthand writer shall if required supply to any party to the proceedings a copy of the transcript of such notes on payment of his charges.
- (c) if no tape-recorded, shorthand or stenographic note be taken of the proceedings the Chairman of the Tribunal shall take a note of the proceedings and a copy of such note will be made available to any party to the proceedings who requests one within three months of the hearing day and reimburses the Tribunal with the cost of supplying the same.

16. The Civil Evidence Acts 1968(1) and 1972(2) shall apply in relation to proceedings before the Tribunal in the same manner as they apply in relation to civil proceedings:

(1) 1968 c. 64.
(2) 1972 c. 30.

- (a) Any notice given pursuant to the provisions of the Civil Evidence Acts shall be given not less than 21 days before the date fixed for the hearing of an Application.
 - (b) Any Counter-notice shall be given not less than 10 days before the date fixed for the hearing.
 - (a) (a) Not less than 28 days before the date fixed for the hearing of an Application the applicant may (in writing) require the other party to indicate to the applicant within 14 days of the receipt of such requirement which of any facts set out in the statement or affidavit submitted in support of the Application are in dispute. Failure to reply to such a notice shall be material only in relation to the question of costs.
 - (b) Any party may by notice in writing at any time not later than nine days before the day fixed for the hearing call upon any other to admit any document and if such other party desires to challenge the authenticity of the document he shall within six days after service of such notice give notice that he does not admit the document and requires it to be proved at the hearing.
 - (c) If such other party refuses or neglects to give notice of non-admission within the time prescribed in the last preceding paragraph he shall be deemed to have admitted the document unless otherwise ordered by the Tribunal.
 - (d) Where a party gives notice of non-admission within the time prescribed by paragraph (b) of this Rule and the document is proved at the hearing, the costs of proving the document shall be paid by the party who has challenged the document whatever the Order of the Tribunal may be unless in their Findings the Tribunal shall find that there were reasonable grounds for not admitting the authenticity of the document.
 - (e) Where a party proves a document without having given notice to admit under paragraph (b) of this Rule no costs of proving the document shall be allowed on taxation unless otherwise directed by the Tribunal except where the omission to give notice to admit was in the opinion of the Taxing Master a saving expense.
 - (a) (a) The Tribunal may in its discretion either as to the whole case or as to any particular fact or facts proceed and act upon evidence given by affidavit.
 - (b) Every affidavit upon which any party proposes to rely shall be filed with the Clerk and served upon the opposing party not less than 21 days before the date fixed for the hearing of the Application together with a notice in Form 9 in the Schedule hereto.
 - (c) Any party on whom such a notice has been served who requires the attendance at the hearing of a deponent to any affidavit shall not less than 10 days before such date require in writing the other party to produce the deponent at the hearing.
 - (d) In the event of any party not requiring the attendance of a deponent in accordance with the provisions of this Rule the Tribunal may accept such affidavit in evidence.
 - (e) If a deponent who has been required to attend in accordance with the provisions of these Rules does not attend the hearing the onus shall be on the party seeking to rely on the affidavit evidence of that witness to show why the affidavit should be accepted in evidence.
 - (f) If any party should wish to call as a witness any person who has not deposed to an affidavit to give evidence he must within 10 days of the date fixed for the hearing notify the Clerk and the other party or parties and provide a written proof of evidence to the other party and four copies to the Clerk.
- 19.** A subpoena issued in the High Court of Justice under section 46(11) of the Act shall be in one of either Forms 7 or 8 as shall be appropriate.
- 20.** If any party fails to attend in person or be represented at the hearing the Tribunal may, upon proof of service upon such party of the notice of hearing, proceed to hear and determine the application in his absence.

21. If at the conclusion of the hearing of an Application the Tribunal find any of the allegations made against the respondent to have been substantiated they shall so inform him. The Clerk shall then refer the Tribunal to any previous disciplinary proceedings in which any allegation has been substantiated against him so that the respondent may then have the opportunity to speak in mitigation, and where appropriate, in respect of costs.

22. Upon the hearing or determination of any Application the Tribunal may in the case of an application against a solicitor, former solicitor, or registered foreign lawyer without finding any allegation of unbecoming conduct proved against the respondent or in the case of an application in respect of a solicitor's clerk, without making any Order under section 43(2) of the Act nevertheless order any party to pay the costs if having regard to his conduct or to all the circumstances, or both, the Tribunal shall think fit.

23. Upon the conclusion of the hearing or determination of any Application the Tribunal may announce its Order while still sitting in which case the Order may be filed immediately with the Society, and the Findings shall be filed later as if judgment had been reserved, or it may reserve judgment in which case it shall announce its Findings and Order in public at a later date notice whereof shall be given to the parties by the Clerk. The Clerk shall on the day of pronouncement file the Order, or the Findings, or both, with the Society. The Clerk shall supply a copy of the Findings and Order to each party to the proceedings and to any other person present at the pronouncement who requests one.

- (a) (a) The Tribunal shall have power upon the application of a party against or with respect to whom it has made an Order to suspend the filing thereof with the Society.
- (b) Where the filing of an Order is suspended under this Rule the Order shall not take effect until it is filed with the Society and if the Order is an Order that a solicitor be suspended from practice the period of suspension shall be deemed to commence on the date of the filing of the Order with the Society or on such later date (if any) specified in the Order.

25. At any time before the filing of the Tribunal's Findings and Order with the Society, or within one calendar month of such filing, if he has neither attended in person nor been represented at the hearing and the Tribunal has determined the Application in his absence, the respondent may apply to the Tribunal for a re-hearing in Form 6 in the First Schedule hereto supported by an affidavit setting out the facts upon which he wishes to rely. If satisfied that it is just so to do, the Tribunal may grant the application upon such terms as it thinks fit. The re-hearing shall be before a division of the Tribunal different from that which heard the original Application.

26. All statements and affidavits shall be filed and kept by the Clerk. The Tribunal may order that any books, papers or exhibits produced or used at a hearing shall be retained by the Clerk until the time within which an appeal may be entered has expired, and, if notice of appeal is given, until the appeal is heard or otherwise disposed of.

27. In the case of an Application in respect of a solicitor's clerk the Tribunal may on the application of any party or on their own motion order that any such Application shall be heard before, together with, or after the hearing of an Application to require a solicitor by whom the clerk is or was employed to answer allegations.

- (a) (a) The Tribunal may at any stage of the proceedings against a Solicitor, Former Solicitor or Registered Foreign Lawyer in which the application is not made on behalf of the Society refer the case to the Society for consideration by the Adjudication and Appeals Committee of the Solicitors Complaints Bureau (or such other appropriate body or committee as the Society might decide) and may adjourn the application pending the consideration thereof by that Committee in case it should see fit to lodge a further application against the respondent or to undertake on behalf of the original application the prosecution of his application.

- (b) The Tribunal shall inform the Society, or the Solicitors Complaints Bureau, or both, (or such other appropriate body or committee as the Society might decide) at any stage of the proceedings relating to a solicitor, whether or not its decision has been pronounced, if it is of the opinion that the Society should consider whether to take any of the steps set out in the Courts & Legal Services Act 1990 (Schedule 15) relating to inadequate professional services.

29. No Application shall be withdrawn without the consent of the Tribunal.

- (i) In proceedings before the Tribunal which involve the decision of another court or tribunal, the following rules of evidence shall apply provided that it is proved in each case that the decision relates to the relevant party to the Application.
 - (a) conviction of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence; proof of a conviction shall constitute prima facie evidence that the relevant party to the Application was guilty of the offence the subject thereof.
 - (b) the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the finding and sentence.
 - (c) the judgment of any civil court may be proved by producing a certified copy of the judgment.
- (ii) In any case set out in paragraph (i) of this Rule, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as prima facie proof of those facts.
- (iii) At the discretion of the Tribunal the strict rules of evidence shall not apply at any hearing before the Tribunal.
 - (a) (a) Subject to the provisions of these Rules the Tribunal may regulate its own procedure.
 - (b) The Tribunal may dispense with any requirements of these Rules in respect of notices, affidavits, witnesses, service or time in any case where it appears to the Tribunal to be just so to do.