
35. Notaries Public (Disciplinary Tribunal Proceedings) Rules

ARRANGEMENT OF SECTIONS

Section

1. Commencement
2. Interpretation
3. Appointment of applicant
4. Notice of constitution of Tribunal
5. Discontinuance of inquiry without hearing
6. Notice of hearing
7. Failure to appear at hearing
8. Representation by solicitor or counsel
9. Admissibility of evidence given by affidavit
10. Making, service and filing of order
11. Withdrawal of proceedings
12. Adjournments
13. Record of proceedings
14. Service
15. Extension or abridgement of time
16. Retention of documents pending appeal
17. Procedure and rules of evidence
18. Summons

Schedule Form

1. Commencement

These Rules come into operation on the day appointed for the commencement of the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998) (except sections 1 and 7 of that Ordinance).

2. Interpretation

In these Rules, unless the context otherwise requires -

“applicant” (申請人) means -

- (a) in the case of an inquiry on a matter submitted under section 40H(1) of the Ordinance, the Society of Notaries; or
- (b) in the case of an inquiry on a matter submitted under section 40H(2) of the Ordinance, the person appointed by the Chief Judge under section 3;

“clerk” (書記) means the clerk to a Tribunal or any person appointed by a Tribunal to perform the duties of that office;

“inquiry” (研訊) means an inquiry under section 40J(1) of the Ordinance;

“respondent” (答辯人) means a notary public whose conduct is the subject of an inquiry;

“Secretary” (祕書) means the Secretary of the Society of Notaries;

“Tribunal” (審裁組) means a Notaries Public Disciplinary Tribunal constituted under section 40I of the Ordinance;

“Tribunal Convenor” (審裁組召集人) means the Tribunal Convenor appointed by the Chief Justice under section 40G(4) of the Ordinance.

3. Appointment of applicant

If a matter is submitted by the Chief Judge to the Tribunal Convenor under section 40H(2) of the Ordinance, the Chief Judge may appoint any person, including the Society of Notaries if it so consents, as the applicant in the subsequent inquiry.

4. Notice of constitution of Tribunal

Within 7 days after a Tribunal has been constituted to conduct an inquiry, the clerk must by written notice inform the applicant and respondent of -

- (a) the constitution of the Tribunal;
- (b) the names of the Tribunal's members; and
- (c) the Tribunal's address for service.

5. Discontinuance of inquiry without hearing

If, after considering a matter submitted to the Tribunal Convenor under section 40H of the Ordinance, a Tribunal is satisfied on the face of the evidence that no case for disciplinary action is shown against the respondent, the Tribunal may make an order under section 40J(2) of the Ordinance that the inquiry be discontinued without further hearing.

6. Notice of hearing

- (1) If, after considering a matter submitted to the Tribunal Convenor under section 40H of the Ordinance, a Tribunal is satisfied on the face of the evidence that a case for disciplinary action is shown against the respondent, then -
 - (a) the Tribunal must as soon as practicable fix the date, time and place of the first hearing of the inquiry; and
 - (b) the clerk must -
 - (i) by written notice inform the applicant and respondent of such hearing; and
 - (ii) serve on the respondent copies of relevant documents containing particulars of the conduct that is to be inquired into and particulars of any associated allegations of misconduct.
- (2) The period between the date of service of the notice and documents under subsection (1)(b) and the day fixed for the first hearing must not be less than 21 days.
- (3) As soon as practicable after the date, time and place of each subsequent hearing of the inquiry have been fixed, the clerk must by written notice inform the applicant and respondent.

7. Failure to appear at hearing

- (1) If either the applicant or respondent fails to appear at a hearing, the Tribunal may still proceed with the inquiry if it is satisfied that a notice of hearing has been served on the absent party.
- (2) If the absent party is the applicant, the Tribunal may make an order under section 40J(2) of the Ordinance that the inquiry be discontinued without further hearing.

8. Representation by solicitor or counsel

The applicant and respondent may be represented at an inquiry by solicitor or counsel.

9. Admissibility of evidence given by affidavit

- (1) A Tribunal may either as to an entire inquiry or as to a particular fact proceed and act upon evidence given by affidavit.
- (2) The Tribunal may, of its own motion or on the application of the applicant or respondent, require the deponent to an affidavit to attend before the Tribunal for the purpose of giving oral evidence and of being cross-examined.

10. Making, service and filing of order

- (1) A Tribunal may make any order in relation to an inquiry on the day on which the inquiry is completed, or at a later date as the Tribunal may fix.
- (2) If the order is to be made at a later date, then as soon as practicable after the date, time and place for doing so have been fixed, the clerk must by written notice inform the applicant and respondent.
- (3) Within 4 days after the date of making the order, the clerk must serve the order on the applicant and respondent.

(4) Within 14 days after the date of making the order, the clerk must file the order in accordance with sections 40J(3) and 40L(2) of the Ordinance.

11. Withdrawal of proceedings

Unless a Tribunal directs otherwise, no proceedings before it may be withdrawn once a notice of the first hearing of the inquiry has been served under section 6(1)(b).

12. Adjournments

A Tribunal may, of its own motion or on the application of the applicant or respondent, adjourn a hearing on such terms as to costs or otherwise as the Tribunal considers appropriate.

13. Record of proceedings

- (1) The proceedings of the Tribunal must be recorded by shorthand notes or by sound recording.
- (2) The applicant and respondent to the proceedings may inspect and take copies of the record on payment of reasonable charges to the Tribunal.

14. Service

- (1) Service of a notice or document under these Rules may be effected personally or by registered post addressed -
 - (a) in the case of a Tribunal, to the clerk at the Tribunal's address for service referred to in section 4(c);
 - (b) in the case of a respondent -
 - (i) to the respondent's usual place of residence or business in Hong Kong; or
 - (ii) if the address is unknown, to the respondent's last known place of residence or business in Hong Kong; and
 - (c) in any other case, to the last known place of residence or business in Hong Kong of the person to be served.
- (2) A Tribunal may make an order for substituted service of a notice or document if the Tribunal considers it appropriate to do so.

15. Extension or abridgement of time

Where a Tribunal has specified a time limit within which a person is required to do anything under these Rules, the Tribunal may extend or abridge such time limit.

16. Retention of documents pending appeal

- (1) Unless a Tribunal otherwise orders, all documents and exhibits produced, used or made in connection with any proceedings under these Rules must be retained by the Tribunal or the clerk -
 - (a) until the time for an appeal under section 40M of the Ordinance has expired; or

(b) if an appeal is lodged, until the appeal is heard or otherwise disposed of, and thereafter must be deposited with the Secretary for safe keeping.

(2) The Secretary must retain the documents and exhibits for a period of not less than 3 years after the date of their receipt. During that period, no person may have access to the documents or exhibits without the Tribunal Convenor's consent.

17. Procedure and rules of evidence

Subject to the Ordinance and these Rules, a Tribunal may determine its own procedure and rules of evidence.

18. Summons

The form of a summons issued under section 40K(1) of the Ordinance must be in accordance with the form prescribed in the Schedule.

SCHEDULE

[S.18]

FORM

SUMMONS TO WITNESS

LEGAL PRACTITIONERS ORDINANCE
(Chapter 159)

In the matter of an inquiry under section 40J(1) of the Legal Practitioners Ordinance.

And in the matter of⁽¹⁾

⁽²⁾ a notary public / an employee of a notary public of⁽³⁾

.....
To⁽⁴⁾ : of
(5)

You are hereby summoned to attend before the Notaries Public Disciplinary Tribunal
at

.....
on day, the day of 20 at.....⁽⁶⁾
a.m./p.m.,

and so from day to day until the Tribunal otherwise directs, to give evidence in respect of the matter under inquiry⁽⁷⁾ and also to bring with you and produce the documents specified below:

[State particulars of documents required to be produced]

Given under my hand this day of 20

.....
Chairman of the Notaries Public
Disciplinary Tribunal

NOTE: ⁽¹⁾ Insert name of respondent.

⁽²⁾ Delete if inapplicable.

⁽³⁾ Insert address of respondent.

⁽⁴⁾ Insert name of witness.

⁽⁵⁾ Insert address of witness.

⁽⁶⁾ Delete if inapplicable.

⁽⁷⁾ Delete if witness not required to produce documents.