New Zealand Law Practitioners Disciplinary Tribunal Amendment Rules 2002

Pursuant to section 130 of the Law Practitioners Act 1982, the New Zealand Law Practitioners Disciplinary Tribunal makes the following rules.

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Schedule
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Rules

1 Title

(1) These rules are the New Zealand Law Practitioners Disciplinary Tribunal Amendment Rules 2002.

(2) In these rules, the New Zealand Law Practitioners Disciplinary Tribunal Rules 1984[1] are called "the principal rules".

[1] SR 1984/224

2 Commencement

These rules come into force on 1 May 2002.

3 Notice of hearing

(1) Rule 5(1) of the principal rules is amended by omitting the words "shall fix a day, time, and place", and substituting the words "must fix the place, time, and day or days".

(2) Rule 5 of the principal rules is amended by adding the following subclauses:

"(3) If the notice under subclause (2) does not specify the time, place, and day or days for the hearing of any charge, the Secretary must, not less than 21 clear days before the hearing, serve or cause to be served on the person charged a separate notice stating the time, place, and day or days for the hearing.

"(4) If more than 1 day is fixed for the hearing, the first of the days fixed is the day of the hearing for the purposes of rules 5(2), 6, and 8."

4 New rule 5A inserted

The principal rules are amended by inserting, after rule 5, the following rule:

"5A **Written response**

"(1) Within 14 clear days after service of any charges, or any other time that the Tribunal or the Chairman directs, the person charged must lodge with the Secretary and serve on the District Council or complaints committee that made the charges a written response to the charges.

"(2) The written response must state—

"(a) which of the facts alleged in each charge are admitted and which are denied; and

"(b) in relation to each charge, whether the charge itself is admitted or denied; and

"(c) an address for service in accordance with rule 23 and contact details (including a telephone number) for the person charged or for that person's legal representative."

5 Further affidavits and documents relied on

Rule 6 of the principal rules is amended by omitting the expression "10" in both places where it occurs, and substituting in each case the expression "15".

6 Deputy Chairman

Rule 21 of the principal rules is amended by revoking subclause (3), and substituting the following subclauses:

"(3) The Chairman may, by oral, written, or other notice to the Secretary, nominate another member of the Tribunal to act as the Chairman in relation to 1 or more specific proceedings.

"(4) A nomination under subclause (3) may be limited to a specific period, conference, or meeting, and may be revoked by the Chairman by oral, written, or other notice to the Secretary.

"(5) If neither the Chairman nor the Deputy Chairman is present in person or by telephone conference link at any meeting or conference, then any member who has been nominated under subclause (3) in relation to proceedings that are being dealt with at that meeting or conference must preside and exercise the powers of the Chairman at that meeting or conference in relation to those proceedings.

"(6) If both the Chairman and the Deputy Chairman are absent from a meeting and no member has been nominated to act as the Chairman in relation to any proceedings to be dealt with at that meeting, the members present must elect 1 of their number to be the Chairman for those proceedings at that meeting."

7 Number of copies to be lodged

Rule 22 of the principal rules is amended by omitting the expression "17", and substituting the expression "10".

8 Leave to withdraw proceedings

Rule 25 of the principal rules is amended by revoking subclauses (2) and (3), and substituting the following subclause:

"(2) On any application for leave to withdraw, the Tribunal may—

"(a) grant leave on any terms and subject to any conditions that it thinks fit; or

"(b) dismiss the application."

9 Adjournments

Rule 26 of the principal rules is amended by revoking subclause (2), and substituting the following subclause:

"(2) At any time before a hearing, the Chairman may adjourn the hearing if it appears that, in the special circumstances of the case, it is necessary or expedient to do so."

10 Enlargement or abridgement of time

Rule 32 of the principal rules is amended by inserting, after the words "The Tribunal", the words "or the Chairman".

11 Giving of directions

Rule 34A(2) of the principal rules is amended by adding the following paragraphs:

"(f) direct any party or all parties to lodge with the Tribunal and serve written submissions within the time or times that the Chairman thinks fit:

"(g) give any other directions that the Chairman thinks fit for the purposes referred to in rule 34A(1)."

12 New forms 1 and 2 substituted in Schedule

The Schedule of the principal rules is amended by revoking forms 1 and 2, and substituting the forms 1 and 2 set out in the Schedule.

Schedule

r 12

New forms 1 and 2 substituted in Schedule

Form 1

r 5

Notice of hearing (to District council or complaints committee)

Before the New Zealand Law Practitioners Disciplinary Tribunal

In the matter of the Law Practitioners Act 1982

and

in the matter of [*name*], a barrister and solicitor (*or* [*name*], an employee of [*name*], barrister and solicitor)

To the Council/complaints committee, [*place name*] District Law Society.

Form 1—*continued*

[*Day*] [*date*] of [*month*] [*year*] is the day (*or* are the days) fixed for the hearing of charges made by you against [*insert name*], a barrister and solicitor (*or* [*name*], an employee of [*name*], barrister and solicitor) before the New Zealand Law Practitioners Disciplinary Tribunal. The Tribunal will sit at [*place and commencement time am or pm*]).

You are required, at least 15 clear days before the day of the hearing,—

(a) to lodge with the Secretary to the Tribunal—

(i) any further affidavits with 10 additional copies; and

(ii) a list of all other documents on which you propose to rely; and

(b) to serve a copy of those affidavits and that list on the person charged.

If you intend to seek leave to withdraw any charge, early notice of this to the Tribunal and the person charged will usually help to shorten and reduce the cost of the hearing and to reduce the amount of any costs that may be awarded.

[*Date*]

.....
Secretary to the New Zealand Law Practitioners Disciplinary Tribunal

This notice is issued by [*name*], Secretary to the Tribunal, at [*address*].

Form 2

r 5

Notice of hearing (to the person charged)

Before the New Zealand Law Practitioners Disciplinary Tribunal

In the matter of the Law Practitioners Act 1982

and

in the matter of [*name*], a barrister and solicitor (*or* [*name*] an employee of [*name*], barrister and solicitor)

To [*name*], of [*name*], barrister and solicitor (*or* [*name*], an employee of [*name*], barrister and solicitor).

Disciplinary charges have been made against you by the Council/complaints committee of the [*place name*] District Law Society.

[*Day*] [*date*] of [*month*] [*year*] is the day (*or* are the days) fixed for the hearing of charges before the New Zealand Law Practitioners Disciplinary Tribunal. The Tribunal will sit at [*place and commencement time am or pm*] (*or* you will be notified separately of the venue, date, and time of the hearing).

Attached to this notice are copies of the charges made against you and of the affidavits in support that have been lodged with the Tribunal.

Your attention is particularly drawn to the following:

(1) You are strongly advised that it is in your own interests to obtain legal representation without delay.

(2) Within 14 clear days after service of this notice and the attached charges on you, you must lodge with the Secretary to the Tribunal and serve on the Council/complaints committee that made the charges a written response to the charges.

(3) Your written response to the charges must state—

(a) which of the facts alleged in each charge are admitted and which are denied; and

Form 2—*continued*

(b) in relation to each charge, whether the charge itself is admitted or denied; and

(c) an address for service and contact details (including a telephone number) for you or for your legal representative.

(4) An admission of any facts alleged in any charge will not of itself be taken as an admission that those facts constitute—

(a) misconduct in your professional capacity; or

(b) conduct unbecoming a barrister or solicitor; or

(c) negligence or incompetence of the kind described in section 112(1)(c) of the Law Practitioners Act 1982; or

(d) if the person charged is an employee, conduct that would, in the case of a practitioner, be grounds for the striking of the practitioner's name off the roll.

(5) If you intend to plead guilty to any charge or admit any of the facts, early notice of this to the Tribunal and the Council/complaints committee will usually help to shorten and reduce the cost of the hearing and to reduce the amount of any costs that may be awarded against you.

(6) You are required, at least 15 clear days before the day of the hearing,—

(a) to lodge with the Secretary to the Tribunal—

(i) the original and 10 copies of any affidavit on which you propose to rely; and

(ii) a list of all other documents on which you propose to rely; and

(b) to serve a copy of those affidavits and that list on the Council/complaints committee of the [*place*] District Law Society at its address for service.

(7) Failure to comply with the requirements of paragraphs (2), (3), and (6) may lead to an exercise by the Tribunal of its power to adjourn the hearing and/or its power to award costs against the person responsible for the failure.

Your attention is also drawn to the copies of the New Zealand Law Practitioners Disciplinary Tribunal Rules 1984 (SR 1984/224) and Part VII of the Law Practitioners Act 1982 enclosed with this notice.

Form 2—*continued*

If you fail to appear, the Tribunal may proceed to hear and determine the charges in your absence.

[*Date*].

.....
Secretary to the New Zealand Law Practitioners Disciplinary Tribunal

This notice is issued by [*name*], Secretary to the Tribunal, at [*address*].

Date of making of rules

These rules were made by the New Zealand Law Practitioners Disciplinary Tribunal at a meeting of the Tribunal held at Auckland on 12 February 2002.

.....	.....
R M Gapes	A J Nicolson
Chairman of the Tribunal	Secretary to the Tribunal

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules were made by the New Zealand Law Practitioners Disciplinary Tribunal under section 130 of the Law Practitioners Act 1982, and amend the New Zealand Law Practitioners Disciplinary Rules 1984.

Rule 3 amends rule 5 of the principal rules to allow more than 1 day to be fixed for a hearing and to allow formal service of charges before a hearing date is fixed.

Rule 4 inserts into the principal rules a *new rule 5A*, which requires a person who has been charged to file and serve a response to each charge.

Rule 5 amends rule 6 of the principal rules so that affidavits and other documents are required to be filed at least 15 days before a hearing.

Rule 6 amends rule 21 of the principal rules so that the Chairman may nominate another member of the Tribunal to act as Chairman for specific proceedings.

Rule 7 amends rule 22 of the principal rules by reducing to 10 the number of copies of documents that must be lodged with the Tribunal.

Rule 8 amends rule 25 of the principal rules to allow applications for leave to withdraw proceedings to be made at any time.

Rule 9 amends rule 26 of the principal rules so that the Chairman may determine both contested and uncontested adjournment applications.

Rule 10 amends rule 32 of the principal rules so that the Chairman may determine applications for enlargement or abridgement of time.

Rule 11 amends rule 34A(2) of the principal rules to increase the scope of directions that may be given by the Chairman at a conference.

Rule 12 amends the principal rules by omitting forms 1 and 2 from the Schedule, and substituting *new forms 1 and 2*.

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