

All About Procedure for filing Complaints against Advocates

By Nisha Singla

Advocacy is a noble profession and an advocate is the most accountable, privileged and erudite person of the society which enjoys the exclusive right to practice law. As officers of the Court as well as agents of the client, advocates have the dual responsibility of upholding the interests of the client fearlessly while helping in dispensation of justice as officers of the court. Accordingly, they are expected to adhere to the highest standards of probity and honor. An advocate should serve the common man compassionately, morally and lawfully.

Professional misconduct is the behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. Professional misconduct refers to disgraceful or dishonorable conduct not befitting an advocate. Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates. It describes provisions relating to punishment for professional and other misconducts. Generally legal profession is not a trade or business, it's a gracious, noble, and decontaminated profession of the society. Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench.

It may be noted that under the Advocates Act, the concerned State Bar Council can take disciplinary action against any advocate who is found to be guilty of professional or other misconduct. The use of the word 'other' clearly indicates that misconduct does not merely refer to professional misconduct – it could refer to any misconduct, whether in the professional capacity or otherwise. Therefore, even conduct unconnected with the profession may account to a misconduct as for example, conviction for a crime, though the crime was not committed in the professional capacity. At the same time it is to be noted that a mere conviction is not sufficient to find an advocate guilty of misconduct, the court must look in to the nature of the act on which the conviction is based to decide whether the advocate is or is not an unfit person to be removed from or to be allowed to remain in the profession.

Misconduct, *according to Oxford dictionary* means a wrongful, improper, or unlawful conduct motivated by premeditated act. It is a behavior not conforming to prevailing standards or laws, or dishonest or bad management, especially by persons entrusted or engaged to act on another's behalf. The expression professional misconduct in the simple sense means improper conduct. In law profession misconduct means an act done willfully with a wrong intention by the people engaged in the profession. It means any activity or behavior of an advocate in violation of professional ethics for his selfish ends. If an act creates disrespect to his profession and makes him unworthy of being in the profession, it amounts to professional misconduct. In other word an act which disqualifies an advocate to continue in legal profession.

To understand the scope and implication of the term 'misconduct', the context of the role and responsibility of an advocate should be kept in mind. Misconduct is a sufficiently wide expression, and need not necessarily imply the involvement of moral turpitude. 'Misconduct' per se has been defined in the *Black's Law Dictionary* to be "any transgression of some established and definite rule of action, a forbidden act, unlawful or improper behavior, willful in character, a dereliction of duty." In a different context, the Supreme Court has opined that the word "misconduct" has no precise meaning, and its scope and ambit has to be construed with reference to the subject matter and context wherein the term occurs. In the context of misconduct of an advocate, any conduct that in any way renders an advocate unfit for the exercise of his profession, or is likely to hamper or embarrass the administration of justice may be considered to amount to misconduct, for which disciplinary action may be initiated.

In the case **Noratanmal Chaurasia vs M.R. Murli 2004 AIR 2440**; the SC has held that misconduct has not been defined in the Advocates Act, 1966 but misconduct envisages as to what would constitute misconduct and indiscipline which, however, is wide enough to include wrongful omission or commission, whether done or omitted to be done intentionally or unintentionally.

Justice V R Krishna Iyer in another case V.C. Rangadurai v. D. Gopalan and Others [AIR 1979 SC 281], a majority judgment in an appeal filed under Section 38 of the 1961 Act observed:

"4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not

in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow.”

“5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon.”

Who is the person aggrieved in the complaint against advocate before Bar Council?

It is not an ordinary suit before a civil court. If the client is aggrieved by the negligence or misconduct of the Advocate leading to deficiency in service, he has a remedy in Consumer Forum. There only aggrieved person has to file petition for remedy. But the before Bar Council, person complaining is not seeking any remedy for himself, but trying to point out misconduct and asking the professional body to establish and protect the standards in the profession. The complainant is in fact serving the interests of profession by pointing out wrongdoers. If proved, his complaint will help the Bar Council to remove the wrongful elements and clean the profession. Hence it is not a dispute between two persons for some benefit or penalty. The people in general and advocates in particular should know how misconduct will be dealt with.

Procedure for Complaints against Advocates:

A complaint against an advocate has to be in the form of a petition. It has to be duly signed and verified as required under the Code of Civil Procedure.

A complaint can be filed in English or in Hindi or in a regional language where the language has been declared to be a state language. In those cases where the complaint is in Hindi or in any other regional language, the State Bar Council shall translate the complaint in English whenever a disciplinary matter is sent to the Bar Council of India as per the Advocates Act.

Every complaint shall be accompanied by the fees prescribed in the Bar Council of India Rules.

Removal of Defects and Request for Particulars in a Complaint

The Secretary of the Bar Council may require the complainant to pay the prescribed fees if the proper fee has not been paid. He can also call the complainant to remove any defects and call for the particulars or copies of the complaint or other documents as may be considered necessary.

On a complaint being found to be in order, it shall be registered and placed before the Bar Council for such order as it may deem fit to pass.

Withdrawal and Settlement of Complaints

No matter taken up by the State Bar Council (either *suo motu* or on a complaint made by other parties) for misconduct of advocates shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or because the complainant does not want to proceed with the enquiry.

Before referring a complaint for misconduct of an advocate to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complainant to furnish further and better particulars or may call for comments from the advocate complained against, within a time to be fixed by it.

Show Cause Notice

Once the Bar Council has referred the complaint to a disciplinary committee, the Registrar should expeditiously send a notice to the advocate.

The notice will ask the concerned advocate to show cause within a specified date, on the complaint made against him and to submit the statement of defense, documents and affidavits in support of the defense.

It will also further inform him that in case of his non-appearance on the fixed date of hearing, the matter shall be heard and determined in his absence. Appearance usually includes appearance by an advocate or through a duly authorized representative.

Time of Enquiry

The Chairman of the Disciplinary Committee will fix the date, hour, and place of the enquiry. This date will not ordinarily be later than thirty days from the receipt of the reference. The Registrar has to give notice of the date, hour and place to the complainant or other person aggrieved, the advocate concerned, and the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be.

Notices

The notices shall, subject to necessary modification, be in Form Nos. E-1 and E-2. It shall be sent to the advocates appearing for the parties. Notice to a party not appearing by the advocate shall be sent to the address as furnished in the complaint or in the grounds of appeal.

The cost of the notices shall be borne by the complainant unless the Disciplinary Committee otherwise directs.

The notices may be sent ordinarily through messenger or by registered post and served on the advocate or the party concerned or his agent or other person as provided for in Order V of the Civil Procedure Code.

Notice may also be sent for service through any Civil Court.

Where the notice sent to any party cannot be served using the normal methods listed above, it may be served by affixing a copy in some conspicuous place in the office of the Bar Council, and also upon some conspicuous part of the house (if any) in which the party concerned is known to have last resided or had his office.

Appearance and Witnesses

Parties can appear in person or by an advocate who should file a *vakalatnama* giving the name of the Bar Council in which he is enrolled, his residential address, telephone number if any, and his address for service of notices.

A Senior Advocate is entitled to appear with another advocate who has filed a *vakalatnama*.

The Bar Council or its Disciplinary Committee may at any stage of a proceeding appoint an advocate to appear as *Amicus Curiae*. Such advocate may be paid such fee as the Council or the Committee may decide.

Excepting when the Committee has otherwise directed, service on the advocate shall be deemed to be sufficient service on the parties concerned, even if copies of the notices are in addition sent to the parties, whether the parties have or have not been served.

Unless otherwise indicated, where more than one Advocate appears for the same party, it is sufficient to serve the notice on any of them.

***Ex-parte* Proceedings**

If, in an enquiry on a complaint received, either the complainant or the respondent does not appear before the Disciplinary Committee in spite of service of notice, the Committee may proceed *ex-parte* or direct fresh notice to be served.

Any such order for proceeding *ex-parte* may be set aside on sufficient cause being shown, when an application is made supported by an affidavit, within 60 days of the passing of the *ex-parte* order.

The provisions of Section 5 of the Limitation Act, 1963 shall apply to this sub-rule.

Proceedings and Exhibits

The Disciplinary Committee shall hear the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be or their advocate and parties or their advocates.

The matters can be heard and determined on documents and affidavits. Unless the committee is of the opinion that it should be in the interest of justice to permit cross-examination of the deponents or to take oral evidence, in which case the procedure for the trial of civil suits shall as far as possible be followed.

On every document admitted in evidence, the following endorsement shall be made which shall be signed by the Chairman or any member of the Committee:

The Disciplinary Committee of Bar Council of

Exhibit No

Date of Document.....

Produced by

Date

Signature of

The exhibits shall be marked as follows: –

- a. Those of the complainant as C1,C2, etc.
- b. Those of Respondent as R1, R2,etc.
- c. Those of Disciplinary Committee as D1, D2, etc.

The Disciplinary Committee may at any stage direct the parties or their advocates to furnish such further and better particulars, as it considers necessary.

Recording of Evidence

Any member of the Committee or any other person authorised by the committee shall record the evidence given before the Disciplinary Committee preferably in English. The evidence so recorded shall be signed by the Chairman or by any other member of the committee if the Chairman is not there.

In the case where the records of evidence are in any other language than English and the same has to be sent to the Bar Council of India or its Disciplinary Committee, then the same has to be translated into English. Such a translation thereof in English has to be made by a person nominated by Committee or Registrar certifying the same to be true copy should also be sent.

Record of Proceedings

Every Disciplinary Committee shall make a record of its day-to-day proceedings.

The Registrar of the Disciplinary Committee shall maintain a case diary setting out shortly in order of date, all relevant information concerning the date of filing, the date for hearing and despatch.

The case diary shall also have the details of service of the notices on the parties or the Advocates or the Attorney General or the Additional Solicitor General or the advocate General as the case may be, of statements or petitions filed and/or of their order, and of other proceedings in the matter before the Committee.

Dropping of Enquiries on Certain Grounds

In the case of the death of the complainant during the enquiry proceedings (and if there is no representative who is willing to conduct the case), the Disciplinary Committee may having regard to the allegations made in the complaint and the evidence available, make a suitable order either to proceed with the enquiry or to drop it.

In the case of an enquiry against one advocate only, on his death the Disciplinary Committee shall record the fact of such death and drop the proceedings.

Where the enquiry is against more than one advocate, on the death of one of them, the Disciplinary Committee may continue the enquiry against the other advocate unless it decides otherwise.

No disciplinary enquiry shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or that the complainant does not want to proceed with the enquiry.

Dress

Unless otherwise permitted, counsel appearing before any of the Disciplinary Committees of the State Bar Council or Bar Council of India shall appear in court dress.

Decision of Case by the Disciplinary Committee

All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code. The disciplinary committee of the State Bar Council, after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:

- dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- reprimand the advocate;
- suspend the advocate from practice for such period as it may deem fit;
- remove the name of the advocate from the State roll of advocates

Findings and Judgment

The finding of the majority of the members of the Disciplinary Committee shall be the finding of the Committee. The reason given in support of the finding may be given in the form of a judgment.

If there is a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reason. It shall be competent for the Disciplinary Committee to award such costs as it thinks fit.

The Registrar of the Disciplinary Committee shall send, free of charge to each of the parties in the proceedings, a certified copy of the final order or judgment.

The date of an Order made by the Disciplinary Committee shall be the date on which it is first received in the office of the Bar Council after all the members have signed it.

For the purpose of limitation, the date of the Order shall be the date on which the contents of the signed Order are communicated to the parties affected.

Pending Matters

Certified copies of the records of a case pending before the Disciplinary Committee may be granted to the parties or to their counsel on an application made in that behalf and on payment of the prescribed fee. This is mandatory unless the Committee has directed otherwise.

The Secretary of a State Bar Council shall send to the Secretary of the Bar Council of India, quarterly statements of the complaints received and the stage of the proceedings before the State Bar Council and Disciplinary Committees.

The Secretary of the Bar Council of India may call for further statements and particulars as he considers necessary.

The Secretary of every State Bar Council shall furnish such particulars and send such statements as may be considered necessary by the Secretary of the Bar Council of India for these purposes and send them all to the records of proceedings that stand transferred.

The date of receipt of the complaint or the date of the initiation of the proceedings at the instance of the State Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee.

Withdrawal of Proceedings

Where a State Bar Council makes a report, the Secretary of the State Bar Council shall send to the Secretary of the Bar Council of India, all the records of the proceedings, along with the report.

An application by a person interested in the withdrawal of a proceeding shall sign the same. It shall set out the necessary facts supported by an affidavit and accompanied by the fee prescribed.

For making an order on an application of a party or otherwise for withdrawal of an application, the Disciplinary Committee of the Bar Council of India may:

- a. Call for a report of the Disciplinary Committee seized of the proceedings;
- b. Issue notice to the respondent;
- c. Require the parties to file such statements as it considers necessary;
- d. Call for the records of the proceedings; and
- e. Examine any witnesses.

In the proceedings before the Disciplinary Committee of Bar Council of India, the parties may appear in person or by an advocate who shall file a *vakalatnama*.

On consideration of the report of a State Bar Council or otherwise, the Disciplinary Committee of the Bar Council of India shall pass such orders as it considers proper.

Disposal of Disciplinary Proceedings

The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under section 35 expeditiously and in each case the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such

proceedings shall stand transferred to the Bar Council of India which may dispose of the same as if it were a proceeding withdraw for inquiry under sub-section (2) of section 36.

Appeal to the Bar Council of India

Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 or the Advocate-General of the State may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India. Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order including an order varying the punishment awarded by the disciplinary committee of the State Bar Council thereon as it deems fit. Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.

Appeal to the Bar Council of India

An appeal to the Council from the State Bar Council shall be in the form of a memorandum in writing. If the appeal is in a language other than English, it shall be accompanied by a translation in English.

In every appeal, all persons who were parties to the original proceedings alone shall be impleaded as parties.

In an appeal by the advocate against an order for misconduct, in case of death of the complainant, the legal representatives of the complainant shall be made parties.

An appeal may be presented by the appellant or his advocate or by his recognized agent in the office of the Bar Council of India. It can also be sent by registered post, so as to reach the Secretary, Bar Council of India. The appeal has to be presented on or before the last day of limitation.

Any appeal may be admitted after the period of limitation if the appellant satisfies the Disciplinary Committee that he has sufficient cause for not preferring the appeal within such a period. Any such application for condonation of delay shall be supported by an affidavit.

The memorandum of appeal shall contain necessary particulars as in Form G. The memorandum of appeal shall state when the order was communicated to the appellant and how it is in time.

Along with the memorandum of appeal, the appellant shall file:

a. The certified copy of the order appealed against, signed by the Registrar of the Disciplinary Committee, or

b. (i) If there is only one respondent, five additional copies of the memorandum of appeal and of the order appealed against.

(ii) If there is more than one Respondent, such number of additional copies as may be necessary.

All copies shall be certified as true copies by the appellant or by his counsel.

Every memorandum of appeal shall be accompanied by the prescribed fees in cash.

If the papers filed in an appeal are not in order, the Registrar shall require the appellant to remove such defects within a specified time.

Allocation of Matters in Appeal

The Chairman of the Executive Committee or in his absence the Vice-Chairman of the Executive Committee) or such other member authorised in this behalf by the Council) shall have the power to allocate matters relating to the Disciplinary Committee. Sometimes the Council allots a particular case to any one particular Disciplinary Committee.

Any matter allotted to a particular Disciplinary Committee, which has not been heard, may be reallocated to a different Disciplinary Committee.

Interim Orders in Appeal

The Chairman of any Disciplinary Committee shall have powers to issue interim orders on urgent matters which may be placed before him by the Registrar.

Time and Date in Appeal

Subject to any resolution of the Bar Council of India relating to the places of hearing, the Chairman of the Disciplinary Committee concerned shall fix the date, hour and place for the hearing of the appeal.

Exhibits and Records in Appeal

The appellant shall be required to file six typed sets of the papers properly paged and indexed, if there is only one respondent.

In case of multiple respondents, as many more sets as there may be number of respondents, for the use of the Disciplinary Committee and by the other parties and for the record.

The papers to be filed are: –

- a. The complaint and the statement in the defence of the advocate,
- b. The oral and documentary evidence and such other papers on which parties intend to rely,
- c. Any other part of the record as may be directed by the Committee.

Where any of the above papers is in a language other than English, English translations thereof will be filed.

The respondent shall, if he so desires, or if so called upon, file six sets of typed papers of any part of the record on which he intends to rely. He shall also file English translations of papers that are not in English.

Notice of Hearing in Appeal

The Registrar shall give notices to the parties, informing them of the date, the time and the place of the hearing of the appeal. A copy of the memorandum of appeal shall be sent to the respondent along with the notice of the appeal.

Withdrawal of Appeal

No appeal filed against an order of punishment of an advocate shall be permitted to be withdrawn on account of settlement or compromise or adjustment of the claim against the advocate.

Every appeal filed by or against an advocate shall abate on the death of the advocate so far as he is concerned.

Records from State Bar Councils

The Registrar shall issue notice to the State Council concerned for the complete records to be sent to the Council.

The Registrar of the State Council concerned shall send along with the records a list containing particulars under the following columns and comply with such other directions as may be issued.

Serial number of document	Date of document	Description of document	Page number

Application for Stay

An application for stay shall be made by the applicant with at least five copies of the application, and the affidavit and as many additional copies as many are the respondents. Where the application is not in English, five copies with translation in English shall also be filed.

In every application for stay made to the Council, the applicant shall state if any application has been made to the State Council and the orders on the same.

Before a matter is allotted to a Disciplinary Committee the registrar may obtain orders on applications for interim stay or other urgent applications from the Chairman of any of the Disciplinary Committees. The orders passed shall be communicated to the parties and to the Secretary of the Bar Council concerned.

The Disciplinary Committee of the Bar Council of India shall exercise all the powers exercised by the Civil Court or Court of Appeal under C.P.C.

Review of the Decision of Bar Council of India

The Bar Council of India or any of its committee, other than its disciplinary committee, may on its own motion or otherwise, review any order, within 60 days of that order, passed by it under the Advocates Act.

Appeal to the Supreme Court

Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 or the Attorney-General of India or the Advocate-General of the State concerned, as the case may be, may within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India thereon as it deems fit. Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.

Misbehavior as Misconduct

In **Re: Vinay Chandra Mishra AIR 1995 SC 2348**; In this case a senior advocate in on being asked a question in the court started to shout at the judge and said that no question could have been put to him. He threatened to get the judge transferred or see that impeachment motion is brought against him in Parliament. He further said that he has turned up many Judges and created a good scene in the Court. He asked the judge to follow the practice of this Court. He wanted to

convey that admission is as a course and no arguments are heard, at this stage. But this act was not only the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. The concerned judge wrote a letter informing the incident to the chief justice of India. A show cause notice was issued to him.

Whether the advocate had committed a professional misconduct?

Is he guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemnor is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. HC Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him. Thus the contemnor Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks and he shall stand suspended from practicing as an advocate for a period of three years.

Central Information Commission

CIC to bar council of delhi: Publish cases of professional misconduct of Advocates

It is important to remember words of Krishna Iyer, “indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility, a responsibility towards the people, especially the poor” and that responsibility has to be practically visible in functioning of every advocate. If not people should know action against him. Right to know of the people arises out of this responsibility of Bar Council. Section 4(1)(d) of RTI Act, mandates the public authority to “provide reasons for its administrative or quasi judicial decisions to affected persons”. Bar Council should understand the purport of above referred judicial pronouncements is properly understood, the Bar Council has to publish these reports because generally entire people are positively affected by the good conduct to some extent and harmfully affected by misconduct of the advocates, and if the

Bar Council punishes them or brings out genuineness of service, it will neutralize the impact. For that purposes it has to publish the reports of the disciplinary proceedings.

It is to be noted that proceedings for contempt and professional misconduct can be carried out simultaneously.

Case: Suo Motto Enquiry vs Nand Lal Balwani [BCI Tr. Case No. 68/1999]

Facts: the respondent advocate hurled the shoes and shouted slogans in the Supreme Court of India. Both contempt and proceedings for professional misconduct were initiated against him.

Held: the SC found him guilty for contempt of court and awarded him a simple imprisonment for 4 months and fine of 2000 Rupees. Further the disciplinary committee of Bar Council of India also found him guilty of professional misconduct and ordered his name to be removed from the roll of Bar Council of Maharashtra and Goa.

Conclusion

The role of the lawyers in the society is of great importance. They being part of the system of delivering justice holds great reverence and respect in the society. Furthermore, as the officers of the court the lawyers are required to uphold the dignity of the judicial office and maintain a respectful attitude towards the Court. This is because the Bar and the Bench form a noble and dynamic partnership geared to the great social goal of administration of justice, and the mutual respect of the Bar and the Bench is essential for maintaining cordial relations between the two. It is the duty of an advocate to uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute, and ensure that at no point of time, he oversteps the limits of propriety. It is further suggested that there must be various career guidance and development programs conducted by the Bar Council immediately after enrolment so that new legal professionals are aware of the do's and don'ts of this profession so that there be a better group of advocates in the coming decades.