**COMPLAINT AGAINST AN ADVOCATE**

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.

The 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.

**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 defence, documents and affidavits in support of the defence.

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 authorised 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 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.

**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 in accordance with rule 8(1) of Bar Council of India rules.

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

**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.

Shambhu Ram Yadav v. Hanum Das Khatry[[1]](#footnote-0), a complaint was filed by the appellant against an advocate to the Bar Council of Rajasthan for misconduct. The Disciplinary Committee, holding that the advocate was guilty of “misconduct”, stated that such an act made the advocate “totally unfit to be a lawyer.” The Supreme Court, upholding the finding of the Rajasthan Bar Council held that the legal profession is not a trade or business. Members belonging to the profession have a particular duty to uphold the integrity of the profession and to discourage corruption in order to ensure that justice is secured in a legal manner. The act of the advocate was misconduct of the highest degree as it not only obstructed the administration of justice, but eroded the reputation of the profession in the opinion of the public.

In Bhupinder Kumar Sharma v. Bar Council Pathankot[[2]](#footnote-1), the appellant was enrolled with the State Bar Council as an Advocate. The Respondent made a written complaint to the State Bar Council making allegations of misconduct against the appellant. The State Bar Council took cognizance of the complaint and referred the complaint to its disciplinary committee. After the completion of the proceedings Order was passed by the Disciplinary Committee of the State Bar Council to remove the name of the Appellant from the State's Roll of Advocate and the same was confirmed by the Disciplinary Committee of the Bar Council of India and also the Supreme Court.

1. AIR 2001 SC 2509 [↑](#footnote-ref-0)
2. AIR 2002 SC 41 [↑](#footnote-ref-1)