

1991—No. 405

LEGAL PROFESSION ACT 1987

NEW SOUTH WALES



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The rules set out hereunder are made by the rule committee of the Legal Profession Standards Board on 18 July 1991.

R. J. BENNETT,
Registrar of the Legal Profession Standards Board.

LEGAL PROFESSION STANDARDS BOARD RULES 1991

Citation

1. These Rules may be cited as the Legal Profession Standards Board Rules 1991.

Commencement

2. These Rules commence on 2 August 1991.

Rule-making power and scope of Rules

3. (1) These Rules governing the practice and procedure of the Board are made under section 169 of the Act by a rule committee of the Board.

(2) Subject to these Rules and to Part 10 of the Act, the Board may regulate its own practice and procedure.

Definitions

4. (1) In these Rules:

“**Board**” means the Legal Profession Standards Board constituted under Part 10 of the Act;

“**Registrar**” means the Registrar of the Board, and includes any person for the time being performing the duties of the Registrar;

“**the Act**” means the Legal Profession Act 1987.

(2) In these Rules, a reference to a form is a reference to a form in the Schedule to these Rules.

Seal of Board

5. The seal of the Board:

- (a) is to contain the words “Legal Profession Standards Board NSW”; and
- (b) is to be kept in the custody of the Registrar.

Exemption from Rules

6. The Board may, at any time, exempt a person from complying with any of the requirements or procedures set out in these Rules.

Time

7. (1) If no time is fixed by these Rules for the doing of any thing in or in connection with a hearing conducted by the Board, the Board may, by order, fix the time within which the thing is to be done.

(2) The Board may, by order and on such terms and conditions (if any) as it thinks fit, alter any time fixed by these Rules or by an order of the Board.

Commencement of hearings—forms and service

8. (1) A hearing by the Board into a complaint referred to the Board or made under the section of the Act referred to in Column 1 of the Table to this Rule is to be commenced by filing with the Registrar a complaint in or to the effect of Form 1.

(2) The person commencing such a hearing is to serve the complaint on the person or persons referred to opposite that section in Column 2.

(3) If it is impracticable for any reason to comply with subrule (2), the Board may order that such steps as are specified in the order be taken to bring the complaint to the notice of the person to be served.

(4) Where an order is made pursuant to subrule (3), the taking of the steps specified in the order shall, unless the Board otherwise orders, have effect as service of the complaint on the person to be served.

TABLE

Column 1	Column 2
(section of act)	(person to be served)
section 134 (1) (b) (i)	the legal practitioner against whom the complaint has been made
section 135	the legal practitioner against whom the complaint has been made
section 141 (1) (b)	the complainant, the appropriate Council and the legal practitioner against whom the complaint has been made

Address for service

9. The following persons are required, before appearing before the Board, a member of the Board or the Registrar in respect of a hearing into a complaint, to file with the Registrar a notice (in or to the effect of Form 2) of an address for service of documents:

- (a) the legal practitioner against whom the complaint has been made;
- (b) the complainant (if any);
- (c) any person to whom leave is granted by the Board under section 144 (4) of the Act to appear at the hearing.

Party failing to appear at hearing

10. If any person who is entitled to appear at a hearing into a complaint fails to appear at the hearing, the Board may hear and determine the complaint in the absence of the person.

Amendment

11. The Board may, on such terms and conditions (if any) as it thinks fit, order that any document in relation to a hearing conducted by the Board be amended or that any party have leave to amend any document in relation to a hearing.

Directions

12. The Board may, from time to time, give such directions and make such orders in relation to any hearing as appears convenient to the Board (whether or not inconsistent with these Rules) for the just, quick and cheap disposal of the hearing.

Settlement and dismissal of complaints

13. (1) If a complainant and the legal practitioner concerned agree to settle a complaint which has been referred to the Board, either of them may file with the Board a notice of the agreement in or to the effect of Form 3.

(2) Where a notice is filed pursuant to this rule, the Board may, if it thinks fit, dismiss the complaint and such dismissal shall, unless the Board otherwise determines at the time of the dismissal, be equivalent to a dismissal on the merits and no further complaint may be made by the complainant against the legal practitioner in connection with or arising substantially out of the facts upon which the dismissed complaint is based.

Withdrawal of complaints

14. (1) In relation to a complaint that has been referred to the Board:

(a) where the complaint has been referred by the appropriate Council:

- (i) the complainant, with the consent of the appropriate Council and the legal practitioner concerned; or
- (ii) the appropriate Council, with the consent of the legal practitioner concerned; or

(b) where the complaint has been referred by the Attorney General:

- (i) the complainant, with the consent of the Attorney General and the legal practitioner concerned; or
- (ii) the Attorney General, with the consent of the legal practitioner concerned,

may file a notice of withdrawal in or to the effect of Form 4 or 5, as may be appropriate.

(2) Where a complaint has been made to the Board, the appropriate Council may, with the consent of the legal practitioner concerned, file a notice of withdrawal in or to the effect of Form 5.

(3) Where a notice is filed pursuant to this rule the Board shall proceed no further with the hearing into the complaint.

(4) The filing of a notice pursuant to this rule shall not prevent a further complaint, based on the same or similar facts as the complaint to which the notice relates, being referred or made to the Board.

Adjournment

5. The Board may adjourn a hearing on such terms and conditions (if any) as it thinks fit.

Summons

16. A summons under section 146 of the Act is to be in or to the effect of Form 5.

Notice to attend and to produce documents

17. A notice under section 147 of the Act is to be in or to the effect of Form 6.

Order for filing

18. An order made by the Board for filing with the Prothonotary is to be in or to the effect of Form 8.

Notification of order

19. The Registrar is, after the Board makes an order under section 149 of the Act, required to serve the order and the reasons for it on any party who was not present or represented when the order was made.

Power of members and Registrar

20. (1) The powers of the Board under Rule 12 may be exercised by a member of the Board or by the Registrar.

(2) The Registrar may exercise the powers of the Board in respect of any matter referred to the Registrar by the Board.

Referring matter to the Board

21. A member of the Board or the Registrar may refer any matter in relation to a hearing to the Board.

Review

22. The Board may review my direction or other thing given or done by a member of the Board or by the Registrar and make such other direction or order as it thinks fit.

(Rule 4 (2))

SCHEDULE—FORMS

FORM 1

(Rule 8)

Legal profession Standards Board
(hearing and number)

COMPLAINT

Appropriate Council complains/refers a complaint* (or The Attorney General refers a complaint) to the Legal Profession Standards Board against (*name of legal practitioner against whom complaint has been made*).

(Give particulars of the complaint below and, if the complaint is a referred complaint, also annex a copy of the complaint.)

Appropriate Council (or The Attorney General) requests the making of the following orders:

or such further or other order as the Board thinks fit.

This complaint will be listed for mention before the Registrar or a member of the Board at (*address*) at (*time*) on (*date*).

To (*name of legal practitioner against whom the complaint has been made*):

Before any attendance at that time, you must file a notice of address for service of any documents on you.

Orders may be made against you by the Board in your absence.

Date:

(*signature on behalf of appropriate
Council or Attorney General*)
(*capacity of signatory*)
(*appropriate Council/Attorney
General**)

(*seal and signature on behalf of
Legal Profession Standards Board*)

(*Delete whichever is inapplicable**)

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FORM 2

(Rule 9)

Legal Profession Standards Board
(Hearing and number)

NOTICE OF ADDRESS FOR SERVICE

The address for service of documents on *(name of legal practitioner, complainant or party having leave to appear under s. 144 (4) of the Legal Profession Act 1987)* is *(address)*.

Date:

(signature of person giving notice of address for service)
(name of person giving notice of address for service)

FORM 3

(Rule 13 (1))

Legal Profession Standards Board
(Hearing and number)

NOTICE OF AGREEMENT

I, *(name and address of complainant, complainant, and name and address of legal practitioner concerned, legal practitioner,)* hereby give notice that we have agreed to settle the complaint by the Complainant against the abovenamed legal practitioner which has been referred to the Board on the following terms:

Date:

(signature of complainant)
Complainant

(signature of legal practitioner concerned)
Legal Practitioner

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FORM 4

(Rule 14 (1))

Legal Profession Standards Board
(Hearing and number)

NOTICE OF WITHDRAWAL

I, *(name and address of complainant)*, hereby withdraw my complaint against the abovenamed legal practitioner, which has been referred to the board.

Date:

(signature of complainant)
Complainant

Appropriate Council *(or The Attorney General)* consents hereto.

*(signature on behalf of appropriate Council
or Attorney General
(capacity of signatory))*

(name and address of legal practitioner concerned) consents hereto.

(signature of legal practitioner concerned)

(Delete whichever is inapplicable)*

FORM 5

(Rule 14)

Legal Profession Standards Board
(Hearing and number)

NOTICE OF WITHDRAWAL

Appropriate Council hereby withdraws the complaint referred/made* by it *(or The Attorney General hereby withdraws the complaint referred by him/her* to the Board against the abovenamed legal practitioner.*

Date:

*(signature on behalf of
appropriate Council or the Attorney General)*
(capacity of signatory)

(name and address of legal practitioner) consents hereto.

(signature of legal practitioner concerned)

(Delete whichever is inapplicable)*

FORM 6

(Rule 16)

Legal Profession Standards Board
(Hearing and number)

SUMMONS

To: *(name and address)*

You are required to appear before a hearing to be conducted by the Legal Profession Standards Board on *(date)* at *(time)* at *(address)* to give evidence *(or to produce the documents specified below or to give evidence and to produce the documents specified below)*

This summons is served under section 146 (4) of the Legal Profession Act 1987 which provides:

(4) A person served with a summons to appear at a hearing to give evidence shall not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board.

Penalty: \$2,000.

Date:

*(signature of member or Registrar of the Legal
Profession Standards Board and seal of
Board)*

Member *(or Registrar)* of the Legal
Profession Standards Board

FORM 7

(Rule 17)

Legal Profession Standards Board
(Hearing and number)

NOTICE TO ATTEND AND PRODUCE DOCUMENTS

To: *(name and address)*

You are required to attend before *(name of a member of the Legal Profession Standards Board, a member of the Legal Profession Standards Board or the Registrar of the Legal Profession Standards Board or name or description of a person authorised by the Board, a person authorised by the Legal Profession Standards Board)* on *(date)* at *(time)* at *(address)* and to produce at that time and place, the documents specified below:

This notice is served under section 147 (2) of the Legal Profession Act 1987 which provides:

(2) a person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: \$2,000.

Date:

(signature of member or Registrar of the Legal Profession Standards Board and seal of Board)

Member (or Registrar) of the Legal
Profession Standards Board

FORM 8

(Rule 18)

Legal Profession Standards Board
(Hearing and number)

ORDER TO BE FILED WITH THE PROTHONOTARY

The Legal Profession Standards Board makes the following orders:

Date of order:

(signature and seal)
Chairperson of the Legal
Profession Standards Board

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SCHEDULE—FORMS

EXPLANATORY NOTE

The object of these Rules is to prescribe matters relating to the practice and procedure of the Legal Profession Standards Board. The Board conducts hearing into complaints referred to it or made by the Bar Council or the Law Society Council against legal practitioners concerning questions of unsatisfactory professional conduct. These Rules are made by a rule committee of the Board.
