



LAW SOCIETY OF KENYA

TERMS OF REFERENCE FOR ETHICS COMMITTEE

Whereas the Council desires that an advocate against whom a complaint has been made to the Law Society of Kenya for professional misconduct should be given a chance to, if possible, amicably resolve the complaint without the need to resort to formal disciplinary proceedings; and

Whereas there are, at the moment, no mechanisms within the Society to promote alternative dispute resolution in the handling of complaints against advocates; and

Whereas the Council has now established Ethics as stipulated in the attached Schedule

PROCEDURE FOR HANDLING OF A COMPLAINT BY AN ETHICS COMMITTEE

1. A complaint to the Law Society of Kenya against an advocate shall be referred by the Secretary, or a person acting on his behalf, to an Ethics Committee falling within the area where the advocate ordinarily practices.
2. An advocate is deemed to ordinarily practice in the town where, in his last declaration to accompany payment for a practicing certificate, he declared his physical address to be.
3. The Secretary may refer a complaint to a Committee other than the one which covers the area where an advocate complained against ordinarily practises if:
 - a) it is necessary to do so in order to reduce travel by the complainant in connection with the complaint, or if it would otherwise be more convenient for the complaint to be dealt with by an Ethics Committee other than the one which covers where the advocate complained against ordinarily practises; or
 - b) if, for reasons to be communicated by the Secretary, or a person acting on his behalf, it is desirable to refer a complaint to an Ethics Committee other than the one which covers where the advocate complained against ordinarily practices.
4. The reference of a complaint to an Ethics Committee shall be in writing and the letter referring the complaint shall be addressed to the Convenor of the Ethics Committee. A copy of the letter shall be sent to the advocate complained against and to the complainant, and shall explain to the advocate and to the complainant the effect

of reference to the Ethics Committee which is to try and promote an amicable settlement of the dispute.

5. An Ethics Committee to which a complaint is referred may do one of the following:-

- i) write to the advocate complained against, requiring him, within a stipulated period, to make proposals for the amicable settlement of the complaint and if the advocate makes such proposals the committee shall consider them and if they are reasonable, shall endeavour to resolve the complaint on the basis of such proposals.
- ii) write to the advocate or to the complainant making proposals to him on how a complaint can be resolved amicably and asking him to signify his concurrence with the proposals within such time as the Ethics Committee may suggest and if the advocate consents to the proposals the committee shall endeavour to resolve the complaint on the basis of such proposals.
- iii) invite the advocate complained against to a meeting with the complainant, in the presence of a member of the Ethics Committee, to discuss the complaint with a view to reaching an amicable resolution.

6. The duty to refer a complaint to an Ethics Committee shall not extend to:-

- a) a complaint which, on the face of it, is frivolous or vexatious or which does not disclosed a valid basis for complaining,
The Secretary shall, in such a case, write to the complainant, informing him of the reasons why the complaint cannot be allowed;
- b) a complaint which has been referred to, or is being or has in the past been handed by the Complaints Commission or the Disciplinary Committee,
- c) a complaint arising from, or relating to, proceedings pending in a court of law;
- d) a complaint the nature of which, in the view of the Secretary, incapable of resolution by an Ethics Committee.

7. An Ethics Committee must deal with all complaints referred to it expeditiously and in any case not later than 30 days from the

date the complaint is referred. An Ethics Committee is deemed to have received a complaint not later than five days after it is dispatched to the Committee.

8. In respect of each complaint referred to it, an Ethics Committee shall, at the conclusion of its handling of the complaint, prepare a report setting out the terms of settlement of the complaint, or its findings with regard to the complaint, as the case may be, and send the report to the Secretary. It is the duty of the Convenor to ensure the timely dispatch of the report to the Secretary.
9. If the report in paragraph 8 constitutes an amicable resolution of the complaint, the complaint shall be deemed as resolved and the Secretary shall close his file on the complaint.
10. If an Ethics Committee is unable to achieve an amicable settlement of a complaint, and makes a report to the Secretary to that effect, the Secretary shall refer the complaint to the Complaints Commission or, if appropriate, to the Disciplinary Committee.
11. The quorum of an Ethics Committee shall be two members
12. Subject to quorum, an Ethics Committee may sit in two or more panels and each such panel shall be deemed to be, and may undertake any or all the business that may be undertaken by, an Ethics Committee.
13. The Convenor shall have the responsibility of co-ordinating the business of an Ethics Committee, for creating panels of the Committee and for ensuring that the Committee meets its responsibilities efficiently.
14. A member of an Ethics Committee shall be entitled to reimbursement of travel costs in connection with attendance of meetings of the Committee. Such costs shall only be payable, at a flat rate of Kshs. 3,000.00 per meeting, if the member has to travel to attend a meeting at a venue which is more than 30 kilometres from where he ordinarily resides.
15. Except as provided in paragraph 14, no other costs shall be paid to, or in connection with, the work of an Ethics Committee.