
NOTICE

27 June 2022

LPC Investigation processes and disciplinary procedures are informed by the Legal Practice Act

The Legal Practice Council (the LPC) has received a number of queries from legal practitioners and members of the public seeking clarity on the disciplinary processes under the Legal Practice Act (the Act).

The LPC has since 2018 been the regulator for the entire legal profession, attorneys and advocates, both practising and non-practising.

In terms of the Regulations promulgated under the Act, the power to establish investigating and disciplinary committees is delegated to the Provincial Councils, and those councils, and not the LPC itself, conduct all investigations and disciplinary hearings following the receipt of a complaint or allegation of unprofessional conduct.

All disciplinary processes are conducted in line with the Act and its Rules, specifically Sections 36 to 44 of the Act and Rules 38 to 45, which prescribe the investigation and disciplinary processes. It is to be noted, however, that the date of commencement of Section 41 of the Act, which provides for an appeal against the conduct or finding of a disciplinary committee, has not yet been proclaimed and so this process is not presently available.

On receipt of a complaint the relevant provincial office considers the complaint and, where necessary, gathers certain further information and particulars that may be required to establish whether grounds exist under the rules for referring the complaint to an investigating committee for further consideration. Complaints may be received from members of the public, legal practitioners, a Court, tribunal or other forum, or they may arise from allegations of misconduct against legal practitioners that are in the public domain.

Complaints from the public must be submitted in writing, and a standard complaint form is available on the Council's website at <https://lpc.org.za/members-of-the-public/how-to-lodge-a-complaint/#complaints-form>.

The Provincial Councils appoint independent investigating committees and disciplinary committees which consist of practising legal practitioners who do not serve on the National or Provincial Councils.

Disciplinary committees must consist of at least one advocate if the complaint is against an advocate, and at least one attorney if the complaint is against an attorney.

Once a complaint has been referred to an investigating committee, the committee investigates the complaint and, if satisfied, on the basis of available prima facie evidence, that the legal practitioner is guilty of misconduct, the complaint is referred to a disciplinary committee for adjudication.

The complainant is entitled to be present at the disciplinary hearing, at which evidence will be led by the Provincial Council's legal officer, or someone else appointed for that purpose. The complainant and witnesses will testify under oath, and may be cross-examined by the legal practitioner against whom the complaint is made or his/her legal representative. The legal practitioner may then testify in his/her defence and call witnesses.

Following the conclusion of the disciplinary hearing before the independent disciplinary committee the parties are advised of the outcome.

Should either party be dissatisfied with the finding of the committee, and in the absence of the commencement of Section 41 of the Act, it is open to the dissatisfied party to approach the High Court for the appropriate relief. The Council advises that as the Act is structured, the Council is not vested with any powers of review or appeal.

The independence of the process is vital to ensuring that all matters are considered without prejudice or influence, in a manner judicially fair to all parties concerned.

Kind regards

Legal Practice Council