

ADVOCATES (INQUIRY COMMITTEE) RULES 2013

(G.N.S 27 of 2013)

In exercise of the powers conferred by paragraph 17 (ccc) of the Advocates Ordinance of Sabah [Cap. 2], the Chief Judge, with the concurrence of the State Attorney-General, has made the following rules:

Citation and commencement

1. (1) These Rules may be cited as the Advocates (Inquiry Committee) Rules 2013.
- (2) These Rules shall come into force on 1st June 2013.

Interpretation

2. In these Rules, unless the context otherwise requires –

“advocate” means an advocate whose name has been entered on the Roll of Advocates for Sabah and includes a person to whom permission to practise has been granted by the Chief Judge under paragraph 10 (c) of the Ordinance;

“Chief Judge” means the Chief Judge of the High Court in Sabah and Sarawak;

“Court” means the High Court in Sabah and Sarawak or a Judge thereof when sitting in Open Court;

“Inquiry Committee” means the Inquiry Committee established pursuant to section 17 of the Ordinance and where the context so permits shall include the Panel of Inquiry appointed by the Chairman of the Inquiry Committee under subrule 5(3);

“Judge” means a Judge of the High Court sitting in Chambers;

Roll” means the Roll of Advocates kept under section 3 of the Ordinance;

“State Attorney-General” means the State Attorney-General of Sabah and includes his Deputy or such legal officer in his Chambers duly authorised to act or appear on his behalf in writing;

“Ordinance” means the Advocates Ordinance (*Cap. 2*) of Sabah.

Inquiry Committee

3. (1) There is established an Inquiry Committee consisting of the following members –

- (a) a Chairman;
- (b) the President for the time being of the Sabah Law Association;
- (c) a Secretary;
- (d) an Assistant Secretary; and
- (e) five other members.

(2) The members referred to in paragraphs (1) (a), (c), (d) and (e) shall be appointed by the Chief Judge from among persons of not less than ten years’ standing as an advocate or as a member of the Federal Judicial and Legal Service or of the State Legal Service or sometimes one and sometimes another.

(3) Subject to subrule 5(3) four members shall constitute a quorum for any meeting of the Inquiry Committee. The Chairman shall ordinarily preside at a meeting of the Inquiry Committee and in the absence of the Chairman, the members present shall elect one of their number to preside at the meeting.

(4) Every member appointed by the Chief Judge shall hold office for a term of two years commencing from the date of such appointment:

Provided always that any such member may at any time resign his office by giving notice in writing to the Chief Judge, and that the Chief Judge may at any time revoke the appointment of any such member.

(5) In the event of any vacancy in the office of any member appointed by the Chief Judge occurring before the expiry of the term of appointment, the Chief Judge may fill the vacancy by appointing a person who is qualified to be a member for the remainder of the term for which his predecessor was appointed.

(6) The Chairman of the Inquiry Committee may convene a meeting of the Inquiry Committee as and when necessary and at least one week's notice of such meeting shall be given by the Secretary.

(7) The Inquiry Committee shall have an address on which notices, including complaints against advocates, may be served or made and such address including any change thereof shall be published in the State Government *Gazette* and at least two newspapers circulating in the State of Sabah.

(8) There shall be paid to each member of the Inquiry Committee such allowances and expenses necessarily incurred by him in the carrying out of his duties and functions under these Rules as the Chief Judge may from time to time determine.

Powers, duties and functions

4. (1) The duties and functions of the Inquiry Committee shall be –
- (a) to consider, examine, scrutinise or enquire into any complaint made against any advocate in his professional capacity by any person aggrieved by any action of the advocate or by the State Attorney-General;
 - (b) if upon examination and inquiry into such complaint, the Inquiry Committee is of the opinion that the same is frivolous and without merit or unsubstantiated, to dismiss the same without taking any further action, unless directed otherwise by the State Attorney-General;
 - (c) if upon examination and inquiry into such complaint, the Inquiry Committee finds that the complaint has been *bona fide*, and that there is *prima facie* evidence that disciplinary proceedings should be taken against the advocate under section 12 or section 12A of the Ordinance, to commence proceedings to apply for such order as the Inquiry Committee

thinks fit under section 13 of the Ordinance having regard to the nature of the complaint and all the relevant circumstances relating thereto.

(2) All complaints to the Inquiry Committee in respect of any breach of any provisions of the Advocates' Remuneration Rules 1988 [G.N.S. 17 of 1988] shall be made by the complainant substantially in the form in the Schedule hereto.

(3) The Inquiry Committee shall have the power –

- (a) to nominate or appoint any of its members or any advocate to represent the Inquiry Committee at any hearing before the Court or Judge in respect of any proceedings brought by or against the Inquiry Committee;
- (b) to order any advocate or complainant to pay the costs of any proceedings before the Inquiry Committee:

Provided that no such order shall be made against the State Attorney-General if he is the complainant;

- (c) to summon any person to appear before the Inquiry Committee to give such evidence or produce such documents as may be required by the Inquiry Committee; and
- (d) to administer oaths and affirmations to witnesses appearing before the Inquiry Committee.

(4) In addition to the powers, duties and functions stipulated hereinabove, the Inquiry Committee may have such other powers, duties and functions as the Chief judge may, by special direction published in the State Government *Gazette*, assign to the Inquiry Committee.

Hearing

5. (1) The Inquiry Committee may conduct its inquiry or proceedings at such place as it may nominate or specify from time to time.

(2) At least seven days' notice in writing shall be given to the complainant and the advocate against whom the complaint is made in respect of any inquiry, hearing or proceedings before the Inquiry Committee.

(3) Every inquiry, hearing or proceedings conducted by the Inquiry Committee may be heard and disposed of by a Panel of Inquiry constituting four or more members as the Chairman may in any particular case determine. The Chairman shall automatically preside over a Panel of Inquiry if he is constituted as a member thereof. Where the Chairman is not constituted as a member of a Panel of Inquiry, he shall appoint a member to preside over the said Panel of Inquiry.

(4) No proceedings shall be open to the public, unless the Inquiry Committee so directs.

(5) Minutes of the proceedings shall be recorded and a copy thereof transmitted to the Chief Judge and to the State Attorney-General.

(6) A copy of such minutes and all documents admitted during the proceedings before the Inquiry Committee shall be attached to the application made under section 13 of the Ordinance.

(7) Evidence given by a witness before the Inquiry Committee shall be on oath or affirmation.

(8) No member of the Inquiry Committee shall be allowed to sit or participate in any proceedings before the Inquiry Committee in relation to any complaint against him or a member of the firm to which such member belongs, but nothing in this rule shall prevent him from appearing before the Inquiry Committee as a witness or to defend himself against the complaint made against him or a member of his firm.

(9) If the complainant or advocate fails to appear before the Inquiry Committee after due notice of inquiry or meeting has been given, the Inquiry Committee may proceed with the hearing despite the absence of any party.

(10) The complainant or advocate shall be entitled to be legally represented at any hearing before the Inquiry Committee, and shall notify the Inquiry Committee in advance of the name of the advocate representing him and his address of service.

Decision

6. (1) The Inquiry Committee may decide on any matter or issue before it by majority vote, and in the event of an equality of votes, the Chairman of the Inquiry Committee or the member elected to preside at such meeting in the absence of the Chairman or the member appointed by the Chairman to preside over the Panel of Inquiry shall have a casting vote.

(2) The Inquiry Committee may in its discretion refer any difficult issue or question of law which has arisen in the course of the proceedings before it for determination by a Judge. Such application shall be by way of Originating Summons.

Power to regulate procedure and proceedings

7. Save as otherwise expressly herein provided, the Inquiry Committee may regulate its own procedure and proceedings as it thinks fit.

Immunity

8. No action or proceedings shall lie against the Inquiry Committee or any member thereof for any act or thing done under these Rules unless it is proved to the satisfaction of the Court that the act or thing was done in bad faith or with malice.

Disciplinary Fund

9. A Disciplinary Fund shall be established for the costs and expenses of the Inquiry Committee in the discharge of its functions. Every advocate shall contribute and pay an annual sum towards the Disciplinary Fund which sum shall be fixed by the Chief Judge. The Disciplinary Fund shall be held in trust and for the use of the Inquiry Committee which shall tender an annual account to the Chief Judge with a copy extended to the Sabah Law Association.

Cost

10. The costs and expenses incurred by the Inquiry Committee in the discharge of its functions hereunder, including any costs which the Court or Judge may award against the Inquiry Committee, shall be paid from the Disciplinary Fund.

Revocation and savings

11. (1) The Advocates' (Inquiry Committee) Rules 1988 [G.N.S. 15 of 1988] are hereby revoked.

(2) Nothing in subrule (1) shall affect the validity of anything lawfully done under and in accordance with the repealed rules.

(3) All inquires, hearings and proceedings conducted by and all decisions, recommendations or findings made by the Inquiry Committee established under the Advocates' (Inquiry Committee) Rules 1988 shall notwithstanding the repeal of the said Rules be proceed with and be continued and acted upon by the Inquiry Committee established under these Rules as if they have been so made, conducted, decided or recommended by them.

(4) Any person who immediately before the commencement of these Rules is appointed Chairman, Secretary and a member of the Inquiry Committee established under the Advocates' (Inquiry Committee) Rules 1988 shall continue in that office and be deemed for the purpose of these Rules to have been so appointed on the date of the commencement of these Rules.

SCHEDULE
[subrule 4 (2)]

FORM OF COMPLAINT TO THE INQUIRY COMMITTEE

From: *Name of complainant, NRIC No. and address*

To: The Secretary
Inquiry Committee

1. I verily believe that [*name of advocate and solicitor or the firm of advocates and solicitors*] of [*address of the advocate and solicitor complained against*] is/are in breach of the Advocates' Remuneration Rules 1988 on the following grounds:

[*State the grounds of belief and enclose documentary evidence (if available) of the alleged breach*]

2. I request the Inquiry Committee to investigate into the above complaint and to take such necessary actions as it deems fit and proper.

3. And I make this complaint by way of a solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1960 [*Act 13*].

Subscribed and solemnly declared by
the abovenamed [*name of complainant*]
at
this day of

}