



Institute of Actuaries of India

IAI Disciplinary Process

20th India Fellowship Seminar

4th-5th December 2013

K.S. Gopalakrishnan, Vice-President

Disciplinary Committee

Council shall constitute DC consisting of

- President or Vice President of the Council
- two Members of Council
- two Members nominated by Central Govt – persons of eminence – experience in the field of law, education, economics, business, finance, accountancy or Public administration.

Appointment of *Prosecution Director*

Appointed by *the* Council - by notification

Functions of *the* PD

- Assist Disciplinary Committee in making inquiries

S 27 (1)

- Shall follow such procedure as may be prescribed

S 27 (2)

Powers

DC,PD and Council shall have the same Powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of :

- a) Summoning and enforcing the attendance of any person and examining him on oath;
- b) the discovery and production of any document;
and
- c) receiving evidence on affidavit

(S 28)

Public Servant

- The Chairperson, Presiding Officer, Members and other officers and employees of Authority, Tribunal and Board, and PD shall be deemed to be a Public Servant within the meaning of section 21 of the IPC (45 of 1860)

(S 54)

- **THE ACTUARIES (PROCEDURE FOR ENQUIRY OF PROFESSIONAL AND OTHER MISCONDUCT) RULES, 2008**

Format of Complaint

Complaint shall be presented

a) before the Designated Person

b) in prescribed form (in triplicate)

Rule 3 (1)

Format of Complaint [Rule 3 (1)]

1. **Name of the Complainant:**
 (with membership number, if Member of the
 Institute of Actuaries of India)
2. **Name of the Member /firm against whom complaint
 is being made:**
 (with membership number / registration number of
 the firm, if known)
3. **Latest address of the complainant for**
communication
4. **Last available professional address of the Member**
or the firm against whom the complaint is made
5. Particulars of **allegation(s)** serially numbered 1.....
 together with **corresponding clause / part of the**
Schedule, 2.
 or
 Particulars of **allegation(s)** serially numbered 3.
 together with **clause / part of the relevant Schedule(s)**
under which the alleged acts of commission or 4.
omission or both would fall 5.

.....

6. Particulars of evidence (s) adduced in support of the allegation (s) made
7. Name(s) of person who have knowledge of the facts of the case

Date.....
Place.....

.....
Signature of the Complainant
(Name.....)

VERIFICATION

I,....., the Complainant, do hereby declare that what is stated above is true to the best of my information and belief.
Verified today theday of.....20.....at.....

Date.....
Place.....

Signature of the Complainant
(Name.....)

If Complaint is filed by

1. Central Government/ State Government

The same shall be -

Authorised by Joint Secretary

Signed by Under Secretary

Rule 3(3)

2. Statutory Authority

(such as IRDA, RBI, SEBI)

Authorised by Joint Secretary

Signed by Under Secretary

12

Rule 3(4)

3. Company/Body Corporate/a Firm/ Association of Individuals

- a) A Resolution passed by the Board of Directors/ Partners etc.
- b) Specifically authorizing an officer/ a person to make complaint behalf of company

Rule 3(5)

Fee for filing Complaint

- ***Except in case of Central Govt., any State Govt., or any statutory authority, every complaint shall be accompanied by a fee of Rs. 500/-.*** *Rule 4(1)*
- ***The fee shall be payable by demand draft in favour of the Institute payable at Mumbai.*** *Rule 4(2)*
- ***Fee once paid shall not be refunded.*** *Rule 4(3)*

Acknowledgement of Complaint

Complaint shall be *duly* acknowledged by the **Designated Person** with an Acknowledgment number.

Rule 3 (7)

DP Reference of Complaint to PD

The designated person shall endorse on every complaint

1. the date of receipt of complaint and
2. his signature
3. and refer the complaint to the PD

Rule 5(1)

Registration of Complaint by PD

PD should be satisfied that

1. Format is duly filled in
2. A Fee of Rs. 500 is received
3. The complaint is against a *Member / Firm*
4. If complaint is filed on behalf of an entity (other than an individual), whether he has the Rank or Specific Authority
5. The allegations relate to Misconduct of a member.

and

6. Whether Designated Person has duly acknowledged the complaint and given an Acknowledgement number

If found in order, **PD shall register the complaint and give a serial number**

Rule 5 (3)

Complaint containing the same subject matter

PD shall

- a) If previous complaint is pending before the Prosecution Director -
Present complaint club with the previous complaint
- b) If Prima facie opinion is formed by PD and pending before the Disciplinary Committee
**Refer to Disciplinary Committee *which* may club the same with previous complaint
or ask PD to deal with it as a separate complaint**
- c) If order already passed by the DC on previous complaint
Refer to Disciplinary Committee and the Disciplinary Committee shall recommend the same to the Council for Decision

Rule 5 (4)

Defective Complaint

PD may

1. Allow Rectification in his presence or
2. Grant such time as he may deem fit for rectification

Rule 5 (5)

Declinature of Complaint and Appeal

If the complainant fails to rectify the defect, the PD may, by order and reasons recorded in writing, decline to register the complaint.

Rule 5 (6)

Appeal against this order, to be made within 15 days of the order, to Disciplinary Committee

Rule 5 (7)

Withdrawal of a Complaint

- PD shall place the Application for withdrawal of a complaint before the Disciplinary Committee
- Disciplinary Committee may permit withdrawal at any stage.

Information

1. Any written information against a *Member* or a *Firm*, *which is not in prescribed Form* shall be treated as Information.

Rule 7(1)

2. Informant shall be asked, whether he shall prefer to file a complaint in *prescribed Form* apprising him *that* -
 - a) **longer time is taken for disposal of any Information than a complaint**
 - b) informant **shall not have the right to be represented during the Enquiry or Hearing**
 - c) the Institute **shall not inform the Informant nor entertain any queries at any and every stage.....**

Rule 7 (2)

- A **copy of the final order** shall be sent to the informant

Rule 7 (2)

3. Any anonymous information received shall not be entertained by the Prosecution Director

Rule 7 (3)

Procedure of Enquiry

Procedure to be followed by PD

- *Within 60 days of receipt of the complaint, the PD shall send to the Member/Firm particulars of the acts of commission or omission, or as the case may be, a copy of the complaint. **Rule 8 (1)(a)***
- *In case of a Firm, a notice shall also be sent, calling upon it to disclose the names of the Members concerned and to send particulars of acts of commission or omission or as the case may be, a copy of complaint, to such Members. **Rule 8(1)(b)***

- *Defendant shall, within 21 days, submit his Written Statement to the PD. (PD may allow further 30 days.)*
Rule 8 (3)
- *Thereafter, PD may send a copy of the WS to the complainant who may submit his rejoinder within 21 days. (PD may allow further 30 days.)*
Rule 8 (4)
- *PD may also call for additional particulars or documents from –*
 - a) the complainant*
 - b) the defendant*
 - c) any party to the complaint*

Presumption

- *Provided that if no WS is submitted by the defendant, or no rejoinder is filed by the complainant within the time allowed, the PD shall presume that the defendant/complainant have nothing further to state and proceed with further action.*

Rule 8 (5)

Prima facie Opinion

The PD shall examine

1. the Complaint
2. the written statement
3. the rejoinder and
4. other additional particulars or documents

and form his *prima facie* opinion, as to whether the *Member* or the *Firm* is guilty or not of any Professional or other misconduct.

Rule 9(1)

Submission of prima facie opinion to Disciplinary Committee

if PD is of prima facie opinion that
member/firm is guilty, or not guilty,

Then

*In either case, the PD will place his opinion
before the Disc. Committee, along with the
Complaint, WS, rejoinder and all relevant
papers.*

Rule 9(2) & 9(5)

Prima facie Guilty and Disciplinary Committee *agreeing*

- *If the Committee agrees with the opinion of the PD holding the Member/Firm prima facie guilty, it will proceed further under Ch IV.*

Rule 9 (3)

Prima facie guilty but Disciplinary Committee *disagreeing*

- ***In case, however, the Committee disagrees with the opinion of the PD holding the Member/Firm prima facie guilty, it will forward the complaint to the Council to close the complaint or advise the PD to hold further enquiry into the complaint. Rule 9 (4)***
- ***After making further enquiry as advised, the PD shall submit his report to the Committee. Rule 9 (8)***

Prima facie not guilty and Disc. Committee agreeing

If the Committee agrees with the prima facie opinion of the PD holding the Member/Firm not guilty, it will refer the matter to the Council for closure.

Rule 9 (6)

Prima facie not guilty and Disc. Committee disagreeing

In case however, the Committee disagrees with the prima facie opinion of the PD, holding the Member/Firm not guilty, it may either proceed under Ch IV, or may advise the PD to further enquire into the matter.

Rule 9 (7)

After making further enquiry as advised, the PD shall submit his report to the Committee.

Rule 9 (8)

Action by Disciplinary Committee

If Disciplinary Committee agrees with the PD that the Member/ Firm is guilty, then Disciplinary Committee shall cause to deliver to the **defendant and the complainant**, a copy of -

1. Prima facie opinion
2. particulars of documents relied upon **by the PD** and **Rule 14 (2)**
3. call for **Written Statement** by **Defendant** within such time as may be specified (may also grant additional time) **Rule 14 (3)**
4. **Defendant** shall send a copy of his **Written Statement** along with supporting Documents to the **PD** and the **Complainant** **Rule 14 (4)**
5. and call for **Rejoinder** from the **complainant** **Rule 14 (5)**

Hearing by the Disciplinary Committee

- The Presiding Officer shall fix the date, hour and place for hearing and send a notice to
 1. the PD
 2. the Defendant and
 3. the Complainantto appear before the Disciplinary Committee in person to make oral submissions, if any.

Rule 14 (6)

4. If Defendant does not appear for hearing the Disciplinary Committee may proceed ex parte.

Rule 14(7)

- If Defendant pleads guilty, the Disciplinary Committee shall record the statement of the Defendant and submit the report to the Council.

Rule 14 (9)

5. If Defendant does not plead guilty, then Disciplinary Committee shall fix a date for **examination of witnesses** or production of documents, if any.

Rule 14 (10)

6. Notice to witnesses to attend or produce any other evidence may be sent, on application by Complainant, Defendant or Prosecution Director.

Rule 14 (11)

Second Hearing

- Disciplinary Committee, shall, **take all such evidence** as may be produced by the complainant, the defendant or the Prosecution Director, including oral examination.
- Disciplinary Committee, may permit **cross examination** of any witness.

- After *presentation* of evidence by the **PD** is over, the **complainant** shall be given an opportunity to present any additional evidence.

Rule 14(13)

- **The Defendant** shall be called upon to *adduce his defence and produce his evidence*

Rule 14(14)

If Defendant **applies** to the Disciplinary Committee **to issue any notice for compelling any witness** for examination/ cross examination/ production of any evidence, the **Disciplinary Committee, shall, issue such notice.**

Rule 14(15)

- *Witnesses summoned at the request of the complainant/defendant, shall not be eligible for reimbursement of expenses.*

Rule 14 (16)

Final Arguments

After evidences have been adduced,

1. the PD
2. the Defendant and
3. the Complainant

may present their arguments

Rule 14(17)

Report of the Disciplinary Committee



After Considering

1. the WS
2. the Rejoinder
3. the Documents
4. Oral submissions by

Defendant, complainant, and the PD, the Disciplinary Committee will arrive at a finding whether the Defendant *is* guilty or not, of any Professional or other misconduct.

Rule 14(19)

- The Disciplinary Committee shall submit its report to the Council

S 26 (2)
Rule (15)

Action by Council on DC's report

- 1) if the Council is satisfied with DC Report - Member is guilty - it shall record its finding - proceed in accordance with the provisions of section 30
- 2) In case Council is not satisfied with DC Report – may refer report again to DC for such further inquiry as may be directed thorough an order of the Council
- 3) If Council disagrees with findings of DC, it may direct PD or itself make an appeal the Authority

Sec 29

Member to be afforded opportunity of being heard

Where the Council is of the opinion that a Member is guilty of a professional or other misconduct mentioned in the schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may take any one or more of the following actions

- a) Reprimand the Member; or
- b) Remove the name of the member from the register permanently or for such period, as it thinks fit;
- c) Impose such fine as it make think fit, which may extend to five lakhs rupees

Sec 29

Appellate Authority



Constitution of Appellate Authority

- Constituted under sub-section (1) of section 22-A of Chartered Accountants Act, 1949 (38 of 1949) with some modification **Sec 32**

Appeal to Authority

- Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 30, may, within ninety days of the date of the date on which the order is communicated to him, prefer an appeal to authority **Sec 36**

Appellate Authority



The Authority may, after calling for the records of any case, revise any order made by the Council under section 30 and may –

- a) confirm, modify or set aside the order;
- b) Impose any penalty or set aside, reduce or enhance the penalty imposed by the order
- c) Remit the case to the DC for such further inquiry as the Authority considers proper in the circumstances of the case;
or
- d) Pass such other order as the Authority thinks fit

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order

THANK YOU