

Rules of court made under s.38.

BARRISTERS AND SOLICITORS RULES

(LN. 1980/026)

1.6.1980

| Amending enactments | Relevant current provisions | Commencement date |
|---------------------|-----------------------------|-------------------|
| None | | |

Note: Notices made under rr.3 and 12, Appointment of Chairman of Admission and Disciplinary Committee, Appointment of Additional Members and Decisions by the Committee are listed at the back of these Rules.¹

ARRANGEMENT OF RULES.

Rule

1. Title.
2. Interpretation.

PART I.

ESTABLISHMENT OF COMMITTEE.

3. Establishment of committee.

PART II.

ADMISSIONS AND ENROLMENT.

4. Application for admission and enrolment.
5. Examination.
6. Exemption.

PART III.

DISCIPLINARY PROCEEDINGS.

¹ See also LN. 2008/010 – “The Admissions and Disciplinary Committee Appointment of Members”

BARRISTERS AND SOLICITORS RULES

**Subsidiary
1980/026**

7. Complaints.
8. Reference by Chief Justice.
9. Investigation.
10. Decision of committee.
11. Appeals.
12. Interim orders.
13. Final orders.
14. Notice of intention to apply for setting aside or annulment.
15. Setting aside or annulment of suspension or disenrolment.
16. Appearances.
17. Endorsement of the Roll of the Court and gazetting of disenrolments, suspensions, setting aside and annulments.

**PART IV.
MISCELLANEOUS.**

18. Saving.
19. *Omitted.*

SCHEDULE.

BARRISTERS AND SOLICITORS RULES**Title.****Subsidiary
1980/026**

1. These rules may be cited as the Barristers and Solicitors Rules.

Interpretation.

2. In these rules, unless the context otherwise requires—

“barrister” means a person enrolled as a barrister under section 28 of the Act;

“professional misconduct” and “conduct unbefitting a barrister or solicitor” include any act or omission which would be regarded as such in disciplinary proceedings brought against a barrister or solicitor in England ;

“solicitor” means a person enrolled as a solicitor under section 30 of the Act.

PART I.**ESTABLISHMENT OF COMMITTEE.****Establishment of committee.**

- 3.(1) There shall be established for the purposes of these rules a committee, to be known as the Admissions and Disciplinary Committee. *

- (2) The committee shall consist of three members, as follows :—

- (a) the Attorney-General who shall be chairman of the committee; and,

- (b) two unofficial members to be appointed by the Chief Justice, one of whom shall be nominated by the Bar of Gibraltar.

- (3) The Chief Justice may appoint an alternate member to substitute for each unofficial member, the alternate for the nominated member to be likewise nominated by the Bar.

- (4) If, in respect of any particular application or complaint, the Attorney-General considers it undesirable that he should sit, he may request the Chief Justice to appoint another chairman, and thereupon—

- (a) the Attorney General shall take no further part in those proceedings; and ,

* See list at the back of these Rules.

- (b) the Chief Justice shall appoint an additional member of the committee and shall nominate one of the members of the committee so constituted to be the chairman for the purposes of those proceedings.

(5) If, in respect of any particular application or complaint, the Chief Justice considers it undesirable that either or both of the unofficial members, or his or their alternates, should sit, he may appoint an additional member or members to substitute for such member or members for the purposes of those proceedings.

(6) No person shall be appointed a member or alternate or additional member of the committee unless he is a barrister or solicitor of at least ten years' standing.

(7) An unofficial member shall hold office for two years and shall be eligible for re-appointment and an alternate member shall hold office during the appointment of the member for whom he substitutes.

(8) A member or alternate member may continue to sit, notwithstanding that his appointment has expired, for the purposes of any proceedings begun before his appointment expired.

(9) The committee shall have power to regulate its own procedure and to appoint a secretary.

PART II.

ADMISSIONS AND ENROLMENT.

Applications for admission and enrollment.

4.(1) An application to be admitted and enrolled as a barrister under section 28 or as a solicitor under section 30 shall be made by petition, which shall be substantially in the form contained in the Schedule, shall be verified by oath or statutory declaration and shall be filed in the Registry, with two recent testimonials to the good character of the applicant.

(2) Every person applying to be admitted as a barrister or solicitor shall deliver to the Registry a notice intimating that he has so applied, which notice shall (unless the Chief Justice shall otherwise allow) be posted and continue to be posted in the Supreme Court for twenty-one days before any order is made on the petition.

Examination.

BARRISTERS AND SOLICITORS RULES

**Subsidiary
1980/026**

5.(1) Every person applying to be admitted as a barrister or solicitor shall before the hearing of his petition appear before the committee who shall interview the petitioner and satisfy themselves and report to the Chief Justice whether or not, in their opinion, the petitioner is a fit and proper person to be admitted as a barrister or solicitor in Gibraltar.

(2) Where the committee submits an unfavourable report on a petitioner, the committee shall furnish the petitioner with a copy thereof.

(3) On receiving an unfavourable report from the committee the Chief Justice may, after hearing the petitioner if the petitioner so desires, if he thinks fit by order in writing stay further proceedings on the petitioner's application.

Exemption.

6. The Chief Justice may in his discretion exempt any person from the provisions of rules 4(2) and 5(1), upon such terms and conditions as he may think fit.

PART III. DISCIPLINARY PROCEEDINGS.

Complaints.

7.(1) Any complaint of the conduct of a barrister or solicitor in his professional capacity shall be in writing and shall be addressed to the Registrar.

(2) On receiving a complaint under the provisions of sub-rule (1), the Registrar shall—

- (a) lay such complaint before the committee ; and
- (b) furnish the barrister or solicitor concerned with a copy of such complaint.

Reference by Chief Justice.

8. The Chief Justice may at any time refer to the committee any information regarding the conduct of a barrister or solicitor.

Investigation.

BARRISTERS AND SOLICITORS RULES**Subsidiary
1980/026**

9.(1) The committee shall investigate any complaint laid before it under rule 7 or any information referred to it under rule 8.

(2) The committee may require a complainant to support his complaint by his own affidavit or the affidavit of some person having knowledge of the facts and the barrister or solicitor concerned shall be furnished with a copy of any such affidavit.

(3) The committee shall give the barrister or solicitor concerned an opportunity to appear before it and be heard.

(4) For the purposes of an investigation, the chairman of the committee may administer oaths.

(5) The barrister or solicitor concerned and the complainant (if any) may issue writs of subpoena ad testificandum and duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Decision of Committee.

10.(1) The decision of the committee on a complaint or reference investigated by it shall contain—

- (a) its findings of fact ;
- (b) its opinion as to the conduct of the barrister or solicitor concerned and in particular whether such conduct amounts to professional misconduct or conduct unbecoming a barrister or solicitor; and
- (c) its opinion as to whether or not the facts establish a reasonable cause for disciplinary action,

and shall state whether those opinions are unanimous or those of the majority of the members.

(2) Where the committee is of the opinion that there is reasonable cause for disciplinary action, it may—

- (a) recommend that the name of the barrister or solicitor concerned be struck off the Roll of the Court or that he be suspended from practising within Gibraltar ; or
- (b) administer a reprimand to the barrister or solicitor concerned, and, if it thinks fit, order him to repay or forego any fee and to make payment of or towards the costs of the investigation,

BARRISTERS AND SOLICITORS RULES

and any such recommendation, reprimand or order shall be set out in the decision of the committee.

**Subsidiary
1980/026**

(3) The committee shall cause its decision to be served on the barrister or solicitor concerned and on the complainant (if any) or, if they are or either of them is outside the jurisdiction, sent to them or him by registered post, and shall cause a copy of the decision to be delivered to the Registrar to be laid before the Chief Justice.

Appeals.

11.(1) If the barrister or solicitor concerned or the complainant (if any) considers himself aggrieved by the decision of the committee, he may within thirty days of the decision or such longer time as the Chief Justice may allow, appeal to the Chief Justice against the decision or any part thereof.

(2) Any such appeal shall be brought in the manner prescribed for appeals in rules 17 to 28 of the Supreme Court Rules, with such modifications as may be necessary and in particular references to the clerk of the Court of First Instance shall be read as referring to the secretary to the committee and references to all persons directly affected by the appeal shall include the barrister or solicitor concerned or the complainant (if any), as the case may be.

(3) The committee shall be entitled to be, represented at the hearing of the appeal.

(4) Every such appeal shall be heard in chambers.

Interim orders.

12. Where the committee has recommended that the name of a barrister or solicitor be struck off the Roll of the Court, the Chief Justice may, if he considers it necessary or desirable, make an immediate interim order that such barrister or solicitor be suspended from practice.

Final orders.

13.(1) Where any person has appealed against a decision of the committee, the Chief Justice, after hearing the appeal, may—

- (a) affirm that decision and make any order necessary to give effect to it ; or
- (b) set aside the decision and remit the proceedings to the committee with any necessary directions; or

BARRISTERS AND SOLICITORS RULES**Subsidiary
1980/026**

- (c) set aside the decision and make such order in the proceedings as he shall think fit.

(2) Where at the expiration of the time prescribed for appeal, no appeal has been brought, the Chief Justice may-

- (a) make such order as may be necessary to give effect to the decision of the committee ;
- (b) make such other order as he shall think fit:

Provided that the Chief Justice shall not-

- (i) make an order imposing any penalty more severe than that recommended by the committee without giving the barrister or solicitor concerned an opportunity of being heard; or
- (ii) reverse a finding that a barrister or solicitor has been guilty of misconduct or conduct unbecoming a barrister or solicitor without giving the complainant an opportunity of being heard.

Notice of intention to apply for setting aside or annulment.

14. A barrister or solicitor who has been disenrolled or suspended and who intends to apply for the setting aside or annulment of his disenrolment or suspension shall give seven days notice of such intention to the committee.

(2) The committee shall, on receipt of such notice, forthwith send to the Registrar, to be placed before the Chief Justice, a statement of any facts which the committee or any of its members consider relevant to the intended application and shall furnish the barrister or solicitor concerned with a copy of such statement.

Setting aside or annulment of suspension or disenrolment.

15.(1) An application for the setting aside or annulment of the disenrolment or suspension of a barrister or solicitor shall be made by summons, supported by affidavit, which shall be served on the committee.

(2) The committee shall be entitled to be represented at the hearing of the application.

(3) Every such application shall be heard in chambers.

(4) The Chief Justice may make such order on the application as he may think fit, including an order for payment of the costs of the application.

Appearances.

16. At any hearing under rule 11, rule 13, or rule 15
- (a) the barrister or solicitor concerned may appear in person or be represented by any other barrister or solicitor ;
 - (b) the complainant (if any), if entitled to be heard, may appear in person or be represented by a barrister or solicitor ; and
 - (c) the committee, if entitled to be represented, may appear by any of its member or by any other barrister or solicitor.

Endorsement of the Roll of the Court and gazetting of disenrolments, suspensions, settings aside and annulments.

17. When the name of a barrister or solicitor is ordered to be struck off the Roll of the Court or he is suspended from practising within Gibraltar or where any such disenrolment or suspension is set aside or annulled, the Registrar shall forthwith—

- (a) endorse the Roll of the Court with a note of the order; and
- (b) cause a notice of the order to be published in the Gazette.

**PART IV.
MISCELLANEOUS.**

Saving.

18. Nothing in these rules shall be deemed to affect or operate to the prejudice of the general jurisdiction of the court in relation to any matter affecting the professional practice, conduct and discipline of barristers and solicitors nor to limit the powers of the court in relation to the exercise of such jurisdiction.

Revocation.

19. *Omitted.*

1960-02

Supreme Court

BARRISTERS AND SOLICITORS RULES

Subsidiary
1980/026

SCHEDULE.

Rule 4.

To the Honourable the Chief Justice.

In the Matter of the Supreme Court Act

-and-

In the Matter of the Barrister and Solicitors Rules

-and-

In the Matter of C.D, a barrister/solicitor

THE PETITION OF

SHEWETH:–

That your petitioner was admitted as a barrister/solicitor in
on the day of and is qualified for admission and
enrolment as a barrister/solicitor under section 28/29 of the Supreme Court
Act:

Your petitioner prays that an order may be made for his admission and
enrolment as barrister/solicitor in the following terms
.....

It is not intended to serve any person with this petition.

Your petitioner's address for service is

Dated this day of , 20

Petitioner

BARRISTERS AND SOLICITORS RULES

Notices made under rr.3 and 12 of the Supreme Court (Barristers and Solicitors) Rules 1980

**Subsidiary
1980/026**

APPOINTMENT OF CHAIRMAN OF ADMISSION AND DISCIPLINARY COMMITTEE

APPOINTMENT OF ADDITIONAL MEMBERS OF ADMISSION AND DISCIPLINARY COMMITTEE

DECISIONS BY THE ADMISSION AND DISCIPLINARY COMMITTEE

| <i>LN number</i> | <i>Complainant if any or matter</i> | <i>Remark</i> | <i>Date</i> |
|------------------|--|---|-------------|
| 1997/103 | Thomas Clancy | A B Serfaty Esq. QC to be an additional member | 9.10.1997 |
| 1997/104 | Thomas Clancy | A V Stagnetto, Esq. QC to be Chairman | 9.10.1997 |
| 2000/023 | Andrew Macdonald Esq. | Louis Triay Esq. QC to be an additional member | 23.3.2000 |
| 2000/024 | Andrew Macdonald Esq. | Anthony Provasoli Esq. to be an additional member | 23.3.2000 |
| 2001/058 | Mr Lalu Gulraj | Albert J Isola Esq. to be an additional member of the Admissions | 7.6.2001 |
| 2001/059 | Mr Lalu Gulraj | Anthony Provasoli Esq. to be an additional member | 7.6.2001 |
| 2001/071 | | Complaint against Mr Stuart Ross | 14.6.2001 |
| 2001/079 | Mr Lalu Gulraj | Charles Gomez Esq. to be an additional member | 5.7.2001 |
| 2001/133 | Ms H Jennings | Anthony Provasoli Esq. to be an additional member | 25.10.2001 |
| 2002/091 | | Appointment of Anthony Provasoli Esq. to be a member | 21.11.2002 |
| 2003/119 | Mr Charles Gomez | J. E. Triay QC to be an additional member | 30.10.2003 |
| 2003/120 | Augustus Stagnetto QC | H. K. Budhrani QC to be an additional member | 30.10.2003 |
| 2004/048 | Annick Prinzessin zu Bentheim-Tecklenburg. | Haresh Budhrani QC to be an additional member and Chairman | 24.6.2004 |
| 2005/089 | Mrs Katherine Payas | Robert Vasquez Esquire of Messrs Triay & Triay, to be a member of the Admissions and Disciplinary Committee in place of the Honourable R. R. Rhoda QC | 2.6.2005 |
| 2005/090 | Mr Robert Clinton | Robert Vasquez Esquire of Messrs Triay & Triay, to be a member of the Admissions and Disciplinary Committee in place of Anthony Provasoli Esquire. | 2.6.2005 |

BARRISTERS AND SOLICITORS RULES**Subsidiary
1980/026**

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| 2005/139 | Mr Terry Greeney | Robert Vasquez Esquire of Messrs Triay & Triay, to be a member of the Admissions and Disciplinary Committee in place of Anthony Provasoli Esquire | 27.10.2005 |
| 2005/140 | Mr David Bonnici | Robert Vasquez Esquire of Messrs Triay & Triay, to be a member of the Admissions and Disciplinary Committee in place of Anthony Provasoli Esquire | 27.10.2005 |
| 2005/146 | the Commissioner of the Royal Gibraltar Police | I have appointed Robert Vasquez Esq. to be a member of the Admissions and Disciplinary Committee | 3.11.2005 |
| 2005/147 | the Commissioner of the Royal Gibraltar Police | I have appointed Augustus Stagnetto QC to be the Chairman of the Admissions and Disciplinary Committee | 3.11.2005 |
| 2005/152 | Mr. Robert Vasquez Esquire | to be a member of the Admissions and Disciplinary Committee in place of Augustus V Stagnetto Q.C., until further notice | 17.11.2005 |
| 2005/178 | | I re-appoint Augustus V Stagnetto Q.C. to be a member of the Admissions and Disciplinary Committee in place of Robert Vasquez Esquire | 15.12.2005 |
| 2006/009 | Mrs Theresa Alcantara | Ray Pilley Esquire to be an Additional Member of the Admissions and Disciplinary Committee | 2.2.2006 |
| 2007/124 | Mrs A Schofield | Mr Hareesh Budhrani QC to be a member of the Admissions and Disciplinary Committee | 15.11.2007 |
| 2008/010 | | (a) Augustus Victor Stagnetto Esq QC, (on the nomination of the Bar) a member of the Admissions and Disciplinary Committee; | 6.3.2008 |
| | | (b) Stephen Catania Esq, (on the nomination of the Bar) to be an alternate member to substitute for the said Augustus Victor Stagnetto Esq QC; | |
| | | (c) Anthony Provasoli Esq to be a member of the said Admissions and Disciplinary Committee; | |
| | | (d) David Dumas Esq QC, to be an alternate member to substitute for the said Anthony Provasoli Esq. | |
| 2008/021 | Attorney General for Gibraltar against Thomas G Phillips | Stephen Catania to be a member of the Admissions and Disciplinary Committee | 10.4.2008 |

BARRISTERS AND SOLICITORS RULES

**Subsidiary
1980/026**

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| 2008/022 | esq Attorney General for Gibraltar against Thomas G Phillips | Augustus Stagnetto QC to be the Chairman of the Admissions and Disciplinary Committee | 10.4.2008 |
| 2008/023 | esq In the matter of the suspension of Christopher Finch | Stephen Catania to be a member of the Admissions and Disciplinary Committee | 10.4.2008 |
| 2008/024 | In the matter of the suspension of Christopher Finch | Augustus Stagnetto QC to be the Chairman of the Admissions and Disciplinary Committee | 10.4.2008 |
| 2008/088 | In the matter of a complaint by Keith Sheriff against Associates of Hassans | Augustus Stagnetto QC to be the Chairman of the Admissions and Disciplinary Committee | 20.11.2008 |
| 2008/089 | In the matter of a complaint by Keith Sheriff against Associates of Hassans | Haresh Budhrani QC to be a member of the Admissions and Disciplinary Committee | 20.11.2008 |
| 2009/053 | In the matter of a complaint by Marrache & Co | Haresh Budhrani QC to be a member of the Admissions and Disciplinary Committee | 1.10.2009 |
| 2010/038 | in the matter of a complaint by Michael Feetham esq | Stephen Catania to be a member of the Admissions and Disciplinary Committee | 18.2.2010 |