



ODA E AVOKATËVE TË KOSOVËS
ADVOKATSKA KOMORA KOSOVA
KOSOVA BAR ASSOCIATION

Regulation on Disciplinary Procedure

Pursuant to articles 42 par. 2, article 50 and 51 of the Law on Bar No. 04/L-193, in conjunction with Article 73 of the KBA Statute, the Assembly of the Kosovo Bar Association in its meeting held on November 16, 2013, adopted the following;

Regulation on disciplinary procedure before the Kosovo Bar Association

I. General provisions:

Article 1 Introduction

1. Pursuant to the Law on the Bar and the KBA Statute, this regulation establishes the disciplinary procedure for lawyers and lawyer interns.

Article 2 Definitions

“Complainant” means the person natural a legal person, including the lawyers Office of Disciplinary, who files a request for investigation.

“Disciplinary Proceedings” includes the processing of the file request, the investigation and processing of the request, disciplinary procedure development before the Disciplinary Committee and proceedings before the Assembly Appeals Committee.

“Just Cause” means such cause as it found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a lawyer either has committed an acts or acts of Professional Misconduct requiring that a Sanction be imposed.

KBA –shall refer to the Kosovo Bar Association

“Professional Misconduct” includes:

1. Lawyers acts or omissions, done individually or in concert with another person or persons, that violate one or more of the standards contained in the Law on the Bar, the KBA Statute, this Regulation and/or the Code of Professional Ethics.
2. Violation of any disciplinary order or judgment.
3. Engaging in the law practice during a period of suspension or inactive status.

“Respondent” means any lawyer or lawyer intern who is the subject of a file request for investigation, Complaint, or disciplinary proceeding.

“Sanction” means:

1. Warning,
2. Fine,
3. Temporary prohibition on the right to practice law,
4. Permanent loss of the right to practice law,
5. Temporary de-registration from the register of interns.
6. Permanent de-registration from the register.

Article 3 Disciplinary Authorities

1. The disciplinary authorities are the following:

- 1.1. The Office of Disciplinary Prosecutor
- 1.2. The Disciplinary Committee
- 1.3. The Appeals Committee

Article 4 Independence of Disciplinary Authorities

1. The disciplinary authorities of the KBA shall act independently and impartially.
2. No person shall have the right to exercise, or attempt to exercise, improper influence, whether directly or indirectly, on the functions of the disciplinary authorities of the KBA.

Article 5 Language and Translation

1. Disciplinary proceedings shall be conducted by the disciplinary authorities in one of the official languages used in Kosovo.
2. Every Complainant, Respondent and witness must be advised of his or her right to communicate and testify in his or her primary language. If his or her primary language is different from the language in which the disciplinary proceeding is being conducted, he or she shall be provided an interpreter, with KBA’s expense, unless he or she knowingly waives this right. Any such waiver shall be writing and shall be entered into the records of the hearing.

Article 6 Record Keeping

1. The KBA shall maintain evidence of open and closed disciplinary actions in an alphabetically record index for all current and former members.
2. The record shall include:
 - 2.1. The name of the lawyer, the address of his office and the date the lawyer joined the KBA.
 - 2.2. The date when the disciplinary actions were initiated against the lawyer
 - 2.3. The date of entry into force of the final decision in disciplinary actions against the lawyer.
 - 2.4. The nature of the decision and, if the lawyer was found responsible for a disciplinary offence, the nature of the sanction
 - 2.5. The date on which the sanction will be erased from the record of the lawyer.
3. A disciplinary sanction shall be erased from the record of the lawyer if no new sanction was imposed within three (3) years for a similar disciplinary offence.
4. Notwithstanding paragraph 3 of this article, the permanent exclusion from the legal profession shall be recorded permanently.

Article 7 Access to Records

1. Any citizen can request a copy of the disciplinary record of the lawyer that represents him/her.
2. Upon receipt of such request, the KBA shall provide a copy of the record that includes a list of sanctions issued against the lawyer, conditionally if these sanctions have been classified as “public” and have not yet been erased from the record of the lawyer.
3. The KBA shall provide the copy of the record within five (5) business days upon the recipient of the request.

II. Office of Disciplinary Prosecutor

Article 8 Introduction

The Office of Disciplinary Prosecutor shall be established as a separate and independent body that serves the KBA.

Article 9 Responsibilities

1. The Office of Disciplinary Prosecutor is responsible for:
 - 1.1 receiving and reviewing every request for investigation of a lawyer or lawyer intern;
 - 1.2 determining whether the Office of Disciplinary Prosecutor has jurisdiction over the matter;
 - 1.3 investigating every request for investigation over which it has jurisdiction;
 - 1.4 reporting the investigation results to the Disciplinary Committee;
 - 1.5 where the Office of Disciplinary Prosecutor determines that just cause exists for prosecution, representing the interests of the KBA to prosecute the matter before the Disciplinary Committee.

Article 10 Personnel

The Office of Disciplinary Prosecutor shall be comprised of the Disciplinary Prosecutor and other staff as shall deem necessary.

Article 11 Disciplinary Prosecutor

1. The Disciplinary Prosecutor shall be selected by KBA Managing Board. A vacancy shall be filled based on competitive process after public announcement of the position.
2. Disciplinary Prosecutor shall be responsible for the investigation and efficient prosecution procedures and effectively exercise his/her duties in accordance with the Lawyers Ethic Code, Statute and regulation approved by KBA.
3. The Director of the Office of Disciplinary Prosecutor shall receive a salary to be determined by the KBA. The Director shall not accept additional compensation, other than reimbursement for reasonable and necessary expenses, for other duties or employment from any other source.

Article 12 Qualifications of the Disciplinary Prosecutor

1. The Disciplinary Prosecutor must meet the following qualifications:
 - 1.1. be a citizen of Kosovo;
 - 1.2. have a valid university degree in law;
 - 1.3. to have passed the Bar Exam in the Republic of Kosovo;

- 1.4. to have at least three (3) years of working experience in the legal profession;
- 1.5. have a positive professional reputation and moral integrity;
- 1.6. not have been convicted for criminal offences, or minor offences that render him/her unfit to be a Disciplinary Prosecutor.

Article 13

Budget for the Disciplinary Prosecutor

Disciplinary Prosecutor shall submit annually directly to the KBA Managing Board a separate budget for the funding of the salaries of the personnel of the Office of Disciplinary Prosecutor and the other expenses of operating the Office of Disciplinary Prosecutor. The budget for the Office of Disciplinary Prosecutor shall be administered by the KBA upon the direction and certification of the Disciplinary Prosecutor. The KBA shall have no authority to limit or otherwise direct the expenditures of the Office of Disciplinary Prosecutor nor shall the KBA have the authority to reallocate the budget of the Office of Disciplinary Prosecutor or utilize funds appropriated to the Office of Disciplinary Prosecutor for any other purpose. Disciplinary Prosecutor shall report annually to the KBA Executive Committee on the activities and expenditures of the Office of Disciplinary Prosecutor.

Article 14

Procedure

Any person may request an investigation of a lawyer or lawyer intern. A request for investigation made to any KBA office or member shall be immediately referred to the Office of Disciplinary Prosecutor.

Article 15

Request for Investigation

1. Every request for investigation shall be made in writing and shall include, at a minimum:
 - 1.1. the requesting person's name, address and telephone number;
 - 1.2. the name, address and telephone number of the Lawyer or intern to be investigated;
 - 1.3. a description of the conduct for which the investigation is being requested;
 - 1.4. any supporting documents.
2. The Office of Disciplinary Prosecutor may assist the requesting party in preparing the request for investigation, but only to ensure that the request includes sufficient information for investigation. The Office of Disciplinary Prosecutor shall not assist the requesting party with the substantive allegations.

Article 16 Legal Review

1. The Office of Disciplinary Prosecutor shall review every request for investigation to determine whether the allegations, if true, would constitute a violation of the KBA Professional Advocates Code of Ethics. If the request does allege such facts, the Office of Disciplinary Prosecutor shall initiate an investigation.
2. If the request for investigation does not allege facts which, if true, would constitute a Professional Misconduct, the Office of Disciplinary Prosecutor shall refuse to investigate the request and notify the requesting party of the refusal.

Article 17

1. The Office of Disciplinary Prosecutor shall notify the subject lawyer or intern lawyer of the initiation of the investigation, and request the subject lawyer's response.
2. Within eight (8) days of receiving notice, the lawyer under investigation shall submit to the Office of Disciplinary Prosecutor a written response to the issues raised in the request for investigation. The response should include documentation supporting the lawyer's position.
3. A lawyer's failure to file a timely response to the request for investigation shall constitute the lawyer's admission that just cause exists for prosecution before the Disciplinary Committee.

Article 18 Investigation

1. The Office of Disciplinary Prosecutor is empowered to seek and obtain evidence of any persons who may have knowledge of the pertinent facts concerning any matter which is the subject of an investigation.
2. Every member of the KBA, including the lawyer or lawyers inter subject to investigation, shall comply with requests for evidence from the Office of Disciplinary Prosecutor. Complaints and objections regarding the scope of the investigation or the methods used to investigate the matter shall be directed to the Office of Disciplinary Prosecutor in the first instance. Disputes and objections that cannot be resolved with the Office of Disciplinary Prosecutor may be appealed to the Disciplinary Committee.

Article 19 Report of Investigation

1. Upon the completion of each investigation, the Office of Disciplinary Prosecutor shall prepare an investigation report to the Disciplinary Committee, including:
 - 1.1. The names, addresses and telephone numbers of the Requesting Party and Lawyer or intern under investigation;

1.2. A summary of the facts, including the request for investigation, the response, and any relevant supporting documentation provided by the parties or obtained in the course of the investigation.

1.3. The Office of Disciplinary Prosecutor's recommendation as to whether or not just cause exists to prosecute the matter, or whether deferral is appropriate, as provided for in Article 20.

Article 20 Deferral

In matters where the evidence shows minor misconduct and where the lawyer agrees to remedy any harm that was sustained by a client, the Office of Disciplinary Prosecutor may recommend to the Disciplinary Committee that proceedings be deferred for up to a year to allow the lawyer to continue to practice under conditions mandated by the Office of Disciplinary Prosecutor. If the lawyer abides by all conditions during the deferral period, the matter will be dismissed and no public discipline will be sought.

III. Disciplinary Committee

Article 21 Responsibilities

1. The Disciplinary Committee is responsible for:

1.1 reviewing every investigation report;

1.2 affirming or denying the Office of Disciplinary Prosecutor's recommendation as to whether just cause exists to prosecute the matter;

1.3 presiding over the prosecution of lawyers and interns accused of professional misconduct;

Article 22 Disciplinary Panel

1. Within fifteen (15) days of receiving the investigation report from the Office of Disciplinary Prosecutor, the Chairperson of the Disciplinary Committee shall designate a disciplinary panel consisting of three (3) members of the Disciplinary Committee. One of the members shall be designated as the panel Chairperson. The panel will act upon the case under the procedure.

2. If a panel member is unable to serve, or has reasonable grounds for not serving, he or she shall notify the Chairperson of the Disciplinary Committee in writing of his or her inability to serve. Notice must be provided to the Chairperson of the Disciplinary Committee within 3 days of appointment to the panel

3. The Complainant and Respondent shall have the right to request a member of the panel be removed upon a showing of good cause if an objection, with the supporting reason, is provided to the Chairperson of the Disciplinary Committee, within 3 days receiving notice of the members of the panel.

4. The Chairperson of the Disciplinary Committee shall replace the disqualified and unavailable panel members within 3 following days.

Article 23 **Initial Review by Disciplinary Panel**

1. Within seven (7) days of his or her appointment to the disciplinary panel, each member must review the investigation report prepared by the Office of Disciplinary Prosecutor and notify the Chairperson of the Disciplinary Committee as to whether he or she believes just cause exists to pursue prosecution of the matter.

2. If a majority of the panel members determine that just cause exists to pursue prosecution of the matter, the Chairperson of the panel shall prepare a written order initiating prosecution of the matter. Copies of the written order shall be sent to the Complainant, the Respondent, the Office of Disciplinary Prosecutor and the Chairperson of the Disciplinary Committee

3. If a majority of the panel members determine that no just cause exists to pursue prosecution of the matter, the Chairperson of the panel shall prepare a written order dismissing the matter. Copies of the written order shall be sent to the Complainant, the Respondent, the Office of Disciplinary Prosecutor and the Chairperson of the Disciplinary Committee. Among the bases for determining that no just cause exists to pursue prosecution are:

3.1. Actions by the Respondent, who is subject of review according to the application, do not constitute violations of rules of professional ethics for lawyers;

3.2. There exist circumstances that exclude disciplinary responsibility;

3.3. For the same issue there exist a final decision by the disciplinary authorities (*ne bis in idem*);

3.4. Statutory limitations have expired for application/request for initiation of disciplinary proceedings

Article 24 **Initiating Prosecution**

1. The Disciplinary Panel shall preside over the prosecution of disciplinary cases.

2. The Office of the Disciplinary Prosecutor shall prosecute the case before the Disciplinary Panel.

3. The Disciplinary Panel shall invite the Respondent and his/her Prosecutor (if hired) and the Respondent for the main hearing in accordance with Article 25. The Disciplinary Panel shall further provide the Respondent with the investigation report, including all the evidence available for the case.

4. Witnesses and experts, if any, shall be called for the main hearing if the Disciplinary Panel considers that they might help the case under the procedure by their testimonies and expertise respectively.

Article 25 Summons

1. Parties to proceedings shall be summoned at least 8 days before the main hearing.

2. The summons shall contain the date, time, and venue of the main hearing and information about the issue under review.

3. The summons shall notify the Respondent that:

3.1. he/she has a right to be represented by a lawyer;

3.2 . that the main hearing will not be postponed due to Prosecutor's failure to appear or the Respondent's failure to retain Prosecutor;

3.3. that the main hearing will proceed whether or not the Respondent attends or testifies;

4. If the parties are invited properly and they fail to appear at the hearing, or fail to justify their absence, the main hearing will be held in their absence.

Article 26 Appointment of the Lawyer

1. When the Respondent cannot afford a lawyer and the interests of justice require that he or she be represented, and in all cases alleging serious violations of rules of ethics for which the measure of license suspension can be imposed in duration from 6 months until 5 years, upon Respondent's request (petition) the Disciplinary Panel may appoint a qualified lawyer to the KBA's budget expense.

2. The appointed lawyer from paragraph 1 of present article may not be any of the members of the disciplinary committees, or any of the members of the KBA Managing Board.

3. The appointed lawyer shall have all the entitlements and authorizations to represent the Respondent as if he/she were hired by the Respondent.

Article 27 Main Hearing – Time and Place

1. As a rule the main hearing shall be held at the KBA head office in Pristina.
2. Disciplinary Panel, with the consent of the Chairperson of the Disciplinary Committee may decide to hold the main hearing outside the head office of the KBA in any of the regional offices of the KBA, or any other place, if by this action the presence of parties, witnesses, and experts is ensured, or more convenient collection of evidence pertaining to the case.
3. The Chairperson of the Disciplinary Panel may postpone for reasonable grounds the date of the main hearing if proposed so by parties, lawyers or ex officio.

Article 28
Main Hearing – Who May Attend

1. The main hearing shall be held without the presence of public.
2. With the permission of the Chairperson of the panel, persons other than those taking part in the proceedings may attend the main hearing, including lawyers in training, law students and other professionals for professional reasons only and in the interest of the KBA.

Article 29
Main Hearing – Recording/Transcribing Proceedings

1. The proceedings of the main hearing shall be transcribed.
2. If conditions allow and upon parties proposals, the President of the KBA may order audio recording.
3. Transcripts shall be read out immediately upon the party's request, lawyer's request and of the person whose statement is recorded in the minutes.
4. The minutes shall be signed by the prosecutor on behalf of the Office of Disciplinary Prosecutor, the Respondent or his/her lawyer, the Chairperson of the disciplinary panel, and the record keeper.
5. Parties are entitled to examine the concluded minutes, make comments regarding the content and request corrections (editing).

Article 30
Main Hearing – Opening the Proceedings

1. The Chairperson of the disciplinary panel opens the main hearing, announces the case and informs the present about the composition of the panel and the representative of the Office of the Disciplinary Prosecutor, and other parties to the procedure. Thereafter he/she will ascertain whether all the invited persons are present at the hearing and verify whether the summons are delivered and whether any justification of absence is given.

2. Where the summons was delivered unduly, the panel will inform the Chairperson of the Disciplinary Committee who will then inform the President of the KBA.
3. The Chairperson of the disciplinary panel shall call on the Office of Disciplinary Prosecutor to read the disciplinary charges.

Article 31
Main Hearing – Instructions to Respondent

1. After the Chairperson of the disciplinary panel establishes that all invited persons have appeared at the hearing or the panel decided to conduct the main trial in the absence of some of the invited persons or to postpone a decision on these issues, the Chairperson of the panel shall call on the Respondent to advise him/her of his/her legal rights.
2. The Chairperson of the panel shall instruct the Respondent that:
 - 2.1. He/she has a right not to declare regarding his/her case or to answer any questions;
 - 2.2. He/she has the right and shall be allowed to make a statement on all the facts and evidence which are against him/her and to state facts and evidence favorable to him/her;
 - 2.3. He/she have the right to examine or to have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;
 - 2.4. If he/she declares, he/she shall not be obliged to incriminate him or herself or to confess guilt,
 - 2.5. He/she may defend him or herself in person or through legal assistance by Prosecutor of his/her choice.
 - 2.6. He/she is entitled to free of charge interpretation if he/she doesn't speak the language in which the proceedings are conducted.
3. The Chairperson of the panel shall invite the Respondent to follow closely the course of the hearing and shall instruct him/her that he/she may present facts, address questions to witnesses and experts, etc., and make comments on and give explanations of their testimony.

Article 32
Main Hearing – Failure to Appear

- 1 If the Office of Disciplinary Prosecutor or other representative of the Office of Disciplinary Prosecutor, including a party of interest to the Complainant fails to appear, the disciplinary panel shall dismiss the prosecution and notify the Chairperson of the Disciplinary Committee, the Office of Disciplinary Prosecutor, and the President of the KBA, in writing.

2. If the Respondent and his/her representative fails to appear, the disciplinary panel shall determine all facts in favor of the Office of Disciplinary Prosecutor, render a decision that the Respondent is guilty and impose an appropriate Sanction.

3. If the Respondent appears, but his/her Prosecutor fails to appear though duly invited and did not provide justifications for his/her absence or when the Prosecutor leaves the hearing without the panel's permission, the main hearing will be held without his/her presence.

4. If witnesses or experts, though duly invited, fail to appear without justification, the main hearing will be held in their absence. If they have previously provided their statements or opinions and their presence is not necessary, the panel may consider their statements or opinions. If they have not previously provided their statements or opinions, the main hearing will be held without their statements or opinions.

Article 33 Standard of Proof

1. Any Respondent, a lawyer or a lawyer intern who is subjected to disciplinary proceedings shall be considered innocent until the Respondent is found to have committed Professional Misconduct by a preponderance of the evidence established by a final decision issued by the disciplinary panel.

2. Any doubts regarding the existence of relevant facts for the case, or for the application of any rule on the disciplinary case, shall be interpreted in favor of the Respondent and his/her rights.

3. Any punishment, fine or sanction should always correspond to the degree of the Professional Misconduct. Prior findings of Professional Misconduct within the past three (3) years can be considered in the assessment of a Sanction, but cannot be considered in determining if there is evidence of Professional Misconduct.

4. Disciplinary violations and measures shall be determined only as provided for by the Law on the Bar, KBA Statute, and the Code of Professional Ethics.

5. No one can be subject to any disciplinary measure for an action which before its commission was not considered by law or pertinent norm (rule) as a violation of the rules of professional ethics for lawyers and no punishment was foreseen for such a violation.

6. In cases of any doubts, the definition of a disciplinary violation shall be interpreted in favor of the Respondent and his/her rights.

Article 34 Maintaining Order during Main Hearing

1. It shall be the duty of the Chairperson of the panel to ensure the maintenance of law and order during the hearing.

2. Immediately after the opening, he/she may warn the audience to conduct properly and not hinder the work of the disciplinary panel.

3. If any person fails to demonstrate proper behavior after having been warned by the Chairperson of the panel, the panel may impose a fine on the person of up to 100,00 euros. The panel may order that the person leave or be removed from the place where the hearing is held.

4. The disciplinary panel may disqualify the defense Prosecutor or the authorized representative of the Respondent from continuing to represent the Respondent clients at the hearing if after being warned and punished the person continues to disturb order. Disqualification shall only be imposed in extreme circumstances. The disqualified lawyer shall be reported to the Office of Disciplinary Prosecutor for investigation of professional misconduct.

5. If Respondent's lawyer is disqualified, the hearing shall continue unless Respondent's Prosecutor was appointed as per Article 29 of present regulation. Where Respondent's Prosecutor was appointed, the Respondent may request that the hearing be postponed.

5.1. Postponement shall be for no more than eight (8) days and the Respondent shall pay the associated costs and expenses.

(5) If the representative of the Office of the Disciplinary Prosecutor disturbs the order, the he or she shall be immediately reported to the Executive Director for investigation of unprofessional conduct.

Article 35 **Presentation of evidence**

1. Presentation of evidence shall include all facts deemed by the panel to be important for a correct and fair adjudication.

2. Presentation of evidence before examination of the Respondent shall take place in Respondent's presence.

3. Evidence shall be presented in the sequence determined by the Chairperson of the panel. As a rule, evidence proposed by the Complainant shall be presented first, followed by evidence proposed by the Respondent, and finally the evidence which the panel has ordered to be collected ex officio.

4. After the commencement of the hearing and if the parties did not do so previously, the parties shall make clear for the panel their motions for evidence they propose to be taken.

5. The parties shall have no right to a specific appeal.

Article 36
Examination of Witnesses and Experts under Oath

1. Before the examination of a witness, the chairperson of the panel shall warn the witness of his/her duty to tell the truth and of legal consequences of false testimony.
2. The disciplinary panel may require the witness to take an oath. The oath of a witness shall read: “Conscious of the significance of my testimony and my legal responsibility I solemnly swear that I shall tell the truth, the whole truth, and nothing but the truth, and I shall not withhold anything which has come to my knowledge.”
3. Before the beginning of the examination of an expert witness, the chairperson of the panel may require him/her to take an oath. The oath of an expert witness shall read: “Conscious of the significance of my testimony and my legal responsibility, I solemnly swear that I shall perform my expert analysis conscientiously and to the best of my knowledge and that I shall state my findings and opinion accurately and completely”.
4. The parties shall have the right to pose questions to the witness or expert during the hearing.
5. The first to pose questions shall be the Office of Disciplinary Prosecutor, then the Respondent and his/her Prosecutor (if any) and in the end, the disciplinary panel.
6. Upon the completion of the evidentiary proceedings, the Chairperson of the disciplinary panel shall call on parties to present their final speeches.

Article 37
Examination of Experts

1. An expert shall communicate his/her findings and opinion to the panel orally.
2. If the expert prepared a report on his/her findings before the hearing, he/she may be allowed to read it, in which case the report shall be entered into the record.

Article 38
Respondent’s Defense

1. The Respondent shall be examined orally after the presentation of evidence in his/her presence. During the examination he/she may be allowed to make use of his/her notes and evidence which support his/her defense.
2. The examination should give the Respondent an opportunity to dispel grounds for suspicion against him/her and to assert the facts that are in his/her favor.
3. The examination shall be conducted with full respect for the dignity of the Respondent.

4. The Respondent shall be asked questions in a clear, distinct and precise manner. Questions to the Respondent must not proceed from the assumption that the Respondent has admitted something he/she hasn't admitted.

5. If the examination of the Respondent was conducted in violation of the provisions of the law, the Statute and present regulation, as well as the provisions of the CPC referring to the admissibility of evidence, such examination shall be inadmissible and may not be used as evidence against the Respondent.

Article 39 Closing Statements

1. Upon completion of the evidentiary proceedings, the Chairperson of the panel shall call on the parties and their representatives to sum up their arguments. The Office of Disciplinary Prosecutor shall speak first, and then the Complainant may make a statement, then and the defense Prosecutor of the Respondent, and finally the Respondent.

2. The disciplinary panel may, upon prior warning, interrupt the speaker who unnecessarily speaks at great length on matters irrelevant to the case.

3. The parties may present their closing statements in writing in addition to, or instead of, presenting them orally.

4. In their closing statements, the parties may present their own evaluation of the evidence taken at the main hearing, explain their conclusions concerning facts which are important for the decision, and present and justify their proposals regarding the disciplinary responsibility of the Respondent, etc., as well as propose mitigating and aggravating circumstances to be taken into consideration in considering the disciplinary sanction by the panel.

5. The representative of the Office of the Disciplinary Prosecutor, for serious violations which are liable of aggravated punishments such as – interim disbarment for the period from 6 months to 5 years, shall propose the sanction which he/she considers the Respondent should receive.

6. The Respondent shall always have the right to speak last.

7. If after the closing statements of the parties the disciplinary panel does not find a need for any further evidence, the Chairperson of the panel shall declare the conclusion of the hearing.

Article 40 Deliberation and Voting Session

1. The disciplinary panel shall decide and render its decisions after deliberation and voting in a session.

2. The disciplinary panel shall base its decision solely on the facts and evidence considered at the main hearing.

3. The panel shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established, and whether or not the Respondent's guilt has been established by the standard of proof set forth in Article 34.

4. When rendering a decision on the main issue, a vote shall first be taken on whether the Respondent has violated the Statute of the KBA, according to the findings of the disciplinary panel, what kind of violation is committed regardless of what is alleged in the disciplinary charge, then a vote shall be taken on the punishment, on acquittal, on other additional sanctions, on the costs of the proceedings and other issues which are to be decided.

5. The disciplinary panel shall take minutes of the deliberation and voting session.

6. The record shall:

6.1. Include facts which the panel reviewed when rendering the decision, and which are considered established and those not established, if any.

6.2. include the Sanctions that the disciplinary panel determines is appropriate.

6.3. reflect whether the decision was rendered unanimously, or there were dissenting opinion from any of the members of the panel.

6.4. include the dissenting opinion

6.5 include the panel's decision on the cost of the proceedings;

6.6. be signed by all members of the panel, placed in a closed envelope and kept in the case file.

Article 41 Written Decision

1. The panel shall authorize the Chairperson of the panel to draft the written and reasoned decision of the majority.

2. The written decision shall be fully consistent with the decision announced to the parties. The decision shall include an introduction, the enacting clause and reasoning.

2.1. The introduction shall include: an indication the body (authority) rendering the decision, the first name and surname of the Chairperson and the members of the disciplinary panel and the recording clerk, the first name and surname of the Respondent, the disciplinary violation of which he/she is charged and an indication whether he/she was present at the hearing, the day of the main hearing, the first name and surname of the representative of the Office of Disciplinary Prosecutor, of the Complainant, of Respondent's defense Prosecutor (if any), legal representative and authorized representative present at the main hearing, and the day of the announcement of the decision that has been rendered.

2.2. The enacting clause of the decision shall include the personal data of the Respondent: the first name and surname, the address of residence and of his/her legal practice, and the decision by which the Respondent is pronounced responsible for the act of which he/she is charged, or by which he/she is acquitted from disciplinary charges. In the event of concurrent disciplinary violations for which he/she is charged and found responsible, the disciplinary panel shall indicate in the enacting clause the sanctions determined for each separate violation, whereupon it shall indicate the aggregate punishment – unified disciplinary sanction.

2.3. In the reasoning part of decision there shall be presented the grounds for each individual point of the rendered decision. 3. The written decision shall include the panel's instruction to post the final decision on the KBA's notice board. If the Respondent is given the sanction of disbarment from 6 months to 5 years, the decision shall include the panel's instruction to notify judicial institutions, courts, public prosecutions, municipal courts for minor offences at all levels of Kosovo.

Article 42 Fines Imposed

1. If the Respondent is punished by a fine, the decision shall state the amount of the fine and the time within which the fine should be paid, as well as the warning that if the fine, together with procedural costs is not paid within the set deadline by the KBA, it will be considered that the Respondent has committed serious breach of lawyer's duties and in summary proceedings the Respondent shall be punished with more serious sanction such as the disbarment for the period from 6 months to 5 years.

2. If the Respondent is punished with a fine of up to 250 euros (twenty five hundred) and his/her financial situation is poor and the fine cannot be enforced (paid) without rendering him/her and his/her family to a harsh financial situation, the disciplinary panel may decide to substitute the punishment of fine with another punishment such as, *i.e.*, obligation to offer pro bono services for people in need in the territory where he/she is practicing law, by determining the number of hours and services to be offered,

3. For services carried as provided for by paragraph 2 of present article, the Respondent should keep evidence in writing and inform the president of the KBA regional office who shall supervise the offering of such services, as well as the disciplinary panel of the KBA.

Article 43 Announcement of the Decision

1. After the deliberation and voting, the disciplinary panel shall announce the decision it has rendered in the presence of the parties.

2. After announcing the decision the Chairperson of the panel shall inform the parties that they will receive a written copy of the decision within 15 days, and instruct the parties of their right to appeal.

Article 44
Appeal of Decision of Disciplinary Committee

1. Either party may file an appeal before the KBA's Appeals Committee against a decision rendered by the disciplinary panel within 8 (eight) days of the day the written decision has been served.

2. An appeal shall be addressed to the KBA – with a reference “To the Appeals Committee”, with a copy to the Chairperson of the Disciplinary Committee.

Article 45
Appeal

1. In addition to the data of the appellant and decision subject of appeal, the appellate brief shall contain the following:

- 1.1. The grounds for challenging the concerned decision,
- 1.2. An explanation of the appeal;
- 1.3. A motion to reverse the challenged decision in whole or in part, or to modify it,
- 1.4. A motion to review the case, and
- 1.5. The signature of the appellant.

2. New evidence and facts may be presented in the appeal but the appellant shall be bound to give reasons for failing to present them before. If referring to new facts the appellant shall indicate the evidence by which these facts may be proven, and in referring to new evidence he/she shall indicate the facts which he/she intends to prove by that evidence.

Article 46
Grounds for Appeal

1. The decision of the Disciplinary Review panel may be appealed against for the following grounds:

- 1.1. Substantial violation of the provisions of the Law on the Bar, the Statute and present regulation
- 1.2. Violation of the substantial law,
- 1.3. Erroneous or incomplete determination of the factual situation,
- 1.4. Decision on disciplinary sanction, and supplementing measure,
- 1.5. Of procedural costs, and
- 1.6. Decision on publication of the decision on imposed sanction.

2. The appellant is bound to give reasonable explanations for each of the above grounds

3. A decision of the disciplinary panel cannot be challenged on the ground of erroneous or incomplete determination of the factual situation when the Respondent has pleaded guilty to all counts of the disciplinary charge and the disciplinary panel has accepted such plea.

IV. Appeals Committee

Article 47 Responsibilities

1. The Appeals Committee is responsible for reviewing disciplinary appeals and appeals against decisions of the KBA Managing Board.

Article 48 Processing of the Appeal

1. After receiving the appeal, the coordinator of the KBA disciplinary office shall register the appeal in the appeals registry.

2. The Chairperson of the Disciplinary Committee shall be informed of the appeal not later than 5 days from the day of its registration in the KBA.

3. A separate file shall be created for each individual appeal and the cover shall indicate the names of the submissions attached to the appeal and the number of pages.

Article 49 Initial Review

1. The Chairperson of the Appeals Committee shall review every appeal. If an appeal does not contain the required elements of present rules, then within 5 days it shall be returned to the appellant to supplement it.

2. If the appeal is not filed within the proscribed deadline of 8 days from its receipt, or if the appeal is filed by an unauthorized person, the Chairperson of Disciplinary Committee shall dismiss the appeal.

Article 50 Notice to Appellee

1. If the appeal meets the requirements under present rules, the Chairperson of the Disciplinary Committee through the coordinator of the disciplinary office shall send within 8 days the appeal together with other attachments to the opposing side to reply to it.

2. The opposing side should provide its reply to the appeal in writing within 8 days of the service of the appeal.

3. If the reply is not filed within above proscribed time it shall be considered that the lawyer has waived his/her right to reply to the appeal.

4. After the expiry of the present deadline the coordinator of the disciplinary office within 5 days shall refer the appeal and its reply, if any, as well as the complete case file of registered documentation to the Appeals Committee of the KBA (Article 26 par. 7 of the Law on the Bar) for further proceedings.

Article 51 Appellate Review

1. The review before the Appeals Committee shall be held:

- 1.1. In closed sessions, and
- 1.2. In a hearing.

Article 52 Closed Sessions

Disciplinary appeals are mainly reviewed in closed sessions except instances where the members of the Appeals Committee or upon the motions by the parties consider that for the purpose of better clarification of the case it is necessary to have a hearing with the presence of the parties.

Article 53 Hearings

1. In cases of hearings before the Appeals Committee, the rules pertaining to the summoning, the participation of the parties, the mandatory defense, the maintenance of order, the time and venue of the hearing, records of the hearing, deliberation, and voting etc., shall be the same as those applied before the disciplinary authority.

2. If the parties who were duly invited fail to appear, the authority shall nevertheless hold the hearing.

3. The Appeals Committee shall apply the same rules that are applied by the disciplinary panel in the hearing, with the exemption of issues that are more appropriate for the second instance panel.

4. The record of the hearing before the Appeals Committee shall be kept, including that of deliberation and voting.

5. The hearing before the Appeals Committee shall start with the report of the Chairperson on the facts in the procedure.

6. The Appeals Committee may ask the parties and defense Prosecutor to provide necessary explanations concerning their contentions in the appeal.

7. The parties and the defense Prosecutor may make motions that certain files be read as a supplement to the report and may provide the necessary explanations of their positions as contained in the appeal or in the reply to the appeal, without repeating the contents of the report.

8. The records of the session shall be enclosed with the files of the Office of Disciplinary Prosecutor and the Disciplinary Committee.

9. A hearing before the Appeals Committee shall be conducted only when it is necessary to take new evidence or to repeat evidence already taken due to an erroneous or incomplete determination of the factual situation, and when there are valid grounds for not returning the case to the Disciplinary Committee for retrial.

Article 54 Decision on Appeal

1. The Appeals Committee may in a closed session or on the basis of a hearing:

1.1. Dismiss an appeal as belated or inadmissible;

1.2. Reject an appeal as unfounded and affirm the decision of the Disciplinary Committee;

1.3. Annul the decision and return the case to the Disciplinary Committee for retrial and decision, or

1.4. Modify the appealed decision and render its decision on the merits of the case.

2. The Appeals Committee shall determine all appeals of the parties by a single decision

3. The decision of the Appeals Committee is final and cannot be appealed.

4. The Appeals Committee shall reject by a decision an appeal as unfounded and affirm the decision of the Disciplinary Committee if it establishes that there are no grounds to challenge the decision and no violations of the law, the Statute and present regulation.

5. The Appeals Committee shall, in accepting an appeal or in acting ex officio, annul by a decision the decision of first instance and return the case for retrial if it finds that there exists a substantial violation of procedural rules and where it considers that a new hearing before the authority of first instance is necessary because of an erroneous or incomplete determination of the factual situation.

6. The Appeals Committee shall annul by a decision the decision of the disciplinary committee on the ground of an erroneous or incomplete determination of facts even though the decision is not challenged on that particular ground if, when considering the appeal, serious doubts arise about the accuracy of the material facts which were determined.

7. Where the only reason for annulling the decision of first instance is an erroneous determination of the factual situation and where all that is required for a correct determination is a different assessment of already determined facts and not the collection of new evidence or repetition of previously produced evidence, the Appeals Committee shall annul the decision and render a decision based on merits of the case.

8. Where the appeal was filed only by the Respondent, the Appeals Committee shall always take into account the legal principle REFERMACIO IN PEIUS that it cannot render a decision less favorable for the appellant because of his/her legal qualification of the violation and the sanction imposed.

9. The Appeals Committee shall, in accepting an appeal or in acting ex officio, modify the decision if it determines that the decisive facts have been properly determined, but that having regard to the determination of the factual situation a different decision should have been passed according to the circumstances of the case.

Article 55 **Written Decision on Appeal**

1. In the written statement of reasons (grounds) for its decision or ruling, the Appeals Committee shall assess the statements which are of the subject of the appeal and indicate the violations of law which it has recognized ex officio.

2. If the decision is annulled on grounds of a substantial violation of procedural rules the statement of grounds shall contain an indication of which violations have effected that such a decision cannot stand.

3. If the decision is annulled on grounds of erroneous or incomplete determination of factual situation, the statement of grounds shall indicate what the deficiencies in the factual determination are, or why new evidence and new facts are important for reaching a correct decision and why they influence that decision.

4. The appellate authority shall return all files to the Disciplinary Committee together with a sufficient number of certified copies of its decision to be served on the parties and other persons concerned.

Article 56 **Proceedings before the Disciplinary Committee after the case is return for a retrial**

1. The Disciplinary Committee in the retrial shall proceed on the basis of the prior disciplinary charge.

2. The parties shall be entitled to introduce new facts and present new evidence at the new hearing.

Article 57 **Competencies of the Appeals Committee for decisions of the Managing Board**

1. Appeals Committee decides as a second instance authority against the decisions of the Managing Board.

2. Deadline for appeal against the decisions of the Managing Board is 8 days from the receipt of the decision.

3. For appeal against the decisions of the Managing Board *mutatis mutandis* apply provisions of the procedure of review of disciplinary appeals.
4. Decision of the Appeals Committee is final.

V. TRANSITIONAL PROVISIONS AND ENTRY INTO FORCE

Article 58 Transitional Provisions

1. Disciplinary proceedings commenced before the entry into force of the present regulation shall be conducted based on the rules in effect at the time of commencement.
2. Disciplinary proceedings commenced after the entry into force of the present regulation shall be conducted pursuant to the present regulation.

Article 59 Force and Effectiveness

This regulation shall enter into force on the day of its adoption by the Assembly of the Kosovo Bar Association.

**President of the KBA
Ibrahim Dobruna**

