

Anti-corruption starts with you. If you see it, report it.



COMBAT CORRUPTION WITH ACCOUNTABILITY

What to expect from legal practitioners and what to do if there is a problem

The Legal Assistance Centre (LAC) believes that we all have a duty to combat corruption and wrongdoing that we encounter in our own lives. If we all take action to hold others accountable to the rule of law, Namibia WILL become a nation of honesty and integrity.

The LAC, as part of the legal profession, encourages the Namibian public to **report any suspicion of wrongdoing by a legal practitioner to the Law Society of Namibia or the independent Disciplinary Committee established by the Legal Practitioners Act** for appropriate disciplinary action.

This pamphlet will help you to understand what you have a right to expect as a client of a legal practitioner, and how to make a complaint if your legal practitioner behaves illegally or unethically.



*This figure has been the international symbol of **JUSTICE** for hundreds of years. The **blindfold** represents objectivity and impartiality. It means that the law should be applied without regard to wealth, position or power. The **scales** mean that the evidence must be fairly weighed in every case. The **sword** represents punishment under the law for wrongdoing, because law is useless if it is not enforced.*

The law that applies to legal practitioners

Legal practitioners are governed by the Legal Practitioners Act 15 of 1995. They must be registered under this Act before they can practise law. **Practising law without being properly registered is a serious crime.** The website of the Law Society of Namibia contains a list of persons who are authorised to practise law in Namibia:

www.lawsocietynamibia.org/content/find-members/find-a-practitioner.

It is also a crime for anyone who is NOT a registered legal practitioner to accept money or a reward for writing a will, a contract that sets up a partnership or a company, a contract for the sale of land or a lease for a period longer than five years.

Protection for your money

A legal practitioner is not allowed to practise as an individual or in a law firm unless he or she holds a **fidelity fund certificate**.

A fidelity fund certificate authorises a legal practitioner to hold funds on behalf of a client. Such funds must be kept in a separate bank account that cannot be used for other purposes. A legal practitioner is entitled to draw fees from this separate trust account only after the legal work has been completed, or as agreed with the client. These trust accounts are audited annually, and the audit reports must be submitted to the Law Society of Namibia.

Interest earned on money held in this separate account must be paid over to the Legal Practitioners' Fidelity Fund. The money in this Fidelity Fund can be used to reimburse a client who has lost money due to theft or misuse of the money by a legal practitioner.

Law centres that provide free legal services and lawyers who work full-time for government are not required to have fidelity fund certificates, since they do not accept money from the public for legal work.

A legal practitioner who practises law without this certificate is not entitled to receive any fee for legal work. Practising without a certificate is also a serious crime.

Legal practitioners must keep **proper financial records**. These financial records can be inspected by the Law Society of Namibia to see if the legal practitioner is complying with the legal requirements on finances.



Key rules

Legal practitioners must act honestly and with integrity when dealing with clients. The Law Society of Namibia has set out professional standards for legal practitioners.

The lists below highlight some of the key duties of a legal practitioner.

A legal practitioner **MUST**:

- Keep your communications confidential
- Carry out your instructions without undue delay, as long as the instructions are not illegal or unethical
- Charge reasonable fees AND provide detailed invoices
- Keep you informed about the progress of your case.



A legal practitioner **MUST NOT**:

- Accept money without holding a fidelity fund certificate, as explained on the previous page
- Provide a certified copy of any document without seeing the original document
- Tell a witness what to say in court
- Bribe a witness or tamper with evidence that is presented to a court
- Lie under oath or knowingly present evidence that is untrue
- Pressure you to settle a legal dispute against your will
- Take on a civil case in exchange for a share of the award instead of charging a specific fee
- Offer to do legal work in exchange for a favour instead of charging a specific fee
- Delay work unreasonably, including delays in responding to correspondence or in winding up the estate of a deceased person.



How to make a complaint about a problem



Anyone who is affected by unprofessional or dishonourable or unworthy conduct of a legal practitioner can make a complaint. The complaint must be made in the form of a sworn written statement. It is not possible to make an anonymous complaint.

One option is to direct the complaint to the **Law Society of Namibia**. The Law Society of Namibia has a duty to help a complainant with the statement setting out the complaint if necessary. The complaint will be considered by the **Council of the Law Society** (eight members of the Law Society elected each year at the Annual General Meeting) OR by the **Legal Ethics and Investigatory Committee** (three members of the Law Society appointed by the Council, who report to the Council). If the initial investigation finds that there is a problem, the Council may refer the matter to the **Disciplinary Committee** (four legal practitioners appointed by the Council plus one person appointed by the Minister of Justice).

Another option is to submit the complaint directly to the **Disciplinary Committee**, which is an independent body. The Disciplinary Committee can impose any of the following sanctions if it finds that a legal practitioner has behaved improperly:

- a reprimand
- a reprimand plus a fine of up to N\$10 000,00
- an application to the High Court to suspend the legal practitioner or to remove his or her name from the roll of legal practitioners (meaning that he or she can no longer act as a legal practitioner without successfully applying to the court later on for reinstatement).

Law Society of Namibia

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Disciplinary Committee

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Pamphlet funded by



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This pamphlet was compiled by the Legal Assistance Centre based on the statute, regulations and rules governing the legal profession in Namibia. It does not necessarily represent the views of the Law Society of Namibia or the Hanns Seidel Foundation.

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