

## **SURVEYORS (DISCIPLINARY ENQUIRY) REGULATIONS 1996**

In exercise of the powers conferred by section 19 of the Surveyors Ordinance 1960, the Surveyors Board, with the approval of the State Secretary, hereby makes the following regulations:

### **Citation and commencement.**

1. These Regulations may be cited as the Surveyors (Disciplinary Enquiry) Regulations 1996 and shall be deemed to have come into operation on the first day of January, 1996.

### **Application.**

2. These Regulations shall apply to enquiries conducted by the Board under section 16 of the Ordinance.

### **Interpretation.**

3. In these Regulations, unless the context otherwise requires –

"advocate" includes a Licensed Surveyor representing the complainant or the surveyor concerned;

"answer" means the reply given or provided by the surveyor concerned in response to any complaint;

"Board" means the Surveyors Board established under section 3 of the Ordinance;

"complainant" means any person who makes, lodges or prefers a complaint to the Board against a licensed surveyor;

"electronic transmission" includes electronic transmission by facsimile machine or device, and telex;

"enquiry" means an enquiry conducted by the Board under section 16 of the Ordinance and in accordance with the procedure established by these Regulations;

"Licensed Surveyor" means a registered surveyor licensed in accordance with section 10 of the Ordinance;

"Ordinance" means the Surveyors Ordinance 1960 [Ord. No.22 of 1960.];

"Secretary" means the person appointed as such under section 7 of the Ordinance;

"statutory declaration" means a declaration made under the Statutory Declarations Act 1960 [Act 13]; and

"surveyor concerned" means a Licensed Surveyor against whose professional conduct the complainant has lodged, made or preferred his complaint.

**Complainant to submit statement of facts.**

4. In exercising the Board's disciplinary powers conferred upon it under section 16 of the Ordinance or any regulations made thereunder, the Board shall, upon receiving a complaint, request the complainant to submit, not less than 14 days before the date of hearing of the enquiry, a statement of facts, without argument, of his complaint setting out the essential facts and the documents, if any, on which he proposes to rely in support of his complaint.

**Statutory declaration.**

5. Such complaint shall be supported by a statutory declaration, if so required by the Board, verifying the truth of the allegations made by the complainant and shall be accompanied by copies of all relevant documents.

**Complainant's address for service.**

6. The complaint shall also contain a name and a proper address of the complainant.

**Service by Secretary.**

7. A copy of the complaint in the form of statement of facts supported by a statutory declaration, if so required by the Board, shall be sent by the Secretary to the surveyor concerned by –

- (a) prepaid registered post; or
- (b) courier service.

**Answer of surveyor concerned.**

8. The surveyor concerned shall, within 15 days of the service of the above said complaint of him, submit to the Secretary, an answer containing a statement of facts, without argument, for the Board's deliberations.

**Dismissal of complaint.**

9. The Board may after due deliberations dismiss the complaint if the Board is of the view that the complaint is frivolous, vexatious or otherwise an abuse of the due process of law. Alternatively, if the Board is of the view that the complaint is well founded, the Board may proceed to conduct a due enquiry.

**Service of notice of hearing.**

10. Before the Board proceeds to conduct a due enquiry, the Secretary shall send by any of the methods prescribed in paragraph (a) or (b) of Regulation 7, to the surveyor concerned a notice of hearing in Form A as set out in the Schedule hereto stating the place, date and time for the enquiry and giving the surveyor concerned not less than 14 days, notice thereof.

**Representation by advocate or surveyor.**

11. The surveyor concerned or the complainant may appear in person or be represented by an advocate or a Licensed Surveyor of his choice.

**Postponement of enquiry.**

12. The Board may, in the exercise of its discretion, adjourn or postpone any enquiry as may be necessary or advisable either on the application of the complainant, the surveyor concerned or his advocate or any other party in the enquiry, on such grounds as may be just and reasonable, having regard to all the circumstances of the case, and for this purpose, the Board may order the payment of reasonable costs to the person inconvenienced by the adjournment or postponement of the enquiry.

**Relevant statement of facts.**

13. The Board in the exercise of its disciplinary powers shall ensure that the complaint containing the allegations against the surveyor concerned and the answer on which the surveyor concerned may rely shall strictly be confined to matters relevant or essentially related to the complaint lodged, made or preferred by the complainant.

**Preliminary objection.**

14. The surveyor concerned may, before the enquiry is fixed for hearing, raise preliminary objection in respect of the complaint on the ground that the allegation or complaint contained therein is irrelevant or unrelated to his professional conduct.

**Board's decision on the objection.**

15. Where the surveyor concerned raises a preliminary objection as aforesaid, the Board may uphold or overrule such objection, or may make such order thereon as may be just, having regard to the circumstances of the case and in the interest of justice.

**Notification to surveyor concerned.**

16. The Board upon making a decision under Regulation 15 shall inform the parties concerned of such decision.

**Absence of complainant or his advocate.**

17. If, on the date fixed for the enquiry, neither the complainant nor his advocate appears, the Board may dismiss the complaint with costs or make such other order as may be fair and reasonable having regard to the circumstances of the complaint.

**Absence of surveyor concerned or his advocate.**

18. If, on the date fixed for the enquiry, neither the surveyor concerned nor his advocate appears, the Board may proceed to hear and investigate the complaint in the absence of the surveyor concerned and his advocate and may make such order including costs as may be fair, just and reasonable having regard to the circumstances of the complaint or the facts of the case.

**Right of cross- examination.**

19. On the date fixed for the enquiry or any adjournment or postponement thereof, the complainant shall be liable to be cross-examined by the surveyor concerned or his advocate on any allegation or statement contained in the complaint or adduced at the enquiry.

**Right to call witnesses.**

20. Both the complainant and the surveyor concerned shall be permitted to call their respective witnesses and these witnesses are liable to be cross-examined.

**Surveyor concerned liable for cross-examination.**

21. The surveyor concerned shall be liable to be cross-examined by the complainant on the answer or any other statement or document adduced by the surveyor concerned in his answer or at the enquiry.

**Extension of time.**

22. The Board may extend the time limited by these Regulations for any act to be done from time to time and give such directions as may be necessary or advisable to permit a full and fair enquiry into the complaint.

**Recording evidence.**

23. It shall not be mandatory for the Board to make a detailed record of all the oral statements given or documents produced before it but it shall be sufficient to make a summary of the relevant statements.

**Decision on enquiry.**

24. At the conclusion of the enquiry into the complaint, or at any adjournment the or postponement thereof, the Board may make such decision or order on the statements and documents produced thereat and such decision or order shall be made in accordance with the provisions of the Ordinance or any regulations made thereunder.

**Service of document.**

25. Where any document has to be served on the complainant or the surveyor concerned, it shall be served by way of the methods prescribed in paragraph (a) or (b) of Regulation 7 or by advertisement in two local daily newspapers and such service shall be deemed to be sufficient and good service on the complainant or the surveyor concerned, as the case may be.

**Surveyor may represent complainant.**

26. Where a complainant is not represented by an advocate or a Licensed Surveyor, the Board may appoint a Licensed Surveyor or District Surveyor in the Lands and Surveys Department to assist the complainant in the preparation and presentation of the complaint, statement or documents for the purposes of the enquiry.

**Costs.**

27. The Board may make such order as to the costs of the enquiry or any part thereof which the Board considers fair and reasonable having regard to all the circumstances of the case.

**Inherent powers.**

28. For the avoidance of doubts, it is hereby declared that nothing in these Regulations shall be deemed to limit or affect the inherent powers of the Board to make any order as may be necessary to prevent injustice or unfairness, having regard to the fundamental rules of natural justice and the proper enhancement of professional ethics and conduct within the jurisdiction of the Board.

**Saving provision.**

29. Notwithstanding the foregoing Regulations, any previous action or decision by the Board shall subsist and have full effect.

SCHEDULE  
(Regulation 10)

FORM A

DISCIPLINARY ENQUIRY NO. OF 199

In the matter of

Licensed Land Surveyor

And

In the matter of Disciplinary  
Enquiry under section 16 of the  
Surveyors Ordinance 1960.

And

In the matter of the Surveyors  
Ordinance 1960 and of the  
Surveyors (Disciplinary Enquiry)  
Regulations 1996.

To:

NOTICE TO APPEAR IN DISCIPLINARY ENQUIRY

TAKE NOTICE that your attendance is necessary to answer to the charge(s) annexed hereto in the Schedule.

You are hereby required to appear in person and or with your advocate or a Licensed Surveyor before the Surveyors Board on the day of 19 at

TAKE NOTICE that in default of your so doing the Board may proceed thereto with due enquiry and make such order or decision as may be deemed fit and proper.

Dated this        day of    , 199 .

*Chairman,  
Surveyors Board, Sabah.*

Made this 18th day of Oktober, 1996.

MOHAMAD BIN JAFRY  
*Chairman,  
Surveyors Board, Sabah.*

I have approved the foregoing Regulations.

Dated this 31st day of December, 1996.

DATUK SERI PANGLIMA KHALIL BIN DATU HJ. JAMALUL  
*State Secretary.*