

Order № 69
Of the Minister of Justice of Georgia
On Approving the Regulation on Disciplinary Liability
of Notaries

March 31, 2010
City of Tbilisi

In pursuance of par. 7 of Article 3 of the Georgian Law „On Notary" I order:

1. To approve the attached regulations on the disciplinary liability of notaries.
2. To deem void the Order №1025 of the Minister of Justice of Georgia, dated September 15, 2003.
3. To enact the present order from April 1, 2010.

Z. Adeishvili

The following amendment is made:

1. Order №124 of the Minister of Justice of Georgia, dated June 30, 2010, Georgian legislative Bulletin III, №77, dated 01.07.2010, Article 1127.

Regulations
On Disciplinary Liability of Notaries

Chapter 1.

Basis of Disciplinary liability and Disciplinary punishment

Article 1. General provisions

Present regulations is approved on the basis of par. 7 of Article 3 of the Georgian Law „On Notary" and determines the basis of liabilities of notaries and notary substitutes (hereinafter referred to as „substitute"), types of disciplinary punishment, as well as establishes the rules of disciplinary proceedings.

Article 2. Basis of disciplinary liability

1. Notary (Substitute) will be assigned the disciplinary punishment foreseen by these Regulations if he (she) violates the liabilities imposed under the Georgian legislation, as well as acts of the Notary Chamber of Georgia, discredits the honor and dignity of the profession of notary and abates the confidence in notary.
2. Notary shall not be imposed a disciplinary liability for an action not contradicting to legislation or not being considered as misdemeanor according to these Regulations, as well as if the fact of misdemeanor is not proved under the rules established by these regulations and acting legislation.
3. Disciplinary punishment assigned to the notary shall be in just correspondence with the quality of social danger of the discipline misdemeanor. Assigning of discipline liability shall not cause unsubstantial limitation of the rights and interests of notaries protected by the law.
4. All notaries shall be equally responsible for disciplinary misdemeanor foreseen by these Regulations. Circumstances considered for taking resolutions at disciplinary proceedings by the authorized body (official) shall be equally taken into account with reference to all other notaries.

Article 3. Disciplinary misdemeanor

Disciplinary misdemeanor and relevant punishments are divided according to the quality of their gravity.

1. For the purpose of these Regulations disciplinary misdemeanor is divided into:
 - a) Simple misdemeanor;
 - b) average misdemeanor;
 - c) considerable misdemeanor;
 - d) extremely considerable misdemeanor;

Article 4. Light disciplinary misdemeanor

Notary (substitute) commits light disciplinary misdemeanor; if he (she):

- a) performs his (his) duties carelessly. Mistakes of light character made during the notary activities shall be considered as careless, not entailing grave results.
- b) Violates general rules of fulfillment of notary acts (drawing of notary act) established by legislation.

- c) In his (her) notary office duties for execution notary acts are not posted up on an easily visible place.
- d) Denies to sign the inspection act of the activities of the notary.
- e) Regularly violates the working schedule of the notary office;
- f) Does not provide classification and/or keeping of notary acts in line with the rules established by legislation;
- g) Draws up notary acts (parts whereof) or makes records in the notary registry with illegible calligraphy.
- h) Pays undue attention to the educational process of the notary trainee.
- i) Unethically treats his (her) colleagues;

Article 4. Average disciplinary misdemeanor;

Notary (substitute) commits an average disciplinary misdemeanor if she (he):

- a) improperly supervises employees of her (his) notary office and any of them is engaged without a written agreement;
- b) (revoked) ;
- c) unsubstantially refuses to fulfill notary act or rendering professional service;
- d) does not fulfill or unduly fulfills resolutions (acts) of the supervisory body, court or Notary Chamber, fails to submit necessary information within established terms;
- e) fails to attend General Meetings of Members of the Notary Chamber, as well as seminars for raising qualification arranged by the Notary Chamber for unreasonable excuse.
- f) Unduly fulfill the requirements set by the Georgian Law „on facilitation to suppression of legalization of illegal incomes" and acts of the financial monitoring service of Georgia, save as cases foreseen by par „n" of Article 6 of the present Regulations

Order №124 of the Minister of Justice of Georgia, dated June 30, 2010 – Georgian Legislative Bulletin III, №77, dated 01.07.2010, Article 1127.

Article 6. Considerable disciplinary misdemeanor

Notary (substitute) commits considerable disciplinary misdemeanor if he (she)

- a) Violates general rules of fulfillment of notary acts (drawing of notary act) established by legislation on systematic basis or if such violation entailed a grave result.
- b) Draws up notary deed of incomprehensible essence;

- c) Executes notary act on the basis of such document the form of which does not correspond to the requirements of the Instruction „On rules for drawing up notary deeds“;
- c¹) Violates the requirements of par. 4 of Article 12 of the Instruction „On rules for drawing up of notary deeds“.
- d) Violates rules of making amendment (correction) in the notary deed, if such amendment causes substantial changing of the essence of the deed.
- e) Systematically calculates the duties for executing notary deed incorrectly, or does not precisely indicate exact amount of notary duty in it.
- f) Deliberately causes to pay less or more amount for notary service, than it has been established.
- g) Advertises his (her) notary activity and professional skills;
- h) Fails to pay membership fee or other taxes foreseen by legislation for unreasonable excuse.
- i) Fulfills notary act without asking for necessary documents required by legislation.
- j) Carelessly keeps notary documentation, which caused loosing or destroying notary deeds or registries.

Order №124 of the Minister of Justice of Georgia, dated June 30, 2010 – Georgian Legislative Bulletin III, №77, dated 01.07.2010, Article 1127.

Article 7. Extremely considerable misdemeanor

Notary (substitute) commits extremely considerable disciplinary misdemeanor if he (she):

- a) Fulfills notary act without asking for necessary documents required by legislation, which has systematic character or caused grave results, or fulfills notary deeds obviously contradicting to the law, moral and/or public order.
- b) Violates the obligations of keeping professional secrecy, causing grave results.
- c) Certifies the fact, which has never occurred.
- d) Performs notary activity if he (she) is prohibited to do so;
- e) Without having legal basis refuses to submit registries of notary deeds, notary deeds or their copies to the supervisory bodies, hides or destroys registries or notary deeds, or does not maintain one or more registries at all.

- f) Refuses to hand in notary seal, registries of notary deeds, notary deeds, documents received for deposition, money or securities, when his (her) commission is terminated.
- g) Parallel to the notary activity performs other payable public or other private activities , save as scientific pedagogical and creative activities;
- h) Performs notary act with his (her) participation or those persons towards whom he (she) is banned to perform notary acts.
- i) treats moneys and/or securities having deposited for the aim of transfer to other persons as his (her) own; hands over deposited documents to non – authorized person.
- j) Does not enter the notary deed in the registry or gives one and the same registration number to different notary act, except the cases when repeating of registration number is mechanical and notary has made notice on it according to the rules established by legislation.
- k) Leaves registration numbers or vacant spaces for number in the registry of notary deeds.
- l) Previously prepares unfilled notary deeds (the so called empty form) by his (her) signature and affixing the seal, or causes to sign the unfilled form of the notary deed in advance.
- m) Systematically (not once) fails to fulfill obligations imposed under the Georgian law „on facilitation to suppression of legalization of illegal incomes” and normative acts of financial monitoring service regarding the submission of accounts, as well as additional information for the deeds being subject to monitoring.

Article 8. Types of discipline punishment.

For the discipline misdemeanors considering the extent of the gravity of the latter notary will be assigned the following punishments:

- a) oral warning;
- b) Written reprimand;
- c) Termination of commission;
- d) Releasing from the position;

Article 9. Oral warning and written reprimand

1. Considering the circumstances notary may be assigned the oral warning or written reprimand for simple or average misdemeanors.
2. Warning should be made immediately to the notary. Written reprimand should be read in the presence of the notary.

3. In case of assigning of oral warning and written reprimand notary should be explained the essence of its misdemeanor and warned not to repeat it again.

Article 10. Termination of commission

1. Notary's commission may be terminated for considerable misdemeanor;
2. Termination of commission means banning of notary activities for a certain period of time;
3. Period of termination of the commission shall be not less than one month and no more than 2 years. Period of termination of the commission shall be established on the basis of assessment of the gravity of misdemeanor, personality of the notary and other significant circumstances.

Article 11. Releasing from the position

1. Notary may be released from the position for extremely grave misdemeanor.
2. Notary's commission shall be terminated from the moment of his (her) releasing from the position.

Article 12. Recidivism

1. Recidivism is a repeated commission of discipline misdemeanor before canceling of discipline punishment.
2. In case of recidivism a punishment heavier than that established by these regulations shall be applied, having been used in case of the first committing of misdemeanor.
3. The rule established by par. 2 of this article shall not operate, if recidivism is a discipline misdemeanor of less degree.
4. If discipline misdemeanor is committed after canceling of discipline punishment, at assigning of discipline punishment the first one shall not be taken into consideration.
5. If punishment foresees minimal or maximal bounds, in case of recidivism notary may be assigned more measures of punishment within the limits of the same punishment.

Article 13. Assigning of discipline punishment

1. The Board of the Notary Chamber of Georgia has the right to assign oral warning or written reprimand to the notary.

2. Notary's commission may be terminated or she (he) may be released from the position by the Minister of Justice of Georgia.

Article14. Appealing of discipline punishment

Notary having been assigned the discipline punishment may appeal the decision on the assignment of the punishment in the court in line with the rules established by legislation.

Article 15. Time limitation of using the discipline punishment

1. Notary (substitute) shall not be imposed the discipline punishment, if 3 years have passed since the commitment of discipline misdemeanor. Period of court proceedings shall not be included in such period.
2. Running of the time limitation shall commence from the date of discipline misdemeanor, while in case of a discipline misdemeanor connected with a will – from the date of publishing of such will.
3. Running of time limitation shall end from the date of commencing of disciplinary proceedings.

Order №124 of the Minister of Justice of Georgia, dated June 30, 2010 – Georgian Legislative Bulletin III, №77, dated 01.07.2010, Article 1128.

Article16. Cancelation of disciplinary punishment

1. Disciplinary punishment will be canceled if:
 - a) Other discipline punishment is not assigned to the notary within 6 months after oral warning comes into effect.
 - b) Within 1 year after written reprimand comes into effect notary will not be assigned other disciplinary punishment.
 - c) Other disciplinary punishment shall not be assigned to the notary within 2 years from reinstatement in commission.
2. Periods determined by I paragraph may be abated at the decision of the person/body assigning the punishment.

Article17. Registering of disciplinary punishment

1. Disciplinary punishment being assigned to the notary shall be entered in the personal file of the notary.
2. Notary Chamber of Georgia shall within 5 days from entering the disciplinary punishment forward the documentation regarding the imposed disciplinary punishments to the Minister of Justice.

Chapter II.

Disciplinary Proceedings

Article 18. Basis for initiation of disciplinary proceedings

Basis for initiation of disciplinary proceedings are as follows:

- a) Faults discovered in the supervisory process of notary activity;
- b) Person's application or claim;
- c) Officially received other document or reference, creating basis for supposition of disciplinary misdemeanor by the notary.

Article 19. Initiation of disciplinary proceedings

1. In the presence of the basis foreseen by Article 18 of these regulations disciplinary proceedings may be initiated by the Minister of Justice or the Board of the Notary Chamber of Georgia – against all notaries of Georgia;
2. Initiation of disciplinary proceedings shall be executed under
 - a) Order of the Minister of Justice;
 - b) Resolution of the Board of the Notary Chamber.
3. Resolution on initiation of disciplinary proceedings shall be taken only in the case if by advance inspection of existing material the fact of committing the disciplinary misdemeanor by the notary is revealed.
4. Recalling (revocation) of the Order (Decision) about initiation of disciplinary proceedings may only be allowed after disciplinary commission appoints the hearing of case.

Article 20. Disciplinary commission of the Notary Chamber

1. General Meeting of Members of the Notary Chamber of Georgia forms the disciplinary commission.
2. Disciplinary commission of the Notary Chamber of Georgia consists of 5 members, Chairman, deputy chairman and secretary of the commission is elected from the members.
3. Commission meets as required. Meeting of the commission is capable if majority of members are present thereon. Meeting of the commission is presided by the chairman of the commission (in his (her) absence – deputy chairman).
4. On the stage of preparing of case, the commission is entitled to ask for the necessary documents required for the consideration of the case, get explanations from notaries and other persons.

5. After case preparation is completed the commission appoints the day for case consideration and notifies on it the notary and other persons, inviting of whom commission deems reasonable.
6. Notary shall attend case hearing. Absence of notary for unreasonable excuse shall not be basis for postponement of case hearing.
7. Commission takes conclusion on the case. Conclusion shall be taken by majority of votes of the members present.
8. Minutes shall be drawn up about the course and conclusion of the commission and it shall be signed by the chairman and secretary of the commission. Member of the commission who does not agree with the conclusion of the commission is entitled to attach her (his) different point of view to the conclusion.
9. Conclusion of the commission shall be submitted to the Chairman of the Board of the Chamber within three business days from its taking.
10. Commission shall consider the case in no later than one month from accepting the case.
11. Board of the Chamber shall take resolution on the case in no later than 14 days from getting the conclusion. Notary shall attend the board meeting. Chairman of the Board shall notify the notary on the appointed date of the board meeting. Absence of notary for unreasonable excuse shall not be basis for postponement of case hearing.
12. If in the course of case consideration it is established that notary chamber has no right to assign disciplinary punishment due to the degree of gravity of misdemeanor by the notary, it shall forward the material of the disciplinary case to the Minister of Justice.

Article 21. Disciplinary proceedings by the Minister of Justice

1. After commencing the disciplinary proceedings by the Minister of Justice case shall be forwarded to the commission for consideration. Commission consists of three members, one of which must perform the functions of the chairman of the commission. Members of the commission are appointed by the Minister of Justice. At least one member of the commission shall be a notary. Commission works by the same rules as are established under Article 20 of the present Regulations. If on the strength of the circumstances of the case conducting of oral hearing will protract considering and resolving of case, or case circumstances are proven by authentic evidence, the chairman of the commission shall be entitled to take decision on considering the case without oral hearing. In such case,

the notary, against of which the discipline proceedings are commenced, shall not participate in case hearing.

2. After getting the conclusion of the commission, the Minister of Justice issues an order by which the Minister
 - a) confirms the disciplinary misdemeanor and determines disciplinary punishment to the notary.
 - b) does not confirm the fact of disciplinary misdemeanor and cancels prosecution.
3. Copy of the order of the Minister shall immediately be forwarded to the notary against of which disciplinary pursuit was commenced. Copy of the order shall also be forwarded to the Notary Chamber of Georgia.

Order №124 of the Minister of Justice of Georgia, dated June 30, 2010 – Georgian Legislative Bulletin III, №77, dated 01.07.2010, Article 1127.