

I Always Feel Like Somebody's Watching Me: Reinstatement and Supervision of Lawyers on Probation. – A Dutch perspective

In the Netherlands advocates (*registered lawyers*) in most cases can be suspended or disbarred by the disciplinary board (and in appeal by the disciplinary court). The local bar president plays an important role in putting complaints before disciplinary board. Furthermore the local bar president also play an important role in the supervision of advocates who are suspended and the reinstatement afterwards.

Suspension of advocates in The Netherlands

There are four ways in which an advocate can be suspended from practicing. In all cases an advocate who is suspended is not permitted to practice, use the title of advocate and he/she loses all positions in which being an advocate is required for electability or eligibility for appointment. The local bar president, as regulator of the advocates within one of the 11 district, supervises advocates who are suspended.

An advocate can be suspended from practising:

- after a 'regular' disciplinary procedure. (section 48, subsection 2 Act on Advocates).
 - A client or the local bar president can lodge a complaint against the advocate.
 - The maximum term of this suspension is one year.
 - During the appeal of the decision of the disciplinary board the advocate is allowed to practice
 - The advocate is reinstated automatically after the suspensions ends.
- after being declared bankrupt, placed under guardianship, etc. (section 16 Act on Advocates)
 - There is no maximum term for the suspension.
 - The advocate is automatically suspend when a court decides on bankruptcy, guardianship, etc. The advocate is automatically reinstated (*the suspension is lifted*) after the duration of the bankruptcy, guardianship, etc.
- if there are serious doubts about an act or omission as a result of which any interest protected is seriously harmed or in danger of being seriously harmed (section 60ab Act on Advocates)
 - The local bar president starts the procedure and the suspension can be imposed within days.
 - There is no maximum term for the suspension.
 - During the appeal of the decision of the disciplinary board the advocate is not allowed to practice
 - The Bar president has to lodge a 'regular' complaint within six weeks after the decision to suspend the advocate. If the complaint is not lodged within six weeks the suspension is lifted automatically.
 - As soon as the decision of the disciplinary board with regard to a 'regular' complaint has become final, the suspension of the advocate lapses by operation of law.
- when he temporarily or permanently gives no indication of being able to duly practise law (section 60b Act on Advocates)
 - The local bar president starts the procedure.
 - There is no maximum term for the suspension.
 - During the appeal of the decision of the disciplinary board the advocate is not allowed to practice.
 - The suspension can only be lifted after a decision of the disciplinary board.

When an advocate is suspended he receives notice from the registrar of the disciplinary board with the date on which the suspension comes into effect. The local Bar president also receives notice from the registrar of the disciplinary board. The local Bar president then informs the advocate on how to act during the suspension. The suspended advocate:

- is not allowed to practice, not even give legal advice or for instance practice as a mediator.
- has to, under all circumstances, avoid the impression that he is allowed to act as an advocate (for instance by answering the phone);
- has to find an acting advocate and withdraw from all cases and court proceedings
- has to inform all clients of the (duration of the) suspension and who serves as acting advocate
- has to remove his name from the office website, stationary and other office materials.

If the local Bar presidents finds that an advocate has violated the terms of his suspension a new disciplinary procedure is started.

Table: number of decisions to disbar or suspend an advocate

	Disbarment by disciplinary court	Suspension by disciplinary court	(partially) suspended suspension by disciplinary court	60ab suspension by disciplinary council	60b suspension by disciplinary council
2015	10	15	16	0	5
2014	4	17	11	4	3
2013	12	18	6	1	2
2012	6	24	4	8	4

Reinstatement of former advocates

- Everyone who qualifies can apply for registration as an advocate (section 2 Act on Advocates).
- A request to be registered as an advocate is submitted to the local bar council in the district where the applicant wishes to practise.
- If an applicant is a former advocate he shall also submit a document issued by the local bar council of the district where he practised law most recently, which documents demonstrates whether or not he has received a disciplinary conviction, if he was ever bankrupt, or if he was ever the subject of a debt management scheme.
- The local bar council may refuse to process the application on a few formal grounds, but also if there is good reason to believe that the applicant, in his capacity of advocate, shall violate the laws, regulations and orders that apply to advocates or that he shall otherwise be guilty of any acts or omissions that do not befit a respectable advocate (section 4, subsection 1, c Act on Advocates).
- There are a few cases in which the Local Bar Council refuses to process the application, for instance:
 - ECLI:NL:TAHVD:2015:330 (in Dutch): the applicant (a former advocate) has not given adequate explanation regarding his wrongdoing in previous years. The disciplinary board states that there are enough reasons to be concerned about the applicants (financial) integrity.
 - ECLI:NL:TAHVD:2010:YA0260 (in Dutch): a former advocate applies for reinstatement. It is refused on the ground that the financial situation of the applicant (bankruptcy) has not improved over the years.

Relevant legislation in the Act on Advocates

Section 4

1. The Council of the Local Bar where the application referred to in Section 2, subsection 5 has been submitted may refuse to process the application if:
 - a. the applicant fails to comply with the application requirements stipulated in Sections 2 and 2a or if he has failed to submit the statements and documents referred to in those sections.
 - b. there is good reason to believe that the applicant, in his capacity of advocate, shall violate the laws, regulations and orders that apply to advocates or that he shall otherwise be guilty of any acts or omissions that do not befit a respectable advocate; or
 - c. the applicant is disbarred by virtue of Section 8c, subsection 3, without the statement referred to in that section being submitted later, and the application is made within a term, to be set by the general council, after the advocate is disbarred.
2. If the application referred to in Section 2, subsection 5 is made by an applicant who was registered as an advocate before, the council can also refuse to process the application if the council is of the opinion that the applicant fails to comply with the requirements for qualification of renewed registration, stipulated under or pursuant to a regulation.
3. The decision to refuse to process the application is made within six weeks of the application being submitted.
4. The swearing-in referred to in Section 3 can take place when the council has not, within the term referred to in Subsection 3, decided to refuse to process the application, or if the council has declared to process the application.
5. Under or pursuant to a regulation, it is determined to what extent, after disbarment by virtue of Section 8c, subsection 3, an examination can still be taken for elements of the study programme and under which conditions this examination can be taken.

Section 5

1. The secretary of the council notifies the applicant of the decision to refuse to process the application, referred to in Section 4, subsection 1, without delay.
2. For a period of six weeks after the notification, the applicant can lodge a complaint with the disciplinary court, referred to in Section 51.
3. The complaint is submitted by means of a petition, which includes a copy of the decision that is the subject of the complaint. The court registrar immediately sends a copy of the petition to the council that took the decision. The processing of the complaint is not subject to Chapters 6 and 7 of the General Administrative Law Act.

[...]

Section 16

Advocates who have been declared bankrupt or who are the subject of a debt management scheme, who have been committed to prison for debt or who have been placed under guardianship, shall be suspended from practising law for the duration of the bankruptcy, the application of the debt management scheme, the detention or guardianship by operation of law. A suspended advocate is not permitted to use the title of advocate while suspended. For the purpose of processing in the bar registration, the registrar of the court that has pronounced a decision or decisions, referred to in the first sentence, that result in the suspension being lifted, shall notify the secretary of the general council of the suspension or exemption thereof. Suspension constitutes a loss of the positions for which the capacity of advocate is required for electability or eligibility for appointment.

[...]

Section 48

1. The decisions of the disciplinary board about the submitted complaints state the reasons and are passed in public, subject to nullification.
2. The orders that can be imposed when a complaint is declared well-founded are:
 - a. a warning;
 - b. a reprimand;
 - c. a financial penalty;
 - d. suspension of practising the profession for the term of no more than one year; or
 - e. disbarment.
3. The board may stipulate that, despite a complaint being declared well-founded, no order is imposed.
4. The order of a financial penalty can be imposed together with another order.
5. If so demanded by any interest protected under Section 46, the disciplinary board can, under the decision pertaining to impose an order as referred to in Subsections 1.b to 1.e inclusive, decide to publish the order imposed, stating the reasons thereof or otherwise, in a manner to be stipulated by the board.
6. If the board fully or partially upholds the complaint and imposes an order as referred to in Subsections 2.a to 2.e inclusive, it can, in its decision, stipulate that the costs, or part thereof, reasonably incurred by the complainant in connection with the processing of the complaint, are reimbursed by the advocate on whom the order is imposed and that the costs, or part thereof, that are charged to the Netherlands Bar in connection with the processing of the case are reimbursed to the Netherlands Bar by the advocate on whom the order imposed. Under or pursuant to a governmental decree, further rules can be stipulated about the implementation of the decision of the board.
7. Orders imposed in accordance with this section are not implemented until they have become final.
8. A suspended advocate is not permitted to use the title of advocate while suspended.
9. Suspension of practising the profession constitutes a loss of the positions for which the capacity of advocate is required for electability or eligibility for appointment.
10. If the complainant so requests, the board shall in its decision set out, stating the reasons at all times, if the advocate against whom the complaint is made has acted prudently towards the complainant, as befits sound legal assistance. The board can make such a decision by virtue of its office as well, if it feels there are sufficient reasons for doing so.

Section 48a

1. When imposing an order for suspension of practising the profession, the disciplinary board can, both with regard to this order and the ban to use the title of advocate, stipulate that this order shall not be implemented at all or for only as much as stipulated by the disciplinary board, unless the disciplinary board subsequently stipulates otherwise on the basis that the advocate in question, before the end of a probationary period to be set out in the decision, has shown conduct as referred to in Section 46, or has failed to comply with a special condition that may have been stipulated in the decision.
2. The probationary period has a maximum term of two years. It starts as soon as the decision has become final.

Section 48b

1. When imposing the orders referred to in Section 48, subsection 2, the disciplinary board can, in derogation from Section 48a, subsection 1, stipulate a special condition that the advocate in question reimburses all or part of the damage he caused, up to an amount to be stipulated by the board and subject to a maximum of € 5,000, within a term to be stipulated by the board, shorter than the probationary period and in a manner to be stipulated by the board.
2. Furthermore, the disciplinary board is authorised to stipulate other special conditions relating to the advocate in question practising law during the probationary period or during part thereof, to be stipulated under the decision.

Section 48c

1. The President monitors compliance with the conditions, referred to in Section 48b. If the advocate in question is the President, the member of the Council of the Local Bar referred to in Section 23, subsection 1 shall be charged with monitoring compliance with the conditions.
2. In the event that the advocate fails to comply with the conditions during the probationary period, the President or the other member of the bar referred to in Subsection 1 shall notify the disciplinary board accordingly, with such demand as he deems necessary.

Section 48d

The disciplinary board that has issued the order referred to in Section 48a, can, either on the demand of the person who, by virtue of Section 48c, subsection 1, monitors compliance with the conditions, referred to in Section 48b, or, at the request of the advocate in question, make changes to the special conditions during the probationary period.

[...]

Section 59

1. With a view to processing in the bar registration, the orders for suspension of practising the profession and disbarment are announced to the secretary of the general council by the registrar of the disciplinary board as soon as the decision has become final.
2. The President of the bar which the advocate is a member of or, if the advocate in question is the President, a member of the Council of the Local Bar as referred to in Section 23, subsection 1 is responsible for publication as referred to in Section 48, subsection 5.
3. In the event of application of Sections 48a to 48g inclusive, the announcement, referred to in Subsection 1, and the publication, referred to in Subsection 2, are not effectuated until an enforcement order has been issued for the decision or the relevant part thereof.

[...]

§ 4a The procedure regarding urgent suspension or taking an interim measure

Section 60ab

1. At the request of the President of the bar which the advocate is a member of, the disciplinary board can suspend an advocate with regard to whom there are serious doubts about an act or omission as a result of which any interest protected under Section 46 is seriously harmed or in danger of being seriously harmed, from practising his profession or take an interim measure with regard to the advocate in question practising his profession, if so demanded by the interest protected under Section 46. He shall not make a decision before hearing or duly summoning the advocate and the President of the bar which the advocate is a member of.

2. A request as referred to in Subsection 1 can also be submitted in the event that an advocate is remanded in custody or if he has been convicted for a crime under a not yet irrevocable court ruling or if an order for deprivation of liberty is imposed on him under such a ruling, on the understanding that suspension can be delivered only for the duration of the deprivation of liberty. The registrar of the court that takes one of the decisions referred to in the first sentence, shall notify the President of the Local Bar which the advocate is a member of, of that decision. Subsection 5 does not apply.
3. The President notifies the advocate in question in writing of the request referred to in Subsections 1 and 2, as well as of the reasons on which the request is based.
4. The disciplinary board makes a decision within 14 days of the request having been sent in accordance with Subsection 1 or 2. The disciplinary board can extend this term with the same term only once.
5. If the complaint or the objection against the advocate on the basis of which the serious suspicion has arisen has not yet been communicated to the disciplinary board in writing, the disciplinary board shall in its decision regarding the request referred to in Subsection 1 also stipulate a reasonable term of no more than six weeks, within which the President shall notify the disciplinary board of the complaint or objection in writing. When this term is exceeded, the decision regarding the request referred to in Subsection 1 shall lapse by operation of law. Following a written request from the President, the disciplinary board can extend the term only once, with a reasonable term, to be stipulated by the board, of no more than six weeks. Paragraph 4 applies by analogy, with the exception of Sections 46c, subsection 1, 46i to 46k inclusive and 46n.
6. At the request of the advocate in question, the disciplinary board can at all times lift the suspension or interim measure imposed by virtue of Subsection 1. He shall not make a decision before hearing or duly summoning the advocate and the President.

Section 60ac

1. With a view to processing in the bar registration, the order for suspension of practising the profession is announced to the secretary of the general council by the registrar of the disciplinary board.
2. A suspended advocate is not permitted to use the title of advocate while suspended.
3. Suspension of practising the profession constitutes a loss of the positions for which the capacity of advocate is required for electability or eligibility for appointment.

Section 60ad

1. The advocate, the President of the bar which the advocate is a member of and the President of the Netherlands Bar can lodge an appeal with the disciplinary court with regard to a decision pursuant to Section 60ab, subsections 1, 2 and 6, within 30 days of a copy of the decision having been sent.
2. The appeal does not suspend the effect of the decision against which it is aimed.

Section 60ae

As soon as the decision of the disciplinary board with regard to a complaint or objection as referred to in Section 60ab, subsection 5 and announced to the board by the President, has become final, the suspension or interim measure imposed pursuant to Section 60ab, subsection 1 or 2, lapses by operation of law.

[...]

§ 4b The procedure regarding undue practising of the profession

Section 60b

1. The disciplinary board can, whether or not after an investigation has taken place in accordance with Sections 60c to 60g inclusive, at the request of the President of the bar which the advocate is a member of, suspend an advocate who temporarily or permanently gives no indication of being able to duly practise law, or take one or more measures he deems necessary with regard to the advocate practising his profession. At the same time as imposing a suspension, the disciplinary board can take a measure. He shall not make a decision before hearing or duly summoning the President of the bar which the advocate is a member of and the advocate in question.
2. The hearing of the case is subject to Sections 47 and 49, subsection 2 to 10 inclusive by analogy. The hearing takes place behind closed doors, unless the advocate in question prefers a public hearing.
3. Section 50, applies by analogy to the dispatch of a copy of the decisions of the disciplinary board, referred to in Subsection 1. Furthermore, the registrar of the disciplinary board immediately sends a copy of the decision with regard to the suspension of the advocate in question, referred to in Subsection 1, to the secretary of the general council by registered letter with a view to processing in the bar registration, and if the advocate is registered with the Legal Aid Board [raad voor de rechtsbijstand], to the management of that board.
4. Both the advocate and the person who made the request referred to in Subsection 1 can, for a period of 30 days after a copy of the decision against the decision, referred to in Subsection 1, was sent, lodge an appeal to the disciplinary court. The second sentence in Subsection 2 applies. The hearing of the case is subject to Sections 55 and 56, subsections 2, 3, 4 and 6. Section 57, with the exception of the reference to Section 47a and Section 48, subsection 1 in Subsection 2, and with the exception of Subsection 5, applies by analogy. Section 58, subsection 1.a to 1.g inclusive applies, on the understanding that the registrar of the disciplinary court shall send only a copy of the decision with regard to the suspension to the management of the Legal Aid Board [raad voor de rechtsbijstand] which the advocate is registered with. With a view to processing in the bar registration, the secretary of the general council also receives a copy of the decision of the court with regard to the suspension of the advocate in question. The appeal does not suspend the effect of the decision against which it is aimed.
5. A suspended advocate is not permitted to use the title of advocate while suspended. Section 48, subsection 9 applies.
6. With a view to monitoring compliance with the provisions referred to in Subsection 1, Section 48c applies by analogy.
7. At the request of the advocate, the disciplinary board can lift the suspension or measures at all times. The board shall not decide about this before having heard or duly summoned the person who made the request referred to in Subsection 1 and the advocate in question. Subsections 2 to 5 inclusive apply by analogy.
8. Sections 60d and 60e apply by analogy.

[...]