

by Allan Garro & Pedro Lizarazo M

Rules for complaints against lawyers & notaries

Costa Rica has more than twenty thousand lawyers and about nine thousand notaries authorized to practice in the country. To become a Notary it is required to be a lawyer, but certainly the two designations have separate duties in the eyes of the law. In summary lawyers represent their clients in Court cases - collections, criminal prosecutions, lawsuits, and conducting procedures handled by Governmental Institutions. Notaries, on the other hand, prepare documents like purchase agreements, affidavits, corporations, wills, and similar.

Lawyers are authorized and supervised by the local Bar Association named Colegio de Abogados (www.abogados.or.cr) whilst Notaries are ruled by an entity named Direccion Nacional de Notariado or National Directorate of Notaries (www.dnn.go.cr). Both are public entities but perform separately, each having their own set of rules regarding to the control and supervision of their members. In order to be authorized to practice as a lawyer or notary, it is mandatory to be incorporated with those institutions.

A frequently asked question is what happens when a client feels that his or her lawyer or notary is untrustworthy or has been performing actions damaging the best interests of the client? Can a complaint be filed? The answer is yes.

The most important thing to do before filing the complaint is to determine if it has to do with violations of the duties as a lawyer or as a notary. It is common that many complaints about Notaries are improperly filed with the Bar Association, which creates much confusion.

Also, it is necessary to take in consideration that complaints can only be about situations related to business practices, either as a lawyer or as a notary, and not about personal aspects of their life. For instance, filing a complaint against a lawyer for non-payment of rent, or against a notary for not paying a credit card, is not acceptable. For these issues the affected person or

company needs to go thru the normal judicial procedures which can apply to any other person.

In case of the lawyers, the Bar Association will take complaints for situations like the following scenarios: a. When a lawyer is reluctant to provide information to the client about a case or procedure being handled in which the client has an interest, b. If the lawyer has committed some type of fraud or has illegally appropriated assets that belong to the client, c. The lawyer has violated professional secrecy or, d. The lawyer does not have the knowledge required to handle the case for the client. There are also many other possible infractions.

The guidelines for filing a complaint against a lawyer are:

- The complaint needs to be filed in writing. Complaints made by telephone or email are not admissible.
- The Office of the Inspector cannot give legal advice or represent the plaintiff in the procedure, nor provide an interpreter, as they are supposed to remain neutral. For these services the plaintiff can hire a lawyer or interpreter on their own.
- The complaint will be taken under study for a few days before a decision is made. If the grounds of the case are strong enough, a procedure against the lawyer shall be initiated, following the due process of the law.
- After both parties have responded to any allegations, a private hearing is set to attempt to have the parties reach a settlement. If that fails, then all proofs are offered and recorded.
- Once the hearing finishes, the case is sent to the Board of Directors for a final decision. Such a decision can only be about disbarring the lawyer for a period of time, which can range from one month to twelve years, depending on the gravity of the offense committed.
- Any false statements made in the complaint may be punished. Also, complaints made in bad faith could entitle the affected lawyer to file a countersuit for damages.

- The Board cannot grant claims for damage or for expenses incurred; damages can only be granted by a Judge in Court on a separate lawsuit. Their decision is final.

For complaints against Notaries, the procedures are very different. The client must file the complaint before the Court of Notaries, which is part of the Court System, and is located in San Jose. The complaint can be verbal, however if a damage claim is filed the document needs to be in writing and hiring a lawyer to handle it is mandatory. In this type of procedure the notary can be disbarred as well as ordered to pay damages and related expenses.

The rest of the procedure against notaries is similar to the one conducted by the Bar Association against lawyers, including a hearing where all proofs are examined. However, the decision made can be appealed before a higher Court, meaning it takes more time to become a final decision. Because notaries are obligated to pay contributions to a guaranty fund in the case compensation is granted, the affected party could get payment from that fund, depending on the amount.

The following examples are valid complaints against notaries: a. Lack of registration of a document in the National Registry for such things as the transfer of the title on a property, a mortgage, or other legal document, b. Producing illegal documents with forged signatures, c. Authorizing illegal documents for lack of requirements or being against the law, d. Keeping the registration expenses received from the parties and, f. Not being impartial when authorizing a document between two or more parties.

The legal system of Costa Rica provides tools for those who have been damaged by a lawyer or by a notary. Affected parties can also choose other options like civil or criminal lawsuits, if applicable.

Certainly there are many reputable professionals in the country while the dishonest ones are just a few. But getting good referrals and trying to get other information about the attorney or Notary prior hiring them reinforces the motto "Forewarned is forearmed" and is strongly advised.

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Batman Rides!

Allan Garro, who writes the Legal Update column for El Residente, doesn't just sit behind a desk and pass out legal advice; he's a kind person who cares about those who don't have all the advantages. Here's his story about what he did to raise the spirits of some sick children, and one boy in particular:

June 20th was the seventh birthday of a boy named William who lives in the palliative care department of the San Juan del Dios Children's Hospital. His biggest dream was to meet Batman, his favorite hero. So, on a rainy Saturday I dressed like Batman, got on my "Batcycle," and went to the hospital. Thank God, the rain had stopped and the doctors allowed him to go outside where we took a short ride on the hospital's front access road. Because of the noise the bike made it only took a few minutes before the windows of the hospital were crowded with all types of kids. Following this, the staff invited me to visit the two entire floors!

Mostly it was a great experience, but I saw some really sad images that made me rethink the value of life. A couple of little kids cried, but dozens were really happy!

My wife, Ingrid, acted as my assistant and photographer.



UPDATE

William's doctors had scheduled him to undergo a dangerous surgery. Two days before the operation was to take place he asked his mother if Batman could possibly come see him again? Allan once more dressed in his costume, went to the hospital, and spent over two hours with the sick boy playing video games. On July 16th William underwent a nine-hour surgery. He came through it well and is recovering nicely.

Kudos to Allan and his wife for making the lives of some unfortunate children a little brighter. We are very proud to have him writing for this publication.