

How to File Complaints Against Lawyers and Notaries in Costa Rica

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Costa Rica has more than twenty-nine thousand lawyers and approximate eight thousand six hundred 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. Lawyers represent their clients in Court cases – collections, criminal prosecutions, lawsuits, or procedures handled by governmental institutions-. Notaries, on the other hand, prepare documents like purchase agreements, transfer deeds, affidavits, corporations, wills etc.

Lawyers are authorized and supervised by the local Bar Association named Colegio de Abogados y Abogadas de Costa Rica (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 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 to 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 confusion and is also a waste of time to the affected party, because of the different location of both entities.

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 playing music too loud at home, is not acceptable. For these issues, the affected person or company needs to go thru the normal judicial procedures which would apply to any other person.

In the case of the lawyers, the Bar Association will take complaints about 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 is also a list with other possible infractions.

The guidelines for filing a complaint against a lawyer are:

- Complaints can be filed at the Central offices or any of the other branches of the Bar Association located in different parts of the country.
- The complaint needs to be filed in writing in front of the Fiscalia (Office of the Inspector). Complaints made by telephone or email are not admissible.
- The Fiscalia staff 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 Inspector in charge prepares a decision, which is sent to the Board of Directors for approval. Such a decision can only be about disbarring the lawyer for a period of time, which can range from one month to ten years, depending on the type of 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 Juzgado Notarial or 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 documents, 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 affected by a lawyer or by a notary. Parties can also choose other options like civil or criminal lawsuits, if applicable. Certainly, there are many reputable professionals in Costa Rica while the dishonest ones are just a few. But getting good referrals and trying to gather other information about the attorney or notary prior to hiring them reinforces the motto "Forewarned is forearmed" and is strongly advised.

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate, and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)