
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE 43 OF 2018



NATIONAL FORUM ON THE LEGAL PROFESSION

Spooral Park Building
Ground Floor
2007 Lenchen Avenue South
Centurion

2 February 2018

Rules required by sections 95(1), 95(3) and 109(2) (a) of the Legal Practice Act

The National Forum for the Legal Profession ("the National Forum"), a transitional body established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 ("the Act"), hereby publishes the draft Rules required by sections 95(1), 95(3) and 109(2)(a) of the Act for comment.

Sections 95(4) and 109(2) (b) read with sections 97(1) and 109(2) and (3) of the Act as amended by the Legal Practice Amendment Act 16 of 2017, requires the National Forum to publish a draft of the proposed Rules in the Gazette, calling on interested parties to comment thereon in writing within a period of not less than 30 days from date of publication.

After finalisation, the Rules will apply to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined, **when the Act comes into operation in terms of section 120(4) thereof**. They consist of the following parts:

- I. Definitions
- II. Fees & Charges
- III. The Council
- IV. Provincial Councils
- V. Professional Practice
- VI. Education and Training
- VII. Admission and Enrolment
- VIII. Rendering of Legal Services
- IX. Law Clinics
- X. Disciplinary Rules
- XI. Legal Practitioners Fidelity Fund: Procedural Rules
- XII. Accounting Rules
- XIII. Legal Practice Fidelity Fund
- Schedules to the Rules

The National Forum which drafted these Rules consists of representatives of various organisations representing attorneys and advocates as well as persons nominated by teachers of law, Legal Aid South Africa, the Attorney's Fidelity Fund and the Minister of Justice and Correctional Services. Various stakeholders were consulted in the drafting process.

The Rules, along with the Code of Conduct for legal practitioners published in Gazette 40610 of 10 February 2017 and the Regulations still due to be promulgated, will play an important role in the establishment of a single unified statutory Legal Practice Council to regulate the affairs of all legal practitioners, candidate legal practitioners and juristic entities, for the first time in the history of South Africa.

The National Forum is confident that the Rules will contribute towards achieving the objectives of the Act, namely the transformation and restructuring of the legal profession which will embrace the values underpinning the Constitution and upholding the rule of law, promote access to justice, legal services and the profession and enhancing and maintaining the integrity, status and independence of the legal profession. The Rules will assist in the regulation of all legal practitioners, candidate legal practitioners and juristic entities in pursuit of the goals of an accountable, efficient and independent legal profession, the protection and promotion of the public interests, the provision of a fair, effective, efficient and transparent procedure for the resolution of complaints against legal practitioners, candidate legal practitioners and juristic entities, the creation of a framework for development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal services by legal practitioners, candidate legal practitioners and juristic entities.*

Interested parties should submit written comments within 30 days of publication hereof to:

Ms Charity Mhlungu, Executive Officer – National Forum
Email: BonGumede@justice.gov.za

Or hand delivered to:

The National Forum, SA Law Reform Commission, 1st Floor, Spooral Park Building, 2007 Lenchen South Avenue, Centurion between 9am – 3pm weekdays.

Signed at Pretoria on this 27th day of January 2018



Adv. Kgomo Moroka SC

Chairperson: National Forum for the Legal Profession



The South African Legal Practice Council

Rules

made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended)

The South African Legal Practice Council**Rules****made under the authority of section 95(1) of the Legal Practice Act, 28 of 2014****Table of Contents**

	Page No
PART I	6
DEFINITIONS	6
PART II	10
FEES AND CHARGES	10
2. Application fees	10
3. Annual fees for Fidelity Fund certificates.....	11
4. Annual fees payable by all legal practitioners	11
5. Fees payable in respect of examinations conducted by the Council.....	12
6. Other fees, levies, contributions and charges.....	12
7. Failure to pay fees, levies and charges	13
PART III	13
THE COUNCIL.....	13
8. Removal or suspension of member of Council	13
9. Meetings of the Council	14
10. Conduct of meetings of a committee	16
11. Appointment of executive officer and other employees	17
12. Conditions of service of executive officer and other employees	17
13. Executive committee.....	17
14. Convening of meeting and conduct of meetings of executive committee.....	18
15. Investment of monies of the Council	18
PART IV	18
PROVINCIAL COUNCILS	18
16. Election of Provincial Councils	18
PART V	27
PROFESSIONAL PRACTICE	27
17. Information to be submitted for admission.....	27
18. Period of practice as an attorney and advocacy training programme	33
19. Information to be provided by attorney for appearance in High Court.....	34

PART VI	35
EDUCATION AND TRAINING	35
20. Competency-based examinations or assessments	35
21. Practical vocational training and remuneration for candidate legal practitioners	37
22. Assessment of persons undergoing practical vocational training	47
23. Levels of competence for admission and enrolment as legal practitioner	48
24. Qualifications to conduct assessment of practical vocational training	49
25. Exemption from performing community service	50
26. Legal practice management course	50
PART VII	51
ADMISSION AND ENROLMENT	51
27. Application for enrolment	51
28. Manner of keeping roll of legal practitioners	53
29. Notification of cancellation or suspension of enrolment	54
30. Application for conversion of enrolment by attorneys and advocates	54
31. Application for conversion of enrolment by advocate practising without fidelity fund certificate and vice versa [section 95(1)(y) read with section 32(1)(b)]	57
32. Circumstances in which legal practitioner can apply for conversion of enrolment	59
PART VIII	59
RENDERING OF LEGAL SERVICES	59
33. Legal services which may be rendered by advocate in possession of fidelity fund certificate	59
34. Briefing of advocates by attorneys and by members of the public	60
35. Instruction of attorneys	60
PART IX	61
LAW CLINICS	61
36. Establishment of law clinics	61
37. Engagement of candidate legal practitioners by law clinics	62
PART X	63
DISCIPLINARY	63
38. Procedure to be followed by disciplinary bodies	63
39. Commencement of enquiry into alleged misconduct	65
40. Investigation of alleged misconduct	66
41. Disciplinary procedure	69

42.	Subpoena	71
43.	Proceedings after disciplinary hearing, and sanctions	71
44.	Appeal against conduct or finding of investigating committee or disciplinary committee	74
45.	Manner and form in which complaints of misconduct must be lodged with the Council	77
PART XI		78
LEGAL PRACTITIONERS' FIDELITY FUND: PROCEDURAL		78
46.	Procedure for election of legal practitioners to the board	78
47.	Application for Fidelity Fund certificates	82
48.	Contributions payable by applicants for Fidelity Fund certificates	83
49.	Form of application for Fidelity Fund certificate	84
PART XII		85
50.	ACCOUNTING RULES	85
Acceptable financial reporting framework		86
Distinguishing between trust account and business account transactions		87
Retention of accounting records and files		87
Updating accounting records		88
Trust money to be kept separate from other money		88
Accounting to clients		88
Payment to clients		89
Accounting Requirements - Accounting Records		89
Internal controls		90
Prompt depositing of trust monies		90
Transfers from trust investment account		91
Trust moneys not to be less than trust balances		91
Trust accounts not to be in debit		91
Reports to Council of non-compliance		91
Transfer from trust bank account to business bank account		91
Deposits on account of charges		91
Withdrawals from trust banking account		92
Payments from trust banking account		92
Interest accrued on trust banking account		92
Lists of balances		93
Notification of trust banking account		93
Trust account investments in terms of section 86(4)		94

Responsibility for ensuring compliance	94
Reporting Requirements	94
Opening of practice	99
Investment Practice Rules	99
Definitions	99
Mandates	100
Reports to clients in relation to investments	100
Accounting records for investment practices	100
Pooling of investments	102
Restrictions applicable to certain investments	102
Investment of funds by firms on behalf of persons, otherwise than in terms of investment practice rule 51	102
General Provisions	103
PART XIII	104
LEGAL PRACTITIONERS' FIDELITY FUND	104
54. Compliance and Enforcement: Inspections	104
55. Contributions to the fund: insurance premiums	111
56. Issuing and costs of fidelity fund certificate	111
57. Procedure for the appointment of the executive officer and other employees	112
Schedule 1A	114
Schedule 1A	116
Schedule 1B (Part A)	118
Schedule 1B (Part B)	120
Schedule 2	122
Schedule 3	124
Schedule 4	126
Schedule 5	127
Schedule 6A	131
Schedule 6B	132
Schedule 7A	133
Schedule 7B	141
Schedule 8	148
Second Schedule	163

PART I**DEFINITIONS**

1. In these rules, unless the context otherwise indicates:
 - 1.1 "accounting records" means the records which a firm is required to keep in terms of accounting rule 50.6;
 - 1.2 "the Act" means the Legal Practice Act, 28 of 2014;
 - 1.3 "attorney" means a legal practitioner who is admitted and enrolled as such under the Act;
 - 1.4 "advocate" means a legal practitioner who is admitted and enrolled as such under the Act;
 - 1.5 "auditor" means a person who is registered as an auditor in terms of the Auditing Profession Act, 26 of 2005 and who engages in public practice as an auditor registered in terms of that Act;
 - 1.6 "bank" means a bank is defined in section 1 of the Banks Act, 94 of 1990;
 - 1.7 "Board" means the Legal Practitioners' Fidelity Fund Board established in terms of section 61 of the Act;
 - 1.8 "branch office" means an office at or from which the firm practises, but which is not a main office;
 - 1.9 "business account transactions" means transactions in regard to which records are required to be kept in terms of accounting rule 50.6;
 - 1.10 "candidate attorney" means a person undergoing practical vocational training with a view to being admitted and enrolled as an attorney;
 - 1.11 "candidate legal practitioner" means a person undergoing practical vocational training, either as a candidate attorney or as a pupil;
 - 1.12 "code of conduct" means the code of conduct setting out rules and standards relating to ethics, conduct and practice for legal practitioners, candidate legal

practitioners and juristic entities and its enforcement through the Council and its structures;

1.13 "conveyancer" means any practising attorney who is admitted and enrolled to practice as a conveyancer in terms of the Act;

1.14 "Council" means the South African Legal Practice Council established in terms of section 4 of the Act;

1.15 "court" means any court in the Republic as defined in section 166 of the Constitution;

1.16 "disciplinary body" means -

1.16.1 an investigating committee;

1.16.2 a disciplinary committee; or

1.16.3 an appeal tribunal,

as the case may be, established under the Act and the rules;

1.17 "fidelity fund certificate" means the certificate referred to in section 85 of the Act;

1.18 "firm" means -

1.18.1 a partnership of attorneys;

1.18.2 an attorney practising for his or her own account; or

1.18.3 a juristic entity

who or which in each case conducts the practice of an attorney, and for purposes of Part XI (accounting rules) of these rules only, includes an advocate referred to in section 34(2)(b) of the Act;

1.19 "Fund" means the Legal Practitioners' Fidelity Fund referred to in section 53 of the Act;

- 1.20 "High Court" means the High Court of South Africa established by section 6 of the Superior Courts Act, 10 of 2013 or, if the context indicates otherwise, the Division thereof having jurisdiction;
- 1.21 "juristic entity" means a commercial juristic entity established to conduct a legal practice as an attorney, as contemplated in section 34(7) of the Act and a limited liability legal practice as contemplated in section 34(9) of the Act;
- 1.22 "legal practitioner" means an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30 respectively of the Act;
- 1.23 "main office" means the premises at and from which the practice of a firm is as a whole administered and controlled, including such premises in two or more buildings situate in sufficiently close proximity to one another to allow the administration of that practice as a single composite entity, and includes premises declared or determined as such in terms of accounting rules 14.2 or 14.5 as the case may be;
- 1.24 "Minister" means the Minister of Justice and Constitutional Development;
- 1.25 "notary" means any practising attorney who is admitted and enrolled to practise as a notary in terms of this Act;
- 1.26 "practical vocational training" means training required in terms of the Act to qualify as a candidate attorney or pupil in order to be admitted and enrolled as an attorney or advocate;
- 1.27 "principal place of practice" means the place at which the main office of a firm is situated, notwithstanding that any member of the firm (being a sole practitioner, or a partner in a partnership, or a director of a juristic entity) may habitually or temporarily practise at or from a branch office; provided that the principal place of practice of a member of the firm who is a member of more than one firm, or who is the proprietor of one firm and a member of another firm or other firms shall be deemed to be the place of the main office of that firm which has its main office closest to his residential address;
- 1.28 "pupil" means a person undergoing practical vocational training with a view to being admitted and enrolled as an advocate;

- 1.29 "Republic" means the Republic of South Africa;
- 1.30 "Roll" means the Roll of Legal Practitioners referred to in section 30(3) of the Act;
- 1.31 "rules" means the rules made by the Council in terms of sections 95(1), 95(3) and 109(2) of the Act;
- 1.32 "training supervisor" means an individual who is authorised in terms of the Act, or in terms of any rule or regulation issued under the Act, to enter into a practical vocational training contract with a pupil, and includes a duly qualified employee of an entity which is accredited by the Council to provide practical vocational training to pupils;
- 1.33 "trust account advocate" means an advocate referred to in section 34(2)(b) of the Act who is, in terms of the Act, required to hold a fidelity fund certificate;
- 1.34 "trust account practice" means a practice conducted by -
- 1.34.1 one or more attorneys who are; or
- 1.34.2 an advocate referred to in section 34(2)(b) of the Act who is in terms of the Act, required to hold a fidelity fund certificate;
- 1.35 "trust account transactions" means transactions in regard to which records are required to be kept in terms of rule 6;
- 1.36 "trust banking account" means a current cheque account, and includes all trust accounts kept by a trust account practice in terms of section 86(2) of the Act;
- 1.37 "trust cash" means any cash held in trust by a trust account practice otherwise than in a trust banking account or a trust investment account;
- 1.38 "trust creditor" means a person on whose account money is held or received as contemplated by section 86(2), or invested as contemplated by section 86(3) or section 86(4), of the Act;
- 1.39 "trust investment account" means and includes all banking accounts kept by a firm in terms of section 86(3) or section 86(4), of the Act;

- 1.40 "trust money" means money held or received on account of any person as contemplated by section 86(2), or invested as contemplated by section 86(3) or section 86(4), of the Act.

Words or expressions referred to in these rules which are not defined herein shall bear the respective meanings assigned to them by section 1 of the Act.

PART II

FEES AND CHARGES

2. Application fees

[section 95(1) read with section 6(4)(a)]

The following fees (which are inclusive of value-added tax) shall be payable to the Council in respect of the matters referred to below:

application for the registration of a practical vocational training contract, and the examination fee of any such contract

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|-----|--|--------|
| 2.1 | application for the registration of a practical vocational training contract, and the examination fee of any such contract | R 342 |
| 2.2 | issuing of a right of appearance certificate in terms of section 25(4) of the Act; | R 171 |
| 2.3 | registration of a cession of a practical vocational training contract, and the examination fee in respect thereof; | R342 |
| 2.4 | enrolment of a legal practitioner or re-enrolment of a person whose name was removed from the roll as a legal practitioner or as a notary or conveyance at his or her own request; | R456 |
| 2.5 | re-enrolment as a legal practitioner, and/or as a notary or | R2 850 |

conveyancer, subsequent to the name of that legal practitioner being struck off the roll;

- | | | |
|------|---|------|
| 2.6 | enrolment as a notary; | R684 |
| 2.7 | enrolment as a conveyancer; | R684 |
| 2.8 | registration for the legal practice management course in terms of section 26(1)(c)(ii) of the Act or application for exemption from attendance at the course; | R456 |
| 2.9 | conversion of enrolment in terms of section 31(1)(a) of the Act; | R684 |
| 2.10 | conversion of enrolment by an advocate in terms of section 32(1)(b) of the Act. | R684 |

**3. Annual fees for Fidelity Fund certificates
[section 95(1) read with section 6(4)(b)]**

- 3.1 Every attorney required to be in possession of a Fidelity Fund certificate, and every advocate contemplated in section 34(2)(b) of the Act, shall pay to the Council an annual fee of R342 (inclusive of value-added tax) for the issue to him or her of a Fidelity Fund certificate, such fee being payable at such times as may from time to time be fixed by the Council.
- 3.2 The amount of the annual fee will be the amount applicable to the practitioner concerned on 1 January of the year in which application for a Fidelity Fund certificate is made; provided that any practitioner enrolled after 30 June in any year shall pay only one half of the annual fee for the year then current.

**4. Annual fees payable by all legal practitioners
[section 95(1)(1) read with section 6(4)(c)]**

- 4.1 Every legal practitioner who is admitted and enrolled in terms of section 24(1) of the Act as a legal practitioner shall pay an annual fee to the Council at such time

as may from time to time be fixed by the Council. That fee (which is inclusive of value-added tax) shall be -

- 4.1.1 in the case of a legal practitioner who is in practice, R2 500;
- 4.1.2 in the case of a legal practitioner who is not in practice, R500.
- 4.2 The Council may in its discretion, and on application by the legal practitioner, permit the annual fee to be payable in instalments.

**5. Fees payable in respect of examinations conducted by the Council
[section 95(1)(a) read with section 6(4)(e)]**

- 5.1 Every legal practitioner and every candidate legal practitioner entering any examination conducted by the Council or on behalf of the Council, or repeating any such examination, shall pay the following fees to the Council:
 - 5.1.1 in respect of the examination referred to in R342
section 26(1)(d) of the Act (candidate legal
practitioners);
 - 5.1.2 in respect of the examination referred to in R342
section 26(2) of the Act (conveyancers);
 - 5.1.3 in respect of the examination referred to in section R342
26(3) of the Act (notaries).
- 5.2 Every candidate entering any examinations referred to in rule 5.1 who applies for a remark or a re-assessment of his or her examination scripts shall pay a fee equal to twice the fee payable in terms of rule 5.1 for the examination in question; provided that if the candidate successfully passes the examination as a result of the remark or re-assessment the fee paid shall be refunded.

**6. Other fees, levies, contributions and charges
[section 95(1)(a) read with section 6(4)(f)]**

Every legal practitioner shall pay to the Council such fees, levies, contributions or charges as it considers necessary, as contemplated in the Act, other than those fees, levies, contributions or charges specifically provided for in these rules, at such time and in such amounts as may from time to time be fixed by the Council.

7. Failure to pay fees, levies and charges

If a legal practitioner or candidate legal practitioner fails to pay any fee, levy or other charge payable by him or her in terms of the Act or in terms of these rules within one month after it has become due, the executive officer appointed in terms of section 19 shall, by letter or by electronic communication, draw his or her attention to that fact; and if the fee, levy or other charge in arrear is not paid within seven days from the date of despatch of that letter or electronic communication, or within such further time as the Council may allow, proceedings for the recovery thereof may be taken against him or her.

PART III

THE COUNCIL

8. Removal or suspension of member of Council [section 95(1)(b) read with section 12(4)]

- 8.1 If the Council proposes to suspend or remove a member of Council from office in terms of the powers granted to it in terms of section 12 of the Act it may not do so without having first notified the member of Council concerned in writing that it is considering such a suspension or removal and without advising such member of the reasons for which it is considering doing so.
- 8.2 The Council shall afford the member of the Council concerned the opportunity to furnish the Council, within a period stipulated in the notification, with his or her reasons, if any, as to why the Council should not exercise the right to suspend or remove him or her.

- 8.3 The Council shall be entitled to call upon the member of Council concerned to amplify such reasons by oral representations to the Council within such period as it shall stipulate.
- 8.4 The Council shall make its decision to suspend or remove the member of Council concerned from office in the light of such reasons, if any, and such oral representations, if any, as may have been submitted by that member.
- 8.5 The Council shall notify the member of Council concerned in writing of its decision either to suspend him or her or remove him or her from office, or not to do so, within 24 hours of such decision, and in the former instance the suspension or removal shall be effective from the date of the Council's decision.
- 8.6 The Council shall record the date on which the removal or suspension of a member of the Council becomes effective, and in the case of a suspension, the date on which the suspension terminates.

9. **Meetings of the Council**
[section 95(1)(c) read with section 16(2)]

- 9.1 Meetings of the Council shall be held at least four times in each year on such dates and at such times and places as may from time to time be determined by the Council or, failing such determination, by the chairperson.
- 9.2 The successive date of each meeting of the Council shall be determined at its preceding meeting or, if the Council should fail to do so, by the chairperson.
- 9.3 The chairperson may at any time *mero motu* convene a meeting of the Council in such manner as he or she shall determine, and the executive officer must, if requested in writing to do so by members of the Council representing not less than one fifth of the Council members in office, convene a special meeting of the Council at such time and in such place as he or she may determine on not less than seven days and not more than fourteen days' notice in writing, stating the business to be considered.
- 9.4 When convening a meeting *mero motu* the chairperson may, in cases which are, in his or her judgment, of sufficient urgency, give such period of notice of the

meeting, and in such manner, as he or she thinks fit, to the members of the Council, but no decision shall be taken at such a meeting unless a quorum is present and the decision is unanimous.

- 9.5 A resolution, other than a written resolution, taken on a motion of the chairperson on a matter which is, in his or her opinion, of sufficient urgency, shall, although not taken at a meeting of the Council but by such other means of communication as the chairperson may deem fit to employ, be as valid and effective as if it had been passed at a meeting of the Council duly convened and held if all those members of the Council who are readily accessible have been consulted and if the majority of all members of the Council who are then in office have expressed their assent.
- 9.6 Every resolution taken in terms of rule 9.5 shall as soon as possible thereafter be recorded in writing and such record shall be deemed to be a minute of the meeting, shall be entered into the minute book of the Council and shall be noted at the next following meeting of the Council.
- 9.7 The majority of the members of the Council then in office constitutes a quorum at any meeting of the Council provided that if a quorum is not present within fifteen minutes after the time fixed for the commencement of the meeting it shall stand adjourned to the corresponding time on the seventh day thereafter at the same time and place, and the members then present shall constitute a quorum; but if the last mentioned date is a public holiday the meeting shall not take place on that day but shall stand adjourned instead to the corresponding time and the same place on the next succeeding business day not being a public holiday, a Saturday or a Sunday.
- 9.8 Minutes shall be kept in a minute book, to be maintained by the executive officer, of every meeting of the Council, and at every ordinary meeting of the Council the minutes of the previous ordinary meeting and of all extraordinary meetings held since then shall be read or, if so resolved by the Council, taken as read and shall, subject to any necessary corrections, be signed by the chairperson as being a correct record of the proceedings of the meeting or meetings concerned.
- 9.9 No resolution passed at any meeting of the Council shall be rescinded at any subsequent meeting unless not less than ten days' written notice of the intention

to propose such rescission shall have been given in the notice of the meeting; but such notice may be dispensed with by the Council if, at the meeting at which the proposed rescission is to be considered, every member of the Council then in office is present and agrees to waive notice and to the motion being moved.

9.10 Subject to the provisions of the Act and of these rules, the Council may make, vary and rescind regulations for its meetings and proceedings, and shall otherwise regulate its meetings as it deems fit.

9.11 No decision taken by or act performed under the authority of the Council is invalid only by reason of -

9.11.1 a casual vacancy on the Council; or

9.11.2 the fact that any person who is not entitled to sit as a member of the Council participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions.

10. Conduct of meetings of a committee
[section 95(1)(d) read with section 18(3)]

10.1 Any committee of the Council established by the Council in terms of the Act shall meet as often as circumstances require but at least once in every year, as such time and at such place as the committee may determine.

10.2 The chairperson of the committee may at any time convene a special meeting of the committee at a time and place determined by the chairperson of the committee.

10.3 If requested in writing by not less than one quarter of the members of a committee, the chairperson of the committee must convene a special meeting of the committee to be held within fourteen days after the receipt of the request, and a meeting must take place at a time and place determined by the chairperson of the committee.

10.4 A majority of members of the committee constitutes a quorum at a meeting.

- 10.5 Every member of the committee, including the chairperson, has one vote. In the event of an equality of votes the chairperson of the committee has a casting vote in addition to his or her deliberative vote.
- 10.6 A decision of the majority of members of a committee present at a duly constituted meeting is a decision of the committee.
- 10.7 Rules 9.8 to 9.11 inclusive relating to meetings and decisions of the Council, with the necessary changes required by the context, apply in respect of any committee.

**11. Appointment of executive officer and other employees
[Section 95(1)(e) read with section 19]**

- 11.1 The Council shall adopt such procedure as it may determine for the appointment of the executive officer or any other employees of the Council.
- 11.2 The Council may assign to the executive officer, in addition to the duties and functions assigned to him or her under the Act, the code of conduct, any other law or these rules, such other functions and duties of a general or particular nature as the Council may determine.

**12. Conditions of service of executive officer and other employees
[section 95(1)(f) read with section 19(6)]**

- 12.1 The executive officer of the Council is responsible for the day-to-day management of the Council's affairs, and is accountable to the Council.
- 12.2 On appointment of the executive officer he or she must enter into a performance agreement with the Council on terms to be agreed between the executive officer and the Council.
- 12.3 The Council must determine the conditions of service of other employees of the Council which are appropriate to the seniority of each such other employee.

**13. Executive committee
[section 95(1)(g) read with section 20(1)]**

The Council shall determine the powers of the executive committee established in terms of section 20 of the Act. The executive committee shall have only those powers which are delegated to it from time to time by the Council, and the Council may at any time revoke any powers so delegated.

**14. Convening of meeting and conduct of meetings of executive committee
[section 95(1)(h) read with section 20(9)(b)]**

The provisions of rule 9, with the necessary changes required by the context, apply to meetings of the executive committee.

**15. Investment of monies of the Council
[section 95(1)(i) read with section 22(3)(b)]**

- 15.1 The executive officer shall cause all monies held by the Council to be placed as soon as practicable after each receipt in such bank accounts as the Council may from time to time determine.
- 15.2 Any monies which in the opinion of the Council are not required for immediate use may be invested by the Council with financial institutions, in securities listed on any registered securities exchange and in such other prudent investments as the Council deems fit.

PART IV

PROVINCIAL COUNCILS

**16. Election of Provincial Councils
[section 95(1)(j) read with section 23(4)]**

- 16.1 A Provincial Council shall consist of such number of members as the Council may determine from time to time, elected in accordance with the provisions of this rule. A member of a Provincial Council shall hold office for a term of three years but may serve as a member for one further term if he or she is again so elected.

- 16.2 Until otherwise determined by the Council, every Provincial Council other than the Gauteng Provincial Council will comprise six attorneys and four advocates, and the Gauteng Provincial Council will comprise eight attorneys and four advocates, constituted in accordance with the principles set out in Schedule 1 (in the case of attorney members) or Schedule 2 (in the case of advocate members) respectively.
- 16.3 The provisions of sections 7(3), 8, 11 and 12 of the Act shall apply, with the necessary changes required by the context, to members of a Provincial Council.
- 16.4 Within 60 days after a Provincial Council has been established by the Council in terms of the Act the Council shall organise the holding of the first election for members of that Provincial Council. In respect of such election -
- 16.4.1 the provisions of this rule will apply;
- 16.4.2 a member of the Council who wishes to make himself or herself available for election as a member of the Provincial Council in whose area of jurisdiction he or she practises shall not be involved in any way in the conduct of the election of members of that Provincial Council.
- 16.5 An election for members of a Provincial Council shall be held, in the manner prescribed in these rules, in every third year after the year in which the first such election is held. The term of office of members of the Provincial shall run from the date of their election to the third anniversary of that date; provided that in the case of a member elected to fill a casual vacancy in the Provincial Council, the term of office of that member shall terminate on the date on which the office of the member replaced by him or her would have terminated. The member elected to fill a casual vacancy shall be eligible for re-election.
- 16.6 During September of each year in which an election is to be held, or at such other time as the Council may determine, the Council shall despatch a notice to every attorney and every advocate admitted to practice and enrolled on the practising roll in the area of jurisdiction of the Provincial Council concerned calling for nominations of attorneys and advocates for election to the Provincial Council, such nominations to be received not later than a date stipulated in the

notice but in any event not earlier than ten days from the date of the notice. The notice -

- 16.6.1 shall be sent by email to the email address of the legal practitioner concerned; where no email address has been provided to the Council by the legal practitioner concerned the notice shall be sent by prepaid post;
- 16.6.2 shall be published in the English language once in a journal published by the legal profession for attorneys practising in South Africa and once in a journal published by the legal profession for advocates practising in South Africa;
- 16.6.3 shall be published once in the government gazette on a date as close as possible to the date of dispatch of the notice;
- 16.6.4 shall give details of the number of vacancies on the Provincial Council for attorney members and advocate members respectively.
- 16.7 Any two attorneys admitted to practice and enrolled on the practising roll and practising within the area of jurisdiction of the Provincial Council may, in the manner prescribed in this rule, nominate any eligible attorney (other than themselves) as an attorney member of the Provincial Council for the then ensuing period of office.
- 16.8 Any two advocates admitted to practice and enrolled on the practising roll and practising within the area of jurisdiction of the Provincial Council may, in the manner prescribed in this rule, nominate any eligible advocate (other than themselves) as an advocate member of the Provincial Council for the then ensuing period of office.
- 16.9 Any such nomination shall be made over the signature of the two nominating individuals in a document which shall provide the following information in relation to each nominee named therein, in not more than 600 words and in such format as the Council may require -
 - 16.9.1 his or her name;

- 16.9.2 in the case of an attorney, the name of the firm of which he or she is a proprietor or a member or by which he or she is employed, stating also the status of that attorney within the firm;
- 16.9.3 in the case of an advocate, whether he or she renders legal services in terms of section 34(1)(2)(a)(i) or section 34(2)a)(ii) of the Act, and in either case whether or not he or she has the status of Senior Counsel.
- 16.9.4 his or her race, gender, date of admission and enrolment and period in practice;
- 16.9.5 if he or she suffers from a disability and wishes to disclose that fact, a statement to that effect and the nature of the disability;
- 16.9.6 the address of his or her principal place of practice

and on which shall be endorsed, over the signature of each nominee named therein, the acceptance of nomination by that nominee and his or her confirmation that the information given therein is correct and that he or she is not disqualified from membership of the Provincial Council.

- 16.10 Originally signed nominations must be lodged with the Provincial Council by not later than the date stipulated in the notice referred to in rule 16.6. Any nomination which does not comply substantially with the provisions of this rule or which is not lodged within the prescribed time must not be recognised.
- 16.11 If no greater number of candidates is nominated than the number to be elected, then the candidates who are nominated will be deemed to have been elected.
- 16.12 If the number of candidates who are nominated exceeds the number to be elected as attorney members or as advocate members, as the case may be, the Council must, within 10 days after the last day on which nominations are required to be lodged in terms of rule 16.6, send to every legal practitioner eligible to vote, by email to the legal practitioner's email address or, where the legal practitioner has not appointed an email address, by prepaid post -
- 16.12.1 an envelope on which the address of the Council is printed, together with the words "voting papers", or, where the communication is by email,

- directions to the legal practitioner as to the size and format of an envelope to be used by the legal practitioner;
- 16.12.2 a smaller envelope on which is printed the words "ballot paper" and nothing else, or where the communication is by email, directions to the legal practitioner as to the size and format of an envelope to be created by the legal practitioner;
- 16.12.3 a printed declaration in such form as the Council may direct containing appropriate spaces for -
- 16.12.3.1 the surname and forenames of the voting legal practitioner and a statement whether he or she is an attorney or an advocate;
- 16.12.3.2 the date of signature by that legal practitioner and that legal practitioner's signature;
- 16.12.3.3 a declaration by the legal practitioner above his or her signature that he or she has not already voted in the election concerned;
- 16.12.4 a ballot paper, substantially in the form of Schedule 1A (in the case of the election of attorney members) or Schedule 1B (in the case of the election of advocate members), containing the surnames and forenames in alphabetical order by surname of the nominated candidates and providing the information indicated in Schedule 1 or Schedule 2, as the case may be, and nothing more;
- 16.12.5 a written notice in such form as the Provincial Council may direct -
- 16.12.5.1 requesting the legal practitioner, if he or she wishes to record a vote -
- 16.12.5.1.1 place a cross on the accompanying ballot paper against the name of each candidate for whom the legal practitioner wishes to vote and so as to indicate a vote in favour of not more than the number of candidates for which there are vacancies, and to make no other mark or alteration on the ballot paper;
- 16.12.5.1.2 to place the ballot paper in the envelope marked "ballot paper";

- 16.12.5.1.3 to seal the envelope containing the ballot paper;
- 16.12.5.1.4 to complete and sign the form of declaration;
- 16.12.5.1.5 to place a completed and signed declaration, together with the envelope containing the ballot paper in and seal the envelope marked "voting papers";
- 16.12.5.1.6 to despatch the envelope marked "voting papers" with its contents to the Council so as to reach the Council not later than a date referred to in the notice;
- 16.12.5.2 drawing the attention of legal practitioners to the fact that the profiles of candidates, containing the information set out in rule 16.9, will be published on the website of the Council for a period of 30 days commencing on the date of the written notice referred to in rule 16.12.5.
- 16.13 The notice referred to in rule 16.12.5 shall contain a warning that if a vote is cast in favour of more than the number of names referred to in rule 16.12.5.1.1, or if any mark or alteration is made on the ballot paper other than the cross indicating a vote in favour of the candidates for whom the legal practitioner intends to vote, or if the declaration referred to in rule 16.12.3 is not duly completed and signed by the voter, the ballot paper will be void.
- 16.14 The Council shall despatch separate notices to attorneys and advocates for purposes of any election in terms of this rule, and all notifications shall distinguish clearly as to whether they are intended for the election of an attorney or for the election of an advocate.
- 16.15 Within 7 days after the last date on which nominations were required to be lodged in terms of rule 16.6 the chairperson of the Council ("the chairperson") shall in writing appoint a legal practitioner of more than fifteen years standing as a referee for the purpose of performing the duties assigned to a referee under these rules. The referee shall not be a candidate for office or a legal practitioner who has nominated a candidate, or a member of the Council or of a Provincial Council, as the case may be.

- 16.16 On each day on which envelopes marked "voting papers" despatched to the Provincial Council are received by the Council, or if it is not practicable on that day, as soon as practicable thereafter, the chairperson shall, in the presence of the referee, open each such envelope and remove its contents. The chairperson and the referee shall then together examine each declaration form, shall verify, to such extent as may appear necessary, the information contained therein against the records of the Council and shall satisfy themselves that the declaration form has been duly completed and signed by the legal practitioner, failing which it will be regarded as invalid. In the event of a disagreement between the chairperson and the referee as to the validity or otherwise of any form of declaration, the view of the referee shall prevail and his or her judgment on the matter shall be final. The referee shall endorse with his or her signature each form of declaration found to be invalid, with the reason for the invalidity. The chairperson and the referee shall together note the name and surname of each legal practitioner who has submitted a declaration and envelope marked "ballot papers", as well as whether that legal practitioner is an attorney or an advocate, in a voting register kept by the referee.
- 16.17 The chairperson shall, in the presence of the referee, in respect of each declaration form found to be valid, place its accompanying envelope marked "ballot paper" unopened through a slot in a ballot box of a design and construction approved by the Council, which shall have been securely locked and sealed in advance by the chairperson and of which the chairperson. After placing the last of such envelopes duly received in the ballot box the chairperson shall, in the presence of the referee, securely seal the slot, and shall hand the key to the referee. The chairperson shall securely retain the ballot box, locked and sealed as aforesaid, and shall deliver the ballot box in that condition to the scrutineers appointed in terms of rule 16.19 on the day following the day referred to in rule 16.12.5.1.6. Separate ballot boxes shall be kept for ballot papers in respect of attorneys and advocates respectively.
- 16.18 An envelope marked "ballot paper" which is accompanied by a form of declaration which has been found to be invalid shall not be placed in the ballot box but the chairperson shall, in the presence of the referee, replace in the envelope marked "voting papers" in which it was received each such envelope marked "ballot paper" unopened, together with its accompanying form of

declaration endorsed by the referee as provided in rule 16.16, shall securely seal all those documents and shall separately retain them in the same manner *mutatis mutandis*, as is provided for in rule 16.17, for a period of three months after the date referred to in rule 16.12.5.1.6. The chairperson shall thereafter destroy all of them unless ordered otherwise by an order of court; provided that if there should be a dispute regarding the validity of the form of declaration the documents shall be retained until the dispute has been resolved. The chairperson shall keep a separate record of the number of declarations and envelopes thus retained by him.

16.19 Prior to or on the date referred to in rule 13.12.5.16 the Council shall appoint as scrutineers to examine the ballot papers placed in the ballot box and of counting the votes received, not less than two legal practitioners, not being candidates for office or legal practitioners who have nominated candidates or who are members of the Council or of a Provincial Council, and none of whom shall be the legal practitioner appointed as referee under these rules . Upon receipt by the scrutineers of the ballot box they shall break the seal, open the ballot box and remove its contents. They shall then open each of the envelopes marked "ballot paper", remove the ballot paper contained therein, examine the ballot paper and satisfy themselves of its validity in accordance with these rules or, if not so satisfied, reject the ballot paper after having endorsed on its reverse over their signatures the reason for its rejection. They shall then count the votes recorded in the remaining ballot papers and record the result in the presence of the chairperson and the referee. Thereafter they shall replace all the ballot papers, including those rejected, in the ballot box and shall lock and re-seal it, and hand it to the chairperson for safekeeping.

16.20 The number of attorney candidates in the respective categories indicated on the ballot paper who received the greatest number of votes of attorneys in diminishing order among the attorney candidates shall be deemed to have been elected as attorney members of the Provincial Council in those categories, and the advocate candidates in the respective categories indicated on the ballot paper who received the greatest number of votes of advocates in diminishing order among the advocate candidates shall be deemed to have been elected as advocate members of the Provincial Council in those categories. If there are insufficient candidates to fill a particular category the Council shall co-opt a

suitable candidate to fill the vacancy, and the co-opted candidate shall be deemed to have been elected in accordance with these rules.

- 16.21 If there is a tie between two or more candidates having the result of leaving undecided which of the candidates has been elected, in the relevant category, the question as to which of them shall be deemed elected shall be determined immediately by lot drawn by the scrutineers in the manner determined by them.
- 16.22 Upon completion of their scrutiny the scrutineers shall immediately report the result of the election in writing to the chairperson and referee. The referee shall immediately determine whether the election was conducted freely and fairly, and shall issue a signed declaration in that regard to the chairperson. The report shall be signed by all of the scrutineers and shall contain the following particulars:
- 16.22.1 the total number of ballot papers received by them;
- 16.22.2 the numbers of ballot papers rejected and the grounds of rejection;
- 16.22.3 the total number of votes in favour of each candidate in each category;
- 16.22.4 the result of any lot drawn in terms of rule 16.21;
- 16.22.5 the names of those candidates who are deemed to have been elected.
- 16.23 The chairperson shall, after receipt of the report of the scrutineers and a declaration in terms of rule 16.22 that the election was conducted freely and fairly, cause each candidate to be advised of the result of the election.
- 16.24 The report of the scrutineers together with a declaration from the referee in terms of rule 16.22 that the election was conducted freely and fairly shall be conclusive as to the result of the election.
- 16.25 The scrutineers, having completed their scrutiny, shall return the ballot box containing the examined ballot papers and which is locked in accordance with rule 16.19 to the chairperson, together with its key. The chairperson shall securely retain the ballot box in that condition for a period of three months after the date referred to in rule 16.12.5.1.6 and shall thereupon break the seal, unlock

the box, empty it of its contents and destroy the contents. The chairperson shall then also destroy all the valid declaration forms received by the Council.

- 16.26 If an election is declared to be not free and fair by the referee in terms of rule 16.22, or by a court on application brought within one month of the announcement of the result, the process for the election of members of the Provincial Council shall be conducted afresh.

PART V

PROFESSIONAL PRACTICE

17. Information to be submitted for admission [section 95(1)(k) read with section 24(2)(d)]

- 17.1 A person seeking to be admitted to practise and to be authorised to be enrolled as a legal practitioner, conveyancer or notary must apply to a High Court in terms of the provisions of section 24(2) of the Act, and must serve a copy of the application on the Council containing the information set out in this rule.
- 17.2 The application must be accompanied by an affidavit by the applicant setting out the following information supported, where applicable, by documentary evidence:
- 17.2.1 confirmation of the jurisdiction of the Court;
- 17.2.2 the applicant's date of birth;
- 17.2.3 confirmation that the applicant is a South African citizen or is a permanent resident of the Republic;
- 17.2.4 confirmation that the applicant has passed the matriculation examination;
- 17.2.5 confirmation that the applicant has satisfied all the requirements for a degree referred to in section 26(1) of the Act after pursuing for that degree a course of study referred to in that section;
- 17.2.6 a statement whether the applicant intends to be enrolled and to practise as an attorney or as an advocate and, in the case of an advocate, whether the applicant intends practising with or without a fidelity fund certificate;

- 17.2.7 confirmation that the applicant had no pecuniary interest in any law practice and that he or she held no other position other than that of candidate legal practitioner during the period of service under the contract of practical vocational training or supervision, or proof that the applicant had such pecuniary interest or held such other position with the approval of the Council;
- 17.2.8 confirmation that the applicant has undergone all the prescribed practical vocational training requirements as a candidate legal practitioner, referred to in section 26(1)(c) of the Act;
- 17.2.9 confirmation that the applicant has passed the competency-based examination or assessment for candidate legal practitioners, referred to in section 26(1)(d) of the Act;
- 17.2.10 confirmation that the applicant has complied with the requirements for community service, if applicable, where that community service is a component of practical vocational training by candidate legal practitioners, pursuant to the provisions of section 29 of the Act, or proof that the applicant has been exempted from performing community service;
- 17.2.11 if a period of more than one year has elapsed between the date of completion of the practical vocational training contract and the date of the application, a statement as to the activities of the applicant during that period;
- 17.2.12 confirmation that the applicant is a fit and proper person to be admitted, including a statement -
- 17.2.12.1 that the applicant has no previous criminal convictions and has no criminal investigations pending. Alternatively, if there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof; ;
- 17.2.12.2 that the applicant has not been subject to previous disciplinary proceedings by the Council or any law society, university or employer, and that no such disciplinary proceedings are pending.

Alternatively, if there have been any proceedings as contemplated in this sub-rule, or if any such proceedings are pending, the applicant shall set out full details thereof;

- 17.2.12.3 that the estate of the applicant has not been sequestrated, provisionally or finally, and that there is no application for a sequestration of his or her estate which is pending
- 17.2.13 confirmation that the originals of all attachments to the affidavit will be made available to the Court on the date of the hearing of the application.
- 17.3 A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney must include in the affidavit in support of the application (in addition to any other information to be provided in terms of this rule) -
- 17.3.1 confirmation that the applicant has served under a practical vocational training contract, stating the dates of filing and registration of that contract and the period served by the applicant under that contract;
- 17.3.2 confirmation by the applicant that his or her principal was entitled to enter into the contract of practical vocational training;
- 17.3.3 confirmation by the applicant that service under the contract of practical vocational training was performed under the direct supervision of the principal or of another attorney in the firm of the principal;
- 17.3.4 confirmation that the applicant was not absent for more than 30 working days during any one year of service under the contract of practical vocational training;
- 17.3.5 confirmation by the applicant of the exact dates served under the practical vocational training contract;
- 17.3.6 a statement as to the type of legal experience gained by the applicant whilst serving under the contract of practical vocational training.
- 17.4 An applicant for admission to practise and to be authorised to be enrolled as an attorney shall attach to his or her application a supporting affidavit by the applicant's principal containing the following information:

- 17.4.1 confirmation of the exact dates that the applicant served under his or her supervision in terms of the contract of practical vocational training;
- 17.4.2 in relation to the principal:
- 17.4.2.1 a statement that he or she has been practising as an attorney for his or her own account or as a partner in a firm of attorneys or as a member of a professional company continuously for three years or for periods of three years in the aggregate during the preceding four years, or has practised as a professional assistant in a firm for a period of five years within the preceding six years, or has practised as a professional assistant in a firm for a period of two years in the preceding five years and has practised as an attorney for his or her own account or as a partner in a firm or as a member of a professional company continuously for two years or for periods of two years in the aggregate during the preceding four years at the date of commencement of the contract of practical vocational training;
- 17.4.2.2 where the applicant has undergone practical vocational training with a law clinic or with Legal Aid South Africa, or with another entity accredited by the Council to provide practical vocational training, that his or her principal has been practising as an attorney or as an advocate, as the case may be, in the full time employment of the law clinic or of Legal Aid South Africa or with that other entity continuously for three years or for periods of three years in the aggregate during the preceding four years at the date of commencement of the practical vocational training contract;
- 17.4.2.3 where the applicant has undergone practical vocational training with the state attorney, that his or her principal has practised the profession of an attorney as the state attorney, deputy state attorney, senior assistant state attorney or assistant state attorney in the office of the state attorney or any branch thereof continuously for four years at the date of commencement of the practical vocational training contract;

- 17.4.2.4 that he or she has continued to practise as aforesaid during the period of the contract of practical vocational training;
- 17.4.2.5 that he or she at no time during the course of the contract of the practical vocational training in question was a principal to more than three candidate attorneys, or where the principal was employed at a law clinic or at Legal Aid South Africa that he or she at no time during the course of the contract of the practical vocational training in question was a principal to more than six candidate attorneys;
- 17.4.3 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an attorney.
- 17.5 An applicant for admission to practise and to be authorised to be enrolled as an advocate shall attach to his or her application (in addition to any further information to be included in terms of this rule) a supporting affidavit by the applicant's supervisor containing the following information:
- 17.5.1 confirmation that he or she is a practising advocate, or has been accredited by the Council to act as a supervisor of pupils for purposes of practical vocational training or is employed by an entity which has been accredited to provide supervisors who are qualified to act as supervisors to pupils
- 17.5.2 confirmation of the exact dates that the applicant served under the supervision of his or her supervisor;
- 17.5.3 confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an advocate.
- 17.6 Copies of the following documents must be attached to the founding affidavit of the applicant, whether for admission as an attorney or as an advocate, and must be certified as being true copies of the originals by a notary public or by a commissioner of oaths:
- 17.6.1 identity document of the applicant;
- 17.6.2 where the surname of the applicant does not correspond with the applicant's name in the application, or with any other documents attached

- to the application, a marriage certificate or other proof to reflect the reason for the discrepancy;
- 17.6.3 matriculation certificate of the applicant;
- 17.6.4 degree certificate or certificates of the applicant;
- 17.6.5 the relevant practical vocational training contract (in the case of an application for admission as an attorney) or written confirmation that the applicant has registered with a person or entity accredited by the Council to supervise the practise vocational training of pupils (in the case of application for admission as an advocate);
- 17.6.6 written confirmation from the Council confirming that the contract of practical vocational training or of supervision, as the case may be, has been registered with the Council;
- 17.6.7 where applicable, an agreement relating to the cession of the contract of practical vocational training and written confirmation from the Council that the cession of the contract has been registered;
- 17.6.8 in the case of an application for admission as an advocate intending to practise with a fidelity fund certificate, proof that the applicant has the knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;
- 17.6.9 attendance report issued in respect of attendance of the applicant at an approved practical legal training course.
- 17.7 An application for admission as a conveyancer or as a notary must be accompanied by an affidavit by the applicant setting out the following information:
- 17.7.1 confirmation of the jurisdiction of the Court;
- 17.7.2 confirmation that the applicant has been admitted as an attorney and practises in that capacity;

- 17.7.3 confirmation that the applicant complies with the provisions of section 26(2) of the Act (in the case of application as a conveyancer) or section 26(3) of the Act (in the case of application as a notary) of the Act.
- 17.8 The original and two copies of the application must lie for inspection with the Council for a period of not less than one month. The application must be properly prepared and bound with an index, all pages of the application must be paginated at the top right hand corner of every page, and all attachments must be clearly marked when the application is served on the Council.
- 17.9 The application must be accompanied by proof of payment of the prescribed fee.
- 18. Period of practice as an attorney and advocacy training programme [section 95(1)(m) read with section 25(4)(a)].**
- 18.1 The continuous period of three years of practice as an attorney, provided for in section 25(3)(a)(i) of the Act, that an attorney applying for the right to appear in the High Court, the Supreme Court of Appeal or the Constitutional Court is required to serve before having the right to appear may be reduced by such period as the Council in its discretion may determine if the applicant has successfully undergone a trial advocacy training programme approved by the Council.
- 18.2 The trial advocacy training programme referred to in rule 18.1 -
- 18.2.1 shall comprise training under the direct supervision of an advocate who has been practising as such for a continuous period of not less than five years, or of an attorney who has the right of appearance in the High Court, the Supreme Court of Appeal and the Constitutional Court and has exercised the right of appearance in those courts for a continuous period of not less than five years;
- 18.2.2 shall require involvement in the programme by the attorney of not less than 40 hours in the aggregate over a period of no longer than six months;
- 18.2.3 may require attendance by the attorney at lectures and workshops, and the completion of written assignments, of sufficient standard to provide training to the attorney in the practical aspects of court work and trial advocacy;

- 18.2.4 shall require the supervisor, at the completion of the programme, to issue a certificate to the attorney that he or she has successfully completed the trial advocacy training programme.

**19. Information to be provided by attorney for appearance in High Court
[section 95(1)(m) read with section 25(4)(a)]**

- 19.1 An attorney who wishes to apply in terms of section 25(3) for the right of appearance in the High Court, the Supreme Court of Appeal and the Constitutional Court must apply to the registrar of the Division of the High Court in which he or she was admitted and enrolled as an attorney for the issue to him or her of the prescribed certificate.
- 19.2 The application must be in writing, must be dated and signed by the attorney and must be accompanied by:
- 19.2.1 documentary proof that he or she has satisfied all the requirements for the LLB degree of any university in the Republic;
- 19.2.2 a certificate issued by the executive officer of the Council to the effect that the applicant has been practising as an attorney for a continuous period of not less than three years;
- 19.2.3 a certificate issued by the executive officer of the Council that the applicant has not had his or her name struck off the Roll and has not been suspended from practice, and that there are no proceedings pending to strike the applicant's name from the Roll or to suspend him or her from practice.
- 19.3 If the applicant wishes to apply for the period of practice to be reduced as contemplated in section 25(3)(a)(i), he or she must provide the registrar with a certificate by the executive officer of the Council that he or she has undergone a trial advocacy training programme approved by the Council and that the Council has resolved that the three year period referred to in that section be reduced to such period as may be specified by the Council.

- 19.4 Where the applicant claims that he or she has gained appropriate relevant experience, as contemplated in section 25(3)(b) of the Act, full details of that experience must be provided in the application.
- 19.5 The applicant must serve a copy of the application on the Council not less than thirty days before he or she applies to the registrar in terms of section 25(3) of the Act.
- 19.6 The certificate issued by the registrar of the relevant Division of the High Court for the right of appearance of the applicant shall be substantially in the form of Appendix 1 of the rules.
- 19.7 Every attorney who, at the date of coming into effect of this rule, was in possession of a certificate issued in terms of section 4(2) of the Right of Appearance in Courts Act, 62 of 1995 shall, within six months of the date of coming into effect of this rule, lodge with the Council a copy of the certificate issued to him or her in terms of that Act.

PART VI

EDUCATION AND TRAINING

20. Competency-based examinations or assessments [section 95(1)(n) read with section 26(1)(d), (2) and (3)]

- 20.1 A person wishing to qualify to be admitted and enrolled as a legal practitioner will be required to have passed a competency based assessment in terms of this rule 20.1, read with any rule made by the Council or the National Forum concerning levels of competence required for the admission and enrolment of legal practitioners.
- 20.2 The assessment of a person wishing to be admitted and enrolled as an attorney shall comprise assessment at least in relation to -
- 20.2.1 the practice and procedure in the High Court and in courts established under the Magistrates' Courts Act, 32 of 1944;
- 20.2.2 the practice and procedure relating to the winding up and distribution of the estates of deceased persons;

- 20.2.3 the practice, functions and duties of an attorney, including the ethical duties of an attorney;
- 20.2.4 a knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act, and compliance with accounting rules published by the Council from time to time.
- 20.3 A person wishing to qualify to be admitted and enrolled as an attorney who, before the date referred to in section 120(4) of the Act, had passed one of more parts of the practical examinations provided for in section 14 of the Attorneys Act, 1979 (Act no. 53 of 1979) but at that date had not yet passed all parts of those examinations, shall have the right to be examined or assessed on those parts which he or she had not yet passed, and upon successfully completing those parts of the said examinations which he or she had not passed at that date, he or she will be deemed to have complied with rule 20.1; provided, however, that if the candidate concerned has not passed the parts of the said examination which he or she had not successfully completed prior to the date referred to in section 120(4) of the Act within a period of three years from that date, then he or she shall no longer have the right to be examined or assessed on any part of those examinations.
- 20.4 The assessment of a person wishing to be admitted and enrolled as an advocate shall comprise assessment at least in relation to -
- 20.4.1 the practice and procedure in the High Court and in courts established under the Magistrates' Courts Act, 32 of 1944;
- 20.4.2 the practice, functions and duties of an advocate, including the ethical duties of an advocate;
- 20.4.3 in the case of an advocate intending to practise as a legal practitioner conducting a trust account practice, a knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act, and compliance with accounting rules published by the Council from time to time.
- 20.5 The assessment of persons wishing to be admitted and enrolled as a notary shall comprise assessment in relation to the practice, functions and duties of a notary.

- 20.6 The assessment of persons wishing to be admitted and enrolled as a conveyancer shall comprise assessment in relation to the practice, functions and duties of a conveyancer.
- 20.7 The areas of knowledge required of persons wishing to be admitted and enrolled as attorneys or as advocates, as the case may be, in terms of this rule, and the standards of proficiency required of such persons, shall be determined by the Council from time to time and shall be published by the Council for the information of legal practitioners and candidate legal practitioners.
- 20.8 An assessment referred to in rules 20.2 and 20.3 shall not be conducted in respect of any person unless that person -
- 20.8.1 has complied with the provisions of the Act in regard to practical vocational training; or
- 20.8.2 is undergoing practical vocational training and has so undergone practical vocational training for a continuous period of not less than six months; or
- 20.8.3 is, under the provisions of the Act, exempt from undergoing practical vocational training.

21. Practical vocational training and remuneration for candidate legal practitioners [section 95(1)(o) read with section 27]

21.1 Candidate attorneys

21.1.1 Information to be submitted to the Council before contract of practical vocational training contract is entered into

Any person intending to serve an attorney under a practical vocational training contract must submit the following to the Council:

- 21.1.1.1 his or her identity document or other proof to the satisfaction of the Council of his or her date of birth; and

21.1.1.2 proof to the satisfaction of the Council that he or she is a fit and proper person and has satisfied all the requirements for the degrees referred to in sections 26(1)(a) or (b) of the Act.

21.1.2 **Lodging, examination and registration of practical vocational training contract**

21.1.2.1 A practical vocational training contract shall be substantially in the form set out in Schedule 2 of these rules.

21.1.2.2 The original of any practical vocational training contract shall, within two months of its date, be lodged by the principal concerned with the Council.

21.1.2.3 The Council shall, on payment of the prescribed fee, examine any practical vocational training contract lodged with it and, if it is satisfied that the practical vocational training contract is in order and the Council has no objection to its registration, register the practical vocational training contract, and shall advise the principal and the candidate attorney concerned in writing of such registration.

21.1.2.4 If a practical vocational training contract is not lodged for registration within two months from the date thereof, any service under any such contract will be deemed to commence on the date of registration.

21.1.3 **Supervision over candidate attorney**

A candidate attorney shall, during the whole term of service specified in the practical vocational training contract -

21.1.3.1 serve in the office of his or her principal under the direct personal supervision of the principal or under the direct personal supervision of an attorney who is a partner or other admitted attorney in the office of the principal;

21.1.3.2 in the case of a candidate attorney serving under a practical vocational training contract with the State Attorney or a member of the professional staff of the State Attorney, serve in the office of the State Attorney or in any branch thereof and under the direct personal

supervision of the State Attorney or a member of his or her professional staff; or

- 21.1.3.3 in the case of a candidate attorney serving under a contract of service with a law clinic or Legal Aid South Africa, serve under the direct personal supervision of a legal practitioner who is employed full time at the law clinic or at the office of Legal Aid South Africa.

21.1.4 **Absence of candidate attorneys**

- 21.1.4.1 Subject to rule 21.1.4.2, a candidate attorney may, with the consent of his or her principal, absent himself or herself from office for a period which does not, or for periods which in the aggregate do not, exceed thirty working days in any one year of the practical vocational contract.

- 21.1.4.2 A court may, on the application of a candidate attorney in any case -

- 21.1.4.2.1 where the principal refuses to grant the candidate attorney leave of absence from office; or

- 21.1.4.2.2 where the period of absence from office exceeds, or the periods of absence from the office in the aggregate exceed, thirty working days in any one year of the practical vocational training contract

grant an order authorising leave of absence from office for the period in question, if the court is satisfied that the principal and the Council received due notice of the application and that sufficient cause for the absence exists or existed, as the case may be.

- 21.1.4.3 An order referred to in rule 21.1.4.2 may be granted before, during or after the period of absence.

- 21.1.4.4 If any period of absence from office exceeds (or the periods of absence from office in the aggregate exceed) thirty working days in any one year of the practical vocational training contract, the period in excess of thirty working days shall be added to the period for which the candidate attorney is bound to serve under the contract.

21.1.4.5 Notwithstanding the provisions of rule 21.1.4, any period of absence not exceeding [six months] by a candidate attorney from the office of his or her principal for the purpose of attending a training course approved by the Council shall, if that candidate attorney has completed the course to the satisfaction of the Council, be deemed to have been served under a practical vocational training contract.

21.1.4.6 Notwithstanding the provisions of rule 21.1.4, any period of absence not exceeding twelve months of a candidate attorney from the office of his or her principal for the purposes of service, in terms of a contract with terms and conditions similar to those of his or her practical vocational training contract, under the direct supervision of another attorney who is entitled to engage a candidate attorney shall, provided the Council has approved such service in advance in writing, be deemed to have been served by the candidate attorney concerned under a practical vocational training contract with his or her principal.

21.1.5 **Restriction on pecuniary interests of candidate attorneys**

21.1.5.1 A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney, other than in respect of bona fide remuneration for his or her services, and shall not, without the prior written consent of the Council, hold or occupy any office in respect of which he or she receives any form of remuneration, directly or indirectly, or engage in any other business other than that of candidate attorney, where holding that office or engaging in that business is likely to interfere with the proper training of the candidate attorney.

21.1.5.2 If any candidate attorney contravenes the provisions of rule 21.1.5.1 the contract concerned shall be void *ab initio* and service rendered thereunder shall be ineffective unless the court on good cause shown otherwise directs.

21.1.6 Cession of practical vocational training contract

21.1.6.1 A practical vocational training contract may with the consent of the principal and the candidate attorney concerned be ceded to any other principal willing to accept such cession.

21.1.6.2 The Council may, in the event of the death, mental illness, insolvency, conviction of a crime, suspension from practice striking off the roll or discontinuation of practice of the principal under whom the candidate attorney is serving, or the debarring of that principal from engaging or continuing to engage a candidate attorney, or any other cause, direct that the practical vocational training contract concerned be ceded to any other principal willing to accept such cession, and all service completed under the ceded contract shall be effective for purposes of the Act and these rules.

21.1.6.3 A practical vocational training contract may be ceded under rule 21.1.6.2 notwithstanding the fact that the principal who accepts the cession will, as a result of that acceptance, have more than the maximum allowable number of candidate attorneys in his or her employment.

21.1.6.4 An agreement whereby a practical vocational training contract is ceded shall, within two months of the date on which the service of the candidate attorney concerned may have terminated with the cedent, or within such further period as a court may on good cause allow, be lodged with the Council by the cessionary together with affidavits -

21.1.6.4.1 by the cedent stating whether the provisions of the Act and these rules relating to service under the practical vocational training contract have been complied with during the whole term of service during which the candidate attorney concerned was in the service of the cedent, and the date on which the candidate attorney terminated his or her services with the cedent; and

21.1.6.4.2 by the cessionary stating the date on which the candidate attorney assumed duty with the cessionary.

21.1.6.5 The Council shall on payment of such fee as may be prescribed -

21.1.6.5.1 examine the agreement and affidavits referred to in rule 21.1.6.4; and

21.1.6.5.2 if it is satisfied that the cession is in order and it has no objection thereto, register the cession

and shall advise the attorney and the candidate attorney concerned in writing of such registration.

21.1.6.6 If a practical vocational training contract is ceded in terms of rule 21.1.6.2 the agreement whereby the practical vocational training contract is ceded shall be signed by the legal representative of the attorney concerned or by the chairperson or the executive officer of the Council as cedent, and a certificate of such legal representative, chairperson or executive officer containing the particulars referred to in rule 21.1.6.4 shall serve as a substitute for the affidavit of the cedent referred to in 21.1.4.

21.1.7 **Termination of practical vocational training contract**

21.1.7.1 If a practical vocational training contract is for any reason cancelled, abandoned or ceded, the principal with whom the candidate attorney is serving at that time must forthwith in writing notify the Council of such cancellation, abandonment or cession.

21.1.7.2 If a practical vocational training contract has been cancelled or abandoned before it has been completed, the court may in its discretion, on the application of the person who served under such contract, and subject to such conditions as the court may impose, order that for the purposes of the Act and these rules the whole or such part of the period served under such contract as the court deems fit, be added to any period served by that person under a practical vocational training contract or contract of service entered

into after the first mentioned contract was cancelled or abandoned, and any period so added shall for purposes of the Act and these rules be deemed to have been served under the last mentioned contract and continuously with any period served thereunder.

21.1.8 Registration of practical vocational training contract by advocate

Any person admitted as a legal practitioner and enrolled to practice as an advocate shall not be allowed to register a practical vocational training contract in terms of the provisions of these rules unless his or her enrolment as an advocate has been converted to that of an attorney in terms of section 32(1) of the Act.

21.1.9 Irregular service under practical vocational training contract

If any person has not served regularly as a candidate attorney in terms of the provisions of these rules the court, if satisfied that such irregular service was occasioned by sufficient cause, and that such service is substantially equivalent to regular service, and that the Council has had due notice of the application, may permit such person, on such conditions as it may deem fit, to apply for admission as an attorney as if he or she had served regularly under a practical vocational training contract or a contract of service.

21.1.10 Cancellation or abandonment of practical vocational training contract

if a person who has served any period under a practical vocational training contract which was cancelled or abandoned before its completion, has satisfied all the requirements for the degrees referred to in sections 26(1)(a) or (b) of the Act, the court may, on the application of such person and subject to such conditions as the court may impose, order -

21.1.10.1 that, for the purpose of this rule 21, the whole of the period so served, or such part of that period as the court deems fit be added to any period served by such person after he or she satisfied such requirements or became so entitled under a practical vocational training contract entered into after the first mentioned contract was

cancelled or abandoned, and thereafter any period so added shall be deemed to have been served -

21.1.10.1.1 after that person satisfied such requirements or became so entitled; and

21.1.10.1.2 under the practical vocational training contract entered into after the first mentioned contract was cancelled or abandoned, and continuously with any period served thereunder.

21.1.10.2 if the period served by that person under the first mentioned practical vocational training contract is equal to or exceeds the period which that person would, at the time of making the application, be required to serve under a practical vocational training contract, that the period so served be considered as adequate service under a practical vocational training contract for purposes of this rule 21, and thereafter any period serviced by that person shall be deemed to have been served after and under a practical vocational training contract entered into after he/she satisfied those requirements and became so entitled.

21.2 Pupils

21.2.1 Information to be submitted to the Council for purposes of registration of pupillage

Any person intending to register with the Council as a pupil must submit the following to the Council:

21.2.1.1 his or her identity document or other proof to the satisfaction of the Council of his or her date of birth;

21.2.1.2 proof to the satisfaction of the Council that he or she is a fit and proper person and has satisfied all the requirements for the degrees referred to in sections 26(1)(a) or (b) of the Act.

21.2.2 Lodging, examination and registration of practical vocational training contract

21.2.2.1 A practical vocational training contract shall be substantially in the form set out in Schedule 3 of these rules.

21.2.2.2 The original of any practical vocational training contract shall, within 2 months of its date, be lodged by the training supervisor concerned with the Council.

21.2.2.3 The Council shall, on payment of the prescribed fee, examine any practical vocational training contract lodged with it and, if it is satisfied that the practical vocational training contract is in order and the Council has no objection to its registration, register the practical vocational training contract, and shall advise the training supervisor and the pupil concerned in writing of such registration.

21.2.2.4 If a practical vocational training contract is not lodged for registration within 2 months from the date thereof, any service under such contract will be deemed to commence from the date of registration.

21.2.3 **Supervision over pupil**

The training supervisor shall, during the whole term of service specified in the practical vocational training contract, supervise the training of the pupil to ensure that the pupil is instructed in the practice and profession of an advocate.

21.2.4 **Restriction on pecuniary interests of pupil**

21.2.4.1 A pupil shall not have any pecuniary interest in the practice and service of an attorney, or in the practice of an advocate, and shall not, without the prior written consent of the Council, hold or occupy any office in respect of which he or she receives any form of remuneration, directly or indirectly, or engage in any business, where holding that office or engaging in that business is likely to interfere with the proper training of the pupil.

21.2.4.2 If a pupil contravenes the provisions of rule 21.2.4.1, the contract concerned shall be void ab initio and ineffective unless the court on good cause shown otherwise directs.

21.2.5 Cession of practical vocational training contract

The provisions of rule 21.1.6 relating to the cession of practical vocational training contracts of candidate attorneys, with the necessary changes required by the context, apply in respect of the cession of practical vocational training contracts of pupils.

21.2.6 Termination of practical vocational training contract

The provisions of rule 21.1.7 relating to the termination of practical vocational training contracts of candidate attorneys, with the necessary changes required by the context, apply in respect of the termination of practical vocational training contracts of pupils.

21.2.7 Irregular service under practical vocational training contract

The provisions of rule 21.1.9 relating to irregular service under practical vocational training contracts of candidate attorneys, with the necessary changes required by the context, apply in respect of irregular service under practical vocational training contracts of pupils.

21.2.8 Cancellation or abandonment of practical vocation training contract

The provisions of rule 21.1.10 relating to the cancellation or abandonment of practical vocational training contracts of candidate attorneys, with the necessary changes required by the context, apply in respect of the cancellation or abandonment of practical vocational training contracts of pupils.

21.3 Every candidate attorney undergoing practical vocational training in terms of a practical vocational training contract shall be entitled to such reasonable remuneration, allowances or stipends for his or her service under the practical vocational training contract as may be determined from time to time by the Council, which remuneration, allowances or stipends shall be payable not less frequently than monthly and shall in any event be not less than an amount determined from time to time by the Council.

21.4 Every pupil undergoing practical vocational training in terms of a practical vocational training contract shall be entitled to such reasonable remuneration,

allowances or stipends (if any) as may be determined from time to time by the Council and as may be appropriate having regard to the nature of the pupil's activities in terms of the practical vocational training contract.

**22. Assessment of persons undergoing practical vocational training
[section 95(1)(p) read with section 28(1)]**

22.1 Every assessment shall be conducted by one or more assessors who qualify in terms of rule 24 to conduct assessments.

22.2 The assessor or assessors who conduct an assessment shall put written questions to the candidate when conducting assessments in respect of the subjects referred to in-

22.2.1 rules 20.2 and 20.4, which respective assessments may, subject to rule 20.7, be taken separately and may require the candidate to draft such process, accounts and documents to show whether he or she possesses sufficient practical knowledge of such subjects to comply with the provisions of any rule made by the Council or the National Forum concerning levels of competence required for the admission and enrolment of legal practitioners;

22.2.2 rule 20.6, and may require the candidate to draft such documents to show whether he or she possesses sufficient practical knowledge of such subject to comply with the levels of competence referred to in rule 22.2.1;

22.2.3 rule 2.6, and may require the candidate to draft such deeds and other documents to show whether he or she possesses sufficient practical knowledge of the requirements of deeds registries and to comply with the levels of competence referred to in rule 22.2.1;

provided that if the candidate has failed to obtain the prescribed minimum standard in the written questions which are put to him or her as part of the assessment, as determined from time to time by the Council, the assessor or assessors conducting the assessment may put oral questions to the candidate to

determine whether or not the candidate possesses sufficient practical knowledge of the subjects concerned.

22.3 The assessment in respect of the subjects referred to in rules 20.5 and 20.6 may only be conducted together with or after the successful completion of the assessment in respect of the subjects referred to in rule 20.2.

22.4 The assessor or assessors conducting the assessment shall, if in their opinion the candidate has satisfactorily answered the questions put to him or her and has shown that he or she possesses sufficient practical knowledge of the subjects concerned, as required in terms of any rule made by the Council or the National Forum concerning levels of competence required for the admission and enrolment of legal practitioners, issue or cause to be issued to the candidate a certificate of proficiency in such subjects. When the Council engages an institution or organisation to perform the functions set out in rule 24 the certificate of proficiency shall be issued by the institution or organisation, as the case may be.

22.5 A candidate entering for assessment in respect of any of the subjects referred to in rule 2, or repeating any such assessment, shall pay a fee to the Council or such amount as may be determined by the Council from time to time, in respect of any such assessment, which fee shall be payable at the time that the candidate registers for the assessment.

**23. Levels of competence for admission and enrolment as legal practitioner
[section 95(1)(q) read with section 28(2)]**

Any person wishing to be admitted and enrolled as a legal practitioner must satisfy the Council that he or she has attained the levels of competence contemplated in the Act and the rules regarding the required knowledge, skills and values that will enable him or her -

23.1 to serve the public with diligence and integrity;

23.2 to apply the provisions and values enshrined in the Constitution of South Africa;

- 23.3 to practise in accordance with the rules of ethics of the relevant branch of the legal profession to which the applicant seeks admission and enrolment;
- 23.4 to promote measures and processes that enhance access to justice;
- 23.5 to apply relevant laws and procedures to resolve disputes;
- 23.6 to advise clients in relation to their rights and the appropriate action to be taken to enforce those rights;
- 23.7 to draft all legal documents which are required to be drafted in the normal course of practice in the branch of the profession to which the applicant seeks admission and enrolment;
- 23.8 to manage his or her practice in the manner appropriate to the branch of the profession to which the applicant seeks admission and enrolment;
- 23.9 in circumstances applicable to the profession to which the applicant seeks admission and enrolment, to apply appropriate principles of accounting relevant to his or her practice;
- 23.10 in general to conduct himself or herself in a manner that enhances the reputation of the legal profession in terms of independence, integrity, competence and the promotion of justice in South Africa.

**24. Qualifications to conduct assessment of practical vocational training
[section 95(1)(r) read with section 28(4)]**

- 24.1 The Council shall appoint persons to determine the structure and process of assessment and to arrange, control and conduct assessments for the purpose of assessing whether individuals undergoing practical vocational training have attained an adequate level of competence for admission and enrolment as a legal practitioner, or may engage or accredit an appropriate institution or organisation to do so on its behalf.
- 24.2 Every person appointed by the Council for the purpose of arranging, controlling and conducting assessments in respect of the subjects referred to in -

CONTINUES ON PAGE 130 - PART 2



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- 24.2.1 rule 20.2, shall be a practising attorney of not less than seven years' standing as a practising attorney;
- 24.2.2 rule 20.4, shall be a practising advocate of not less than seven years' standing as a practising advocate: provided that in the case of a candidate legal practitioner intending to be admitted and enrolled as an advocate conducting a trust account practice, at least one of the persons conducting the assessment must be an attorney of not less than seven years' standing as a practising attorney;
- 24.2.3 rule 20.5, shall be a notary of not less than seven years' standing as a practising notary; and
- 24.2.4 rule 20.6 shall be a conveyancer of not less than seven year's standing as a practising conveyancer, or a registrar of deeds.
- 24.3 The periods of practice which are required to qualify an attorney, or an advocate, or a notary, or a conveyancer, as the case may be, to conduct assessments may be reduced by the Council in its discretion if in any particular instance the person concerned had other prior experience to qualify him or her to conduct an assessment.
- 24.4 Where the Council engages an institution or organisation to conduct the assessment on its behalf, that institution or organisation will be required to ensure that the persons employed by it to arrange, control and conduct assessments shall be individuals with the qualifications referred to in 24.2.

25. Exemption from performing community service
[section 95(1)(s) read with section 29(3)]

The Council may from time to time publish rules relating to the legal practitioners or categories of legal practitioners who shall be exempted from performing community service.

26. Legal practice management course
[section 95(1)(zL) read with section 85(1)(b)]

- 26.1 Every legal practitioner who is obliged in terms of section 84(1) of the Act to be in possession of a Fidelity Fund certificate must:
- 26.1.1 within a period of one year after the date on which the legal practitioner was required for the first time to be in possession of a Fidelity Fund certificate; and
- 26.1.2 after payment of the fee prescribed in rule 3.1.
- complete a legal practice management course accredited by the Council
- 26.2 The Council may exempt any legal practitioner, fully or partially and on such conditions as the Council may determine, from completing a legal practice management course to the extent that the legal practitioner -
- 26.2.1 has a qualification that is similar to or of a higher standard than that attainable on completion of the course in question; or
- 26.2.2 has a level of experience that would render the completion of the course in question or any part of such course unnecessary.
- 26.3 A legal practice management course referred to in rule 26.1 may be presented through lectures, seminars or any other forms of learning requiring the physical presence of the legal practitioner concerned, or in appropriate circumstances determined by the Council may be presented through an approved distance learning method or digital transmission, telephone or video conference call, audio tape or electronic network.

PART VII

ADMISSION AND ENROLMENT

27. **Application for enrolment**
[section 95(1)(t) read with section 30(1)(a) and (b)(iii)]
- 27.1 Any person duly admitted by the High Court and authorised to be enrolled to practise as a legal practitioner, or as a notary, or as a conveyancer under the Act may, in the manner prescribed by rule 27.2, apply to the Council, through the

Provincial Council where the legal practitioner or notary or conveyancer intends to practise, (or in the case of a person who does not intend to practice, where that person is ordinarily resident) for the enrolment of his or her name on the roll of legal practitioners, or notaries, or conveyancers, as the case may be.

27.2 An application for enrolment in terms of rule 27.1 shall be in writing and shall contain the following information in respect of the applicant:

- 27.2.1 his or her full names, date of birth, identity number and residential address;
- 27.2.2 whether or not he or she practises or is about to commence practice;
- 27.2.3 if he or she does not practise, his or her business address and postal address and telephone numbers, if any;
- 27.2.4 the address of his or her main office and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;
- 27.2.5 whether he or she conducts practice as an attorney or as an advocate, and, in the case of an advocate, whether with or without a Fidelity Fund certificate;
- 27.2.6 in the case of an attorney, whether he or she conducts practice -
 - 27.2.6.1 for his or her own account and, if so, whether alone or in partnership (stating the full names of his or her partners) or as a member of a commercial juristic entity (stating the full names of his or her co-members); or
 - 27.2.6.2 as an employee;
- 27.2.7 the address and postal addresses and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any, of every branch office and of every building at and from which he or she practises;
- 27.2.8 the name under which the firm of which he or she is the proprietor or a member or by which he or she is employed conducts practice;

27.2.9 if he or she is employed by any person who does not practise, the nature of his or her employment and the name and business address and postal address and telephone numbers, if any, of his or her employer.

and shall, within thirty days of any change taking place in any of these particulars, lodge a statement of such change with the Council through the Provincial Council where he or she practises or intends to practise.

27.3 The Council may require that the information referred to in rule 27.2 be submitted on a form to be determined by the Council.

27.4 An application referred to in rule 27.1 must be in writing and signed by the applicant, and must be accompanied by the following:

27.4.1 proof of payment of the fee payable in terms of rule 2;

27.4.2 a certificate signed by the registrar of the High Court to which the applicant applied for admission to practise that the applicant was admitted to practise and was authorised to be enrolled as a legal practitioner, and/or as a notary, and/or as a conveyancer, as the case may be, and that no proceedings are pending or are contemplated to strike the name of the applicant off the roll or to suspend the applicant from practice;

27.4.3 a statement indicating whether the applicant intends to practise as an attorney, and/or as a notary, and/or as a conveyancer, or as an advocate, and, in the case of an advocate, whether he or she intends practising with or without a Fidelity Fund certificate.

27.5 Subject to the compliance with rules 27.1 to 27.4, the Council shall place the name of the applicant on the roll of attorneys or of advocates or of notaries or of conveyancers, as the case may be, to be kept in terms of rule 28.

27.6 A notary or conveyancer shall not be enrolled in terms of this rule unless he or she is also first enrolled as an attorney.

**28. Manner of keeping roll of legal practitioners
[section 95(1)(v) read with section 30(3)]**

- 28.1 The Council shall keep separate alphabetical registers in which are recorded the names of all attorneys, advocates, notaries and conveyancers admitted by the High Court, as well as the dates of admission and enrolment, and in the case of advocates practising with a Fidelity Fund certificate, a statement to that effect.
- 28.2 The roll of legal practitioners kept by the Council shall reflect the particulars contained in section 30(3) of the Act.
- 28.3 The roll of legal practitioners kept by the Council may be kept in electronic form.

**29. Notification of cancellation or suspension of enrolment
[section 95(1)(w) read with section 31(3)]**

- 29.1 If the High Court orders that the name of a legal practitioner be struck off the roll or that he or she be suspended from practice the Council must forthwith upon receipt of notification to that effect from the High Court cancel or suspend the enrolment of the legal practitioner, as the case may be.
- 29.2 The Council shall forthwith upon the cancellation or suspension of the enrolment of a legal practitioner in terms of rule 29.1 notify that legal practitioner of the cancellation or suspension of enrolment and shall make the appropriate entry in the roll kept by the Council in terms of rule 28.
- 29.3 The notification of cancellation or suspension of enrolment shall be in writing by notice delivered to the legal practitioner concerned or sent by pre-paid registered post, and in addition a copy of the notice shall be sent to the electronic address (if any) chosen by the legal practitioner.

**30. Application for conversion of enrolment by attorneys and advocates
[section 95(1)(x) read with section 32(1)(a)]**

- 30.1 Any person duly admitted by the High Court and enrolled to practise as a legal practitioner under the Act may, in the manner prescribed by rule 30.2, apply to the Council, through the Provincial Council where the legal practitioner intends to practise, to convert his or her enrolment as an attorney to that of an advocate, and vice versa.

- 30.2 An application for conversion in terms of rule 30.1 shall be in writing and shall contain the following information in respect of the applicant:
- 30.2.1 his or her full names, date of birth, identity number and residential address;
 - 30.2.2 whether or not he or she practises or is about to commence practice;
 - 30.2.3 if he or she does not practise, his or her business address and personal address and telephone numbers, if any;
 - 30.2.4 the address of his or her main office and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;
 - 30.2.5 whether he or she conducts practice as an attorney or as an advocate and, in the case of an advocate, whether he or she conducts practice -
 - 30.2.5.1 in the manner contemplated in section 34(2)(a)(i) of the Act; or
 - 30.2.5.2 in the manner contemplated in section 34(2)(a)(ii) of the Act;
 - 30.2.6 if he or she is employed by any person who does not practise, the nature of his or her employment and the name and business address and postal address and telephone numbers, if any, of his or her employer;
- 30.3 The Council may require that information referred to in rule 30.2 be submitted on a form to be determined by the Council.
- 30.4 The application referred to in rule 30.1 must be signed by the applicant, and must be accompanied by the following:
- 30.4.1 proof of payment of the prescribed fee;
 - 30.4.2 a certificate signed by the registrar of the High Court to which the applicant applied for admission to practise that no proceedings are pending or are contemplated to strike the name of the applicant off the roll or to suspend the applicant from practice;
 - 30.4.3 where the applicant is an attorney applying to convert his or her enrolment to that of an advocate -

- 30.4.3.1 a statement indicating whether he or she intends to practise as an advocate and, if so, whether he or she intends to practise with or without a fidelity fund certificate;
- 30.4.3.2 proof to the satisfaction of the Council that he or she has the right of appearance in the High Court, the Supreme Court of Appeal and the Constitutional Court in terms of section 25(2) of the Act or in terms of any legislation in force prior to the coming into force of the Act and has undergone such specialised training in advocacy as is required by pupils for admission as advocates, other than training in terms of a contract for the provision of practical vocational training under the supervision of a training supervisor, as provided for in the rules;
- 30.4.3.3 such other requirements as the Council may determine.
- 30.4.4 where the applicant is an advocate applying to convert his or her enrolment to that of an attorney, proof to the satisfaction of the Council -
- 30.4.4.1 that the applicant has the knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;
- 30.4.4.2 that the applicant has attended a legal practice management course as contemplated in section 26(1)(c)(ii) of the Act;
- 30.4.4.3 that the applicant has been enrolled as an advocate for a period of not less than 12 months, or 3 years in the case of an advocate who has been admitted and enrolled as such without having complied with the requirements of regulation 7 of the regulations under section 109(1)(a) of the Act or without having successfully completed a training course as contemplated in section 112(1)(a)(ii) of the Act ;
- 30.4.4.4 such other requirements as the Council may determine.
- 30.5 Where the applicant is an attorney, and the Council is satisfied that the applicant is entitled to convert his or her enrolment to that of an advocate, the Council shall remove the name of the applicant from the roll of attorneys and shall place the

name of the applicant on the roll of advocates intending to practice without a fidelity fund certificate, or with a fidelity fund certificate, as the case may be.

- 30.6 Where the applicant is an advocate, and the Council is satisfied that the applicant is entitled to convert his or her enrolment to that of an attorney, the Council shall remove the name of the applicant from the roll of advocates and place the name of the applicant on the roll of attorneys.

31. Application for conversion of enrolment by advocate practising without fidelity fund certificate and vice versa [section 95(1)(y) read with section 32(1)(b)]

- 31.1 Any person duly admitted by the High Court and enrolled as an advocate practising as such in terms of section 34(2)(a)(i) may, in the manner prescribed by rule 31.2, apply to the Council, through the Provincial Council where the advocate intends to practise, to convert his or her enrolment to that of an advocate practising as such in terms of section 34(2)(a)(ii), and vice versa.

- 31.2 An application for conversion in terms of rule 31.1 shall be in writing and shall contain the following information in respect of the applicant:

- 31.2.1 his or her full names, date of birth, identity number and residential address;
- 31.2.2 whether or not he or she practises, or is about to commence practice and to be enrolled as an advocate;
- 31.2.3 if he or she does not practise, his or her business address and personal address and telephone numbers, if any;
- 31.2.4 the address of his or her main office and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;
- 31.2.5 whether he or she conducts practice -
- 31.2.5.1 in the manner contemplated in section 34(2)(a)(i) of the Act; or
- 31.2.5.2 in the manner contemplated in section 34(2)(a)(ii) of the Act;

- 31.2.5.3 if he or she is employed by any person who does not practise, the nature of his or her employment and the name and business address and postal address and telephone numbers, if any, of his or her employer.
- 31.3 The Council may require that information referred to in rule 31.2 be submitted on a form to be determined by the Council.
- 31.4 The application referred to in rule 31.1 must be signed by the applicant, and must be accompanied by the following:
- 31.4.1 proof of payment of the prescribed fee;
- 31.4.2 a certificate signed by the registrar of the High Court to which the applicant applied for admission to practise that no proceedings are pending or are contemplated to strike the name of the applicant off the roll or to suspend the applicant from practice;
- 31.4.3 where the applicant applies to convert his or her enrolment to that of an advocate conducting a practice in the manner contemplated in section 34(2)(a)(ii) of the Act, proof to the satisfaction of the Council -
- 31.4.3.1 that the applicant has the knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;
- 31.4.3.2 that the applicant has attended a legal practice management course as contemplated in section 26(1)(c)(ii) of the Act.
- 31.5 If the Council is satisfied that the applicant is entitled to convert his or her enrolment from that of an advocate conducting a practice in a manner contemplated in section 34(2)(a)(i) of the Act to that of an advocate conducting a practice in the manner contemplated in section 34(2)(a)(ii) of the Act, and vice versa, the Council shall remove the name of the applicant from the relevant roll of advocates and shall enrol the applicant on the appropriate roll of advocates.

**32. Circumstances in which legal practitioner can apply for conversion of enrolment
[section 95(1)(z) read with section 32(3)]**

- 32.1 An attorney may at any time, in the manner determined in rule 30, and upon payment of the fee determined by the Council in the rules, apply to the Council to convert his or her enrolment as an attorney to that of an advocate, whether an advocate who conducts a practice in the manner contemplated in section 34(2)(a)(i) of the Act, or an advocate conducting a practice in the manner contemplated in section 34(2)(a)(ii) of the Act.
- 32.2 An advocate referred to in section 34(2)(a)(i) and practising as such may at any time, as determined in the rules and upon payment of the fee determined by the Council, apply to the Council for the conversion of his or her enrolment to that of an advocate referred to in section 34(2)(a)(ii) and practising as such, provided the applicant satisfies the Council -
- 32.2.1 that the applicant has the knowledge of accounting necessary for the keeping of accounting records referred to in section 87 of the Act and for compliance with the accounting rules published by the Council from time to time;
- 32.2.2 that the applicant has attended a legal practice management course as contemplated in section 26(1)(c)(ii) of the Act.
- 32.3 An advocate referred to in section 34(2)(a)(ii) and practising as such may at any time, as determined in the rules and upon payment of the fee determined by the Council in the rules, apply to the Council for the conversion of his or her enrolment to that of an advocate referred to in section 34(2)(a)(i) and practising as such.

PART VIII

RENDERING OF LEGAL SERVICES

- 33. Legal services which may be rendered by advocate in possession of fidelity fund certificate
[section 95(1)(zA) read with section 34(2)(b)]**

An advocate referred to in section 34(2)(a)(ii) of the Act who is in possession of a fidelity fund certificate may render all those legal services which advocates were entitled to render before the commencement of the Act, and may perform such functions ancillary to his or her instructions as are necessary to enable him or her properly to represent the client.

**34. Briefing of advocates by attorneys and by members of the public
[section 95(1)(zB) read with section 34(3)]**

All briefs to advocates as contemplated in section 34(2)(a)(i) shall be subject to the terms and conditions contained in Part IV of the code of conduct made under section 97(1)(b) of the Act applicable to that type of advocate.

**35. Instruction of attorneys
[section 95(1)(zC) read with section 34(4)]**

- 35.1 For purposes of this Rule 35 "client" means the user or intended user of legal services to be provided by an attorney.
- 35.2 Instructions by a client to an attorney may be in writing or may be verbal.
- 35.3 When written instructions are given by a client to an attorney the attorney must ensure that they set out the intended scope of the engagement with sufficient clarity to enable the attorney to understand the full extent of the mandate. If the attorney is uncertain as to the scope of the mandate the attorney must seek written clarification of the intended scope of the instruction.
- 35.4 Where the client instructs the attorney verbally, the attorney must as soon as practically possible confirm the instructions in writing and in particular must set out the attorney's understanding of the scope of the engagement.
- 35.5 An attorney who is in receipt of instructions from a client must comply with those provisions of the Act which relate to the provision of legal services, including, without limitation, the provisions of sections 34 and 35 of the Act.
- 35.6 Rule 35 applies, with the necessary changes, to an advocate contemplated in section 34(2)(a)(ii) of the Act who is in possession of a Fidelity Fund certificate.

PART IX

LAW CLINICS

36. Establishment of law clinics [section 95(1)(zD) and (zF) read with section 34(8)(a)]

36.1 The Council may grant recognition to an entity as a law clinic if it is satisfied that the entity complies with the following requirements:

36.1.1 if it complies with the provisions of section 34(8)(a) of the Act;

36.1.2 if it is properly constituted, organised and controlled to the satisfaction of the Council;

36.1.3 if it provides legal services to the public;

36.1.4 if the legal services provided by the clinic are rendered free of charge, direct or indirect, to the recipient of those services; provided that -

36.1.4.1 the clinic may recover from the recipient of its services any amounts actually disbursed by the clinic on behalf of the recipient;

36.1.4.2 where the clinic acts for a successful litigant in litigation it will be entitled to take cession from that litigant of an order for costs awarded in favour of the litigant, and to recover those costs for its own account;

36.1.5 the services may be rendered only to persons who, in the opinion of the Council, would not otherwise be able to afford them, or, with the prior written approval of the Council, services rendered in the public interest; and the Council may from time to time issue guidelines for the assistance of clinics in determining to whom services may be rendered;

36.1.6 the clinic may not undertake work in connection with the administration or liquidation or distribution of the estate of any deceased or insolvent person, mentally ill person or any person under any other legal disability, or the liquidation of a company, nor in relation to the transfer or mortgaging of

immovable property, nor in relation to the lodging or processing of claims under the Road Accident Fund Act, 1996, or such other work as the Council may from time to time determine;

36.1.7 the name under which the clinic is to carry on its activities, and the letterheads and other stationery of the clinic will require the prior approval of the Council; and

36.1.8 legal practitioners in the employ of the clinic may be remunerated only by way of salary payable by the clinic or by the organisation to which it is attached.

**37. Engagement of candidate legal practitioners by law clinics
[section 95(1)(zE) read with section 34(8)(b)(iv)]**

37.1 If a legal practitioner in the full time employment of a law clinic wishes to engage a candidate legal practitioner for purposes of practical vocational training he or she may do so only if:

37.1.1 the candidate legal practitioner is to be under his or her direct personal supervision or under the direct personal supervision of another legal practitioner who is a member of the professional staff of the clinic;

37.1.2 the clinic is open for business during normal business hours for not less than eleven months in any year;

37.1.3 the clinic has proper office systems, including telephones, information technology facilities, files and filing procedures, a diary system and at least elementary library facilities;

37.1.4 the clinic has a proper accounting system and accounting procedures;

37.1.5 the clinic handles a reasonably wide range of work to give the candidate legal practitioner exposure to the kind of problems that a newly qualified legal practitioner would expect to encounter and be able to handle competently during his or her first year of practice. The Council shall have the right to direct the clinic to require the candidate legal practitioner to attend a training course approved by the Council in areas of practice

which, in the opinion of the Council, are not adequately dealt with by the clinic;

provided that no such legal practitioner shall be entitled to engage more than three candidate legal practitioners at any one time.

PART X

DISCIPLINARY

38. Procedure to be followed by disciplinary bodies [section 95(1)(zG) read with section 38(1) and 39(1)]

38.1 Disciplinary proceedings

In rules 38 to 45 -

38.1.1 "the executive officer" means the executive officer of the Council appointed in terms of section 19(1) of the Act;

38.1.2 "the legal officer" means a person, by whatever title he or she may be designated, who is an employee of the Council and who is appointed or charged by the Council to perform the disciplinary functions referred to in these rules;

38.1.3 "the respondent" means a legal practitioner or candidate legal practitioner or juristic entity referred to in section 37(1) of the Act whose conduct is the subject of any proceedings (of whatever nature, including a complaint or a decision whether or not to refer such conduct to investigation) under these rules;

38.1.4 "costs", where an investigating committee or a disciplinary committee [or an appeal tribunal] orders a respondent to pay the costs of the investigation or of the disciplinary [or appeal] hearing, means the actual costs incurred by the Council in conducting the disciplinary proceedings, including without limitation:

38.1.4.1 the cost of procuring the attendance of witnesses;

- 38.1.4.2 the professional fees of accountants or auditors in public practice, in relation to evidence of an accounting nature;
- 38.1.4.3 the professional fees of legal practitioners engaged by the Council to act as *pro forma* complainant, or in any other capacity, to assist the investigating committee or the disciplinary committee [or the appeal tribunal] in the disciplinary process, assessed on the scale as between attorney and client.
- 38.2 The Council shall have disciplinary jurisdiction over all respondents no matter where the conduct which is, or allegedly is, misconduct is perpetrated. On the understanding that the Council is empowered by section 38(1) of the Act to enquire into and deal with any complaint of misconduct, and on the further understanding that this rule is not intended to be a complete list of acts or omissions which may constitute misconduct on the part of a legal practitioner, any legal practitioner shall be guilty of misconduct if he or she -
- 38.2.1 contravenes or fails to comply with any rule or any provision of a code of conduct applicable to him or her; or
- 38.2.2 fails after demand to pay any subscription or any fee, levy or other charge payable to the Council in terms of the Act.
- 38.3 The Council shall assign its duties in relation to the exercise of its disciplinary functions to a committee established by it in terms of section 37(1) or section 37(4) of the Act, subject to the provisions of the Act and these rules.
- 38.4 An investigating committee established by the Council shall consist of not less than two legal practitioners, of whom at least one shall be an attorney where the respondent is an attorney or a candidate attorney or a juristic entity, and at least one shall be an advocate where the respondent is an advocate or a pupil;
- 38.5 a disciplinary committee established by the Council shall consist of the individuals provided for in section 37(4) of the Act; provided that where more than two legal practitioners have been appointed to serve on a disciplinary committee:

- 38.5.1 where the respondent is an attorney or a candidate attorney, the majority of legal practitioners serving on the committee shall be attorneys;
- 38.5.2 where the respondent is an advocate or a pupil, the majority of the legal practitioners serving on the committee shall be advocates.

39. Commencement of enquiry into alleged misconduct

- 39.1 If an allegation of misconduct against a respondent comes to the attention of the executive officer or the legal officer, he or she must refer the allegation to the investigating committee if -
- 39.1.1 the allegations are in the public domain and he or she on reasonable grounds suspects that a respondent may be guilty of misconduct; or
- 39.1.2 a court sends, or directs to be sent, a record of proceedings in that court; or
- 39.1.3 a member of the public lodges a complaint with the Council and the executive officer or the legal officer is of the opinion that the complaint of misconduct appears to be justified.
- 39.2 Members of the public who wish to lodge a complaint of misconduct against a respondent must do so on affidavit lodged with the Council, unless the executive officer or the legal officer decides otherwise. A complaint shall set out clearly and concisely the specific acts or failures to act which give rise to the complaint of misconduct.
- 39.3 In order to establish whether grounds for referring the complaint to the investigating committee exist, the executive officer or the legal officer may, in his or her discretion:
- 39.3.1.1 notify the respondent in writing of the nature of the complaint and call upon the respondent to furnish a written explanation in answer to the complaint within 30 days of such notice; and
- 39.3.1.2 request the complainant to provide further particulars on any aspect of the complaint.

40. Investigation of alleged misconduct

- 40.1 When a complaint or allegation of misconduct against the respondent is referred to the investigating committee, that committee must investigate the complaint or allegation.
- 40.2 For purposes of carrying out its responsibilities in terms of rule 40.1 the investigating committee may:
- 40.2.1 take any steps which are not prohibited by law to gather information with regard to the complaint or allegation;
 - 40.2.2 request a complainant to provide further particulars on any aspect of the complaint;
 - 40.2.3 request the respondent to appear before the investigating committee in order to assist it to formulate its recommendations to the Council by notice, specifying the time and place of the meeting of the investigating committee. That notice shall inform the respondent:
 - 40.2.3.1 that the respondent has the right to be assisted or represented by another person;
 - 40.2.3.2 that any statement made by the respondent to the investigating committee may be used in evidence and that the proceedings of the investigating committee will be recorded; and
 - 40.2.3.3 that section 40(4)(b) of the Act provides that a respondent may be ordered to pay the cost of the investigation or of any disciplinary hearing;
 - 40.2.4 by notice in writing require the respondent, or any employee of the respondent, to produce to the investigating committee at a time and place stipulated in the notice, any information relating to the complaint including, but not limited to, files, statements, correspondence, accounting records or other documents which are in the possession of or under the control of the

respondent or that other person and which relate to the subject matter of the complaint;

40.2.5 request the executive officer to institute legal action against any person referred to in rule 40.2.4 who fails to produce to the investigating committee the information referred to in that rule at the time and place stipulated in the notice; and

40.2.6 inspect and, if the investigating committee considers it appropriate, retain any information obtained pursuant to rules 40.2.4 and 40.2.5, and make copies of and take extracts from such information.

40.3 Notwithstanding the provisions of rules 40.2.3.1 and 40.2.3.2, the investigating committee and the respondent may agree to declare any appearance or part of an appearance of the respondent before the committee to be "without prejudice". In such a case:

40.3.1 the evidence presented or the discussions at such appearance or part of the appearance will not be recorded;

40.3.2 the discussions between the investigating committee and the respondent will not be used in evidence against the respondent;

40.3.3 the complainant will not be entitled to attend the proceedings.

40.4 If, in the course of the investigations, the respondent admits to the investigating committee that the respondent is guilty of misconduct, and the investigating committee and the respondent agree on an appropriate punishment to be imposed for that misconduct, or if it appears to the investigating committee to be appropriate, the investigating committee may recommend to the Council that a specific sanction be imposed on, and the payment of a specific amount in respect of costs be required from, the respondent; provided that such a recommendation will not be binding on the Council or on a disciplinary committee, which will be entitled to impose its own punishment after conducting an enquiry in accordance with this rule.

40.5 If after investigating allegations of misconduct against the respondent the investigating committee is satisfied:

- 40.5.1 that the respondent, on the basis of available *prima facie* evidence, is guilty of misconduct which, on account of the nature of conduct, warrants misconduct proceedings, the investigating committee must refer the matter to the Council for adjudication by a disciplinary committee;
- 40.5.2 that the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, it must discuss the complaint and inform the Council, the complainant and the respondent of its decision and the reasons for it. Without limiting the discretion of the investigating committee, the following may be grounds for determining that the conduct in question does not warrant misconduct proceedings:
- 40.5.2.1 that the respondent is not guilty of misconduct; or
- 40.5.2.2 that the respondent has given a reasonable explanation for his or her conduct; or
- 40.5.2.3 that the conduct of which the respondent may be guilty is of an inconsequential nature; or
- 40.5.2.4 that there is no reasonable prospect of success in preferring a charge of misconduct against the respondent; or
- 40.5.2.5 that in all the circumstances it is not appropriate to charge the respondent with misconduct.
- 40.6 If a complainant is aggrieved by:
- 40.6.1 the manner in which the investigating committee conducted its investigation; or
- 40.6.2 the outcome of the investigation,
- he or she may appeal to the appeal tribunal in terms of section 41 of the Act.
- 40.7 When the Council receives a referral from the investigating committee in terms of rule 40.5.1 that the legal practitioner be charged with misconduct, it must refer the matter to a disciplinary committee for adjudication.

41. Disciplinary procedure

- 41.1 A disciplinary enquiry shall be commenced by way of the service on the respondent personally of a summons requiring the attendance of that respondent at the enquiry.
- 41.2 The summons shall be issued under the hand of the executive officer or the legal officer or some other duly authorised employee of the Council and shall be served not less than 10 days before the date appointed for the hearing, in the computation of which period weekends and statutory public holidays shall be excluded.
- 41.3 The summons shall set out the place, date and time of the hearing and shall contain the charge or charges of unprofessional or unworthy or dishonourable conduct alleged against the respondent.
- 41.4 At an enquiry conducted under this rule the respondent -
- 41.4.1 may be present at the hearing of the proceedings provided that if the respondent is not so present, the hearing may proceed in his or her absence if summons has been properly served on him or her;
 - 41.4.2 may be assisted or represented by another person or by a legal practitioner in conducting his or her defence;
 - 41.4.3 has the right to be heard;
 - 41.4.4 may call witnesses;
 - 41.4.5 may cross-examine any person called as a witness in support of the charge; and
 - 41.4.6 may have access to any book, document or object produced in evidence;
- 41.5 a respondent appearing at an enquiry -
- 41.5.1 may admit at any time before a conviction that he or she is guilty of the charge; and

- 41.5.2 may, in the case where he or she makes an admission of guilt, be deemed to be guilty of misconduct as charged.
- 41.6 The complainant in the matter shall be entitled to be present during all proceedings in the disciplinary enquiry relating to his or her complaint in the same manner as a complainant in criminal proceedings.
- 41.7 The Council may appoint a practising attorney or advocate, or an employee who is admitted as an attorney or advocate, to act as a pro forma prosecutor in the leading of evidence against, and the presentation of the case against, the respondent at the enquiry, and to examine and cross-examine witnesses.
- 41.8 The duties, functions and powers of the disciplinary committee relating to the conduct of an enquiry shall be the following, namely:
- 41.8.1 to determine through its chairman and, subject always to the provision of these rules and to the Act, the manner in which the enquiry shall be conducted;
- 41.8.2 to exercise the powers vested in the Council in terms of the Act in relation to its disciplinary functions;
- 41.8.3 to dispense with any requirements regarding summonses, notices, affidavits, documents, service or times in any case where it appears to be just to do so, or to extend the time for doing anything in connection with the conduct of the enquiry;
- 41.8.4 of its own accord, or upon the application of any affected person, to adjourn the enquiry upon such terms as to costs or otherwise as it deems fit;
- 41.8.5 to cause the proceedings at the enquiry to be recorded in such a manner as shall enable a true and correct record of such proceedings to be available, and to procure that each of its decisions shall be recorded in writing and be prefaced by a statement of its findings in relation to the fact investigated during the course of the enquiry, and shall be signed by the chairperson of the committee;

- 41.8.6 to procure that all decisions referred to in rule 41.8.5 shall be filed in the records of the Council;
- 41.8.7 of its own accord, to treat as a separate complaint of misconduct, any act or omission on the part of a respondent attending, or required to attend, an enquiry being conducted under these rules, where such act or omission is calculated to interfere with, or otherwise interferes with, its proper consideration, investigation and determination of the complaint for the subject matter of the enquiry, and to refer any such separate complaint to the Council for consideration and investigation in accordance with the provisions of these rules;
- 41.8.8 to exercise such ancillary powers as it shall consider reasonably necessary to enable it to discharge its duties, functions and powers under these rules;
- 41.8.9 to appoint a person or persons to assist it in the performance of its functions under these rules;
- 41.8.10 where any matter of procedure arises for which no provision is made in these rules, to determine through its chairman in his or her discretion what procedure shall be followed.

42. Subpoena

A subpoena issued by the disciplinary committee in terms of section 39(3) of the Act-

- 42.1 shall be in the form of Schedule 4 to these rules;
- 42.2 shall be signed by the chairperson of the committee or, in the absence of the chairperson, any member of the committee; and
- 42.3 shall be served on the person concerned personally.

43. Proceedings after disciplinary hearing, and sanctions

- 43.1 After the conclusion of the hearing the disciplinary committee must, within 30 days, decide whether or not the respondent is guilty of misconduct.

- 43.2 If the disciplinary committee finds that the respondent is guilty of misconduct it must -
- 43.2.1 inform the respondent and the Council and the Provincial Council concerned of the finding; and
- 43.2.2 inform the respondent of the right of appeal as provided for in terms of section 41 of the Act;
- 43.3 A respondent found guilty of misconduct may -
- 43.3.1 address the disciplinary committee in mitigation of sentence; and
- 43.3.2 call witnesses to give evidence on his or her behalf in mitigation of sentence.
- 43.4 If the disciplinary committee finds the respondent guilty of misconduct it may call witnesses to give evidence in aggravation of sentence and may-
- 43.4.1 in the case of a legal practitioner:
- 43.4.1.1 order him or her to pay compensation, with or without interest, to the complainant, which order is subject to confirmation by an order of any court having jurisdiction in the circumstances in the prescribed manner, on application by the Council;
- 43.4.1.2 impose upon him or her a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister by notice in the *Gazette*, on the advice of the Council;
- 43.4.1.3 temporarily suspend him or her from practising or from engaging in any particular aspects of the practice of law, pending the finalisation of an application referred to in rule 43.4.1.4;
- 43.4.1.4 advise the Council to apply to the High Court for -
- 43.4.1.4.1 an order striking his or her name from the roll;
- 43.4.1.4.2 an order suspending him or her from practice;

- 43.4.1.4.3 an interdict prohibiting him or her from dealing with trust money; or
- 43.4.1.4.4 any other appropriate relief;
- 43.4.1.5 advise the Council to amend or endorse his or her enrolment;
- 43.4.1.6 order that his or her Fidelity Fund certificate be withdrawn, where applicable;
- 43.4.1.7 warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or
- 43.4.1.8 caution or reprimand him or her;
- 43.4.2 in the case of a juristic entity:
 - 43.4.2.1 order it to pay compensation, with or without interest, to the complainant, which order is subject to confirmation by an order of any court having jurisdiction in the circumstances in a prescribed manner on application by the Council;
 - 43.4.2.2 impose upon it a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister by notice in the *Gazette*, on the advice of the Council;
 - 43.4.2.3 warn it against certain conduct;
 - 43.4.2.4 advise the Council to apply to the High Court for the winding up of the juristic entity; or
 - 43.4.2.5 caution or reprimand the juristic entity; or
- 43.4.3 in the case of a candidate legal practitioner:
 - 43.4.3.1 cancel or suspend his or her practical vocational training;
 - 43.4.3.2 impose upon him or her a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister by notice in the *Gazette*, on the advice of the Council; or

43.4.3.3 caution or reprimand him or her.

43.5 The disciplinary committee may -

43.5.1 impose any combination of the sanctions in rules 43.4.1, 43.4.2 or 43.4.3;
and

43.5.2 postpone the taking of any steps or suspend the imposition of any sanction
on such conditions as it may determine;

43.5.3 in addition to the sanctions referred to in rule 43.4, order the respondent to
pay the cost of the investigation or of the disciplinary hearing.

43.6 If the respondent fails to comply with any conditions determined by the
disciplinary committee, the committee may impose a sanction for non-
compliance or may execute the sanction which was originally imposed, unless
the respondent satisfies the disciplinary committee that the non-compliance was
due to circumstances beyond his or her or its control, in which case the
disciplinary committee may impose such further conditions as it deems fit.

43.7 At the conclusion of a disciplinary hearing -

43.7.1 the disciplinary committee must notify the complainant, the respondent, the
Council and the Provincial Council in writing of the outcome of the hearing ;

43.7.2 if the disciplinary committee has found the respondent not guilty of
misconduct it must inform the complainant of the right to appeal as
provided for in terms of section 41 of the Act and of the time limit imposed
by rule 44.2.

**44. Appeal against conduct or finding of investigating committee or disciplinary
committee**

44.1 Subject to section 43 of the Act, a respondent may, within thirty days of being
informed of the decision of a disciplinary committee, lodge an appeal with the
appeal tribunal against the finding of the disciplinary committee or against the
sanction imposed by the disciplinary committee, or both

44.2 A complainant who is aggrieved by -

44.2.1 the manner in which an investigating committee conducted its investigation, or the outcome of the investigating committee; or

44.2.2 the outcome of a disciplinary enquiry.

may lodge an appeal with the appeal tribunal, within thirty days of being informed on the decision of the investigating committee or the disciplinary committee, as the case may be, against the conduct or finding of the investigating committee or the disciplinary committee, as the case may be.

44.3 The appeal referred to in rule 44.1 or 44.2 shall be by notice of appeal in writing, addressed to the Council, setting out -

44.3.1 in the case of an appeal by the respondent:

44.3.1.1 whether the appeal is against the finding of misconduct by the disciplinary committee, or against the sanction imposed, or both; and

44.3.1.2 the grounds of appeal in detail;

44.3.2 in the case of an appeal by the complainant:

44.3.2.1 whether the appeal is against the manner in which the investigating committee or the disciplinary committee, as the case may be, conducted the investigation or the hearing; and/or

44.3.2.2 whether the appeal is against the decision of the investigating committee or the disciplinary committee, as the case may be; and

44.3.2.3 the grounds of appeal in detail.

44.4 The Council shall forward a copy of the notice of appeal referred to in rules 44.3.1 or 44.3.2 to the complainant or to the respondent, as the case may be, and shall call upon the complainant or the respondent, as the case may be, to respond in writing to the notice of appeal within thirty days, or within such longer period as the Council may determine.

- 44.5 On receipt of the response from the complainant or the respondent, as the case may be, in terms of rule 44.4 the Council must forward the notice of appeal and the response to the appeal tribunal. If no response is received from the complainant or the respondent, as the case may be, the Council must send the copy of the notice of appeal to the appeal tribunal to be dealt with in accordance with these rules.
- 44.6 On receipt of the notice of appeal and, if applicable, the response to the notice of appeal the appeal tribunal shall advise the respondent and the complainant of the place and date, being a date not less than ten days after the date of the notice, at which the appeal will be heard by the appeal tribunal.
- 44.7 At the hearing of the appeal the respondent and the complainant may be present and may be assisted or represented by another person or by a legal practitioner. The proceedings before the appeal tribunal shall be conducted in such manner as the appeal tribunal shall determine.
- 44.8 After the conclusion of the hearing before the appeal tribunal the appeal tribunal must, within thirty days:
- 44.8.1 decide whether or not the finding of the disciplinary committee should be confirmed or set aside; or
- 44.8.2 decide whether or not the sanction imposed on the respondent should be confirmed or set aside; provided that if the sanction imposed by the disciplinary committee is to be set aside the appeal tribunal may impose its own sanction in respect of the misconduct, which sanction imposed by the appeal tribunal may be one which is more severe than that imposed by the disciplinary committee; or
- 44.8.3 if it decides that the conduct of the investigating committee or the disciplinary committee was unlawful or unfairly prejudicial to the respondent or to the complainant, or was in any other respect irregular or not in accordance with natural justice, it shall refer the matter back to the Council to be dealt with as a new complaint before a different investigating committee or disciplinary committee.

44.9 At the conclusion of the hearing before the appeal tribunal the appeal tribunal must notify the respondent, the complainant, the Council and the Provincial Council in writing of the outcome of the appeal.

44.10 If a respondent who has been found guilty of misconduct lodges an appeal in terms of rule 44.1 the decision of the disciplinary committee may not be enforced before the appeal tribunal has decided the appeal.

44.11 **Publication**

The Council shall cause particulars of all disciplinary hearings, including the particulars of:

44.11.1 the allegations of misconduct dealt with;

44.11.2 the members of the disciplinary committee in question;

44.11.3 the respondent involved in the dispute; and

44.11.4 the outcome of the hearings and any sanction imposed, if applicable

to be published on the website of the Council, to be updated at least once every month, and to be available for inspection by members of the public during business hours of the Council and of the relevant Provincial Councils.

45. **Manner and form in which complaints of misconduct must be lodged with the Council**

[Section 109(2)(a)(vi)]

45.1 A person wishing to lodge a complaint of misconduct against a legal practitioner, a candidate legal practitioner or a juristic entity must lodge the complaint in writing with the Council.

45.2 The complaint must be substantially in the form of Schedule 5 of these rules, must be signed by the complainant before a Commissioner of Oaths, and must be lodged with the Council; provided that the Council may in appropriate circumstances require that the complaint be lodged in a different format.

- 45.3 The Council, or a person to whom the function may be assigned by the Council, shall be entitled to dispense with the requirements of this rule in any specific case if in his or her view it is appropriate, and in the interests of justice, that the requirements of the rule be dispensed with.
- 45.4 The failure of a complainant to comply with the provisions of this rule shall not prevent the Council from exercising its powers to enquire into the conduct of a legal practitioner, a candidate legal practitioner or a juristic entity even in the absence of a formal complaint by a complainant.
- 45.5 The Council may require a complainant to provide, on affidavit, such further particulars in relation to any aspect of the complaint as it deems necessary

PART XI

LEGAL PRACTITIONERS' FIDELITY FUND: PROCEDURAL

46. Procedure for election of legal practitioners to the board [section 95(1)(zJ) read with section 62(1)(a)]

- 46.1 One member shall be elected to the Board from among, and by, the practising legal practitioners who are in good standing and who have their principal place of business as such in the area of the following provinces:
- 46.1.1 one member from the province of Gauteng;
- 46.1.2 one member from the provinces of Western Cape and Northern Cape;
- 46.1.3 one member from the provinces of the Free State, North West, Limpopo and Mpumalanga;
- 46.1.4 one member from the provinces of KwaZulu-Natal and Eastern Cape.
- 46.2 One member shall be elected to the Board from among the practising advocates referred to in section 34(2)(b) who are in good standing, by all the practising legal practitioners in the Republic who are in good standing.
- 46.3 Whenever a vacancy occurs in the Board in respect of –

- 46.3.1 a member elected from among the legal practitioners having their principal places of business in the areas referred to in rule 46.1 respectively; or
- 46.3.2 the member elected to the Board from among the advocates referred to in section 34(2)(b) of the Act

the Council shall call for nominations from among the legal practitioners of the respective province or provinces and who are on the practising roll, or from among the advocates referred to in section 34(2)(b) of the Act who are on the practising roll, as the case may be, by notice in the *Gazette* and in such other publication as may be appropriate, allowing 21 days from the date of the notice to the date on which nominations are to be submitted, and stating that nominations are to be made in writing in accordance with these rules.

- 46.4 A nomination may only be made –
 - 46.4.1 in the case of a nomination in respect of a vacancy referred to in rule 46.3.1, by a legal practitioner having his or her principal place of business in the province concerned; and
 - 46.4.2 in the case of a nomination in respect of a vacancy referred in in rule 46.3.2, by a legal practitioner.
- 46.5 Every nomination shall be in writing, shall be signed by the person making it and shall –
 - 46.5.1 in the case of a nomination by an attorney, state the name of that attorney, his or her date of admission as an attorney and the address of that attorney's principal place of business; and
 - 46.5.2 in the case of an advocate, state the name of advocate, his or her date of admission as an advocate and the address at which such advocate keeps chambers.
- 46.6 Every nomination shall be accompanied by –
 - 46.6.1 written acceptance of the practising attorney or practising advocate being nominated, duly signed by the said attorney or advocate, and providing

such details relating to the said attorney or advocate as is required from the attorney or advocate making the nomination in terms of rule 46.5; and

46.6.2 a comprehensive *curriculum vitae* of the person being nominated, in not more than 600 words and in such format as the Council may require, containing at least the following information:

46.6.2.1 his or her name;

46.6.2.2 in the case of an attorney, the name of the firm of which he or she is a proprietor or a member or by which he or she is employed, stating also the status of that attorney within the firm;

46.6.2.3 in the case of an advocate, whether or not he or she renders legal services in terms of section 34(2)(a)(ii) of the Act, and whether or not he or she has the status of a Senior Counsel;

46.6.2.4 his or her race, gender, date of admission and enrolment, and period in practice;

46.6.2.5 if he or she suffers from a disability, a statement to that effect and the nature of the disability;

46.6.2.6 the address of his or her principle place of practice

and on which shall be endorsed, over the signature of each nominee named therein, his or her confirmation that the information given therein is correct and that he or she is not disqualified from membership of the Board.

46.7 Upon receipt of a nomination, the Council shall make every effort to verify the information provided in the *curriculum vitae* that accompanied such nomination.

46.8 Within 30 days after the closing date for nominations, the Council shall publish a list of all the persons duly nominated and who have duly accepted such nomination, by notice in the *Gazette* and in such other publications as may be appropriate: provided that the Council may refuse to include the name of any person who has been nominated in respect of whom the Council has reason to believe that the information provided in the *curriculum vitae* submitted by or on

behalf of such person contains material details that are untrue, and any person whose name is so omitted shall be ineligible for election to the Board.

46.9 A notice referred to in rule 46.8 -

46.9.1 shall invite the submission of a written communication from every legal practitioner eligible to vote for the election of the member or members concerned, in such format as the Council may determine, by which such practitioner exercises his or her right to vote;

46.9.2 shall draw the attention of legal practitioners to the following consideration in relation to the constitution of the Board:

46.9.2.1 the racial and gender composition of South Africa;

46.9.2.2 representation of persons with disabilities;

46.9.2.3 provincial representation.

46.10 Every such written communication shall be signed by its author and -

46.10.1 in the case of a communication from an attorney, state the name of his or her practice and the address of that attorney's principal place of business; and

46.10.2 in the case of a communication from an advocate, specify the date of admission of the advocate concerned and the address at which such advocate keeps chambers.

46.11 Upon the expiry of 21 days from the date of the last-mentioned notice in the *Gazette*, referred to in rule 46.8, the Council shall, at a formal special meeting, tally all the votes received in writing by hand delivery, facsimile transmission or ordinary mail in respect of each person duly nominated, and shall determine the names of the persons in favour of whom the most such votes have been cast in order to fill the number of vacancies on the Board which are required to be filled.

46.12 Having made such a determination, the Council shall at such meeting declare such person or persons duly elected.

- 46.13 The Council shall within 7 days of having made such a declaration, by notice in the *Gazette*, publish the name of the person or persons so elected.

**47. Application for Fidelity Fund certificates
[section 95(1)(zK) read with section 85(1)(a)]**

- 47.1 The Council shall, not later than the last day of September in every year, send to every legal practitioner who is obliged in terms of section 84(1) of the Act to be in possession of a fidelity fund certificate, by electronic on-line submission to that legal practitioner's electronic mail address (or by pre-paid post to the postal address of that legal practitioner, or by delivery to that legal practitioner's business address, where the legal practitioner has not provided the Council with an email address) an application form for a fidelity fund certificate in respect of the year following. The Council shall enclose with such application form a statement setting out the liability, if any, of the legal practitioner concerned in respect of his or her subscription or other amounts due to the Council.
- 47.2 The application form for a fidelity fund certificate shall, as nearly as circumstances will permit, be in the form set out in rule 49.
- 47.3 Every legal practitioner who is obliged in terms of section 84(1) of the Act to be in possession of a fidelity fund certificate shall sign the application form relevant to him or her and shall truly, accurately and completely set out the information and particulars provided for in the form, and shall return the duly completed and signed application form by electronic on-line submission (or where the legal practitioner does not have an email facility, by pre-paid post or by delivery) to the Council not later than the first day of December of the same year in which it was sent.
- 47.4 The failure on the part of a legal practitioner to receive an application form and the statement of liability shall not relieve the legal practitioner of his or her obligation to make an application as required by section 85(1) of the Act.
- 47.5 The Council may from time to time require an applicant to furnish it with further and additional information and particulars in respect of any application before it issues a fidelity fund certificate, and neither the Council nor the Board shall incur any liability in respect of any penalty incurred or loss sustained by the applicant

due to any delay in issuing such a certificate if such delay was caused by the applicant's failure to furnish such information or particulars.

47.6 A fidelity fund certificate shall be in the form of Schedule 6A (in the case of attorneys) and Schedule 6B (in the case of advocates referred to in section 34(2)(b) of the Act) to this rule and shall be signed by an authorised official on behalf of the Council, and the production of such a certificate purporting to be so signed shall be *prima facie* evidence of its contents.

47.7 Every such application shall be accompanied by –

47.7.1 the contribution payable by the applicant, the amount of which shall from time to time be notified by the Council through publication in the *Gazette*; and

47.7.2 proof that the applicant has discharged all her or his liabilities in respect of enrolment fees and other amounts due to the Council;

47.7.3 in the case of an applicant who, for the first time, is required to be in possession of a fidelity fund certificate, proof that the applicant has completed a legal practice management course referred to in section 85(1)(b) of the Act or where, at the date of application, the applicant has not yet completed the practice management course, a statement to that effect and an acknowledgement that the applicant is aware that he or she will be required to complete the practice management course within the period referred to in rule 26, failing which a fidelity fund certificate will not be issued to him or her until he or she has completed the course;

47.7.4 in the case of a legal practitioner other than one referred to in rule 47.7.3, the certificate of an auditor in respect of an audit of his or her trust accounts that had been performed immediately prior to the application.

**48. Contributions payable by applicants for Fidelity Fund certificates
[section 95(1)(zM) read with section 85(2)]**

The contribution payable by the applicant for a fidelity fund certificate shall be in the amount determined by the Council from time to time, in consultation with the Board, in

accordance with sections 85(3) and 85(4) of the Act, and as notified by the Council in the *Gazette*.

49. **Form of application for Fidelity Fund certificate
[section 95(1)(zN)]**

The application form for a fidelity fund certificate, referred to in rule 47.2 shall, in the case of attorneys, be as nearly as circumstances will permit in the form set out in Schedule 7A to these rules, and in the case of advocates referred to in section 34(2)(b) of the Act, be as nearly as circumstances will permit in the form set out in Schedule 7B to these rules.

PART XII**50. ACCOUNTING RULES**

- 50.1 Part XII of the rules applies only to legal practitioners conducting a trust account practice.
- 50.2 If a firm at any time administers and controls its practice as a whole from premises in two or more buildings which, in the opinion of the Council, do not constitute such a single composite entity as is contemplated in the definition of 'main office' in rule 1, the Council may require the firm to declare to it in writing, within a time stipulated by the Council, which one or more of those buildings as may constitute such an entity, in the opinion of the Council, contains or contain its main office, and thereafter that firm shall administer and control its practice as a whole from the premises so declared.
- 50.3 The Council may make such enquiry as it deems fit, including inspection of the premises concerned, and the firm concerned shall furnish the Council with such information and render such assistance as it may require to enable it to form an opinion in terms of accounting rule 50.2.
- 50.4 A declaration made by a firm under accounting rule 50.2 shall remain effective until such time as the firm:
- 50.4.1 moves its main office from the premises which are the subject of the declaration; or
- 50.4.2 makes a declaration in terms of accounting rule 50.2 in respect of other premises.
- 50.5 Should a firm fail to make a declaration under accounting rule 50.2 within the time stipulated by the Council, the Council may by notice in writing to the firm determine which of the premises concerned constitutes its main office, whereupon the remaining provisions of accounting rules 50.2, 50.3 and 50.4 shall apply as though those premises had been so declared by the firm.

Accounting Requirements - General

50.6 A firm shall keep in an official language of the Republic such accounting records as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogation from the generality of this rule:

50.6.1 records showing all assets and liabilities as required in terms of sections 87 of the Act;

50.6.2 records containing entries from day to day of all monies received and paid by it on its own account, as required by sections 87(1) and 87(3) of the Act;

50.6.3 records containing particulars and information of:

50.6.3.1 all monies received, held and paid by it for and on account of any person;

50.6.3.2 all monies invested by it in terms of section 86(3) or section 86(4) of the Act;

50.6.3.3 any interest referred to in section 86(5) of the Act which is paid over or credited to it;

50.6.3.4 any interest credited to or in respect of any separate trust savings.

Acceptable financial reporting framework

50.7 **For purposes of these rules:**

50.7.1 acceptable financial reporting frameworks which are to be recognised and applied are:

- 50.7.1.1 "IFRS" being International Financial Reporting Standards as issued from time to time by the International Reporting Standards Board, or its successor body; and
- 50.7.1.2 "IFRS for SMEs", being IFRS for Small and Medium Enterprises.
- 50.7.2 In determining what is meant by "acceptable financial reporting frameworks" regard shall be had, *inter alia*, to any rulings of the Council published to trust account practitioners with respect to specific additional disclosures required to be made in the financial statements or trust account Schedules.

Distinguishing between trust account and business account transactions

- 50.8 The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.

Retention of accounting records and files

- 50.9 A firm shall retain its accounting records, and all files and documents relating to matters dealt with by the firm on behalf of clients:
- 50.9.1 for at least five years from the date of the last entry recorded in each particular book or other document of record or file;
- 50.9.2 save with the prior written consent of the Council, or when removed therefrom under other lawful authority, at no place other than its main office, a branch office or, in the case of electronic accounting records or files, the location at which such accounting records or files are ordinarily hosted; provided that:
- 50.9.2.1 in the case of electronic accounting records or files hosted offsite, such records or files shall always be reasonably secured and shall remain immediately accessible to authorised persons from the office of the firm, and to the Council; and
- 50.9.2.2 in the case of a branch office, only insofar as they relate to any part of its practice conducted at that branch office.

Updating accounting records

- 50.10 A firm shall update and balance its accounting records monthly and shall be deemed to comply with this rule if, *inter alia*, its accounting records have been written up by the last day of the following month.

Trust money to be kept separate from other money

- 50.11 Trust money shall in no circumstances be deposited in or credited to a business banking account. Money other than trust money found in a trust banking account at any time shall be transferred to a business banking account without undue delay. A firm shall be deemed to have complied sufficiently with this rule if it:
- 50.11.1 makes transfers from its trust banking account to its business banking account at least once a month; and
 - 50.11.2 ensures that, when making a transfer from its trust banking account to its business banking account:
 - 50.11.2.1 the amount transferred is identifiable with, and does not exceed, the amount due to the firm;
 - 50.11.2.2 the trust creditor from whose account the transfer is made is identified; and
 - 50.11.2.3 the balance of any amount due to the firm remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.

Accounting to clients

- 50.12 Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for not less than five years; each account shall contain details of:
- 50.12.1.1 all amounts received by it in connection with the matter concerned, appropriately explained;

- 50.12.1.2 all disbursements and other payments made by it in connection with the matter;
- 50.12.1.3 all fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed;
- 50.12.1.4 the amount owing to or by the client.

Payment to clients

- 50.13 A firm shall, unless otherwise instructed, pay any amount due to a client within a reasonable time.

Accounting Requirements - Accounting Records

- 50.14.1 A firm shall maintain its accounting records in terms of the Act and these rules.
- 50.14.2 A firm shall report to the Council forthwith, in writing, any loss, theft or destruction of any such records.
- 50.14.3 A firm shall, in the case of the accounting records being computerised, make monthly back-ups which shall be kept in a safe, fireproof place remote from the firm or, in the case of accounting records being in the form of manual books of account, by ensuring that, outside normal business hours, such records are kept in a safe place.
- 50.14.4 If the firm keeps any of its accounting records in electronic form, the firm shall:
 - 50.14.4.1 provide adequate precautions against loss of the records as a result of damage to or failure of the media in which the records are maintained; and
 - 50.14.4.2 ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems or software from time to time.

50.14.5 A firm shall, where the firm utilises electronic banking in respect of payments from the trust account, keep a proper audit trail, which shall include verification of the payee's banking account details.

50.14.6 The firm's accounting records shall not, save with the prior written consent of Council or under lawful authority, and except for electronic records in terms of accounting rule 50.14.3 and backups of computerised records, be maintained at any place other than its main office or branch office, but in the latter instance, only insofar as they relate to any part of its practice conducted at that branch.

50.14.7 A firm shall ensure:

Internal controls

50.14.7.1 that adequate internal controls are implemented to ensure compliance with these rules and to ensure that trust funds are safeguarded; and in particular to ensure -

50.14.7.1.1 that the design of the internal controls is appropriate to address identified risks;

50.14.7.1.2 that the internal controls have been implemented as designed;

50.14.7.1.3 that the internal controls which have been implemented operate effectively throughout the period ;

50.14.7.1.4 that the effective operation of the internal controls is monitored regularly by designated persons in the firm having the appropriate authority;

Prompt depositing of trust monies

50.14.7.2 that all money received by it on account of any person is deposited intact into its trust banking account on the date of its receipt or the first banking day following its receipt on which it might reasonably be expected that it would be banked;

Transfers from trust investment account

- 50.14.7.3 unless the firm has received written authorisation for the payment of any guarantees issued by a bank on the strength of a trust investment, that any amount withdrawn by it from a trust investment account is deposited promptly by it in its trust banking account.

Trust moneys not to be less than trust balances

- 50.14.8 A firm shall ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records.

Trust accounts not to be in debit

- 50.14.9 A firm shall ensure that no account of any trust creditor is in debit.

Reports to Council of non-compliance

- 50.14.10 A firm shall immediately report in writing to the Council should the total amount of money in its trust bank accounts and money held as trust cash be less than the total amount of credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reason for the debit and proof of rectification.
- 50.14.11 A firm shall immediately report in writing to the Council should an account of any trust creditor be in debit, together with a written explanation of the reason for the debit and proof of rectification.

Transfer from trust bank account to business bank account

- 50.14.12 A firm shall employ and maintain a system to ensure that the requirements of these rules are not infringed when amounts are transferred from its trust banking account to its business banking account.

Deposits on account of charges

- 50.14.13 Amounts received by a firm in advance to cover a prospective liability for services rendered or to be rendered or for disbursements (including

counsel's fees) to be made must be deposited forthwith to the credit of its trust banking account.

Withdrawals from trust banking account

50.14.14 Withdrawals from a firm's trust banking account shall be made only:

50.14.14.1 to or for a trust creditor; or

50.14.14.2 as transfers to the firm's business banking account, provided that such transfers shall be made only in respect of money due to the firm; and provided that no transfer from its trust banking account to its business banking account is made in respect of any disbursement (including counsel's fees) or fees of the firm unless:

50.14.14.2.1 the disbursements have actually been made and debited by the firm; or

50.14.14.2.2 a contractual obligation has arisen on the part of the firm to pay the disbursement; or

50.14.14.2.3 fees and disbursement have been correctly debited in its accounting records.

Payments from trust banking account

50.14.15.1 Any cheque drawn on a firm's trust banking account shall be made payable to or to the order of a payee specifically designated.

50.14.15.2 Payments from the trust banking account of a firm shall only be by cheque or electronic transfer.

50.14.15.3 No withdrawals from the trust banking account of a firm may be made by way of cellular and telephone transacting.

Interest accrued on trust banking account

50.14.16 The trust interest accrued on a firm's trust banking account or trust investment account, and that part of the interest accrued on a trust savings account opened in terms of section 86(4) of the Act which is payable to the

Fund in terms of section 86(5)(b) of the Act, shall be paid over to the Fund or its nominee at such times and in such manner as shall be determined by the Council from time to time.

Lists of balances

- 50.15.1 Every firm shall extract at intervals of not more than three calendar months, and in a clearly legible manner, a list showing all persons on whose account money is held or has been received and the amount of all such moneys standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in order to ensure compliance with accounting rule 50.14.7.
- 50.15.2 The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which the balance was extracted.
- 50.15.3 Each such list shall be part of the accounting records of the firm to be retained for the five-year period referred to in accounting rule 50.9.

Notification of trust banking account

- 50.16 Every firm shall:
- 50.16.1 immediately notify the Council in writing of the name and address of the bank or banks at which its trust banking account or accounts are kept and shall thereafter notify the Council immediately of any change in the name and address of such bank or banks;
- 50.16.2 whenever so required by the Council, furnish to the Council within ten days or such longer period as the Council may stipulate, a signed statement issued by the bank or banks with which it keeps its trust banking account or accounts and a signed statement issued by the bank with which the firm keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account or accounts at such date or dates as may be specified by the Council.

Trust account investments in terms of section 86(4)

- 50.17 A firm which invests funds on behalf of any person shall, in addition to all other requirements applicable to the holding or investment of trust money:
- 50.17.1 not invest such funds other than in a trust savings or other interest-bearing account with a bank;
- 50.17.2 obtain that person's written confirmation of the investment as soon as is reasonably possible, or notify that person forthwith thereof in writing; and
- 50.17.3 forthwith cause the relevant trust savings or other interest-bearing account to be endorsed to the effect that it is an account opened in terms of Section 86(4) of the Act.
- 50.18 A firm shall not, in connection with any mandate which the firm has accepted to invest trust funds, agree or arrange to receive from a bank any commission, fee or other reward, without having disclosed, in writing, such commission, fee or reward to the person who has given the firm the mandate to invest.

Responsibility for ensuring compliance

- 50.19 Every partner of a firm, and every director of a juristic entity referred to in section 34(7) of the Act, and every advocate referred to in section 34(2)(b) of the Act, will be responsible for ensuring that the provisions of the Act and of those rules relating to trust accounts of the firm are complied with.

Reporting Requirements

- 50.20 A firm shall at its expense once in each calendar year or at such other times as the Council may require, appoint an auditor to discharge the duties assigned to the auditor in terms of these rules; provided that:
- 50.20.1 the Council may refuse to recognise the appointment by a firm of an auditor of whom the Council on good cause does not approve;
- 50.20.2 the Council may at any time, in its discretion and at its expense, appoint an auditor or a suitably qualified inspector to discharge those duties;

- 50.20.3 on the written application of a firm the Council may authorise the firm to appoint a person who in the opinion of the Council is suitably qualified as an inspector to perform the functions of an auditor in terms of these rules, subject to such terms as the Council in its discretion may determine.
- 50.21 A firm which commences practice for the first time shall, within six months of so commencing practice, furnish the Council with a report substantially in the form of the First Schedule to these rules (or in such other form as the Council may determine after consultation with the Independent Regulatory Board for auditors) covering the first four months of that firm's practice.
- 50.22 A firm shall allow an auditor or inspector appointed under accounting rule 50.20 access to such of its records as the auditor or inspector may deem necessary to examine for the purposes of discharging his duties under accounting rule 50.24 and shall furnish the auditor or inspector with any authority which may be required to enable the auditor or inspector to obtain such information, certificates or other evidence as the auditor may reasonably require for such purposes.
- 50.23 A firm shall ensure that the report to be furnished by an auditor or inspector in terms of accounting rule 50.21 or 50.22 is furnished in its original format (which may include an electronic format specified by the Council) within the required time or on the required date; provided that on written application by a firm relating to a particular report the Council may, in its discretion and on such conditions as it may stipulate, condone a failure by that firm to comply with this requirement. The form of such report shall be obtained only from the Council, which shall issue it on request to any firm or to any auditor or inspector appointed in terms of accounting rule 50.20.
- 50.24 A firm shall ensure that every auditor or inspector who has accepted an appointment in terms of accounting rule 50.20 shall:
- 50.24.1 within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require and subject to any conditions that the Council may impose, furnish the Council with a report which shall be in the form of the First Schedule to these rules or in such other form as the Council may determine after consultation with the Independent Regulatory Board for Auditors;

- 50.24.2 without delay report in writing directly to the Council if at any time during the discharge of his or her functions and duties under this rule:
- 50.24.2.1 if it comes to his or her notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, its trust investment account and held by it as trust cash;
- 50.24.2.2 any material queries regarding the firm's accounting records which the auditor or inspector has raised with the firm have not been dealt with to his satisfaction;
- 50.24.2.3 any reasonable request made by the auditor or inspector for access to the firm's records or for any authority referred to in accounting rule 50.24 has not been met to his or her satisfaction;
- 50.24.3 state in his or her report in terms of accounting rule 50.24.1 that to the best of his or her belief:
- 50.24.3.1 the firm has not, during the period under review, carried on the business of an investment practice; or
- 50.24.3.2 the firm has carried on the business of an investment practice and has complied with these rules.
- 50.25.1 The Council may reject a report in terms of accounting rule 50.24 from an auditor or inspector whose appointment the Council has refused to recognise, as provided in accounting rule 50.20.1, or which is not in the prescribed format.
- 50.25.2 A copy of the report on the prescribed form required under accounting rule 50.24.1 and any report made in terms of accounting rule 50.24.2 shall be sent by the auditor or inspector to the firm concerned.
- 50.26 Where the Council is satisfied that it is not practicable to obtain the services of an auditor or inspector for the issuing of a report as prescribed under accounting rule 50.24, it may in lieu thereof accept as compliance with the requirements of accounting rule 50.24 such other evidence as it may deem sufficient.

- 50.27 The Council may by notice to trust account practices amend the Schedule or the audit report form as may be required from time to time to report such information as may be required.
- 50.28 A firm is obliged to report in the relevant sections of the accounting rule 51 report the gross interest earned and the gross charges levied in respect of trust accounts in terms of sections 86(1) or 86(3) or 86(4) of the Act, even if no claim in respect of bank charges is to be made.
- 50.29 In order to qualify for the issue of a Fidelity Fund certificate, a trust account practitioner must ensure that an unqualified audit or inspector's report is issued in respect of any firm or firms of which he or she was a partner or director or sole practitioner during the financial period under review, and is delivered timeously to the Society.
- 50.30 Where the audit or inspector's report in respect of the trust account of the firm is qualified by the auditor or inspector, as the case may be, the firm shall provide the Council with such information as the Council may require to satisfy itself that the firm's trust account is in good order, that the trust account practitioner remains fit and proper to continue to practise and that Fidelity Fund certificates may be issued to the members of the firm.

Closure of firm

- 50.31 A trust account practitioner who practises for his or her own account and who intends to cease practising shall, before he or she so ceases to practice, provide the Council, in writing, with the following information:
- 50.31.1 notice of the trust account practitioner's intention to cease practising for his or her own account;
- 50.31.2 his or her future contact particulars, being his or her residential and business address, fax, e-mail and telephone details;
- 50.31.3 the steps to be taken to satisfy the Council that provision has been made for the effective winding up of his or her practice, both in respect of current files and archived files and in respect of accounting records;
- 50.31.4 the name, address and telephone number of his or her bookkeeper;

- 50.31.5 the status of the writing up of his or her accounting records by providing the Council with a copy of the latest trust reconciliation;
- 50.31.6 the name of the auditor or inspector who will be submitting the final audit report;
- 50.31.7 updated contact particulars for as the trust account practitioner remains on the roll.
- 50.32 A trust account practitioner shall be required to submit, within three months of the date that such practitioner ceases to practise:
- 50.32.1 an audit or inspector's report for any period for which an audit or review is outstanding, up to date of closure of the trust banking account;
- 50.32.2 a final list of trust creditors as at the date on which the trust account practitioner ceased to practise;
- 50.32.3 confirmation from the auditor or inspector that all trust creditors have been paid;
- 50.32.4 in the event of trust creditors being taken over by another firm, a list of trust creditors, signed by the trust account practitioner, after the auditor or inspector confirms that that list is correct, and signed by or on behalf of the partners of the firm taking over the trust creditors, confirming that they accept liability for claims of the trust creditors listed and that they have received the funds;
- 50.32.5 a certificate of nil balance from the trust account practitioner's bank confirming that the trust banking account has been closed.
- 50.33 In the event of non-compliance with accounting rule 50.31 or 50.32, or if at any time the Council has reason to believe that adequate provision has not been made for the winding up of the practice or for the protection of the interests of clients' affairs, the Council may take such steps as it deems necessary to wind up the practice subject to the Council's being entitled to recover the reasonable expenses incurred and reasonable compensation for work done in connection therewith from the trust account practitioner concerned.

Opening of practice

50.34 An office opened by a firm, which for the first time opens a practice within the jurisdiction of a Provincial Council, shall be designated as a main office of the firm in that jurisdiction, and the firm shall ensure that:

50.34.1 banking accounts for the firm are opened in that jurisdiction;

50.34.2 a separate set of accounting records is kept for the office.

50.35 The Council may at any time inspect or cause to be inspected the accounting records of any firm to satisfy itself that the provisions of section 86 of the Act, read with these rules, have been or are being complied with. Such inspection may be conducted by the Council, or by an auditor or suitably qualified inspector appointed by the Council, or by the Fund at the request of the Council.

Report of dishonest or irregular conduct

50.36 Unless prevented by law from doing so every trust account practitioner is required to report to the Council any dishonest or irregular conduct on the part of another trust account practitioner in relation to the handling of or accounting for trust money on the part of that other trust account practitioner.

50.37

Investment Practice Rules**Definitions**

51.1 A firm shall for the purpose of this rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients and it controls or manages such investments, whether directly or indirectly.

51.2 A client shall for the purpose of this investment practice rule include any person on whose behalf a firm invests funds or manages or controls investments, whether or not such person is otherwise a client of the firm concerned.

51.3 This investment practice rule shall not apply to:

- 51.3.1 investments made pursuant to section 86(4) of the Act, which are not transactions contemplated in investment practice rule 51.1;
- 51.3.2 any investment of a temporary nature that is made in the course of and incidental to a conveyancing or other matter, including litigation, to which the investing client is a party;
- 51.3.3 investments made by attorneys in their capacity as executors, trustees, curators or in any similar capacity in so far as such investments are governed by any other statutory enactment or regulation;
- 51.3.4 any investment (other than one referred to in investment practice rule 51.1) made with a bank in the name of that client alone and on the written instructions of that client.

Mandates

- 51.4 A firm carrying on an investment practice shall obtain an investment mandate from each client before or as soon as possible after investing funds for that client. The form of the investment mandate shall be substantially in the form of the Second Schedule to these rules, and shall contain a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.

Reports to clients in relation to investments

- 51.5 Every firm carrying on an investment practice shall report to its client in writing in terms of the client's investment mandate at least once every twelve months on income earned and capital movements during the period of the report. That report shall reflect all commission earned or other charges made by the firm in carrying out the mandate.

Accounting records for investment practices

- 51.6 Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep a separate trust account record and supporting documents in respect of each client, which record shall reflect:

- 51.6.1 payments of all monies entrusted to it from time to time by the client for investment pursuant to the mandate granted by the client in terms of investment practice rule 51.4;
- 51.6.2 payments of all monies invested by it on the client's behalf;
- 51.6.3 payments of all amounts, both capital and income, derived from investments and received for the client's account;
- 51.6.4 all payments made by it to the client in respect of the client's investments, and
- 51.6.5 all charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate in terms of investment practice rule 51.4.
- 51.7 The accounting records and other supporting documents referred to in investment practice rule 51.6 shall be retained by the firm in such manner as to enable it to furnish each client upon request with all current details of the client's investments as recorded in investment practice rule 51.6. Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed. Where accounting records are maintained by means other than on paper, adequate facilities must exist for such records to be reproduced in printed form.
- 51.8 All accounting records required to be retained in terms of investment practice rule 51.3 and copies of all reports dispatched in terms of rule 51.3 shall be retained for at least five years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record, and shall be held at the same office as the firm's other accounting records.

Pooling of investments

- 51.9 No firm may mix deposits in a pooled account or make other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a bank in a savings account or on the money market on behalf of the client. The firm shall obtain from the bank an acknowledgement of receipt of each deposit or money market investment and such written receipts shall be retained by the firm as part of its accounting records.
- 51.10 All monies received by a firm for investment with a bank shall be paid to such bank as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a payment by cheque has been cleared with the issuing bank.

Restrictions applicable to certain investments

- 51.11 A firm may not invest on behalf of a client:
- 51.11.1 in shares or debentures in any company which is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or
- 51.11.2 in loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security, unless the client's specific written authorisation for each such investment has first been obtained.

Compliance with requirements of Financial Advisory and Intermediary Services FAIS Act.

- 51.12 Every firm carrying on an investment practice must comply with all the applicable requirements of the Financial Advisory and Intermediary Services Act, 37 of 2002 and the regulations thereunder.

Investment of funds by firms on behalf of persons, otherwise than in terms of investment practice rule 51

- 52.1 A firm shall not invest any funds on behalf of any person otherwise than in accordance with the written instructions of that person, detailing the manner and form of the investment.
- 52.2 The written instructions referred to in rule 52.1:
- 52.2.1 shall be obtained by the firm concerned before the investment is made, save that, in cases of urgency, the firm may obtain them as soon as possible thereafter and shall forthwith upon making the investment request the person concerned in writing to furnish it with such instructions, detailing in that request the manner and form of the investment;
- 52.2.2 may be incorporated in a written contract to which the person giving the instructions is a party.
- 52.3 If the firm does not receive the written instructions to be obtained by it in terms of rule 52.2 within one month after its written request the firm shall forthwith notify the Council in writing and at the same time furnish the Council with copies of all relevant letters of request and responses, if any.

General Provisions

- 53.1 Failure by a firm to comply with any of the provisions of the rules contained in Part XI of the rules shall constitute misconduct on the part of the partners or directors of the firm.
- 53.2 An administrative levy in an amount to be determined by the Council from time to time shall be payable by all firms whose audit reports are not submitted within six months of the annual close of the accounting records of the firms concerned, as prescribed by accounting rule 50.24.
- 53.3 It shall constitute misconduct, or an abuse or misuse of trust funds, for a trust account practitioner to enter into any abnormal or unusual banking arrangement in relation to trust accounts such as "no interest - no charges" or to agree to or acquiesce in reduced interest or to increased charges in return for, or in the expectation or hope of, work allocated or referred to the trust account practitioner by the bank or corresponding advantages allowed by the bank to him or her in respect of his or her business or private accounts.

- 53.4 The Council shall be entitled to recover from any firm any expenditure incurred by the Council resulting from the firm's failure to comply with these accounting rules.

PART XIII

LEGAL PRACTITIONERS' FIDELITY FUND

54. Compliance and Enforcement: Inspections

54.1 Authority to conduct inspections

- 54.1.1 The Board may at any time, itself or through its nominee, or through a nominee of the Council acting on behalf of the Board, and at its own cost and on its own initiative, inspect the accounting records of any trust account practice in order to satisfy itself that the provisions of sections 86 and 87 of the Act, and the Council rules, are being complied with.
- 54.1.2 If on an inspection it is found that any of the provisions of sections 86 or 87, or the Council rules, have not been complied with, the Board may write up the accounting records of the trust account practice and recover the costs of the inspection and the writing up of the accounting records from the trust account practice concerned. If on an inspection it is found that any of the provisions of sections 86 or 87, or the Council rules, have not been complied with, the Board may write up the accounting records of the trust account practice and recover the costs of the inspection and the writing up of the accounting records from the trust account practice concerned.

54.2 Inspections

- 54.2.1 The Board may appoint any person in the service of the Board, or any other suitably qualified person, as an inspector to carry out inspections in terms of these rules.
- 54.2.2 The Board may determine the remuneration to be paid to a person who is appointed in terms of rule 54.2.1 and who is not in the full time service of the Board.

54.3 Certificate of appointment

54.3.1 The Board must issue an inspector contemplated in rule 54.2 (whether a person in the full time service of the Board or any other suitably qualified person) with a certificate of appointment signed by the chief executive officer of the Board, which certificate of appointment must specify -

54.3.1.1 the full name of the person so appointed;

54.3.1.2 his or her identity number;

54.3.1.3 his or her signature;

54.3.1.4 a description of the capacity in which he or she is appointed; and

54.3.1.5 the extent of his or her powers to inspect.

54.3.2 When an inspector undertakes an inspection in terms of these rules the inspector must -

54.3.2.1 be in possession of a certificate of appointment issued in terms of rule 54.3.1; and

54.3.2.2 on request, show that certificate to any person who is affected by the performance of the functions of the inspector, or is in charge of any premises or firm to be inspected.

54.4 **Conduct of inspections**

54.4.1 In carrying out the Board's functions in terms of these rules an inspector may at any reasonable time, and on reasonable notice where appropriate, enter and inspect any premises at which the Board reasonably believes that a trust account practice is being conducted.

54.4.2 In conducting such an inspection an inspector may -

54.4.2.1 in writing direct a person to appear for questioning before the inspector at a time and place determined by the inspector;

54.4.2.2 order any person who has or had any document in his, her or its possession or under his, her or its control relating to the accounting records of the firm to produce that document or to furnish the

inspector, at the place and in a manner determined by the inspector, with information in respect of that document;

54.4.2.3 open any strongroom, safe or other container, or order any person to open any strongroom, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;

54.4.2.4 use any computer system or equipment on the premises, or require reasonable assistance from any person on the premises to use that computer system, to access any data contained in or available to that computer system, and to reproduce any document from that data;

54.4.2.5 examine or make extracts from, or copy, any document in the possession of the firm or any other person which is relevant to the inspection or, against the issue of a receipt, remove that document temporarily for that purpose; and

54.4.2.6 against the issue of a receipt, seize any document obtained in terms of 54.4.2.3 to 54.4.2.5 which, in the opinion of the inspector, may constitute evidence of non-compliance with the provisions of sections 86 and 87 of the Act or of the rules.

54.4.3 A firm to whom this Act applies must, without delay, provide reasonable assistance to an inspector acting in terms of rule 54.4.

54.4.4 No warrant is required for the purposes of an inspection in terms of these rules.

54.4.5 An inspector may at any time request the firm to provide to the Board such additional information or documentation relating to the subject matter of the inspection.

54.5 The inspection procedure

54.5.1 The procedure for an inspection will be determined on a case-by-case basis by the inspector.

54.5.2 An inspection may be conducted by one or more inspectors. Where more than one inspector is engaged in an inspection, one of the inspectors will

be designated as the lead inspector who will take overall responsibility for the conduct of the inspection.

- 54.5.3 Any request for the firm to produce documentation for purposes of inspection must be in writing, unless the purpose of the inspection, in the reasonable opinion of the inspector, would be frustrated by the giving of notice.
- 54.5.4 All inspections must be conducted so as to cause as little inconvenience and disruption to the firm and its staff as possible.
- 54.5.5 The inspection should be conducted only during normal business hours, unless the inspector reasonably considers that the conducting of an inspection at any other time is necessary on the grounds of urgency or expediency.
- 54.5.6 Not less than seven days' notice in writing shall be given to the firm of any inspection; provided that where the inspector has a reasonable suspicion that there has been a contravention of the Act or of the Council rules, or that the purpose of the inspection may be frustrated by the giving of notice, the inspection may be conducted without notice.
- 54.5.7 Only the inspector, and such other officials of the Board as may be reasonably necessary to carry out the inspection, should enter the premises of the firm during the course of the inspection. The person in charge of the firm, or a person nominated by him or her, shall be entitled to be present and to observe all aspects of the inspection, but the failure of that person to be present at the inspection shall not prevent the inspector from proceeding with the inspection.
- 54.5.8 If an inspector, after having identified himself or herself and declared his or her official capacity and the purpose for requiring admission to the premises of the firm and having complied with any other reasonable requirements, is not immediately given admission to the premises, the Board may apply to court for an order that the inspector be admitted to the premises to enable the inspection to be carried out.

- 54.5.9 The firm which is the subject of the inspection shall make such facilities available to the inspector as may reasonably be required for the purpose of conducting the inspection.
- 54.5.10 Any request for information or documentation which is not immediately available for inspection must be in writing and must allow the firm a reasonable time to comply with the request. Any such request -
- 54.5.10.1 must describe with reasonable particularity each item or category of items to be inspected;
- 54.5.10.2 must specify a reasonable time, place and manner for inspection and for performing any related acts; and
- 54.5.10.3 in the case of electronically stored information, must specify the form in which that information is to be produced.
- 54.5.11 If the firm which is the subject of an inspection objects to making disclosure of documentation or information which is called for by the inspector, the firm must set out its objection in writing, with detailed grounds of the objection, and the matter shall be determined by the chief executive officer of the Board.
- 54.5.12 Unless otherwise stipulated or ordered by a court, the following procedures shall apply to producing documents or electronically stored information:
- 54.5.12.1 the firm must produce documents as they are kept in the normal and ordinary course of business, or must otherwise organise and label the documents to correspond to the categories in the request;
- 54.5.12.2 if the request for information does not specify a form for producing electronically stored information, the firm must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form; and
- 54.5.12.3 the firm may not be required to produce the same electronically stored information in more than one form.

- 54.5.13 The Board may request the firm which is subject to the inspection to complete a pre-inspection questionnaire to allow for more efficient planning and conducting of the inspection.
- 54.5.14 At the conclusion of the inspection the inspector must prepare a report to the Board on the findings of the inspection, a copy of which report must be made available to the firm which was subject to the inspection. If the firm objects to any of the findings in the report it must do so in writing to the Board, outlining the basis of the objection. The Board shall consider the objections and shall take such further action in relation thereto as the Board considers appropriate.
- 54.5.15 The Board may in its discretion refer the inspection report to the Council for consideration. The firm which is the subject of the report shall be notified of such referral.
- 54.5.16 Any report of an inspection may, if appropriate, be used in disciplinary or criminal proceedings which may be brought against members of the firm.
- 54.6 **Duty to cooperate**
- 54.6.1 Every firm, and every partner or director of the firm, and every trust account advocate, must cooperate with the Board in the performance of any inspection in terms of these rules. Without limiting the generality of this provision, cooperation shall include cooperating with and complying with any lawful request, made in pursuance of the Board's authority and responsibilities under the Act -
- 54.6.1.1 to provide access to, and the ability to copy, any accounting record in the possession, custody or control of the firm or of that person; and
- 54.6.1.2 provide information by oral interviews, written responses or otherwise.
- 54.6.1.3 any person who refuses or fails to produce a book, document or any article for purposes of an inspection, or obstructs or hinders any person in the performance of his or her functions in conducting the investigation, is guilty of an offence.

- 54.6.2 The Board will not be liable for any costs incurred by the firm arising out of an inspection in terms of these rules, otherwise than in exceptional circumstances.

54.7 Confidentiality

Subject to any other law, any person who performs any function under these rules may not disclose any information which he or she obtained in the performance of that function except -

- 54.7.1 for the purposes of an inspection or hearing by a disciplinary body of the Council;
- 54.7.2 to any person authorised thereto by the Board or the Council who of necessity requires it for the performance of his or her functions under the Act or these rules;
- 54.7.3 if he or she is a person who of necessity supplies it in the performance of his or her functions under the Act or under these rules;
- 54.7.4 when required to do so by order of a court of law;
- 54.7.5 at the written request of the Legal Services Ombud for the Republic; or
- 54.7.6 at the written request of the National Prosecuting Authority or any competent authority which requires it for the institution of an investigation with a view to the institution of any criminal prosecution.

54.8 Obligations to provide information and documentation not affected by confidentiality rules

Subject to the provisions of any other law, a firm, or the person in charge of the firm, or any person nominated by him or her, may not refuse to produce any book, document or article required for purposes of an inspection under these rules, even though he or she is of the opinion that it contains confidential information belonging to or concerning his or her client. Contributions to the fund: insurance premiums

55. Contributions to the fund: insurance premiums

- 55.1 Every attorney who is required to be in possession of a fidelity fund certificate, and every advocate contemplated in section 34(2)(b) of the Act, shall pay annually to the Council, on behalf of the Fund, such amount as the Board shall determine as a contribution to the Fund towards the cost of the premiums payable by the Fund in respect of contracts of insurance entered into in terms of section 77 of the Act.
- 55.2 The annual contributions payable in terms of rule 3.1 shall be payable by not later than 30 November in every year commencing in the year to be determined by the Board; provided that any practitioner enrolled after 30 June in any year shall pay only one-half of the annual fee for the year then current, payable within thirty days of enrolment.
- 55.3 The Board shall, not later than the last day of September in every year, cause to be sent to every legal practitioner who is obliged in terms of section 84(1) of the Act to be in possession of a fidelity fund certificate, by electronic on-line transmission to that legal practitioner's electronic mail address (or by pre-paid post to the postal address of that legal practitioner, or by delivery to that legal practitioner's business address, where the legal practitioner has not provided the Council with an email address) an invoice in respect of the contribution to be made by the legal practitioner in respect of the year following.
- 55.4 The failure on the part of a legal practitioner to receive an invoice in respect of the contribution shall not relieve the legal practitioner of his or her obligation to make payment of the contribution as required by rule 55.1.

56. Issuing and costs of fidelity fund certificate

- 56.1 Subject to the payment of all contributions payable by a legal practitioner for the issue of a fidelity fund certificate, as required by rule 55.1, and upon receipt of the costs payable to the Council for the issue of the fidelity fund certificate, as determined from time to time by the Council in consultation with the Board, and as notified by the Council in the *Gazette*, and subject to the Council's being satisfied as to the matters dealt with in the application for the fidelity fund

certificate, the Board shall cause the Council to issue a fidelity fund certificate to the applicant.

- 56.2 A fidelity fund certificate shall be in the form of Schedule 2A to these rules (in the case of attorneys) and Schedule 2B to these rules (in the case of advocates referred to in section 34(2)(b) of the Act), and shall be signed by an authorised official on behalf of the Council, and the production of such a certificate purporting to be so signed shall be prima facie evidence of its contents.

57. Procedure for the appointment of the executive officer and other employees

- 57.1 The Board must appoint an executive officer to carry out the functions referred to in section 63(2) of the Act, and such other employees as it deems necessary to assist the executive officer.
- 57.2 The procedure for the appointment of the executive officer shall be as follows:
- 57.2.1 the Board shall advertise the vacancy for an executive officer in such media and in such manner as the Board shall determine;
- 57.2.2 the advertisement shall state the criteria to be considered by the Board in appointing the executive officer;
- 57.2.3 the advertisement calling for applications shall state the date by which applications should be received, and shall include a statement that applications received after that date will not be considered;
- 57.2.4 after the closing date the Board, or a committee of the Board established for that purpose, shall review the applications and arrange to interview those of the applicants which the Board or the committee, as the case may be, considers to be suitable for the position of executive officer; provided that if the Board or the committee, as the case may be, considers that none of the applicants is suitable for the position the Board shall again advertise for the vacancy, and the provisions of rules 57.2.1 to 57.2.4 shall again apply.
- 57.2.5 If, after following the procedure referred to in this rule 57.2, the Board appoints a candidate to fill the office of executive officer it shall enter into a

written agreement with the individual setting out the terms and conditions of the appointment.

57.3 Nothing in these rules shall be construed -

57.3.1 as requiring the Board to appoint any of the applicants for the vacancy; or

57.3.2 as prohibiting an existing employee of the Board from applying for the position of executive officer.

57.4 The procedure for the appointment of other employees of the Board shall be determined by the Board.

57.5 The need for the staff of the Board to reflect -

57.5.1 the racial and gender composition of South Africa; and

57.5.2 representation of persons with disabilities

must as far as practicable be considered when the executive officer and other employees of the Board are appointed.

57.6 The Board must determine the conditions of service of the executive officer and other employees of the Board.

**Schedule 1A
(Part A)
(Rule 16.12.4)****Provincial Council of [●]****Ballot Paper - Attorneys**

(for use in elections for all Provincial Councils except for the Gauteng Provincial Council)

Every attorney who is on the roll of practising attorneys and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of six candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the six attorneys who will serve as members of the Provincial Council:

1. the two black women¹ with the highest number of votes in this category;
2. the two black men with the highest number of votes in this category;
3. the white woman with the highest number of votes in this category;
4. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

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¹ Black is used as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003, read with the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013 as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation.

When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.*

**Schedule 1A
(Part B)
(Rule 16.12.4)****Provincial Council of Gauteng****Ballot Paper - Attorneys****(only for use in elections for the Gauteng Provincial Council)**

Every attorney who is on the roll of practising attorneys and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of eight candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the eight attorneys who will serve as members of the Provincial Council:

1. the two black women² with the highest number of votes in this category;
2. the two black men with the highest number of votes in this category;
3. the two white women with the highest number of votes in this category;
4. the two white men with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

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² Black is used as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003, read with the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013 as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation.

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When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.*

**Schedule 1B
(Part A)
(Rule 16.12.4)****Provincial Council of [●]****Ballot Paper - Advocates**

(for use in elections for all Provincial Councils except for the Gauteng Provincial Council)

Every advocate who is on the roll of practising advocates and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of four candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the four advocates who will serve as members of the Provincial Council:

1. the black woman³ with the highest number of votes in this category;
2. the black man with the highest number of votes in this category;
3. the white woman with the highest number of votes in this category;
4. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

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³ Black is used as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003, read with the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013 as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation.

When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.*

**Schedule 1B
(Part B)
(Rule 16.12.4)****Provincial Council of Gauteng****Ballot Paper - Advocates****(only for use in elections for the Gauteng Provincial Council)**

Every advocate who is on the roll of practising advocates and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of four candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the four advocates who will serve as members of the Provincial Council:

1. the black woman⁴ with the highest number of votes in this category; the black man with the highest number of votes in this category;
2. the white woman with the highest number of votes in this category;
3. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

A
B
C
D
E
F
G

⁴ Black is used as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003, read with the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013 as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994 or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date and such other persons as may be categorised as black persons for purposes of that legislation.

When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.*

**Schedule 2
(Rule 21.1.2.1)****Form of Practical Vocational Training Contract**

Practical vocational training contract entered into at on this day of 20....., between, an attorney of the High Court of South Africa (hereinafter referred to as the principal) and born on (hereinafter referred to as the candidate attorney).

1. The candidate attorney undertake -

- 1.1 to serve the principal diligently, honestly and properly in his or her profession as an attorney from the date hereof for such period as may be determined by regulation, and during that period to maintain confidentiality in all matters relating to the business of the principal;
- 1.2 to execute, at all times, all lawful instructions given to him or her by the principal or any partner of the principal or any person placed in authority over the candidate attorney by the principal or any partner of the principal;
- 1.3 not to absent himself or herself from his or her employment by the principal without the principal's prior consent;
- 1.4 subject to any applicable rule or regulation, not to engage in any business whatsoever other than that of a candidate attorney without the written consent of the principal and the Legal Practice Council;

2. The principal undertakes -

- 2.1 to use his or her best efforts to teach and instruct the candidate attorney in the practice and profession of an attorney;
- 2.2 provided the candidate attorney has served his or her period under this contract properly and is in the principal's opinion a fit and proper person for admission, to

use his or her best efforts to procure the admission and enrolment of the candidate attorney as an attorney of the High Court of South Africa.

3. Should the principal discontinue his or her practice he or she shall not thereafter be bound by this contract but shall, if requested by the candidate attorney, cede this contract to another qualified principal.

4. Should the candidate attorney:

4.1 not serve the period of service properly in terms of this contract;

4.2 commit a breach of any of the terms of this contract; or

4.3 be guilty of any misconduct

the principal will be entitled to cancel this contract and dismiss the candidate attorney from his or her employment.

Signed on 20...

As witnesses:

1
Principal

2
Candidate Attorney

**Schedule 3
(Rule 21.2.2.1)****Form of Practical Vocational Training Contract**

Practical vocational training contract entered into at on this day of 20....., between, an advocate of the High Court of South Africa (hereinafter referred to as the training supervisor) and born on (hereinafter referred to as the pupil).

1. The pupil undertakes -

- 1.1 to undergo training under the supervision of the training supervisor diligently, honestly and properly from the date hereof for such period as may be determined by regulation, and during that period to maintain confidentiality in all matters relating to the business of the training supervisor
- 1.2 to execute, at all times, all lawful instructions given to him or her by the training supervisor or any person placed in authority over the pupil by the training supervisor;
- 1.3 subject to any applicable rule or regulation not to engage in any business whatsoever other than that of a pupil without the written consent of the training supervisor and the Legal Practice Council;

2. The training supervisor undertakes -

- 2.1 to use his or her best efforts to teach and instruct the pupil in the practice and profession of an advocate;
- 2.2 provided the pupil has served his or her period under this contract properly and is in the training supervisor's opinion a fit and proper person for admission, to training supervisor use his or her best efforts to procure the admission and enrolment of the pupil as an advocate of the High Court of South Africa.

3. Should the training supervisor discontinue his or her practice or otherwise cease to qualify to act as a training supervisor he or she shall not thereafter be bound by this contract but shall, if requested by the pupil, cede this contract to another qualified training supervisor;

4. Should the pupil:

4.1 not serve the period of service properly in terms of this contract;

4.2 commit a breach of any of the terms of this contract; or

4.3 be guilty of any misconduct,

then the training supervisor will be entitled to cancel this contract.

Signed on 20...

As witnesses:

1
Training supervisor

2
Pupil

**Schedule 4
(Rule 42.1)****LEGAL PRACTICE COUNCIL****Form of Subpoena****(issued in terms of section 39(3) of the Legal Practice Act, 2014)**

To:

Name :

Physical address :

You are hereby required to appear in person at

.....on..... 20XX ...at.....(time)

before the disciplinary committee in the matter of a hearing in terms of section 39 of the
Legal Practice Act, 2014 (Act 28 of 1014), in relation to the conduct of

.....

You are required to remain in attendance until excused by the disciplinary committee in
order to testify at the hearing in regard to the matter under consideration.You are also required to bring with you, and then produce, the documents specified in the list
hereunder.**List of documents to be produced**

.....

.....

.....

Given under the hand of the disciplinary committee on20XX

Capacity

**Schedule 5
(Rule 45.2)****The Legal Practice Council****Complaint of misconduct**

A person wishing to complain against the conduct of a legal practitioner, a candidate legal practitioner or a juristic entity must initiate the process by completing this document, signing it before a Commissioner of Oaths and lodging the original with the Council at the following address:

[Insert address of the appropriate Provincial Council] or by prepaid post to **[insert postal address of the Provincial Council]**

In this document a reference to a "legal practitioner" is a reference to a legal practitioner, a candidate legal practitioner or a juristic entity, as the context requires.

*** PLEASE QUOTE OUR REFERENCE NUMBER AT ALL TIMES ***

Please complete the document in print or typing

Please note that it is your duty to inform the Legal Practice Council of any change in your address or particulars after this complaint has been lodged.

1.	COMPLAINANT'S DETAILS
Full name and surname	
Identity number	
Home address and code:	
Postal address and code:	
E-mail address:	
Telephone number/s:	
Your Employer:	

Work Address:	
Employer's telephone number:	
2.	LEGAL PRACTITIONER'S DETAILS
Full name and surname	
Where is the legal practitioner practising?	
If the legal practitioner is an attorney, the name of the firm of attorneys where the attorney is practising.	
3.	DETAILS OF YOUR COMPLAINT
On which date did you instruct the legal practitioner?	
What was the nature of your instruction to the legal practitioner? ie what did you ask the legal practitioner to do for you?	
When last did you hear from or consult with your legal practitioner?	
Was there a written letter of engagement?	
If so, please provide a copy.	Annexure:
4.	NATURE OF YOUR COMPLAINT
Into which of the following categories does your complaint fall?	
	Failure to account for money
	Failure to respond to communications
	Failure to deal properly with your instructions
	Fees and costs
	Other

5.	NATURE OF THE WORK
	Third party/motor vehicle accident claim
	Deceased estate
	Property transaction
	Divorce proceedings
	Criminal proceedings

Please complete only if your complaint does not fall within any of the above categories	
(Use a separate schedule if the space is insufficient)	
6	FURTHER DETAILS OF YOUR COMPLAINT
Did the legal practitioner send you you any letters after your instructions to him/her? (If you are in possession of such letters, please enclose only the letters relevant to your complaint.	
	Annexure/s:
Please state point by point why you are unhappy with the legal practitioner? In what way did he/she fail to do the work you expected to be done?	
(Use a separate schedule if the space is insufficient)	

<p>Please note that this document may be furnished to the legal practitioner. You are cautioned against making any potentially defamatory allegations against the legal practitioner, as you could expose yourself to a civil claim for damages by the legal practitioner</p>

LOGO

Schedule 6A
(Rule 47.6)**LEGAL PRACTITIONERS' FIDELITY FUND****FIDELITY FUND CERTIFICATE**

for the year ending 31 December [●]

Pursuant to the provisions of Chapter 6 of the
Legal Practice Act, 28 of 2014 (the Act)

I hereby certify that

[NAME OF LEGAL PRACTITIONER]

an attorney

of

[NAME OF FIRM]has complied with the provisions of Section 85 of the Act
in respect of the year ending 31 December [●]

for Executive OfficerLegal Practitioners'
Fidelity Fund

Issued on [●]

LOGO

Schedule 6B
(Rule 47.6)**LEGAL PRACTITIONERS' FIDELITY FUND****FIDELITY FUND CERTIFICATE**

for the year ending 31 December [●]

Pursuant to the provisions of Chapter 6 of the
Legal Practice Act, 28 of 2014 (the Act)

I hereby certify that

[NAME OF LEGAL PRACTITIONER]

an advocate as contemplated in section 34(2)(b) of the Act

has complied with the provisions of Section 85 of the Act

in respect of the year ending 31 December [●]

for Executive OfficerLegal Practitioners'
Fidelity Fund

Issued on [●]

**Schedule 7A
(Rule 49)****LEGAL PRACTITIONERS' FIDELITY FUND****APPLICATION FOR FUND CERTIFICATE IN TERMS OF THE
LEGAL PRACTICE ACT, 2014 (ACT NO. 28 OF 2014)
FOR THE YEAR ENDING 31 DECEMBER 20____****APPLICATION FORM FOR ATTORNEYS***PLEASE COMPLETE IN BLOCK LETTERS***GENERAL INFORMATION**

1. Full names of the applicant: _____

Identity
number: _____

Practitioner reference
number: _____
2. Name under which practice will be carried on ("the firm"). If the practice is
incorporated give the full name and registration number:

Firm classification (sole practitioner, partnership, incorporated practice): _____
Firm practice reference number: _____

Company
number: _____
3. Physical address at which practice will be carried on (i.e. principal place of practice)

Province: _____
4. Contact details:

Postal
address: _____

Residential

address: _____

Docex address (if applicable): _____

Telephone (business): _____ (home): _____

(fax): _____ (e-mail): _____

5. Any other physical address at which practice will be carried on, including province:

_____ Province: _____

Name of practitioner in control: _____

6. Full names of partners or co-directors, if any: _____

7. If no Fidelity Fund Certificate has been obtained for the current year, state date on which the applicant will begin to practise for own account or in partnership or as a member of an incorporated practice:

8. If applicant ceased to practise for own account, or in partnership or as member of an incorporated practice, and intends to resume practising, state:

Name and address of former practice: _____

_____ Province: _____

When applicant ceased to practise: _____

ADDITIONAL INFORMATION REQUIRED BY THE LEGAL PRACTITIONERS' FIDELITY FUND FOR RISK MANAGEMENT AND ANALYSIS

9. Registration number with the Financial Intelligence Centre (attach proof): _____

10. Appointed auditor: _____ Practice registration number: _____

Firm

name: _____

Physical

address: _____

Postal

address: _____

Telephone (business): _____ (fax): _____

E-mail address: _____

11. The firm participated / did not participate in the automated monthly transfer system for the period from _____ 20____ to _____ 20____.
12. The firm provides bridging finance to clients: YES / NO.
13. The firm carried on the business of an investment practice during the year: YES / NO.

If yes, the investment practice registration in terms of the Financial Advisory and Intermediary Services Act, No. 37 of 2002, with the Financial Services Board is: _____

14. The practice purchased / did not purchase -
- 14.1 insurance cover to protect against the possibility of misappropriation of trust money and property;
- 14.2 professional indemnity insurance cover.

If such insurance was acquired, state in each case the extent of the cover, the name of the insurer and the policy number.

15. The legal practitioner is required to complete and return the attached risk questionnaire for analysis and risk management by the Attorneys Insurance Indemnity Fund.

FINANCIAL INFORMATION

16. I/ We as the practitioner(s) / partner(s) / director(s) is / are responsible for ensuring that the attorneys' trust accounts are maintained in compliance with the provisions of the Legal Practice Act and the rules of the Legal Practice Council. The practitioner(s) / partner(s) / director(s) is / are responsible for the design, implementation and

monitoring of accounting and internal control systems and the completion of the risk assessment of the firm.

16.1 I / We, confirm that I / we have maintained the necessary accounting records as required in terms of sections 87(1) and 87(3) of the Legal Practice Act, No. 28 of 2014 and the rules of the Legal Practice Council for the accounting period from 1 October 20____ to 30 September 20____.

16.2 I /We certify that:

16.2.1 the accounting records, to the best of my / our knowledge and belief, are in accordance with the terms of the Legal Practice Act, No. 28 of 2014, and the rules of the Legal Practice Council;

16.2.2 any trust deficit was reported to the Council;

16.2.3 the interest earned in terms of sections 86(5) of the Legal Practice Act was paid to the Council in full on a monthly basis;

16.2.4 the annual fees and charges are fully paid up.

16.3 the State the amount (as per the bank statement) standing to the credit of the firm's trust banking account(s) and the amount of trust monies invested by the applicant's firm at the end of each quarter of this year, per financial institution.

Balance standing to the credit of the firm's trust banking account(s)	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates	(F) Property	Total
Currency							
31 December 20__							
31 March 20__							
30 June 20__							
30 September 20__							
TOTAL TRUST FUNDS							

Trust banking account details	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates

Bank:					
Branch:					
Branch code:					
Account number:					
Credit interest rate:					
- at 31 March					
- at 30 Sept					

Balance standing to the credit of the firm's trust banking account(s)	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates	(F) Property	Total
Bank service fee formula:							

16.4 **Analysis of section 86(4) investments by category at 30 September 20__:**

Category	Distribution	Duration(average number of months)
Conveyancing	%	months
Commercial	%	months
Litigation	%	months
Road Accident Fund	%	months
Investments	%	months
Estates	%	months
Other: (Specify)		
	%	months
	%	months
	%	months
	%	months
TOTAL	100%	

16.5 I hereby authorise the above bank/s to provide the Legal Practitioners' Fidelity Fund with details of any changes to, and to certify, the above information, from time to time, as requested by the Fund.

16.6 I hereby authorise the Legal Practitioners' Fidelity Fund to negotiate with my bankers the terms relating to interest accruing on, and bank charges levied against, my trust current banking account(s).

SIGNED ON THIS ____ DAY OF 20__ AT _____.

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES:

1. _____

Final Rules - The South African Legal Practice Council 19_01_2018.docx
19/01/2018

138

2. _____

SIGNATURE OF APPLICANT

GUIDELINES FOR COMPLETING THIS FORM

This form must be completed in advance for the coming year.

The form should be submitted by, 1 December of each year for a certificate in respect of the following year.

If commencing practice for the first time the application will be in respect of the current year.

The information requested in this application form will, inter alia, be used by the Legal Practitioners' Fidelity Fund to provide statistics for risk management, risk profiling and reinsurance programmes.

Item 16.3: The amount (as per bank statements) standing to the credit of the firm's trust banking account, the amount of trust moneys invested by the applicant's firm, estate accounts and other entrusted property.

A - Insert the balance standing to the credit of the trust current banking account as per the bank statement as at the end of each quarter. If there is more than one trust account, add the balances together and enter the result in A for each quarter.

B - Insert the total of the amounts invested in terms of section 86(3) in B for each quarter.

C - Insert the total of the amounts invested in terms of section 86(4) in C for each quarter. On this type of investment the interest generated is payable to the practitioner's client(s), and to the Legal Practitioners' Fidelity Fund in terms of section 86(5)(b).

D - Insert the total of the amounts invested in terms of the Council's investment rules in D for each quarter.

E - Insert the total amount held in respect of estates in terms of section 87(3)(c) of the Act in E for each quarter.

F - Insert the value of any other entrusted property in terms of section 55(1) of the Act, in F for each quarter.

Use annexures if there is more than one account and financial institution.

For trust funds denominated in any foreign currency, provide a separate annexure in the same format noting the currency.

Trust current banking account details:

- (a) Enter name of bank.
- (b) Enter name of branch.
- (c) Enter branch code.
- (d) Enter bank account number.
- (e) Enter the credit interest rate applied to the account as at the dates specified. These dates relate to the current year. If the rates are not shown on the bank statements, practitioners should contact their bank managers to get the correct information. If the rate fluctuates depending on the size of the balance in the account, indicate the rate on balances in excess of R100 000.
- (f) The bank service fee formula must be entered as at 30 September of the current year. The service fee formula is normally printed on the bank statement in the following way:

___/___/___

The first 3 digits are the charge for the first R100 of each cheque issued, expressed in cents.

The next 3 digits are the charge for each additional R100 of each cheque issued.

The last 3 or 4 digits are the maximum charge per cheque issued.

Use annexures if space is insufficient and for information on multiple accounts.

Item 16.4: You are required to provide your own assessment of the nature of section 86(4) trust investments at 30 September, expressed as a percentage, and the average duration of each type of investment.

Insert percentages to indicate the nature of section 86(4) trust investments.

Also insert the average duration of each investment type.

**Schedule 7B
(Rule 49)**

LEGAL PRACTITIONERS' FIDELITY FUND
APPLICATION FOR FUND CERTIFICATE IN TERMS OF THE
LEGAL PRACTICE ACT, 2014 (ACT NO. 28 OF 2014)
FOR THE YEAR ENDING 31 DECEMBER 20____

APPLICATION FORM FOR ADVOCATES referred to in section 34(2)(b) of the Act*PLEASE COMPLETE IN BLOCK LETTERS***GENERAL INFORMATION**

1. Full names of the applicant: _____

Identity number: _____

Practitioner reference number: _____
2. Physical address at which practice will be carried on (i.e. principle place of practice)

_____. Province: _____
3. Contact details:

Postal address: _____

Residential address: _____

Docex address if applicable: _____

Telephone (business): _____ (home): _____

(fax): _____ (e-mail): _____
4. Any other physical address at which practice will be carried on, including province:

_____. Province: _____
5. If no Fidelity Fund Certificate has been obtained for the current year, state date on which the applicant will begin to practise: _____
6. If applicant ceased to practise, and intends to resume practising, state:

Name and address of former practice: _____

_____ Province: _____

When applicant ceased to practise: _____

**ADDITIONAL INFORMATION REQUIRED BY THE LEGAL PRACTITIONERS' FIDELITY FUND
FOR RISK MANAGEMENT AND ANALYSIS**

7. Registration number with the Financial Intelligence Centre (attach proof): _____

8. Appointed auditor: _____ Practice registration number: _____

Firm

name: _____

Physical

address: _____

Postal

address: _____

Telephone (business): _____ (fax): _____

E-mail

address: _____

9. The applicant participated / did not participate in the automated monthly transfer system for the period from _____ 20____ to _____ 20____.

10. The applicant provides bridging finance to clients: YES / NO.

11. The applicant carried on the business of an investment practice during the year: YES / NO.

If yes, the investment practice registration in terms of the Financial Advisory and Intermediary Services Act, No. 37 of 2002, with the Financial Services Board is: _____

12. The applicant purchased / did not purchase -

12.1 insurance cover to protect against the possibility of misappropriation of trust money and property;

12.2 professional indemnity insurance cover

If such insurance was acquired, state in each case the extent of the cover, the name of the insurer and the policy number.

13. The legal practitioner is required to complete and return the attached risk questionnaire for analysis and risk management by the Attorneys Insurance Indemnity Fund.

FINANCIAL INFORMATION

14. As the legal practitioner I am responsible for ensuring that the legal practitioner's trust accounts are maintained in compliance with the provisions of the Legal Practice Act, 28 of 2014 ("the Act") and the rules of the Legal Practice Council. I am responsible for the design, implementation and monitoring of accounting and internal control systems and the completion of the risk assessment of the firm.

- 14.1 I confirm that I have maintained the necessary accounting records as required in terms of sections 87(1) and 87(3) of the Act and the rules of the Legal Practice Council for the accounting period from 1 October 20____ to 30 September 20____.

14.2 **I certify that:**

- 14.2.1 the accounting records, to the best of my knowledge and belief, are in accordance with the terms of the Act and the rules of the Legal Practice Council;
- 14.2.2 any trust deficit was reported to the Council;
- 14.2.3 the interest earned in terms of sections 86(5) of the Act was paid to the Council in full on a monthly basis;
- 14.2.4 the annual fees and charges are fully paid up.
- 14.3 State the amount (as per the bank statement) standing to the credit of the firm's trust banking account(s) and the amount of trust monies invested by the applicant's firm at the end of each quarter of this year, per financial institution:

Balance standing to the credit of the applicant's trust banking account(s)	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates	Total
Currency						
31 December 20__						
31 March 20__						
30 June 20__						
30 September 20__						
TOTAL TRUST FUNDS						

Trust banking account details	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates
Bank:					
Branch:					
Branch code:					
Account number:					
Credit interest rate:					
- at 31 March					
- at 30 Sept					

Balance standing to the credit of the applicant's trust banking account(s)	(A) Section 86(1)	(B) Section 86(3)	(C) Section 86(4)	(D) Investments	(E) Estates	(F) Property	Total
Bank service fee formula:							

14.4 Analysis of section 86(4) investments by category at 30 September 20__:

Category	Distribution	Duration(average number of months)
Commercial	%	months
litigation	%	months
Road Accident Fund	%	months
Investments	%	months
Estates	%	months
Other: (Specify)		
	%	months
	%	months
	%	months
	%	months
TOTAL	100%	

14.5 I hereby authorise the above bank/s to provide the Legal Practitioners' Fidelity Fund with details of any changes to, and to certify, the above information, from time to time, as requested by the Fund.

I hereby authorise the Legal Practitioners' Fidelity Fund to negotiate with my bankers the terms relating to interest accruing on, and bank charges levied against, my trust current banking account(s).

SIGNED ON THIS ____ DAY OF _____ 20__ AT _____.

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

AS WITNESSES:

1. _____

2. _____

SIGNATURE OF APPLICANT

GUIDELINES FOR COMPLETING THIS FORM

This form must be completed in advance for the coming year.

The form should be submitted by 1 December of each year for a certificate in respect of the following year.

If commencing practice for the first time the application will be in respect of the current year.

The information requested in this application form will, inter alia, be used by the Legal Practitioners' Fidelity Fund to provide statistics for risk management, risk profiling and reinsurance programmes.

Item 14.3: The amount (as per bank statements) standing to the credit of the firm's trust banking account, the amount of trust moneys invested by the applicant's firm, estate accounts and other entrusted property.

A - Insert the balance standing to the credit of the trust current banking account as per the bank statement as at the end of each quarter. If there is more than one trust account, add the balances together and enter the result in A for each quarter.

B - Insert the total of the amounts invested in terms of section 86(3) in B for each quarter.

C - Insert the total of the amounts invested in terms of section 86(4) in C for each quarter. On this type of investment the interest generated is payable to the practitioner's client(s), and to the Legal Practitioners' Fidelity Fund in terms of section 86(5)(b).

D - Insert the total of the amounts invested in terms of the Council's investment rules in D for each quarter.

E - Insert the total amount held in respect of estates in terms of section 87(3)(c) of the Act in E for each quarter.

F - Insert the value of any other entrusted property in terms of section 55(1) of the Act, in F for each quarter.

Use annexures if there is more than one account and financial institution.

For trust funds denominated in any foreign currency, provide a separate annexure in the same format noting the currency.

Trust current banking account details:

- (a) Enter name of bank.
- (b) Enter name of branch.
- (c) Enter branch code.
- (d) Enter bank account number.
- (e) Enter the credit interest rate applied to the account as at the dates specified. These dates relate to the current year. If the rates are not shown on the bank statements, practitioners should contact their bank managers to get the correct information. If the rate fluctuates depending on the size of the balance in the account, indicate the rate on balances in excess of R100 000.
- (f) The bank service fee formula must be entered as at 30 September of the current year. The service fee formula is normally printed on the bank statement in the following way:

___/___/___

The first 3 digits are the charge for the first R100 of each cheque issued, expressed in cents.

The next 3 digits are the charge for each additional R100 of each cheque issued.

The last 3 or 4 digits are the maximum charge per cheque issued.

Use annexures if space is insufficient and for information on multiple accounts.

Item 14.4: You are required to provide your own assessment of the nature of section 86(4) trust investments at 30 September, expressed as a percentage, and the average duration of each type of investment.

Insert percentages to indicate the nature of section 86(4) trust investments.

Also insert the average duration of each investment type.

**Schedule 8
(Rule 50.24.1)****AUDITOR'S REPORT****(First Part) : Illustrative Auditor's Report (Unmodified opinion)****Circumstances**

- Compliance of trust accounts of trust account practices with the Act and the accounting rules contained in the code of conduct ("the accounting rules").
- Unmodified auditor's opinion
- The information in the Practitioner's Annual Statement on Trust Accounts of trust account practice agrees with the underlying records that were the subject of the engagement on the trust accounts of the trust account practice.

Independent Registered Auditor's Report on Trust Accounts of Trust Account Practice.

To the <Practitioner / Partners / Directors⁵> (insert the name of the firm)

We have undertaken a reasonable assurance engagement on the compliance of the trust accounts of <insert the name of the firm> with Section 86(1), 86(2), 86(3), 86(4), 86(5), 86(6) and 86(7) of the Legal Practice Act, No. 28 of 2014 (the Act), and accounting rules 0 and 51⁶ (the Rules) for the <period from <insert date> to <insert date>>/<year ended <insert date>>. ⁷

We clarify that we are not required to perform any procedures on records or documents relating to accounting for deceased and insolvent estates and trusts other than those dealt with via the firm's trust banking account(s).

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the accompanying Annual Statement on Trust Accounts of a trust account practice for the <period from <insert date> to <insert date> /

⁵ Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

⁶ Applicable Rules are: 50.6, 50.7, 50.8, 50.9, 50.10, 50.11, 50.13, 50.14.7.2, 50.14.7.3, 50.14.8, 50.14.9, 50.14.12, 50.14.13, 50.14.14, 50.14.15, 50.14.16, 50.15, 50.16, 50.19 and 51.

⁷ Throughout the report - delete which is not applicable: <period from <insert date> to <insert date>>/<year ended <insert date>>.

<year ended <insert date>> to the underlying records that were the subject of our engagement on the compliance of the firm's trust accounts with the Act and the Rules. We are also required to read the firm's representations and the other disclosures in the firm's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies with our knowledge obtained in our engagement on the compliance of the firm's trust accounts with the Act and Rules.

<Practitioner's/Partner's/Partners'/Director's/Directors'> responsibility for the trust accounts

The <practitioner/partners/directors> is/are responsible for ensuring that the firm's trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as the <practitioner/partners/directors> determine(s) is also necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are also responsible for the preparing the attached statement and for the financial information and declarations contained therein.

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on compliance of the firm's trust accounts with the Act and the Rules, based on our procedures performed, and to report as required on the firm's Annual Statement on Trust Accounts.

We conducted our assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance about the compliance of trust accounts of trust account practices, in all material respects, with the Act and the Rules.

A reasonable assurance engagement in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of trust accounts of trust account practices with the Act and the Rules. The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and the Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the circumstances of the engagement. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the Guide on *Engagements on Attorneys Trust Account* issued by the Independent Regulatory Board for Auditors;
- Making inquiries of the trust account practitioner and his or her staff;
- Testing transactions for all significant activities with the objective of evaluating whether:
 - Transactions were appropriately identified as trust transactions;
 - Trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
 - Deposits and withdrawals from the trust bank account were to, or for, a trust creditor;
 - Transfers to the firm's business account were only in respect of moneys claimed to be due to the firm; and
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether confirmations from financial institutions were in support of the records made available to us.

We believe that our work performed and evidence obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion

In our opinion, the trust accounts of (*insert the name of the firm*) for the period/year ended <*insert date*> were maintained, in all material respects, in compliance with the Act and the Rules.

Report on Firm's Annual Statement on Trust Accounts⁸

As part of our engagement, on the compliance of the firm's trust accounts with the Act and the Rules, we have agreed the information extracted from the trust accounting records included in the accompanying firm's Annual Statement on Trust Accounts for the <period from <*insert date*> to <*insert date*>>/<year ended <*insert date*>> to the underlying records that were the subject of our engagement. We have also read the firm's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is

⁸ Refer paragraphs 75-77 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* for guidance regarding the auditor's reporting responsibilities.

inconsistent with our knowledge obtained in the course of our engagement. The firm's Annual Statement on Trust Accounts is the responsibility of the firm.

We have not undertaken an assurance engagement on the firm's Annual Statement on Trust Accounts and accordingly we do not express an opinion thereon.

Report on Other Legal and Regulatory Requirements

<The form and content of this section of the auditor's report will vary depending on the nature of the auditor's other reporting responsibilities.>⁹

Restriction on distribution and use

This report is for the purpose of meeting the auditor reporting requirements of the Rules and, as regards the accompanying firm's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the Legal Practice Council and the Legal Practitioners' Fidelity Fund. Consequently it may not be suitable for any other purpose. It is intended solely for the use of *<practitioner/partners/directors>* of the firm, the Council and the Legal Practitioners' Fidelity Fund, and should not be distributed to other parties.

Auditor's Signature

Name of individual registered auditor

IRBA Registration number for firm and/or auditor

Registered audit firm

Date of report

Auditor's address (if not on a firm letterhead)

⁹ Refer paragraph 78 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts*, for illustrative wording to insert as: *Report on Other Legal and regulatory requirements*, where a reportable irregularity, as required in section 45 of the Auditing Profession Act, No. 26 of 2005 has been reported.

(Second Part) : Illustrative Auditor's Report (Qualified opinion)**Circumstances**

- Certain non-compliance identified (rather than significant non-compliance) of the trust account practitioner's trust accounts with the Act and the Rules.
- Qualified auditor's opinion
- The information in the firm's Annual Statement on Trust Accounts agrees with the underlying records that were the subject of the engagement on the trust account practitioner's trust accounts.

Independent Registered Auditor's Report on Trust Accounts of a Trust Account Practitioner

To the <Practitioner / Partners / Directors¹> (insert the name of the firm)

We have undertaken a reasonable assurance engagement on the compliance of the trust accounts of <insert the name of the firm> with Section 86(1), 86(2), 86(3), 86(4), 86(5), 86(6) and 86(7) of the Legal Practice Act, no 29 of 2014 (the Act), and Accounting Rules 0 and 51² (the "Rules") for the <period from <insert date> to <insert date>>/< year ended <insert date>>.

We clarify that we are not required to perform any procedures on records or documents relating to accounting for deceased and insolvent estates and trusts other than those dealt with via the firm's trust banking account(s).

As part of our assurance engagement we are required to agree the information extracted from the accounting records and included in the attached Annual Statement on Trust Accounts of the trust account practice for the <period from <insert date> to <insert date>>/ <year ended <insert date>> to the underlying records that were the subject of our engagement on the compliance of the firm's trust accounts with the Act and Rules. We are also required to read the firm's representations and the other disclosures in the firm's Annual Statement on Trust Accounts for the purpose of identifying material inconsistencies with our knowledge obtained in our engagement on the compliance of firm's trust accounts with the Act and Rules.

<Practitioner's/Partner's/Partners'/Director's/Directors'> responsibility for the trust accounts

¹ Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

² 50.66, 50.7, 50.8, 50.9, 50.10, 50.11, 50.13, 50.14.7.2, 50.14.7.3, 50.14.8, 50.14.9, 50.14.12, 50.14.13, 50.14.14, 40.15.15, 50.14.16, 50.15, 50.16, 50.19 and 51.

The <practitioner/partners/directors> is/are responsible for ensuring that the firm's trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as the <practitioner/partners/directors> determine(s) is also necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are responsible for the preparing the attached firm's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

Auditor's responsibility

Our responsibility is to express a reasonable assurance opinion on the compliance of the firm's trust accounts with the Act and the Rules, based on our procedures performed, and to report as required on the firm's Annual Statement on Trust Accounts.

We conducted our assurance engagement in accordance with International Standard on Assurance Engagements ISAE 3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*. That standard requires that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance about the compliance of the trust accounts of trust account practices, in all material respects, with the Act and the Rules.

A reasonable assurance engagement in accordance with ISAE 3000 involves performing procedures to obtain evidence about the compliance of trust accounts of the account practice with the Act and the Rules. The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and the Rules, whether due to fraud and error. In making those risk assessments we considered internal control relevant to the circumstances of the engagement. Our reasonable assurance engagement included the following procedures:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the Guide on *Engagements on Attorneys Trust Accounts* issued by the Independent Regulatory Board for Auditors;
- Making inquiries of the trust account practitioner and his or her staff;
- Testing of transactions for all significant activities with the objective of evaluating whether:
 - Transactions were appropriately identified as trust transactions;

- Trust transactions were in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
- Deposits and withdrawals from the trust bank account were to, or for, a trust creditor;
- that transfers to the firm's business account were only in respect of moneys claimed to be due to the firm; and
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating whether confirmations from financial institutions were in support of the records made available to us.

We believe that our work performed and evidence obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for qualified opinion

The firm's trust accounts were not maintained in compliance with the Act and the Rules, as follows³;

List ...<insert instances of non-compliance identified>

Qualified opinion

In our opinion, except for the instances of non-compliance listed in the preceding paragraph, the trust accounts of <insert the name of the firm> for the period/year ended <insert date> were maintained in compliance with the Act and the Rules.

Report on firm's Annual Statement on Trust Accounts⁴

As part of our engagement, on the compliance of the firm's trust accounts with the Act and the Rules, we have agreed the information extracted from the trust accounting records included in the accompanying firm's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>>/ < year ended <insert date>> to the underlying records that were the subject of our assurance engagement. We have also read the firm's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent

³ Any contravention of Sections 86 of the Act, and any instance of contravention of the rules identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

⁴ Refer paragraphs 75-77 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* for guidance regarding the auditor's reporting responsibilities.

with our knowledge obtained in the course of our engagement. The firm's Annual Statement on Trust Accounts is the responsibility of the attorney.

Based on our reading we have not identified any information contained in the firm's Annual Statement on Trust Accounts that is inconsistent with our knowledge obtained in the course of our engagement. However, we have not undertaken an assurance engagement on the firm's Annual Statement on Trust Accounts and accordingly we do not express an opinion thereon.⁵

Report on Other Legal and Regulatory Requirements

*<The form and content of this section of the auditor's report will vary depending on the nature of the auditor's other reporting responsibilities.>*⁶

Restriction on distribution use

This report is for the purpose of meeting the auditor reporting requirements of the Rules and, as regards the accompanying firm's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the Legal Practice Council and the Legal Practitioners' Fidelity Fund. Consequently it may not be suitable for any other purpose. It is intended solely for the use of *<practitioner/partners/directors>* of the firm, the Legal Practice Council and the Legal Practitioners' Fidelity Fund, and should not be distributed to other parties.

Auditor's Signature

Name of individual registered auditor

IRBA Registration number of firm and/or auditor

Registered audit firm

Date of report

Auditor's address (if not on a firm letterhead)

⁵ Refer paragraph 77 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* for matters to be considered when inconsistencies are identified.

⁶ Insert paragraph on *Report on Other Legal and regulatory requirements* where a reportable irregularity has been reported (refer paragraph 78 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts* for illustrative wording).

(Third Part) : Annual Statement on Trust Accounts of Trust Account Practice¹**(On practitioner's letterhead)**

The Executive Office

Legal Practice Council

Address

Date

Practitioner's Annual Statement on Trust Accounts²

This statement is in support of the below listed practitioner(s) application for a Fidelity Fund Certificate for the <year/period> commencing <insert date> and ending <insert date>.

15. List of trust account practitioners in firm / practice applying for annual Fidelity Fund Certificate³

1.

2.

16. Firm's compliance representations

I/we confirm that I/we have maintained the necessary accounting records⁴ as required in terms of section 86 of the Legal Practice Act, no 28 of 2014 and the accounting rules applicable to trust account practitioners for the ended <insert date>, inter alia:

- a) The firm's trust accounts have been updated monthly and balanced at least quarterly;
- b) The firm complied/ has not complied with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Legal Practitioners' Fidelity Fund and the firm's bank(s);
- c) The ratio as a percentage of total bank charges (excluding VAT) incurred during the year to the total of interest earned during the year was <insert percentage>;

¹ To be attached to the auditor's *Report on the Practitioner's* Trust Account Practice to be submitted to the Legal Practice Council

² To be attached to the auditor's report on the Practitioner's Trust Accounts to be submitted to the Legal Practice Council.

³ Attach separate list if there are numerous partners / directors in the firm.

⁴ Accounting records include those for trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator.

- d) The firm's trust accounts for the period subsequent to 2X February 20X2 have been written up to *(insert date)* and the trial balance was last balanced at *<insert date>* and in compliance with the provisions of *<insert Rule X> read with <insert Rule X>*;
- e) The following changes in the composition of the firm occurred during the year or during the period from *<insert date>* to *<insert date>*:

<i><insert changes></i> :

- f) The firm was issued with a valid fidelity fund certificate for the calendar year ended *<insert financial period end>* (i.e. the calendar year before the financial period/year of this report in the name of *<insert the name of the firm>*).
- g) The firm is registered as an Accountable Institution in accordance with section 43B of the Financial Intelligence Centre Act, Act No. 38 of 2001 (FICA) with accountable institution registration reference number: *<insert number>* that was issued by the Financial Intelligence Centre.
- h) The firm *<has/has not>* complied with the requirements of section 21 of FICA "Identification of clients and other persons when establishing a business relationship or conducting a single transaction with a client".
- i) The firm *<has / has not>* reported *<insert number>* cash transactions (received or paid) above the prescribed limit to the Financial Intelligence Centre for the period reported on in accordance with the requirements of Section 28 of FICA "Cash transactions above prescribed limit".
- j) The firm *<has / has not>* reported *<insert number>* property associated with terrorist and related property reports to the Financial Intelligence Centre for the period in accordance with the requirements of section 28A of FICA "Property associated with terrorist and related activities".
- k) The firm *<has / has not>* reported *<insert number>* suspicious and unusual transactions to the Financial Intelligence Centre for the period in accordance with the requirements of section 29 of FICA "Suspicious and unusual transactions".
- l) The firm *<has / has not>* formulated and implemented internal rules in terms of section 42 of FICA which includes the requirement to report cash threshold

transactions (section 28) and suspicious and unusual transactions (section 29) to the Financial Intelligence Centre.

17. Places of practice

At the date of this report, the firm's principal place of practice is that given in the letterhead and the firm's South African offices are situated at <insert full physical addresses⁵>:

<insert office addresses>

18. Information extracted from the trust accounting records

Reconciliation of interest earned on the firm's section 78(1) and section (2)(a) trust accounts from 1 March 20XX to 2X February 20XX:

(i)	Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 86(2) and monies invested in terms of section 86(3) of the Legal Practice Act, no 28 of 2014.	
(ii)	Amount earned during the current period on monies deposited in trust banking accounts in terms of section 78(1) and monies invested in trust investment accounts in terms of section 86(3) of the Legal Practice Act, no 28 of 2014.	
(iii)	Amount incurred during the current period in respect of refundable bank charges (excluding VAT – firms not liable for Vat as vendors may include VAT)	
(iv)	Amount already paid over to the Council as nominee of the Legal Practitioners' Fidelity Fund during the period under review in terms of section 86(5) of the Legal Practice Act, no 28 of 2014 is: (a schedule of the payments made is to be attached)	
(v)	Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of section 86(2) and monies invested in terms of section 86(3) of the Legal	

⁵ Attach as a separate list if the firm has multiple offices in South Africa.

Practice Act, no 28 of 2014.	
------------------------------	--

- (vi) The amount referred to in paragraph 4(v) agrees/ does not agree⁶ with the balance as recorded in the accounting records, which amount, less the amount of R_____ paid over to the Council since period end, *<is/ is not>* held in the firm's trust account.

If not held in the trust account, a written explanation detailing how the trust interest has been dealt with is to be annexed to the report.

- (vii) The following information was extracted from our trust accounting records that were the subject of our auditor's assurance engagement in respect of trust creditors/liabilities and trust funds available at the period / year end *<insert date>* and on one other date, selected by our auditor *<insert date>*, were as follows:

TOTAL TRUST CREDITORS / LIABILITIES	Local	Foreign ⁷	At period end ⁸	At year end
Trust creditors/liabilities				
Trust creditors in terms of:				
- Section 86(2)				
- Section 86(3)				
- Section 86(5)(a)				
- Section 86(5)(b)				

⁶ If the answer to paragraph 4(vi) is: "*does not agree*", list all instances in which the accounting rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this assurance report).

⁷ Attach a detailed schedule of liabilities per foreign currency per category, in the same format, and convert to Rand at the reporting date.

⁸ The date selected, by the auditor, must be a date, other than the financial year end, which occurs during the financial year / period to which this assurance engagement relates.

- Interest				
Trust creditors in terms of estates ⁹				
Trust creditors in terms of other entrusted assets ¹⁰				
TOTAL TRUST CREDITORS / LIABILITIES				
Trust funds available in terms of trust banking accounts:				
- Section 86(2)				
- Section 86(3)				
- Section 86(4)				
- Trust cash on hand				
- Interest				
Trust funds and assets relating to estates				
Other entrusted assets ¹¹				
Debit balances in trust ledger ¹²				
TOTAL FUNDS				
TRUST SURPLUS / (DEFICIT)¹³				

19. Investment practice

The firm:

- (i) has/ has not carried on the business of an investment practice during the year under review;

⁹ This is trust liabilities in respect of which the practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator for which consent has been obtained from the Master of the High Court to deal with through the firm's trust account.

¹⁰ This relates to the liability originating from any asset entrusted to the practitioner other than the items listed, supported by a detailed schedule of the nature of such liability.

¹¹ Assets entrusted to the practitioner other than the trust funds items listed.

¹² Details of debit balances in the trust ledger must be provided as an attachment to the report providing reasons for the occurrence and how it was resolved.

¹³ Detailed explanation required on how the surplus / deficit originated and how it was subsequently cleared and resolved. Indicate when the deficit was reported to the Council.

- (ii) has/ has not complied¹⁴ in all respects with the provisions of investment practice<rule 51> contained in the rules;
- (iii) <is / is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Services Board.

.....

<Name of trust account practice>

<Sole Practitioner/Partners/Directors>¹⁵

SUPPLEMENTARY INFORMATION REQUESTED BY THE LEGAL PRACTICE COUNCIL
FIRM (INSERT FIRM NAME)

Schedule of Interest payments

For the financial period _____ to _____

Trust Banking Account at <insert Name of Bank>, Branch Code No. _____ and Account No. _____				
	Date	Financial Period	Method of Payment (EFT / Cheque)	Amount
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

¹⁴ If the answer to paragraph 5(ii) is: "has not complied", list all instances in which the rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this assurance report).

¹⁵ Delete whichever is not applicable. For practices with a large number of partners / directors this "Practitioners' Annual Statement on Trust Accounts" should be signed by the partner / director authorised by the Partnership / Board of the Inc.

9.				
10.				
11.				
12.				
13.				
Total				

Notes:

1. The total indicated above should agree with Par 4(v) of the **Practitioner's Annual Statement on Trust Accounts**.
2. Kindly note that a separate schedule should be submitted for each trust bank account operated by the firm.

**Second Schedule
(Rule 51.4)****CLIENT INVESTMENT MANDATE**

I/We, the undersigned _____
 (the client) of _____
 do hereby authorise and empower _____
 (firm's name) _____
 to make the following investments as my/our agent and on my/our behalf:

- | | | |
|------|--|----------|
| 20. | TYPE OF INVESTMENTS | YES / NO |
| 20.1 | With a bank (subject to the conditions as set out at the bottom of this mandate); and/or | |
| 20.2 | Stocks and shares on JSE; and/or | |
| 20.3 | Money lending; and/or | |
| 20.4 | Other (give details under 5 or on an annexure, if necessary) | |
| 21. | TYPE OF MANDATE GIVEN | YES / NO |
| 21.1 | Discretionary | |
| 21.2 | Non-discretionary | |
| 22. | IS FIRM TO KEEP ALL SECURITIES/CERTIFICATES | YES / NO |
| 23. | REPORTING Monthly / Quarterly / 6-Monthly / Annually | |
| 24. | GENERAL | |

Instructions re securities, interest payments, charges etc. _____

25. ACKNOWLEDGEMENTS BY INVESTOR

The investor acknowledges:

- 25.1 that the firm acts as the investor's agent in relation to any investments made in terms of this mandate;
- 25.2 that the investor assumes (except in so far as there may in law be a right of recovery against the firm) all risks connected with the administration by the firm of money entrusted to the firm, as well as the responsibility to ensure that the firm executes the instructions as recorded in this mandate;
- 25.3 that any funds invested with a bank are not protected against the possible liquidation or other failures of the bank;
- 25.4 that money or other assets paid to the firm for investment pursuant to this mandate do not enjoy the protection of the Legal Practitioners' Fidelity Fund.

Signed at _____ on this _____ day of _____

Signature of client

Accepted at _____ on this _____ day of _____

Signature of the firm

To be completed and signed in duplicate and a copy to be handed to the client.
Conditions applicable to investments with a Bank