

**FREQUENTLY ASKED QUESTIONS CONCERNING ADVOCATES ON THE  
LEGAL PRACTICE ACT 28 OF 2014**

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<sup>2</sup> The date is important as the rules etc could change!

## **A) ABBREVIATIONS**

Code of Conduct= in GG but still to be accepted by the LPC

Fidelity fund advocates=advocates in possession of a Fidelity Fund certificate

GG=Government Gazette

LPA= Legal Practice Act 28 of 2014 as amended

LP=Legal Practitioner

LPC= Legal Practice Council

NBCSA=National bar Council of South Africa

NF= National Forum

PLPC=Provincial Legal Practice Council

PVC='practical vocational training'

Regulations= in the GG now before parliament

Rules=the rules put in place already by the NF

The Board=Legal Practitioners' Fidelity Fund Board

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## **FREQUENTLY ASKED QUESTIONS**

### **1 WHEN WILL THE LPA COMMENCE?**

Commencement is dealt with in section 120.

There are 3 commencement dates:

1) Date One for NF : Chapter 10, already in force. This chapter deals with the National Forum. The duties of the National Forum:

a) make recommendations to the Minister (section 97) ; the regulations are now before parliament

b) to publish a code of code of conduct (sec 97 (1) (b) ),this has been done, but it is not in force yet, the LPC to take it further. When the NF published the Code, no opportunity was given for comment by others, section 36 rules that it is the duty of the LPC. The LPC will call for comments. (There are many queries to be raised on the code)

c) to publish rules,which has been done.

2) Date 2 for LPC: Chapter 2 for LPC: The date has been fixed for 31 October 2018. Before this takes place, the NF must hold elections for LPC, the regulations by the Minister must go through parliament. (There are many other events but not really applicable to advocates, see Annexure "A")

3) Date 3: The remaining provisions of this Act come into operation on a date, after the commencement of Chapter 2, fixed by the President by proclamation in the *Gazette*.

### **2. I have already been admitted as an advocate, will I have to register with the LPC?**

All advocates must register with the LPC, the definition of an advocate (sec 1) is "‘advocate' means a legal practitioner who is admitted and enrolled as such under this Act" . You will have to register but you will not have to undergo further exams unless you want to become a fidelity fund advocate.

The NF called upon the various Bars, including the NBCSA, to provide a list of names of members with other information who would then be on the LPC roll.

The registration process is already provided for - see section 114(1) read with section 114(2)(c) and section 114(3).

### **3. What governing bodies will be in place?**

The LPC, the PLPC, the Board and the Ombud ('Ombud' means the person appointed by the President as a Legal Services Ombud in terms of section 47)

### **4. What legal documents will regulate the profession?**

1)The LPA 2) rules 3) regulations 4) Code of Conduct.

### **5. Who are “legal practitioners?”**

There are three kinds of legal practitioners defined in section 34 of the LPA: attorneys, advocates and fidelity fund advocates who are advocates in possession of a Fidelity Fund certificate. (See annexure “B” for section 34)

### **6. Are there any advantages in becoming a fidelity fund advocate?**

This is where you get clients direct.

The biggest advantage is that you do not have to worry about an attorney not paying your bill but the downside is that you will have to get the money from your client.

The other caution is that you will have to comply with the requirements of the Board concerning auditing, extra fees to the Board etc.

The wording of the LPA is such that it looks like there is a limitation on the advocate. However, the rules tried to overcome this.

Rule 33 deals with 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.<sup>3</sup> And see annexure “N”.

### **7. I am an admitted advocate who is interested in becoming a fidelity fund advocate, is this possible?**

An advocate practising without a Fidelity Fund certificate who wishes to convert his or her enrolment to that of an advocate conducting a practice with a Fidelity Fund certificate must similarly satisfy the Council that he or she has the required knowledge of accounting. If the applicant has previously practised as an attorney he or she will have the required knowledge of accounting.

In the case of an application for admission as an advocate intending to practise with a Fidelity Fund certificate, proof that the applicant has satisfied the requirements of the Council in terms of section 85(1)(b) of the Act in relation to a legal practice management course, and has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting 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; attendance report issued in respect of attendance of the applicant at a practical legal training course approved by the Council. See in general Annexure “M” and “N”.

The question was also asked whether one could now already do a course in practice management or not. The attendance of a legal practice management course through LSSA/LEAD is a possibility. One can even write the LSSA exam on accounting.<sup>4</sup> The

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<sup>3</sup> **RULE 35** Instruction of attorneys [section 95(1)(zC) read with section 34(4)] For purposes of this Rule 35 "client" means the user or intended user of legal services to be provided by an attorney. Instructions by a client to an attorney may be in writing or may be verbal. 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. 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. 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. 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.

<sup>4</sup> LSSA : <http://www.lssa.org.za/legal-practitioners/professional-examinations> Closing date for registration for the February exam (6 and 7 February 2018) is 15 January 2018. The legal practice management course: <http://www.lssalead.org.za/legal-practitioners/practice-management-training/practice-management-training>

NF asked the Law Societies to issue a letter to all attorneys, see annexure “Q”, a similar letter had to go out to all law societies.

#### **8. How will admissions work after 31 October 2018?**

Section 28 of the LPA is applicable as seen in annexure “L”.

#### **9. How can a legal practitioner (after 31 October 2018) who is interested in becoming a fidelity fund advocate, become one?**

Admission as advocate with a fidelity fund certificate: In the case of an application for admission as an advocate intending to practise with a Fidelity Fund certificate, proof that the applicant has satisfied the requirements of the Council in terms of section 85(1)(b) of the Act in relation to a legal practice management course, and has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting 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; attendance report issued in respect of attendance of the applicant at a practical legal training course approved by the Council. See in general Annexure “M” and “N”.

#### **10 How does conversion from advocate to attorney and vice versa work?**

An advocate applying for conversion of his or her enrolment to that of an attorney must satisfy the Council that he or she has the required knowledge of accounting (rule 30.4.4.1). And see annexure “O” and “Q”

#### **11 Can advocates still do pupillage this year (2018) or even next year?**

The regulations provide as follows:

Attendance at any training course approved by any existing society of advocates or the General Council of the Bar for which the pupil had registered before the date referred to in section 120(4) of the Act and in respect of which the required attendance was completed within a period of twelve months after that date will be regarded for purposes of these regulations as compliance with the requirements of sub-regulation (1)(b).

A person wishing to qualify to be admitted and enrolled as an advocate who, before the date referred to in section 120(4) of the Act, has passed all parts of the examinations conducted by the General Council of the Bar or any other society of advocates contemplated in section 112(1)(a)(ii) of the Act will be deemed to have complied with rule 21.1.

A person wishing to qualify to be admitted and enrolled as an advocate who, before the date referred to in section 120(4) of the Act, had passed one or more parts of the examinations referred to in rule 21.6 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 21.1; provided, however, that if the pupil concerned had 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 provided that a person wishing to be qualified to be admitted and enrolled as an advocate who, before the date referred to in 120(4) of the Act, has passed one or more parts of a training course approved by the General Council of the Bar or any other society of advocates, as contemplated in section 112(1)(a)(ii) of the Act, 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 this rule 21.4; provided further, however, that if the pupil concerned had 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.

## **12 What is said about fees in the LPA?**

Section 35 is a very controversial section. The Rules Board are currently awaiting inputs from stakeholders; final date for comments was 31 July 2018. The proposal is that there should be a rule made by the Rules Board to set MAXIMUM fees.

Apart from this debate, advocates should study section 35 as it puts a duty on advocates to prior to even starting with a case, give an estimated fee. And this is also applicable to getting a brief. The full text is found in Annexure “E”.

### **13 Will there still be disciplinary bodies of Bar associations ?**

No, the LPC will establish disciplinary bodies.<sup>5</sup> However, the Bar associations could have their own disciplinary matters consisting of breaching of “house rules” .

### **14 How many advocates will be on the LPC?**

Election of the 10 Attorneys and 6 Advocates to serve on the first LPC is intended to be conducted in August 2018 by an election service provider under supervision of the NF. An Election Committee was appointed by the NF for this purpose. Three additional members are due to be appointed to the LPC by the Minister, 2 by the Law Teachers and 1 each by the Fidelity Fund and Legal Aid South Africa.

### **15 How is pupillage going to be dealt with after 31 October 2018?**

The practical vocational training (PVT) requirements that pupils must comply with. A person with a LLB degree who wants to be admitted as an Advocate, must serve under a PVT contract for 12 months & complete 400 hours course work before or during the 12 months PVT & pass the prescribed examination.

There will be Bar associations who will be offering pupillage but the Bar association must be accredited by the LPC. No Bar has been accredited as there is no LPC in place. See Annexure “H”.

The pupil and master(who will now be called a “training supervisor”) will sign an agreement, thus entering into a contract.

See in general concerning a pupil: Annexure “L” and “M” and “R” (the contract)

The trial advocacy training programme referred to in rule 19.1 - 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

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<sup>5</sup> Section 37 Establishment of disciplinary bodies (1) The Council must, when necessary, establish investigating committees, consisting of a person or persons appointed by the Council to conduct investigations of all complaints of misconduct against legal practitioners, candidate legal practitioners or juristic entities.

appearance in the High Court, the Supreme Court of Appeal and the Constitutional Court and has exercised the right of appearance in those courts regularly for a continuous period of not less than five years or for an aggregate period of five years during the preceding seven years; 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; 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; 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.

### **16 Will pupils have a right of appearance?**

Regulation 8 is applicable: **Right of appearance of pupils in court or any other institution**

8. A pupil is entitled to appear —
- (a) in any court, other than the High Court, the Supreme Court of Appeal or the Constitutional Court; and
  - (b) before any board, tribunal or similar institution on behalf of any person, instead of and on behalf of and with the approval of the person under whose supervision he or she is undergoing his or her practical vocational training.

### **17 What subscriptions will be levied on admitted and enrolled LPs by the LPC?**

Practising Advocates will pay subscriptions of R2 500 including VAT per year (except LPs admitted and enrolled for less than 12 months, who will pay R1 500 including VAT per year). The first subscriptions, calculated *pro rata*, are due to be levied by the LPC from 1 November 2018 to 30 June 2019.

Unless the LPC amends the Rule relating to subscriptions (after input from LPs), the subscriptions payable by all practising LPs from 1 July 2019 onward will be R2 500 per year (except LPs admitted and enrolled for less than 12 months, who will pay R1 500 including VAT per year).

- All non-practising Attorneys and Advocates will pay subscriptions of R800 including VAT per year.

But there are other costs that will have to be paid!! See Annexure “K”.

**18 What transitional arrangements should be in place before 31 October 2018?**

See Annexure “F”

**19 I would like to nominate an advocate for the LPC, how is this done?**

Regulation 3 rules this, see Annexure “G” and “J”

**20 How many provincial councils are there and when will they be in place?**

Within 2 months from 31 October 2018, The establishment of Provincial Councils are in Regulation 3(1) The nine Provincial Councils contemplated in section 23 of the Act are –

- (a) the Eastern Cape Provincial Council with its office in East London;
- (b) the Free State Provincial Council with its office in Bloemfontein;
- (c) the Gauteng Provincial Council with its office in Pretoria;
- (d) the KwaZulu-Natal Provincial Council with its office in Durban;
- (e) the Limpopo Provincial Council with its office in Polokwane;
- (f) the Mpumalanga Provincial Council with its office in Nelspruit;
- (g) the Northern Cape Provincial Council with its office in Kimberley;
- (h) the North West Provincial Council with its office in Mahikeng; and
- (i) the Western Cape Provincial Council with its office in Cape Town.

(2) Every Provincial Council must, upon its establishment, establish at least one committee of the Provincial Council at every centre within the province concerned at which there is a seat of a Division of the High Court but no office of the Provincial Council.

(3) The committee contemplated in subregulation (2) must consist of two attorneys and two advocates, appointed by the Provincial Council for such periods as may be determined by the Provincial Council to assist it in the exercising of its powers and the performance of its functions.

**21 Apart from a pupil having a master, who else are going to assess the pupil?**

Advocates will have to qualify as assessors, the NBCSA will elect members to be assessors. Rule 25: Every person appointed by the Council for the purpose of arranging, controlling and conducting assessments in respect of the subjects referred to in -rule 21.2, shall be a person who has been a practising attorney for not less than seven years;rule 21.5, shall be a person who has been a practising

advocate for not less than seven years: 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 a person who has been a practising attorney for not less than seven years; rule 21.8, shall be a person who has been a practising notary for not less than seven years; and rule 21.9, shall be a person who has been a practising conveyancer for not less than seven years.

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.

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 rule 25.2.

**22 How may I convert from a practising legal practitioners to a non-practising legal practitioner?**

See annexure "P"

## **D) ANNEXURES**

“A” LPC duties before and after 31 October 2018.

“B” Section 34 of the LPA

“C” Talk on the Code of Conduct

“D” Minimum qualifications and practical vocational training

“E” Section 35

“F” Transitional arrangements

“G” LPC nominations and elections

“H” Pupils

“J” Ballot Paper LPC

“K” LP other costs

“L” Admission as advocate application in court

“M” Pupil’s Contract

“N” Rule 27 Legal practice management course

O” Application for conversion of enrolment by attorneys and advocates

“P” Conversion of non-practising legal practitioners to practising legal practitioners and vice versa

“Q” Circumstances in which legal practitioner can apply for conversion of enrolment

“R” Form of Practical Vocational Training Contract

## **ANNEXURE A**

### **TASKS OF THE LPC (after election)**

#### **1. Immediately after establishment of the LPC**

- Appoint Chairperson, Deputy, EXCO and staff
- Adopt the transfer agreements with the Law Societies
- Register for VAT
- Open bank accounts

- Adopt the Rules
- Elect the Provincial Councils (PCs)

**2. Before the transfer date ito s120(4) – 3 months?**

- Arrange for buildings, infrastructure, staff and funding for the PCs
- Establish committees – both LPC and PCs
- *Identify which of the existing committees of the Law Societies should be retained in order to continue to function for a transitional period*
- Put all systems in place
- Revise the functions of the PCs already in the Regulations, if necessary
- Accredite PVT service providers
- Agreements with service providers
- Adopt the Code of Conduct (ito s36)
- Arrange the transfer of work in progress from the Law Societies and Advocates structures

**3. After the transfer date and the Act becomes fully applicable ito s120(4)**

- In general, perform the functions listed in s6
- Update database
- Levy subscriptions
- Invest funds
- *Formatting the certificates of attendance to be issued by the Practical Law Schools, to provide for attendance before and after the effective date.*
- *Adopt a policy on the attendance of Practical Law Schools by persons who do not qualify to be admitted as a LPs ito s24(2)(b)(i) or (ii).*
- Decide whether to continue with non-regulatory litigation taken over from Law Societies
- Revise and fine-tune processes
- Revise Rules
- Revise Code of Conduct
- Advise Minister on Regulations that require amendment, if necessary

- Initiate amendments to Act, if necessary
- Advise the Minister on community service (s94(1)(f)), admission of foreign LPs (s95(1)(j)), limited liability legal practices, MDPs and Paralegals (s34(9))
- Liaison with LPFF on conducting of inspections and related matters
- Submission of input on fees to SALRC (s35(2))
- Assistance with the establishment of the office of, and liaison with the Ombud
- Submit annual report to the Minister.

## **ANNEXURE B**

### **34 Forms of legal practice**

(1) An attorney may render legal services in expectation of any fee, commission, gain, or reward as contemplated in this Act or any other applicable law, upon receipt of a request directly from the public for that service.

(2) (a) An advocate may render legal services in expectation of a fee, commission, gain or reward as contemplated in this Act or any other applicable law-

- (i) upon receipt of a brief from an attorney; or
- (ii) upon receipt of a request directly from a member of the public or from a justice centre for that service, subject to paragraph (b).

(b) An advocate contemplated in paragraph (a) (ii) may only render those legal services rendered by advocates before the commencement of this Act as determined by the Council in the rules, if he or she-

- (i) is in possession of a Fidelity Fund certificate and conducts his or her practice in accordance with the relevant provisions of Chapter 7, with particular reference to sections 84, 85, 86 and 87;
- (ii) has notified the Council thereof in terms of section 30 (1) (b) (ii).

(c) An advocate may render legal services in criminal or civil matters in expectation of a fee, commission, gain or reward as contemplated in this Act or any other applicable law upon receipt of a request directly from a justice centre for that service, in which event the provisions of paragraph (b) do not apply.

(3) The Council must make rules relating to the briefing of advocates-

- (a) by attorneys; and

(b) directly by members of the public.

(4) The Council must make rules relating to the instruction of attorneys.

(5) Attorneys may only practise-

(a) for their own account;

(b) as part of a commercial juristic entity referred to in subsection (7) and as such, may only make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance, or otherwise with an attorney;

(c) as part of a law clinic established in terms of subsection (8);

(d) as part of Legal Aid South Africa; or

(e) as an attorney in the full-time employment of the State as a state attorney or the South African Human Rights Commission.

(6) Advocates may only practise-

(a) for their own account and as such may not make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance or otherwise;

(b) as part of a law clinic established in terms of subsection (8);

(c) as part of Legal Aid South Africa; or

(d) as an advocate in the full-time employment of the State as a state advocate or the South African Human Rights Commission.

(7) A commercial juristic entity may be established to conduct a legal practice provided that, in terms of its founding documents-

(a) its shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;

(b) provision is made for legal services to be rendered only by or under the supervision of admitted and enrolled attorneys; and

(c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for-

(i) the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and

(ii) in respect of any theft committed during their period of office.

(8) (a) Subject to the approval of the Council in terms of the rules, a law clinic may be established by-

## **Annexure “C” Judge Roland Sutherland<sup>6</sup> talk on Code of Conduct**

### **EXTRACT ONLY**

The Code applies to Attorneys, Advocates (Counsel), Trust Account Advocates and employed legal advisers.<sup>5</sup> The Code says nothing about so called ‘para-legals’ an omission which has been criticised. The code does not apply to anybody who 5 Code: 67; the idea is that a legal adviser who is an attorney or advocate ought to conform to these norms, not anyone who gives legal advice who is employed in a company. Thus, a LLB graduate who is not admitted as a legal practitioner is not covered. 4 4 gives legal advice as part and parcel of another calling. There are two obvious callings to which that the LPA does not apply in which it is unavoidable for a practitioner to give legal advice. The first calling is that of tax planner, which would include Chartered Accountants in public practice giving advice on the tax laws. The second calling is that of Labour Relations Consultants who are directly, and far more deeply, involved in habitual litigation than even tax advisors. Thus, it must be noted that the LPA and the code do not purport to comprehensively regulate the giving of legal advice per se. 6 The code therefore applies only to those legal practitioners who have the societal role of dealing with the managing of litigation and giving legal advice as their core vocation. The Code consists of several chapters which address distinct types of legal practitioners. Two of the chapters relate to all legal practitioners; ie attorneys and counsel; one of which sets out general principles, and the second deals with courtcraft. Another chapter deals purely with attorneys: I do not address that chapter, save insofar as the relationship with counsel is concerned, and for example, to note that there are some benign references about attorneys' obligations to counsel in respect of payment of fees. One chapter deals specifically with counsel and a separate chapter deals specifically with Trust Account Advocates, although much of the content is duplicated. A chapter is devoted to employed legal advisers. This structure makes it plain that what applies to you as counsel is in chapters I, II, IV, and VI. 6 This policy choice might be contrasted with the unhappy prospect, currently an issue being litigated about, whether attorneys, who habitually demand on behalf of their clients that payments be made of what is due, might have register under the National Credit Act. 5 5 What is stipulated in the code about

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<sup>6</sup> Extract from a talk by Judge Sutherland, a former Johannesburg Bar member, delivered to Jhb Bar in May 2017

counsel is a fairly faithful representation of the traditional ethos of the Bar. Among other statements, you will find that in the Code there is a phrase which the GCB task team<sup>7</sup> coined to describe counsel as ‘independent practitioners of advocacy’<sup>8</sup> which captures the sense that the Bar wanted to import into this Code as a distinctive characteristic of counsel. By and large there is nothing substantial counsel need to relearn. The core substance that is, by now, second nature to you, has not changed.

A general theme of the LPA and of the code is a greater degree of public accountability, itself commendable, and a dimension of the impact on the institutional life of the Bar, a topic reserved for another day. What you still need to do, for the present, and are obliged to do if you are uncertain about what a rule in the code means, is to go to the Bar Council to get a ruling – an interpretative ruling – on what it means.<sup>27</sup> But clearly it is important to make the distinction between interpreting a rule and inventing one to suit the circumstances. There shall be no more inventions on the trot, so to speak. Approaching the Bar Council is simply an interim arrangement because the institutions which the Legal Practice Council (LPC) have to set up do not exist yet. The Societies of Advocates will not retain their power to regulate and apply discipline when these new institutions have been established.<sup>28</sup> Disciplinary powers will be handed over to sub-formations at a provincial level of the LPC. When this will happen is uncertain. It will not necessarily occur when the Code 27 Code: 14.7 28 Section 23 of the LPA. 10 10 comes into operation, because it is going to take a long time to put all these institutions in place. An interesting aspect of the disciplinary regime envisaged is that Section 44(1) of the LPA reserves the powers of the High Court to be the last word on what the conduct of lawyers will be.<sup>29</sup> This has an interesting twist. The High Court will retain its de facto inherent jurisdiction to regulate the conduct of people who practice before it. One must assume that, obviously, the Court cannot ignore the Code, but to the extent that one can expect a judicial gloss to develop, there is room for a Court to say a great deal about issues that become controversial; eg, about who is fit and proper to be admitted to the Roll of Advocates, and no less, who is fit and proper to be reinstated. Moreover, the experiment with Trust Account Advocates will probably provide some early controversies.

## **Annexure “D”**

### **Section 26 of LPA: Minimum qualifications and practical vocational training**

(1) A person qualifies to be admitted and enrolled as a legal practitioner, if that person has-

- (a) satisfied all the requirements for the LLB degree obtained at any university registered in the Republic, after pursuing for that degree-
  - (i) a course of study of not less than four years; or
  - (ii) a course of study of not less than five years if the LLB degree is preceded by a bachelor's degree other than the LLB degree, as determined in the rules of the university in question and approved by the Council; or
- (b) subject to section 24 (2) (b), satisfied all the requirements for a law degree obtained in a foreign country, which is equivalent to the LLB degree and recognised by the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 ([Act 67 of 2008](#)); and
- (c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister, including-
  - (i) community service as contemplated in section 29, and
  - (ii) a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34 (2) (b); and
- (d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the rules.

### **Section 30 Enrolment with Council**

(1) (a) A person duly admitted by the High Court and authorised to be enrolled to practise as a legal practitioner must apply to the Council in the manner determined in the rules, for the enrolment of his or her name on the Roll.

(b) The application referred to in paragraph (a) must-

- (i) be accompanied by the fee determined in the rules;
- (ii) indicate whether the applicant intends to practise as an attorney or an advocate and, in the case of an advocate, whether he or she intends practising with or without a Fidelity Fund certificate; and
- (iii) be submitted to the Council in the manner determined in the rules through the Provincial Council where the legal practitioner intends to practise.

(2) The Council must enrol the applicant as an attorney, advocate, notary or conveyancer, as the case may be, if he or she complies with the provisions of this Act.

(3) The Council must keep a Roll of Legal Practitioners, as determined in the rules, which must reflect-

- (a) the particulars of practising and non-practising legal practitioners and, in the case of advocates, whether they practise with or without a Fidelity Fund certificate;

## **Annexure “E”**

### **35 Fees in respect [of] legal services**

(1) Until the investigation contemplated in subsection (4) has been completed and the recommendations contained therein have been implemented by the Minister, fees in respect of litigious and non-litigious legal services rendered by legal practitioners, juristic entities, law clinics or Legal Aid South Africa referred to in section 34 must be in accordance with the tariffs made by the Rules Board for Courts of Law established by [section 2](#) of the Rules Board for Courts of Law Act, 1985 ([Act 107 of 1985](#)).

(2) The Rules Board for Courts of Law must, when determining the tariffs as contemplated in subsection (1), take into account-

- (a) the importance, significance, complexity and expertise of the legal services required;
- (b) the seniority and experience of the legal practitioner concerned, as determined in this Act;
- (c) the volume of work required and time spent in respect of the legal services rendered; and
- (d) the financial implications of the matter at hand.

(3) Despite any other law to the contrary, nothing in this section precludes any user of litigious or non-litigious legal services, on his or her own initiative, from agreeing with a legal practitioner in writing, to pay fees for the services in question in excess of or below any tariffs determined as contemplated in this section.

(4) The South African Law Reform Commission must, within two years after the commencement of Chapter 2 of this Act, investigate and report back to the Minister with recommendations on the following:

- (a) The manner in which to address the circumstances giving rise to legal fees that are unattainable for most people;
- (b) legislative and other interventions in order to improve access to justice by the members of the public;
- (c) the desirability of establishing a mechanism which will be responsible for determining fees and tariffs payable to legal practitioners;
- (d) the composition of the mechanism contemplated in paragraph (c) and the processes it should follow in determining fees or tariffs;
- (e) the desirability of giving users of legal services the option of voluntarily agreeing to pay fees for legal services less or in excess of any amount that may be set by the mechanism contemplated in paragraph (c); and
- (f) the obligation by a legal practitioner to conclude a mandatory fee arrangement with a client when that client secures that legal practitioner's services.

(5) In conducting the investigation referred to in subsection (4), the South African Law Reform Commission must take the following into consideration:

- (a) Best international practices;
- (b) the public interest;
- (c) the interests of the legal profession; and
- (d) the use of contingency fee agreements as provided for in the Contingency Fees Act, 1997 ([Act 66 of 1997](#)).

(6) The Minister may by notice in the *Gazette* determine maximum tariffs payable to legal practitioners who are instructed by any State Department or Provincial or Local Government in any matter.

(7) When any attorney or an advocate referred to in section 34 (2) (b) first receives instructions from a client for the rendering of litigious or non-litigious legal services, or as soon as practically possible thereafter, that attorney or advocate must provide the client with a cost estimate notice, in writing, specifying all particulars relating to the envisaged costs of the legal services, including the following:

- (a) The likely financial implications including fees, charges, disbursements and other costs;
- (b) the attorney's or advocate's hourly fee rate and an explanation to the client of his or her right to negotiate the fees payable to the attorney or advocate;
- (c) an outline of the work to be done in respect of each stage of the litigation process, where applicable;

(d) the likelihood of engaging an advocate, as well as an explanation of the different fees that can be charged by different advocates, depending on aspects such as seniority or expertise; and

(e) if the matter involves litigation, the legal and financial consequences of the client's withdrawal from the litigation as well as the costs recovery regime.

(8) Any attorney or an advocate referred to in section 34 (2) (b) must, in addition to providing the client with a written cost estimate notice as contemplated in subsection (7), also verbally explain to the client every aspect contained in that notice, as well as any other relevant aspect relating to the costs of the legal services to be rendered.

(9) A client must, in writing, agree to the envisaged legal services by that attorney or advocate referred to in section 34 (2) (b) and the incurring of the estimated costs as set out in the notice contemplated in subsection (7).

(10) Non-compliance by any attorney or an advocate referred to in section 34 (2) (b) with the provisions of this section constitutes misconduct.

(11) If any attorney or an advocate referred to in section 34 (2) (b) does not comply with the provisions of this section, the client is not required to pay any legal costs to that attorney or advocate until the Council has reviewed the matter and made a determination regarding amounts to be paid.

(12) The provisions of this section do not preclude the use of contingency fee agreements as provided for in the Contingency Fees Act, 1997 ([Act 66 of 1997](#)).

### **Annexure F Transitional Arrangements**

#### **TRANSITIONAL ARRANGEMENTS**

A Transitional Arrangements Committee has been established to attend to all transitional aspects. The Committee, consisting of members of the NF and representatives of the Law Societies, are attending to the following, in co-operation with the Pre-Transitional Committees of the Law Societies. The *effective date* for the transfer is intended to be 31 October 2018.

- The transfer of staff from the Law Societies to the LPC & PCs, as provided in the transfer agreements.
- The secondment of key personnel from the Law Societies to carry out the priority functions of the LPC & PCs until the *effective date*.

- • Phasing out of the staff service benefits of the existing Law Societies which will not be offered by the LPC. It was agreed with the Law Societies that they should pay their employees certain amounts relating to leave pay, bonuses and long service awards.
- • Preparing for the transfer of movable assets excluding cash from the Law Societies to the LPC & PCs, by:
  - - Preparing asset registers of the 4 Law Societies
  - - Determining the take-over value of the assets
  - - Determining the assets that need to be relocated and making the necessary arrangements
  - - Arranging insurance cover for the assets to become effective upon transfer.
  - • The transferring of the cash reserves held by the Law Societies by taking over their bank accounts on the *effective date*.
  - • Arrange for the payment of interest on trust banking accounts by Attorneys over the transitional period to the Law Societies until the effective date, whereafter the money will be transferred to the Fidelity Fund.
- Arrange for an audit of the financial records of the Law Societies for the period from 1 July 2018 to the *effective date*.
- • Prepare for the transfer of work in progress from the Law Societies to the LPC and PCs.
- • Prepare for the transfer of regulatory work in progress from Advocates structures to the LPC & PCs.
- • Evaluate and consider the Law Societies' existing agreements with their service providers.
- • Conclusion of new agreements by the LPC with service providers.
- • Arrange for the handing over by the Law Societies of:
  - - Documents of title to the assets and rights which are in their possession or under their control;
  - - The originals (or copies) of all their contracts;

- - Records relating to the activities of the Law Societies prior to the effective date and relating to its assets, rights, liabilities and obligations.
- • Standardize the operational and financial procedures and systems currently in place at the various Law Societies and aligning such procedures with the rules and regulations of the Legal Practice Council (e.g. disciplinary procedures).
- • Take steps to urgently deal with existing backlogs, to ensure a smooth transition of the operational functions of the Law Societies to the Legal Practice Council.
- • Arrange for the transfer of the immovable properties of the Law Societies of the Northern Provinces, KwaZulu-Natal and the Free State, to the LPC.
- • Arrange for the continuation of the Benevolent Funds of the Law Societies after the effective date.
- • Arrange for the LPC to take over the pending court cases in which the Law Societies and Advocates structures are involved.
- • Sourcing premises for the LPC and LPCs. The PCs must be able to function from the *effective date*.
- • Infrastructure must be sourced for the LPC and PCs.
- • Compiling a database of all admitted LPs, including unaffiliated Advocates.
- • Communication by the NF with the Minister, the Law Teachers, the Fidelity Fund and Legal Aid SA to arrange for the appointment of the non-elected designates to the LPC.
- • Arrange final meeting of the NF with the LPC before the NF is dissolved.

The events listed above are the culmination of many years of dedicated work

### **Annexure “G”**

(4) (a) Upon promulgation of these regulations, the chairperson must, within 14 days, send a notice to every attorney and every advocate who is admitted to practise and who is enrolled on the Roll of Practising Legal Practitioners contemplated in section 30(3) of the Act, calling for nominations of attorneys and advocates respectively for election to the Council: Provided that in respect of the first election under these regulations the notice must be sent to every practising attorney who is admitted to practise and is enrolled as such, to every advocate who is enrolled as

such, to every law society and society of advocates and to the General Council of the Bar.

(b) When a vacancy in the Council occurs, the Council must immediately send a notice to every attorney or every advocate who is admitted to practise and who is enrolled on the Roll of Practising Legal Practitioners contemplated in section 30(3) of the Act, depending on whether the person to be elected is an attorney or an advocate, calling for nominations of attorneys or advocates, as the case may be, for election to the Council in the relevant vacancy that has occurred.

(5) A notice referred to in subregulation (4) must —

- (a) stipulate a date by which the nominations must be received by the Council, which date may not be earlier than ten days from the date of the notice;
- (b) be sent by email to the email address of every legal practitioner, unless a legal practitioner has not provided the Council an email address, in which case the notice must be sent by prepaid post: Provided that in respect of the first election under these regulations the notice must be sent to every legal practitioner at his or her email address of which the National Forum has knowledge from whatever source or, where the National Forum has no knowledge of an email address, to his or her postal address of which the National Forum has knowledge from any source;
- (c) be published once in the *Government Gazette* on a date as close as possible to the date of dispatch of the notice;
- (d) give details of the number of vacancies on the Council for attorney members and advocate members, respectively; and
- (e) draw the attention of legal practitioners to the provisions of sections 7(2) and (3) and section 8 of the Act.

(6) A nomination of an attorney for election to the Council must be made by any two other attorneys in the manner prescribed by subregulations (8) and (9).

(7) A nomination of an advocate for election to the Council must be made by any two other advocates in the manner prescribed by subregulations (8) and (9).

(8) Any nomination of an attorney or advocate must be made in a document which provides the following information in respect of each nominee named therein, in not more than 600 words:

- (a) His or her name and identity number;
- (b) 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 whether he or she is a director, a partner or a professional assistant of that firm;
- (c) in the case of an advocate, whether he or she renders legal services in terms of section 34(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;
- (d) his or her race, gender, date of admission and enrolment and period in practice;
- (e) if he or she has a disability and wishes to disclose that fact, a statement to that effect and the nature of the disability;
- (f) the address of his or her principal place of practice; and
- (g) his or her knowledge and experience in the matters set out in section 7(2)(e) of the Act.

(9) The nomination document referred to in subregulation (8) must —

- (a) be signed by the two nominating attorneys or advocates, as the case may be;
- (b) be endorsed, over the signature of the nominee named therein, by his or her acceptance of the nomination; and
- (c) contain the nominee's confirmation that —
  - (i) the information given therein is correct; and
  - (ii) he or she is not disqualified in terms of section 8 of the Act from membership of the Council.

(10) (a) Original signed nominations must be lodged with the Council by not later than the date stipulated in the notice referred to in subregulation (5).

(b) Any nomination which does not substantially comply with these regulations or which is not lodged within the prescribed time does not qualify to be submitted for voting purposes in terms of these regulations.

(11) 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 14 days after the last day on which nominations are required to be lodged in terms of subregulation (5), send to every attorney or advocate,

as the case may be, who is eligible to vote, by email to that legal practitioner's email address or, where the email address of that legal practitioner is not known to the Council, by prepaid post —

- (a) 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 created by the legal practitioner;
- (b) 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;
- (c) a declaration form containing appropriate spaces for —
  - (i) the surname and forenames of the voting legal practitioner;
  - (ii) a statement whether he or she is an attorney or an advocate;
  - (iii) his or her signature and the date of his or her signature; and
  - (iii) a declaration by the legal practitioner above his or her signature that he or she has not already voted in the election concerned;
- (d) a ballot paper, in the case of the election of attorneys, in a form that substantially corresponds with Annexure A to these regulations or, in the case of the election of advocates, in a form that substantially corresponds with Annexure B to these regulations, containing the surnames and forenames in alphabetical order, by surname, of the nominated candidates and providing the information indicated in Annexure A or Annexure B, as the case may be, and nothing more;
- (e) a written notice in such form as the Council may direct, requesting the legal practitioner that if he or she wishes to record a vote he or she must —
  - (i) place a cross on the accompanying ballot paper against the name of each candidate for whom the legal practitioner wishes to vote, 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;
  - (ii) place the ballot paper in the envelope marked "ballot paper";
  - (iii) seal the envelope containing the ballot paper;
  - (iv) complete and sign the form of declaration;

- (v) place a completed and signed declaration, together with the envelope containing the ballot paper in and seal the envelope marked "voting papers"; and
- (vi) send 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.

### **Annexure "H" PUPILS**

#### **Practical vocational training requirements that pupils must comply with before they can be admitted by the court as legal practitioners**

7. (1) A person intending to be admitted and enrolled as an advocate must —

- (a) serve under a practical vocational training contract with a person referred to in subregulation (6) for a continuous period of twelve months after that person has satisfied all the requirements for a degree referred to in sections 26(1)(a) or (b) of the Act; and
- (b) during the service under a practical vocational training contract or within a period of no longer than twelve months after the termination of the practical vocational training contract, complete a programme of structured course work, comprising compulsory modules, of not less than 400 notional hours duration in the aggregate over a period of no longer than six months: Provided that if a pupil fails to complete the period of structured course work within a period of 24 months after the date of registration of a practical vocational training contract, he or she will be required to repeat the course work programme.

(2) Any pupil may, instead of serving under a practical vocational training contract on a full-time basis for a period of twelve months, as provided for in subregulation (1)(a), elect to complete the practical vocational training on a part-time basis over a period of 18 months, provided that he or she completes a period of structured course work of not less than 400 notional hours duration in the aggregate during that period.

(3) The programme of structured course work may be completed during the period of service under a practical vocational training contract, or thereafter,

but a pupil may not embark on the programme of structured course work before he or she has entered into a practical vocational training contract.

(4) Attendance at any training course approved by any existing society of advocates or the General Council of the Bar for which the pupil had registered before the date referred to in section 120(4) of the Act and in respect of which the required attendance was completed within a period of twelve months after that date will be regarded for purposes of these regulations as compliance with the requirements of sub-regulation (1)(b).

(5) Subject to the provision of the Act, any period of service before the pupil has satisfied the requirements of the degrees referred to in subregulation (1) is not regarded as good or sufficient service in terms of a practical vocational training contract.

(6) A pupil may be engaged or retained under a practical vocational training contract by an advocate —

- (a) who is enrolled and practising as such; or
- (b) in the full time employ of, or who is a member of —
  - (i) Legal Aid South Africa, established in terms of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014); or
  - (ii) a legal aid institution which has been approved by the Council for the purpose of engaging pupils and who is responsible for supervising the training of pupils so engaged; or
  - (iii) any other institution approved by the Council for the purpose of engaging pupils and who is responsible for supervising the training of pupils so engaged.

(7) An advocate engaging a pupil —

- (a) as contemplated in subregulation (6)(a) must have practised as an advocate for a period of not less than three years, or for periods of not less than three years in the aggregate during the preceding four years; and
- (b) as contemplated in subregulation (6)(b) must have practised as an advocate for a period of not less than three years, or for periods of not less than three years in the aggregate during the preceding four years prior to being engaged by Legal Aid South Africa or the institution concerned.

(8) Service by a pupil to an advocate while that advocate is not practising or has not practised as provided for in subregulation (7) is not deemed to be service under a practical vocational training contract for purposes of these regulations.

(9) An advocate referred to in subregulation (6)(a) may, at no time, have more than one pupil and an advocate referred to in subregulation (6)(b) may, at no time, have more than six pupils in the aggregate engaged or retained in terms of a practical vocational training contract.

(10) When an advocate dies or retires from practice or has been struck off the Roll any advocate who complies with the requirements of these regulations may take cession of the practical vocational training contract of the pupil, despite the fact that the cessionary may then have more than one or six, as the case may be, pupils, under contract.

(11) The compulsory course work referred to in subregulation (1) must comprise the following modules:

- (a) legal accounting for pupils other than pupils intending to be admitted as advocates referred to in section 34(2)(b) of the Act;
- (b) special legal accounting for pupils intending to be admitted as advocates referred to in section 34(2)(b) of the Act;
- (c) advocacy skills, including trial and motion court proceedings and attendance of court proceedings;
- (d) alternative dispute resolution;
- (e) civil procedure;
- (f) criminal procedure;
- (g) professional conduct and legal ethics of advocates;
- (h) legal writing and drafting;
- (i) constitutional law and customary law; and
- (j) information and communication technology for practice, and associated aspects of cyber law.

## **Annexure “J”**

### **ANNEXURE B**

#### **(Regulation 2)**

## BALLOT PAPER - ADVOCATES

Every advocate who is on the Roll of Practising Advocates may vote for a maximum of six candidates from the candidates listed below.

Please note that in order to comply with section 7(2)(a) of the Legal Practice Act, 2014 (Act No. 28 of 2014) and subject to the availability of the candidates, two black women, two black men, one white woman and one white man with the highest number of votes in their respective categories will constitute the six advocates who will serve as members of the Legal Practice Council.

A short profile of each candidate is available on the Council's website.

A

B

C

D

E

F

G

H

I

J

K

L

***When voting, please take into account the provisions of section 7(2) of the Legal Practice Act:***

*“When constituting the Council the following factors must, as far as is practicable, be taken into account:*

- (a) the racial and gender composition of South Africa;*
- (b) the objects of the Council;*
- (c) representation of persons with disabilities;*
- (d) provincial representation; and*
- (e) 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.*

**NOTE:**

The term “Black” has the same meaning as in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), read with the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 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.

## **Annexure “K”**

### **Other costs for LP**

#### **Fees and Charges**

##### **1. Application fees**

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

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

1.1	the registration of a practical vocational training contract, and the examination fee of any such contract;	R 345
1.2	issuing of a certificate of good standing;	R 175
1.3	cession of a practical vocational training contract, and the examination fee in respect thereof;	R 345
1.4	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 conveyancer at his or her own request;	R 460
1.5	re-enrolment as a legal practitioner, and/or as a notary or conveyancer, subsequent to the name of that legal practitioner being struck off the roll;	R2 875
1.6	enrolment as a notary;	R 690

1.7	enrolment as a conveyancer;	R 690
1.8	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;	R 460
1.9	conversion of enrolment in terms of section 32(1)(a) of the Act;	R 690
1.10	conversion of enrolment by an advocate in terms of section 32(1)(b) of the Act.	R 690

## **Annexure “L”**

### **Admission as advocate**

#### **Application for admission and enrolment as legal practitioners**

**[sections 95(1)(k) and (t) read with sections 24(2)(d), 30(1)(a) and 30(b)(iii)]**

A person seeking to be admitted to practise and to be authorised to be enrolled as an attorney or as an advocate under the Act -

must apply to a High Court in terms of the provisions of section 24(2) of the Act; and must simultaneously lodge an application in terms of sections 30(1)(a) and 30(b)(iii) of the Act with the Council, through the Provincial Council where the applicant intends to practise (or in the case of a person who does not intend to practise, where that person is ordinarily resident), for the enrolment of his or her name on the roll of attorneys or advocates, or on the roll of non-practising attorneys or advocates, as the case may be, which application shall be treated as an application subject to the condition that the applicant is duly admitted by the High Court and authorised to be enrolled as a legal practitioner in terms of section 30 of the Act.

An application for admission and enrolment in terms of rule 17.1 must be in writing and must be accompanied by an affidavit by the applicant setting out the following information supported, where applicable, by documentary evidence:

confirmation of the jurisdiction of the Court;

his or her full names, date of birth, identity number and residential address;

confirmation that the applicant is a South African citizen or is a permanent resident of the Republic;

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;

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, or whether the applicant does not intend to practise;

the physical address of his or her main office and of every branch office and of every building at and from which he or she practises, and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;

in the case of an attorney, whether he or she conducts practice -

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

as an employee.

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.

confirmation that the applicant had no pecuniary interest in any law practice and that he or she held no other position 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 prior written approval of the Council;

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;

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;

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;

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;

confirmation that the applicant is a fit and proper person to be admitted, including a statement as to whether -

the applicant has any previous criminal convictions or has any criminal investigations pending. 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;

the applicant has been subjected to previous disciplinary proceedings by the Council or any law society, university or employer, or whether any such disciplinary proceedings are pending. 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;

the estate of the applicant has been sequestrated, provisionally or finally, or whether there is any application for the sequestration of his or her estate which is pending;

where the estate of the applicant has been sequestered, the applicant must state whether or not he or she has been rehabilitated.

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.

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 training supervisor containing the following information:

confirmation that he or she is a practising advocate, or has been accredited by the Council to act as a training 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 training supervisors to pupils;

confirmation of the exact dates that the applicant served under the supervision of his or her training supervisor;

confirmation that in his or her view the applicant is a fit and proper person to be admitted and enrolled as an advocate.

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:

identity document of the applicant;

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;

degree certificate or certificates of the applicant;

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 practical vocational training of pupils (in the case of application for admission as an advocate);

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;

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;

in the case of an application for admission as an advocate intending to practise with a Fidelity Fund certificate, proof that the applicant has satisfied the requirements of the Council in terms of section 85(1)(b) of the Act in relation to a legal practice management course, and has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting 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;

attendance report issued in respect of attendance of the applicant at a practical legal training course approved by the Council.

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.

The Council may require that the information referred to in this rule 17 be submitted in a form to be determined by the Council.

An application in terms of this rule 17 must be accompanied by proof of payment of the fee payable in terms of rule 2.

Subject to compliance with rules 27.1 to 27.9, and upon receipt by the Council of a copy of an order by the High Court admitting the applicant to practise and authorising him or her to be enrolled as a legal practitioner, the Council shall place the name of

the applicant on the roll of attorneys or of advocates, or on the roll of non-practising attorneys or advocates, as the case may be, to be kept in terms of rule 28.

The Council must cause to be enrolled as an attorney or as an advocate, as the case may be, every person who is to be regarded in terms of section 114(1) of the Act as having been admitted to practice as an attorney or as an advocate, subject to any condition imposed by the High Court in relation to the admission of that person and subject to the terms of any order of court whereby any such person has been suspended from practice as an attorney or as an advocate, as the case may be.

## **Annexure “M”**

### **Pupillage**

#### **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 with a candidate attorney 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.

#### **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.

#### **Cancellation or suspension 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 suspended 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 -

that, for the purpose of this rule 22, 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 -

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

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

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 22, and thereafter any period served by that person shall be deemed to have been served after and under a practical vocational training contract entered into after he or she satisfied those requirements and became so entitled.

## **Pupils**

### **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:

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

proof to the satisfaction of the Council that he or she is a fit and proper person to serve as a pupil under a practical vocational training contract and has satisfied all the requirements for the degrees referred to in sections 26(1)(a) or (b) of the Act.

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

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

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.

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.

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.

### **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.

### **Restriction on pecuniary interests of pupil**

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.

If a pupil contravenes the provisions of rule 22.2.4.1, the contract concerned shall be void ab initio and ineffective unless the court on good cause shown otherwise directs.

### **Cession of practical vocational training contract**

The provisions of rule 22.1.6 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.

### **Termination of practical vocational training contract**

The provisions of rule 22.1.7 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.

### **Irregular service under practical vocational training contract**

The provisions of rule 22.1.9 in 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.

### **Cancellation or suspension or abandonment of practical vocational training contract**

The provisions of rule 22.1.10 relating to the cancellation or suspension 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.

## **Annexure “N” Rule 27 Legal practice management course**

**[section 95(1)(zL) read with section 85(1)(b)]**

**Every legal practitioner who is obliged in terms of section 84(1) of the Act to be in possession of a Fidelity Fund certificate and who is not in possession of a Fidelity Fund certificate must, 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, or within such further period as the Council may approve in any specific case, complete to the satisfaction of the Council a legal practice management course approved by the Council.**

- 1.10.1 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 - has a qualification that is similar to or of a higher standard than that attainable on completion of the course in question; or has a level of experience that would render the completion of the course in question or any part of such course unnecessary.

A legal practice management course referred to in rule 27.1 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.

The legal practice management course referred to in rule 27.1 must comprise the following modules:

module 1: general introduction to management;

module 2: risk management and insurance;

module 3: law business finance;

module 4: systems and technology;

module 5: practice administration;

module 6: marketing of legal services;

module 7: human resources management;

module 8: strategic management.

The legal practice management course referred to in rule 27.1 shall require, in addition to the completion of the modules referred to in rule 27.4, the successful completion of the following assignments:

law business finance;

risk management and insurance;

a business plan

The compulsory modules of practice management training and the assignments referred to in rule 27.4 shall be completed to the satisfaction of the Council over a period of no longer than twelve months.

Satisfactory completion of any practice management training course presented at the Legal Education and Development Section of the Law Society of South Africa for purposes of the Attorneys Act 53 of 1979, for which an attorney or candidate attorney had registered before the date referred to in section 120(4) of the Act and in respect of which was completed satisfactorily within a period of twelve months after that date will be regarded as compliance with the requirements of rule 27.1.

**Annexure “O” RULE 30 Application for conversion of enrolment by attorneys and advocates**

**[section 95(1)(x) read with section 32(1)(a)]**

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 30.1.2, 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.

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:

his or her full names, date of birth, identity number and residential address;

whether or not he or she practises or is about to commence practice;

if he or she does not practise, his or her business address and personal address and telephone numbers, if any;

the physical 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;

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 -

in the manner contemplated in section 34(2)(a)(i) of the Act; or

in the manner contemplated in section 34(2)(a)(ii) of the Act;

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;

every court in which he or she has been admitted, and a statement that he or she has not been admitted in any other court.

The Council may require that information referred to in rule 30.2 be submitted in a form to be determined by the Council.

The application referred to in rule 30.1 must be signed by the applicant, and must be accompanied by the following:

proof of payment of the prescribed fee;

a certificate signed by the registrar of every 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;

where the applicant is an attorney applying to convert his or her enrolment to that of an advocate -

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;

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;

such other requirements as the Council may determine.

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 -

that the applicant has passed the examination required to be passed by attorneys so as to reflect that the applicant has the required knowledge of accounting 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;

that the applicant has attended a legal practice management course as contemplated in section 85(1)(b) of the Act;

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 ;

such other requirements as the Council may determine.

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.

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.

### **Annexure “P” Conversion of non-practising legal practitioners to practising legal practitioners and vice versa**

#### **RULE 31 AND 32**

Any person admitted by the High Court and enrolled to practise as a legal practitioner under the Act or admitted and enrolled as a non-practising legal practitioner may, in the manner prescribed by rule 30.2, apply to the Council through the Provincial Council where the legal practitioner intends to practise, or in the case of an applicant who is a practising legal practitioner intending to convert his or her enrolment to that of a non-practising legal practitioner, where that legal practitioner resides, to convert his or her enrolment as a practising legal practitioner to that of a non-practising legal practitioner, and vice versa.

The provisions of rule 30.2, apply to an application in terms of rule 31.1, with the changes required by the context.

The Council may require that information referred to in rule 30.2 be submitted in a form to be determined by the Council.

The application referred to in rule 31.1 must be signed by the applicant, and must be accompanied by the following:

proof of payment of the prescribed fee;

a certificate signed by the registrar of every High Court to which the applicant applied for admission 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 (in the case of a practising legal practitioner).

Where the applicant is a practising legal practitioner, and the Council is satisfied that the applicant is entitled to convert his or her enrolment to that of a non-practising legal practitioner, the Council shall remove the name of the applicant from the roll of practising legal practitioners and shall place the name of the applicant on the roll of non-practising legal practitioners.

Where the applicant is a non-practising legal practitioner and the Council is satisfied that the applicant is entitled to convert his or her enrolment to that of a practising legal practitioner, the Council shall remove the name of the applicant from the roll of non-practising legal practitioners and shall place the name of the applicant on the roll of practising legal practitioners.

### **Annexure Q Circumstances in which legal practitioner can apply for conversion of enrolment**

#### **[section 95(1)(z) read with section 32(3)]**

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 as an advocate who conducts a practice in the manner contemplated in section 34(2)(a)(i) of the Act, or as an

advocate conducting a practice in the manner contemplated in section 34(2)(a)(ii) of the Act.

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 -

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;

that the applicant has attended a legal practice management course as contemplated in section 85(1)(b) of the Act.

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.

### **Annexure “R” 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 unless the written consent of the training supervisor and the Legal Practice Council has been granted;

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 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, subject always to the employment laws applicable in South Africa.

Signed on ..... 20...

As witnesses:

1 .....  
.....

Training supervisor

2 .....  
.....

Pupil

End –for now

**Annexure “S” Letter to attorneys and advocates re fidelity fund certificate**

# KwaZulu-Natal Law Society

OFFICE OF THE DIRECTOR

YOUR REF :

OUR REF : FFC Applications

***Please Quote Our Reference***

10 August 2018



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## **URGENT NOTIFICATION FOR THE ATTENTION OF MEMBERS**

Dear Members

### **NEW REQUIREMENTS FOR APPLYING FOR 2019 FIDELITY FUND CERTIFICATES IN TERMS OF THE LEGAL PRACTICE ACT**

Legal practitioners are referred to Section 84(1), (2) and (3) of the Legal Practice Act 28 of 2014 which reads as follows: -

- (1) Every attorney or any advocate referred to in section 34(2)(b), other than a legal practitioner in the full-time employ of the South African Human Rights Commission or the State as a state attorney or state advocate and who practises or is deemed to practice –
  - (a) for his or her own account either alone or in partnership;
  - or
  - (b) as a director of a practice which is a juristic entity, must be in possession of a Fidelity Fund certificate.
- (2) No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or

property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund Certificate.

- (3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered."

With the implementation of the Legal Practice Act, it is expected that the Law Societies will cease to exist by 31<sup>st</sup> October 2018, where after all regulatory functions will be assumed by the Legal Practice Council, and through delegated authority, the Provincial Councils. This will coincide with the period during which practitioners will be applying for their 2019 Fidelity Fund Certificates.

Considering this and to ensure that the 2019 Fidelity Fund Certificate applications are considered in terms of the requirements of the Legal Practice Act and its Rules (Gazetted on 13 July 2018), the application process will commence on 1 November 2018. The Rules formulated in terms of the Legal Practice Act requires that applications must be made before 1 December 2018.

The requirements for obtaining a 2019 Fidelity Fund Certificate in terms of the Legal Practice Act are: -

- The contribution of R345-00 payable by the applicant, inclusive of VAT, as set out in the Rules;
- Proof that the applicant has discharged all her/his liabilities in respect of enrolment fees and other amounts due to the Council, inclusive of yearly subscription fees and disciplinary fines;
- Proof of completion of Practice Management Training before applying for the first Fidelity Fund Certificate;
- Approval of the trust account audit report by the Council, and
- The properly completed application.

The Fidelity Fund Certificate application portal will be undergoing further development to ensure alignment with the requirements set out above.

For more information in this regard, please contact the Society.

Kind regards

**MRS P.D. ARNOLD MFUSI**  
**DIRECTOR**