

# **DRAFT UNIFORM RULES**

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## PART 1

### DEFINITIONS

1. In these Rules, unless the context otherwise indicates :
  - 1.1 "**accounting records**" means the records which a firm is required to keep in terms of rule 35.5;
  - 1.2 "**the Act**" means the Attorneys Act, Act 53 of 1979;
  - 1.3 "**auditor**" means a person who is registered as an auditor in terms of the Auditing Profession Act, Act 26 of 2005 and who engages in public practice as an auditor registered in terms of that Act;
  - 1.4 "**bank**" means a bank as defined in section 1 of the Banks Act, Act 94 of 1990;
  - 1.5 "**branch office**" means an office at or from which the firm practises, but which is not a main office;
  - 1.6 "**business account transactions**" means transactions in regard to which records are required to be kept in terms of rule 35.5.2;
  - 1.7 "**circle**" means an association of members formed in terms of section 69(j) of the Act, under whatever name or description it exists;
  - 1.8 "**Council**" means the council of the Society;
  - 1.9 "**Court**" means the division of the High Court of South Africa having jurisdiction in the area in which the main office of the Council is situated;
  - 1.10 "**declared member**" means a person who has been declared a member in terms of section 57(2) of the Act for so long as he or she does not become a practising member;
  - 1.11 "**election**" means an election of members to the Council in accordance with the relevant provisions of Part III of these rules;
  - 1.12 "**firm**" means:
    - 1.12.1 a partnership of practitioners;
    - 1.12.2 a sole practitioner for his or her own account;

- 1.12.3 a personal liability company,
- who or which in each case conducts the practice of a practitioner;
- 1.13 "**the Fund**" means the Attorneys Fidelity Fund;
- 1.14 "**general meeting**" means a general meeting of members convened in accordance with section 68 (a) of the Act;
- 1.15 "**main office**" means the premises within the area of jurisdiction of the Council at and from which the practice of the firm is as a whole administered and controlled, including such premises in two or more buildings situate in sufficiently close proximity to one another to allow the administration of that practice as a single composite entity, and includes premises declared or determined as such in terms of rule 35.1 or 35.4, as the case may be;
- 1.16 "**member**" means a member of the Society in terms of section 57 of the Act;
- 1.17 "**place of abode**" means the place at which a declared member ordinarily resides;
- 1.18 "**practising member**" means a practitioner who is a member in terms of section 57 (1) of the Act;
- 1.19 "**practitioner**" means an attorney, notary or conveyancer duly admitted to practice and practising in the area of jurisdiction of the Council;
- 1.20 "**president and vice-president**" means respectively the president and vice-president of the Society or the person acting as such in terms of section 63(4) of the Act;
- 1.21 "**principal place of practice**" means the place at which the main office of a practising member is situate, notwithstanding that he or she may habitually or temporarily practise at or from a branch office; provided that the principal place of practice of a member who is a member of more than one firm or who is the proprietor of one firm and a member of another or others shall be deemed to be the place of the main office of that firm which has its main office closest to his residential address;
- 1.22 "**roll**" means the roll of attorneys or of notaries or of conveyancers kept by the registrar of the Court;

- 1.23 "secretary" means the secretary of the Society, by whatever title the person appointed by the Council to fulfil that function may be known, and includes an assistant secretary of the Society;
- 1.24 "Society" means the [insert name of Law Society concerned];
- 1.25 "special meeting" means a meeting of members convened in accordance with section 68 (b) of the Act;
- 1.26 "trust account transactions" means transactions in regard to which records are required to be kept in terms of rule 35.5;
- 1.27 "trust banking account" means a current cheque account and includes all trust accounts kept by a firm in terms of section 78 (1) of the Act;
- 1.28 "trust cash" means any cash held in trust by a firm other than in a trust banking account or a trust investment account;
- 1.29 "trust creditor" means a person on whose account money is held or received as contemplated by section 78(1) or invested as contemplated by 78(2)(a) or section 78(2A) of the Act;
- 1.30 "trust investment account" means and includes all accounts kept by a firm in terms of section 78(2) or section 78(2A) of the Act;
- 1.31 "trust money" means money held or received on account of any person as contemplated by section 78(1) or invested as contemplated by section 78(2) or section 78(2A) of the Act.

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

## PART II

### MEMBERS

#### Records of practitioners and members

- 2.1 Every person who is admitted and enrolled or re-admitted and re-enrolled as an attorney of the Court or whose name has been placed or again placed on the roll shall within 30 days after the date of his or her admission and enrolment or of his or her re-admission and re-enrolment or after the date on which his or her name has



been so placed or again placed on the roll, as the case may be, lodge with the secretary a statement, containing the following information:

- 2.1.1 his or her full name, date of birth, identity number and residential address;
- 2.1.2 whether or not he or she practises or is about to commence practice;
- 2.1.3 if he or she does not practise, his or her business address and postal address and telephone numbers, if any;
- 2.1.4 the address of his or her main office and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;
- 2.1.5 whether he or she conducts practice :
  - 2.1.5.1 for his or her own account, and, if so, whether alone or in partnership
  - 2.1.5.2 liability company (stating the full names of his or her co-directors); or
  - 2.1.5.3 as an employee.
- 2.1.6 the address and postal addresses and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any, of every branch office and of every building at and from which he or she practises;
- 2.1.7 the name under which the firm of which he or she is proprietor or a member or by which he or she is employed conducts practice;
- 2.1.8 if he or she is employed by any person who does not practise, the nature of his or her employment and the name and business address and postal address and telephone numbers, if any, of his or her employer;

and shall, within 30 days of any change taking place in any of the above particulars, lodge with the secretary a statement of such change.

- 2.2 The Council may require that the information referred to in this rule shall be submitted on a form to be determined by the Council.

### **Records to be maintained**

- 2.3 The secretary shall keep records, in such form as may be determined by the Council, in which he or she shall maintain a record, in relation to each person

concerned, of the information lodged with him or her from time to time in accordance with rule 2.1 and indicating whether such person is a member or not and, if so, whether he or she is a practising member or a declared member. The secretary shall also record, in relation to each person concerned:

- 2.3.1 the date of his or her admission and enrolment and, where applicable, of his or her re-admission and re-enrolment as an attorney, notary or conveyancer of the Court and, where applicable, the date upon which his or her name was placed or was again placed on the roll and, where applicable, the date upon which he or she became a practising member or a declared member, as the case may be;
- 2.3.2 where applicable, the date upon which he or she ceased to be a practising member or a declared member, as the case may be;
- 2.3.3 where applicable, the date of his or her removal from the roll of attorneys or of notaries or of conveyancers or of his or her suspension from practice and the period of the suspension.

All information appearing in the records referred to in this rule 2.3 shall, in the absence of manifest error in an entry, for all purposes be deemed to be correct.

#### **Access to information relating to practitioners**

- 2.4 The records referred to in rule 2.3 shall be kept at the secretariat and be provided, free of charge, to any member, the chief executive officer of the Law Society of South Africa or any person authorised by him or her in writing, to the secretary of any other law society referred to in section 56 of the Act or any person authorised by him or her in writing, and to the Executive Director of the Fund or any person authorised by him or her in writing.
- 2.5 Upon payment of such fees as may be fixed by the Council, the secretary may furnish any person other than the persons referred to in rule 2.4 with a certificate containing some or all of the following information extracted from the register, but with no other information, namely:
  - 2.5.1 the name and address of any practising member;
  - 2.5.2 the name and business address, or where no business address is registered, the residential address of any declared member;

- 2.5.3 whether a member has ceased practising or ceased to be a declared member, as the case may be; and
- 2.5.4 such further information as the Council is permitted in terms of the Act to provide.

### **Maintenance of records and communications by Council**

- 2.6 The Council may, where appropriate, communicate with members and with third parties electronically. In communicating with its members, and in retaining records in electronic form, the Council shall ensure that all electronic communications and records are appropriately safeguarded, and that measures are established and maintained that secure the confidentiality and integrity of the communications and records (whether those records are in paper and text or in electronic form), in terms of generally accepted information security practices appropriate to the information.
- 2.7 The Council shall appoint an information officer, whose functions shall include:
  - 2.7.1 overseeing the security of information processed by the Council;
  - 2.7.2 processing personal information in terms of legislation relating to the protection of personal information;
  - 2.7.3 providing access to information in terms of the Promotion of Access to Information Act, 2 of 2000; and
  - 2.7.4 interaction with the information officers of members and of third parties on issues relating to information security, protection of personal information and access to information.

### **Declaration of persons as members**

- 2.8 In declaring a person to be a member of the Society under section 57(2) of the Act, the Council shall have regard, inter alia, to the following considerations:
  - 2.8.1 the nature and length of duration of his or her employment or of the profession, business or other occupation practised, conducted or engaged in by him or her;
  - 2.8.2 whether or not he or she practises or resides outside the jurisdiction of the relevant society;

- 2.8.3 where application to be so declared a member is made by him or her, the reasons which he or she advances in support of his or her application;
- 2.8.4 whether, if he or she is employed, his or her employer supports or objects to his or her admission to membership and, in either case, the reasons advanced for the support or objection;
- 2.8.5 whether he or she would, in the opinion of the council, be a person whom the council would consider fit and proper to practise in the jurisdiction of the relevant Society.
- 2.9 Every such declaration shall be conditional upon:
- 2.9.1 the person concerned having, should the Council so require, before being declared a member, furnished the Society with his or her written acknowledgement that he or she is aware that he or she is bound by the Act and the rules of the Society and the code of conduct of the profession, including the rules of professional conduct contained in Part VI of the rules.;
- 2.9.2 the person concerned ceasing to be a declared member upon the date of a written notice to him or her by the Council that, because of a change of his or her employment or of his or her profession, business or other occupation, or because, in the opinion of the Council, there has been a material alteration in the circumstances upon which the Council based its decision to declare him or her a member or because that decision was based upon information which, in the judgment of the Council, was erroneous, false or misleading, or on account of conduct on the part of the declared member which in the opinion of the Council is unethical or improper, the Council deems it desirable that his or her declared membership should cease;
- 2.9.3 such further conditions as the Council may see fit to impose in writing in declaring him to be a member;
- 2.9.4 the right of the Council from time to time, in its discretion, by means of written communications to the member concerned, to impose such conditions as it could have imposed in terms of rule 2.9.2, or to add to or otherwise vary any such conditions previously imposed.
- 2.10 Declared members shall not have the right to vote and shall not be eligible for appointment or election to the Council.

- 2.11 Before issuing a notice in terms of rule 2.9.2 the Council shall afford the person concerned an opportunity to be heard, and, either in the notice itself or, if so required by him or her, after the notice has been issued, shall furnish the member concerned with written reasons for its decision.
- 2.12 The Council shall be entitled to terminate a declared member's membership of the Society if it deems it desirable to do so by reasons of:
- 2.12.1 any change in the nature of such member's employment subsequent to his or her declaration as a member;
- 2.12.2 any alteration, deemed by the Council to be material. In the circumstances in the light of which the Council exercises its discretion to declare him a member including (but without derogating from the generality of the foregoing) the reliance by the Council, in making such declaration, upon information which, in its opinion, appears to be erroneous, false or misleading;
- 2.12.3 any other circumstances which, in the opinion of the Council, justify such a termination of membership.
- 2.13 The Council:
- 2.13.1 shall not exercise its right of termination without having notified the member concerned in writing that it is considering such termination and without advising such member of the reason for which it is considering doing so and without having afforded the member concerned the opportunity to furnish the Society within a period stipulated (which period shall not be less than 14 days) calculated from the date of the society's notification to the member) his or her reason, if any, as to why the Council shall not exercise such right;
- 2.13.2 shall be entitled to call upon the member concerned to amplify such reasons by oral representations to Council within such period as it shall stipulate;
- 2.13.3 shall make its decision as to whether or not the membership of the member concerned is to be terminated in light of such reasons, if any, and such oral representations, if any, submitted by such member;
- 2.13.4 shall notify the member concerned in writing of its decision either to terminate his or her membership or not to do so, and in the former instance, the member's membership of the society shall terminate with effect of the date of the Council's notification.

### **Honorary Membership**

- 2.14 The Council may appoint as an honorary member of the Society any attorney who is not a member of the Society, whether or not he or she is or has formerly been a practitioner, if in the opinion of the Council he or she has made a significant contribution to the administration of justice or the attorneys' profession.
- 2.15 Any person so appointed shall remain an honorary member of the Society during the pleasure of the Council, and may, upon invitation by the Council, attend meetings and other gatherings of members, but shall have no right of audience, save at the invitation or with the consent of the chairman, shall not have a vote at any meeting of members and shall not be liable for the payment of any subscriptions, levies, or fees, nor shall he or she be eligible for election or appointment to the Council.
- 2.16 The secretary shall keep a record of the names and addresses of all honorary members.

### **Life Membership**

- 2.17 The Council may appoint as a life member of the Society any attorney who has been a practising member of the Society for a period of 40 years or more.
- 2.18 Any person so appointed:
- 2.18.1 shall not be liable for the payment of any subscription, levy, fee or charge, other than a fine imposed pursuant to a disciplinary enquiry by the Council;
- 2.18.2 if he or she is a practising member, may attend meetings and other gatherings of members, and shall have a right of audience and may vote at any meeting of members; and
- 2.18.3 shall be bound by these rules and shall remain subject to the disciplinary procedures and sanctions of the Society.
- 2.19 The secretary shall keep a record of the names and addresses of all life members.

### **Professional companies**

- 2.20 It shall be the obligation of every member of a professional company which practises within the area of jurisdiction of the Council or which has a registered office situate within that area of jurisdiction:

- 2.20.1 to ensure that the secretary is notified in writing, in the case of any such company which was incorporated before the promulgation of these rules and which has not yet done so, within 30 days of the date of their promulgation, or, in other cases, within 30 days of the date when the company registers such registered office or the date when it so commences practice, whichever of the two dates is the earlier, of:
- 2.20.1.1 the name of the company, its registration number, the date of its incorporation and the address of its registered office;
  - 2.20.1.2 the full names, dates of birth, identity numbers and residential, business and postal addresses of every member of the company;
  - 2.20.1.3 the address of every place of practice within the Republic where the company practises or in which it shall have any interest, with the postal addresses and telephone number used in connection with the practice carried on at each such place;
  - 2.20.1.4 any other information which the Council may from time to time require;
- of any change in any of the information given in terms of rule 2.20.1 within 30 days of such change taking place;
- 2.20.2 to supply the Council, whenever so required, with notarially certified copies of the memorandum of incorporation, notice of incorporation and registration certificate relating to such company together with notarially certified copies of all amendments made to any of the foregoing to the date of such supply.
- 2.21 The secretary shall keep the information furnished under rule 2.20.1 in the Society's records.
- 2.22 A firm shall ensure that every member of a professional company shall be a director of that company and only a member of a company shall be a director thereof.
- 2.23 Any reference in these rules to a practitioner or to a partner or partnership in relation to practitioners shall be deemed to include a reference to a company under section 23 of the Act or to a member or director of such company, unless the context otherwise indicates.

### **Annual subscription and other charges payable to the Society by members**

- 2.24 Each member shall pay to the Society an annual subscription and such fees, levies or other charges at such time and at such amounts as may from time to time be fixed by the Council with the approval of the Society given at a general or special meeting in terms of section 60(2) of the Act.
- 2.25 If any member fails to pay a subscription or any fee, levy or other charge within one month after it has become due, the secretary shall, by letter or by electronic communication, draw his or her attention to that fact, and if the subscription or fee, levy or other charge in arrear is not paid within seven days from the date of despatch of such letter or within such further time as the Council may allow, proceedings for the recover thereof may be taken against him or her.
- 2.26 A member whose annual subscription is in arrears for more than two months shall be entitled to be present at any general or special meeting of members but shall not be entitled to vote thereat either in person or by proxy.

### **Communications to members**

- 2.27 A communication or notice to a member, if not delivered to him or her personally where required in terms of these rules, shall be sent to him or her by post or electronic communication to the address in the Society's records:
- 2.27.1 if he or she is a practising member, at that of his or her main office, or if he or she does not practise at the main office, at such branch office which may be applicable;
- 2.27.2 if he or she is a declared member who has disclosed neither a business address nor the address of an employer, or if he or she is any other person who does not practise, at his or her residential address;
- or if the member has chosen an electronic address for the receipt of notices, the communication or notice to the member shall be sent to him by electronic means at that electronic address; provided that any communication to a member which requires that member to attend before the Council or a committee of the Council shall be delivered to that member personally or be sent by registered post.
- 2.28 A communication or notice which is posted to a member shall be deemed to have been duly and properly received seven days after posting, and if transmitted by electronic means, shall be deemed to have been duly and properly received on the date of transmission, unless the contrary is proved. An electronic communication



addressed to a member who is a subscriber to an advanced signature facility established by the Council in terms of the Electronic Communication and Transmission Act, 25 of 2002 that is transmitted to the member and signed electronically by an authorised officer of the Council shall in all circumstances be deemed to have been delivered to the member personally, unless the contrary is proved.

### **Security of communications and records**

- 2.29 The Council and members shall ensure that all information, in whatever form, that is created, processed, communicated or retained (referred to in these rules collectively as "**processed information**") shall be processed subject to a degree of information security that is appropriate, having regard to the nature of the information and the purpose for which it is processed. In assessing the appropriateness of information security for purposes of this rule the Council and members must have regard to all applicable laws and rules, as well as relevant codes, guidelines and practices pertaining to the establishment and maintenance of information security.

### **Meetings of members**

#### **General meetings**

- 2.30 The Council shall convene a general meeting to take place on a date not later than 6 months after the end of the financial year. Notice of every general meeting shall be sent to every member by the secretary at least 49 clear days before the date of the meeting and shall:
- 2.30.1 state the date, the time of commencement and place thereof;
  - 2.30.2 state the business to be transacted thereat as set forth in rule 2.31;
  - 2.30.3 call for notices of special business in terms of rule 2.31.6.
- 2.31 The business to be transacted at a general meeting shall be:
- 2.31.1 the confirmation of minutes of the previous meeting of members;
  - 2.31.2 the consideration of the president's report, together with the annual financial statements of the Society for the preceding year and such other reports as are required by these rules to be placed before the annual general meeting. The president's report shall include the number of ordinary monthly meetings held by the Council during the preceding year; how many of those meetings each

member of the Council in office at the time attended; and such comment, if any, as the president may consider appropriate as to the reasons for the absence of any member from any such meeting;

2.31.3 at a general meeting first following an election, to receive the result of that election;

2.31.4 the appointment of the auditor or auditors;

2.31.5 the consideration and transaction of any business which the Council may deem expedient to submit to the meeting;

2.31.6 the consideration and transaction of any special business of which due notice as provided in rule 2.30.4 shall have been given by any member.

2.32 The procedure at a general meeting shall, unless varied by the chairperson, be as follows:

2.32.1 the chair shall be taken as directed by rule 2.68;

2.32.2 the minutes of the preceding general meeting and of all intervening special meetings shall be read, or taken as read if the meeting so decides, and confirmed;

2.32.3 the president's report shall then be considered together with the annual financial statements of the Society for the preceding year signed by the auditor and all matters arising therefrom shall be open for discussion;

2.32.4 in a year in which an election has been held, the chairperson shall then announce the names of the candidates elected as members of the Council for the ensuing period of office;

2.32.5 the appointment of an auditor or firm of auditors shall take place in the manner determined by the meeting;

2.32.6 any business or matter which the Council may have deemed it expedient to introduce shall then be discussed and dealt with or the opinion of the meeting taken thereon;

2.32.7 after all the business submitted by the Council has been dealt with, any special business, of which notice has been duly given and which may be lawfully dealt with at the meeting, shall be considered and dealt with.

- 2.33 Notice of any special business to be raised by any member at a general meeting shall be given to the secretary in writing at least 32 clear days before the date of the meeting. In respect of such special business:
- 2.33.1 notice shall be sent to each member by the secretary at least 21 clear days before the date of the meeting;
- 2.33.2 whenever a notice of special business has been given by a member and included as business to be transacted at a general meeting, and the member who gave the notice is not present at that meeting and has not withdrawn it, any member there present may, with the consent of the chairperson, adopt it as his or her own, and move it as if the notice had been given by him or her, failing which that business shall be removed from the agenda.

### **Special meetings**

- 2.34 The Council may on such dates and at such times and places as it may determine convene special meetings.
- 2.35 The Council shall upon a requisition in writing made by members representing not less than five per cent of the members of the Society (calculated by reference to the total number of practising members at 1 January of the year during which the meeting is requisitioned) convene a special meeting; every such requisition shall specify the business required to be dealt with at that meeting, shall be signed by the members making the requisition and shall be lodged with the secretary.
- 2.36 Notice of every special meeting shall be sent to every member by the secretary at least 14 clear days before the date of the meeting and shall state :
- 2.36.1 the date and place and the time of commencement thereof; and
- 2.36.2 the business for which the meeting is convened;
- provided that:
- 2.36.3 should it be a matter of urgency, as to which the Council shall be the sole judge, such shorter period of notice as the Council may determine may be given;
- 2.36.4 in the case of a meeting requisitioned under rule 2.35 the meeting shall be convened for a date not more than 30 clear days after the lodgement of the

signed requisition with the secretary and shall be held at such time and at such place as the Council may determine.

- 2.37 No business other than that for which a special meeting has been convened may be dealt with at that meeting.

### **Provisions common to all meetings of members**

- 2.38 A quorum at a general or special meeting shall be fifty practising members personally present within 15 minutes after the time fixed for the commencement of the meeting.
- 2.39 If a quorum is not present and the meeting is a general meeting or a special meeting other than one requisitioned under rule 2.35, it shall stand adjourned to the corresponding time on the seventh day thereafter at the same place, and the members then personally present shall constitute a quorum; provided that if the last mentioned day be a public holiday the meeting shall not take place on that day but shall stand adjourned instead to the corresponding time and the same place on the next succeeding business day, not being a public holiday, a Saturday or a Sunday.
- 2.40 If the meeting is a special meeting requisitioned in accordance with rule 2.35 and there is not a quorum present at the time appointed for that meeting or within 15 minutes thereafter, the meeting shall be dissolved.
- 2.41 Unless the chairperson otherwise decides, no notice of any meeting adjourned as provided in rule 2.39 need be given.
- 2.42 Any meeting of members at which a quorum shall be present may be adjourned to such time, date and place as may be decided at the meeting.
- 2.43 No business shall be transacted at an adjourned meeting other than the business competent to be considered and uncompleted at the meeting which was adjourned.
- 2.44 The following rules of debate and conduct shall be observed at all meetings of members:
- 2.44.1 subject to the provisions of this rule 2.44, members shall be given due and sufficient opportunity to speak on any subject under debate or discussion but no member shall be entitled, without the leave of the chairperson, to speak more than once on the same subject, except by way of explanation; provided that the mover of any motion shall be allowed to speak in reply, after which the debate or discussion shall be closed;

- 2.44.2 a member moving a motion may not speak for more than 15 minutes and any other member may not speak for more than 10 minutes, provided that the chairperson may extend such periods by such time as he or she may direct;
- 2.44.3 while an original motion is under debate no further motion shall be received except the following motions of course:
  - 2.44.3.1 to amend the motion;
  - 2.44.3.2 that the meeting be adjourned;
  - 2.44.3.3 that the debate be adjourned;
  - 2.44.3.4 that the question be not now put;
  - 2.44.3.5 that the meeting proceed to the next business.
- 2.45 An amendment shall:
  - 2.45.1 be relevant to the motion on which it is moved;
  - 2.45.2 if so required by the chairperson, be reduced to writing, signed by the mover, handed to the chairperson and read by him or her before being moved;
  - 2.45.3 be disposed of before:
    - 2.45.3.1 any subsequent amendment be moved;
    - 2.45.3.2 the original motion be proceeded with;
  - 2.45.4 if carried, cause the original motion as thereby amended to become the original motion before the meeting and to which any subsequent amendment may be moved;
  - 2.45.5 not be permitted if it alters the original motion in such a way as to make it a new motion actually or in effect, or effectively negates the original motion.
- 2.46 A member shall not be entitled to move the amendment of the same motion on more than one occasion.
- 2.47 A motion that the meeting be adjourned:

- 2.47.1 may, at any time except during the course of a speech by another member or while a vote is being taken, be moved by a member who has not already participated in the debate on the question then before the meeting;
- 2.47.2 shall provide for the date, place and time of the resumed meeting;
- 2.47.3 shall, if carried, forthwith cause the meeting to be adjourned; provided that if so directed by the chairperson, business other than opposed business shall first be disposed of;
- 2.47.4 shall, if not carried, prevent the acceptance of another such motion until half an hour thereafter;
- 2.47.5 may not be moved or seconded by the same member more than once during the course of one meeting;
- 2.47.6 may be spoken to by the mover for not longer than five minutes but shall not be spoken to by the seconder beyond formally seconding it and shall not be further discussed save in relation to any amendment to the period of the adjournment or by that member who first rises to speak in opposition to it and who may do so for not longer than five minutes;
- 2.47.7 shall, if carried during a debate on any question and before the conclusion thereof, entitle the member who moved the adjournment to speak first on that question at the adjourned meeting.
- 2.48 A motion that the debate be adjourned:
  - 2.48.1 may, at the conclusion of any speech during the debate, be moved by a member who has not already participated in the debate;
  - 2.48.2 shall, if carried, cause the meeting forthwith to proceed to the next business on the agenda and the adjourned debate, unless otherwise resolved, to be resumed at the next general meeting;
  - 2.48.3 shall, at the resumption of the adjourned debate, entitle the member who moved the adjournment to speak first;
  - 2.48.4 shall, if not carried, prevent the acceptance of another such motion until half an hour thereafter;
  - 2.48.5 may not be moved or seconded by the same member more than once during the course of the same debate;

- 2.48.6 may be spoken to by the mover for not longer than five minutes but shall not be spoken to by the seconder beyond formally seconding it and shall not be further discussed save in relation to any amendment to the period of the adjournment or by that member who first rises to speak in opposition to it and who may do so for not longer than five minutes.
- 2.49 A motion that the question be not now put:
- 2.49.1 may, at the conclusion of any speech while an original motion, but not an amendment thereto, is under debate, be moved by a member who has not already participated in that debate;
- 2.49.2 may be moved immediately after an amendment to the original motion has been moved and before debate thereon has commenced and shall take precedence over such amendment;
- 2.49.3 shall be accepted or rejected by the chairperson in his or her discretion and its rejection shall preclude the moving of another such motion during the same debate until half an hour thereafter;
- 2.49.4 may not be amended;
- 2.49.5 shall, if not carried, cause the original motion to be put to the vote forthwith without further discussion;
- 2.49.6 shall, if carried, prevent the original motion from being put to the vote at that meeting but shall not prevent it from being moved afresh at a subsequent meeting;
- 2.49.7 shall be superseded by a motion that the meeting be adjourned;
- 2.49.8 may be spoken to by the mover and by any other member once only for not longer than five minutes each save that the mover shall have the right to reply for not longer than five minutes.
- 2.50 A motion that the meeting proceed to the next business:
- 2.50.1 shall be an interrupting motion;
- 2.50.2 may, at the conclusion of any speech while an original motion or any amendment hereto is under debate, be moved by a member who has not already participated in that debate;

- 2.50.3 shall be accepted or rejected by the chairperson in his or her discretion;
- 2.50.4 may not be spoken to by the mover or seconder beyond formally moving or seconding it;
- 2.50.5 may not be further discussed save that the chairperson shall upon accepting the motion, immediately offer the mover of the original motion the opportunity where applicable of exercising his or her right to reply to the debate on the original motion, whereafter the chairperson shall at once put the interrupting motion to the vote;
- 2.50.6 shall, if not carried, cause the debate on the original motion or on the amendment to be resumed at the point where it was interrupted, provided that if the mover of the original motion has exercised his or her right of reply and there be further debate on the original motion, the mover thereof shall have the right of replying only to such further debate shall, if not carried, preclude the mover and seconder thereof from again moving or seconding another such motion during the same debate and the chairperson from accepting another such motion by another member during the same debate until half an hour thereafter;
- 2.50.7 shall, if carried, cause the original motion together with amendments thereto, if any, to lapse and no decision in regard thereto shall be deemed to have been taken.
- 2.51 A motion shall be seconded before being put to the meeting.
- 2.52 The chairperson may call the attention of the meeting to continued irrelevance, tedious repetition, unbecoming language or any breach of order on the part of a member and may order such member to discontinue his or her speech, or to withdraw a remark and, in the case of aggravated breach of order, defiance or serious impropriety, to withdraw from the meeting.
- 2.53 The ruling of the chairperson in regard to the application or the interpretation of or other matters arising out of or connected with any of the provisions of the rules relating to the rules of debate and conduct to be observed at all meetings shall be final and binding.
- 2.54 Except where in these rules otherwise provided, all questions discussed at general or special meetings shall be decided by a simple majority of members voting either in person or by proxy as provided in rule 2.57.



- 2.55 In all such questions the chairperson at the meeting shall, in the event of an equality of votes, have a second or casting vote in addition to his or her deliberative vote.
- 2.56 Voting in person shall be by way of show of hands; provided that if the chairperson so directs or if a poll is, at the request of a member, favoured by show of hands of at least one fourth of the members present in person, the vote shall be taken by poll in such manner as the chairperson shall direct.
- 2.57 At all general and special meetings votes may be given (except where otherwise in these rules provided) in person or by proxy.
- 2.58 The proxy holder shall be a member and shall be appointed by a written proxy substantially in the form prescribed in the First Schedule to these rules, which shall be completed and signed, and the votes and acts of such proxy holder shall be as valid and effectual as if made, done or given by the member in person, and every such proxy shall continue in force for the particular meeting for which it was given and for any adjournment thereof.
- 2.59 The proxy form shall contain a statement of the subject on which the holder thereof is to vote and also in what manner the holder is to vote in respect thereof or whether he or she may vote thereon or on any amendment as he or she thinks fit; provided that where the proxy holder is the chairperson the proxy form shall instruct him or her to vote only for or against a motion and with no authority to vote as he thinks fit, and provided further that the chairperson shall have no authority under the proxy to vote for any amendment to the original motion.
- 2.60 A proxy holder, other than the chairperson, shall not be entitled, at any general or special meeting, to act as a proxy for more than the number of members determined by the Council from time to time.<sup>1</sup>
- 2.61 Whenever a motion in respect whereof proxy votes have been lodged in accordance with rule 2.62 is put to the vote, the voting procedure shall be as follows:
- 2.61.1 the votes of those members who vote in person both for and against the motion shall first be counted;
- 2.61.2 the votes of those members who vote by proxy both for and against the motion shall next be counted in the manner set forth under rule 2.61.5;

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<sup>1</sup> The position as far as the Cape Law Society is concerned differs from the other provincial law societies to the following extent: "2.60 There shall be no limit on the number of proxies that a proxy holder shall hold."

- 2.61.3 the total number of votes counted in accordance with rules 2.61.1 and 2.61.2 shall be taken into account in determining the result of the voting;
- 2.61.4 proxy holders who exercise a vote by proxy shall do so by handing to two scrutineers, appointed by the chairperson from among the members present who do not themselves hold proxy forms, their proxy forms on which they shall have endorsed at the foot in the case of those motions where they have been instructed to vote as they think fit (including motions of course) the manner in which they have elected to vote;
- 2.61.5 the scrutineers shall scrutinise each proxy form so handed to them and, having satisfied themselves that the form bears the date stamp of the secretariat as in rule 2.63 provided and that the vote has in each case been cast as authorised, shall count the number of proxy votes cast both for and against the motion and shall report the result to the chairperson who shall add them to the respective number of votes cast both for and against the motion by the members who voted in person and shall forthwith announce the result of the voting to the meeting and his or her announcement shall in the absence of manifest error for all purposes be taken as correctly reflecting that result;
- 2.61.6 if after a vote has been taken on a motion of course on which a proxy has cast his or her proxy vote, the original motion, in respect of which the proxy holder has been authorised to vote by proxy, is put to the vote, the secretary shall return his or her proxy form to the proxy holder concerned to enable him or her to cast his or her proxy vote on the original motion.
- 2.62 The signed proxy form bearing the original signature of the member shall be lodged with the secretary not less than 24 hours prior to the time fixed for the commencement of the meeting at which the proxy is intended to be acted upon. This rule will be deemed to have been complied with if a faxed or electronic copy of the signed proxy form is received by the secretary not less than 24 hours prior to the time fixed for the commencement of the meeting provided that the original of that proxy form bearing the original signature of the member giving the proxy shall be received by the secretary not later than the time fixed for the commencement of the meeting.
- 2.63 The secretary shall thereupon satisfy himself or herself that each such proxy form complies with these rules and has been duly completed and shall then place the date stamp of the secretariat upon the form as evidence that these rules have been complied with in relation thereto.

- 2.64 The secretary shall ensure that all original proxy forms bearing the stamp of the secretariat as aforesaid are available at the place of the meeting and under his or her charge at least one hour before the time of commencement of the meeting, and shall hand to a proxy holder on request, and having identified him or her as such proxy holder, his or her proxy form so stamped.
- 2.65 No proxy vote shall be recognised which is not dealt with and cast in accordance with provisions of this rule.
- 2.66 No member shall be entitled to vote by proxy on any question directly affecting any member personally.<sup>2</sup>
- 2.67 Minutes of the proceedings of every meeting of members shall be kept by the secretary or, in the event of his or her absence, by any other person appointed for the occasion by the chairperson at that meeting, which minutes shall be in written or electronic format. A fair copy of minutes which are kept in writing shall be entered in a minute book to be kept for that purpose and shall, subject to any necessary correction having been made, be signed as correct by the chairperson at the first succeeding meeting of the Council. Where the record of the proceedings is kept in electronic format it shall be in such form as the Council may determine. Such minutes shall be held available at the secretariat for inspection, free of charge, by any member on request.
- 2.68 At all meetings of members the president, if he or she shall be present, and if not, then the vice-president, and in the absence of the president and the vice-president, then a member of the Council nominated by the members of the Council there present, and in the absence of the president, vice-president and all the members of the Council, then a member of the Society, to be elected at the meeting, shall preside as chairperson, provided that the member who takes the chair as president or vice-president at the commencement of a general meeting shall continue to act as chairperson for so long as he or she is present at that meeting, notwithstanding that he or she may during the course of that meeting cease to be president or vice-president or a member of the Council.

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<sup>2</sup> In respect of the Cape Law Society, the rule reads: "2.66 No member shall be entitled to vote by proxy on any question directly affecting that member personally."

## **Matters requiring special approval of members**

- 2.69 The alienation or mortgaging of any immovable property of the Society, the appointment of its auditors and the fixing by the Council of any subscription, fees, levies or other charges payable to the Society by members shall be subject to the approval of a simple majority of the members who are present or represented at a general meeting or at a special meeting convened for one or more of those purposes, provided that the members present or represented at the meeting may resolve that a decision on the appointment of auditors may be determined by the Council. The chairperson at the meeting shall not have a second or casting vote in this regard.

## **PART III**

### **THE COUNCIL**

#### **Number of Council members and manner of election and appointment**

- 3.1 The number of Council members shall be [●].
- 3.2 In respect of the Council:
- 3.2.1 fifty percent shall be practitioners who are not members of the National Association of Democratic Lawyers (Nadel) or the Black Lawyers Association (BLA);<sup>3</sup>
- 3.2.2 twenty-five percent shall be members of Nadel elected by the members of Nadel in accordance with its procedures and appointed to be members of the Council by Nadel;
- 3.2.3 twenty-five percent shall be members of the BLA elected by the members of BLA in accordance with its procedures and appointed to be members of the Council by BLA.
- 3.3 No person shall be eligible to be elected or appointed if such person:

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<sup>3</sup> In respect of the Cape Law Society, the number of Council members shall be 20 and sub-rule 3.2.1 reads: "3.2.1 fifty percent shall be practitioners who are not members of the National Association of Democratic Lawyers (Nadel) or the Black Lawyers Association (BLA); who shall be elected by members who are not members of Nadel or BLA and who shall be representative of such members of the Provinces of the Western Cape, Eastern Cape and Northern Cape. The number of members of each province shall be determined by the non Nadel and non BLA members of the Council holding office immediately prior to the election."

- 3.3.1 has outstanding subscriptions, fines, costs and levies or any other financial obligations due to the Society; has a pending application to strike his or her name from the roll of attorneys or to suspend him or her from practice;
- 3.3.2 is not in possession of a current Fidelity Fund Certificate, where applicable; or
- 3.3.3 has been found guilty of unprofessional or dishonourable or unworthy conduct during the preceding three years in respect of which a fine of R50 000 or more has, or fines of R50 000 or more in the aggregate have, been imposed.

#### **Manner of election or appointment of member of the Council**

- 4.1 The members of the Council referred to in rule 3.2.1 shall be elected or appointed in the manner determined by the members of the Council who are not members of Nadel or BLA.
- 4.2 The members of the Council referred to in rules 3.2.2 and 3.2.3 shall be elected or appointed by Nadel and BLA respectively in the manner determined by them respectively.

#### **Period of office of members of Council**

- 5.1 A member of the Council shall take office as such on the date of election or appointment in terms of the Act or immediately after the result of the election at which he or she is elected has been received by the general meeting first following that election and shall, subject to rule 6, hold office until the reception of the result of the next election by the general meeting concerned.
- 5.2 A member of the Council who holds office as such at the date of promulgation of these rules shall be deemed to have been elected or appointed in accordance with these rules and shall, subject to rule 6.1, continue to hold office until the reception by the general meeting concerned of the result of the first of the elections held in terms of rule 3.4.
- 5.3 A member of the Council shall serve in that capacity for a term of three years but may make himself or herself available for re-election or re-appointment, as the case may be, for a further term of three years; provided that if a member of the Council is co-opted as a member in terms of these rules then the period between the date of his co-option and the date of the next annual general meeting shall be counted as

part of his term of office. A member of Council shall in any event, however, not be entitled to serve as a member of council for more than seven consecutive years.<sup>4</sup>

### **Vacating of office by member of Council**

6.1 A member of the Council shall vacate his or her office:

6.1.1 if he or she:

6.1.1.1 resigns by notice in writing to the secretary;

6.1.1.2 ceases to be a member of the Society;

6.1.1.3 is suspended from practice by the court;

6.1.1.4 is removed from office by the Council in terms of rule 7;

6.1.1.5 surrenders his or her estate or if his or her estate is finally sequestrated as insolvent;

6.1.1.6 becomes of unsound mind;

6.1.1.7 is absent without leave for more than four meetings (other than special meetings) of the Council in any twelve month period commencing on the date of the annual general meeting, without reasons acceptable to the Council;

6.1.1.8 is declared by a court to be incapable of managing his or her own affairs;

6.1.2 during any period for which he or she may be suspended from office.

6.2 A resolution of the Council declaring such member's office vacated shall be *prima facie* proof as to the fact and grounds of vacation.

### **Suspension and removal of member of Council**

7.1 Any councillor who:

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<sup>4</sup> The position in the Cape Law Society differs from the other provincial law societies to the following extent: "5.3 A member of the Council shall serve in that capacity for a term of three years but may make himself or herself available for re-election or re-appointment, as the case may be, for a further term of three years; provided that if a member of the Council is co-opted as a member in terms of these rules then the period between the date of his co-option and the date of the next annual general meeting shall be counted as part of his term of office."

- 7.1.1 has outstanding subscriptions, fines, costs and levies or any other financial obligations due to the Society; or
- 7.1.2 has a pending application to strike his or her name from the roll of attorneys or to suspend him or her from practice; or
- 7.1.3 is not in possession of a current Fidelity Fund Certificate; or
- 7.1.4 has been found guilty of unprofessional or dishonourable or unworthy conduct during the preceding three years in respect of which a fine of R50 000 or more has, or fines of R50 000 or more in the aggregate have, been imposed

shall be suspended from serving as a councillor.<sup>5</sup>

- 7.2 Any councillor who is suspended shall be reinstated:
  - 7.2.1 upon payment of outstanding subscriptions, fines, costs and levies or any other financial obligations due to the Society; or
  - 7.2.2 on issue to him or her of a current Fidelity Fund Certificate; or
  - 7.2.3 if the result of the application to strike his or her name from the roll of attorneys or to suspend him or her from practice is such that he or she is not struck from the roll or suspended from practice.
- 7.3.1 Subject to the provisions of the Act, the Council may by a vote representing a majority of 75% of councillors present at a meeting of the Council suspend a member of the Council from office for any reason which it considers would justify his or her removal from office, pending an enquiry into the circumstances which gave rise to the decision to suspend.
- 7.3.2 The Council shall not exercise its right of suspension in terms of rule 7.3.1 without having first notified the member concerned in writing that it is considering such a suspension and without advising such member of the reason for which it is considering doing so.

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<sup>5</sup> The position in respect of the Cape Law Society is as follows: "7.1.4 has been found guilty of unprofessional or dishonourable or unworthy conduct during the preceding three years in respect of which a fine of R20 000 or more has, or fines of R20 000 or more in the aggregate have been imposed" shall be suspended from serving as a councillor.

- 7.3.3 The Council shall afford the member concerned the opportunity to furnish the Council within a period stipulated in the notification his or her reason, if any, as to why the Council should not exercise such right to suspend him or her.
- 7.3.4 The Council shall be entitled to call upon the member concerned to amplify such reasons by oral representations to Council within such period as it shall stipulate.
- 7.3.5 The Council shall make its decision in the light of such reasons, if any, and such oral representations, if any, submitted by such member.
- 7.3.6 The Council shall notify the member concerned in writing of its decision either to suspend or not to do so, and in the former instance the suspension shall be effective from the date of the Council's decision.
- 7.4 The Council shall record the date on which the suspension of a member of the Council becomes effective and the date on which the suspension terminates.

#### **Temporary appointments as members of the Council**

8. In making an appointment to the Council:
- 8.1 to fill a vacancy caused by the vacation of office by a member of the Council in terms of section 62(2)(a) of the Act; or
- 8.2 to fill a vacancy caused by the increase in the number of the members of the Council in terms of section 62(2)(b) of the Act; or
- 8.3 to act in the place of a suspended member of the Council in terms of section 62(3) of the Act.

the Council shall ensure that the allocation of seats on the Council is maintained as provided for in terms of rule 3.

#### **Election of president and vice-president**

9. A president and a vice-president or vice-presidents as contemplated by section 63(1) of the Act shall, in that order, be elected annually on the day on which the general meeting is held:<sup>6</sup>

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<sup>6</sup> In respect of the Cape Law Society, the rule reads as follows "9. A president and four vice-presidents, one each of whom shall respectively be members of Nadel and BLA and two of whom shall not be members of Nadel and



- 9.1 in a year in which an election has been held, by the members of the incoming Council as soon as may be practicable after the receipt by the general meeting of the result of that election;
- 9.2 in each other year, by the members of the Council then in office at a convenient time after the chair has been taken in terms of rule 2.70.

### **Periods of office of president and vice-president**

- 10.1 Subject to subsections (2), (3) and (4) of section 63 of the Act, a president and a vice-president shall hold office from the time of his or her election as such until the next election of the president and the vice-president in terms of rule 9.
- 10.2 The president and the vice-president or vice-presidents in office at the date of promulgation of these rules shall each continue, subject to the subsections (2), (3) and (4) of section 63 of the Act, to hold office as such until the first election of a president and a vice-president or vice-presidents respectively in terms of rule 9.
- 10.3 A retiring president and a retiring vice-president shall each be eligible for re-election to those respective offices but shall not be entitled to serve more than two terms of one year each in their respective capacities.
- 10.4 If a president or a vice-president becomes indisposed or for any other reason is unable to fulfil his or her duties in that capacity, and the Council on reasonable grounds believes that he or she will be unable to resume his or her duties within a period of three months, then the Council shall elect one of their number to act as president or vice-president, as the case may be, for the unexpired term of office of the individual concerned; provided that the member of the Council so elected shall be elected from amongst the members of Council who are elected or nominated by the same constituency as the president or vice-president who ceases to hold that office.

### **Council meetings**

- 11.1 Meetings of the Council shall, so far as practicable in the opinion of the Council, be held at least once in each calendar month (except December) on such dates and at such times and places as may from time to time be determined by the Council or, otherwise, by the president, and shall be convened by the Council at its preceding

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BLA, as contemplated by section 63(1) of the Act shall, in that order, be elected annually on the day on which the general meeting is held:"

meeting or, should the Council fail to do so, by the president; provided that the president may at any time *mero motu* convene a meeting of the Council in such manner as he or she shall determine; provided further that the secretary shall forthwith, if requested in writing so to do by members representing not less than one-fifth of the Council members in office, convene a special meeting of the Council at such time and place as he or she may determine by not less than seven nor more than 14 days' notice in writing, stating the business to be considered.

- 11.2 When convening a meeting *mero motu*, the president may, in cases which are, in his or her judgment, of sufficient urgency, give such period of notice of the meeting, and in such manner as he or she thinks fit, to the members of the Council provided that no decision shall be taken at such a meeting unless a quorum be present and the decision be unanimous.
- 11.3 A resolution, other than a written resolution, taken on the motion of the president on a matter which is, in his or her opinion, of sufficient urgency, shall, although not taken at a meeting of the Council but by such other means of communication as the president may deem fit to employ, if all those members of the Council who are readily accessible have been consulted and if the majority of all members of the Council who are then in office have expressed their assent, be as valid and effectual as if it had been passed at a meeting of the Council duly convened and held.
- 11.4 Every such resolution shall as soon as possible thereafter be recorded in writing and such record shall be deemed to be a minute of a meeting, shall be entered in the minute book referred to in rule 11.6 and shall be noted by the next following meeting of the Council.
- 11.5 Save where otherwise provided in these rules, fifty percent plus one of the members of the Council shall form a quorum; provided that if a quorum is not present within 15 minutes after the time fixed for the commencement of the meeting it shall stand adjourned to the corresponding time on the seventh day thereafter at the same place, and the members then present shall constitute a quorum; and provided further that if the last-mentioned date is a public holiday the meeting shall not take place on that day but shall stand adjourned instead to the corresponding time and the same place on the next succeeding business day, not being a public holiday, a Saturday or a Sunday.<sup>7</sup>

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<sup>7</sup> Rule 11.5 reads as follows in respect of the Cape Law Society: "11.5 At any meeting of the Council a quorum shall be twelve members personally present. If a Councillor is unable to be present at a Council meeting, the Council

- 11.6 Minutes shall be kept in a minute book, to be maintained by the secretary, of every meeting of the Council and at each ordinary monthly meeting of the Council the minutes of the previous ordinary monthly meeting and of all meetings held since shall be read, or if so resolved by the Council, taken as read and shall, subject to any necessary correction, be signed by the chairperson as being a correct record of the proceedings of the meeting or meetings concerned.
- 11.7 No resolution passed at any meeting of the Council shall be rescinded at any subsequent meeting unless not less than 10 days' written notice of the intention to propose such rescission shall have been given in the notice of the meeting; provided that such notice may be dispensed with by the Council if, at its meeting at which the proposed rescissions are to be considered, every member of the Council then in office is present and agrees to waive notice and to the motion being moved.
- 11.8 Subject to the provisions of the Act and of these rules, the Council may make, vary and rescind regulations for its meetings and proceedings and for the appointment and regulation of the proceedings of its committees.

#### **Execution of documents**

12. Any deed or other document which the Council resolves to execute shall be signed by persons authorised by the Council.

#### **The secretary**

13. The Council may assign to the secretary, in addition to the duties and functions assigned to him or her under the Act, these rules or any other law, other functions and duties of a general or particular nature.
14. The administrative headquarters of the Society shall be known as its secretariat and shall be housed in such premises as the Council may from time to time determine.
15. The secretary shall cause all money paid to the Society to be placed as soon as practicable after their receipt in such accounts as the Council may from time to time determine with a banking institution or banking institutions referred to in section 68 (e) of the Act.
16. All cheques drawn on, or electronic transfers from, any banking account kept in terms of rule 15 shall be signed by, and all money withdrawn from any savings, deposit or other

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member representing the constituent of such Council member as referred to in Rule 3.2.1, 3.2.2 or 3.2.3 may appoint an alternate member from such constituent to represent the absent Councillor."

investment account with any banking institution shall be so withdrawn upon, the signatures or authority, as the case may be, of the secretary and one member of the Council or, at times when there are vacancies in the offices of secretary and assistant secretary, or neither the secretary nor an assistant secretary is readily available, by or upon the signatures of any two members of the Council.

### **Audit of financial statements and president's report**

17. The Council shall cause proper accounting records to be kept of the income and expenditure of the Society and of the assets and liabilities of the Society, and the accounting records shall be closed annually on the last day of the financial year of the Society, whereafter the annual financial statements for that year shall be prepared for submission to the next general meeting. <sup>8</sup>
18. At least 21 clear days before every general meeting the president's report together with the annual financial statements of the Society duly signed by the auditor or auditors, in respect of the preceding financial year, shall lie for inspection of members at the secretariat. The president's report together with the audited annual financial statements of the Society shall be posted on the website of the Society, provided that every member shall on written request be entitled to receive a printed copy thereof free of charge, and printed copies will also be made available free of charge to members at the general meeting.
19. Subject to rule 2.69 the members in a general meeting shall appoint one or more auditors, or firms of auditors, at each general meeting. The auditor shall remain in office until the appointment of his or her or its successor at the next succeeding general meeting, the retiring auditor or firm being eligible for reappointment. The outgoing auditor or firm of auditors shall be deemed to continue in office until the close of the general meeting at which his or her or its period of office terminates, or if for any cause his or her or its successor shall not be appointed at such meeting, then until the appointment of his or her or its successor.
20. If any vacancy should arise in the office of auditor, such vacancy shall be filled by the Council and the auditor or firm of auditors so appointed shall hold office for the remainder of the period of office for which his or her or its predecessor was appointed.

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<sup>8</sup> In respect of the Cape Law Society, the rule reads as follows: "17. The Council shall cause proper accounting records to be kept of the income and expenditure of the Society and of the assets and liabilities of the Society, and the accounting records shall be closed annually on the last day of the financial year of the Society; whereafter the annual financial statements for that year shall be prepared for submission to the next general meeting. The financial year of the Society shall run from the 1<sup>st</sup> day of July to the 30<sup>th</sup> day of June in the following year."

## **PART IV**

### **GENERAL PRACTICE**

#### **Articles of clerkship and contracts of service and candidate attorneys**

- 21.1 Articles of clerkship shall contain the whole agreement entered into between the parties and shall be lodged with the secretary within one month of their execution. Should any subsequent agreement amending the articles be entered into, the amending agreement shall be lodged within 60 days of its execution.
- 21.2 The Council shall have the right to reject any articles of clerkship, contracts of service or supplementary agreement lodged as aforesaid, which are in conflict with the Act or which in the opinion of the Council contain any improper or objectionable provisions.
- 21.3 Unprofessional or dishonourable or unworthy conduct on the part of a candidate attorney shall include any conduct which would be unprofessional, dishonourable or unworthy had it been perpetrated by a practitioner. Candidate attorneys shall be subject to discipline by the Council and the provisions of these rules shall apply to candidate attorneys.
- 21.4 Articles of clerkship and contracts of service shall be substantially in the form set out in the Third Schedule to these rules.
- 21.5 In any case which comes to its notice in which the Council is satisfied, after due enquiry, that the principal-candidate attorney relationship between a member and his or her candidate attorney has broken down or deteriorated to such extent that the candidate attorney is unlikely to receive adequate training under the direction of that member, the Council may order that member, and that candidate attorney:
- 21.5.1 to make due endeavour within a period stated by the Council to find another member who is able and willing to take that candidate attorney into service under articles of clerkship or contract of service;
- 21.5.2 before or immediately after the end of that period to report to the secretary in writing the name of such other member, if found, or, if no such member has at the end of that period been found, to report immediately to the secretary in writing on the endeavours made and the reasons for failing to find such other member;

- 21.5.3            in the event of such other member being found, to effect due cession of the articles of clerkship or contract of service to that other member within a period stated by the Council.
- 21.6            In the event of the secretary receiving a negative report under rule 21.5.2 he or she may, if satisfied that reasonable endeavours were made to find such other member, grant a reasonable extension of the first mentioned period, at the end of which the member concerned and the candidate attorney shall make a further such report to him or her as referred to in rule 21.5.
- 21.7            The secretary shall immediately report to the president the fact of receipt and the contents of any report received by him or her under this rule 21 and whether, and for what period he or she has granted an extension of the first mentioned period, and shall also report to the president the fact of non-receipt after the first mentioned period or any extension thereof of any report from the member or the candidate attorney.
- 21.8            If no such other member is found within the first-mentioned period or any extension thereof, the Council may, if satisfied after further due enquiry that the aforesaid breakdown or deterioration of relationship has not been remedied, cancel the articles of clerkship or contract of service.
- 21.9            Any member and any candidate attorney who fails, without sufficient cause, to comply with the provisions of this rule or with any order of the Council made in terms thereof shall be guilty of unprofessional conduct.
- 21.10           A member who, whether by agreement with his or her candidate attorney or otherwise, cancels articles of clerkship or in relation to whom articles or a contract of service to which he or she is a party otherwise terminate shall, within 30 days of the cancellation or other termination, notify the secretary in writing of that fact, furnishing the reasons for the cancellation or other termination. Where articles of clerkship or a contract of service are lawfully cancelled in this manner or by order of the court or by order of the Council or otherwise lawfully terminate, but not otherwise, the secretary shall endorse the fact and nature of the cancellation or other termination upon the duplicate original or the articles of clerkship or a contract of service kept by him or her.
- 21.11           A candidate attorney shall be entitled to be released from office duties for up to eight hours per week in order to attend university or other classes for the purpose of qualifying for the profession.

- 21.12 A candidate attorney who has been released from office duties in order to attend such classes shall furnish proof to the satisfaction of his or her principal that he or she has attended all such classes or has provided his or her principal with a reasonable explanation for failing to attend any classes.
- 21.13 No member shall permit his or her candidate attorney to appear on his or her behalf in any court or before any board, tribunal or similar body contemplated in section 8(1) of the Act unless and until he or she shall have satisfied himself or herself that the candidate attorney is in possession of a certificate issued under section 8(3) or section 86(2) (d) (ii) of the Act.
- 21.14 No candidate attorney shall so appear unless a certificate of right of appearance referred to in section 8(3) has been issued by the Society.
- 21.15 A member shall notify the secretary in writing of any intended absence, of which he or she is aware, of his or her candidate attorney, from his or her office for a period of more than 30 consecutive working days.

#### **Training in legal practice management**

- 21.16 Every member to whom a fidelity fund certificate is required to be issued for the first time shall, unless exempted therefrom by the Council on good cause shown:
- 21.16.1 during the period commencing on the date on which that member was first required to apply for the issue of a fidelity fund certificate in terms of section 42 of the Act and terminating on the last day of the year following the year of issue of a fidelity fund certificate, or such later date as may be approved by the Council on good cause shown; and
- 21.16.2 after payment of the fee, if any, prescribed in terms of section 80(i) of the Act complete, to the satisfaction of the Council, a legal practice management course approved by the Council.

#### **Sequestration**

- 22.1 A member whose estate has been finally sequestrated shall notify the Society forthwith in writing, and furnish the Council with a copy of the application for his or her sequestration or voluntary surrender as well as a copy of the relevant court order and the name of his or her trustee or provisional trustee.
- 22.2 A member whose estate has been finally sequestrated shall not practise for his or her own account unless he or she has a separate business banking account, save

with the express consent of the Council on such terms and conditions as the Council may deem appropriate.

- 22.3 A member shall be guilty of unprofessional or dishonourable or unworthy conduct if he or she fails to comply with the provisions of rules 22.1 and 22.2.

### **Branch offices**

23. No member shall have or retain any branch office unless it is at all times when practice is being conducted there under the effective supervision of a member who, if he or she is not the first mentioned member himself or herself or a partner or co-director of that member, shall be an employee of that member who is an attorney who has had not less than three years' experience in practice and who has been approved for the purpose by the Council in writing; provided that the opinion of the Council as to whether or not a branch office is at any time under such effective supervision shall be binding and shall, if negative, entitle the Council to order the first mentioned member immediately to rectify his or her default or otherwise to close that office as a branch office.

### **Information as to whether practitioner practises in the jurisdiction of the relevant society**

24. Any practitioner who claims or is considered prima facie by the Council to be practising in the area of jurisdiction of the Society shall furnish the Council with such information as it may reasonably require to establish whether or not he or she is a practising member.



## Pro bono services<sup>9</sup>

<sup>9</sup> The rules relating to pro bono services applicable to members of the Cape Law Society are different to those of the other three provincial law societies. In respect of the Cape Law Society, rule 25 reads as follows:

“25. (to be read in conjunction with the pro bono guidelines as amended from time to time by the Society)

### 25.1 Definitions-

*Cape Law Society* shall be referred to as the Society.

*Professional standards* shall include Rule 14 of the Rules of the Society.

*Pro bono* is defined as legal work done free of charge, in the public interest for those who cannot afford it.

*Pro bono services* shall include, but not be limited to, the delivery of advice, opinion or assistance in matters, falling within the professional competence of an attorney, to facilitate access to justice for those individuals, groups of people, organisations and small businesses who comply with the means test as determined and prescribed by the Society from time to time, through recognised structures, or in accordance with sub-rule 25.3 or 25.4. In forma pauperis applications from the Registrar of the High Court and acting as a Small Claims Court Commissioner also qualifies as pro bono services for which pro bono hours can be accredited to the member.

*Recognised structures* shall include, but not be limited to those approved in terms of sub-rule 25.7.1 and identified in terms of sub-rule 25.7.3.

*Small business* shall include, but not be limited to sole proprietors, partnerships, close corporations, incorporated or unincorporated bodies that aim to generate income and make a profit and that are in the start-up phase or not yet generating an income.

25.2 The Society may, in its discretion, issue guidelines in respect of any aspect relating to pro bono generally and in respect of the sub-rules of this rule.

25.3 Practising members shall perform pro bono services of not less than 24 hours per calendar year, save that an attorney who becomes a practising member during the course of a year shall perform pro rata pro bono services.

25.3.1 Where a member's pro bono hours exceeds the 24 hour minimum threshold, a member may elect to apply to the Society for the excess hours rendered to be transferred to the following calendar year. The Society may, in the event of good cause shown, approve the member's application. Any excess hours may only be transferred for a maximum of one calendar year.

25.4 Members may refer to the Society, for consideration by the pro bono committee subject to approval by the Council, an application for any special project, programme or initiative proposed for recognition as pro bono services.

25.5 Pro bono work can be initiated by a member provided that an application is sent by the member to the Society prior to the commencement of such work. The application will be considered by the pro bono committee subject to approval by Council. All work rendered after application but prior to approval will be taken into consideration as pro bono work.

25.6 The Society may from time to time identify projects, programmes and initiatives to be undertaken on a pro bono basis by its members.

25.7 Recognised structures –

25.7.1 Organisations seeking to become recognised structures may apply for consideration as such from the pro bono committee subject to the approval by Council.

25.7.2 Once approved as a recognised structure, that recognised structure is required to enter into a joint venture agreement with the Society. Only once the joint venture agreement has been executed can the recognised structure refer matters to the Society's members.

25.7.3 The Society shall, from time to time, publish on its website a list of recognised structures with which joint venture agreements for the delivery of pro bono services have been concluded.

25.7.4 Members may notify the Society of their preferred area of interest and recognised structure/s of choice. Such preference may be taken into account by the Society when allocating pro bono work.

25.8 Recording pro bono hours –

25.8.1 Members shall submit to the Society, in prescribed form, a declaration providing full particulars of pro bono services rendered, irrespective of whether the matter has been finalised, by the end of each calendar year.

25.8.2 The Society shall make the prescribed form available on its website.

25.8.3 The Society, in accordance with its policy, shall keep a record of pro bono services rendered by its members.

25.8.4 It shall be the responsibility of members to ensure that the Society's records as to pro bono services rendered are complete by submitting their declaration, in prescribed form, for such pro bono services rendered annually.

25.9 Disbursements incurred in respect of pro bono services shall be borne by the client.

25.10 Cost orders –

## 25.1 Definitions

*Pro Bono* services shall include, but not be limited to, services approved in terms of rule 25.3 or recognised in terms of rule 25.4, relating to, the delivery, through recognised structures, of advice, opinion or assistance in matters falling within the professional competence of a member, to facilitate access to justice for those who cannot afford to pay for such services.

*Recognised structures* shall include, but not be limited to, the office of the Registrars of the High Court when issuing *in forma pauperis* instructions, small claims courts, community (non-commercial) advice offices, university law clinics, non-government organisations, the office of the Inspectorate of Prisons and circle and specialist committees of the Society, approved in terms of rule 25.6 or recognised in terms of rule 25.8.

*Those who cannot afford to pay* shall be those who ordinarily qualify for assistance through recognised structures.

- 25.2 Practising members who have practised for less than 40 years and/or who are less than 60 years of age shall, subject to being asked to do so, perform pro bono services of not less than 24 hours per calendar year, save that:
- 25.2.1 an attorney who becomes a practising member during the course of a year shall perform pro bono services equal to not less than two hours per month, or part thereof, of practising member status acquired in the first year of practice;

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Upon collection of the cost order in favour of a pro bono client:

- 25.10.1 Any disbursement actually paid by the client should be reimbursed to the client and any disbursement covered by the member should be reimbursed to the member. Any balance shall be paid to the Society for administration by the Society for purposes of advancing the pro bono project. The member may elect to retain the balance or pay it to the Society's pro bono fund. In the event of the member electing to retain the funds, no pro bono hours shall be claimed for any services rendered. In the event of the member paying the costs recovered to the Society, pro bono hours may be recorded by the member.
- 25.10.2A A member may apply to the Society for any designated pro bono funds in the control of the Society as a contribution towards any disbursement incurred in the execution of pro bono services.
- 25.11 Unprofessional conduct –
- 25.11.1 It shall be unprofessional conduct for a practising member who has still to perform pro bono services, to refuse to deliver pro bono services without good cause. Where refusal is without good cause, such refusal shall be referred to the disciplinary committee of the Society for further action.
- 25.11.2 In the event of the Society receiving a complaint of refusal to deliver pro bono services, with no good cause, it shall be entitled to treat its record of services rendered as complete, save only for services rendered within 60 days of the complaint that is not on record. The member against whom the complaint is made shall be responsible to provide the Society with a declaration, relating to such additional services, within 21 days of receipt by the Society of the complaint, failing which, services alleged to have been rendered, but not on record, will be treated as not having been rendered for the purpose of investigating the complaint. Pending investigation of the complaint, the Society shall refer the complainant to another practising member, for assistance.
- 25.11.3 Professional standards applicable to services rendered by attorneys shall apply to pro bono services.

- 25.2.2 in the year of publication of this rule, practising members shall perform pro bono services equal to not less than two hours per month, or part thereof, from the month of publication to the end of that year.
- 25.3 Members may refer to the Society, for approval by Council as pro bono services, a written description of areas of professional work proposed for recognition as pro bono services.
- 25.4 The Council shall, within 30 days of publication of this rule and thereafter from time to time, publish a list of services which, when performed by attorneys at no charge for those who cannot afford to pay, shall be recognised as pro bono services capable of being delivered in compliance with the provisions of this rule.
- 25.5 *Pro bono* services shall be delivered only through recognised structures to those who cannot afford to pay for professional services.
- 25.6 Members may refer to the Society, for approval by Council as a recognised structure, a written description of a structure proposed for recognition.
- 25.7 The Society is mandated by members to enter into partnership and joint venture agreements with recognised structures, the effect of which is that only matters that fall within the professional competence of attorneys are referred to practising members for advice, opinion or assistance; that briefs addressed to practising members are reasonably well formulated; and that potential language and cultural barriers are overcome.
- 25.8 The Council shall, within 30 days of publication of this rule and thereafter from time to time, publish a list of recognised structures, including structures with which the Society has concluded partnership or joint venture agreements for the delivery of pro bono services.
- 25.9 Members shall submit to the Society a certificate providing full particulars of pro bono services delivered, within 60 days of delivery thereof, failing which the service shall be treated as not having been rendered in terms of this rule.
- 25.10 The Council shall keep a record of services delivered by each member, which record shall be prepared from members' certificates. A report of all services rendered shall be extracted annually and shall be retained by the Society, but individual member records substantiating the report shall be expunged. On 1 January of each year all individual members' records shall be refreshed to show an availability of hours for the new year. The record of hours served or not served in

the previous year shall then be expunged. The Society shall report to its members annually at the annual general meeting and shall make such report generally available on the total delivery of pro bono services by members.

- 25.11 The Society shall cause particulars of pro bono hours still to be served by members in a calendar year to be published on its website and for reduced hours to be displayed against submission by members of certificates. This information will also be available from the Society on request. It shall be the responsibility of members to ensure that the Society's records as to pro bono services rendered are complete so that correct information is published on the website and generally made available.
- 25.12 Members may elect to deliver pro bono services through a single recognised structure and may also elect that pro bono services be delivered by his or her firm on his or her behalf. The Society shall cause a member's election of the recognised structure through which he or she chooses to deliver his or her pro bono services to be published on its website. This information will also be available from the Society on request. Members who make such an election may properly refuse calls through other recognised structures for the delivery of pro bono services. It shall be the responsibility of the member to notify the Society of his or her election so that this information is published on the website and generally made available.
- 25.13 Members who travel a distance of more than 50km from their office in order to deliver pro bono services may, in special circumstances, make written application to the Society to recover the actual cost of travel, excluding the first 100km.
- 25.14 Disbursements incurred, save for travel expenses referred to in rule 25.13, in respect of pro bono services shall be borne by the client.
- 25.15 It shall be unprofessional conduct for a practising member who has still to perform pro bono service hours in any year to refuse, without good cause, to deliver pro bono services.
- 25.16 In the event of the Society receiving a complaint of refusal to deliver pro bono services, without good cause, it shall be entitled to treat its record of services rendered as complete, save only for services rendered within 60 days of the complaint that are not on record. The member against whom the complaint is made shall be responsible for providing the Society with certificates, relating to such additional services, within 21 days of receipt by the Society of the complaint, failing which, services alleged to have been rendered, but not on record, will be treated as not having been rendered for the purpose of investigating the complaint. Pending

investigation of a complaint, the Society shall refer the complainant to another practising member for assistance.

- 25.17 Professional standards applicable to services rendered by attorneys shall apply to pro bono services.
- 25.18 Notwithstanding the provisions of this clause 25, the Council may from time to time enter into arrangements with firms and with recognised structures, not inconsistent with this rule 25, for the delivery of *pro bono* services. In particular the Council may permit firms to establish structures within the firms themselves whereby *pro bono* services are provided by members within those firms on behalf of other members of the firms, but so that the aggregate of the *pro bono* services rendered by the firm in that manner shall always equal or exceed the aggregate of the quotas of *pro bono* services to be rendered by the individual members of the firm.

### **Practitioners who cease to practise and winding up of abandoned practices**

- 26.1 Before applying for the removal of his or her name from the roll a practitioner who practises or has practised for his or her own account in the area of jurisdiction of the Society shall:
- 26.1.1 advise the secretary in writing of that fact;
- 26.1.2 unless exempted by the Council, furnish the secretary with a certificate by an auditor approved by the Council, or such other proof as the Council may require, that proper provision has been made for the liquidation, taking over or protection of all trust money;
- 26.1.3 satisfy the Council by affidavit or otherwise, as the Council may require, that:
- 26.1.3.1 all obligations to clients have been discharged or duly assigned with such consents as may be necessary;
- 26.1.3.2 any other requirements, including those set out in rules 35.29 and 35.30, which the Council deems necessary for the protection of trust money or other assets held in trust, the completion of work on hand, the handling of queries and in general the orderly winding up of his or her practice or former practice, have been met;
- 26.1.4 state in his or her application that he or she has complied with the provisions of this rule 26.1.

- 26.2 Before or as soon as may be after ceasing voluntarily to practise for any reason other than pursuant to rule 26.1 a practitioner who practises or has practised for his or her own account in the area of jurisdiction of the Society shall comply with the provisions of rule 26.1 other than those of rule 26.1.4 and shall thereafter inform the secretary in writing of any changes in his or her business, postal and residential addresses for a period of three years from the date of his or her ceasing to practise or for so long as his or her name remains upon the roll, whichever period is the shorter.
- 26.3 Without derogating from the provisions of rules 26.1 and 26.2, should a practitioner who practised as the sole proprietor of a practice in the area of jurisdiction of the Society, for any reason whatsoever have ceased so to practise without having, in the view of the secretary, made adequate arrangements for the continuance or winding up of his or her practice or for the protection of his or her or his or her clients' affairs or property, any firm may, at the request and under the direction of the secretary, take such steps as may appear necessary to ensure that such practice is wound up with reasonable expedition, subject to any right which such firm may have to recover the reasonable expenses of such winding up or other compensation from such practitioner or from his or her estate or from any other source. Where the secretary himself or herself intervenes or assists a practitioner for the purpose of winding up the practice of the practitioner concerned, he or she will also be entitled to recover from the practitioner or from his or her estate, on behalf of the Society, the reasonable expenses incurred by him or her and reasonable compensation for the work done by him or her in connection with his or her assistance or intervention.

### **Practice in association with other lawyers**

- 27.1 A member wishing to practise in association with any person (in this rule called the associate) who carries on the practice of a lawyer outside the Republic shall make written application to the Council for permission to do so and shall not, in the absence of such permission, commence or, subject to any rights existing immediately prior to the date on which these rules are promulgated, continue to do so.
- 27.2 In considering such an application the Council shall have regard, *inter alia*, to the following considerations:
- 27.2.1 whether it is satisfied that there is in existence in the country in which the associate practises a fund which is, in the opinion of the Council, a sound and

effective fund, equivalent to or of the nature of the Fund, referred to in section 25 of the Act;

- 27.2.2 whether it is satisfied that the associate is effectively covered by such fund and that, if the rules, constitution or other founding or governing instrument of that fund provide for a practising certificate, certificate of membership or other similar document to be held by lawyers whose fidelity it guarantees, the associate holds such currently valid certificate or other document.
- 27.3 If not satisfied in terms of rule 27.2.1 or 27.2.2 the Council shall refuse such permission, but this rule shall not derogate from the Council's right to refuse such permission, even if so satisfied, on any other ground which it deems fit.
- 27.4 Before granting such permission the Council shall be satisfied, *inter alia*, that:
- 27.4.1 the associate is in lawful practice in the country in which he or she practises and in good standing in his or her profession there;
- 27.4.2 standards of professional conduct which are, in the opinion of the Council, sufficiently high are observed in the country in which the associate practises;
- 27.4.3 the associate is required to observe the ethical standards and rules of an appropriate law society, bar association or other similar body having jurisdiction over the associate.
- 27.5 A member to whom such permission is granted shall:
- 27.5.1 forthwith notify the Council if the circumstances contemplated under rule 27.2.1 or 27.2.2 at any time cease to exist;
- 27.5.2 whenever applying for a fidelity fund certificate, at the same time furnish the secretary with a certificate signed by him or her that those circumstances and the circumstances contemplated under rule 27.4.1 still exist, and for purposes of section 42(3)(a) of the Act the secretary shall regard the requirements of this rule 27.5.2 as requirements of the Society;
- 27.5.3 disclose to his or her clients the fact that he or she practises in association with an associate who carries on the practice of a lawyer outside the Republic.
- 27.6 The Council shall withdraw such permission if it comes to its notice that any of the circumstances contemplated under rules 27.2.1 or 27.2.2 or 27.3.1 have ceased to exist in relation thereto or that the member to whom it was granted has ceased to

practise or has been suspended from practice or forbidden to practise in the province, and may withdraw such permission if it comes to its notice that the associate concerned or the member to whom it was granted has been guilty of any unprofessional or dishonourable or unworthy conduct which is, in the opinion of the Council, of a sufficiently serious nature to render it undesirable that the practice in association should continue.

- 27.7 While holding such permission the member shall disclose on his letterheads, professional cards and other stationery the name and place of practice of his or her associate and the fact of the practice in association, and may, subject to the law or any professional rules of the other country concerned, allow similar information relating to the member to be disclosed on the letterheads, professional cards and other stationery of his or her associate.
- 27.8 A member may not practise in association with a practitioner who practises within the Republic unless that practitioner:
- 27.8.1 is on the roll; and
  - 27.8.2 holds a valid fidelity fund certificate; and
  - 27.8.3 is a member of a Law Society.
- 27.9 The provisions of rule 27.7 shall apply to such practice in association.
- 27.10 For purposes of this rule, other than rule 27.9, the expressions "practice in association" and "practise in association" include practice or practise in partnership or as members of a professional company.

## **Professional fees, tariffs and allowances**

### **Assessment of fees payable to a member**

- 28.1 It shall be competent for the Council or any committee appointed by the Council for that purpose, at the request of any person or member, to assess the fees and reasonable disbursements payable by such person to a member in respect of the performance of work in his or her capacity as a practitioner, provided that the Council or the committee shall not assess fees or disbursements:
- 28.1.1 in instances where a state official is empowered to do so; or
  - 28.1.2 where the work concerned is already covered by a statutory tariff; or



- 28.1.3 in litigious matters, unless the parties agree that the fees and disbursements are subject to assessment by the Council or a committee appointed by the Council for that purpose.
- 28.2 Where the parties have agreed that the costs in a litigious matter are to be calculated in terms of the Society's criteria for non-litigious matters, the bill may be assessed by the Council or relevant committee provided that the parties submit proof of such agreement and an undertaking that they will be bound by and comply with the Society's rules in this regard.
- 28.3 With a view to affording the member concerned reasonable and adequate remuneration for the services rendered by him or her, the Council or the committee, as the case may be, shall, on every assessment, allow all such fees and disbursements as appear to it to have been reasonable for the performance of the work concerned and in so doing shall take cognisance of the following:
- 28.3.1 the amount and importance of the work done;
- 28.3.2 the complexity of the matter or the difficulty or novelty of the work or the questions raised;
- 28.3.3 the skill, labour, specialised knowledge and responsibility on the part of the member;
- 28.3.4 the number and importance of the documents prepared or perused, without necessarily having regard to length;
- 28.3.5 the place where and circumstances in which the services or any part thereof were rendered;
- 28.3.6 the time expended by the member;
- 28.3.7 where money or property is involved, its amount or value;
- 28.3.8 the importance of the matter to the client;
- 28.3.9 the quality of the work done;
- 28.3.10 the experience or seniority of the member;
- 28.3.11 whether the fees and disbursements have been incurred or increased through over-caution, negligence or mistake on the part of the member.

- 28.4 At the assessment of any member's fees and reasonable disbursements, the Council or the committee, as the case may be, may call for the production of such books, documents, papers, accounts or other information as in its opinion are necessary to enable it properly to determine any matter arising upon such assessment.
- 28.5 The Council or the committee, as the case may be, shall not proceed with the assessment of the fees or reasonable disbursements unless the secretary has given notice by prepaid registered post or by personal service to both the member concerned and the person liable to pay the fees and reasonable expenses, stating the time and place of such assessment, recording that he or she is entitled to be present and represented thereat, and requiring the person liable for the payment of the fees, or his or her legal representative, to notify the secretary and the practitioner in writing not later than one week prior to the date fixed for the assessment of the items on the bill to which he or she objects and the grounds for such assessment, failing which the Council or the committee may assess the bill as if no objection had been raised; provided that such notice shall not be necessary if both the member and such person have consented in writing to assessment in their absence.
- 28.6 At the assessment the Council or the committee, as the case may be, shall permit the member and such person to submit their representations and arguments either orally or in writing and to be represented by an attorney.
- 28.7 After receiving such representations and arguments, the Council or the committee, as the case may be, shall be entitled to reserve its decision.
- 28.8 As soon as the Council or the committee, as the case may be, has arrived at its decision, it shall deliver to both the member and such person either by hand or by prepaid registered post, or in such other manner as may be elected by the member or such other person, a copy of the fee list submitted for assessment, duly endorsed with the allocatur of the Council or the committee, as the case may be, under the hand of the secretary.
- 28.9 Subject to the provisions of section 74(5) of the Act, the fees and disbursements determined in terms of the allocatur shall be deemed to be reasonable fees and disbursements payable to the member for the services rendered.

- 28.10 The Council or the committee, as the case may be, shall be entitled in its discretion at any time to depart from any of the provisions of rule 28 in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.
- 28.11 A tariff of fees as determined by the Council from time to time shall be payable to the Council by the party requesting such an assessment in respect of the assessment.

### **Attorney and client charges**

- 29.1 A member to whom any claim of whatever nature is handed for collection may in addition to any professional fees (including, without limitation, the charges for any proceedings in a court of law) charge reasonable attorney and client charges and reasonable collection commission, including collection commission where payment is made directly to the creditor client.
- 29.2 Notwithstanding rule 29.1, a member to whom any claim of whatever nature is handed over for collection shall not be entitled to recover attorney and client charges or collection commission from a debtor in excess of amounts determined from time to time by the Council; provided that where the member recovers collection commission from the debtor, either in terms of any law or in terms of contractual obligation, he or she shall credit his or her client therewith to the extent of, but not exceeding, the collection commission debited to his or her client. Collection commission covers all attendances and work done in connection with the receipt of a payment and accounting to a client in respect of a payment.
- 29.3 A member may charge a fee where a matter which has been set down for hearing collapses for any reason, provided the client has agreed in writing to the member's charging a fee in those circumstances and on the amount of the fee, and provided further that the fee is reasonable.

### **Drawing and taxation of bills of costs**

- 30.1 Subject to the right of a party to the matter concerned to be present, a firm shall not permit the taxation of a bill of costs by a taxing master of a court to be attended by any person other than a person referred to in rule 30.2.
- 30.2 The taxation of a bill of costs shall, where attended, be attended by the member presenting the bill or on whose behalf the bill is presented or by his or her partner or full time employee, being a member or a candidate attorney and being, in each case, a person familiar with the subject matter of the taxation: provided that the first

mentioned member or his or her correspondent, as the case may be, shall assume full responsibility for the content of the bill submitted and for the taxation.

### **Allowances and commissions**

- 31.1 No member shall make over, share or divide with any person other than a practitioner in the Republic, or a legal practitioner outside the Republic, either by way of partnership, commission or allowance or in any other manner, any portion whatsoever of his or her professional fees, and no member shall, directly or indirectly, enter into any express or tacit agreement, arrangement or scheme of operation the result or potential result of which is that a person who is not a practitioner, or a legal practitioner outside the Republic, will enjoy, share or participate in his or her professional fees, whether by way of partnership, commission or allowance or in any other manner.
- 31.2 Any deed, document, or writing signed or attested by a practitioner, in his or her capacity as such, shall be considered to have been prepared and drawn by him or her, and all fees charged in connection with, or relating to, the preparation, drawing or execution of any such deed, document or writing, shall be considered fees earned by him or her within the meaning of rule 31.1.
32. Subject to section 83(6) of the Act and to the provisions of rule 31.1, a member shall not, in connection with any mandate which he or she has accepted, agree or arrange to receive from or share with any agent or other third party any commission, fee or other reward, without having disclosed such agreement, arrangement, receipt or sharing to his or her client in writing and without having received his or her client's written consent thereto and to the retention by him or her for his or her own account of such reward.

### **Contracting of legal work to third parties**

- 33.1 Where a member subcontracts legal work, which in the normal course would or could have been performed by the member personally, to a third party service provider, the consent of the client must first have been obtained. Such consent must be informed consent, and in particular, the client must have been informed as to whether any confidential information will be made available to the service provider.
- 33.2 Unless otherwise agreed to the contrary in writing the member should take reasonable steps to ensure that the instructions given to the service provider are properly carried out. Although the member will not be required to maintain a day-to-

day supervision of the work done the member must exercise an independent judgment on the quality of the work.

- 33.3 Where the service provider is not a practising practitioner or a practising advocate or a firm which is subject to the rules of ethics and professional conduct of the Society, the member must conclude a written confidentiality agreement with the service provider providing for reasonable safeguards to protect the confidentiality of any client information.
- 33.4 The member should endeavour to ensure that the service provider does not have a conflict of interest relative to the member's client by obtaining a written assurance to that effect from the service provider. This rule does not apply to the outsourcing of copying services, file storage services or information technology and communication services which are used in the provision of legal services but it does apply to expert forensic services which are provided in relation to information and communication technologies.
- 33.5 The member should take reasonable steps to ensure that the client's privilege, if any, in the information disclosed to the service provider is maintained.
- 33.6 Where the service provider is not a practising attorney or a firm subject to the rules of ethics and professional conduct of the Society, or is not a practising advocate, the member should take reasonable steps to ensure that the service provider understands and complies with the rules of professional conduct.
- 33.7 A member who outsources legal work may not receive any undisclosed allowance on the fees payable to the outsource service provider save for outsources traditionally permitted between correspondent practitioners. Any discount on fees must, unless otherwise agreed in writing with the client, accrue for the benefit of the client.
- 33.8 The member shall not be entitled to add a premium to the amount paid to the service provider and must seek to recover that amount from the client as a disbursement only. However, the member shall be entitled to charge a reasonable fee for work actually performed by him in instructing the service provider and in reviewing the service provider's work.
- 33.9 Where a member subscribes on a regular basis to the services of a third party service provider irrespective of the requirements of a specific client (including, but not limited to, a commercial subscription to an internet-based intellectual property

search facility) the member shall be entitled to charge a reasonable fee to the client for the use of those services in attending to any matter on behalf of the client.

### **Legal aid matters**

34. A member shall not receive or attempt to recover, directly or indirectly, from any source, whether for itself or any other person, in a matter referred to it by the Legal Aid Board of South Africa, established under the Legal Aid Act, 1969, any disbursements, fee or reward in excess of the disbursements, fees or rewards approved by the said Board in such matter.

## **PART V**

### **ACCOUNTING RULES**

#### **Main office**

- 35.1 If a firm at any time administers and controls its practice as a whole from premises in two or more buildings which, in the opinion of the Council, do not constitute such a single composite entity as is contemplated in the definition of 'main office' in rule 1, the Council may require the firm to declare to it in writing, within a time stipulated by the Council, which one or more of those buildings as may constitute such an entity in the opinion of the Council, contains or contain its main office, and thereafter that firm shall administer and control its practice as a whole from the premises so declared. It is specifically provided, however, that if a firm which has its main office within the area of jurisdiction of the Council of another Society establishes more than one branch office within the area of jurisdiction of the Council, that firm must declare to the Council which of such branch offices is to be regarded as its main office within the area of jurisdiction of that Council; and the provisions of this rule 35, changed appropriately, will apply in respect of that office.
- 35.2 The Council may make such enquiry as it deems fit, including inspection of the premises concerned, and the practising member concerned shall furnish the Council with such information and render such assistance as it may require to enable it to form an opinion in terms of rule 35.1.
- 35.3 A declaration made by a practising member under rule 35.1 shall remain effective until such time as he or she:
- 35.3.1 moves his or her main office from the premises which are the subject of the declaration; or

- 35.3.2 makes a declaration in terms of rule 35.1 in respect of other premises.
- 35.4 Should a firm fail to make a declaration under rule 35.1 within the time stipulated by the Council, the Council may by notice in writing to the firm determine which of the premises concerned constitutes its main office, whereupon the remaining provisions of rules 35.1, 35.2 and 35.3 shall apply as though those premises had been so declared by the firm.

### **Accounting Requirements - General**

- 35.5 A firm shall keep in an official language of the Republic such accounting records as are necessary to enable the firm to satisfy its obligations in terms of the Act, these rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogation from the generality of this rule:
- 35.5.1 records showing all assets and liabilities as required in terms of sections 78(4) and 78(6) of the Act;
- 35.5.2 records containing entries from day to day of all monies received and paid by it on its own account, as required by sections 78(4) and 78(6) of the Act;
- 35.5.3 records containing particulars and information of:
- 35.5.3.1 all monies received, held and paid by it for and on account of any person;
- 35.5.3.2 all monies invested by it in terms of section 78(2) or section 78(2A) of the Act;
- 35.5.3.3 any interest referred to in section 78(3) of the Act which is paid over or credited to it;
- 35.5.3.4 any interest credited to or in respect of any separate trust savings.

### **Acceptable financial reporting framework**

- 35.6 For purposes of these rules:
- 35.6.1 acceptable financial reporting frameworks which are to be recognised and applied are:

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

### **Distinguishing between trust account and business account transactions**

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

### **Retention of accounting records and files**

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

### **Updating accounting records**

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



### **Trust money to be kept separate from other money**

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

### **Accounting to clients**

- 35.11 Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for not less than five years; each account shall contain details of:
- 35.11.1.1 all amounts received by it in connection with the matter concerned, appropriately explained;
  - 35.11.1.2 all disbursements and other payments made by it in connection with the matter;
  - 35.11.1.3 all fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed;
  - 35.11.1.4 the amount owing to or by the client.

## **Payment to clients**

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

## **Accounting Requirements - Trust Account Transactions**

- 35.13.1 A firm shall maintain its accounting records in terms of the Act and these rules.
- 35.13.2 A firm shall report to the Society forthwith, in writing, any loss, theft or destruction of any such records.
- 35.13.3 A firm shall, in the case of the accounting records being computerised, make monthly back-ups which shall be kept in a safe, fireproof place remote from the firm or, in the case of accounting records being in the form of manual books of account, by ensuring that, outside normal business hours, such records are kept in a safe place.
- 35.13.4 If the firm keeps any of its accounting records in electronic form, the firm shall:
- 35.13.4.1 provide adequate precautions against loss of the records as a result of damage to or failure of the media in which the records are maintained; and
- 35.13.4.2 ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems or software from time to time.
- 35.13.5 A firm shall, where the firm utilises electronic banking in respect of payments from the trust account, keep a proper audit trail, which shall include verification of the payee's banking account details.
- 35.13.6 The firm's accounting records shall not, save with the prior written consent of Council or under lawful authority, and except for electronic records in terms of rule 35.13.2 and backups of computerised records, be maintained at any place other than its main office or branch office, but in the latter instance, only insofar as they relate to any part of its practice conducted at that branch.

35.13.7 A firm shall ensure:

#### **Internal controls**

- 35.13.7.1 that adequate internal controls are implemented to ensure compliance with these rules and to ensure that trust funds are safeguarded; and in particular to ensure -
- 35.13.7.1.1 that the design of the internal controls is appropriate to address identified risks;
- 35.13.7.1.2 that the internal controls have been implemented as designed;
- 35.13.7.1.3 that the internal controls which have been implemented operate effectively throughout the period ;
- 35.13.7.1.4 that the effective operation of the internal controls is monitored regularly by designated persons in the firm having the appropriate authority;

#### **Prompt depositing of trust monies**

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

#### **Transfers for trust investment account**

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

#### **Trust balances not to exceed trust moneys**

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

### **Trust accounts not to be in debit**

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

### **Reports to Society of non-compliance**

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

35.13.11 A firm shall immediately report in writing to the Society should an account of any trust creditor be in debit, together with a written explanation of the reason for the debit and proof of rectification.

### **Transfer from trust bank account to business bank account**

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

### **Deposits on account of charges**

35.13.13 Amounts received by a firm in advance to cover a prospective liability for services rendered or to be rendered or for disbursements (including counsel's fees) to be made must be deposited forthwith to the credit of its trust banking account.

### **Withdrawals from trust banking account**

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

35.13.14.1 to or for a trust creditor, or

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

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

- 35.13.14.2.2 a contractual obligation has arisen on the part of the firm to pay the disbursement; or
- 35.13.14.2.3 fees and disbursement have been correctly debited in its accounting records.

#### **Payments from trust banking account**

- 35.13.15.1 Any cheque drawn on a firm's trust banking account shall be made payable to or to the order of a payee specifically designated.
- 35.13.15.2 Payments from the trust banking account of a firm shall only be by cheque or electronic transfer.
- 35.13.15.3 No withdrawals from the trust banking account of a firm may be made by way of cellular and telephone transacting.

#### **Interest accrued on trust banking account**

- 35.13.16 The trust interest earned on a firm's trust banking account shall be paid over to the Attorneys Fidelity Fund or its nominee at such times and in such manner as shall be prescribed.

#### **Lists of balances**

- 35.14.1 Every firm shall extract at intervals of not more than three calendar months, and in a clearly legible manner, a list showing all persons on whose account money is held or has been received and the amount of all such moneys standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in order to ensure compliance with rule 35.13.7.
- 35.14.2 The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which the balance was extracted.
- 35.14.3 Each such list shall be part of the accounting records of the firm to be retained for the five-year period referred to in rule 35.8.

### **Notification of trust banking account**

35.15 Every firm shall:

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

### **Trust account investments in terms of section 78(2A)**

- 35.16 A member, who invests funds on behalf of any person shall, in addition to all other requirements applicable to the holding or investment of trust money:
  - 35.16.1 not invest such funds other than in a trust savings or other interest-bearing account with a bank;
  - 35.16.2 obtain that person's written confirmation of the investment as soon as is reasonably possible, or notify him forthwith thereof in writing; and
  - 35.16.3 forthwith cause the relevant trust savings or other interest-bearing account to be endorsed in terms of section 78(2A) of the Act.
- 35.17 A member shall not, in connection with any mandate which the member has accepted to invest trust funds, agree or arrange to receive from a bank any commission, fee or other reward, without having disclosed such commission, fee or reward to the client in writing.

### **Responsibility for ensuring compliance**

- 35.18 Every partner of a firm, and every director of a personal liability company, will be responsible for ensuring that the provisions of the Act and of those rules relating to trust accounts of the firm are complied with.

## Reporting Requirements

- 35.19 A firm shall at its expense once in each calendar year or at such other times as the Council may require appoint an auditor to discharge the duties assigned to the auditor in terms of these rules; provided that:
- 35.19.1 the Council may refuse to recognise the appointment by a firm of an auditor of whom the Council on good cause does not approve;
  - 35.19.2 the Council may at any time, in its discretion and at its expense, appoint an auditor or a suitably qualified inspector to discharge those duties;
  - 35.19.3 on the written application of a firm the Council may authorise the firm to appoint a person who in the opinion of the Council is suitably qualified as an inspector to perform the functions of an auditor in terms of these rules, subject to such terms as the Council in its discretion may determine.
- 35.20 A firm which commences practice for the first time shall, within six months of so commencing practice, furnish the Council with a report substantially in the form of the Fourth Schedule to these rules (or in such other form as the Council may determine after consultation with the Independent Regulatory Board for auditors) covering the first four months of that firm's practice.
- 35.21 A firm shall allow an auditor or inspector appointed under rule 35.19 access to such of its records as the auditor or inspector may deem necessary to examine for the purposes of discharging his duties under rule 35.23 and shall furnish the auditor or inspector with any authority which may be required to enable the auditor or inspector to obtain such information, certificates or other evidence as the auditor may reasonably require for such purposes.
- 35.22 A firm shall ensure that the report to be furnished by an auditor or inspector in terms of rule 35.20 or 35.23 is furnished in its original format (which may include an electronic format specified by the Council) within the required time or on the required date; provided that on written application by a firm relating to a particular report the Council may, in its discretion and on such conditions as it may stipulate, condone a failure by that firm to comply with this requirement. The form of such report shall be obtained only from the Society, which shall issue it on request to any firm or to any auditor or inspector appointed in terms of rule 35.19.
- 35.23 Every auditor or inspector who has accepted an appointment in terms of rule 35.19 shall:

- 35.23.1 within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require and subject to any conditions that the Council may impose, furnish the Council with a report which shall be in the form of the Fourth Schedule to these rules or in such other form as the Council may determine after consultation with the Independent Regulatory Board for Auditors;
- 35.23.2 without delay report in writing directly to the Council if at any time during the discharge of his or her functions and duties under this rule:
- 35.23.2.1 if it comes to his or her notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, its trust investment account and held by it as trust cash;
- 35.23.2.2 any material queries regarding the firm's accounting records which the auditor has raised with the firm have not been dealt with to his satisfaction;
- 35.23.2.3 any reasonable request made by the auditor for access to the firm's records or for any authority referred to in rule 35.20 has not been met to his or her satisfaction;
- 35.23.3 state in his or her report in terms of rule 35.23.1 that to the best of his or her belief:
- 35.23.3.1 the firm has not, during the period under review, carried on the business of an investment practice; or
- 35.23.3.2 the firm has carried on the business of an investment practice and has complied with this rule 35.
- 35.24.1 The Council may reject a report in terms of rule 35.23 from an auditor whose appointment the Council has refused to recognise, as provided in rule 35.19.1, or which is not in the prescribed format.
- 35.24.2 A copy of the report on the prescribed form required under rule 35.23.1 and any report made in terms of rule 35.23.2 shall be sent by the auditor to the firm concerned.
- 35.25 Where the Council is satisfied that it is not practicable to obtain the services of an auditor or inspector for the issuing of a report as prescribed under rule 35.23, it may



in lieu thereof accept as compliance with the requirements of rule 35.23 such other evidence as it may deem sufficient.

- 35.26      The Council may by notice to members amend the schedule or the audit report form as may be required from time to time to report such information as may be required.
  
- 35.27      A firm is obliged to report in the relevant sections of the rule 35 report the gross interest earned and the gross charges levied in respect of trust accounts in terms of sections 78(1) or 78(2)(a) of the Act, even if no claim in respect of bank charges is to be made.
  
- 35.28      In order to qualify for the issue of a Fidelity Fund certificate, a member must ensure that an unqualified audit or inspector's report is issued in respect of any firm or firms of which he or she was a partner or director during the financial period under review and is delivered timeously to the Society.
  
- 35.29      Where the audit or inspector's report in respect of the trust account of the firm is qualified by the auditor or inspector, as the case may be, the firm shall provide the Council with such information as the Council may require to satisfy itself that the firm's trust account is in good order, that the member remains fit and proper to continue to practise and that Fidelity Fund certificates may be issued to the members of the firm.

### **Closure of firm**

- 35.30      A member who practices for his or her own account and who intends to cease practising shall, before the member so ceases to practice, provide the Society, in writing, with the following information:
  - 35.30.1      notice of the member's intention to cease practising for his or her own account;
  
  - 35.30.2      the member's future contact particulars, being his or her residential and business address, fax, e-mail and telephone details;
  
  - 35.30.3      the steps to be taken to satisfy the Society that provision has been made for the effective winding up of the member's practice, both in respect of current files and archived files and in respect of accounting records;
  
  - 35.30.4      the name, address and telephone number of the member's bookkeeper;

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

### **Opening of practice**

- 35.33 An office opened by a firm, which for the first time opens a practice within the jurisdiction of the Society shall be designated as a main office of the firm in that jurisdiction, and the firm shall ensure that:
  - 35.33.1 banking accounts for the firm are opened in that jurisdiction;

- 35.33.2 the trust interest on those accounts is paid to the Society;
  - 35.33.3 a separate set of books is kept for the office;
  - 35.33.4 an audit or inspector's report for that firm is submitted to the Society.
- 35.34 The Council may at any time inspect or cause to be inspected the accounting records of any firm to satisfy itself that the provisions of section 78(5) of the Act, read with these rules, have been or are being complied with. Such inspection may be conducted by the Council, or by an auditor or suitably qualified inspector appointed by the Council, or by the Fund at the request of the Council.

### **Report of dishonest or irregular conduct**

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

## **Investment Practice Rules**

### **Definitions**

- 36.1 A firm shall for the purpose of this rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients and it controls or manages, whether directly or indirectly, such investments.
- 36.2 A client shall for the purpose of this rule include any person on whose behalf a firm invests funds or manages or controls investments, whether or not such person is otherwise a client of the firm concerned.
- 36.3 This rule shall not apply to:
- 36.3.1 investments made pursuant to section 78(2A) of the Act, which are not transactions contemplated in rule 36.1;
  - 36.3.2 any investment of a temporary nature that is made in the course of and incidental to a conveyancing or other matter, including litigation, to which the investing client is a party;
  - 36.3.3 investments made by members of firms in their capacity as executors, trustees, curators or in any similar capacity in so far as such investments are governed by any other statutory enactment or regulation;

- 36.3.4 any investment (other than referred to in rule 36.1) made with a bank in the name of that client alone and on the written instructions of that client.

### **Mandates**

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

### **Reports to clients**

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

### **Accounting records for investment practices**

- 36.6 Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep a separate trust account record and supporting documents in respect of each client, which record shall reflect:
- 36.6.1 payments of all monies entrusted to it from time to time by the client for investment pursuant to the mandate granted by the client in terms of rule 36.4;
  - 36.6.2 payments of all monies invested by it on the client's behalf;
  - 36.6.3 payments of all amounts, both capital and income, derived from investments and received for the client's account;
  - 36.6.4 all payments made by it to the client in respect of the client's investments, and
  - 36.6.5 all charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate in terms of rule 36.4.
- 36.7 The accounting records and other supporting documents referred to in rule 36.6 shall be retained by the firm in such manner as to enable it to furnish each client upon request with all current details of the client's investments as recorded in rule 36.6. Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account

records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed. Where accounting records are maintained by means other than on paper, adequate facilities shall exist for such records to be reproduced in printed form.

- 36.8 All accounting records required to be retained in terms of this rule 36.6 and copies of all reports dispatched in terms of rule 36.7 shall be retained for at least five years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record and shall be held at the same office as the firm's other accounting records.

### **Pooling of investments**

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

### **Restrictions applicable to certain investments**

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

### **Investment of funds by members on behalf of persons, otherwise than in terms of rule 36**

- 37.1 A member shall not invest any funds on behalf of any person otherwise than in accordance with the written instructions of that person, detailing the manner and form of the investment.
- 37.2 The written instructions referred to in rule 37.1:
- 37.2.1 shall be obtained by the member concerned before the investment is made, save that, in cases of urgency, he or she may obtain them as soon as possible thereafter and shall forthwith upon making the investment request the person concerned in writing to furnish him or her with such instructions, detailing in that request the manner and form of the investment;
- 37.2.2 may be incorporated in a written contract to which the person giving the instructions is a party.
- 37.3 If the member does not receive the written instructions to be obtained by him or her in terms of rule 37.2 within one month after his or her written request he or she shall forthwith notify the secretary in writing and at the same time furnish him or her with copies of all relevant letters of request and responses, if any.

### **General Provisions**

- 38.1 Failure to comply with any of the provisions of these accounting rules shall constitute unprofessional conduct on the part of the partners or directors of the firm.
- 38.2 An administrative levy in an amount to be determined by the Council from time to time shall be payable by all firms whose audit reports are not submitted within six months of the annual close of the accounting records of the firms concerned, as prescribed by rule 35.22.
- 38.3 It shall constitute unprofessional conduct, or an abuse or misuse of trust funds, for a member to enter into any abnormal or unusual banking arrangement in relation to trust accounts such as "no interest - no charges" or to agree to or acquiesce in reduced interest or to increased charges in return for, or in the expectation or hope of, work allocated or referred to the member by the bank or corresponding advantages allowed by the bank to the member in respect of the members business or private accounts.
- 38.4 The Council shall be entitled to recover from a firm any expenditure incurred by the Council resulting from the firm's failure to comply with these rules.

## **PART VI**

### **CONDUCT**

39. Members shall comply with the rules of professional conduct set out below. A member who fails to so comply shall be guilty of unprofessional and/or dishonourable and/or unworthy conduct.
40. Members shall at all times:
- 40.1 maintain the highest standards of honesty and integrity;
  - 40.2 treat the interests of their clients as paramount, provided that their conduct shall be subject always to:
    - 40.2.1 their duty to the court;
    - 40.2.2 the interests of justice;
    - 40.2.3 the observation of the law;
    - 40.2.4 the maintenance of the ethical standards prescribed by these rules and generally recognised by the profession;
  - 40.3 honour any undertaking given in the course of their practice, unless prohibited by law;
  - 40.4 refrain from doing anything in a manner prohibited by law or by the code of conduct of the profession which places or could place them in a position in which a client's interests conflict with their own or those of other clients;
  - 40.5 maintain confidentiality regarding the affairs of present or former clients, unless otherwise required by law;
  - 40.6 respect the freedom of clients to be represented by the lawyer of their choice;
  - 40.7 account faithfully, accurately and timeously for any of their clients' money which comes into their possession, keep such money separate from their own money, and retain such money for so long only as is strictly necessary;
  - 40.8 retain the independence necessary to enable them to give their clients unbiased advice;

- 40.9 advise their clients at the earliest possible opportunity on the likely success of such clients' cases and not generate unnecessary work, nor involve their clients in unnecessary expense;
- 40.10 use their best efforts to carry out work in a competent and timely manner and not take on work which they do not reasonably believe they will be able to carry out in that manner;
- 40.11 be entitled to a reasonable fee for their work, provided that no member shall fail or refuse to carry out, or continue, a mandate on the ground of non-payment of fees and disbursements (or the provision of advance cover therefor) if demand for such payment or provision is made at an unreasonable time or in an unreasonable manner;
- 40.12 remain reasonably abreast of developments in the law and legal practice in the fields in which they practise;
- 40.13 behave towards their colleagues, including any legal practitioner from a foreign jurisdiction, with integrity, fairness and respect;
- 40.14 refrain from doing anything which could or might bring the attorneys' profession into disrepute.

### **Approaches and publicity**

41. For purposes of these rules:

- 41.1 "publicity" shall include any direct or indirect reference to a member, published or disseminated by any written, pictorial or aural means, in any medium (including electronic and social media), irrespective of whether such publicity or reference:
  - 41.1.1 is made in connection with any sponsorship, patronage, welfare activity, other similar benevolent purpose or support in any cause; or
  - 41.1.2 is made, or is paid for, at the instance, or with the knowledge or consent, of the member; or
  - 41.1.3 appears, or is contained, in any editorial, advertorial or advertisement

and "publicise" has a corresponding meaning.



- 41.2 Members shall ensure that all written and oral approaches (including letterheads) to clients, or potential clients, and all publicity, including the offering of services by publicity, made or published by or on behalf of a member:
- 41.2.1 are made in a manner which does not bring the attorneys' profession into disrepute;
  - 41.2.2 are not offensive, inappropriate or made for the purpose of procuring work in respect of which another attorney has already received instructions;
  - 41.2.3 do not misrepresent the nature of the service offered;
  - 41.2.4 accord in every respect with the requirements of this rule;
  - 41.2.5 do not misrepresent, disparage, compare, criticise the quality of or claim to be superior to, the service provided by any other member, whether or not such other member is identified therein;
  - 41.2.6 do not refer to a client by name in any publicity or advertisement published by or on behalf of a member unless:
    - 41.2.6.1 the prior written consent of the client had been obtained; or
    - 41.2.6.2 the advertisement relates solely to the sale or letting of a client's property.
- 41.3 Members' responsibilities set out in rule 41.2 cannot be delegated. Where a member becomes aware of publicity referring to him or her which is in conflict with or infringes this rule, he or she shall immediately take appropriate steps to have the publicity rectified or withdrawn and shall publish the rectification in the same medium or media as that in which the conflicting or infringing publicity appeared.

### **Specialisation and expertise**

42. Members may, on the basis of specialised qualifications or experience, advertise or hold themselves out as being specialists or as offering specialist services, provided that if a member claims specialisation or expertise in any branch of the law, the Council may:
- 42.1 require a member to show good cause by a specified date why he or she should not be ordered by the Council to cease to hold himself or herself out as a specialist or as expert in any particular branch of the law;

- 42.2 order the member to cease holding himself or herself out as a specialist or expert in the branch of the law concerned if it is the opinion of the Council that the member's claim is not justified; and
- 42.3 declare that such order shall serve as notice in terms of rule 50 without in any way limiting the Council's powers in terms of rule 50.

### **Sharing of fees <sup>10</sup>**

- 43.1 A member shall not, directly or indirectly, enter into any express or tacit agreement, arrangement or scheme of operation or any partnership (express, tacit or implied), the result or potential result whereof is to secure for the practitioner the benefit of professional work, solicited by a person who is not a practitioner, for reward, whether in money or in kind; but this prohibition shall not in any way limit bona fide and proper marketing activities by full time employees of the member.
- 43.2 A member shall furnish the Council with an affidavit, within seven days of request therefor, explaining the presence and function or position of an employee and manner or form of remuneration earned by such employee, or containing similar information relating to person who is not a practitioner who is apparently associated with the member's practice or who is continuously or repeatedly in, at or about the member's office.
- 43.3 A member may not hold himself or herself out as practising as a practitioner while in the employ of a person who is not a practitioner, save with the prior written consent of the Council.

### **Sharing of offices**

- 44. A practising member may not, without the prior written consent of Council, share offices with a person who is not a member or an employee of a member.

### **Payment of commission**

- 45. A member may not effect payment, directly or indirectly, of agent's commission in advance of the date upon which such commission is due and payable, except out of funds provided by the person liable therefor and on the express authority of such person.

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<sup>10</sup> The heading, as applicable in the jurisdiction of the Cape Law Society, reads "Touting".

**Naming of partners and practice**

- 46.1 Subject to rule 46.4, a member shall disclose his or her name on any letterhead used for the practice and, in the case of:
- 46.1.1 a partnership, the names of all the partners; or
  - 46.1.2 a professional company, the names of all directors.
- 46.2 A member who discloses in his or her letterhead or in other publications the name of any person employed by him or her or his or her firm in any capacity shall indicate clearly that such person is not a practitioner or his or her partner or fellow director; provided that, without prior written consent of the Council, such indication shall be made by using one or more of the following words and no others:
- 46.2.1 where such person is a member, "consultant", "associate", "professional assistant" or "assisted by";
  - 46.2.2 where such person is not a member, "candidate attorney", or in the case of professionals in fields other than law, such professional status as may be appropriate, or in the case of management employees, the descriptive management title.
- 46.3 A member shall practise only under a style or name which:
- 46.3.1 is his or her own name or the name of a former proprietor of, or partner in, such practice if he or she practises without partners; or
  - 46.3.2 contains the names of any or all of the present partners or former partners or proprietors of or in such firm if he or she practises in partnership; or
  - 46.3.3 is a derivative of the names referred to in rules 46.3.1 or 46.3.2, or is the name of a national or international legal practice of which the member is an employee or with which the member or his or her firm is associated or of which he or she or his or her firm forms part, unless the Council in the particular circumstances prohibits the use of that name; or
  - 46.3.4 the Council has first approved in writing, in the case of any other name.
- 46.4 Notwithstanding the provisions of rule 46.1, it will be sufficient compliance with that rule:

- 46.4.1 in the case of a partnership consisting of more than twenty partners, if the names of the senior partner and managing partner (and in the case of a branch office, the names of the senior partner of the partnership and the managing partner of the branch) are disclosed on the letterhead, provided the letterhead contains a note indicating the address at which the names of all the partners will be available for inspection;
- 46.4.2 in the case of a personal liability company, if the names of the directors are disclosed as required by the Companies Act, 71 of 2008.<sup>11</sup>

### **Replying to communications**

- 47.1 A member shall, within a reasonable time, reply to all communications which require an answer unless good cause for refusing an answer exists.
- 47.2 A member shall respond timeously and fully to requests from the Society for information and/or documentation which he or she is able to provide.
- 47.3 A member shall comply timeously with directions from the Society.

### **Naming in deed of alienation**

48. A member may not act in terms of a deed of alienation of immovable property in which the member's name or the name of the member's firm has been printed or duplicated as transferring attorney. This prohibition will not, however, apply if a separate written instruction is given to the member prior to the signature of the deed of alienation or to an agreement prepared by the member on instruction from the client.

### **Specific provisions relating to conduct**

49. A member shall:
- 49.1 refrain from accepting from any person directly or indirectly any sum of money which it is agreed or intended should be used as payment or part payment for services to be rendered or for disbursements to be made in the future in the event of any future act or omission forming the basis of any criminal charge against the person by or for whose benefit such payment was made;

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<sup>11</sup> In respect of the Cape Law Society, rule 46.4.2 reads: "46.4.2 in the case of a personal liability company, consisting of more than twenty directors, if the names of the senior director and managing director (and in the case of a branch office, the names of the senior director of the company and the managing director of the branch) are disclosed on the letterhead, provided the letterhead contains a note indicating the address at which the names of all the directors will be available for inspection;"

- 49.2 issue and, on request, hand over or otherwise deliver to the person making payment, a receipt for any money received;
  - 49.3 exercise proper control and supervision over his or her staff and offices.
  - 49.4 not abandon his or her practice, or shall not close his or her practice, without previous notice to his or her clients and without arranging with them for the dispatch of their business or the care of their property in his or her possession or under his or her control;
  - 49.5 if he or she is practising as a sole practitioner, and intends to be absent from his or her practice for a period in excess of 21 working days, give notice to the Society at least 30 days prior to his departure of the arrangements which he or she has made for the supervision of the practice during his or her absence. The member may, in the case of urgency only, give the Society a shorter period of notice. In the notice the member must inform the Society:
    - 49.5.1 which other member will be supervising his or her practice;
    - 49.5.2 the extent of the supervision which the other member will exercise;
    - 49.5.3 what arrangements he or she has made for the signing of his or her business and trust cheques; and
    - 49.5.4 the reason for the late notice, if applicable.
- This rule 49.5 applies to members who practise as partners or directors of a firm where all the partners or directors intend to be absent simultaneously from the firm for a period in excess of 21 working days.
- 49.6 not overreach a client or overcharge the debtor of a client, or charge a fee which is unreasonably high, having regard to the circumstances of the matter;
  - 49.7 submit an account for taxation or assessment, as the case may be, within a reasonable time after a request to do so by the Council, the client or the person purportedly liable for payment of the fee;
  - 49.8 not act for or in association with any organisation or person, not being a practising practitioner, whose business or part of whose business it is to solicit instructions for the practitioner;

- 49.9 not buy instructions in matters from a third party and may not, directly or indirectly, pay or reward a third party, or give any other consideration for the referral of clients other than an allowance on fees to a practising attorney for the referral of work;
- 49.10 use the services of a third party (including for the purpose of gathering evidence) only where the member has established a *bona fide* attorney and client relationship with the client, such that:
  - 49.10.1 the client is free to elect whether or not to use the services of the third party;
  - 49.10.2 the member takes proper instructions directly from the client;
  - 49.10.3 the member is mandated to engage the third party at the client's cost;

in which event the member may issue an instruction to a third party whom the member considers will be competent to do specific work and the member may, on the client's behalf, pay to the third party a fair and reasonable fee, consistent with the value of the work actually done by the third party.
- 49.11 when using the services of a consultant, render an account to the client, disclosing the payment to the third party as a disbursement;
- 49.12 not accept a mandate, knowing there to be an existing mandate, or a freshly terminated mandate, given to another attorney without explaining to the client all the implications, of his doing so, including in particular the cost implications;
- 49.13 perform professional work or work of a kind commonly performed by a practitioner with such a degree of skill, care or attention, or of such a quality or standard, as in the opinion of the Council may reasonably be expected;
- 49.14 in any communication with another person on behalf of a client:
  - 49.14.1 not represent to that person that anything is true which the member knows, or reasonably ought to know, or reasonably believes, is untrue; or
  - 49.14.2 not make any statement that is calculated to mislead or intimidate that other person, and which materially exceeds the legitimate assertion of the rights or entitlement of the member's client; or
  - 49.14.3 not threaten the institution of criminal proceedings against that other person in default of that person's satisfying a concurrent civil liability to the member's client; or

- 49.14.4 not demand the payment of any costs to the member in the absence of an existing liability therefor owed by the person to the member's client;
- 49.15 be in attendance during a consultation with counsel or an attorney acting as counsel, or at court during the hearing of a matter (other than an unopposed application) in which he or she is the attorney of record, in person or through a partner or employee, being a member or a candidate attorney;
- 49.16 take all such steps as may be necessary from time to time to ensure compliance at all times as an accountable institution with the requirements of the Financial Intelligence Centre Act, 38 of 2001;
- 49.17 not tout for professional work. A member will be regarded as being guilty of touting for professional work if he or she either personally or through the agency of another, procures or seeks to procure, or solicits for, professional work in an improper or unprofessional manner or by unfair means, all of which for purposes of this rule will include, but not be limited to:
- 49.17.1 the payment of money, or the offering of any financial reward or other inducement of any kind whatsoever, directly or indirectly, to any person, in return for the referral of professional work; or
- 49.17.2 directly or indirectly participating in an arrangement or scheme of operation resulting in, or calculated to result in, the member's securing professional work solicited by a third party.

For purposes of this rule 49.17 "professional work", in addition to work which may by law or regulation promulgated under any law be performed only by a practitioner, means such other work as is properly or commonly performed by or associated with the practice of a practitioner.

## **PART VII**

### **DISCIPLINARY PROCEEDINGS**

50.

- 50.1 The Council shall have disciplinary jurisdiction over all members no matter where the conduct which is, or allegedly is, unprofessional or dishonourable or unworthy is perpetrated.

- 50.2 The Council may assign its duties in relation to the exercise of its disciplinary functions to any committee appointed by it in terms of section 67 of the Act, subject to the provisions of the Act and these rules.
- 50.3 The Council:
- 50.3.1 shall consider any complaint made by or on behalf of any person feeling aggrieved by reason of any alleged unprofessional or dishonourable or unworthy conduct on the part of any member;
  - 50.3.2 may, of its own motion, exercise its powers under these rules notwithstanding the absence of any complaint, in which event the provisions of this rule 50 shall *mutatis mutandis* apply;
  - 50.3.3 may utilise admitted attorneys within its employ in order to correspond with the complainant and the member in respect of whom the complaint is made and to investigate a complaint.
- 50.4 Save where the Council otherwise decides a complaint shall be in writing and in the form of an affidavit, or in any such form as the Council may from time to time require, and shall set out in detail the facts upon which the complaint is based. A complaint shall be lodged with the secretary.
- 50.5 The Council may require a complainant to provide, on affidavit if requested, further particulars concerning any aspect of the complaint.
- 50.6 Upon receipt of a complaint, and further particulars where these have been furnished, the Council may:
- 50.6.1 where it is of the opinion that the complaint does not disclose a *prima facie* case of unprofessional or dishonourable or unworthy conduct or where a complainant has neglected or refused to comply with the requirements of the Council under these rules, dismiss the complaint and inform the complainant accordingly;
  - 50.6.2 where it is of the opinion that a *prima facie* case of unprofessional or dishonourable or unworthy conduct on the part of the member concerned is or may be made out:
    - 50.6.2.1 furnish the member with particulars of the complaint and call upon the member to furnish the Council in writing within such time as the Council



may direct, with an explanation in answer to the complaint, and may require such explanation to be verified by affidavit; or

- 50.6.2.2 at any time and whether or not it has proceeded under rule 50.6.2.1, call upon the member to appear at such time and place as it may determine to explain or elucidate or discuss the matter.
- 50.7 When, upon a consideration of the complaint and the member's explanation in answer thereto or elucidation of the matter, it is of the opinion that no *prima facie* case of unprofessional or dishonourable or unworthy conduct has been made out, dismiss the complaint and notify the complainant and the member accordingly.
- 50.8 When, upon a consideration of the complaint and the member's explanation in response thereto, it is of the opinion that an adequate answer to the complaint has not been given the Council shall formulate in writing a charge or charges of unprofessional or unworthy or dishonourable conduct and require the member to furnish it with the member's answer to such charge or charges within a stipulated time.
- 50.9 Upon receipt of the member's and complainant's answers, or where no answer is received, on the basis of the facts before it, the Council shall either dismiss the complaint, and notify both the complainant and member accordingly, or find the member guilty of the charge or charges, or resolve to conduct a formal enquiry as provided for in rule 50.15 below.
- 50.10 Where the Council makes a finding of guilty it shall notify the member accordingly and afford the member an opportunity to place before it in writing, on affidavit if requested, within a specified time, such facts and submissions as are relevant to the nature of the sanction to be imposed.
- 50.11 Upon receipt of any facts or submissions concerning the nature of the sanction to be imposed upon the member the Council shall consider the evidence before it, and impose upon the member a sanction authorised by the Act.
- 50.12 If a member is dissatisfied with the finding and sanction imposed he shall have the right to call for a formal enquiry to be conducted as provided for below.
- 50.13 Where the Council resolves to hold a formal enquiry, or where a member has called for such an enquiry as contemplated above, the Council shall refer the matter to a disciplinary enquiry committee appointed by it. The committee may consist of two or more members, who shall not have participated in the finding and sanction imposed

upon the member as provided for above. The Council may also appoint any practising attorney or advocate or an employee who is admitted as such as a *pro forma* prosecutor in the leading of evidence against, and the presentation of the case against, the member, at the enquiry.<sup>12</sup>

- 50.14 The Council shall have the power to rescind any finding of guilty pursuant to which a member requests that a formal enquiry be conducted, if it is satisfied, on the advice of the *pro forma* prosecutor appointed by it, that there are no reasonable prospects of the charges being proven at a formal enquiry.
- 50.15 A formal enquiry shall be commenced by way of the service on the member personally of a summons requiring the attendance of such member at the enquiry and which summons shall contain the charge or charges of unprofessional or unworthy or dishonourable conduct alleged against the member. Such summons shall be issued under the hand of the president or the secretary or a duly authorised employee of the Society, and shall be served not less than TEN (10) days before the date appointed for the hearing, in the computation of which period weekends and public holidays shall be excluded.
- 50.16 A member appearing at an enquiry conducted under this rule shall be entitled to legal representation.
- 50.17 The duties, functions and powers of the disciplinary enquiry committee relating to its conduct of a formal enquiry shall be the following, namely:
  - 50.17.1 to determine through its chairman and subject always to the provisions of these rules and of the Act the manner in which the enquiry shall be conducted;
  - 50.17.2 to exercise the powers vested in the Council under section 71(2)(a) of the Act;
  - 50.17.3 to dispense with any requirements regarding summonses, notices, affidavits, documents, service or times in any case where it appears to it to be just so to do or to extend the time for doing anything in connection with the conduct of the enquiry;

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<sup>12</sup> In respect of the Cape Law Society, the rule reads as follows: "50.13 Where the Council resolves to hold a formal enquiry, or where a member has called for such an enquiry as contemplated above, the Council shall refer the matter to a disciplinary enquiry committee appointed by it. The committee may consist of two or more members, who shall not have participated in the finding and sanction imposed upon the member as provided for above. The Council may also appoint any practising attorney or practising advocate who is admitted as such as a *pro forma* prosecutor in the leading of evidence against, and the presentation of the case against, the member, at the enquiry."

- 50.17.4      *mero motu*, or upon the application of any affected party, to adjourn the enquiry upon such terms as to costs, or otherwise, as it deems fit;
- 50.17.5      to cause the enquiry proceedings to be recorded in such a manner as shall enable a true and correct record of such proceedings to be available and to procure that each of its decisions shall be recorded in writing and be prefaced by a statement of its findings in relation to the facts investigated during the course of the enquiry and shall be signed by the chairman of such committee so authorised; and to procure further, that each such decision shall be filed in the records of the Society;
- 50.17.6      *mero motu*, to treat as a separate complaint of unprofessional or dishonourable or unworthy conduct, any act or omission on the part of a member attending, or required to attend, an enquiry being conducted under this sub-rule where such act or omission is calculated to interfere with, or otherwise interferes with, its proper consideration, investigation and determination of the complaint forming the subject matter of such enquiry and to refer any such separate complaint to a disciplinary committee for consideration and investigation in accordance with the provisions of this rule 50;
- 50.17.7      to exercise such ancillary powers as it shall consider reasonably necessary to enable it to discharge its duties, functions and powers hereunder;
- 50.17.8      to do all things necessary to ensure that all disciplinary proceedings falling within its duties, functions and powers are dealt with justly, expeditiously and in accordance with these rules;
- 50.17.9      at the conclusion of the enquiry, to find the member not guilty of the charge forming the subject matter of the enquiry or guilty of unprofessional or dishonourable or unworthy conduct in relation to such charge and in the event of a finding of not guilty, to notify the member and the complainant, if any, accordingly.
- 50.18      Upon a finding of guilty under rule 50.17.9 the disciplinary enquiry committee may, having considered the member's disciplinary record, and such other evidence and submissions relevant to the sanction to be imposed by it which are placed before it by the *pro forma* prosecutor and the member either:

- 50.18.1 impose upon such member such punishment as is provided for in section 72 of the Act, in which event it shall notify the member concerned of its determination and of the punishment imposed; or
- 50.18.2 where it is of the opinion that the nature of the charge upon which it shall have found the member guilty is such as, having regard to the member's disciplinary record, warrants an application for the striking off of such member from the roll of attorneys or for his suspension from practice, make a recommendation to the Council accordingly and simultaneously forward the record of the enquiry to the Council for such action as the Council may elect to take and in which event it shall notify the member concerned of its determination and recommendation aforesaid.
- 50.19 The disciplinary enquiry committee shall, save to the extent set forth in these rules, preserve the confidential nature of all its enquiry proceedings.
- 50.20 On receipt of a recommendation made to it by the disciplinary enquiry committee under rule 50.18.2 the Council shall consider the record of the enquiry and resolve either:
- 50.20.1 to adopt the recommendation of the disciplinary enquiry committee, in which event it shall proceed to take action for the striking off of the member from the roll of attorneys or for his suspension from practice, as it may consider appropriate; or
- 50.20.2 not to adopt the recommendation of the disciplinary enquiry committee, in which event, it shall advise such committee accordingly and refer the matter back to such committee whereupon such committee shall impose such punishment on the member as is referred to in Rule 50.18.1; or
- 50.20.3 with the consent of the member, dispose of the matter *mero motu*.
- 50.21 A member found guilty by a disciplinary enquiry committee shall have the right to appeal afforded him under the provisions of section 73 of the Act.
- 50.22 If at the conclusion of an enquiry the member is found guilty in terms of section 72(1) of the Act and an order is made that the member is to pay the costs incurred by the Council in connection with such an enquiry in terms of section 72(1)(a)(iv) costs shall be calculated in accordance with a tariff determined by the Council from time to time and in default of such determination shall be calculated in accordance with the High Court tariff applicable to civil litigation.

Without derogating from the generality of any such order for the payment of costs, such costs shall include:

- 50.22.1 the costs of recording, transcribing and preparing copies of any record;
- 50.22.2 costs incurred by the Council in the employment of any pro forma prosecutor;
- 50.22.3 the costs incurred by the Council in respect of the employment of an accountant or accountants or other person appointed to investigate and report on the member's accounting records, and of any person appointed by the Council to investigate and report on any other documents or records or things relating to the member's practice or former practice;
- 50.22.4 the costs of procuring the attendance of witnesses and their witness fees, including those of the complainant.
- 50.23 The member concerned may on request be furnished by the secretary with copies of the record of the enquiry or extracts therefrom against payment by the member of the cost of the making those copies calculated according to the said tariff.
- 50.24 Subject to the provisions of the Act, the provisions of this Part VII shall apply, changed as appropriate, in respect of a candidate attorney whose alleged conduct is being enquired into; provided that the Council may require the member with whom the candidate attorney is serving articles or under a contract of service to report in writing to the Council on any aspect of the matter or to attend during any stage of the enquiry and there, *inter alia*, to make such verbal report or give such explanation relating to the matter as the Council may deem fit.
- 50.25 If the enquiry is held by a committee appointed by the Council under section 67 of the Act and it appears to the committee at any stage during the course of its enquiry that the evidence then before it is likely to warrant the suspension or cancellation of the articles of clerkship or contract of service, the committee shall refer the matter to the Council and inform the candidate attorney and the member with whom he is serving articles or under contract of service accordingly and the Council may then itself continue and conclude the enquiry or may refer it or any aspect thereof back to the committee.

- 50.26 The Council may, for the general information of members or of the public or of both, in such manner and to such extent as it may deem fit, publish or allow or arrange for the publication of information relating to an enquiry under section 71 of the Act.<sup>13</sup>
- 50.27 Subject to the provisions of the Act or any other laws, no individual and no group of individuals, and no body corporate or other association, not having, in the opinion of the Council, an interest in the subject matter of an enquiry, shall be entitled to information relating to it.
- 50.28 No decision taken by a committee in any proceedings in terms of this rule 50 shall be invalid by reason only of the existence of a vacancy on the committee or of the fact that the composition of the committee is changed after the commencement of the enquiry as a result of the death or incapacity or resignation of a member of a committee, or for any other reason, provided the decision was taken by the requisite majority of the members of the committee who were present for the duration of the proceedings.

## **PART VIII**

### **MISCELLANEOUS**

#### **Circles**

- 51.1 The area of jurisdiction of the Council may be divided into circles which are declared as such by the Council in respect of geographical areas within its area of jurisdiction.
- 51.2 If the Council has established circles in terms of rule 51.1 it shall have the power from time to time to increase, reduce or in any other manner alter the areas of the several circles.
- 51.3 Where circles have been established all members practising or otherwise employed within the area of a circle shall be members of that circle.

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<sup>13</sup> The rule reads as follows in respect of the Cape Law Society: "50.26 The Council shall, for the general information of members and the public, publish or allow or arrange for the publication of the name of the member, the ultimate finding and the sanction imposed in respect of all proceedings in terms of this rule 50, provided that in the case of offences where the sanction imposed is a warning, a reprimand or a fine not exceeding an amount determined by Council from time to time, the information will not be formally published but will be made available to any member of the public, on enquiry, for a period of 24 months, calculated from the date on which the ultimate finding and sanction imposed became final."

- 51.4 The affairs of a circle shall be conducted by a circle committee, which shall consist of such number of members practising in that circle as the Council may determine.
- 51.5 The functions of a circle committee shall be:
- 51.5.1 to consider and deal with such matters as specifically affect the members practising or otherwise employed within its area and are not matters which in the opinion of the Council should properly be dealt with by the Council;
  - 51.5.2 to discuss and report on matters referred to it by the Council and generally deal with such matters when so required by the Council;
  - 51.5.3 to consider and make representations to the Council upon any matter affecting the profession either in its area or as a whole or affecting the Society;
  - 51.5.4 to assist where possible in the friendly settlement of disputes between its members;
  - 51.5.5 such other functions as the Council may from time to time decide.
- 51.6 Where the whole area of a circle is served by an attorneys association whose constitution has been approved by the Council:
- 51.6.1 the committee of such attorneys association shall, if the Council so decides, constitute the circle committee for such circle; or alternatively
  - 51.6.2 the Council may suspend the operation of the whole or any part of this rule for as long as it shall think fit in relation to that circle.
- 51.7 Members of circle committees shall be nominated and elected annually in such manner as shall be required by the constitution of the circle.
- 51.8 Members of circle committees shall remain in office for such period as shall be determined by the Council.
- 51.9 Circle committees shall have such powers in relation to the management and conduct of circle affairs as shall be determined by the Council.
- 51.10 Where a circle has been established the circle committee shall furnish an annual report to the Council.
- 51.11 The Council may contribute towards the reasonable expenses of a circle such amounts as it may from time to time determine, and the circle concerned shall,

whenever called upon to do so by the Council, furnish the Council with such particulars as it may require to enable such determination to be made.

### **Law Clinics**

52. Any law clinic which seeks recognition as a law clinic for purposes of the Act and of these rules shall comply with the following requirements:
  - 52.1 the clinic shall be properly constituted, organised and controlled to the satisfaction of the Council, either as part of the faculty of law at a university in the Republic or as a law centre controlled by a non-profit making organisation;
  - 52.2 the clinic must provide legal services to the public;
  - 52.3 the legal services provided by the clinic must be rendered free of charge, direct or indirect, to the recipient of those services; provided that:
    - 52.3.1 the clinic may recover from the recipient of its services any amounts actually disbursed by it on behalf of the recipient;
    - 52.3.2 where the clinic acts for the successful litigant in litigation it will be entitled to take cession from such litigant of any order for costs awarded in favour of the litigant and to recover those costs for its own account;
  - 52.4 the services may be rendered only to persons who, in the opinion of the Council, would not otherwise be able to afford them, or, with the prior written approval of the Council, services rendered in the public interest; and the Council may from time to time issue guidelines for the assistance of clinics in determining to whom services may be rendered;
  - 52.5 the clinic may not undertake work in connection with the administration or liquidation or distribution of the estate of any deceased or insolvent person, mentally ill person or any person under any other legal disability, or the judicial management or the liquidation of a company, nor in relation to the transfer or mortgaging of immovable property, nor in relation to the lodging or processing of claims under the Road Accident Fund Act, 1996, or any amendment thereof, or such other work as the Council may from time to time determine;
  - 52.6 the name under which the clinic is to carry on its activities, and the letterheads and other stationery of the clinic, shall require the prior approval of the Council;



- 52.7 attorneys in the employ of the clinic may be remunerated only by way of salary payable by the clinic or by the organisation to which it is attached.
- 52.8 If an attorney in the full time employment of a law clinic wishes to engage a candidate attorney under articles of clerkship or contract of service he or she may do so only if:
- 52.8.1 the candidate attorney is to be under his or her direct personal supervision or under the direct personal supervision of another attorney who is a member of the professional staff of the clinic;
  - 52.8.2 the clinic is open for business during normal business hours for not less than 11 months in any year;
  - 52.8.3 the clinic has proper office systems with telephones, typing facilities, files and filing procedures, a diary system and at least elementary library facilities;
  - 52.8.4 the clinic has a proper accounting system and accounting procedures;
  - 52.8.5 the clinic handles a reasonably wide range of work to give the candidate attorney exposure to the kind of problems that a newly qualified attorney would expect to encounter and be able to handle competently during his or her first year of practice. The Council shall have the right to direct the clinic to require the candidate attorney to attend a training course approved by the Council in areas of practice which, in the opinion of the Council, are not adequately dealt with by the clinic;

provided that no such attorney shall engage more than three candidate attorneys.

### **Benevolent Fund**

- 53.1 The Council may maintain and control a separate fund to be known as the Benevolent Fund of the Law Society. The benevolent fund maintained by the Society immediately before the promulgation of these rules shall be deemed to constitute the fund, for so long as the Council maintains it.
- 53.2 The Council shall credit to the benevolent fund:
- 53.2.1 the balance which at the date of promulgation of these rules stands to the credit in the accounting records of the Society of the benevolent fund maintained by the Society immediately before the promulgation of these rules;

- 53.2.2 all subscriptions, fees, levies and other charges and all donations and other payment to the fund received from any person.
- 53.3 Subject to any law, the Council may from time to time solicit donations to the benevolent fund from members or other persons by way of annual contributions, lump sum payments or in any other manner.
- 53.4 The Council may, with the approval of the Society given at a general or a special meeting in terms of section 60 (2) of the Act, fix subscriptions, fees, levies or other charges to be allocated to the benevolent fund.
- 53.5 The Council shall in its discretion assist from the assets of the benevolent fund, by way of donation, grant, annuity or otherwise, necessitous members and former members and candidate attorneys and former candidate attorneys and their spouses and other dependants, and necessitous surviving spouses and dependants of members or former members or candidate attorneys or former candidate attorneys who have died.
- 53.6 the Council may determine:
- 53.6.1 the form and manner of application for assistance from the benevolent fund;
- 53.6.2 the conditions upon which any such assistance is given.

### **Dissolution of Society**

54. If for any reason the Society is wound up, liquidated or in any other manner dissolved and there remain after the satisfaction of its liabilities any assets whatsoever, the same shall be transferred to such other Society or association, as the members shall in general meeting decide, with objects similar to those of the Society.

### **Date of commencement**

- 55.1 These rules shall come into operation on the date of their promulgation.
- 55.2 The proclamation may declare that the coming into operation of certain rules may be deferred to a later date.

## FIRST SCHEDULE

## PROXY FORM

I, .....  
 being a practising/declared\* member of the Law Society of [●], having the office at which I  
 habitually practise at † .....  
 .....

hereby appoint .....  
 being a member of the Law Society of [●], of .....

or failing him/her the chairperson of the meeting as my proxy to vote for me and in my name at  
 a meeting of members of the Law Society of [●], to be held on the ..... day of  
 ..... 20..., or at any adjournment thereof on the following subjects and in the  
 following manner:

	In favour of	Against	**As he thinks fit
Motion to .....	.....	.....	.....
Motion to .....	.....	.....	.....
Motion to .....	.....	.....	.....

(Indicate instructions to proxy by means of a cross in relevant space.)

\* Delete whichever is not applicable.

† To be completed only by practising members.

\*\* Only where the proxy holder is not the chairperson of the meeting. The chairperson  
 may be authorised to vote only for or against a motion.

I further authorise my proxy to vote in such a manner as he may deem best fitted to achieve my  
 will as above instructed on any motion of course relating to the original motion concerned.

SIGNED this ..... day of ..... 20.....  
 .....

Signature

*Proxy's endorsement in terms of rule 25.5.4 indicating his election where he is authorised to  
 vote on a subject as he thinks fit or on a motion of course:*

	In favour of	Against
Motion to .....	.....	.....
Motion to .....	.....	.....
Motion to .....	.....	.....

(Proxy to indicate election by means of a cross in relevant space.)

Proxy holder's signature

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### Notes

1. If no person is named in the proxy form the chairperson will be deemed to be the proxy holder.
2. A proxy holder, other than the chairperson, may not act for more than five members at any general or special meeting.<sup>14</sup>

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<sup>14</sup> In respect of the Cape Law Society, the note reads: "There shall be no limit on the number of proxies that a proxy holder shall hold."

**SECOND SCHEDULE****VOTING PAPER**

THE LAW SOCIETY OF \_\_\_\_\_

**VOTING PAPER**

Name of Candidate	Address	Column for Voter's Mark (X)

**NOTES**

## Note I

The names of the candidates are given in alphabetical order by province. You may vote only for the candidates nominated for the province in which you are practising.

## Note II

There are [●] vacancies as follows:

1. Province \_\_\_\_\_
2. Province \_\_\_\_\_

## Note III

You may vote for any number of candidates in your province provided that the number voted for does not exceed the number of vacancies referred to in Note II above.

## Note IV

No voting paper other than this will be accepted unless it is sent or delivered by you to the secretary in an envelope marked "Voting Paper" with a letter explaining why the printed form was not returned.

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**IDENTIFICATION ENVELOPE**
**Form of Declaration on Identification Envelope**

I, (state name)

.....

who practise at (state address) and name of the firm

.....

in the province of

.....

being a member of the Law Society of \_\_\_\_\_ do hereby declare that I am the person to whom the enclosed Voting Paper was addressed, that I am entitled to vote and that I have not returned any other voting paper in this election.

\_\_\_\_\_

**Signature of Voter**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ in the presence of the undersigned witness.

\_\_\_\_\_

**Signature of Witness**

**THIRD SCHEDULE****(FIRST PART) FORM OF ARTICLES OF CLERKSHIP**

ARTICLES OF CLERKSHIP made and entered into at ..... on this  
 ..... day of ..... 20....., by and between  
 ..... an attorney of the [●]  
 Provincial Division of the High Court of South Africa (hereinafter referred to as the principal)  
 ..... and ..... born on ..... (hereinafter  
 referred to as the candidate attorney) in terms of which:

1. the candidate attorney binds himself or herself and undertakes:
  - 1.1 to serve the principal diligently, honestly, properly and confidentially in his or her profession as an attorney in the [●] Province for ..... consecutive years from the date hereof;
  - 1.2 to execute, at all times, all lawful instructions given to him or her by the principal or any partners of the principal or any person placed in authority over the candidate attorney by the principal or any partners of the principal;
  - 1.3 not to absent himself or herself from his or her employment by the principal without the principal's prior consent;
  - 1.4 not to engage in any business whatsoever other than that of the candidate attorney without the written consent of the principal and the Council of the Law Society of the [●];
2. the principal undertakes that:
  - 2.1 he or she will use his or her efforts to teach and instruct the candidate attorney in the practice and profession of an attorney;
  - 2.2 provided that the candidate attorney has served his or her period of articles properly and is in the principal's opinion a fit and proper person for admission, the principal will use his or her best efforts to procure the admission of the candidate attorney as an attorney of the [●] Provincial Division of the High Court of South Africa;
3. should the principal discontinue his or her practice in the [●] Province he or she shall not thereafter be bound by these articles but shall, if requested by the candidate attorney, cede these articles to an attorney practising in the said province;
4. should the clerk:

- 4.1 not serve the period of articles properly in terms of these articles;
- 4.2 commit a breach of any of these articles; or
- 4.3 be guilty of any misconduct, then the principal will be entitled to cancel these articles, and dismiss the candidate attorney from his or her employment.

In witness whereof the parties have hereunto set their hands at ..... on the day, month and year aforementioned, in the presence of the undersigned witnesses.

As witnesses:

1 .....  
Principal

2 .....  
Candidate Attorney

.....  
\*Parent or guardian

---

\*Where the candidate attorney is a minor.



**THIRD SCHEDULE****(SECOND PART) FORM OF CONTRACT OF SERVICE**

CONTRACT OF SERVICE made and entered into at ..... on this ..... day of ..... 20....., by and between ..... an attorney of the [●] Provincial Division of the High Court of South Africa (hereinafter referred to as the principal) who is permanently employed by the ..... Legal Aid Clinic/..... office of the Legal Aid Board and which clinic/office has been properly certified or approved in terms of section 1 of the Attorneys Act 1979 (Act No. 53 of 1979) (as amended), and ..... born on ..... (hereinafter referred to as the candidate attorney) in terms of which:

1. The candidate attorney binds himself or herself and undertakes:
  - 1.1 to serve the principal from date hereof for ..... consecutive years diligently, honestly, properly and with due regard to the confidential nature of the principal's practice as an attorney in the [●] province;
  - 1.2 to execute, at all times, all lawful instructions given to him or her by the principal or any admitted attorney or advocate who is permanently employed by the Legal Aid Clinic or the office of the Legal Aid Board where the principal is employed;
  - 1.3 not to absent himself or herself from his or her employment by the principal without the principal's prior consent;
  - 1.4 not to engage in any business whatsoever other than that of a candidate attorney without the written consent of the principal and the Council of the Law Society of [●].
2. The principal undertakes that:
  - 2.1 he or she will use his or her efforts to teach and instruct the candidate attorney in the practice and profession of an attorney;
  - 2.2 provided the candidate attorney has served his or her contract of service properly and is in the principal's opinion a fit and proper person for admission, the principal will use his or her best efforts to procure the admission of the candidate attorney as an attorney of the [●] Provincial Division of the High Court of South Africa.

3. Should the principal cease to practice in the [•] he or she shall not thereafter be bound by this contract of service but shall, if requested by the candidate attorney, cede the contract of service to an attorney practising in this province.

4. Should the candidate attorney:

4.1 not serve his or her term in accordance with this contract of service;

4.2 commit a breach of any provision of this contract of service; or

4.3 be guilty of any misconduct, then principal will be entitled to cancel this contract of service and dismiss the candidate attorney from his or her employment.

In witness whereof the parties have hereunto set their hands at .....

..... on the day, month and year aforementioned in the presence of the undersigned witnesses.

As witnesses:

1 .....  
Principal

2 .....  
Candidate Attorney

.....  
\*Parent or guardian

---

\*Where the candidate attorney is a minor.

## FOURTH SCHEDULE

## AUDITOR'S REPORT

## (First Part): Illustrative Auditor's Report (Unmodified opinion)

**Circumstances**

- Compliance of attorneys trust accounts with the Act and the Uniform Rules
- Unmodified auditor's opinion
- The information in the Attorney's Annual Statement on Trust Accounts agrees with the underlying records that were the subject of the engagement on the attorney's trust accounts.

**Independent Registered Auditor's Report on Attorneys Trust Accounts**

To the <Practitioner / Partners / Directors<sup>1</sup>> (insert the name of the attorney's firm)

We have undertaken a reasonable assurance engagement on the compliance of attorneys trust accounts of <insert the name of the attorney's firm> with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the Act), and Uniform Rules 35 and 36<sup>2</sup>> (the Rules) for the <period from <insert date> to <insert date>>/<year ended <insert date>>.<sup>3</sup>

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

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

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

The <practitioner/partners/directors> is/are responsible for ensuring that attorneys trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as the

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

<sup>2</sup> Applicable Rules are: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.12; 35.13.7.6; 35.13.7.7; 35.13.8; 35.13.9; 35.13.12; 35.13.13; 35.13.14; 35.13.15; 35.13.16; 35.14; 35.16; 35.19; 36

<sup>3</sup> Throughout the report - delete which is not applicable: <period from <insert date> to <insert date>>/<year ended <insert date>>.

<practitioner/partners/directors> determine(s) is also necessary to prevent and detect fraud and theft. The <practitioner/partners/directors> is/are also responsible for the preparing the attached statement and for the financial information and declarations contained therein.

#### *Auditor's responsibility*

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

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

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

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

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

## Opinion

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

## Report on Attorney's Annual Statement on Trust Accounts<sup>4</sup>

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

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

## Report on Other Legal and Regulatory Requirements

*<The form and content of this section of the auditor's report will vary depending on the nature of the auditor's other reporting responsibilities.>*<sup>5</sup>

## Restriction on distribution and use

This report is for the purpose of meeting the auditor reporting requirements of the Rules and, as regards the accompanying Attorney's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the Council<sup>6</sup> and the Attorneys' Fidelity Fund. Consequently it may not be suitable for any other purpose. It is intended solely for the use of *<practitioner/partners/directors>* of the firm, the Council and the Attorneys' Fidelity Fund, and should not be distributed to other parties.

## Auditor's Signature

Name of individual registered auditor

IRBA Registration number for firm and/or auditor

Registered audit firm

Date of report

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

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

<sup>5</sup> Refer paragraph 78 of the Guide for Registered Auditors: *Engagements on Attorneys Trust Accounts*, for illustrative wording to insert as: *Report on Other Legal and regulatory requirements*, where a reportable irregularity, as required in section 45 of the Auditing Profession Act, No. 26 of 2005 has been reported.

<sup>6</sup> Or relevant Provincial Law Society



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

### **Circumstances**

- Certain non-compliance identified (rather than significant non-compliance) of the attorney's trust accounts with the Act and the Rules.
- Qualified auditor's opinion
- The information in the attorney's annual statement on trust accounts agrees with the underlying records that were the subject of the engagement on the attorneys trust accounts.

### **Independent Registered Auditor's Report on Attorneys Trust Accounts**

To the <Practitioner / Partners / Directors<sup>1</sup>> (insert the name of the attorney's firm)

We have undertaken a reasonable assurance engagement on the compliance of attorneys trust accounts of <insert the name of the attorney's firm> with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the Act), and the Uniform Rules <insert specific rule numbers<sup>2</sup>> (the "Rules") of the <insert the name of the relevant Law Society> for the <period from <insert date> to <insert date>>/< year ended <insert date>>.

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

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

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

The <practitioner/partners/directors> is/are responsible for ensuring that the attorneys trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partners/directors> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant mandates, including such controls as the <practitioner/partners/directors> determine(s) is also necessary to prevent and detect fraud and

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

<sup>2</sup> Applicable Rules are: 35.5; 35.6; 35.7; 35.8; 35.9; 35.10; 35.12; 35.13.7.6; 35.13.7.7; 35.13.8; 35.13.9; 35.13.12; 35.13.13; 35.13.14; 35.13.15; 35.13.16; 35.14; 35.16; 35.19; 36

theft. The <practitioner/partners/directors> is/are responsible for the preparing the Attorney's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

#### *Auditor's responsibility*

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

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

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

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

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



### *Basis for qualified opinion*

The attorneys trust accounts were not maintained in compliance with the Act and the Rules, as follows<sup>3</sup>;

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

### *Qualified opinion*

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

### *Report on Attorney's Annual Statement on Trust Accounts<sup>4</sup>*

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

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

### *Report on Other Legal and Regulatory Requirements*

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

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<sup>3</sup> Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and any instance of contravention of the rules of the <insert Province> Law Society identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

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

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

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

*Restriction on distribution use*

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

*Auditor's Signature*

Name of individual registered auditor

IRBA Registration number of firm and/or auditor

Registered audit firm

Date of report

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

### **(Third Part): Attorney's Annual Statement on Trust Accounts<sup>1</sup>**

#### **(On attorney's letterhead)**

The Secretary

*Insert the name of the relevant Law Society*

Address

Date

#### **Attorney's Annual Statement on Trust Accounts<sup>2</sup>**

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

#### **1. List of attorneys in firm / practice applying for annual Fidelity Fund Certificate<sup>3</sup>**

1.

2.

#### **2. Attorney's compliance representations**

I/we confirm that I/we have maintained the necessary accounting records<sup>4</sup> as required in terms of sections 78(4) and 78(6) of the Attorney's Act, No 53 of 1979 and the Uniform Rules and regulations of the relevant Provincial Law Society for the ended <insert date>, inter alia:

- a) The firm's trust accounts have been updated monthly and balanced at least quarterly;
- b) The firm complied/ has not complied with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund and the firm's bank(s);
- c) The ratio as a percentage of total bank charges (excluding VAT) incurred during the year to the total of interest earned during the year was <insert percentage>;
- d) The firm's trust accounts for the period subsequent to 2X February 20X2 have been written up to (*insert date*) and the trial balance was last balanced at <insert date> and in compliance with the provisions of <insert Rule X> read with <insert Rule X>;
- e) The following changes in the composition of the firm occurred during the year or during the period from <insert date> to <insert date>:

<insert changes>:
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<sup>1</sup> To be attached to the auditor's *Report on the Attorney's Trust Accounts* to be submitted to the relevant Provincial Law Society

<sup>2</sup> To be attached to the auditor's report on the Attorney's Trust Accounts to be submitted to the relevant Provincial Law Society

<sup>3</sup> Attach separate list if there are numerous partners / directors in the attorneys' firm or practice.

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

- f) The firm was issued with a valid fidelity fund certificate for the calendar year ended *<insert financial period end>* (i.e. the calendar year before the financial period/year of this report in the name of *<insert the name of the attorney's firm>*), as required by *<relevant Uniform Rules....> Prohibition of rendering of services as attorneys in certain circumstances*.

g)

**[Removed because these paragraphs are duplicated].**

- g) The firm is registered as an Accountable Institution in accordance with section 43B of the Financial Intelligence Centre Act, Act No. 38 of 2001 with accountable institution registration reference number: *<insert number>* that was issued by the Financial Intelligence Centre.
- h) The firm *<has/has not>* complied with the requirements of section 21 of the Financial Intelligence Centre Act, Act 38 of 2001 "Identification of clients and other persons when establishing a business relationship or conducting a single transaction with a client".

**[Correction of omission].**

- i) The firm *<has / has not>* reported *<insert number>* cash transactions (received or paid) above the prescribed limit to the Financial Intelligence Centre for the period reported on in accordance with the requirements of Section 28 (of the Financial Intelligence Centre Act, Act No. 38 of 2001 FICA, "Cash transactions above prescribed limit".
- j) The firm *<has / has not>* reported *<insert number>* property associated with terrorist and related property reports to the Financial Intelligence Centre for the period in accordance with the requirements of section 28A of the Financial Intelligence Centre Act, Act No. 38 of 2001. "Property associated with terrorist and related activities".
- k) The firm *<has / has not>* reported *<insert number>* suspicious and unusual transactions to the Financial Intelligence Centre for the period in accordance with the requirements of section 29 of the Financial Intelligence Centre Act, Act No. 38 of 2001. "Suspicious and unusual transactions".
- l) The firm *<has / has not>* formulated and implemented internal rules in terms of section 42 of the Financial Intelligence Centre Act, Act No. 38 of 2001 which includes the requirement to report cash threshold transactions (section 28) and suspicious and unusual transactions (section 29) to the Financial Intelligence Centre.

### 3. Places of practice

- a. At the date of this report, the firm's principal place of practice is that given in the letterhead and the firm's South African offices are situated at *<insert full physical addresses<sup>5</sup>>*:

<i>&lt;insert office addresses&gt;</i>
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<sup>5</sup> Attach as a separate list if the firm has multiple offices in South Africa.

#### 4. Information extracted from the trust accounting records

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

(i)	Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979	
(ii)	Amount earned during the current period on monies deposited in trust banking accounts in terms of section 78(1) and monies invested in trust investment accounts in terms of section 78(2)(a) of the Attorneys Act, No 53 of 1979	
(iii)	Amount incurred during the current period in respect of refundable bank charges (excluding VAT – firms not liable for Vat as vendors may include VAT)	
(iv)	Amount already paid over to the Law Society as nominee of the Attorneys Fidelity Fund during the period under review in terms of section 78(3) of the Attorneys Act, No. 53 of 1979 is: (a schedule of the payments made is to be attached)	
(v)	Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979	

- (vi) The amount referred to in paragraph 4(v) agrees/ does not agree<sup>6</sup> with the balance as recorded in the books of account, which amount, less the amount of R\_\_\_\_\_ paid over to the Society since period end, <is/ is not> held in the firm's trust account.

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

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

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

TOTAL TRUST CREDITORS / LIABILITIES	Local	Foreign <sup>7</sup>	At period end <sup>8</sup>	At year end
<b>Trust creditors/liabilities</b>				
Trust creditors in terms of:				
- Section 78(1)				
- Section 78(2)(a)				
- Section 78(2A)				
- Interest				
Trust creditors in terms of estates <sup>9</sup>				
Trust creditors in terms of other entrusted assets <sup>10</sup>				
<b>TOTAL TRUST CREDITORS / LIABILITIES</b>				
<b>Trust funds available in terms of trust banking accounts:</b>				
- Section 78(1)				
- Section 78(2)(a)				
- Section 78(2A)				
- Trust cash on hand				
- Interest				
Trust funds and assets relating to estates				
Other entrusted assets <sup>11</sup>				
Debit balances in trust ledger <sup>12</sup>				
<b>TOTAL FUNDS</b>				
<b>TRUST SURPLUS / (DEFICIT)<sup>13</sup></b>				

## 5. Investment practice

The firm:

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

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

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

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

<sup>11</sup> Assets entrusted to the practitioner other than the trust funds items listed.

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

<sup>13</sup> Detailed explanation required on how the surplus / deficit originated and how it was subsequently cleared and resolved. Indicate when the deficit was reported to the law society.

- (i) Has/ has not carried on the business of an investment practice during the year under review;
- (ii) Has/ has not complied<sup>14</sup> in all respects with the provisions of <rule 36> of the Uniform Rules;
- (iii) The firm <is / is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Services Board.

.....

**<Name of Attorney/s>**

**<Sole Practitioner/Partners/Directors><sup>15</sup>**

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

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

**SUPPLEMENTARY INFORMATION REQUESTED BY THE <INSERT PROVINCE> LAW  
SOCIETY**

**FIRM (INSERT FIRM NAME)**

**Schedule of Interest payments**

**For the financial period \_\_\_\_\_ to \_\_\_\_\_**

Trust Banking Account at <insert Name of Bank>, Branch Code No. _____ and Account No. _____				
	Date	Financial Period	Method of Payment (EFT / Cheque)	Amount
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
<b>Total</b>				

**Notes:**

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



**FIFTH SCHEDULE****CLIENT INVESTMENT MANDATE**

I/We, the undersigned \_\_\_\_\_

(the client) of \_\_\_\_\_

do hereby authorise and empower \_\_\_\_\_

(firm's name) \_\_\_\_\_

to make the following investments as my/our agent and on my/our behalf:

- |     |  |          |
|-----|--|----------|
| 1.  | TYPE OF INVESTMENTS  | YES / NO |
| 1.1 | With a bank (subject to the conditions as set out at the bottom of this mandate); and/or |          |
| 1.2 | Stocks and shares on JSE; and/or   |          |
| 1.3 | Money lending; and/or  |          |
| 1.4 | Other (give details under 5 or on an annexure, if necessary)                             |          |
| 2.  | TYPE OF MANDATE GIVEN  | YES / NO |
| 2.1 | Discretionary  |          |
| 2.2 | Non-discretionary  |          |
| 3.  | IS FIRM TO KEEP ALL SECURITIES/CERTIFICATES  | YES / NO |
| 4.  | REPORTING                      Monthly / Quarterly / 6-Monthly / Annually                |          |
| 5.  | GENERAL  |          |

Instructions re securities, interest payments, charges etc. \_\_\_\_\_

**6. ACKNOWLEDGEMENTS BY INVESTOR**

The investor acknowledges:

- 6.1            that the firm acts as the investor's agent in relation to any investments made in terms of this mandate;

- 6.2 that the investor assumes (except in so far as there may in law be a right of recovery against the firm) all risks connected with the administration by the firm of money entrusted to the firm, as well as the responsibility to ensure that the firm executes the instructions as recorded in this mandate;
- 6.3 that any funds invested with a bank are not protected against the possible liquidation or other failures of the bank;
- 6.4 that money or other assets paid to the firm for investment pursuant to this mandate do not enjoy the protection of the Attorneys Fidelity Fund.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Signature of client

Accepted at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Signature of the firm

To be completed and signed in duplicate and a copy to be handed to the client.

Conditions applicable to investments with a Bank