

# ATTORNEYS ACT 53 OF 1979

(Afrikaans text signed by the State President)

*[Assented To: 21 May 1979]  
[Commencement Date: 1 June 1979]*

## as amended by:

Attorneys Amendment Act 76 of 1980  
Attorneys Amendment Act 116 of 1981  
Attorneys Amendment Act 60 of 1982  
Attorneys Amendment Act 56 of 1983  
Second Attorneys Amendment Act 103 of 1983  
Attorneys Amendment Act 108 of 1984  
Attorneys Amendment Act 80 of 1985  
Attorneys Amendment Act 87 of 1989  
Attorneys Amendment Act 13 of 1990  
Attorneys Amendment Act 102 of 1991  
Attorneys Amendment Act 115 of 1993  
General Law Third Amendment Act 129 of 1993  
General Law Sixth Amendment Act 204 of 1993  
Admission of Legal Practitioners Amendment Act 33 of 1995  
General Law Amendment Act 49 of 1996  
Judicial Matters Amendment Act 104 of 1996  
Qualification of Legal Practitioners Amendment Act 78 of 1997  
Attorneys and Matters relating to Rules of Court Amendment Act 115 of 1998  
Judicial Matters Second Amendment Act 122 of 1998  
Judicial Matters Amendment Act 62 of 2000  
Judicial Matters Amendment Act 55 of 2002  
Judicial Matters Second Amendment Act 55 of 2003  
Judicial Matters Amendment Act 22 of 2005  
Jurisdiction of Regional Courts Amendment Act 31 of 2008  
[with effect from 9 August 2010]  
Judicial Matters Amendment Act 66 of 2008

## ACT

**To consolidate the laws relating to the admission and practice of attorneys, notaries and conveyancers; the Attorneys Fidelity Fund; and law societies established in respect of the profession of attorney, notary or conveyancer; and to provide for matters connected therewith.**  
[Long title substituted by s. 34 of Act 87/89]

### NOTE:

The Act has been amended by section 7 of Act 76/80 by the substitution for the expressions "section 2(a)", "section 2(a) or (c)" and "section 2(d)" wherever they occur of the expressions "section 2(1)(a)", "section 2(1)(a) or (c)" and "section 2(1)(d)", respectively.

**BE IT ENACTED** by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

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#### **1. Definitions**

In this Act, unless the context otherwise indicates-

**“advocate”** means an advocate of the Supreme Court;

**“appropriate legal experience”** means any service which is related to the application of the law and which is prescribed by the Minister;

[Definition of “appropriate legal experience” inserted by s. 1 of Act 115/93]

**“articled clerk”** .....

[Definition of “articled clerk” deleted by s. 1 of Act 87/89]

**“articles”** or **“articles of clerkship”** means any contract in writing under which any person is bound to serve an attorney for a specified period in accordance with this Act;

**“attend”**, for purposes of Chapter I, includes participation in a distance education course approved by the provincial law societies, and **“attended”** and **“attending”** have a corresponding meaning;

[Definition of “attend” inserted by s. 17 of Act 62/2000]

**“attorney”** means any person duly admitted to practise as an attorney in any part of the Republic;

**“banking institution”** means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965), and registered, otherwise than provisionally, or deemed to be registered as a banking institution in terms of section 4 of that Act;

**“board of control”** means the Attorneys Fidelity Fund Board of Control referred to in section 27;

[Definition of “board of control” substituted by s. 1 of Act 87/89]

**“building society”** means -

(a) a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and finally registered or deemed to be registered as a permanent building society in terms of section 5 of that Act;

(b) a building society as defined in section 1 of the Building Societies Act, 1986, (Act No. 82 of 1986), and finally registered as a building society in terms of section 18 of that Act;

[Definition of “building society” substituted by s. 1 of Act 87/89]

**“candidate attorney”** means any person bound to serve under articles of clerkship or to perform community service under a contract of service;

[Definition of “candidate attorney” inserted by s. 1 of Act 87/89 and substituted by s. 1 of Act 115/93]

**“community service”** means full-time service related to the application of the law and performed -

(a) at a law clinic in respect of which the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic; or

(b) on behalf of and under the control of the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), and which is approved for this purpose by the Minister;

[Definition of “community service” inserted by s. 1 of Act 115/93]

**“contract of service”** means any contract in writing under which a candidate attorney who wishes to perform community service, is bound to serve a principal for a specified period in accordance with this Act;

[Definition of “contract of service” inserted by s. 1 of Act 115/93]

**“conveyancer”** means any person duly admitted to practise as a conveyancer within any part of the Republic;

**“council”** means the council of a society;

**“court”** means any court of a provincial division;

**“fidelity fund certificate”** means a certificate issued in terms of section 42;

**“fund”** means the Attorneys Fidelity Fund referred to in section 25;  
[Definition of “fund” substituted by s. 1 of Act 87/89]

**“law clinic”** means-

- (a) a centre for the practical legal education of students in the faculty of law at a university in the Republic; or
- (b) a law centre controlled by, or which is, a non-profit making organization,

which, subject to section 79A, provides legal services to the public free of charge;  
[Definition of “law clinic” inserted by s. 1 of Act 102/91 and substituted by s. 17 of Act 62/2000]

**“Minister”** means the Minister of Justice;

**“notary”** means any person duly admitted to practise as a notary in any part of the Republic;

**“practise”** means practise as an attorney or a notary or conveyancer, and **“practice”** has a corresponding meaning;

**“practitioner”** means any attorney, notary or conveyancer;

**“prescribed”** means prescribed by rule or by regulation made in terms of section 74, 81 or 82;

**“principal”**, in relation to -

- (a) a candidate attorney, means the attorney who is being served by such candidate attorney under articles of clerkship;
- (b) a former candidate attorney referred to in section 8(4), means the practitioner concerned so referred to;
- (c) a candidate attorney performing community service, means an attorney who is employed full-time at a law clinic or an office of the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), and who has so practised or been so employed for a period of three years or periods of three years in the aggregate during the preceding four years; and
- (d) a former candidate attorney referred to in section 8(4) performing community service, means the practitioner concerned so referred to;

[Definition of “principal” substituted by s. 1 of Act 87/89 and s. 1 of Act 115/93]

**“profession”** means the profession of attorney, notary or conveyancer and, in relation to a society, means such profession within the province of that society;

**“professional company”** means a company referred to in section 23;

**“province”** .....

[Definition of “province” deleted by s. 1 of Act 115/93]

**“provincial division”** means a provincial division as defined in the Supreme Court Act, 1959 (Act No. 59 of 1959);

**“Republic”** .....

[Definition of “Republic” deleted by s. 1 of Act 115/93]

**“roll”**, in relation to a court, means the roll of attorneys or of notaries or of conveyancers of that court;

**“secretary”**, in relation to a society, includes an assistant secretary of that society;

**“society”** means any law society referred to in section 56;

**“Supreme Court”** means the Supreme Court of South Africa as constituted by section 2 of the Supreme Court Act, 1959;

**“Territory”** .....

[Definition of “Territory” deleted by s. 1 of Act 115/93]

**“trust account”**, in relation to a practising practitioner, means an account comprising -

- (a) that practitioner’s trust banking account referred to in section 78(1); and
- (b) any trust savings or other interest-bearing account referred to in section 78(2) or (2A) opened by that practitioner;

[Definition of “trust account” inserted by s. 1 of Act 87/89]

**“unprofessional or dishonourable or unworthy”**, in relation to conduct, includes any conduct prescribed as such.

## CHAPTER I

### PRACTITIONERS: QUALIFICATIONS, ADMISSION AND REMOVAL FROM ROLL

#### 2. Duration of service under articles

(1) Any person intending to be admitted as an attorney, shall serve under articles of clerkship for a period of -

- (a) two years after he or she has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after pursuing for that degree a course of study of not less than four years;

[Para. (a) substituted by s. 2 of Act 78/97]

- (aA) two years after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university and has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate;

[Para. (aA) inserted by s. 2 of Act 78/97]

- (aB) two years after he has satisfied all the requirements for a degree or degrees of a university in a country which may be designated by the Minister, after consultation with the presidents of the various societies, by notice in the *Gazette*, and in respect of which a university in the Republic with a faculty of law has certified that the syllabus of instruction and the standard of training thereof, together with a supplementary examination (if any) required by the latter university, the requirements of which have been satisfied by that person, are equivalent or superior to those required for the degree referred to in paragraph (a);

[Para. (aA) inserted by s. 1 of Act 108/84 and renumbered to (aB) by s. 2 of Act 78/97]

- (b) .....

[Para. (b) deleted by s. 2 of Act 78/97]

- (c) three years after he or she has satisfied all the requirements for any degree, other than an honorary degree, of any university in the Republic, but has not satisfied the requirements of paragraph (a), (aA) or (aB);

[Para. (c) substituted by s. 1 of Act 108/84 and s. 2 of Act 78/97]

- (cA) three years after he or she has satisfied all the requirements for any degree other than an honorary degree, or for other such degrees, of a university in a country designated under paragraph (aB), and in respect of which degree or degrees a university in the Republic has certified that the syllabus of instruction and the standard of training thereof are equivalent or superior to those required for a corresponding degree of such university in the Republic, but has not satisfied the requirements of paragraph (a), (aA), (aB) or (c);

[Para. (cA) inserted by s. 1 of Act 108/84 and substituted by s. 2 of Act 78/97]

- (d) three years after he has passed the matriculation examination conducted and controlled by the joint matriculation board referred to in section 15 of the Universities Act, 1955, or an examination certified by that matriculation board to be equivalent or superior thereto, and thereafter has served continuously for a period of at least two years as a clerk to any judge of the Supreme Court, provided he enters into articles of clerkship within a period of one year after he has ceased to serve in such manner; or

- (e) five years after he has passed an examination referred to in paragraph (d).

- (1A) Any person intending to be admitted as an attorney and who has not served articles of clerkship in terms of subsection (1), and has satisfied all the requirements for a degree referred to in paragraph (a) or (aB) of subsection (1), or the degrees referred to in paragraph (aA) of that subsection, shall serve under articles of clerkship for a period of one year and shall in addition thereto -

- (a) attend a training course approved by the society concerned for an uninterrupted period of at least four months and complete such course to the satisfaction of that society; or
- (b) perform community service approved by the society concerned in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of that society.

[Subs. (1A) inserted by s. 2 of Act 115/93 and amended by s. 2 of Act 78/97]

- (2) Subject to the provisions of this Act, any period of service performed before the passing of any examination or the obtaining of any degree referred to in subsection (1), shall not be regarded as good or sufficient service for the purposes of this Act.

## **2A. Exemption from service under articles of clerkship**

Any person intending to be admitted as an attorney and who has satisfied all of the requirements for a degree referred to in paragraph (a) or (aB) of section 2(1), or the degrees referred to in paragraph (aA) of that section, and who -

- (a)
  - (i) has attended a training course approved by the society concerned for an uninterrupted period of at least four months and has completed such course to the satisfaction of that society; and
  - (ii) has performed community service in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of that society; or
- (b) has performed community service in terms of a contract of service for an uninterrupted period of at least two years to the satisfaction of the society concerned; or

- (c) has, to the satisfaction of the society concerned, gained at least five years' appropriate legal experience,

is exempted from service under articles of clerkship in terms of section 2(1), and from the provisions of section 2(1A).

[S. 2A inserted by s. 3 of Act 115/93 and amended by s. 3 of Act 78/97]

### 3. By whom candidate attorneys may be engaged

- (1) A candidate attorney shall only be engaged or retained by a person practising the profession of attorney -

- (a) on his own account; or
- (b) as a partner in a firm of attorneys; or
- (c) as a member of a professional company; or
- (d) as State Attorney; or
- (e) as Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney in the office of the State Attorney or any branch thereof; or
- (f) in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by the council for the operation of the clinic;

[Para. (f) inserted by s. 2 of Act 102/91 and substituted by s. 18 of Act 66/2008]

- (fA) as an employee of the Legal Aid Board at an office of the Legal Aid Board; and  
[Para. (fA) inserted by s. 18 of Act 66/2008]

(g) .....

(h) .....

(i) who has -

- (i) if he or she is an attorney so practising on his or her own account or as a partner in a firm of attorneys or as a member of a professional company, or is employed full-time at a law clinic, or is employed full-time at an office of the Legal Aid Board, so practised or been so employed for a period of three years or periods of three years in the aggregate during the preceding four years;

[Subpara. (i) substituted by s. 2 of Act 102/91 and s. 18 of Act 66/2008]

- (ii) if he is the State Attorney or any Deputy State Attorney, Senior State Attorney or Assistant State Attorney as aforesaid, practised the profession in the office of the State Attorney or any branch thereof continuously for a period of four years immediately prior to taking such candidate attorney under articles.

- (2) Service by any candidate attorney to any attorney while such attorney is not practising the profession as referred to in subsection (1), shall not be deemed to be good or sufficient service for the purposes of this Act.

- (3) An attorney shall at no time have more than three candidate attorneys under articles: Provided that -

- (a) on the death or retirement from practice of any attorney, any of his surviving or remaining partners, any member of the professional company of which he was a



member or any other person who as an attorney is employed full-time at the law clinic concerned;

[Para. (a) substituted by s. 2 of Act 102/91]

- (b) where an attorney has been debarred under section 72(1)(a)(iii) from continuing with a contract of articles, any of his partners, any other member of the professional company of which he is a member or any other person who as an attorney is employed full-time at the law clinic concerned,

[Para. (b) substituted by s. 2 of Act 102/91]

may take cession of the articles of any candidate attorney articulated to such attorney, although the cessionary will then have more than three candidate attorneys in his employment.

[S. 3 amended by s. 2 of Act 108/84 and substituted by s. 2 of Act 87/89]

#### **4. Information to be submitted to society before articles are entered into**

Any person intending to serve any attorney under articles of clerkship shall submit to the secretary of the society of the province in which the service under such articles is to be performed the following, namely -

- (a) his birth certificate or other proof to the satisfaction of the society of his date of birth; and
- (b) proof to the satisfaction of the society that he is a fit and proper person and that he has -
- (i) passed the examination referred to in section 2(1)(d); or
- (ii) satisfied all the requirements for a degree, other than an honorary degree, at any university in the Republic, or for a degree or degrees referred to in paragraph (aB) or (cA) of section 2(1), in respect of which a certification in accordance with those respective paragraphs has been done.

[Subpara. (ii) substituted by s. 3 of Act 108/84 and s. 4 of Act 78/97]

#### **4A. Information which shall be submitted to a society before performance of community service**

A candidate attorney intending to perform community service shall submit to the secretary of the society of the province in which the community service is to be performed, the following, namely -

- (a) his birth certificate or other proof to the satisfaction of the society of his date of birth;
- (b) proof to the satisfaction of the society that he -
- (i) is a fit and proper person;
- (ii) has satisfied all the requirements for a degree referred to in paragraphs (a) or (aB) of section 2(1), or the degrees referred to in paragraph (aA) of that section; and

[Subpara. (ii) substituted by s. 5 of Act 78/97]

- (c) the contract of service in which the date is mentioned upon which he will commence community service and at which law clinic or office of the Legal Aid Board, as the case may be, he intends performing community service.

[S. 4A inserted by s. 4 of Act 115/93]

#### **5. Lodging, examination and registration of articles or contract of service**

- (1) The original of any articles of clerkship or contract of service shall within two months of the date thereof be lodged by the principal concerned with the secretary of the society of the province in which the service under such articles or contract of service is to be performed.

- (2) The secretary of the society concerned shall, on payment of the fees prescribed under section 80, examine any articles or contract of service lodged with him and shall, if he is satisfied that the articles are or contract of service is in order and that the council has no objection to the registration thereof, on payment of the fees so prescribed register such articles or contract of service and shall advise the principal and candidate attorney concerned of such registration in writing by certified post.
- (3) If articles of clerkship are or a contract of service is not registered within two months of the date thereof, any service thereunder shall be deemed to commence on the date of registration thereof.  
[S. 5 amended by s. 3 of Act 87/89 and substituted by s. 5 of Act 115/93]

## **6. Supervision over candidate attorney**

- (1) Without derogating from the provisions of section 10, any candidate attorney shall during the whole term of service specified in the articles of clerkship, serve -
  - (a) in the office of his principal under his direct personal supervision or under that of an attorney who is a partner or manager of his principal;
  - (b) in the case of a candidate attorney articulated to the State Attorney or to a member of his professional staff, in the office, of the State Attorney or in any branch thereof and under the direct personal supervision of the State Attorney or a member of his professional staff; or
  - (c) in the case of a candidate attorney articulated to an attorney employed full-time at a law clinic, under the direct personal supervision of that attorney or another attorney who is also employed full-time at the law clinic concerned.  
[Para. (c) inserted by s. 3 of Act 102/91]
- (2) For the purposes of subsection (1) "office " shall not include a branch office which is under the control of an attorney who is not entitled to have a candidate attorney under articles.
- (3) A candidate attorney performing community service shall during the whole term of service specified in the contract of service, serve -
  - (a) in the office of the law clinic under the direct personal supervision of his principal, or of an attorney or advocate, who is also employed full-time at the law clinic concerned; or
  - (b) in the office of the Legal Aid Board under the direct personal supervision of his principal, or of an attorney or advocate, who is also employed full-time at the relevant office of the Legal Aid Board.  
[Subs. (3) inserted by s. 6 of Act 115/93]  
[S. 6 substituted by s. 4 of Act 87/89 and amended by s. 6 of Act 115/93]

## **7. Absence of candidate attorney**

- (1) Subject to the provisions of subsection (2), a candidate attorney may, with the consent of his principal, absent himself from office for a period which does not, or for periods which in the aggregate do not, exceed thirty working days in any one year of the articles of clerkship or contract of service.  
[Subs. (1) substituted by s. 7 of Act 115/93]
- (2)
  - (a) A court may on the application of a candidate attorney in any case -
    - (i) where his principal refuses to grant him leave of absence from office;

- (ii) where the period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of the articles of clerkship or contract of service,  
[Subpara. (ii) substituted by s. 7 of Act 115/93]

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

- (b) An order referred to in paragraph (a) may be granted before, during or after the period of absence.
- (3) If any period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of articles of clerkship or contract of service, the period in excess of thirty working days shall be added to the period for which the candidate attorney is bound to serve under articles or contract of service.  
[Subs. (3) substituted by s. 7 of Act 115/93]
- (4) Notwithstanding the provisions of section 6, one half of any period of absence from the office of his principal by a candidate attorney as a result of training undergone by him in the South African Defence Force in terms of section 3 of the Defence Act, 1957 (Act No. 44 of 1957), shall, subject to a maximum period of three months, be deemed to have been served under such articles of clerkship or contract of service.  
[Subs. (4) substituted by s. 7 of Act 115/93]
- (5) Notwithstanding the provisions of section 6, any period of absence not exceeding 6 months of a candidate attorney from the office of his principal for the purpose of attending a training course approved by the society concerned, shall, if that candidate attorney has completed that course to the satisfaction of that society, be deemed to have been served under articles of clerkship or contract of service: Provided that in the case of a candidate attorney referred to in sections 2(1A) and 2A the period of attending a training course shall not be deemed to be a period that that candidate attorney has served under articles of clerkship or contract of service.  
[Subs. (5) substituted by s. 7 of Act 115/93]
- (6) Notwithstanding the provisions of section 6, any period of absence not exceeding 12 months of a candidate attorney from the office of his principal for the purposes of service, in terms of a contract with terms and conditions similar to those of his articles of clerkship, under the direct supervision of another attorney who is entitled to engage a candidate attorney in terms of section 3, shall, provided the secretary of the society where the articles concerned have been registered has approved such service in advance in writing, be deemed to have been served by the candidate attorney concerned under articles of clerkship with his principal.  
[S. 7 amended by s. 1 of Act 76/80 and substituted by s. 5 of Act 87/89]

## **8. Appearance of candidate attorney in court and before other institutions**

- (1) Any candidate attorney who has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph (aB) of that section in respect of which a certification in accordance with that paragraph has been done, shall be entitled to appear in any court, other than any High Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearances as if he or she himself or herself had appeared: Provided that such a candidate attorney shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), unless he or she -
- (i) has previously practised as an advocate for at least one year; or

(ii) has served for at least one year under his or her articles or contract of service; or

(iii) has at least one year's experience as a state advocate, state prosecutor or magistrate.

[Subs. (1) amended by s. 8 of Act 115/93 and substituted by s. 6 of Act 78/97 and s. 10 of Act 31/2008]

(2) .....

(3) The secretary of the society concerned shall, upon the written application of the principal of any candidate attorney referred to in subsection (1) and upon the payment of the fees prescribed under section 80(bA), issue to such candidate attorney a certificate that he complies with the relevant provisions of subsection (1).

(4)

(a) Any candidate attorney who is entitled to appear as contemplated in subsection (1), shall at the expiry of his articles or contract of service, and provided he remains in the employ of the attorney who was his principal immediately before such expiry, or provided he remains in the service of the law clinic or the Legal Aid Board concerned, as the case may be, remain so entitled until he is admitted as an attorney, but not for longer than six months.

[Para. (a) substituted by s. 8 of Act 115/93]

(b) The provisions of section 6 shall apply *mutatis mutandis* in respect of a former candidate attorney referred to in paragraph (a).

(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the roll or discontinuance of practice of the attorney who was the principal of a former candidate attorney referred to in subsection (4) immediately before the expiry of his articles, such former candidate attorney shall with the written permission of the secretary of the society of the province in which the candidate attorney served under articles, be entitled to take service with any other attorney and to appear as contemplated in subsection (4) under the supervision of that attorney.

[S. 8 amended by s. 1 of Act 56/83 and s. 4 of Act 108/84 and substituted by s. 6 of Act 87/89]

## 9. Restriction of pecuniary interests of candidate attorneys

(1) A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney, or in the organization or institution where he performs community service, and shall not, without the prior written consent of the council of the society of the province in which he performs service under the articles or contract of service, hold or occupy any office or engage in any other business other than that of candidate attorney.

(2) If any candidate attorney contravenes the provisions of subsection (1), the articles or contract of service shall be void *ab initio* and service rendered thereunder shall be ineffectual unless the court on good cause shown otherwise directs.

[S. 9 substituted by s. 7 of Act 87/89 and s. 9 of Act 115/93]

## 10. Cession of articles or contract of service

(1) Articles or a contract of service may with the consent of a principal and the candidate attorney concerned be ceded to any other principal willing to accept such cession.

(2) The society concerned may in the event of the death, mental illness, insolvency, conviction for crime, suspension, striking off the roll or discontinuance of practice of the principal under whom a candidate attorney is serving or the debarring of such principal from engaging or continuing to engage a candidate attorney, or any other cause, direct that the articles or the contract of service concerned be ceded to any other principal

willing to accept such cession, and all service completed under the ceded articles or the contract of service shall be effectual for the purposes of this Act.

- (3) Articles or a contract of service may be ceded under subsection (2) notwithstanding the fact that the principal who accepts the cession will, as a result of that acceptance, have more than three candidate attorneys in his or her employment.
- (4) An agreement whereby articles or a contract of service is ceded shall within two months of the date on which the services of the candidate attorney concerned have been terminated with the cedent, or within such further period as the court may for good cause allow, be lodged with the society of the province wherein service under the said articles or the said contract of service so ceded is to be performed, by the cessionary together with affidavits -
  - (a) by the cedent stating whether the provisions of this Act relating to service under articles of clerkship or a contract of service have been complied with during the whole term of service during which the candidate attorney concerned was in his or her service and the date on which the candidate attorney terminated his or her services with him or her; and
  - (b) by the cessionary stating the date on which the said candidate attorney assumed duty with him or her.
- (5) The secretary of the law society referred to in subsection (4) shall on payment of such fee as is prescribed under section 80 -
  - (a) examine the agreement and affidavits referred to in that, subsection; and
  - (b) if he or she is satisfied that the cession is in order and that the council of the society has no objection, register the cession,and shall advise the attorney and the candidate attorney concerned of such registration in writing by registered post.
- (6) If articles or a contract of service is ceded in terms of subsection (2), the agreement whereby the articles or the contract of service is ceded shall be signed by the legal representative of the attorney concerned or the president or secretary of the society concerned as cedent, and a certificate of such legal representative, president or secretary containing the particulars referred to in subsection (4)(a), shall serve as a substitute for the affidavit referred to in subsection (4)(a).  
[S. 10 amended by s. 8 of Act 87/89 and substituted by s. 11 of Act 104/96]

## **11. Termination of articles or contract of service**

- (1) If articles of clerkship are or a contract of service is for any reason cancelled, abandoned or ceded, the principal with whom the candidate attorney concerned is serving at that time shall forthwith in writing notify the secretary of the society of such cancellation, abandonment or cession.
- (2) If articles of clerkship have or a contract of service has been cancelled or abandoned before completion thereof, the court may in its discretion on the application of the person who served under such articles or contract of service and subject to such conditions as the court may impose, order that for the purposes of this Act, the whole or such part of the period served under such articles or contract of service as the court deems fit, be added to any period served by that person under articles or a contract of service entered into after the first-mentioned articles were or contract of service was cancelled or abandoned, and any period so added shall for the purposes of this Act be deemed to have been served under the last-mentioned articles or contract of service and continuously with any period served thereunder.

(3) If a person who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), or the degrees referred to in paragraph (aA) of that section, or a degree or degrees referred to in paragraph (aB) or (cA) if that section in respect of which a certification in accordance with those respective paragraphs has been done, the court may, on the application of such person and subject to such conditions as the court may impose, order -

(a) that, for the purposes of this Act, the whole of the period so served or such part thereof as the court deems fit be added to any period served by such person after he satisfied such requirements or became so entitled under articles of clerkship entered into after the first-mentioned articles were cancelled or abandoned, and thereafter any period so added shall be deemed to have been served -

(i) after he or she satisfied such requirements; and

(ii) under the articles entered into after the first- mentioned articles were cancelled or abandoned and continuously with any period served thereunder;

(b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he or she would, at the time of the making of the application, be required to serve under articles of clerkship in terms of this Act, that the period so served be considered as adequate service under articles for the purposes of this Act, and thereafter any period so served by such person shall be deemed to have been served after and under articles entered into after he or she satisfied such requirements.

[Subs. (3) amended by s. 7 of Act 78/97]

[S. 11 amended by s. 5 of Act 108/84 and s. 9 of Act 87/89 and substituted by s. 10 of Act 115/93]

## **12. Registration of articles or contract of service entered into by advocate**

Any person admitted to practise as an advocate shall not be allowed to register articles or a contract of service in terms of the provisions of this Act, unless his name has on his own application been removed from the roll of advocates.

[S. 12 substituted by s. 1 of Act 13/90 and s. 11 of Act 115/93]

## **13. Exemption from service under articles and certain examinations, and powers of court in respect of irregular service and certain other service**

(1) Any person lawfully admitted to the Republic for permanent residence therein who is ordinarily resident in the Republic and who has been admitted and enrolled as a solicitor or attorney of the supreme or high court of any country or territory which has been approved for the purposes of this subsection by regulation made under section 81(1)(a) -

(a) shall -

(i) if he has practised for at least 5 years as a solicitor or an attorney, as the case may be, in the country or territory in which he has been so admitted and enrolled and belongs to a class of persons (if any) which has been designated by any such regulation; or

(ii) if the country or territory referred to has been designated for the purposes of this subparagraph by regulation made under section 81(1)(a), without his having practised as contemplated in subparagraph (i), and if he belongs to a class of persons (if any) which has been designated by any such regulation,

be exempted from service under articles;

[Para. (a) substituted by s. 2 of Act 76/80 and s. 1 of Act 60/82]

- (b) shall, if a university in South Africa which has a law faculty has certified that an examination which he or she has passed in any country or territory is, in so far as it relates to the syllabus of instruction and the standard of training, together with a supplementary examination (if any) required by that university, the requirements of which have been satisfied by that person equivalent or superior to the examination which is required for the degree mentioned in section 2(1)(a) be exempted from satisfying the requirements for the degree mentioned in the said section 2(1)(a);

[Para. (b) substituted by s. 2 of Act 56/83, s. 6 of Act 108/84 and s. 8 of Act 78/97]

- (c) may, by regulation made under section 81(1)(c), be exempted from the requirement to pass any examination referred to in section 14(1)(a), (b) or (c) or any part thereof.

[Subs. (1) amended by s. 2 of Act 76/80]

- (2) If any person has not served regularly as a candidate attorney, the court; if satisfied that such irregular service was occasioned by sufficient cause, that such service is substantially equivalent to regular service, and that the society concerned has had due notice of the application, may permit such person, on such conditions as it may deem fit, to apply for admission as an attorney as if he had served regularly under articles or a contract of service.

[Subs. (2) substituted by s. 10 of Act 87/89 and s. 12 of Act 115/93]

- (3) The court may, on the application of a candidate attorney who has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph (aB) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done, and subject to such conditions as the court may impose, order that the whole or any part of the period served by that candidate attorney under articles before he or she satisfied such requirements, shall, for the purpose of his or her admission and enrolment as an attorney, be regarded as having been served after and under articles entered into after he or she satisfied such requirements.

[Subs. (3) substituted by s. 6 of Act 108/84, s. 10 of Act 87/89 and s. 8 of Act 78/97]

### **13A. Certain attorneys must comply with certain conditions before being entitled to practise on their own account**

Any person contemplated in section 13(1)(a)(ii) who has been admitted and enrolled as an attorney in terms of this Act, shall not be entitled to practise that profession on his own account, unless he has after his admission and enrolment practised for a period of not less than 3 years on such conditions as may be determined by regulation made under section 81(1)(j).

[S.13A inserted by s. 3 of Act 76/80]

### **13B. Certain attorneys to complete training in legal practice management**

- (1) After the commencement of section 6 of the Judicial Matters Amendment Act, 2005, and subject to subsection (2), every attorney who, for the first time, is required to apply for a fidelity fund certificate in terms of section 42 must-

- (a) within the period contemplated in section 74(1)(dA); and  
(b) after payment of the fee prescribed in terms of section 80(i),

complete a legal practice management course approved by and to the satisfaction of the council of the province in which he or she intends to practise.

- (2) The relevant council may exempt an attorney, fully or partially and on such conditions as may be appropriate, from completing a legal practice management course to the extent that the attorney-
  - (a) has a qualification that is similar to or of a higher standard than that attainable on completion of the course in question; or
  - (b) has a level of experience that would render the completion of the course in question or any part of such a course unnecessary.

[S.13B inserted by s. 8 of Act 55/2003 and substituted by s. 6 of Act 22/2005 w.e.f. 14 August 2009]

#### **14. Practical examinations**

- (1) The judge president of a provincial division may after consultation with the president of the society concerned appoint two or more examiners for the purpose of arranging, controlling and conducting examinations in respect of -
  - (a) the practice and procedure in the Supreme Court and in magistrates' courts established under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
  - (b) the practical bookkeeping necessary for the keeping of the accounting records referred to in section 78 (4);  
[Para. (b) substituted by s. 1 of Act 80/85]
  - (c) the practice, functions and duties of an attorney;
  - (d) the practice, functions and duties of a notary;
  - (e) the law, practice and procedure of conveyancing.
- (2) An examination referred to in subsection (1) shall be conducted by not less than two examiners so appointed.
- (3) An examination referred to in subsection (1) shall not be conducted in respect of any person unless he satisfies the examiners concerned that he -
  - (a) has complied with the provisions of this Act in regard to service under articles or a contract of service; or
  - (b) is serving under articles or contract of service and has so served for a continuous period of not less than six months or;
  - (c) is, under the provisions of this Act, exempt from service under articles; or
  - (d) has attended a training course approved by the society concerned for an uninterrupted period of at least four months and has completed such course to the satisfaction of that society.

[Subs. (3) substituted by s. 13 of Act 115/93]

#### **15. Admission and readmission of attorneys**

- (1) Unless cause to the contrary to its satisfaction is shown, the court shall on application in accordance with this Act, admit and enrol any person as an attorney if -
  - (a) such person, in the discretion of the court, is a fit and proper person to be so admitted and enrolled; and
  - (b) the court is satisfied that such person has satisfied the following requirements or, where applicable, has been exempted therefrom in terms of the provisions of this Act, namely that such person -



- (i) is 21 years of age or older;
- (ii)
  - (aa) is a South African citizen or has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic; or
  - (bb) is a citizen of a state the territory of which formerly formed part of the Republic, and belongs to such category of persons, and complies with such conditions, as may be determined by the Minister, after consultation with the presidents of the various societies, by notice in the *Gazette*;
- (iii)
  - (aa) has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, after pursuing for that degree or degrees a course of study referred to in paragraph (a) or (aA) of that section, as the case may be; or  
[Item (aa) substituted by s. 9 of Act 78/97]
  - (bb) has satisfied all the requirements for a degree or degrees referred to in paragraph (aB) of section 2(1) in respect of which a certification in accordance with that paragraph has been done; or  
[Item (bb) substituted by s. 9 of Act 78/97]
  - (cc) has previously been admitted as an advocate;  
[Item (cc) substituted by s. 9 of Act 78/97]
- (iv) has passed the practical examinations referred to in section 14(1)(a), (b) and (c);
  - (ivA)
    - (aa) during his term of service under articles or contract of service, or after the expiry of his articles or contract of service; or
    - (bb) after he has been exempted in terms of this Act from service under articles of clerkship,  
  
has attended a training course approved by the society of the province in which he completed his service under articles or contract of service, or, in the case of section 2A(c), has attended a training course approved by the society of the province in which the candidate attorney intends to practise, and has completed such training course to the satisfaction of that society: Provided that this subparagraph shall not apply to a person who attended a training course referred to in section 2(1A)(a) or 2A(a)(i) and who has completed such course to the satisfaction of the society concerned; and  
[Subpara. (ivA) inserted by s. 11 of Act 87/89 and amended by s. 3 of Act 33/95]
  - (v) .....  
[Subpara. (v) deleted by s. 3 of Act 33/95]
  - (vi) completed his service under articles or contract of service, or has complied with the provisions of section 2(1A) within the period of 3 years preceding his application to the court or within the further period allowed by the court in terms of subsection (2).  
[Subpara. (vi) substituted by s. 14 of Act 115/93]

(2) The court may in its discretion, on the application of any person and on good cause shown, allow a further period in addition to the period of 3 years referred to in subsection (1)(b)(vi), within which the applicant may apply for admission as an attorney,

subject to such conditions, if any, as it may deem fit, including a condition relating to further service under articles or contract of service.

[Subs. (2) substituted by s. 14 of Act 115/93]

- (3) A court may, on application made in accordance with this Act, readmit and re-enrol any person who was previously admitted and enrolled as an attorney and has been removed from or struck off the roll, as an attorney, if -
- (a) such person, in the discretion of the court, is a fit and proper person to be so readmitted and re-enrolled; and
  - (b) the court is satisfied that he has complied with the provisions of subsection (1)(b)(ii).

[S. 15 substituted by s. 7 of Act 108/84]

#### **16. Duty of applicant for admission or readmission and enrolment as attorney to society**

Any person who applies to the court to be admitted or readmitted and enrolled as an attorney, shall satisfy the society of the province wherein he so applies -

- (a) that he is a fit and proper person to be so admitted or readmitted and enrolled;
- (b) if he has at any time been admitted as an advocate, that his name was subsequently removed from the roll of advocates on his own application; and
- (c) if he is a person exempted from service under articles in terms of section 13(1), that he is still entitled to practise and that his name is still on the roll of solicitors or attorneys of the country or territory referred to in that section, and that no proceedings to have him struck off the roll or suspended from practice are pending.
- (d) if his estate has at any time been sequestrated, whether provisionally or finally, that despite such sequestration he is a fit and proper person to be so admitted or readmitted and enrolled.

[Para. (d) inserted by s. 52 of Act 129/93]

#### **17. Admission of attorneys practising in certain countries or territories**

Notwithstanding the provisions of this Act, but subject to the provisions of section 19, any person admitted and enrolled as a solicitor or an attorney of the supreme or high court of any country or territory approved for the purposes of this section by regulation made under section 81(1)(a), may be admitted and enrolled by the court as an attorney in the Republic upon satisfying the court that he -

- (a) has been admitted and enrolled as a solicitor or an attorney of that supreme or high court, and that no proceedings are pending to have him struck off the roll of solicitors or attorneys or suspended from practice;
- (b) is resident and practising as a solicitor or an attorney in the country or territory in which he has been so admitted and enrolled;
- (bA) belongs to a class of persons (if any) which has been designated by regulation made under section 81(1)(a); and

[Para. (bA) inserted by s. 2 of Act 60/82]

- (c) is a fit and proper person to be admitted and enrolled as an attorney in the Republic.

#### **18. Admission and readmission of notaries and conveyancers**

- (1) The court may on application made in the prescribed manner admit and enrol any person as a notary or conveyancer if the court is satisfied that -

- (a) he is an attorney admitted by such court to practise as an attorney;
  - (b) no order of court striking his name off the roll of attorneys or suspending him from practice as an attorney is in operation in respect of him;
  - (c) no proceedings are pending to strike his name off the roll of attorneys or to suspend him from practice; and
  - (d) he has passed the practical examination prescribed by section 14(1)(d) or (e), as the case may be, or is exempted therefrom under the provisions of this Act.
- (2) The court may on application made in the prescribed manner readmit and re-enrol as a notary or conveyancer, as the case may be, any person who was previously admitted and enrolled as a notary or conveyancer and has been removed from or struck off the roll, if -
- (a) he, in the discretion of the court, is a fit and proper person to be so readmitted and re-enrolled; and
  - (b) the court is satisfied that such person has complied with the provisions of paragraphs (a), (b) and (c) of subsection (1).

[S. 18 substituted by s. 8 of Act 108/84]

**19. Applications for admission or readmission as practitioner to be submitted to secretary of society**

- (1) Any person who applies to a court to be admitted or readmitted as a practitioner shall at least one month before the date of his application deliver to the secretary of the society of the province in which the court to which such application is made, is situated, together with his notice of application, a copy of his application for admission or readmission and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.
- (2) Upon production to the secretary referred to in subsection (1), of the application, affidavits, certificates, documents and other papers referred to therein, the secretary shall, upon payment of the fees prescribed under section 80, certify on such application that the provisions of this section have been complied with.
- (3) Unless such certificate has been obtained, the person concerned shall not make his application to the court.

**20. Enrolment of practitioner admitted and enrolled by other court**

- (1) Any person admitted and enrolled as an attorney, or a notary or conveyancer under this Act may in the manner prescribed by subsection (2), apply to the registrar of any court other than the court by which he was so admitted and enrolled to have his name placed on the roll of attorneys or of notaries or of conveyancers, as the case may be, of the court for which such registrar has been appointed.
- (2) An application referred to in subsection (1) shall be in writing and be signed by the applicant and shall be accompanied by -
  - (a) an affidavit stating the name of every court in which the applicant is enrolled in terms of this Act;
  - (b) a certificate signed by the registrar of every court in which the applicant is so enrolled that his name is still upon the roll of such court;

- (c) a certificate signed by the secretary of the society of each province in which the applicant is so enrolled that no proceedings are pending or contemplated to strike his name off the roll or to suspend him from practice;
  - (d) proof to the satisfaction of the registrar that a copy of the application and copies of the documents referred to in paragraphs (a), (b) and (c) have been served on the secretary of the society of the province in which such other court is situated; and
  - (e) proof to the satisfaction of the registrar that the fees prescribed by section 80(h) have been paid.
- (3) A registrar receiving an application referred to in subsection (1), shall place the name of the applicant on the roll of attorneys or of notaries or of conveyancers, as the case may be, kept by him in terms of section 21, unless an objection in writing against it is lodged with him by the secretary of the society concerned within 21 days from the date of receipt of the application by the registrar.
- (4) When the name of a practitioner has in terms of subsection (3) been placed by the registrar upon the roll of attorneys or of notaries or of conveyancers, as the case may be, he shall be entitled to practise and shall have all the rights and privileges and be subject to all the obligations which he would have had and to which he would have been subject if he had been admitted and enrolled by that court.
- (5) A notary or conveyancer shall not be enrolled in terms of this section unless he is also thus enrolled as an attorney.

## **21. Rolls of attorneys, of notaries and of conveyancers**

- (1) The registrar of every court shall keep separate alphabetical registers in which he shall record the names of all attorneys, notaries and conveyancers admitted by such court and all names enrolled in terms of section 20, as well as the dates of admission or enrolment
- (2) If a court orders the striking off the roll or suspension from practice of any practitioner, the registrar shall forthwith enter a reference to such order opposite the name of the practitioner in the registers kept by him in terms of subsection (1), and shall forward copies of such order to the registrars of the other courts, the registrars of deeds appointed in terms of section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the secretaries of the various societies.
- (3) If a registrar of a court receives a copy of an order forwarded to him in terms of subsection (2), he shall forthwith, if the name of the practitioner concerned appears in the registers kept by him, enter a reference to that order opposite the name of such practitioner, and such entry shall in the area of jurisdiction of such court have the effect of removing such practitioner from the roll or suspending him from practice, as the case may be.

## **22. Removal of attorneys from roll**

- (1) Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the court within the jurisdiction of which he practises -
- (a)
    - (i) if he is no longer a South African citizen;
    - (ii) in the case of a person who is not a South African citizen, other than a person contemplated in subparagraph (iii), if he has failed to obtain a certificate of naturalization in terms of the South African Citizenship Act, 1949 (Act No. 44 of 1949), within a period of six years from the date on

which he was admitted to the Republic for permanent residence therein, or within such further period as the court may for good cause allow;

[Subpara. (ii) substituted by s. 9 of Act 108/84]

- (iii) in the case of a person referred to in item (bb) of section 15(1)(b)(ii), if he is no longer a citizen of any state referred to in that item, or has ceased to belong to a category of persons or to comply with conditions determined in terms of that item;

[Subpara. (iii) inserted by s. 9 of Act 108/84]

- (b) in the case of a person referred to in section 13(1) who is exempted from passing any examination, if he has failed to pass any examination in respect of which he is so exempted before the expiration of the period in respect of which he is so exempted or within such further period as the court may for good cause allow;
- (c) in the case of a person admitted and enrolled in terms of section 17, if it appears to the court that he is no longer resident or practising as an attorney or a solicitor in the country or territory in which he was admitted and enrolled on his admission and enrolment in the Republic or if the country or territory in which he was so admitted and enrolled is no longer a prescribed country or territory; or
- (d) if he, in the discretion of the court, is not a fit and proper person to continue to practise as an attorney.

[Para. (d) substituted by s. 9 of Act 108/84]

- (e) if his estate has been finally sequestrated and he is unable to satisfy the court that despite his sequestration he is still a fit and proper person to continue to practise as an attorney.

[Para. (e) inserted by s. 53 of Act 129/93]

[S. 22 renumbered to Subs. (1) by s. 4 of Act 76/80]

(2)

- (a) If it appears to the court that a person in respect of whom a society intends making an application under subsection (1), has left the Republic and that he probably does not intend to return to the Republic and that his whereabouts are unknown, the court may order that service on that person of any process in connection with such application may be effected by the publication of such process in an Afrikaans and an English newspaper circulating in the district in which the said person's last known business address, as entered in the records of the society concerned, is situated.
- (b) Any such process may, if the court so orders, be so published in a form as near as may be in accordance with Form 1 (Edictal Citation) of the First Schedule to the Supreme Court Rules.

[Para. (b) inserted by s. 12 of Act 87/89]

- (c) Any process referred to in paragraph (b), shall before the publication thereof be approved and signed by the registrar concerned.

[Para. (c) inserted by s. 12 of Act 87/89]

[Subs. (2) inserted by s. 4 of Act 76/80 and renumbered to (2) (a) by s. 12 of Act 87/89]

## **23. Juristic Person may conduct a practice**

- (1) A private company may, notwithstanding anything to the contrary contained in this Act, conduct a practice if -
- (a) such company is incorporated and registered as a private company under the Companies Act, 1973 (Act No. 61 of 1973), with a share capital, and its memorandum of association provides that all present and past directors of the company shall be liable jointly and severally with the company for the debts and liabilities of the company contracted during their periods of office;

- (b) only natural persons who are practitioners and who are in possession of current fidelity fund certificates are members or shareholders of the company or persons having any interest in the shares of the company;
  - (c) the name of the company consists solely of the name or names of any of the present or past members of the company or of persons who conducted, either for their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company: Provided that the words "and associates" or "and company " may be included in the name of the company.
- (2) Every shareholder of the company shall be a director of the company, and only a shareholder of the company shall be a director thereof.
  - (3) If a shareholder of the company or a person having any interest in the shares of the company, dies or ceases to conform to any requirement of subsection (1)(b), he or his estate, as the case may be, may, as from the date on which he dies or ceases so to conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the council of the society of the province in which the company's registered office is situate, may approve.
  - (4) No voting rights shall attach to any share held in terms of subsection (3), and the holder of any such share shall not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its practice.
  - (5) If the articles of association of the company so provide, the company may, without confirmation by a court, upon such conditions as it may deem expedient, purchase any shares held in it, and the authorized share capital of the company shall not be reduced thereby.
  - (6) Shares purchased in terms of subsection (5) shall be available for allotment in terms of the articles of association of the company.
  - (7) Notwithstanding anything to the contrary contained in any other law, the articles of association of the company may provide that a member of the company may not appoint a person who is not a member of the company, to attend, speak or vote in his stead at any meeting of the company.
  - (8) If the company ceases to conform to any requirement of subsection (1), it shall forthwith cease to practise, and shall, as from the date on which it ceases so to conform, not be recognized in law as a practitioner: Provided that the provisions of this subsection shall not, during the period referred to or contemplated in subsection (3), apply to a company by reason only that a shareholder of the company or a person having any interest in the shares of the company has ceased to be a practitioner or to be in possession of a fidelity fund certificate.
  - (9) Any reference in this Act or in any other law to a practitioner or to a partner or partnership in relation to practitioners, shall be deemed to include a reference to a company under this section or to a member of such a company, as the case may be, unless the context otherwise, indicates.

#### **24. Applications in terms of this Chapter to be delivered to secretary of society concerned**

Subject to provisions to the contrary in this Chapter contained, any person who makes an application to a court in terms of this Chapter, shall, at least one month before the date of his application, deliver to the secretary of the society of the province in which the court to which such application is made is situated, a copy of the application, together with copies of the other documents and papers referred to therein or connected therewith.

## CHAPTER II

### FIDELITY FUND

[Heading substituted by s. 13 of Act 87/89]

#### 25. Continued existence of Fidelity Fund

The fund established by section 8 of the Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941 (Act No. 19 of 1941), shall, notwithstanding the provisions of section 86, continue to exist under the name the Attorneys Fidelity Fund.

[S. 25 substituted by s. 14 of Act 87/89]

#### 26. Purpose of fund

Subject to the provisions of this Act, the fund shall be applied for the purpose of reimbursing persons who may suffer pecuniary loss as a result of -

- (a) theft committed by a practising practitioner, his candidate attorney or his employee, of any money or other property entrusted by or on behalf of such persons to him or to his candidate attorney or employee in the course of his practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity; and
- (b) theft of money or other property entrusted to an employee referred to in paragraph (cA) of the definition of "estate agent" in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976), or an attorney or candidate attorney referred to in paragraph (d) of the said definition, and which has been committed by any such person under the circumstances contemplated in those paragraphs, respectively, and in the course of the performance -
  - (i) in the case of such an employee, of an act contemplated in the said paragraph (cA); and
  - (ii) in the case of such an attorney or candidate attorney, of an act contemplated, subject to the proviso thereof, in the said paragraph (d)

[S. 26 substituted by s. 3 of Act 60/82 and s. 15 of Act 87/89]

#### 27. Fund to vest in and to be held in trust by board of control

- (1) The fund shall vest in and be administered by a board of control to be known as "The Attorneys Fidelity Fund Board of Control".

[Subs. (1) substituted by s. 16 of Act 87/89]

- (2) The fund shall be held in trust by the board of control for the purposes mentioned in this Chapter.
- (3) The board of control may under its name sue and be sued.

#### 28. Constitution of board of control

- (1) The board of control shall consist of -
  - (a) the serving presidents of all societies; and
  - (b) three members of each society elected annually by the council of the society.

[Para. (b) substituted by s. 18 of Act 62/2000]

- (2) The council of a society may in respect of each member elected by it under subsection (1) appoint an alternate member from among the members of the society.

### **29. Period of office of members of board of control**

An elected member of the board of control shall hold office until his successor has been elected and, unless another is elected in his place in any year, he shall be deemed to have been re-elected.

### **30. Vacation of office by members of board of control**

A member of the board of control shall vacate his office if he -

- (a) becomes mentally ill;
- (b) ceases to be a member of the society the council of which elected him;
- (c) becomes insolvent or makes any arrangement or composition with his creditors;
- (d) ceases to practise;
- (e) is, convicted of any offence which, in the opinion of the council which elected him, debars him from serving as a member of the board of control;
- (f) resigns and his resignation is accepted by his society and the board of control.

### **31. Chairman and Vice-chairman of board of control**

- (1) The board of control shall annually elect a chairman and a vice-chairman.
- (2) If the chairman and vice-chairman are both absent from any meeting of the board of control, the board shall from among its number elect a chairman for that meeting.

### **32. Meetings of board of control**

The board of control shall meet at such times and places as it or its chairman may determine from time to time.

[S. 32 substituted by s. 17 of Act 87/89]

### **33. Quorum**

Ten members of the board of control shall constitute a quorum for any meeting thereof.

[S. 33 substituted by s. 19 of Act 62/2000]

### **34. Decisions and chairman's casting vote**

- (1) A decision of the majority of the members of the board of control present at any meeting thereof shall, subject to the provisions of subsection (2), be the decision of the board of control.
- (2) In the event of an equality of votes at any meeting of the board of control, the chairman shall have a casting vote in addition to his deliberative vote.

### **34A. Committees of board of control**

- (1)
  - (a) The board of control may appoint one or more committees to assist it in the carrying out of its duties, the performance of its functions and the exercise of its powers, may at any time increase or reduce the membership of any such committee and may fill any vacancy on any such committee.
  - (b) The board of control may designate one of the members of a committee appointed by it in terms of paragraph (a) as chairman of that committee and, if



no such designation is made, the members of that committee may from among their number elect a chairman.

- (2) The board of control may assign to a committee appointed by it in terms of subsection (1), such of its powers as it may deem fit, but shall not be divested of any power which it may have assigned to a committee, and may amend or withdraw any decision of any such committee.
- (3) The board of control may require any committee appointed in terms of subsection (1) either generally or specially to enquire into and to advise the board of control on any matter in connection with the duties, functions or powers of the board of control.

[S. 34A inserted by s. 18 of Act 87/89]

### **35. Validity of resolution signed by all members of board of control**

A resolution of the board of control contained in a writing and signed by all members of the board shall be valid although no meeting was held to pass that resolution.

### **36. Revenue of fund**

The fund shall consist of -

- (a) the annual contributions by practitioners and interest paid to the fund in terms of this Act;
- (b) the revenue obtained from time to time from the investment of the fund;
- (c) money given or advanced to the fund by any society;
- (d) money recovered by the fund in terms of this Act;
- (e) money received on behalf of the fund from any insurance company;
- (f) other money lawfully paid into the fund.

### **37. Banking account**

Money in the fund shall, pending the investment or application thereof in terms of this Act, be paid into an account at a banking institution or building society to the credit of an account to be known as "The Attorneys Fidelity Fund Account".

[S. 37 substituted by s. 19 of Act 87/89]

### **38. Certificate in respect of liabilities of fund and investment of money in fund**

- (1) The board of control shall appoint an actuary to determine on or before 31 March in any year the amount which in that actuary's opinion will be required during the next ensuing year ending on 31 December, for the purposes of the fund's obligations in terms of section 45, and such actuary shall furnish the board of control, on or before the first-mentioned date, with a certificate setting out the amount so determined.
- (2) The board of control shall within 30 days after receipt thereof submit such certificate to the Minister, and the Minister shall, after receipt of the said certificate, determine the amount which in his opinion will be required during the said ensuing year for the purposes referred to in subsection (1).
- (3) Such money in the fund as exceeds the amount determined under subsection (2) may be invested in the manner prescribed under section 81(2)(b).
- (4) So much of the amount determined in terms of subsection (2) as is not immediately required for the purposes referred to in subsection (1) in any financial year, as well as so much of the money referred to in subsection (3) as is not invested as contemplated in

that subsection, shall, subject to the provisions of section 46, be invested in such Government and other securities as may be prescribed.

[S. 38 substituted by s. 2 of Act 80/85]

### **39. Audit**

- (1) The accounts of the fund shall be audited by an accountant appointed by the board of control.
- (2) A person appointed under subsection (1) shall, at least once in every year and not later than a date to be determined by the board of control, draw up a balance sheet and profit and loss account of the fund and forthwith submit certified copies thereof and of his report thereon to the chairman of the board of control and to each council.

### **40. Insurance contracts for purpose of indemnifying fund**

- (1) The board of control may in its discretion enter into a contract with any person or company carrying on fidelity insurance business in the Republic whereby the fund will be indemnified to the extent and in the manner provided in such contract against liability to pay claims under this Act.
- (2) A contract referred to in subsection (1) shall be entered into in respect of practitioners generally.
- (3)
  - (a) A claimant against the board of control shall not have -
    - (i) any right of action against any person or company with whom a contract of indemnity has been entered into in terms of this section, in respect of such contract; or
    - (ii) any right to any money paid by the insurer in accordance with such contract.
  - (b) Money paid by the insurer in accordance with such contract shall be paid into the fund for appropriation by the board of control.

### **40A. Acquisition, forming and administration of insurance company or scheme.**

The board of control may -

- (a)
  - (i) acquire or form, and administer, a public company; or
  - (ii) together with any other person or institution establish a scheme, underwritten by a registered insurer, so as to provide insurance cover, subject to the provisions of the Insurance Act, 1943 (Act No. 27 of 1943), to practitioners in respect of claims which may proceed from the professional conduct of such practitioners;
- (b) enter into deeds of suretyship to the satisfaction of the Master of the Supreme Court so as to provide security on behalf of a practitioner in respect of work to be done by such practitioner as executor in the estate of a deceased person, or as trustee in an insolvent estate, or as curator to the person or property in the case of a person who is unable to manage his own affairs, or in any other similar capacity, or by any other person in such capacity where a practitioner acts as agent for the person concerned; and
- (c) levy premiums and fees for the provision of such insurance or security, as the case may be.

[S. 40A inserted by s. 4 of Act 102/91]

### **40B. Insurance contracts for purpose of professional indemnity to practitioners**

The board of control may enter into a contract with a company or scheme contemplated in section 40A(a) or any company carrying on professional indemnity insurance business in the Republic for the provision of group professional indemnity insurance to practitioners to the extent and in the manner provided for in such contract.

[S. 40B inserted by s. 14 of Act 55/2002]

**41. Possession of fidelity fund certificates by practitioners practising on own account or in partnership**

- (1) A practitioner shall not practise or act as a practitioner on his own account or in partnership unless he is in possession of a fidelity fund certificate.
- (2) Any practitioner who practises or acts in contravention of subsection (1) shall not be entitled to any fee, reward or disbursement in respect of anything done by him while so practising or acting.
- (3) The provisions of this Chapter shall not apply in respect of any person admitted and enrolled as a conveyancer under Act No. 23 of 1904 (Natal).

**42. Application for and issue of fidelity fund certificate**

- (1) A practitioner practising on his own account or in partnership, and any practitioner intending so to practise, shall apply in the prescribed form to the secretary of the society concerned for a fidelity fund certificate.
- (2) Any application referred to in subsection (1) shall be accompanied by the contribution (if any) payable in terms of section 43.
- (3)
  - (a) Upon receipt of the application referred to in subsection (1), the secretary of the society concerned shall, if he is satisfied that the applicant has discharged all his liabilities to the society in respect of his contribution and that he has complied with any other lawful requirement of the society, forthwith issue to the applicant a fidelity fund certificate in the prescribed form.
  - (b) A fidelity fund certificate shall be valid until 31 December of the year in respect of which it was issued.
- (4) Any document purporting to be a fidelity fund certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the society concerned.

**43. Contributions to fund by practitioners**

- (1)
  - (a) Subject to the provisions of this section, every practitioner, practising on his or her own account or in partnership, shall, annually when he or she applies for a fidelity fund certificate, pay to the fund-
    - (i) such amount as may be fixed by the board of control from time to time in respect of the cost of group professional indemnity insurance arranged by the board of control pursuant to the provisions of section 40B; and
    - (ii) such other non-refundable amount as may be fixed by the board of control from time to time.
  - (b) Any practitioner referred to in paragraph (a) who commences to practise on or after 1 July in any year shall in respect of that year pay half of the contribution which is payable in terms of that paragraph for that year.

- (4) A practitioner who applies under section 42 for the first time for a fidelity fund certificate shall pay to the fund, in addition to any contributions payable in terms of subsection (1) such single non-refundable contribution as the board of control may determine.
- (5) The board of control may require a practitioner in respect of whom the fund has been applied as a result of any of the circumstances referred to in section 26, to pay an additional annual contribution to the fund of such amount and for such period as the board of control may determine.
- (6)
  - (a) A practitioner who is not in possession of a fidelity fund certificate and who intends to commence to practise on his or her own account or in partnership, shall, before commencing so to practise, give notice of such intention to the secretary of the society of the province in which he or she intends to practise, and he or she shall thereupon become liable to pay to the fund the amount of the contribution referred to in subsections (1) and (4).
  - (b) Any practitioner who is in possession of a fidelity fund certificate but who intends to commence to practise for his or her own account or in partnership in the area of jurisdiction of any provincial division other than that in which he or she usually practises for his or her own account or in partnership, shall give notice of such intention to the secretary of the other society concerned.
- (7) All contributions payable under this section shall be paid to the society, and every society shall remit the contributions to the board of control within seven days of receipt thereof.

[S. 43 substituted by s. 15 of Act 55/2002]

#### **44. Board of control may refund contributions in certain cases**

If any practitioner in respect of whom no claim has been made under this Act or in respect of whom such claim has not been sustained, dies or ceases to practise, the board of control may in its discretion, if it is satisfied that no claim is likely to be made, pay to him or her, or to his or her estate, a sum not exceeding the aggregate amount of his or her contributions to the fund made prior to the date of commencement of the Judicial Matters Amendment Act, 2002.

[S. 44 substituted by s. 16 of Act 55/2002]

#### **45. Payments from fund**

- (1) Subject to the provisions of this Act, the fund shall be applied for the following purposes, namely -
  - (a) all claims, including costs, payable in terms of this Act, and interest as provided in subsection (2);
  - (b) in the discretion of the board of control, a contribution towards expenses incurred by a claimant in establishing his claim;
  - (bA) in the discretion of the board of control, the costs or any portion thereof incurred by a claimant in exhausting the legal remedies contemplated in section 49(1);  
[Para. (bA) inserted by s. 20 of Act 87/89]
  - (c) legal expenses incurred in defending any claim made against the fund or otherwise incurred in relation to the fund;
  - (d) premiums payable in respect of contracts of insurance entered into by the board of control in terms of sections 40 and 40B;  
[Para. (d) substituted by s. 17 of Act 55/2002]
  - (e) refunds made to any member or to his estate in, terms of section 44;

- (f) expenses involved in the administration of the fund, including allowances to members of the board of control in respect of their services or their reasonable travelling expenses incurred in connection with the management of the fund;
  - (g) in the discretion of the board of control, the bank charges or any portion thereof paid by a practitioner in connection with the keeping of his trust account;  
[Para. (g) substituted by s. 20 of Act 87/89]
  - (h) in the discretion of the board of control, the premium or any portion thereof payable in respect of any group insurance policy of any kind taken out in favour of practitioners;  
[Para. (h) substituted by s. 17 of Act 55/2002]
  - (i) in the discretion of the board of control, the costs or any portion thereof incurred by a practitioner in connection with the obtaining of a fidelity fund certificate;
  - (j) in the discretion of the board of control, the defraying of the whole or any portion of the expenses incurred by any society for the purposes of or in connection with any steps taken by it under section 22(1), 78 or 83(13);  
[Para. (j) substituted by s. 3 of Act 80/85]
  - (k) loans and interest thereon;
  - (l) other moneys which are payable or may be paid from the fund in accordance with this Act or the regulations made thereunder.
- (2) The board of control may in its discretion pay an amount out of the fund as interest on the amount of any judgment obtained or of any claim admitted against the fund: Provided that -
- (a) .....  
[Para. (a) deleted by s. 20 of Act 87/89]
  - (b) the rate of interest shall not exceed the prevailing rate of interest prescribed under section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

**46. Board of control may make grants from fund for education or research in law and for enhancement of professional standards of practitioners**

The board of control may, if the amount of the fund exceeds the amount determined under section 38(2), out of the excess in question -

- (a) make grants with the approval of the Minister on such conditions as the board of control may determine with such approval -
  - (i) to any person, any university established by an Act of Parliament, any university college established under the Extension of University Education Act, 1959 (Act No. 45 of 1959), any university contemplated in section 2(1)(aA) of this Act or section 3(2)(a)(iii) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or a person connected with any such university or university college or to any training centre in the Republic designated by the Minister for the purposes of -
    - (aa) education or research in the science of law or in legal practice;
    - (bb) education or research in any related science or practice in so far as such education is given to a student of a law faculty at any such university or university college, or to a student at any such training centre, or in so far as such research is done at any such university, university college or training centre;

(cc) the furtherance of the administration or dispensation of justice;

- (ii) to any association or society of attorneys, notaries or conveyancers in a country which has been designated by the Minister by notice in the *Gazette* after consultation with the presidents of the various societies, for the purposes of enabling such association or society to establish or maintain a fund for facilitating the practice of law;

and may, with such approval, at any time when it deems fit, revoke such grant or any part thereof;

- (b) pay an honorarium or compensation to any person for services rendered at the request of the board of control with the object of enhancing the professional standards of practitioners.

[S. 46 amended by s. 3 of Act 56/83 and substituted by s. 4 of Act 80/85]

#### **47. Limitation of liability of fund**

- (1) The fund shall not be liable in respect of any loss suffered -

- (a) by any person as a result of theft committed by a practitioner while such practitioner is in the employment of any person who is not a practitioner,
- (b) by the wife of a practitioner as a result of any theft committed by that practitioner;
- (c) by any practitioner as a result of any theft committed by any partner or employee of that practitioner or by any employee of any partnership in which he is a partner,
- (d) by any practitioner as a result of any theft committed by any member or employee of a professional company of which he is a member;
- (e) as a result of any theft committed by any practitioner whose fidelity has been guaranteed by any person, either in general or in respect of the particular transaction, to the extent to which it is covered by the guarantee;
- (f) by any person as a result of any theft committed by any practitioner after such person has received a notification in writing from the secretary of a society or the board of control warning him against the employment or continued employment of such practitioner;
- (g) by any person as a result of theft of money which a practitioner has been instructed to invest on behalf of such person after the date of commencement of this paragraph.

[Para. (g) inserted by s. 1 of Act 115/98]

- (2) A claim for reimbursement as contemplated in section 26 shall be limited, in the case of money entrusted to a practitioner, to the amount actually handed over, without interest, and, in the case of securities or other property, to an amount equal to the average market value of such securities or property at the date when written demand is first made for their delivery, or, if there is no average market value, the fair market value as at that date of such securities or other property, without interest.
- (3) Only the balance of any loss suffered by any person after deduction from the loss of the amount or value of all money or other benefits received or receivable by him from any source other than the fund, may be recovered from the fund.
- (4) Subject to subsection (5), a practitioner must be regarded as having been instructed to invest money for the purposes of subsection (1)(g), where a person -

(a) who entrusts money to the practitioner; or

(b) for whom the practitioner holds money,

instructs the practitioner to invest all or some of that money in a specified investment or in an investment of the practitioner's choice.

[Subs. (4) inserted by s. 1 of Act 115/98]

(5) For the purposes of subsection (1)(g), a practitioner must be regarded as not having been instructed to invest money if he or she is instructed by a person -

(a) to pay the money into an account contemplated in section 78(2A) if such payment is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of any particular matter or transaction which is already in existence or about to come into existence at the time that the investment is made and over which investment the practitioner exercises exclusive control as trustee, agent or stakeholder or in any fiduciary capacity;

(b) to lend money on behalf of that person to give effect to a loan agreement where that person, being the lender -

(i) specifies the borrower to whom the money is to be lent;

(ii) has not been introduced to the borrower by the practitioner for the purpose of making that loan; and

(iii) is advised by the practitioner in respect of the terms and conditions of the loan agreement; or

(c) to utilise money to give effect to any term of a transaction to which that person is a party, other than a transaction which is a loan or which gives effect to, a loan agreement that does not fall within the scope of paragraph (b).

[Subs. (5) inserted by s. 1 of Act 115/98]

(6) Subsection (1)(g) does not apply to money which a practitioner is authorised to invest where the practitioner acts in his or her capacity as executor, trustee or curator or in any similar capacity.

[Subs. (6) inserted by s. 1 of Act 115/98]

(7) A practitioner who has been instructed to invest money as contemplated in subsection (4) shall, as soon as practicable after he or she has received such instruction but prior to the receipt of the money to be invested, notify the person giving the instruction of the provisions of subsection (1)(g) in the form and manner prescribed by the board of control in terms of subsection (8).

[Subs. (7) inserted by s. 1 of Act 115/98]

(8) For the purposes of subsection (7), the board of control shall issue directives prescribing the form and manner in which a notice referred to in that subsection shall be given and may from time to time review and, if necessary, revise such directives.

[Subs. (8) inserted by s. 1 of Act 115/98]

(9) Pending the issuing of the directives contemplated in subsection (8), a notice referred to in subsection (7) shall -

(a) be drawn up by the practitioner;

(b) be signed by both the practitioner and the person giving the instruction; and

(c) contain a written acknowledgment by such person to the effect that he or she -

- (i) has been informed by the practitioner concerned of the provisions of subsection (1)(g) and that he or she understands the effect thereof; and
- (ii) admits that the fund shall not be liable in respect of any loss suffered by him or her as a result of theft of such money.  
[Subs. (9) inserted by s. 1 of Act 115/98]

- (10) Any practitioner who contravenes subsection (7) shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.  
[Subs. (10) inserted by s. 1 of Act 115/98]

#### **47A. Transitional provisions relating to liability of fund for investments**

The fund is not liable for loss of money caused by theft committed by a practitioner, candidate attorney, employee or agent of a practitioner where the money is invested or should have been invested on instructions given before the date contemplated in section 47(1)(g) and where -

- (a) the money is to be repaid, at any time after that date, to the beneficiary specified in any agreement whether with the borrower or practitioner;
- (b) the theft is committed at any time after the expiration of 90 days after the investment matures or after the expiration of 90 days after the date contemplated in section 47(1)(g);
- (c) repayment is subject to the lender making a demand or is subject to the occurrence of an impossible or uncertain event; or
- (d) the repayment date is not fixed.

[S. 47A inserted by s. 2 of Act 115/98]

#### **48. Claims against fund: notice, proof and extension of periods for claims**

- (1) No person shall have a claim against the fund in respect of any theft contemplated in section 26 unless -
- (a) written notice of such claim is given to the council of the society concerned and to the board of control within 3 months after the claimant became aware of the theft or by the exercise of reasonable care should have become aware of the theft; and
  - (b) within 6 months after a written demand has been sent to him by the board of control, the claimant furnishes the board with such proof as the board may reasonably require.
- (2) If the board of control is satisfied that, having regard to the circumstances, a claim or the proof required by the board has been lodged or furnished as soon as practicable, it may in its discretion extend any of the periods referred to in subsection (1).

#### **49. Actions against fund**

- (1) No action shall without leave of the board of control be instituted against the fund unless the claimant has exhausted all available legal remedies against the practitioner in respect of whom the claim arose or his estate and against all other persons liable in respect of the loss suffered by the claimant.
- (2) Any action against the fund in respect of any loss suffered by any person as a result of any theft committed by any practitioner, his candidate attorney or employee, shall be instituted within one year of the date of a notification directed to such person or his



legal representative by the board of control informing him that the board of control rejects the claim to which such action relates.

[Subs. (2) substituted by s. 21 of Act 87/89]

- (3) In any action against the fund all defences which would have been available to the person against whom the claim arose, shall be available to the fund.
- (4) Any action against the fund may, subject to the provisions of this Act and the regulations made thereunder, be brought in any provincial or local division of the Supreme Court within the jurisdiction of which the cause of action arose.

#### **50. Subrogation**

On payment out of the fund of money in settlement in whole or in part of any claim under this Act, the fund shall be subrogated to the extent of such payment to all the rights and legal remedies of the claimant against any practitioner or any person in relation to whom the claim arose, or in the event of his death or insolvency or other legal disability, against any person having authority to administer his estate.

#### **51. Claims may be charged against future revenue of fund**

- (1) If the fund at any time has insufficient assets to settle all claims and judgments, such claims and judgments shall, to the extent to which they are not settled, be charged against future revenue of the fund.
- (2) The board of control may in its discretion determine the order in which claims and judgments in terms of subsection (1) shall be settled, and may, if the revenue of the fund is not sufficient to settle all claims in full, settle any claim or judgment in whole or in part.
- (3) Without limiting the discretion of the board of control it shall, in applying the fund towards such settlement of claims and judgments, consider the following, namely -
  - (a) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the fund not be settled in whole or in part;
  - (b) subject to paragraph (a), the full settlement of claims not exceeding R1 000, except in special circumstances, before claims for amounts exceeding R1 000 are settled to a greater extent than R1 000;
  - (c) in equal circumstances, the priority of claimants according to the dates of the judgments or the dates when the claims were admitted by the board of control, as the case may be.

#### **52. Exemption of fund from certain provisions of certain laws**

- (1) The revenue of the fund shall be exempt from the provisions of any law relating to payment of income tax or any other tax or levy by the State.
- (2) Any provision of any law relating to insurance (other than a law relating to the compulsory insurance of employees) or the provision of security in connection therewith, shall not apply to the fund.

#### **53. Indemnification in respect of certain acts in good faith**

No action for damages shall be instituted -

- (a) against the fund, the board of control or any member, official or employee of the board of control in respect of anything done in the *bona fide* exercise or performance of its or his powers or duties in terms of the provisions of this Act; or

- (b) against any society, any council, any member of a council or official or employee of any council, in respect of any notification issued in good faith for the purposes of section 47 (1)

**54. Preservation and disposal of records and documents in possession of board of control**

- (1) Any record or document in possession of the board of control relating to any claim instituted against the fund shall, subject to the provisions of subsection (2), be preserved at the office of the secretary of the board of control.
- (2) The chairman of the board of control may, after the lapse of 5 years from the date on which any claim to which any record or document relates is settled by the board of control or adjudicated upon by the court or rendered unenforceable by lapse of time, direct that such record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

**55. Application of Chapter in respect of persons exercising legal professions in area of former Republic of Transkei, Bophuthatswana, Venda or Ciskei**

- (1) For the purposes of this Chapter -
  - (a) “practising practitioner “ includes any person who exercises a legal profession in -
    - (i) the former Republic of Transkei or Ciskei; or
    - (ii) the former Republic of Bophuthatswana or Venda, on his or her own account or in partnership, and -
      - (aa) who is required by a law of the former Republic of Transkei or Ciskei, or by section 6(1) of the Attorneys and Matters relating to Rules of Court Amendment Act, 1998, as the case may be, as a prerequisite for exercising such profession, to be in possession of a valid fidelity fund certificate issued to him or her in terms of section 42(3);
      - (bb) who is in possession of such a certificate; and
  - (b) a person referred to -
    - (i) in paragraph (a)(i) must be regarded as being a practitioner who is a member of the society known as the Law Society of the Cape of Good Hope;
    - (ii) in paragraph (a)(i) must be regarded as being a practitioner who is a member of the society known as the Law Society of the Transvaal.

- (2) This Chapter shall apply with the necessary changes in respect of any theft committed in the area of the former Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, by a practising practitioner, his or her candidate attorney, employee or agent, of any money or other property referred to in section 26.

[S. 55 substituted by s. 1 of Act 116/81, amended by s. 22 of Act 87/89 and substituted by s. 3 of Act 115/98]

**CHAPTER III**

**LAW SOCIETIES**

**56. Continued existence of law societies**

The law societies known as -

- (a) in the case of the law society of the province of the Cape of Good Hope, The Law Society of the Cape of Good Hope;
- (b) in the case of the law society of the province of the Orange Free State, The Law Society of the Orange Free State;
- (c) in the case of the law society of the province of the Transvaal, The Law Society of the Transvaal;
- (d) in the case of the law society of the province of Natal, The Natal Law Society;
- (e) .....

[Para. (e) deleted by s. 15 of Act 115/93]

shall, notwithstanding the provisions of section 86, continue to exist as juristic persons.

#### **57. Membership of society**

- (1) Every practitioner who practises in any province, whether for his own account or otherwise, shall be a member of the society of that province.
- (2) A society may by notice in writing addressed to any person who has been admitted and enrolled as an attorney or a notary or conveyancer in any court in the province of its society, or whose name has been placed on the roll of such court, but who does not practise in that province, declare such person to be a member of such society with effect from a date fixed in that notice.
- (3) The person who holds office as State Attorney in terms of section 2(1)(a) of the State Attorney Act, 1957 (Act No. 56 of 1957), shall be a member of every society.
- (4) If a member of any society is suspended from practice he shall during the period of such suspension not be entitled to the rights or privileges of membership of any society, and if a member of any society is struck off the roll of any court, such member shall cease to be a member of every society of which he is a member.
- (5) The provisions of this section shall not apply in respect of any person who is in terms of the Natal Conveyancers Act, 1926 (Act No. 24 of 1926), entitled to practise as a conveyancer, but who is not an attorney.

#### **58. Objects of society**

The objects of a society shall be -

- (a) to maintain and enhance the prestige, status and dignity of the profession;
- (b) to regulate the exercise of the profession;
- (c) to encourage and promote efficiency in and responsibility in relation to the profession;
- (d) to deal with all matters relating to the interests of the profession and to protect those interests;
- (e) to uphold the integrity of practitioners;
- (f) to uphold and improve the standards of professional conduct and qualifications of practitioners;
- (g) to provide for the effective control of the professional conduct of practitioners;
- (h) to promote uniform practice and discipline among practitioners;

- (i) to encourage the study of the law;
- (j) to initiate and promote reforms and improvements in any branch of the law, the administration of justice, the practice of the law and in draft legislation;
- (k) to represent generally the views of the profession;
- (l) in the interests of the profession in the Republic, to co-operate with such other societies or bodies of persons as it may deem fit

#### **59. Powers of society**

A society may for the purpose of achieving its objects -

- (a) acquire or hire movable or immovable property;
- (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the society;
- (c) make donations of property (including money) of the society;
- (d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments;
- (e) with or without security, invest or lend money of the society;
- (f) with or without security, borrow or raise money required by the society in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (g)
  - (i) employ, fix the remuneration and other conditions of service of and discharge a secretary, one or more assistant secretaries and other officials and employees of the society;
  - (ii) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services;
- (h) establish or promote or administer or assist in the establishment or promotion or administration of -
  - (i) insurance schemes;
  - (ii) medical aid schemes or medical benefit schemes;
  - (iii) pension funds or provident funds or pension schemes or benevolent schemes, for members and ex-members of the society, for employees of such members, for officials and employees of the society and for dependants of such members, ex-members, officials and employees;
- (i) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (j) appear in support of or in opposition to, or to abide the decision of any court in, any proceedings brought in terms of the provisions of this Act, and if permitted by any other law, such law;
- (k) generally, do anything that is necessary for or conducive to the attainment of the objects of the society, and the generality of this provision shall not be limited by the preceding paragraphs of this section.

**60. Council to manage and control affairs of society**

- (1) The affairs of a society shall be managed and controlled by a council, which may, subject to the provisions of subsection (2), exercise the powers of the society.
- (2) The alienation or mortgaging of any immovable property of a society, the appointment of the auditors of a society and the fixing of any subscription, fees, levies or other charges payable to a society by its members, shall be subject to the approval of such majority of the members of that society who are present or represented at a general meeting or at a meeting specially convened for that purpose, as may be prescribed.

**61. Constitution of council and election and period of office of members**

- (1) A council shall consist of such number of members of the society concerned as may be prescribed.
- (2) The members of a council shall be elected in the prescribed manner by the members of the society concerned.
- (3) A member of a council shall hold office for the prescribed period.

**62. Vacation of office, suspension from office and filling of vacancies**

- (1) A member of a council shall vacate his office -
  - (a) in the prescribed circumstances;
  - (b) if he is removed from office by the council in the prescribed circumstances and manner.
- (2)
  - (a) When a member of a council vacates his office before the expiration of the prescribed period of office, the council may appoint a member of the society to fill the vacancy for the unexpired portion of such period of office.  
[Subs. (2) renumbered to (2)(a) by s. 4 of Act 115/98]
  - (b) Any vacancy occurring in any council as a result of the increase in the number of members of such a council, may be filled by a person appointed by that council from the members of the society concerned and such a person shall hold office until the completion of the next election of members of the council held subsequent to the appointment of the person concerned.  
[Para. (b) inserted by s. 4 of Act 115/98]
- (3) A council may in the prescribed circumstances and manner suspend from office any member of that council and may in such case appoint any member of its society to act during the period of suspension in the place of the member so suspended.

**63. President and vice-president or vice-presidents**

- (1) A council shall from among its members elect a president and one or more vice-presidents, who shall respectively also be the president and vice-president or vice-presidents of the society concerned and who shall hold office for the prescribed periods.
- (2) If the office of the president becomes vacant before the expiration of his period of office, the vice-president or, if there is more than one vice-president, that vice-president determined by the council, shall be the president for the unexpired portion of such period of office.

- (3) If the office of a vice-president becomes vacant before the expiration of his period of office, the council shall elect one of its number to fill such vacancy, and the member so elected shall be vice-president for the unexpired portion of such period of office.
- (4) If for any reason the president is absent or unable to perform his functions as president, the vice-president or, if there is more than one vice-president, such vice-president as the council may determine, shall act as president, and such vice-president shall while so acting have all the powers and perform all the functions of the president.

#### **64. Meetings of council**

- (1) A meeting of a council shall be convened in the manner prescribed and shall be held at a time and place prescribed for determined in the manner prescribed.
- (2) If the president and the vice-president or, if there is more than one vice-president all vice-presidents, are absent from or unable to preside at any meeting of a council, the members of the council present at that meeting shall elect one of their number to preside at such meeting during such absence or inability, and the person so elected shall while so presiding have all the powers and perform all the functions of the president.
- (3)
  - (a) The decision of the majority of the members of a council present at a meeting of the council shall be the decision of the council: Provided that in the event of an equality of votes on any matter before such meeting, the person presiding at such meeting shall have a casting vote in addition to his deliberative vote.
  - (b) The method and procedure of voting at meetings of a council shall be determined by that council.
- (4)
  - (a) The quorum for any meeting of a council shall be as prescribed.
  - (b) If the number of members of a council is reduced to a number less than that required to constitute the prescribed quorum, the remaining members of that council shall from among the members of the society concerned appoint such number of members as is required to constitute the prescribed quorum.

#### **65. Alternate members**

A council may appoint any member of its society as an alternate to attend on behalf of any member any meeting of the council which such member is unable to attend, with the power to vote at any such meeting.

#### **66. Validity of decisions taken by, or acts performed under authority of, council**

No decision taken by a council or act performed under authority of a council shall be invalid by reason only of the existence of a vacancy on that council or of the fact that a person who was not entitled to sit as a member of the council, sat as a member of the council, if the decision was taken or the act was authorized by the requisite majority of the members of the council who were present at the time and entitled to sit as members.

#### **67. Committees of council**

- (1)
  - (a) A council may appoint one or more committees to assist it in the carrying out of its duties, the performance of its functions and the exercise of its powers, may at any time increase or reduce the membership of any such committee and may fill any vacancy on any such committee.

- (b) Any committee referred to in paragraph (a) shall consist of members of the council concerned or of members of the society concerned or of members of such council as well as of members of such society.
  - (c) A council may designate one of the members of a committee appointed by it in terms of paragraph (a) as chairman of that committee and, if no such designation is made, the members of that committee may from among their number elect a chairman.
- (2) A council may assign to a committee appointed by it in terms of subsection (1), such of its powers as it may deem fit, but shall not be divested of any power which it may have assigned to a committee, and may amend or withdraw any decision of any such committee: Provided that if a council has assigned to a committee the power to enquire into any case of alleged unprofessional or dishonourable or unworthy conduct and to impose any punishment in respect thereof in accordance with section 72, the council shall not amend or withdraw any decision arrived at or anything done by such committee in terms of the power so assigned.
- (3) A council may require any committee appointed in terms of subsection (1) either generally or specially to enquire into and to advise the council on any matter in connection with the duties, functions or powers of the society or the council.

#### **68. Duties of council**

A council shall -

- (a) convene annually a general meeting of the members of its society;
- (b) convene in the prescribed circumstances a special meeting of the members of its society;
- (c) determine the date and place of meetings of its society and the business to be transacted at such meetings;
- (d) make rules providing for the calling of and the quorum and procedure at meetings of its society, and the manner in which motions shall be submitted to such meetings;
- (e) deposit all money received by it with a banking institution or with a building society;
- (f) keep proper accounts of the revenue and expenditure and of the assets and liabilities of its society.

#### **69. Powers of council**

A council may -

- (a) prescribe the books, records, certificates or other documents to be kept, maintained or issued for the purposes of this Act, the form thereof, the inspection thereof by persons authorized to do so by the council, and the circumstances and manner in which alterations may be effected thereto;
- (b) fix the subscriptions, fees, levies or other charges payable to its society by the members of its society, and, in fixing such subscriptions, fees, levies or other charges, differentiate among members belonging to different categories determined by it for the purpose;
- (c) fix the fees payable to its society in respect of certificates issued by the secretary of its society, and determine the persons who shall be obliged to pay such fees;
- (d) prescribe the tariff of fees payable to any practitioner in respect of professional services rendered by him in cases where no tariff is prescribed by any other law;

(dA) authorize any practitioner, after the submission of reasons which are acceptable to the council, to deviate in a particular case from any prescribed tariff for conveyancing services;

[Para. (dA) inserted by s. 54 of Act 129/93]

(e) prescribe the information to be furnished to the secretary of its society by any person who -

(i) commences or discontinues to practise in the province of its society;

(ii) takes up employment in that province or ceases to be employed therein as a practitioner,

(iii) enters into or withdraws from a partnership with any person practising in that province;

(iv) practises in that province and who changes his business or residential address;

(f) prescribe the minimum remuneration payable to candidate attorneys;

[Para. (f) substituted by s. 23 of Act 87/89]

(g) prescribe the form and contents of articles of clerkship;

(h) prescribe the manner of assessment of the fees payable by any person to a practitioner in respect of the performance of any work other than litigious work and in respect of expenses reasonably incurred by such practitioner in connection with the performance of that work and, *mero motu* or at the request of such person or practitioner, assess such fees in the prescribed manner;

[Para. (h) substituted by s. 23 of Act 87/89, s. 5 of Act 102/91 and s. 54 of Act 129/93]

(i) pay any person allowances to cover expenses reasonably incurred by such person in connection with the performance of any act at the request or under the directions of the council, on behalf of or for the benefit of its society;

(j) subject to such conditions as it may deem fit to impose, permit members of its society to form associations of such members, to be known, as circles, in respect of such areas of the province concerned as the council may determine from time to time; determine the duties, functions and powers of such circles; designate places as the headquarters of such circles; and determine the constitution of bodies responsible for the management of the affairs of such circles;

(k) prescribe the conditions on which any practitioner may practise at any branch office or in association with any other practitioner or any other person who carries on the practice of a lawyer outside the Republic;

(l) prescribe the allowance on the fees charged by a practitioner for professional services which such practitioner shall be entitled to make to another practitioner or to any other person who carries on the practice of a lawyer outside the Republic with whom he is not in partnership, in respect of any matter on which they were both engaged;

(m) prescribe the procedure to be followed in connection with any enquiry referred to in section 71;

(n) determine the manner in which the council shall conduct its business;

(o) prescribe the requirements to be complied with by a law clinic referred to in section 3(1)(f);

[Para. (o) inserted by s. 5 of Act 102/91]

(p) do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers.



**70. Council's power of inspection**

- (1) A council may for the purposes of an enquiry under section 71 or in order to enable it to decide whether or not such an enquiry should be held, direct any practitioner to produce for inspection, either by the council itself or by any person authorized thereto by the council, any book, document, record or thing which is in the possession or custody or under the control of such practitioner and which relates to his practice or former practice.
- (2) The refusal or failure by a practitioner to comply with a direction in terms of subsection (1) shall constitute unprofessional conduct.

**71. Enquiry by council into alleged cases of unprofessional or dishonourable or unworthy conduct**

- (1) A council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct on the part of any attorney, notary or conveyancer whose name has been placed on the roll of any court within the province of its society, whether or not he is a member of such society, or of any person serving articles of clerkship or a contract of service with a member of its society, or of any former candidate attorney referred to in section 8(4).

[Subs. (1) substituted by s. 24 of Act 87/89 and s. 16 of Act 115/93]

- (2)
  - (a) For the purposes of an enquiry under subsection (1), a council may -
    - (i) under the hand of the president or the secretary of its society, summon any person who in the opinion of the council may be able to give material information concerning the subject matter of the enquiry or who is believed by the council to have in his possession or custody or under his control any book, document, record or thing which has any bearing on the subject matter of the enquiry, to appear before it at a time and place specified in the summons, to be interrogated or to produce that book, document, record or thing, and may retain for inspection any book, document, record or thing so produced;
    - (ii) through the person presiding at the enquiry administer an oath to, or accept an affirmation from, any person present at the enquiry and who was summoned under subparagraph (i) and interrogate him and require him to produce any book, document, record or thing in his possession or custody or under his control.
  - (b) A summons referred to in paragraph (a) shall be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrate's court.
  - (c) In connection with the interrogation of any person who has been summoned under this section or the production by such person of any book, document, record or thing, the law relating to privilege as applicable to a witness summoned to give evidence or to produce a book, document, record or thing in a civil trial before a court of law shall apply.
  - (d)
    - (i) Any person who has been summoned in terms of this subsection or who has given evidence before a council shall be entitled to the same witness fees as if he had been summoned to attend or had given evidence at a civil trial in a magistrate's court held at the place where the enquiry is held.
    - (ii) Any fees which may become payable in terms of subparagraph (i) shall be paid from the funds of the society concerned.

- (3) The person presiding at the enquiry shall keep or cause to be kept a record of the proceedings at the enquiry and of the evidence given thereat.
- (4) A council conducting an enquiry in terms of this section may, if the conduct enquired into forms or is likely to form the subject of criminal or civil proceedings in a court of law, postpone the enquiry until such proceedings have been determined.

## **72. Council's disciplinary powers**

- (1) A council conducting an enquiry in terms of section 71 may find the person concerned guilty of unprofessional or dishonorable or unworthy conduct and may-
  - (a) in the case of a practitioner-
    - (i) impose upon him or her a fine not exceeding R100 000; or
    - (ii) reprimand him or her; or
    - (iii) for a specified period or until otherwise decided by the council, debar him or her from engaging or continuing to engage a candidate attorney; and
    - (iv) recover from him or her the costs incurred by the council in connection with the enquiry;
  - (b) in the case of a candidate attorney-
    - (i) cancel or suspend his or her articles of clerkship or contract of service;
    - (ii) impose upon him or her a fine not exceeding R20 000; or
    - (iii) reprimand him or her;
  - (c) in the case of a former candidate attorney referred to in section 8(4)-
    - (i) debar him or her from remaining in the employ of the attorney referred to in section 8(4) or 8(5), as the case may be; or
    - (ii) impose upon him or her a fine not exceeding R20 000; or
    - (iv) reprimand him or her.

[Subs. (1) amended by s. 5 of Act 80/85, substituted by s. 25 of Act 87/89, amended by s. 17 of Act 115/93 and s. 13 of Act 204/93 and substituted by s. 19 of Act 66/2008]

- (2) Where a council finds a person referred to in subsection (1) guilty of the conduct referred to therein, it may -
  - (a) on the conditions determined by it postpone the taking of any steps in respect of him or the imposition of any punishment upon him;
  - (b) impose a fine referred to in subsection (1), but suspend the payment of such fine, or any part thereof
- (3)
  - (a) If the taking of any steps or the imposition of any punishment has been postponed for a particular period in terms of subsection (2), and if at the end of that period the council concerned is satisfied that the person concerned has substantially observed all the relevant conditions, that council shall inform that person that no steps will be taken in respect of him or that no punishment will be imposed upon him.

- (b) If the payment of a fine or any part thereof has been suspended by a council for a particular period in terms of subsection (2), and if at the end of such period the council concerned is satisfied that the person concerned has substantially observed all the relevant conditions, that council shall inform such person that the payment of that fine or that part thereof will not be enforced.
- (4) A fine imposed at an enquiry in terms of this section and the costs incurred by a council in connection with such enquiry may be recovered by legal process in the magistrate's court of the district in which the office of the society concerned is situate.
- (5) A council may to such extent and in such manner as may be prescribed publish information relating to an enquiry held by it in terms of section 71.
- (6) The provisions of this section shall not affect the power of -
  - (a) a society to apply in terms of the provisions of this Act for the suspension from practice or the striking from the roll of any practitioner against whom an enquiry is being or has been conducted in terms of this Act in respect of the conduct which forms or formed the subject matter of such enquiry;
  - (b) a competent court, at the instance of the society concerned, to suspend any practitioner from practice or to strike him from the roll.

### **73. Appeal against finding of council**

- (1) A person who has been found guilty in terms of section 72 may within a period of thirty days of the date of the council's decision appeal to a competent court against that finding by lodging with the registrar of that court a notice of appeal setting out in full his grounds of appeal.
- (2) A person who appeals in terms of subsection (1) shall when lodging such notice of appeal deposit with the registrar concerned an amount of R200 as security for the costs of the appeal and shall on the same day deliver or send to the secretary of the society concerned a copy of the notice of appeal.
- (3) The secretary of the society concerned shall within a period of thirty days of the date upon which he received the notice of appeal referred to in subsection (1), send to the registrar referred to in that subsection in respect of the enquiry concerned -
  - (a) three copies of the record referred to in section 71(3);
  - (b) the documentary evidence admitted at the enquiry;
  - (c) a statement of the finding of the council which held the enquiry and the reasons for such finding;
  - (d) any observations which such council may wish to make.
- (4) An appeal in terms of subsection (1) shall be prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all rules applicable to such last-mentioned appeal in respect of the hearing thereof shall *mutatis mutandis* apply to an appeal under this section.
- (5) The court hearing an appeal under this section shall -
  - (a) confirm the finding appealed against; or
  - (b) set that finding, and the punishment imposed in respect thereof, aside; or
  - (c) confirm that finding, but set that punishment aside, and impose in its place such punishment as could have been imposed by the council concerned.

- (6) If a person succeeds in his appeal in terms of this section, the costs of the enquiry shall not be recoverable by the council concerned, and if such costs have already been recovered by that council, such costs shall be refunded.

#### **74. Council may make rules**

- (1) A council may subject to the provisions of subsections (2) and (3) make rules, which shall be binding within the province of its society, as to -
- (a) conduct which on the part of any practitioner or candidate attorney, or former candidate attorney referred to in section 8(4), shall constitute unprofessional or dishonourable or unworthy conduct;  
[Para. (a) substituted by s. 26 of Act 87/89]
  - (b) service under articles of clerkship or a contract of service and the circumstances under and the conditions on which articles of clerkship or a contract of service may be cancelled by the council;  
[Para. (b) substituted by s. 18 of Act 115/93]
  - (c) the conditions relating to conduct and activities on which persons other than practitioners may be employed by practitioners to assist them in their practices;
  - (d) the appointment by the council of persons as honorary members of its society, the rights and privileges of such honorary members and the termination of their membership;
  - (dA) legal practice management courses to be completed by attorneys as contemplated in section 13B and determine the period within which such courses must be completed;  
[Para. (dA) inserted by s. 9 of Act 55/2003 w.e.f. 14 August 2009]
  - (e) any matter not provided for in this section which by this Chapter is required or permitted to be prescribed; and
  - (f) generally, all matters which the council considers it necessary or expedient to prescribe in order that the purposes of this Chapter may be achieved.
- (2) Any rule referred to in subsection (1) shall be made with the approval of the Chief Justice of South Africa and, if the Chief Justice is of the opinion that the interests of the public would be adversely affected by the provisions of any such rule, with the approval of the State President.
- (3) A council shall not submit any draft rule to the Chief Justice unless -
- (a) if the draft rule is submitted by the council of -
    - (i) the Law Society of the Cape of Good Hope;
    - (ii) the Law Society of the Orange Free State;
    - (iii) the Natal Law Society; or
    - (iv) .....  
[Subpara. (iv) deleted by s. 18 of Act 115/93]
- such draft rule has been approved by the majority of the members of the society concerned present or represented at a general meeting of that society; and

- (b) the council has consulted with the judge president of every provincial division in the province of its society and with the chief justice of every high court in such province.
- (4) Rules made under subsection (1) shall come into operation on the date of publication of such rules in the *Gazette* or on a subsequent date fixed in the notice of publication.
- (5) Any assessment of fees in terms of a rule contemplated in section 69(h) shall be subject to review in all respects as if it were a determination by such officer of a provincial division or high court as is charged with the taxation of fees and charges.
- (6) In this section "High Court" means any high court constituted in terms of section 34(1) of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971).  
[Subs. (6) substituted by s. 18 of Act 115/93]

#### **75. Limitation of liability**

No action for damages shall lie against any society, council, member of a council, official or employee of any society or any person with whom a council has concluded any agreement referred to in section 59(g)(ii), in respect of anything done in good faith in terms of this Act.

#### **76. Society may institute private prosecution**

Any society may, by any person authorized thereto in writing by his president, institute a prosecution for any offence in terms of this Act or of any regulation made thereunder, and the provisions of the laws relating to private prosecutions shall apply to such prosecution as if a society is a public body.

#### **77. Particular provisions relating to persons exercising legal profession in Transkei or Ciskei**

- (1) Any person who exercises in Transkei or Ciskei a legal profession equivalent to that of a practitioner, shall be a member of the society known as the Law Society of the Cape of Good Hope, if such person is in terms of a law of Transkei or Ciskei, as the case may be, permitted to be a member of that society.
- (2) The society referred to in subsection (1), may perform in respect of any person who exercises in Transkei or Ciskei a legal profession referred to in that subsection, or who undergoes training in Transkei or Ciskei in order to qualify himself for such profession, such functions as are assigned in terms of this Chapter to the society in respect of practitioners or candidate attorneys or former candidate attorneys referred to in section 8(4), if a law of Transkei or Ciskei, as the case may be, authorizes it to do so.

[Subs. (2) substituted by s. 27 of Act 87/89]

[S. 77 substituted by s. 2 of Act 116/81]

### **CHAPTER IV**

#### **GENERAL**

#### **78. Trust accounts**

- (1) Any practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person.
- (2)
  - (a) Any practitioner may invest in a separate trust savings or other interest-bearing account opened by him with any banking institution or building society any money deposited in his trust banking account which is not immediately required for any particular purpose.

- (b) Any trust savings or other interest-bearing account referred to in paragraph (a) shall contain a reference to this subsection.
- (2A) Any separate trust savings or other interest-bearing account -
  - (a) which is opened by a practitioner for the purpose of investing therein, on the instructions of any person, any money deposited in his trust banking account; and
  - (b) over which the practitioner exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity,shall contain a reference to this subsection.
- (3) The interest, if any, on money deposited in terms of subsection (1) and the interest on money invested in terms of subsection (2) shall be paid over to the fund by the practitioner concerned at the prescribed time and in the manner prescribed.
- (4) Any practising practitioner shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person, of any money invested by him in a trust savings or other interest-bearing account referred to in subsection (2) or (2A) and of any interest on money so invested which is paid over or credited to him.
- (5) The council of the society of the province in which a practitioner practises may by itself or through its nominee and at its own cost, inspect the accounting records of any practitioner in order to satisfy itself that the provisions of subsections (1), (2), (2A), (3) and (4) are being observed, and, if on such inspection it is found that such practitioner has not complied with such provisions, the council may write up the accounting records of such practitioner and recover the costs of the inspection or of such writing up, as the case may be, from that practitioner.
- (6) For the purposes of subsections (4) and (5), "accounting records" includes any record or document kept by or in the custody or under the control of any practitioner which relates to -
  - (a) money invested in a trust savings or other interest-bearing account referred to in subsection (2) or (2A);
  - (b) interest on money so invested;
  - (c) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which such practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator, or
  - (d) his practice.
- (7) No amount standing to the credit of any practitioner's trust account shall be regarded as forming part of the assets of the practitioner, or may be attached on behalf of any creditor of such practitioner: Provided that any excess remaining after payment of all claims of persons whose money has, or should have, been deposited or invested in such trust account, and all claims in respect of interest on money so invested, shall be deemed to form part of the assets of such practitioner.
- (8) The court may on application made by the society of the province concerned, and on good cause shown, prohibit any practitioner from operating in any way on his trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.
- (9)
  - (a) If any practitioner -

- (i) dies;
- (ii) becomes insolvent;
- (iii) in the case of a professional company, is liquidated or placed under judicial management, whether provisionally or finally;
- (iv) is struck off the roll or suspended from practice;
- (v) is declared by a competent court to be incapable of managing his own affairs; or
- (vi) abandons his practice or ceases to practise,

the Master of the Supreme Court may, on application made by the society of the province concerned or by any person having an interest in the trust account of that practitioner, appoint a *curator bonis* to control and administer such account, with such of the prescribed rights, duties and powers as the Master may deem fit.

- (b) Any person who is of the opinion that he has been prejudiced by a decision of a Master in terms of paragraph (a), may, within 30 days after the decision became known to him, appeal against that decision to the court, and the court may confirm or vary the said decision or give any such other decision as in its opinion the Master should have given.
  - (c) Nothing in this subsection or in subsection (7) or (8) contained shall be construed as preventing any practitioner who was practising in partnership with a practitioner referred to in paragraph (a) of this subsection, from operating on the trust account of the partnership.
- (10) Any banking institution or building society at which a practitioner keeps his trust account or any separate account forming part of his trust account, shall not by reason only of the name or style by which the account concerned is distinguished, be deemed to have knowledge that the practitioner is not entitled to all money paid into such account or with which such account is credited: Provided that the provisions of this subsection shall not relieve such banking institution or building society from any liability or obligation which legally exists and to which it would be subject apart from the provisions of this Act.
- (11) Notwithstanding anything in subsection (10) contained, a banking institution or building society at which a practitioner keeps his trust account or any separate account forming part of his trust account, shall not, in respect of any liability of the practitioner to such banking institution or building society, not being a liability arising out of or in connection with any such account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against money standing to the credit of any such account.
- (12) The provisions of this section shall not be construed -
- (a) as depriving any banking institution or building society of any existing right;
  - (b) as taking away or affecting any claim, lien, counterclaim, right of set-off, or charge of any kind which a practitioner has against or on any money held or received by him on account of any person;
  - (c) as relieving any practitioner who has invested any money referred to in subsection (1) in a trust savings or other interest-bearing account referred to in subsection (2) or (2A), of any liability in respect thereof.
- (13) Any banking institution or building society at which a practitioner keeps his trust account or any separate account forming part of his trust account, shall, if so directed by the

council of the society of the province in which such practitioner is practising, furnish the council with a signed certificate which indicates the balance of such account at the date or dates stated by the council.

(14) This section shall not apply to the State Attorney or a member of his professional staff.  
[S. 78 amended by s. 1 of Act 103/83 and s. 6 of Act 80/85 and substituted by s. 28 of Act 87/89]

## **79. Trust property not to form part of assets of practitioner**

Notwithstanding anything to the contrary in any law or the common law contained, trust property which is expressly registered in the name of a practitioner, or jointly in the name of a practitioner and any other person in his or their capacity as administrator, trustee, curator, or agent, as the case may be, shall not form part of the assets of that practitioner or other person.

## **79A. Recovery of costs by law clinics**

- (1) Notwithstanding the provisions of section 83(6) of this Act and section 9(2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), whenever in any legal proceedings or any dispute in respect of which legal services are rendered to a litigant or other person by a law clinic, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement, or otherwise, it shall be deemed that such litigant or other person has ceded his or her rights to such costs to the law clinic.
- (2)
  - (a) A litigant or person referred to in subsection (1) or the law clinic rendering legal services to such litigant or person may, at any time before payment of the costs referred to in subsection (1), give notice in writing to-
    - (i) the person liable for such costs; and
    - (ii) the registrar or clerk of the court concerned, that the legal services concerned are being or have been rendered by that law clinic.
  - (b) Where notice has been given as contemplated in paragraph (a), the law clinic concerned may proceed in its own name to have such costs taxed, where appropriate, and to recover them, without being substituted on the record of the legal proceedings concerned, if any, for the litigant or person referred to in subsection (1).
- (3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal services were rendered by the law clinic, actually incurred the costs of obtaining the services of the attorney or advocate acting on his or her behalf in the proceedings or dispute concerned.  
[S. 79A inserted by s. 20 of Act 62/2000]

## **80. Minister may prescribe fees**

The Minister may, after consultation with the presidents of the various societies, by notice in the *Gazette* prescribe a scale of fees which shall be paid in respect of the -

- (a) examination of articles of clerkship or a contract of service in terms of section 5;  
[Para. (a) substituted by s. 19 of Act 115/93]
- (b) registration of articles of clerkship or a contract of service;  
[Para. (b) substituted by s. 19 of Act 115/93]
- (bA) issuing of a certificate in terms of section 8(3);  
[Para. (bA) inserted by s. 10 of Act 108/84]
- (c) examination of documents in terms of section 10(5);



- (d) registration of a cession of articles of clerkship or a contract of service in terms of section 10 (5);

[Para. (d) substituted by s. 12 of Act 104/96]

- (e) admission or readmission as an attorney;

- (f) admission or readmission as a notary;

- (g) admission or readmission as a conveyancer;

- (h) enrolment as a practitioner under section 20.

- (i) the completion of legal practice management courses as contemplated in section 13B.

[Para. (i) inserted by s. 10 of Act 55/2003 w.e.f. 14 August 2009]

[S. 80 amended by s. 10 of Act 108/84]

## 81. Regulations

- (1) The Minister may after consultation with, except in the case of regulations made under paragraph (f) or (g), the Chief Justice of South Africa and after consultation with the presidents of the various societies make regulations determining the following:

- (a) the countries or territories which shall be approved of for the purposes of section 13(1) or 17 and be designated for the purposes of section 13(1)(a)(ii), and the class or classes of persons which shall be designated for the purposes of sections 13(1) and 17;

[Para. (a) substituted by s. 5 of Act 76/80 and s. 4 of Act 60/82]

- (b) the service which is recognized as appropriate legal experience for the purposes of section 2A(c) and the period which may expire between the date on which such service has been completed and the date on which exemption from articles of clerkship may be granted;

[Para. (b) substituted by s. 5 of Act 76/80, deleted by s. 4 of Act 56/83 and inserted by s. 20 of Act 115/93]

- (c) whether any person referred to in section 13(1) shall be exempted or not from passing any practical examination referred to in section 14(1)(a), (b) or (c) or any part thereof before being admitted and enrolled as an attorney under this Act;

- (d) the circumstances under which any person shall, for the purposes of admission as a notary or conveyancer under section 18, be exempted from passing the practical examination referred to in section 14(1)(d) or (e);

- (e) the rights, duties and powers of a curator *bonis* appointed under section 78(9);

- (f) the time when and the manner in which any interest referred to in section 78(3) shall be paid to the fund;

- (g) the acts which shall not be performed by any person other than a practitioner or an agent referred to in section 22 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

- (h) the certificate which shall be endorsed on any document specified in the regulations by any person preparing such document for or on behalf of any other person;

- (i) .....

[Para. (i) substituted by s. 29 of Act 87/89 and deleted by s. 4 of Act 33/95]

- (j) the conditions for the purposes of section 13A on which a person contemplated in section 13(1)(a)(ii) who has been admitted and enrolled as an attorney in terms of this Act, shall be allowed to practise before being entitled to practise on his own account.

[Para. (j) inserted by s. 5 of Act 76/80]

[Sub.s. (1) amended by s. 4 of Act 56/83]

- (2) The Minister may, for the purposes of the provisions of this Act relating to the fund, with the concurrence of the Chief Justice of South Africa and after consultation with the presidents of the several societies, make regulations relating to -
  - (a) the method of payment and recovery of any contribution to the fund;
  - (b) the investment of the money contemplated in section 38(3);  
[Para. (b) substituted by s. 7 of Act 80/85]
  - (bA) the investment of the money available for investment in terms of section 38(4);  
[Para. (bA) inserted by s. 7 of Act 80/85]
  - (c) the form in which and the periods within which notice is to be given to a society and the board of control in respect of claims against the fund and the particulars thereof, and the conditions subject to which and the extent to which the board of control may settle claims without recourse to legal proceedings;
  - (d) the form of certificates to be issued to practitioners and of declarations, applications, notices and documents to be used in relation to any application or refusal of any application relating to the fund;
  - (e) the obtaining of evidence for the purposes of the fund that any person has been admitted to practise or is still practising or has ceased to practise, or as to the reason why any person has discontinued practice, and generally for the obtaining of information which is considered necessary or desirable for the purposes of determining the merits of applications for fidelity fund certificates or matters related thereto;
  - (f) the election of a chairman, vice-chairman and other office-bearers of the board of control;
  - (g) the appointment, remuneration and dismissal of officers of the board of control;
  - (h) the opening of offices for and the regulation of the management and administration of the board of control, including the manner and form in which all agreements, deeds and documents shall be drawn up and executed by, for or on behalf of the board of control;
  - (i) the authorization of the board of control or any committee thereof to subpoena and to examine on oath any person whose evidence is deemed necessary to enable the said board or committee to decide on the validity of any claim submitted against the fund;
  - (j) generally, such other matters which are considered necessary for the implementation of the intention of this Act in respect of the fund.
- (3) Regulations made under subsection (1)(g) may provide for exemption, either temporarily or permanently or partially or wholly, from the prohibitions therein contained in respect of particular persons or categories of persons or in respect of any specified matter connected with any act mentioned in such regulations: Provided that no exemption granted permanently shall be cancelled or withdrawn unless such cancellation or withdrawal has been approved by resolution of Parliament.

[Subs. (3) amended by s. 29 of Act 87/89]

- (4) Any regulation made under subsection (1)(h) may provide for penalties by way of a fine not exceeding R1 000 or imprisonment for a period not exceeding 3 months for any contravention thereof or failure to comply therewith.  
[Subs. (4) substituted by s. 29 of Act 87/89]
- (5) Regulations made by the Minister under subsection (2) shall be published in the *Gazette* and shall thereupon have the same force and effect as if they were enacted in this Act.

## 82. Rules of court

The Chief Justice may, after consultation with the judges president of the several provincial divisions and with the presidents of the several societies, make rules of court so as to provide for

- (a) the qualifications of examiners appointed under section 14;
- (b) the manner in which examinations referred to in section 14 shall be conducted;
- (c) the registration fees payable by candidates for the examinations referred to in section 14;
- (d) the procedure to be followed and the information to be supplied to the court by any applicant for admission or readmission under this Act;  
[Para. (d) substituted by s. 13 of Act 104/96]
- (e) the nature and form of the oath which shall be taken and signed by any person before admission and enrolment under this Act;

any other matter considered necessary for giving effect to the provisions of this Act, excluding Chapters II and III.

## 83. Offences

- (1) No person other than a practitioner shall practise or hold himself out as a practitioner or pretend to be, or make use of any name, title or addition or description implying or creating the impression that he is a practitioner or is recognized by law as such or perform any act which he is in terms of any regulations made under section 81(1)(g) prohibited from performing.
- (2) No person shall orally or by means of any written or printed matter or in any other manner, directly or indirectly, either for himself or for any other person, canvass, advertise or tout for, or make known his preparedness or that of such other person to undertake any work, whether for or without remuneration, in connection with the drawing up of a will or other testamentary writing, 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.  
[Subs. (2) substituted by s. 5 of Act 60/82]
- (3) Notwithstanding anything to the contrary in any law contained, no person other than an advocate or an attorney or an agent referred to in section 22 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall appear for or on behalf of any other person in any proceedings or categories of proceedings which are held under the provisions of any law and which have been designated by the Minister by notice in the *Gazette* after consultation with the presidents of the various societies.
- (4) Any practitioner who has been struck off the roll or suspended from practice shall not, while he is so struck off or suspended, continue to practise as a practitioner directly or indirectly for his own account or in partnership or association with any other person, or, except with the written consent of the society concerned, and, if he is a person who, in

terms of section 34(1)(b) of the Internal Security Act, 1982 (Act No. 74 of 1982), has been struck off the roll, also with the written consent of the Minister, be employed in any capacity connected with the profession of a practitioner.

[Subs. (4) substituted by s. 30 of Act 87/89]

- (5) A practitioner shall not, except with the written consent of the society concerned, and, in the case of a person who, in terms of section 34(1)(b) of the Internal Security Act, 1982, has been struck off the roll, also with the written consent of the Minister, employ in any capacity any person who has been struck off the roll or suspended from practice, while such person is so struck off or suspended.

[Subs. (5) substituted by s. 30 of Act 87/89]

- (6) A practitioner shall not make over to or share or divide with any person other than a practitioner in, or a legal practitioner outside, the Republic, either by way of partnership, commission or allowance or in any other manner any portion of his professional fees.

- (7) A person who contravenes any of the provisions of subsections (1) to (6) or of section 13A shall be guilty of an offence and on conviction liable to a fine not exceeding R2 000 in respect of each offence.

[Subs. (7) substituted by s. 6 of Act 76/80 and s. 30 of Act 87/89]

(8)

- (a) Any person, except a practising practitioner, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or to any other person, draws up or prepares or causes to be drawn up or prepared any of the following documents, namely -

- (i) any agreement, deed or writing relating to immovable property or to any right in or to immovable property, other than contracts of lease for periods not exceeding five years, conditions of sale or brokers' notes;
- (ii) any will or other testamentary writing;
- (iii) any memorandum or articles of association or prospectus of any company;
- (iv) any agreement, deed or writing relating to the creation or dissolution of any partnership or any variation of the terms thereof;
- (v) any instrument or document relating to or required or intended for use in any action, suit or other proceeding in a court of civil jurisdiction within the Republic,

shall be guilty of an offence and on conviction liable in respect of each offence to a fine not exceeding R2 000 and in default of payment thereof to imprisonment not exceeding six months.

[Para. (a) amended by s. 30 of Act 87/89]

- (b) The expression "fee, gain or reward, direct or indirect" referred to in paragraph (a) shall not apply to -

- (i) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his employer from the person on whose behalf the document was drawn or prepared; or
- (ii) any commission or other remuneration to which any person is or may be entitled either by law or otherwise for services rendered in his capacity as executor, administrator, trustee, curator, tutor or guardian by virtue of his appointment as such by any court of law or under the provisions of any will or other testamentary writing, or as agent for any person holding such appointment.

- (9) Any practitioner who does not comply with the provisions of section 78(1), (2), (2A), (3) or (4), shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000.

[Subs. (9) substituted by s. 30 of Act 87/89]

- (10) Any person who directly or indirectly purports to act as a practitioner or to practice on his own account or in partnership without being in possession of a fidelity fund certificate, shall be guilty of an offence and on conviction liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

[Subs. (10) substituted by s. 30 of Act 87/89]

- (11) The provisions of subsection (2) shall not apply -

- (a) to any board of executors, or trust company (not being a private company within the meaning of section 104 of the Companies Act 1926 (Act No. 46 of 1926)), licensed as such on or before 31 December 1938 under the Licences Consolidation Act, 1925 (Act No. 32 of 1925), which -
- (i) has in its name or title words indicating that its objects or functions include work in connection with a matter mentioned in subsection (2); or
- (ii) on signboards, nameplates or notices exhibited on the premises in which it carries on business, on its stationery, or on its usual annual calendars or in any advertisement in the public press, or in its annual reports or any report of the proceedings at an annual general meeting, makes known by a simple statement to that effect that its objects or functions include any such work;  
[Para. (a) amended by s. 1 of Act 19/96]
- (b) to any person who in reply to a direct enquiry voluntarily made to him by someone else makes known the preparedness of himself or some other person to perform any such work;
- (c) to any shareholder or employee of a board of executors or trust company mentioned in paragraph (a) who canvasses another shareholder or employee of the same board of executors or trust company on behalf of such board or company;
- (d) to any practitioner or any commercial banking institution or any board of executors or trust company who indicates in any public notice required by law in connection with the liquidation or administration of any estate, that he or it does such work;
- (e) to any practitioner who makes known in such manner as may be approved by the society of the province in which he practises, that he does such work;
- (f) to any person (not being a board of executors or trust company mentioned in paragraph (a) or a company registered under the Companies Act, 1926 (Act No. 46 of 1926), or a commercial banking institution) -
- (i) who on 21 February 1941 held a valid broker's or agent's licence issued under the Licences' Consolidation Act, 1925 (Act No. 32 of 1925);
- (ii) .....

[Subpara. (ii) deleted by s. 1 of Act 49/96]

who on a signboard, nameplate or notice exhibited on the premises where he carries on business, on his stationery or in any advertisement in the public press, makes known by a simple statement to that effect that his business includes any such work;

[Para. (f) amended by s. 1 of Act 49/96]

- (g) to any accountant who on 21 February 1941, was entitled to use any designation provided for by the Chartered Accountants Designation (Private) Act, 1927 (Act No. 13 of 1927), and who still is so entitled, who on a signboard or nameplate exhibited on the premises in which he carries on business, or on his stationery, makes known by a simple statement to that effect that his business includes any such work, provided he had on the date mentioned by such means made known that his business included such work.

[Para. (g) amended by s. 1 of Act 49/96]

(12) The provisions of subsection (8) shall not apply to -

- (a) any person in the employment of a practising practitioner drawing or preparing or causing to be drawn or prepared any of the documents concerned in the course of his employment and on behalf of his employer;
- (b) any agent referred to in section 22 of the Magistrates' Courts Act, 1944, and any person in the employment of such agent, acting in the course of his employment and on behalf of his employer, drawing or preparing or causing to be drawn or prepared any of the documents concerned, in so far as such agent was prior to the commencement of this Act entitled to draw or prepare or cause to be drawn or prepared any of the aforementioned documents and to charge a fee therefor;
- (c) any person in the employment of the State, the Railway Administration, a provincial administration, the administration of the Land and Agricultural Bank of South Africa drawing or preparing or causing to be drawn or prepared any of the documents concerned in the course of his duty;

[Para. (c) amended by s. 1 of Act 49/96]

- (d) any trustee under the laws relating to insolvency or any executor, administrator or curator or any liquidator of a company drawing or preparing any of the documents concerned in the course of his statutory duties and receiving such fees as may be allowed by law;
- (e) any person -
  - (i) who on 31 December 1938 was the manager or secretary or attorney in the employment of a board of executors or trust company or any branch thereof licensed as such under the Licences Consolidation Act 1925 (Act No. 32 of 1925);

- (ii) .....

[Subpara. (ii) deleted by s. 1 of Act 49/96]

in respect of any such document drawn or prepared by him in such capacity in so far as immediately prior to the relevant date aforementioned he in his said capacity was entitled to draw or prepare such a document and to charge a fee therefor,

[Para. (e) amended by s. 1 of Act 49/96]

- (f) any practising advocate in so far as he would be entitled but for the passing of this Act to draw or prepare any of the aforesaid documents in the ordinary course of his profession.
- (g) any board of executors or trust company which, on 27 October 1967, was licensed as such under the Licences Act, 1962 (Act No. 44 of 1962), and carrying on business of which a substantial part consisted of the liquidation or distribution of the estates of deceased persons, if the person in the service of any such institution, who draws up or prepares or causes to be drawn up or prepared the documents referred to in subsection (8)(a)(ii), satisfies all the academic

requirements to be admitted as an advocate or attorney in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or this Act, as the case may be.

[Para. (g) inserted by s. 9 of Act 122/98]

(13) Any practitioner who contravenes subsection (1), (3) or (4) of section 78 or subsection (2), (5) or (6) of this section shall also be guilty of unprofessional conduct and be liable to be struck off the roll or suspended from practice.

(14) Subsection (8) shall not in any way affect the provisions of the Natal Conveyancers Act, 1926 (Act No. 24 of 1926).

(15)

(a) Any person who has been summoned under section 71 who -

(i) fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the person presiding at the enquiry;

(ii) refuses to take the oath or make an affirmation when required by the person presiding at the enquiry to do so;

(iii) fails, without sufficient cause, to produce any book, document, record or thing which he has in terms of section 71(2) been required to produce;

(iv) fails, without sufficient cause, to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him,

shall be guilty of an offence and on conviction liable to a fine not exceeding R400.

[Para. (a) amended by s. 30 of Act 87/89]

(b) Any person who at an enquiry referred to in section 71 gives false evidence after having been sworn or after having made an affirmation, shall be guilty of an offence and on conviction liable to the penalties prescribed by the law in respect of perjury.

#### **84. Society of Cape Province may exercise certain powers in respect of certain matters and persons in Transkei and Ciskei**

The society of the province of the Cape of Good Hope, and its council, president and secretary, may in respect of matters and persons in Transkei and Ciskei perform any functions which are similar to the functions assigned to them by Chapter I or this Chapter and which are assigned to them in respect of such matters and persons in Transkei and Ciskei, respectively.

[S. 84 substituted by s. 3 of Act 116/81]

#### **84A. Law Society of Transvaal may exercise certain powers in respect of practitioners practising in areas of former Republics of Bophuthatswana and Venda**

Notwithstanding any other law, the Law Society of the Transvaal and its council, president and secretary, may in respect of practitioners practising in the areas of the former Republics of Bophuthatswana and Venda, perform any function which is similar to a function assigned to that Law Society, council, president or secretary, as the case may be, by section 22(1)(d) or (e), (2), 67(2), 69(a), (e) or (m), 70, 71, 72, 73, 74(1)(a), (e) and (f), 78, 81(1)(e) and (f), (2)(a), (d), (e), (i) or (j), (5) or 83(9), (13) or (15).

[S. 84A inserted by s. 5 of Act 115/98]

**85. ....**

[S. 85 repealed by s. 1 of Act 49/96]

**86. Repeal of laws and savings**

- (1) Subject to the provisions of subsections (2) and (3), the laws set out in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2)
  - (a) Any person referred to in subsection (1) of section 34 of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934), who in terms of that subsection was immediately prior to the commencement of this Act entitled to be admitted and enrolled as an attorney shall continue to be so entitled.
  - (b) The provisions of this Act shall not be construed so as to deprive any person referred to in subsection (2) of the said section 34 of the right to be admitted as an attorney or a notary or conveyancer or to practise in Natal as an advocate as well as an attorney.
  - (c)
    - (i) Any person referred to in subsection (4) of the said section 34 shall notwithstanding the provisions of section 15(1)(b)(iii) of this Act be entitled to be admitted as an attorney, provided he complies with all the other requirements of this Act.  
[Subpara. (i) substituted by s. 31 of Act 87/89]
    - (ii) Any person referred to in subsection (5) of the said section 34 shall receive from his employer the salary referred to in that subsection from the date or from the expiry of the period referred to in that subsection.
  - (d)
    - (i) Any articled clerk referred to in subsection (6) of the said section 34, shall be entitled to appear as provided in that subsection, and the principal of any such clerk shall be entitled to charge fees in respect of such appearance as if he had appeared himself.
    - (ii) The provisions of section 8(3) of this Act shall *mutatis mutandis* apply in respect of an articled clerk referred to in subparagraph (i).
  - (e)
    - (i) The Natal Provincial Division of the Supreme Court may remove the name of any person referred to in subsection (1) of section 35 of the Attorneys, Notaries and Conveyancers Admission Act, 1934, from the roll of attorneys, notaries and conveyancers upon an application of which notice was given as mentioned in that section, and thereupon the provisions referred to in that subsection shall apply in respect of such person.
    - (ii) Such division may upon an application, of which notice was given as mentioned in that section, of any person whose name was removed from the roll of attorneys, notaries and conveyancers under subparagraph (i), again admit such person as an attorney or a notary or conveyancer, subject to the provisions of subsection (2) of the said section 35.
    - (iii) The provisions of subsection (3) of section 35 shall apply in respect of an application referred to in this paragraph and in respect of the order of admission granted on the ground of such application.
- (3) Anything done or deemed to have been done under any provision of a law repealed by subsection (1), shall be deemed to have been done under the corresponding provision of this Act.

## 87. Short title

This Act shall be called the Attorneys Act, 1979.



**Schedule**

**LAWS REPEALED**

<b>No. and year of law</b>	<b>Title</b>	<b>Extent of repeal</b>
-	South Africa Act, 1909	Section 115
Act No. 23 of 1934	Attorneys, Notaries and Conveyancers Admission Act, 1934	The whole
Act No. 16 of 1938	Attorneys, Notaries and Conveyancers Admission (Amendment) Act, 1938	The whole
Act No. 19 of 1941	Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941	The whole (except section 5)
Act No. 31 of 1944	Attorneys' Admission (Military Service) Act, 1944	The whole
Act No. 22 of 1949	Attorneys, Notaries and Conveyancers Admission Amendment Act, 1949	The whole
Act No. 32 of 1952	General Law Amendment Act, 1952	Section 11
Act No. 18 of 1956	Legal Practitioners' Amendment Act, 1956	The whole
Act No. 31 of 1957	State Attorney Amendment Act, 1957	The whole
Act No. 74 of 1959	Legal Practitioners' Fidelity Fund Amendment Act, 1959	The whole
Act No. 82 of 1959	Universities Amendment Act, 1959	Sections 11, 12 and 13
Act No. 81 of 1962	Legal Practitioners' Amendment Act, 1962.	The whole
Act No. 11 of 1963	Women Legal Practitioners Act, 1963	The whole
Act No. 63 of 1964	Attorneys, Notaries and Conveyancers Admission Amendment Act, 1964	The whole
Act No. 26 of 1965	Attorneys, Notaries and Conveyancers Admission Amendment Act, 1965	The whole
Act No. 67 of 1967	Attorneys, Notaries and Conveyancers Admission Amendment Act, 1967	The whole
Act No. 70 of 1968	General Law Amendment Act, 1968	Sections 14 to 18
Act No. 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	Section 14
Act No. 93 of 1970	Attorneys, Notaries and Conveyancers Admission Amendment Act, 1970	The whole
Act No. 71 of 1971	Legal Practitioners' Fidelity Fund Amendment Act, 1971	The whole
Act No. 102 of 1972	General Law Amendment Act, 1972	Section 6
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 5
Act No. 94 of 1974	Second General Law Amendment Act, 1974	Section 21
Act No. 41 of 1975	Law Societies' Act, 1975	The whole
Act No. 57 of 1975	General Law Amendment Act, 1975	Sections 2 to 6
Act No. 14 of 1976	Attorneys Amendment Act, 1976	The whole
Act No. 115 of 1976	Second Attorneys Amendment Act, 1976	The whole
Act No. 4 of 1977	Legal Practitioners' Fidelity Fund Amendment Act, 1977	The whole
Act No. 81 of 1978	Attorneys Amendment Act, 1978	The whole