

THE NATAL LAW SOCIETY

RULES

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RULES

Notice 161 of 1979, as amended.

The following Rules of the Natal Law Society have been made by the Council in terms of Section 74(1) of Act 53 of 1979 and, after having been approved by the majority of members at a General Meeting, and by the Chief Justice of South Africa, were published in Government Gazette No. 6316 dated 2 March 1979, and have since been amended by:

GG 6848 dated 15.2.1980
GG 7924 dated 20.11.1981
GG 9316 dated 13.7.1984
GG 10100 dated 21.2.1986
GG 10679 dated 3.4.1987
GG 12300 dated 23.2.1990
GG 13933 dated 24.4.1992
GG 14823 dated 28.5.1993
GG 15575 dated 25.3.1994
GG 16227 dated 27.1.1995
GG 16704 dated 6.10.1995
GG 17042 dated 22.3.1996
GG 17669 dated 20.12.1996
GG 18952 dated 12.6.1998
GG 19245 dated 18.9.1998
GG 22011 dated 2.2.2001
GG 23407 dated 17.5.2002
GG 24093 dated 29.11.2002
GG 25217 dated 25.7.2003
GG 25778 dated 5.12.2003
GG 27370 dated 18.03.2005
GG 29173 dated 8.09.2006
GG 29669 dated 9.03.2007

1. Definitions

In these Rules, unless the context otherwise indicates or a contrary definition is set out hereunder, words or phrases have the meanings defined in the Act, and -

"accountant" means a person who is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act 80 of 1991, and who practises as a public accountant as defined in that Act;

[amended by GG 29173 dated 8/9/2006.]

“accounting period” means

- (a) a period not exceeding six months in duration, the first period commencing on the expiry of the immediately preceding closing date of the accounting records of the firm after the commencement of this rule and each period thereafter commencing on the expiry of the immediately preceding period;
- (b) where there is no such immediately preceding period a period not exceeding six months in duration, the first period commencing on the date on which this rule applies to the firm or, having ceased to apply, applies again to that firm and each period thereafter commencing on the expiry of the immediately preceding period;
[inserted by GG 25778 dated 5/12/2003.]

"accounting records" means the records which a firm is required to keep in terms of Rule 20;

"Act" means the Attorneys Act (Act 53 of 1979);

“balancing of books” means

the preparation and bringing to a balance a trial balance being a schedule or list of balances both debit and credit extracted from the accounts in both business and trust ledgers and including the reconciled cash book balances;

[inserted by GG 25778 dated 5/12/2003.]

"BLA" means the Black Lawyers Association, a voluntary Association of Lawyers;

"business account transactions" means transactions in regard to which records are required to be kept in terms of Rule 20;

"Constituency" means either (a) BLA; or (b) NADEL; or (c) Attorneys who are not members of BLA or NADEL;

"Council" means the Council of the Society;

"Complaints Committee" means a committee appointed in terms of section 67(1) of the Act;

"enquiry" means a disciplinary enquiry held by the Council or a Complaints Committee;

"firm" means two or more members practising in partnership, a member practising for his own account or a professional company as defined in the Act;

"Greater Durban" means the Magisterial Districts of Durban, Pinetown, Chatsworth and Verulam;

"member" means a person who by virtue of section 57 of the Act is a member of the Society;

"NADEL" means the National Association of Democratic Lawyers, a voluntary Association of Lawyers;

"partner" includes the shareholders of a professional company as defined in the Act;

"person" includes a firm and body corporate;

"President" and **"Vice-President"** means respectively the President and either Vice-President of the Society;

"Secretary" means the Secretary appointed in terms of Rule 11 and shall include any acting, deputy or assistant secretary;

"Society" means the Natal Law Society;

"subscription" means a subscription in terms of Rule 19;

"trust account transactions" means transactions in regard to which records are required to be kept in terms of Rule 21;

"trust banking account" means a banking account kept by an attorney in terms of section 78(1) of the Act;

[amended by GG 29173 dated 8/9/2006.]

"trust cash" means any cash held in trust by a firm other than in a trust banking account or in a trust investment account;

"trust creditor" means a person on whose account money is held or received as contemplated by section 78(1) or invested as contemplated by section 78(2) or 78(2A) of the Act;

"trust investment account" means and includes all accounts kept by a firm in terms of section 78(2)(a) or 78(2A) of the Act;

[amended by GG 29173 dated 8/9/2006.]

"trust money" means money held or received on account of any person as contemplated by section 78(1) or invested as contemplated by section 78(2) or 78(2A) of the Act;

"trust savings account" means a savings or interest bearing account kept by a member in terms of section 78 of the Act;

"year" means the financial year of the Society.

2. The Council

- (a) The affairs of the Society shall be managed and controlled by the Council of the Society which shall consist of 20 members, of whom 5 shall be attorneys who are members of BLA; 5 shall be attorneys who are members of NADEL and 10 shall be members who are not members of BLA or NADEL;
- (b) Of the 10 non-BLA and non-NADEL members of the Council, 5 shall be members practising in Greater Durban, 3 shall be members practising in the Pietermaritzburg Magisterial District and 2 shall be members practising elsewhere in the Province of Natal, as it existed prior to the adoption of the Interim Constitution, Act 200 of 1993;
- (c) Of the 5 BLA and 5 NADEL members of the Council, at least 1 each shall be members practising in Greater Durban, at least 1 each shall be members practising in the Pietermaritzburg Magisterial District and at least 1 each shall be members practising outside Greater Durban and outside the Pietermaritzburg Magisterial District.

3. Annual General Meetings

- (a) A general meeting of the members of the Society shall be convened annually by the Council.
- (b) An annual general meeting shall be held at a time, date and place fixed by the Council provided that it shall take place not less than 10 calendar months and not more than 13 calendar months after the date of the last preceding annual general meeting.
- (c) Notice of every annual general meeting shall be posted by the Secretary to each member of the Society at least 49 days before the date of the meeting.
- (d) Such notice shall state the time, date and place of the meeting and the business to be transacted at the meeting, which shall include-
 - (i) confirmation of the Minutes of the previous meeting;
 - (ii) the consideration of the President's report for the preceding year and matters arising therefrom;
 - (iii) the consideration and adoption, with or without modification, of the financial statements of the Society for the preceding year and the remuneration of the auditor;

- (iv) the appointment of an auditor;
 - (v) the result of the election of Councillors if any elections have been held that year;
 - (vi) the consideration and transaction of any special business of which due notice has been given by any member in terms of subrule (g) of this Rule;
 - (vii) the consideration and transaction of any special business which the Council wishes to submit to the meeting;
 - (viii) the consideration of any other matter which the Chairman may allow to be raised for discussion, provided that no such matter shall be voted upon at the meeting.
- (e) The President's report on the events of the preceding year shall be posted by the Secretary to each member of the Society at least 21 days before the date of the meeting. The report shall contain or be accompanied by the audited financial statements of the Society, and a list of Councillors indicating the number of meetings attended by each Councillor during the year.
 - (f) The order of the business at an annual general meeting shall, unless varied by the Chairman with the approval of the meeting, be the order set out in the notice of meeting.
 - (g) Notice in writing of any special business which a member wishes to have considered at the annual general meeting shall be given to the Secretary at least 32 days before the date of the meeting. Such notice shall contain the motion to be proposed. Notice of such special business shall be posted to each member by the Secretary at least 21 days prior to the date of the meeting.

4. Special General Meetings

- (a) The Council may at any time and shall within 14 days of receiving a written requisition therefore, signed by not less than 20 members, convene a special general meeting of which written notice of not less than 21 days shall be posted to all members of the Society; save that in a case of urgency, of which the Council shall be the sole judge, the Council may give shorter notice.
- (b) The notice shall state the time, place, date and purpose of the meeting and the motion to be proposed. No other business shall be transacted at the meeting, save that the Chairman may in his discretion permit other matters to be discussed provided that no such matter shall be voted upon at the meeting.

5. Provisions Common to General Meetings

- (a) The quorum at the general meeting shall be 50 members present in person.

- (b) (i) If within half-an-hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day not earlier than 14 days and not later than 21 days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting the members present in person or by proxy shall be a quorum.
- (ii) Where a meeting has been adjourned as aforesaid the President whom failing, the senior vice-president shall fix a time, date and place for the reconstituted meeting and the Secretary shall, not less than 7 days before the date to which the meeting has been adjourned, send a written notice to each member stating the time, date and place of the meeting.
- (c) A general meeting at which a quorum is present may be adjourned to a time, date and place decided by such meeting.
- (d) The following rules of debate shall be observed at all general meetings:
 - (i) Except with the consent of the Chairman, no member shall be permitted to speak more than once on the same question, save that the mover of any motion shall be entitled to speak in reply.
 - (ii) The mover of a motion shall not speak for more than 15 minutes and any other member may not speak for more than 10 minutes, provided that the Chairman may extend such periods by such time as he may decide.
 - (iii) Whenever an amendment to a motion has been moved and seconded, no further amendment shall be moved or seconded until the first amendment has been disposed of. If any amendment is carried, the motion as amended shall take the place of the original motion and shall become the question on which any further amendment may be moved.
 - (iv) The Chairman may call the attention of the meeting to any unbecoming language or a breach of order or discipline on the part of a member and may direct such member to discontinue his speech or to leave the meeting.
 - (v) If a member who has given proper notice of a motion is not present and has not withdrawn the motion, any member present may, with the consent of the Chairman, propose the motion as if the notice had been given by him.
 - (vi) No member whose subscription is in arrear for more than 2 months shall be entitled to vote or be present at a general meeting.
 - (vii) All matters shall be decided by a majority of members voting in person or by proxy.
 - (viii) The vote shall be taken in the manner directed by the Chairman.
 - (ix) If the votes are equal the Chairman shall be entitled to a second or casting vote.

- (x) No vote shall be taken on any motion constituting special business in terms of Rules 3(d)(vi) or 3(d)(vii) unless due notice shall have been given in terms of these Rules.
- (e) A proxy holder shall be a member.
- (f) A proxy shall remain in force only for the particular meeting for which it is given and for any adjournment thereof.
- (g) A proxy shall be in such form as may be laid down by the Council from time to time and shall be in the form set out in the First Schedule hereto.
- (h) No proxy form shall be acted upon unless it is signed by the person granting such proxy and delivered to the Secretary at least 24 hours before the time fixed for the meeting at which it is intended to be used.
- (i) The President, failing whom a Vice-President nominated by the Council, failing whom a member of the Council appointed by the Council, failing whom a member appointed by the meeting, shall be the Chairman of a general meeting.

6. Election of Councillors

- (a) Councillors shall hold office for a period of two years until the conclusion of the next but one ensuing annual general meeting, at which they shall be eligible for re-election.
- (b) No person shall be eligible for election as a member of the Council unless such person -
 - (i) is a member who has practised as an attorney for at least 2 years; and
[amended by GG 24093 dated 29/11/2002.]
 - (ii) conducts his practice at an office situate in the area for which he is nominated.
- (c) A candidate for election shall be nominated in writing over the signature of two members and such nomination shall be accepted in writing by the candidate over his signature or that of his duly authorised representative. The nomination shall be in the form set out in the Second Schedule hereto.
- (d) The nomination of a candidate must be delivered to the Secretary not less than 32 days prior to the date upon which the annual general meeting of the Society is to be held.
- (e) If less than the required number of nominations is received for any constituency, the remaining Councillors shall have the power at any time to appoint a member who represents the relevant geographic area and constituency and has been nominated by that constituency to fill the vacancy, provided that the member so appointed is eligible to fill the vacancy.

- (f) If no greater number of candidates is duly nominated than the number to be elected for an area and constituency, the candidates nominated shall be deemed to be duly elected at the conclusion of the annual general meeting at which the election takes place.
- (g) When there are more candidates than vacancies for members of the Council in terms of Rule 2, the election or elections shall be by ballot which shall take place as follows:
 - (i) Twenty-one clear days at least before the date of the annual general meeting the Secretary shall send by post to each member a ballot voting paper for each area in which a ballot is necessary accompanied by a blank envelope, an identification envelope and an envelope bearing the address of the Secretary and the words "Voting paper/s".
 - (ii) The identification envelope shall have printed on the face of it a declaration substantially in the following form:
 I (state name)
 of (state address)
 being a member of the Natal Law Society do hereby declare that I am the person to whom the enclosed voting paper/s is/were addressed, that I am entitled to vote and that I have not returned any other voting papers in this election.
 (Signature of Voter)
 Signed at this day of 19
 - (iii) The ballot voting paper shall contain for each area and constituency the names of the candidates nominated for election in alphabetical order and the number of candidates to be elected for the area and every member receiving ballot voting papers and entitled to vote shall record his choice of candidates thereon by making a cross against the names of the candidates for whom he desires to vote.
 - (iv) A voter shall place his completed ballot voting papers in the blank envelope, seal that envelope and place that envelope in the identification envelope, seal that envelope, sign the declaration thereon and transmit it by post to the Secretary or otherwise deliver it to the Secretary, in the envelope addressed to him, so as to reach him by not later than 09h00 on the day preceding that of the annual general meeting.
- (h) The Secretary shall retain, unopened, all identification envelopes and shall deliver the same upon the last date fixed for the receipt of voting papers to the scrutineers, who shall be members appointed by the President after the close of nominations. No candidate and no proposer or seconder of a candidate may be appointed as a scrutineer.
- (i) After 09h00 on the date preceding the Annual General Meeting the scrutineers shall:
 - (i) examine the identification envelopes and the declarations thereon and reject and leave unopened those identification envelopes on which the declarations have not been completed in accordance with subrule (g), or have been completed by persons not qualified to vote;
 - (ii) open those identification envelopes which they have not rejected;

- (iii) extract from the identification envelopes the blank envelopes containing the ballot voting papers and insert them into a closed ballot box;
 - (iv) open the ballot box, and thereafter open in turn each blank envelope and examine all completed ballot voting papers contained therein, for each area for which an election is to be held;
 - (v) in the event of an envelope containing more than one completed ballot voting paper for a particular area the scrutineers shall reject all papers in the envelope relating to such area.
- (j) The remaining ballot voting papers shall then be examined by the scrutineers and any ballot voting papers shall be spoilt and be rejected by the scrutineers if:
- (i) more crosses are recorded on it than the number of Councillors required for that area and constituency; or
 - (ii) it is otherwise rendered unintelligible; or
 - (iii) it is otherwise not completed in accordance with these Rules.
- (k) After counting the votes the scrutineers shall prepare a report in which they shall record:
- (i) the name of each candidate nominated for election in each area and constituency and the total number of votes cast in favour of each candidate in descending numerical order;
 - (ii) the total number of voting papers received;
 - (iii) the number (if any) of voting papers rejected;
- and shall deliver such report to the Secretary.
- (l) Upon receipt of the scrutineers' report the Secretary shall forthwith arrange for that report to be delivered to the Chairman to preside at the annual general meeting, who, after having satisfied himself that such report is complete and regular on the face of it, shall declare the result of the election to the annual general meeting. Such declaration shall be final and binding notwithstanding any irregularity or informality.
- (m) In the event of an equality of votes, the candidates having an equal number shall draw lots at the annual general meeting and in the event of a candidate being absent the President or some other person nominated by him shall draw the lot of the absent candidate.

7. Election of Office Bearers

- (a) At the first meeting of the Council after the annual general meeting the Council shall elect from amongst the Councillors -
 - (i) a President;
 - (ii) three Vice-Presidents;
 - (iii) the Chairman and the members of each of the standing committees referred to in Rule 10;

to hold office until the next election of office bearers in the following year, provided that the Council may defer the election of any office bearer to a later meeting of the Council.

- (b) An office bearer referred to in paragraph (a), shall cease to hold office if he resigns by giving written notice to the Secretary or if he ceases to be a Councillor.
- (c) If any vacancy occurs in any such office the Council shall fill such vacancy and in doing so shall have due regard to the provisions of section 63 of the Act.

8. Proceedings of the Council

- (a) Ordinary meetings of the Council shall be held on the first Friday of each month but the Council may postpone or advance the date of any meeting.
- (b) Any three Councillors may, by written notice, request the President to convene a special meeting of the Council to consider any special business. Such requisition shall contain details of the business to be conducted at the meeting. The meeting shall be convened in the manner provided for in Rule 3(d) hereof.
- (c) The President or any of the Vice-Presidents may call a special meeting of the Council by giving notice thereof at least one clear day prior to the date of the proposed meeting.
- (d) The Secretary shall post or deliver to all Councillors an agenda of the business to be conducted at each ordinary meeting of the Council at least seven days prior to the date of the meeting.
- (e) A Councillor shall not be entitled, save with the leave of the Chairman, to introduce a matter for discussion at such meeting which does not appear on the agenda.
- (f) The Chairman of all meetings of the Council shall be the President, whom failing a Vice-President, whom failing a Chairman elected at the meeting.
- (g) Save as otherwise provided in these Rules, 12 Councillors shall constitute a quorum.
- (h) In default of a quorum after the lapse of 15 minutes beyond the time fixed for the commencement of the meeting, the Chairman may adjourn the meeting to a date and

time fixed by him.

- (i) Subject to the provisions of Rules 9(c) and 15(e), all questions discussed at a meeting of the Council shall be decided by a majority of the Councillors there present and voting in person. The Chairman shall, in the event of an equality of votes, have a second or casting vote in addition to his vote as a Councillor. Every Councillor present when a vote is taken must record his vote.
- (j) No Councillor shall be entitled to speak more than once on any matter raised for debate save with the leave of the Chairman.
- (k) The Council shall cause Minutes to be kept of all business conducted at Council meetings.
- (l) A Councillor shall not, by reason of his office, be precluded from contracting with the Council and the Council may remunerate or compensate any Councillor for any services performed by him on behalf of the Council or in the interests of the Society and may pay allowances as compensation for any travelling, subsistence or other expenses incurred by such Councillor on behalf of or in the interests of the Council or the Society.

9. Resignation, Suspension and Disqualification of Councillors

- (a) A Councillor shall cease to hold office as such -
 - (i) upon receipt by the Council of his resignation in writing;
 - (ii) upon his suspension from practice or removal from the roll as an attorney;
 - (iii) upon his ceasing to be a member;
 - (iv) upon the sequestration or surrender of his estate as insolvent;
 - (v) upon his absenting himself without leave from all meetings of the Council held over a period of 3 consecutive calendar months;
 - (vi) upon the Council resolving that he be removed from office.
- (b) The Council may suspend any Councillor from office and may restore to office any Councillor who has been suspended.
- (c) No resolution for the removal or suspension of a Councillor shall be acted upon unless at least 15 Councillors are present at the meeting at which the resolution is voted upon and at least two-thirds of such Councillors vote in favour of the resolution.

10. Committees

- (a) The Standing Committees of the Council shall be -
 - (i) The Finance Committee
 - (ii) The Durban Library Committee
 - (iii) The Pietermaritzburg Library Committee
 - (iv) A Complaints Committee or Committees.
 - (v) The Examining Committee.
- (b) The Finance Committee shall be responsible for the management of the finances of the Society and it shall submit a financial report to the Council at monthly intervals.
- (c) The Library Committees in conjunction with the Secretary shall be responsible for the administration and control of the Council's libraries in Durban and Pietermaritzburg.
- (d) The Complaints Committees shall be responsible for attending to matters of discipline.
- (dA) The Examining Committee shall be responsible for *inter alia* the examination of articles of clerkship, contracts of service, cessions of articles of clerkship and contracts of service, the admission and readmission of practitioners, changes in law firms, and considering the circumstances concerning the absence from the office by single practitioners and Rule 21A and 21B reports.
[amended by GG 27370 dated 18/03/2005.]
- (e) The Council may constitute, re-constitute or dissolve ad hoc committees from time to time and each such committee shall conform to such rules as may be imposed on it by the Council.
- (f) Subject to any limitations imposed by the Council, a committee shall have the power to co-opt additional members.
- (g) The Council may appoint alternates to the members of a committee. An alternate may attend meetings of the committee to which he is appointed but he may only speak and vote when the member to whom he is an alternate is absent from the meeting.
- (h) The quorum necessary for the transaction of the business of a committee may be fixed by the Council and unless so fixed shall be 2 members having the right to vote.
- (i) A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present and entitled to vote and in the event of an equality of votes the Chairman shall have a second or casting vote.
- (j) If at any meeting of a committee the Chairman is not present, the members present may elect one of their number who has the right to vote to be the Chairman of the meeting.

11. Staff

- (a) The Council shall appoint a Secretary and may appoint other persons such as it considers necessary to assist the Council in the performance of its duties and it may remunerate them for their services.
- (b) All appointments by the Council shall be upon such terms and conditions as the Council may in its discretion determine and may be terminated as and when the Council sees fit.

12. The Secretary

- (a) The Secretary shall be the chief administrative officer of the Society.
- (b) The Secretary shall perform his functions in accordance with the directions of the Council.
- (c) The Secretary shall be the custodian of all books, documents, papers, records, securities, fixtures, furniture, fittings and other moveable assets belonging to or lodged with the Society.
- (d) The Secretary shall keep a record of all proceedings of the Council and of the Society in a minute book or books.
- (e) The Secretary shall maintain a Register of all members containing the full names and business addresses of each member.
- (f) The Secretary shall prepare all documents, conduct all correspondence and perform all of the functions appertaining to his office.
- (g) The Secretary shall, in addition to his other duties, be the Treasurer of the Society and he shall -
 - (i) promptly deposit all moneys received by the Society to the credit of an account in the name of the Society at a bank or building society designated for that purpose by the Council.
 - (ii) keep proper accounts of the income and expenditure and of the assets and liabilities of the Society.

13. Notices

Any notice in writing addressed by the Council or by the Secretary to any firm at the address notified by that firm to the Secretary, shall be deemed to have been validly given and any such firm shall be deemed to have received such notice -

- (i) on the fourth day following its posting by prepaid post; or
- (ii) on physical delivery thereof at such address.

14. Misconduct

- (a) The Council may from time to time publish to its members guidelines in the form of rulings concerning the standards of conduct to which it expects members to adhere.
- (b) Unprofessional, dishonourable or unworthy conduct on the part of a member shall, without restricting the generality of those terms, include:
 - (i) A breach of faith or trust in relation to his client or in relation to any estate of which he is executor, administrator, trustee, liquidator, receiver, or curator.
 - (ii) Withholding the payment of trust moneys without lawful excuse.
 - (iii) Failing within a reasonable time to respond to an enquiry from a person to whom he owes a duty to reply.
 - (iv) Failing within a reasonable time to render his client a detailed statement of account after being called upon to do so.
 - (v) Failing without good cause to wind up a deceased estate without undue delay.
 - (vi) Conduct direct or indirect in the course of his/her practice, which may reasonably be regarded as likely to attract business unfairly.
[amended by GG 27370 dated 18/03/2005.]
 - (vii) Carrying on practice at an office which is not under the direct and personal supervision of -
 - (aa) the member, or
 - (bb) a partner of the member, or
 - (cc) a practitioner who is employed by the member.
 - (viii) Giving or taking allowances in contravention to these rules.
 - (ix) Subject to the Council's permission sharing offices with a person who is not required to take out a certificate in terms of section 42 of the Act.
[amended by GG 27370 dated 18/03/2005.]
 - (x) In any way assisting, allowing or enabling an unqualified person to charge, recover or receive any fee, or derive any remuneration for, in respect of or in connection with the preparation or execution of any document, or the performance of any professional work which only an attorney, notary or conveyancer, as the case may be, is qualified by law to prepare, sign, execute, attest or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever whereby any such fee or remuneration as aforesaid is or shall be charged, recovered or received, by any such unqualified person.
 - (xi) Failing to pay within a reasonable time the reasonable fees and disbursements of any attorney, notary or conveyancer or of any legal practitioner in a foreign

jurisdiction in respect of work entrusted to such practitioner by him unless -

- (aa) at the time of giving initial instructions in regard to such work, he advised such practitioner that he did not hold himself responsible for the payment of such fees and disbursements; or
 - (bb) payment is withheld for a reason which the Council deems good and sufficient.
- (xii) Claiming in a letter of demand payment of costs of demand or collection commission unless the debtor is under a legal obligation to pay such costs or commission.
- (xiii) Seeking to recover by reason of an agreement from a third party, fees in an amount greater than the normal and usual fee which that member would have expected and have been entitled to receive from his own client if there had been no such agreement.
- (xiv) Any material breach of the provisions of the Act or of these Rules.
- (xv) Touting, otherwise than as permitted in terms of Rule 14(d).
- (xvi)
[deleted by GG 27370 dated 18/03/2005.]
- (xvii) Failing to comply with any Rule of the International Code of Ethics of the International Bar Association, as amended from time to time, and which are set out in the Eighth Schedule to these Rules, save where the Rule is in conflict with, or is superseded by a Rule of this Society or a Ruling of the Council.
- (xviii) Soliciting or requesting instructions from any source in exchange for payment directly and/or indirectly of any consideration, gift, allowance, reward or benefit.
[inserted by GG 25217 dated 25/7/2003.]
- (xix) Endeavouring to secure work or favourable treatment unfairly by conferring a benefit, or offering to confer a benefit, upon a person who, by reason of his office, employment or relationship of agency is in a position to influence the flow of work to the member, or to exercise a power in favour of the member or the member's client.
[inserted by GG 25217 dated 25/7/2003.]

For the purposes of this sub-paragraph the expression "benefit" includes:

- (aa) A donation in cash or kind other than a gift given on an occasion when gifts are customarily given, provided that the gift is of such a value that it is unlikely to exert an undue influence on the recipient;
- (bb) A disposition made or service provided for a consideration that is inadequate in relation to the value thereof;

- (cc) Sharing with a person who is not a member any advertising or promotional costs intended to attract work to the member and/or a person who is not an attorney.
- (dd) Payments made to an estate agent or mortgage bond originator or any person or body for work done or services rendered that would normally be done by a legal practitioner in the performance of a mandate received from a bank or a client.
[inserted by GG 25217 dated 25/7/2003.]
- (xx) Borrowing money from a client, unless that client is independently represented in the transaction, or it is a part of the client's normal business to lend money.
[inserted by GG 25217 dated 25/7/2003.]
- (xxi) Lending money to a client unless:
 - (aa) the terms and conditions of the loan are recorded in writing; and
 - (bb) the client is advised in writing that the client may seek independent advice in respect of the conditions of the loan and the interest rate charged; or
 - (cc) the client is independently represented in accepting the loan.
[inserted by GG 25217 dated 25/7/2003.]
- (xxii) Acting on the instructions of an organisation or person, not being a practising attorney, unless the relationship between the member and the person on whose behalf instructions are given is properly a relationship of attorney and client and:
 - (aa) Instructions thereafter are received directly from such client;
 - (bb) The member's costs and charges are payable by such client; and
 - (cc) The member's independent professional judgement is exercised on behalf of such client without outside interference or control.
[inserted by GG 25217 dated 25/7/2003.]
- (xxiii) Conduct contemplated and prescribed in Sections 3 to 8 of the Prevention and Combating of Corrupt Activities Act, 2004, Act 12 of 2004, where such conduct is committed by a member in the course of his/her practice.
[inserted by GG 27370 dated 18/03/2005.]
- (xxiv) Conduct described in the Eleventh Schedule.
[inserted by GG 27370 dated 18/03/2005.]
- (xxv) Failing to comply with any Rule of the Code of Ethics for Legal Practitioners, as amended from time to time, and which are set out in the Thirteenth Schedule to these Rules, save where the Rule is in conflict with, or is superseded by a Rule of this Society or a Ruling of the Council.
[inserted by GG 29669 dated 9/03/2007.]

- (c)
[deleted by GG 27370 dated 18/03/2005.]
- (d) Subject to the provisions of Rule 14(b)(vi), a member may publicise the member's practice, or permit another person to do so, provided that the member, or such other person, shall -
- (i) not attract work unfairly,
 - (ii) not do anything which compromises or impairs, or is likely to compromise or impair –
 - (aa) the member's independence or integrity;
 - (bb) the client's freedom to instruct an attorney of the client's choice;
 - (cc) the member's duty to act in the best interest of the client;
 - (dd) the member's good reputation or that of the attorney's profession;
 - (ee) the member's proper standard of work;
 - (iii) not advertise jointly with a non-attorney,
 - (iv) not pay any of the advertising costs of a non-attorney,
 - (v) be entitled to advertise informatively only e.g. the advertisements may contain the name and address details of the member's firm, the names of the professional employees of the firm and the areas of law in which they practise.
[substituted by GG 29669 dated 9/03/2007.]

15. Disciplinary Rules

- (a) (i) The Council may itself exercise the disciplinary powers set out in the Act, or it may assign all or any such powers to a complaints committee or committees or to an ad hoc enquiry committee or committees appointed by it in terms of Rule 10;
- (ii) subject to the provisions of section 71 of the Act and to any resolution of the Council, the Chairman of a complaints committee shall determine the manner in which it shall discharge its duties.
- (b) Subject to any limitation imposed by a resolution of the Council when assigning its duties, or any variation thereof, a complaints committee shall have the following powers, namely:
 - (i) to determine the information to be furnished by the Secretary to a complainant who intends to lodge a complaint and the assistance to be given by the Secretary to a complainant who for good cause cannot lodge a complaint unaided;

- (ii) before it investigates any complaint, to require a complainant to make his complaint formally in writing and to verify it by affidavit;
 - (iii) to require the complainant to furnish such further evidence, written or oral, documentary or otherwise, as it may require;
 - (iii) to furnish the member in respect of whom a complaint has been received with such particulars of the complaint as may be necessary to enable him to reply;
 - (v) to investigate mero motu the conduct of any member, to draw up a pro forma complaint and to exercise in respect of that complaint, the same power as it has with regard to any other complaint;
 - (vi) to direct the member against whom the complaint has been made to reply in writing to the Secretary within a stipulated time;
 - (vii) to direct the member against whom the complaint is made to verify his reply by affidavit;
 - (viii) to direct the member against whom the complaint is made to furnish such further evidence, written or oral, documentary or otherwise, as it may require;
 - (ix) to refer the member's reply to the complainant and to request the complainant to comment on the member's reply by a stipulated date and to verify such comment on affidavit.
[inserted by GG 27370 dated 18/03/2005.]
 - (x) to require the member to appear before it;
[amended by GG 27370 dated 18/03/2005.]
 - (xi) to dismiss a complaint which in its opinion does not prima facie or on consideration of the member's reply disclose unprofessional, dishonourable or unworthy conduct.
[amended by GG 27370 dated 18/03/2005.]
- (c) If after consideration of a complaint, the member's reply, and the complainant's comments, the Complaints Committee is of the view –
- (i) that the complaint disclosed a *prima facie* case of unprofessional, dishonourable or unworthy conduct, the Committee shall –
 - (aa) inform the member of the Committee's decision and give the member the option of accepting the Committee's decision or of rejecting the decision and making further submissions in terms of Rule 15(cA) or of calling for an enquiry, or
 - (bb) refer the matter to the Council together with its report and recommendations, and
 - (cc) inform the complainant of its decision.

- (ii) That the complaint does not *prima facie* disclose unprofessional, dishonourable or unworthy conduct, the Committee may dismiss the complaint and inform the complainant of its decision.

[substituted by GG 27370 dated 18/03/2005.]

- (cA) Where the Complaints Committee has reached a decision in terms of sub-rule (c)(i), the member shall, in addition to being entitled to demand an enquiry, also be entitled to apply to the Complaints Committee in writing and on oath to re-open the matter solely on the grounds that new evidence has come into the member's possession after the Complaints Committee had reached its decision. On such grounds alone the Complaints Committee may, if satisfied on the balance of probabilities that the new evidence may alter its decision, call on the complainant to comment on the new evidence and thereafter confirm or rescind its previous decision and, if it rescinds its previous decision, reach a new decision and notify the member and the complainant of the confirmation of its previous decision or of its new decision.

- (d) If the Council decides *mero motu* or on the recommendation of a complaints committee made in terms of subrule (c)(ii) that an enquiry should be held or if a member demands an enquiry in terms of the provisions of subrule (c)(i) -

- (i) the Council shall appoint an ad hoc enquiry committee consisting of a chairperson, who shall be a Councillor, and two or more other members, two of which committee, one of whom shall be a Councillor (hereinafter called the Enquiry Committee) shall form a quorum;

[amended by GG 29173 dated 8/9/2006.]

- (ii) the Chairperson of the Enquiry Committee shall, subject to the provisions of the Act and these Rules, determine the manner in which the committee shall discharge its duties and all other matters relating to procedure; provided that, notwithstanding the provisions of Rule 15(d)(vi) the Enquiry Committee shall conduct the enquiry on an inquisitorial basis;

[amended by GG 29173 dated 8/9/2006.]

- (iii) the complaints committee which investigated the complaint or the Council, if the Council has decided *mero motu* to hold an enquiry, shall cause a written summons under the hand of the President or the Secretary of the Society to be served upon the member complained against requiring him to appear before the enquiry committee at the time and place and on the date specified in the summons;

- (iv) the summons shall set out the specific charge or charges of unprofessional or dishonourable or unworthy conduct made against the member concerned;
 - (v) if during the course of any enquiry it should appear to the enquiry committee that the member may have been guilty of unprofessional, dishonourable or unworthy conduct in respects other than those alleged in the summons, the enquiry committee may amend or add to the charges contained in the summons in which event it shall inform the member of the amended charges and grant such adjournment, if any, as may be necessary to enable the member to prepare his defence;
 - (vi) the Council may appoint an advocate or an attorney or the Secretary to lead evidence, to cross-examine the member complained against and witnesses, and to present argument;
 - (vii) the enquiry committee or the Council having decided mero motu to hold an enquiry may also cause any other person to be summoned to appear at the enquiry in the manner provided in section 71(2) of the Act;
 - (viii) should the member complained against or any other person required to appear fail to appear pursuant to any summons, the enquiry committee may, after 15 minutes have elapsed since the time for the enquiry, proceed with the enquiry in his absence;
 - (ix) if the Chairperson is absent from any meeting of the Enquiry Committee the remaining members of the Enquiry Committee shall appoint an acting Chairperson who shall be a Councillor from amongst their number and any reference in these Rules to the Chairperson of any Enquiry Committee shall be deemed to include a reference to an acting Chairperson;
[amended by GG 29173 dated 8/9/2006.]
 - (x) the Council may in its discretion remove from office any member of an enquiry committee and it may fill any vacancy occurring in the membership of an enquiry committee;
 - (xi) nothing contained in these Rules shall be construed as disqualifying a member of a complaints committee from serving on an enquiry committee.
 - (xii) the enquiry shall be open to the public and the media unless the member, or the complainant, can advance compelling reasons to the Enquiry Committee why the enquiry should not be open to the public and the media.
[inserted by GG 29173 dated 8/9/2006.]
- (e) After completing its enquiry, an enquiry committee shall act in terms of the powers assigned to it by the Council provided that the enquiry committee shall refer the matter to the Council for a decision if the enquiry committee considers that steps should be taken to suspend the member from practice or to strike his name from the roll of attorneys, notaries or conveyancers. No application to suspend a member from practice or to strike his name from the roll shall be made except on the authority of the Council taken at a meeting at which not less than 15 Councillors were present, of whom at least two-thirds have voted in favour of the making of such an application.

- (f) Upon finding a member guilty, a complaints committee or an enquiry committee if so authorised may impose a punishment of the nature prescribed in section 72 of the Act and may make such order as to the payment by the member of the costs as it considers just.
- (g) Every decision of a complaints committee or an enquiry committee in terms of which a member is found guilty, shall be recorded in writing and be placed before the Council.
- (h) The Council, or the complaints committee or the enquiry committee to which the complaint was referred, may publish the decision taken in respect of such complaint in such manner as it may think fit.
- (i) If a complaints committee or the Council should decide that a member should be required to appear before it, it may, without prejudice to its rights to cause an enquiry to be held subsequently, caution such member.
- (j) A complaints committee or an enquiry committee may summarily enquire into and punish a member for any act or omission on the part of such member which has the effect of obstructing without just cause or unreasonably delaying the investigation of any complaint against such member.
- (k) The costs which a member may be ordered to pay shall include all of the costs which the Society incurs in connection with the complaint made against the member.
- (l) The costs of the Society shall be deemed to include a basic charge of R200 in respect of administrative services not otherwise itemised and a charge of R100 per hour for every hour or part thereof during which the Secretary is required to appear before an enquiry committee in terms of Rule 15(d)(vi).
- (m) Such costs shall be payable by the member forthwith upon the receipt by him of the Society's bill of costs certified under the hand of the Secretary, provided, however, that should a member be dissatisfied with any item in such bill of costs he shall have the right to appeal to the Council. The member's appeal shall be in writing advising the item or items complained against and the grounds of his appeal. Should the member wish to appear personally or through an Advocate or Attorney before the Council to argue his appeal he shall have the right to do so provided he gives notice of his intention in the said notice of appeal. The appeal shall be considered by the Council at its next convenient monthly meeting. The appeal shall be summarily and finally determined by the Council at such meeting or at any such further meeting to which it may adjourn the matter.
- (n) Subject to the provisions of the Act, these Rules shall apply, mutatis mutandis, to any proceedings against a candidate attorney, provided that in such proceedings his principal may also be joined as a party charged formally or nominally, as the case may be.

16. Assessment of fees

- (a) It shall be competent for the Council or any committee appointed by the Council for that purpose, *mero motu*, or at the request of any person or member, to assess the fees and disbursements payable to a member in respect of the performance of any work other than litigious work by a member in his capacity as such; provided that the Council or the committee shall not assess fees and disbursements in instances where a state official is empowered to do so or where the work concerned is already covered by a statutory tariff.
- (b) With a view to affording the member reasonable and adequate remuneration for the services rendered by him, the Council or the committee as the case may be, shall, on every assessment, allow all such fees and disbursements as appear to it to have been reasonable for the performance of the work concerned, and in so doing shall take cognisance of the following -
- (i) the amount and importance of the work done;
 - (ii) the complexity of the matter or the difficulty or novelty of the work or the questions raised;
 - (iii) the skill, labour, specialised knowledge and responsibility involved on the part of the member;
 - (iv) the number and importance of the documents prepared or perused without necessarily having regard to length;
 - (v) the place where and circumstances in which the services or any part thereof were rendered;
 - (vi) the time expended by the member;
 - (vii) where money or property is involved, its amount or value;
 - (viii) the importance of the matter to the client;
 - (ix) the quality of the work done;
 - (x) the experience or seniority of the member;
 - (xi)
[deleted by GG 27370 dated 18/03/2005.]
 - (xii)
[deleted by GG 27370 dated 18/03/2005.]

whether the fees and disbursements have been incurred or increased through overcaution, negligence or mistake on the part of the member.

- (c) At the assessment of any member's fees and disbursements, the Council or the committee, as the case may be, may call for the production of such books, documents, papers, or accounts as in its opinion are necessary to enable it properly to determine any matter arising upon such assessment.
- (d) The Council or the committee, as the case may be, shall not proceed to the assessment of the fees and disbursements unless the Secretary of the Society has duly given notice by prepaid registered post to both the member and the person liable to pay the fees, stating the time and place of such assessment and recording that he is entitled to be present and represented thereat, but such notice shall not be necessary if both the member and such person have consented in writing to the assessment in their absence. At the assessment the Council or the committee, as the case may be, shall permit the member and such person to submit their representations and arguments either orally or in writing. After receiving such representations and arguments, the Council or the committee, as the case may be, shall be entitled to reserve its decision. As soon as the Council or the committee, as the case may be, has arrived at its decision, it shall deliver to both the member and such person either by hand or prepaid registered post, a copy of the fee list submitted for assessment, duly endorsed with the allocatur of the Council or the committee, as the case may be, under the hand of the Secretary of the Society. Subject to the provisions of section 74(5) of the Act the fees and disbursements determined in terms of the allocatur shall be deemed to be the reasonable fees and disbursements payable to the member for the services rendered.
- (e) The Council or the committee, as the case may be, shall be entitled in its discretion at any time, to depart from any of the provisions of subrule (b) above, in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

16A. Fees for Conveyancing and Notarial Work

- (1) The fees specified in the Seventh Schedule of these Rules shall serve as a guide to members in connection with the preparation or registration of documents registered or filed, or intended for registration or filing, in a Deeds Registry referred to in the Deeds Registries Act, No. 47 of 1937, or the Mining Titles Office referred to in the Mining Titles Registration Act, No. 16 of 1967.

16B. Collapse Fee

A member may not charge a fee where a matter which has been set down for hearing collapses for any reason unless the fee:

- (1) has been agreed to in writing in advance with the client and the client has been informed that the client is not obliged to agree to such a fee;
- and
- (2) is determinable and reasonable and takes into account any work that is actually done by the member after the collapse of the matter but before the end of the period for which the matter had been scheduled to run.

[inserted by GG 29669 dated 9/03/2007.]

17. Investment Practices

- (1) (a) A firm shall for the purpose of this Rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients or if it controls or manages, whether directly or indirectly, such investment by the collection of interest or capital redemption payments on behalf of investing clients.
- (b) This Rule shall not apply to -
 - (i) investments made pursuant to section 78(2A) of the Act, as contemplated by Section 47(5)(a) of the Act;
[amended by GG 29173 dated 8/9/2006.]
 - (ii) any other investment of a temporary nature that is made in the course of and is incidental to a conveyancing or other matter, including litigation, to which the investing client is a party, or
 - (iii) investments made by members in their capacities as executors, trustees, curators or in any similar capacities insofar as such investments are governed by any other statutory enactment or regulation.
- (2) A member carrying on an investment practice is required to obtain a certificate from the member's accountant who will be required to report to the Society in terms of Rule 21A or furnish a report from the trust account partner in terms of Rule 21B to the effect that the member has complied with this Rule.
[amended by GG 29173 dated 8/9/2006.]
- (3) A member carrying on an investment practice shall obtain an investment mandate from each client before investing funds for that client. The form of the investment mandate should be substantially in accordance with the form referred to in the Fourth Schedule to these Rules.
- (4) Every member carrying on an investment practice shall, not later than 6 months after the financial year end of such member's firm, supply each client with a schedule reflecting all relevant details of such client's investments. Such report shall also be made available at any other time upon the reasonable request of a client.
- (5) (a) Every member carrying on an investment practice shall, in addition to his normal accounting records, also keep a separate trust account record in respect of each client, which account shall reflect -
 - (i) payments of all monies entrusted to him from time to time by the client for investment pursuant to the mandate granted by the client in terms of subrule (3);
 - (ii) payments of all monies invested by him on the client's behalf;

- (iii) payments of all amounts, both capital and income, derived from investments and received for the client's account;
 - (iv) all payments made by him to the client in respect of the client's investments, and
 - (v) all charges paid to the member in respect of services rendered by him to the client pursuant to the client's mandate in terms of subrule (3).
- (b) The accounting records and other supporting documents referred to in paragraph (a) shall be retained by the member in such manner as to enable him to furnish each client upon request with all current details of the client's investments as recorded in paragraph (a). Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed. Where accounting records are maintained by means other than on paper, adequate facilities shall exist for such records to be reproduced in printed form.
- (c) All accounting records required to be retained in terms of this subrule and copies of all reports despatched in terms of subrule (4) shall be retained for at least 5 years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record and shall be held at the same office as the member's other accounting records.
- (6)
 - (a) No member may syndicate deposits or other money market investments in any manner other than by accepting funds as agent for each participating client and placing such funds with a deposit-taking institution on the money market. The deposit-taking institution shall acknowledge receipt of each deposit or money market investment and such written receipts shall be retained by the member as part of his accounting records.
 - (b) All monies received by a member for investment with a deposit-taking institution shall be paid to such institution as soon as is reasonably possible after receipt by the member, having regard to matters such as whether a payment by cheque has to be cleared with the issuing banker.
 - (c) For the purpose of this rule "deposit-taking institution" shall mean any bank or building society registered in terms of the Deposit-Taking Institutions Act, No. 94 of 1990.

- (7) A member may not invest on behalf of a client -
- (a) in shares or debentures in any company which is not listed on the Johannesburg Stock Exchange, unless it is a subsidiary of a listed company;
 - (b) in money market type investments, other than in the client's name in an institution as defined in subrule 6(c), or
 - (c) in loans in respect of which, in the member's opinion, there is no adequate security;

unless the client's written authorization for such investment has first been obtained.

- (8) (a) Notwithstanding the terms of this Rule, a member who has an existing investment practice, at the date of commencement of this Rule, shall -
- (i) not accept new funds for investment without complying with subrules (3), (5), (6) and (7);
 - (ii) in respect of all existing investments, secure compliance with subrules (3), (5), (6) and (7) within 6 months of the date of this Rule;
 - (iii) not be required to commence compliance with subrule (5) until the end of February of the calendar year following the year in which the period of grace stipulated in subparagraph (ii) expires;
 - (iv) not be required to lodge his first annual accountant's report in terms of subrule (2) until the expiry of 3 months after the end of the financial period in which the period of grace stipulated in subparagraph (ii) expires.
- (b) Any member who, as part of his investment practice, already holds or manages an investment which does not comply with subrule (7), shall not later than 6 months after the commencement of this Rule either obtain the client's written consent for such investment or relinquish the management of such investment.
- (9) Failure to comply with the provisions of this Rule may constitute unprofessional conduct on the part of the member, his partners or directors.

18. Allowances

- (a) Sharing of fees shall only be allowed in the following circumstances:
 - (i) Attorneys' fees with practising attorneys;
 - (ii) Conveyancers' fees with practising attorneys or conveyancers.
 - (iii) Notaries' fees with practising notaries or within a firm of which the notary is a partner or an employee.

- (b)
[deleted by GG 27370 dated 18/03/2005.]

- (c) A member who introduces a client to another member and who advises such other member that he will not be responsible for the fees and disbursements of the client introduced shall not, in the absence of any agreement to the contrary, be entitled to claim any share of the fees of the member to whom the client was introduced.

- (d)
[deleted by GG 27370 dated 18/03/2005.]

- (e)
[deleted by GG 27370 dated 18/03/2005.]

- (f)
[deleted by GG 27370 dated 18/03/2005.]

19. Annual subscription

- (a) There shall be an annual subscription payable to the Society by each member which shall be fixed by members at an Annual General Meeting on the recommendation of the Council for each year and shall be payable not later than 31 December in each year and the Council may differentiate among members belonging to different categories determined by it for the purpose of fixing subscriptions.
- (b) The Council may in its discretion waive any subscription payable by a member in whole or in part.
- (c) If a member fails to pay his annual subscription within one month after it has become due the Secretary shall, by pre-paid registered post, draw his attention to this fact and if the subscription is not paid within 21 days from the date of such letter or within such further time as the Council may allow, proceedings for the recovery thereof may be taken by the Council.

20. Accounting Requirements : General

- (1) A firm shall keep in an official language of the Republic such accounting records as are necessary fairly to present in accordance with generally accepted accounting practice the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogating from the generality of this rule -
 - (a) records containing particulars and information of all monies received, credited to, held and paid by it including interest for and on account of any person as well as of all monies invested by it in terms of section 78(2) or 78(2A) of the Act;
 - (b) records showing its assets and liabilities.
[substituted by GG 29669 dated 9/03/2007.]
- (2) In determining what is meant by "generally accepted accounting practice" regard shall be had, inter alia, to any Rulings of the Council published to members.
- (3) The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.
- (4) A firm shall retain its accounting records -
 - (a) for at least 5 years from the date of the last entry recorded in each particular book or other document of record;
 - (b) save when removed therefrom under other lawful authority, -

- (i) in the case of a firm practising in KwaZulu-Natal only, at its main office or a branch office, but, in the latter case only insofar as such records relate to any part of its practice conducted at that branch office,
 - (ii) in the case of a firm practising with its main office in another province and a branch office in KwaZulu-Natal, such firm shall be deemed to comply with this sub-rule where all trust monies received in KwaZulu-Natal by that firm are receipted and banked within KwaZulu-Natal, and the branch office has immediate access to the firm's computerised clients' accounting system via a terminal and printer in the branch office.
[amended by GG 29173 dated 8/9/2006.]
 - (iii) Any firm seeking to keep such records at any other place must seek written permission from the Society.
[inserted by GG 29669 dated 9/03/2007.]
- (5) A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this Rule, inter alia, if its accounting records have not been written up for more than 1 month and have not been balanced within 2 months after each date on which the trust creditors' lists referred to in Rule 21(7) are to be extracted.
- (6) (a) Trust money shall in no circumstances be deposited in or credited to a business banking account, while money other than trust money at any time found in a trust banking account shall be transferred to a business banking account without undue delay; provided that a firm which -
 - (i) makes transfers from its trust banking account to its business banking account at least once a month, and
 - (ii) ensures that each transfer from its trust banking account to its business banking account is for the full amount due and available to the firm as at that date of transfer,
[amended by GG 29173 dated 8/9/2006.]shall be deemed to have complied sufficiently with this Rule.
- (b) When making a transfer from its trust banking account to its business banking account, a firm shall ensure that -
 - (i) the amount transferred is identifiable with and does not exceed the amount due to it, and
 - (ii) the balance of any amount due to it remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.

- (7) Every firm shall within a reasonable time after the performance or earlier termination of any mandate account to its client in writing; each account shall contain -
- (a) details of all amounts received by it in connection with the matter concerned appropriately explained;
 - (b) particulars of all disbursements and other payments made by it in connection with the matter;
 - (c) fees and disbursements raised against the client and, where any fee represents an agreed fee, a statement that such fee was charged and the amount so agreed;
[amended by GG 29173 dated 8/9/2006.]
 - (d) the amount due to or by the client,
- and the firm shall retain a copy of each such account for not less than 5 years.
- (8) A firm, unless otherwise instructed, shall pay any amount due to a client within a reasonable time.

21. Accounting Requirements : Trust Account Transactions

- (1) A firm shall -
- (a) issue a pre-numbered trust receipt in duplicate for all money received on account of any person and such receipt shall be printed and shall provide the following details -
 - (i) date of receipt;
 - (ii) amount in words and in figures;
 - (iii) from whom received;
 - (iv) for whose credit;
 - (v) identification of transaction;
 - (vi) whether trust or business;
 - (vii) whether received in cash, by cheque or otherwise; and
 - (b) on the date of the receipt of such trust money, or the first banking day following its receipt on which it might reasonably be expected that it will be banked, deposit such money in its trust bank account; and/or
 - (c) record all direct deposits received on account of any person and such records shall provide the details as in (a)(i) to (vii) above.
[substituted by GG 29669 dated 9/03/2007.]
- (2) Any amount withdrawn by a firm from a trust investment account shall promptly be deposited in its trust banking account.
[amended by GG 29173 dated 8/9/2006.]

- (3) A firm shall -
- (a) ensure that the total amount of money in its trust accounts, and held as trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records;
[amended by GG 29173 dated 8/9/2006.]
 - (b) ensure that no account of any trust creditor is in debit;
 - (c) employ and maintain a system to ensure that the requirements of paragraphs (a) and (b) are not infringed when amounts are transferred from its trust banking account to its business banking account.
 - (d) immediately report in writing to the Secretary should the total amount of money in its trust accounts, and money held as trust cash be less than the total amount of credit balances of the trust creditors shown in its accounting records.
[amended by GG 29173 dated 8/9/2006.]
 - (e) immediately report in writing to the Secretary should an account of any trust creditor be in debit.
[inserted by GG 23407 dated 17/5/2002.]
- (4) A firm shall ensure that amounts received in advance to cover fees and disbursements are deposited forthwith into its trust banking account.
[amended by GG 29173 dated 8/9/2006.]
- (5) A firm shall ensure that withdrawals from its trust banking account are made only -
- (a) to or for a trust creditor;
 - (b) as transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm.
- (6) A firm shall ensure that -
- (a) any cheque drawn on its trust banking account shall be made payable to or to the order of a payee specifically designated;
 - (b) no transfer from its trust banking account to its business banking account is made in respect of any disbursement, including counsel's fees, or fees of the firm until -
 - (i) the disbursement has actually been made by the firm;
 - (ii) the fee has been correctly debited in its accounting records.

- (7) (a) Every firm shall extract at intervals of not more than 3 calendar months in a clearly legible manner a list of amounts then standing to the credit of any person, who shall be identified therein by name, in respect of all money held or received by it on account of such person and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in order to ensure compliance with subrule (3).
- (b) The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which that balance was extracted.
- (c) Each such list shall be part of the accounting records of the firm to be retained for the 5 year period referred to in Rule 20(4)(a).
- (8) Every firm shall -
 - (a) open and keep a trust banking account at a bank or building society in Natal, provided that the Council may, in the case of a firm which has its head office situated in another province and a branch office situated in Natal, on written application by such firm and subject to such conditions as the Council may impose, exempt that firm from the provisions of this paragraph;
 - (b) immediately notify the Secretary in writing of the name and address of the bank or banks at which are kept its trust banking account or accounts and shall thereafter notify the Secretary immediately of any change in the name and address of such bank or banks;
 - (c) whenever so required by the Council, furnish to the Council within 10 days, or such longer period as the Council may stipulate, a signed statement issued by the bank or banks with which it keeps its trust banking account or accounts and a signed statement issued by the financial institution with which it keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account at such date or dates as may be specified by the Council.
- (9) (a) A member who invests funds on behalf of any person in terms of Section 78 (2A) of the Act with that person's prior written specific Instructions shall obtain such instructions to make such investment substantially in the form referred to in the Twelfth Schedule to these rules.
- (b) A member who invests funds on behalf of any person without that person's prior written specific or general instructions shall -
 - (i) not invest such funds otherwise than in a trust savings or other interest-bearing account with a banking institution or building society;
 - (ii) obtain that person's written confirmation of the investment as soon as is reasonably possible or notify him forthwith thereof in writing, which confirmation or notification shall substantially be in the form of the instructions to make such investment referred to in the Twelfth Schedule to these Rules, and

- (iii) forthwith cause the relative trust savings or other interest-bearing account to be endorsed in terms of section 78(2A) of the Act.
[substituted by GG 29669 dated 9/03/2007.]
- (10) A firm, when reporting to the Secretary as required by the provisions of Rules 21(3)(d) and (e) shall submit simultaneously with such report the following documentation:-
- (a) a schedule with name/s of trust account/s in debit and debit amount/s;
 - (b) the firm's full explanation on oath of how each trust debit arose;
 - (c) proof that the trust debit or shortfall has been rectified;
 - (d) the firm's full written statement as to how each trust debit or shortfall was rectified"
[inserted by GG 23407 dated 17/5/2002.]
- (11) A firm shall submit either a Rule 21A Report by Accountants or a Rule 21B Certificate in compliance with the provisions of the relevant Rule.
[inserted by GG 27370 dated 18/03/2005.]
- (12) Any firm which complies with the provisions of Rule 21B shall appoint a trust account partner who shall be responsible for the firm's compliance with Rule 21B.

A sole practitioner shall for the purposes of this Rule be deemed to be the trust account partner.

[inserted by GG 27370 dated 18/03/2005.]

21A. Report by Accountants

- (1) A firm shall at its expense once in each calendar year or at such other times as the Council may require, appoint an accountant approved by the Council to act on behalf of and as the representative of the fund to discharge the duties assigned to him in terms of subrule (4).
- (2) A firm shall allow an accountant appointed under subrule (1) access to such of its records as he may deem it necessary to examine for the purposes of discharging his duties under subrule (4) and shall furnish the accountant with any authority which may be required to enable him to obtain such information, certificates or other evidence as he may reasonably require for such purposes.
- (3) A firm shall ensure that the report to be furnished by an accountant in terms of subrule (4) is so furnished within or at the required time; provided that the Council may in its discretion and on such conditions as it may stipulate, on written application by a firm relating to a particular report, condone a failure by that firm to comply with this requirement.

- (4) Every accountant who has accepted an appointment in terms of subrule (1) shall -
- (a) within 6 months of the annual closing of the accounting records of the firm concerned, or at such other times as the Council may require, furnish the Council with a report which shall be in the form set out in the Fifth Schedule to these Rules;
 - (b) without delay report in writing directly to the Council if, at any time during the discharge of his functions and duties under this Rule -
 - (i) it comes to his notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm in respect of any trust creditor, exceeded the total amount of the funds in its trust banking account and/or its trust investment account and/or its trust cash in respect of such trust creditor or that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, and/or its trust investment account and/or its trust cash;
[amended by GG 23407 dated 17/5/2002.]
 - (ii) any material queries regarding its accounting records which he has raised with the firm have not been dealt with to his satisfaction;
 - (iii) any reasonable request made by him for access to its records or for any authority referred to in subrule (2) has not been met to his satisfaction.
- (5) A copy of the report in the prescribed form required under subrule (4)(a) and any report made in terms of subrule (4)(b) shall be sent by the accountant to the firm concerned.
- (6) The form as prescribed under subrule (4) shall be obtained only from the Secretary who shall issue it on request to any firm or to any accountant appointed in terms of this Rule.
- (7) In any case where the Council is satisfied that it is not practicable to obtain the services of an accountant for the issuing of a report as prescribed under subrule (4), it may in lieu thereof accept as compliance with the requirements of subrule (4) such other evidence as it may deem sufficient.
- (8) Where the accountant submits a qualified audit report in accordance with the provisions of sub-rule 4 above reporting a shortfall as envisaged by sub-rule 4(b)(i) the firm shall simultaneously with the submission of such qualified audit report submit the undermentioned documentation, namely -
- (a) a schedule with the name/s of the trust account/s in debit and the debit amount/s;
 - (b) the firm's full explanation on oath of how each trust debit arose;

- (c) the accountant's confirmation that the firm's explanation accords with the firm's accounting records;
- (d) proof that the trust debit or shortfall has been rectified;
- (e) the firm's full written statement as to how each trust debit or shortfall was rectified.

[inserted by GG 23407 dated 17/5/2002.]

21B. Accounts Certificate

- (1)
 - (a) A firm may apply to the Council to submit an Accounts Certificate in accordance with this Rule in the place of a Report submitted in terms of Rule 21A.
 - (b) The Council will assess such application and grant permission when the applicant's firm satisfies the criteria laid down by the Council, which criteria include, but are not limited to a firm's trust interest contribution, geographical location, nature of practice, its period of existence and its previous compliance with Rule 21A.
 - (c) The Council may limit the number of applications to be granted, and may accept or refuse such applications.
 - (d) A firm whose application has been approved shall comply with this Rule and is exempted from compliance with Rule 21A.
- (2) A participating firm shall deliver to the Council within one calendar month of the completion of each accounting period a Certificate in respect of that period.
- (3) In respect of an accounting period for which no client monies have been held the Certificate shall be in the form set out in the Tenth Schedule to these Rules and, in all other cases, shall be in the form set out in the Ninth Schedule to these Rules.
- (4) The Council may on such terms and conditions as it may stipulate, on written application by a firm relating to a particular Certificate, extend the period of one calendar month within which a Certificate is required following a balancing of books, but such extension shall not exceed three months from the date on which the Certificate was due.

- (5) Two partners must sign the Certificate under these Rules, one of whom shall be the current Designated Trust Account partner, unless the practitioner is a sole practitioner.
- (6) In the case of a firm, which has two or more offices, where any branch office maintains a separate trust banking account, the firm shall lodge a separate Certificate for each such branch office.

[amended by GG 27370 dated 18/03/2005.]

22. Candidate Attorneys

- (a) Articles of Clerkship or a contract of service shall contain the whole agreement entered into between the parties.
- (b) Articles of Clerkship or a contract of service shall comply substantially with the form of articles or a contract of service set out respectively in the Third and Sixth Schedules to these Rules.
- (c) The Council shall have the right to reject any Articles of Clerkship or a contract of service which in the opinion of the Council contain improper or undesirable clauses.
- (d) Candidate Attorneys shall be subject to discipline by the Council and the provisions of Rules 14 and 15 shall apply to candidate attorneys.

23. Changes in Firms and Branch Offices

- (1) It shall be the duty of every member -
 - (a) within 30 days of becoming a member to lodge with the Secretary a statement of his full names and the address at which he practises, and in the case of those members who practise as shareholders of a professional company, the address at which the professional company practises;
 - (b) who is a shareholder of a professional company to ensure that there is lodged with the Secretary a statement of the company's name, the number and date of its incorporation, the address of its registered office, the address at which it practises and the full names of its shareholders within 30 days of the date upon which the company commences to practise in Natal or undergoes any change in shareholding;
 - (c) of a firm which changes the address of the place at which it practises, within 30 days of such change, individually or collectively with his partners or co-shareholders to notify the Secretary of the firm's new address;
 - (d) who practises in any existing practice, partnership or professional company in which any change of professional personnel takes place, or who commences practice on his own account, to notify the Secretary forthwith in writing of full details of the change or changes which have taken place and to furnish such additional particulars in this regard as the Secretary may require of any such

member;

- (2) (a) The Secretary shall in the event of any change occurring as contemplated in Rule 23(1)(d) be entitled to call upon any member involved in such change whether practising for his own account, or in partnership, or as a shareholder in a professional company, to state in writing what arrangements have been made in relation to any monies held or to be held by the member practising for his own account, or by the partnership in which the member practises, or by the professional company in which the member is a shareholder, on account of any person in terms of section 78 of the Act, and shall further be entitled to call upon such member to provide the Council with a list of trust creditors;
- (b) The Secretary shall further be entitled to call upon any member, or the lawful executor or representative of any member, to furnish a certificate by an accountant approved by the Council in relation to any matter or thing in connection with the protection of any monies held or to be held or received by any member on account of any person in terms of section 78 of the Act.
- (3) (a) A member may open one or more branch offices within the Province of Natal after he has informed the Secretary in writing prior to opening his branch office of the following -
- (i) his intention to open a branch office and the proposed physical address, postal address and telephone number of such branch office;
 - (ii) whether he will open a separate trust account and keep separate accounting records for his branch office, and
 - (iii) the name or names of the practitioner or practitioners who will be supervising the branch office, and the hours that it will be open to the public.
- (b) A member who practises from more than one physical address shall indicate on his letterheads the address of his main office and all branch offices, and all letters shall indicate from which address they emanate.
- (c) A member's branch office may remain open only while it is under the direct and personal supervision of -
- (aa) the member, or
 - (bb) a partner of the member, or
 - (cc) a practitioner who is employed by the member.
- (d) In the event that a member's branch office has a separate trust banking account, the member is obliged to lodge a separate certificate for the branch office in terms of Rule 21A of these Rules.

24. Suspension or Modification of Rules

The Council may in such manner as it may determine, and subject to such conditions and directions as it may impose, suspend in whole or in part or modify the application of any rule applicable to any member while such member is employed by or acting to promote or assist the functioning of any body recognised by the Council as a students' legal aid clinic, legal aid body, or other similar organisation of a public or philanthropic nature, which renders legal services in the public interest.

25. Law Clinics

- (1) Any law clinic performing "community service" as defined in the Act, which seeks recognition as a law clinic for the purposes of the Act and of this Rule shall comply with the following requirements:

[amended by GG 29173 dated 8/9/2006.]

- (a) the law clinic shall be properly constituted, organised and controlled to the satisfaction of the Council, either as part of the faculty of law at a university in the Republic or as a law centre controlled by a non-profit making organisation;
- (b) the law clinic must provide legal services to the public;
- (c) the legal services provided by the law clinic must be rendered free of any direct or indirect charge to the recipient of those services; provided that -
 - (i) the law clinic may recover from the recipient of its services any amounts actually disbursed by it on behalf of the recipient; and
 - (ii) where the law clinic acts for the successful litigant in litigation it will be entitled to take cession from such litigant of any order for costs awarded in favour of the litigant and to recover those costs for its own account;
- (d) the services may be rendered only to a person who would not otherwise be able to afford them; provided that the Clinic shall be obliged to apply a means test pre-determined by it;
[amended by GG 29173 dated 8/9/2006.]
- (e) the law clinic may not undertake work in connection with -
 - (i) the drafting of Wills;
 - (ii) subject to the provisions of paragraph (f), the administration, liquidation or distribution of the estate of any deceased person, insolvent person, mentally ill person or any other person under any other legal disability;
 - (iii) the judicial management or liquidation of any company;

- (iv) the transfer or mortgaging of immovable property;
 - (v) the lodging or processing of any claims under the Multilateral Motor Vehicle Accidents' Fund Act, No. 93 of 1989, its predecessors or its successors;
 - (vi) such other work as may from time to time be prescribed in this Rule;
- (f) the law clinic entering into a contract of service with a candidate attorney accepts the responsibility to provide the candidate attorney with adequate opportunities for gaining practical legal experience in all aspects prescribed in paragraph 5 of the contract of service;
[inserted by GG 29173 dated 8/9/2006.]
- (g) the law clinic may undertake work in connection with the administration, liquidation or distribution of the estate of any deceased person only in those cases where the executor has declined nomination and the Master of the High Court has exercised his/her discretion in terms of the Administration of Estates Act, 1965, and has appointed an attorney employed full-time at a law clinic as Executor;
[amended by GG 29173 dated 8/9/2006.]
- (h) the name under which the law clinic is to carry on its activities, its letterheads and other stationery shall require the prior approval of the Council;
[renumbered by GG 29173 dated 8/9/2006.]
- (i) attorneys in the employ of the law clinic may be remunerated only by way of salaries payable by the clinic or by the organisation to which it is attached.
[renumbered by GG 29173 dated 8/9/2006.]
- (2) If any attorney employed full-time at a law clinic wishes to and is qualified in terms of Section 3 of the Act to engage a candidate attorney to perform community service he/she may do so only if -
[amended by GG 29173 dated 8/9/2006.]
- (a) the candidate attorney will be under his/her direct personal supervision or under the direct personal supervision of another attorney or advocate who is a member of the professional staff and is also employed full-time at the law clinic;
[amended by GG 29173 dated 8/9/2006.]
 - (b) the law clinic carries on its activities during normal business hours for not less than 11 months in any year;
 - (c) the law clinic has proper office systems with telephones, typing facilities, files and filing procedures, a diary system and at least elementary library facilities;
 - (d) the law clinic has a proper bookkeeping system and accounting procedures, and

- (e) the law clinic handles a reasonably wide range of work to give the candidate attorney exposure to the kind of problems that a newly qualified attorney would expect to encounter and be able to handle competently during his first year of practice.

26. Dissolution of Society

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

27. Pro Bono Services

27.1 Definitions

- (a) **Pro Bono services** shall include, but not be limited to, the delivery of advice, opinion or assistance in matters, falling within the professional competence of a member, to facilitate access to justice for those who cannot afford to pay, through recognised structures, approved in terms of sub-rule 27.3 and identified in terms of subrule 27.4.
- (b) **Recognised structures** shall include, but not be limited to, the office of the Registrars of the High Court when issuing in *forma pauperis* instructions, Small Claims Courts, community (non commercial) advice offices, University clinics, non-government organisations, the office of the Inspectorate of Prisons, Circle and specialist Committees of the Society, and others approved in terms of sub-rule 27.7 and identified in terms of sub-rule 27.8.
- (c) **Those who cannot afford to pay** shall be those who ordinarily qualify for assistance through recognised structures.

27.2 Practising members who have practised for less than 40 years and who are less than 60 years of age, shall be encouraged to perform pro bono services of not less than 24 hours per calendar year, save that:

27.2.1 a member who becomes a practising member during the course of a year shall be encouraged to perform pro bono services equal to not less than 2 hours per month, or part thereof, of practising member status acquired in the first year of practice;

27.2.2 in the year of publication of this Rule, practising members shall be encouraged to perform pro bono services equal to not less than 2 hours per month, or part thereof, from the month of publication to the end of that year.

27.3 Members may refer to the Society, for approval by Council as pro bono services, a written description of areas of professional work proposed for recognition as pro bono services.

- 27.4 The Society shall, within 30 days of publication of this Rule and from time to time, publish, through its Circular, a list of services which, when performed by members at no charge for those who cannot afford to pay, shall be recognised as pro bono services capable of being delivered in compliance with the provisions of this Rule.
- 27.5 Pro bono services shall be delivered through recognised structures only to those who cannot afford to pay for professional services.
- 27.6 Members may refer to the Society, for approval by Council as a recognised structure, a written description of a structure proposed for recognition.
- 27.7 The Society is mandated by members to enter into partnership and joint venture agreements with recognised structures, the effect of which is that only matters that fall within the professional competence of members are referred to practising members for advice, opinion or assistance, that briefs addressed to practising members are reasonably well formulated, and that potential language and cultural barriers are overcome.
- 27.8 The Society shall, within 30 days of publication of this Rule and from time to time, publish, in a Circular, a list of recognised structures, including structures with which the Society has concluded partnership, or joint venture, agreements for the delivery of pro bono services.
- 27.9 Members shall submit to the Society a certificate providing full particulars of pro bono services delivered, within 60 days of delivery thereof, failing which, the service shall be treated as not having been rendered in terms of this Rule.
- 27.10 The Society shall, within 30 days of the publication of this Rule, publish, in a Circular, the form of the certificate to be submitted by practising members. Any amendments introduced to the certificate, by Council, shall be published, from time to time in a Circular.
- 27.11 The Society shall keep a record of services delivered per member, which record shall be raised from member certificates. A report of all services rendered shall be extracted annually and shall be retained by the Society but individual member records substantiating the report shall be expunged. On 1 January of each year, all individual member records shall be refreshed to show an availability of hours for the new year. The record of hours served or not served in the previous year shall then be, expunged. The Society shall report to its members annually and at the Annual General Meeting, and shall make such report generally available, on the total delivery of pro bono services by members.
- 27.12 The Society shall cause particulars of pro bono hours still to be served by members in a calendar year to be published on its website and for reduced hours to be displayed against submission by members of certificates. This information will also be available from the Society, on request. It shall be the responsibility of practising members to ensure that the Society's records as to pro bono services rendered are complete so that correct information is published on the website and generally made available.

- 27.13 Members may elect to deliver pro bono services through a single recognised structure. The Society shall cause a member's election of the recognised structure through which he/she chooses to deliver his/her pro bono services to be published on its website. This information will also be available from the Society, on request. Members who make such an election may properly refuse calls through other recognised structures for the delivery of pro bono services. It shall be the responsibility of the practising member to notify the Society of his/her election so that this information is published on the website and generally made available.
- 27.14 Members who travel a distance of more than 50km from their office in order to deliver pro bono services may, in special circumstances, make written application to the Society to recover the actual cost of travel, excluding the first 100km.
- 27.15 Disbursements incurred, save for travel expenses referred to in 27.14, in respect of pro bono services shall be borne by the client.
- 27.16 It shall be unprofessional conduct for a practising member who still has to perform pro bono service hours to refuse, with no good cause, to deliver pro bono services.
- 27.17 In the event of the Society receiving a complaint of refusal to deliver pro bono services, with no good cause, it shall be entitled to treat its record of services rendered as complete, save only for services rendered within 80 days of the complaint that are not on record. The member against whom the complaint is made shall be responsible to provide the Society with certificates, relating to such additional services, within 21 days of receipt by the Society of the complaint, failing which, services alleged to have been rendered, but not on record, will be treated as not having been rendered for the purpose of investigating the complaint. Pending investigation of the complaint, the Society, shall refer the complainant to another practising member, for assistance.
- 27.18 Professional standards applicable to services rendered by members shall apply to pro bono services.

[inserted by GG 27370 dated 18/03/2005.]

First Schedule

PROXY

- 1. I,
- 2. hereby appoint
- 3. to act as my proxy at the General Meeting of
- 4. the Natal Law Society to be held on 19 and at any adjournments thereof, to vote for me on any matter which may be put to the vote at such meeting as follows:

	In favour	Against	Abstain
5. Resolution to
Resolution to
Resolution to

I declare that I and my proxy are members as defined in the Rules of the Natal Law Society.

Dated at this 19

As Witnesses:

- 1.
.....
- 2.

Notes: 1 and 2, insert full names; 3 insert Annual or Special; 4 insert date; 5 indicate clearly the title of the motion or otherwise describe the motion clearly and indicate whether your proxy shall vote for or against it or shall abstain or if no indication is given as to how your proxy is to vote, you will be taken to have given your proxy a mandate to use his discretion as to the manner in which the vote should be counted.

Second Schedule
The Natal Law Society
Nomination of Council Member

Nomination :

I (full name of proposer), _____
a member of the Natal Law Society, and I (full name of seconder) _____
_____ a member of the Natal Law Society,
hereby nominate (full name of nominee) _____
as a member of the Council for (state Greater Durban, Pietermaritzburg or Country Districts)
_____ representing (state whether BLA, NADEL or non-BLA and
non-NADEL) _____ and whose further particulars are as follows -

1. Name of nominee's firm _____
2. Town or city in which nominee practises _____
3. Number of years that nominee has practised as an attorney _____
4. Number of years that nominee has served on -
 - (a) Natal Law Society Council: _____ years from _____ to _____
 - (b) Legal Circle Committee: _____ years from _____ to _____
 - (c) Natal or National Branch Committee of NADEL: _____ years
from _____ to _____
 - (e) Natal or National Branch Committee of BLA: _____ years
from _____ to _____

Date

Proposer's Signature

Date

Seconder's Signature

Acceptance :

I (full name of nominee), _____
hereby accept nomination as a member of the Natal Law Society Council and declare that -

- (a) in terms of Rule 6(b) of the Natal Law Society Rules, I am not disqualified from being nominated, and
- (b) I am a member of the Natal Law Society practising as an attorney in the area for which I have been nominated.
- (c) I am -
 - * (i) a member of NADEL;
 - * (ii) a member of BLA;
 - * (iii) not a member of NADEL or BLA
 - * (Delete whichever is not applicable.)

Date

Nominee's Signature

Third Schedule

Articles of Clerkship

Between _____
a duly admitted Attorney practising under the name and style of _____
_____ at _____
(hereinafter referred to as the Principal), and _____
(hereinafter referred to as the Candidate Attorney), a major (minor, assisted herein by his/her guardian).

It is agreed that -

1. The duration of this agreement shall be a period of _____ years commencing on the _____ day of _____ 19 ____, and terminating on the _____ day of _____ 19 ____, provided that, should the Candidate Attorney become entitled to be admitted as an Attorney prior to the date of termination, this agreement shall forthwith terminate upon such admission.
2. The commencing monthly salary shall be the sum of R _____ which shall be payable in arrear not later than the last day of each calendar month.
3. The Candidate Attorney hereby undertakes and agrees that he/she shall-
 - (a) diligently, honestly, properly and confidentially serve his/her Principal in his/her profession as an Attorney;
 - (b) promptly execute all lawful instructions given to him/her by his/her Principal, any of his/her partners or any other person placed in authority over him/her by his/her Principal;
 - (c) ensure that he/she does not absent himself/herself from his/her employment by his/her Principal without his/her Principal's prior consent;
 - (d) conform with the reasonable requirements of his/her Principal with regard to dress, behaviour and propriety, and do all things in his/her power to ensure that he/she obtains during the course of this agreement, such qualifications as shall entitle him/her to admission as an Attorney;
 - (e) keep a diary or other written record of the training which he/she received under articles and until such time as he/she is admitted as an attorney hold such diary or other record available for inspection by his/her principal, the Council of the Natal Law Society or by the examiners responsible for conducting the Candidate Attorneys' practical examinations in terms of section 14 of the Attorney's Act, 1979;
 - (f) not engage in any business other than that of Candidate Attorney without the written consent of his/her Principal and the Council of the Natal Law Society;

- (g) at no time divulge any secrets of his/her Principal or his/her clients, nor discuss their affairs with any third party without their specific knowledge and consent, and that he/she will not damage, do away with or deface any records, books, documents or assets of his/her Principal or his/her clients.
4. The Candidate Attorney hereby indemnifies his/her Principal and/or partners and, in the case of a professional company, the directors and holds them harmless against any claims which may arise against him/her or them from any act, omission or default on the part of the Candidate Attorney acting in the course and scope of his/her employment under this agreement.
5. The Principal hereby undertakes and agrees that he/she shall-
- (1) use his/her best endeavours to ensure that the Candidate Attorney is properly and fully instructed in the practice, ethics and understanding of the profession of an attorney and provide the Candidate Attorney with opportunities for gaining practical experience in:
 - (a) the preparation of legal opinions and briefs for Counsel;
 - (b) interviews with clients and witnesses and the drafting of witnesses' statements;
 - (c) the identification and application of appropriate legal principles to facts;
 - (d) advocacy (the arguing of elementary cases before courts and tribunals and the effective presentation of certain legal arguments);
 - (e) negotiations and the settlement of disputes;
 - (f) the drafting of letters, contracts, wills and pleadings;
 - (g) the keeping of proper accounting records and the handling of trust money;
 - (h) routine office administration, including the proper handling of files and documents;
 - (i) the preparation of statements of account for clients and bills of cost for taxation;
 - (2) use his/her best efforts to procure the admission of the Candidate Attorney as an Attorney; provided that the Candidate Attorney has served his/her period of articles properly and is in his/her Principal's opinion a fit and proper person for admission as an Attorney;
 - (3) in the event of his/her ceasing to practice as an Attorney, sign all documents and do all acts or things necessary to enable the Candidate Attorney, should he/she desire, to cede these Articles to some other suitable Attorney, and use his/her best endeavours to ensure that such other suitable Attorney will accept such cession.
6. Should the Candidate Attorney -

- (a) not serve his/her period of articles properly in terms of this Agreement;
 - (b) commit a breach of any of the terms and conditions of this Agreement, or
 - (c) be guilty of any misconduct,
- the Principal shall be entitled to cancel this Agreement and dismiss the Candidate Attorney from his/her employment.

Signed by the Principal at _____ this _____ day of _____ 19__

As Witnesses:

- 1. _____
Principal
- 2. _____

Signed by the Candidate Attorney at _____ this _____ day of _____ 19__

As Witnesses:

- 1. _____
Candidate Attorney
- 2. _____

Duly assisted by me in my capacity as his/her lawful guardian.

Guardian

Note :

- 1. Clauses 4 and/or 6 may be omitted and/or amended by the parties to the Agreement.
- 2. Articles of Clerkship may not be backdated.
- 3. Clause 4 contains an indemnity clause requiring revenue stamps in addition to the revenue stamp required for the Agreement.

Fourth Schedule

CLIENT INVESTMENT MANDATE

I, the undersigned, _____

(Full names and Identity Number) of _____

hereby authorise and empower (firm's name) _____

to make the following investment/s as my agent and on my behalf -

(delete words, which are not applicable or insert words if and where required)

1. TYPE OF INVESTMENT/S

- (a) Money lending (Yes/No), and/or
- (b) Money market (Yes/No), and/or
- (c) Stocks and shares on JSE (Yes/No), and/or
- (d) Call or fixed term deposit [for _____ days/months/year/s] (Yes/No), and/or
- (e) Any other type (Yes/No) [specify sufficient details thereof]

2. TYPE OF MANDATE GIVEN

- (a) Does the firm have the sole and exclusive discretion to make the investment/s? (Yes/No)
- (b) If no, the type of mandate is non-discretionary and the precise instruction/s given to the firm to invest with relevant details of such instructions are to be set out.

3. IS FIRM TO KEEP ALL SECURITIES? (Yes/No)

4. IS GENERAL OR SPECIAL POWER OF ATTORNEY ATTACHED?

- (a) General power of attorney? (Yes/No)
- (b) Special power of attorney? (Yes/No)
- (c) None? (Yes/No)

5. REPORTING:

The firm shall report as follows: (Monthly/Quarterly/6 Monthly/Annually)

6. PROTECTION:

I acknowledge that I have been informed by the practitioner (attorney, notary or conveyancer) concerned of the provisions of subsection 47(1)(g) of the Attorneys Act and that I understand the effect thereof.

I acknowledge and admit that the Attorneys Fidelity Fund shall not be liable in respect of any loss suffered by me as a result of theft of money, which the practitioner has been instructed to invest on my behalf.

7. GENERAL.

Any other instructions: _____

SIGNED AT _____ on this _____ day of _____ 20____

Client

ACCEPTED AT _____ on this _____ day of _____ 20____

On behalf of firm

Full names of practitioner

[substituted by GG 29669 dated 9/03/2007.]

Fifth Schedule

Report by Independent Accountant

REPORT OF AN INDEPENDENT ACCOUNTANT TO THE SOLE PROPRIETOR/PARTNERS/DIRECTORS OF [INSERT THE NAME OF THE FIRM], THE LAW SOCIETY OF KWAZULU-NATAL AND THE ATTORNEYS FIDELITY FUND

I/We have audited the trust accounts of {insert the name of the firm} to determine whether those accounts were maintained in compliance with sections 78(1), 78(2), 78(2A), 78(3), 78(4) and 78(6) of the Attorneys Act, No. 53 of 1979 (the Act) and with Rules 17, 20, 21 and 21A of the KwaZulu-Natal Law Society for the period from {insert date} to {insert date}.

The sole proprietor/partners/directors of {insert the name of the firm} is/are responsible for ensuring that the firm's trust accounts are maintained in compliance with the provisions of the Act and the Rules of the KwaZulu-Natal Law Society and for the implementation of accounting and internal control systems. Our responsibility is to express an opinion on whether the firm's trust accounts were maintained in compliance with the sections of the Act, and the Rules referred to above for the period {insert date} to {insert date} based on our audit.

Scope

This audit was conducted in accordance with the South African Auditing Standards applicable to special purpose audit engagements and the guide issued by the South African Institute of Chartered Accountants, Guidance for Auditors: The Audit of Attorneys' Trust Accounts in terms of the Attorneys Act, No 53 of 1979 and the Applicable Rules of the Provincial Law Societies. This audit has included:

examining, on a test basis, evidence supporting the amounts and disclosures in the trust accounts, and

assessing the accounting principles used by management.

We believe this audit provides a reasonable basis for our opinion.

We have not performed any audit procedures on records or documents relating to accounting for deceased and insolvent estates and trusts, not transmitted through the trust account. Accordingly, we do not express any opinion in this regard.

Qualification

The report is subject to the following qualifications (if none, state NIL)

.....
(Any contravention of sections 78(1), 78(2), 78(2A), 78(3), 78(4) and 78(6) of the Act and of the Rules of the Law Society referred to above relating to trust accounts are regarded as material and should be reported. If the report is qualified the next heading is to be changed to "Qualified opinion" and the wording is to change to "In my/our opinion, except as noted above, the...")

Opinion

In our opinion, the attorney’s trust accounts of {insert the name of the attorneys firm} for the period from {insert date} to {insert date} were maintained in compliance with Sections 78(1), 78(2), 78(2A), 78(3), 78(4) and 78(6) of the Attorneys Act, No. 53 of 1979 and in terms of the Rules 17, 20, 21, 21A of the KwaZulu Natal Law Society.

Supplementary information

Our audit procedures indicated that:

1. The firm’s trust and business accounts for the period reported on have been updated monthly and balanced at least quarterly.
2. The firm complied/did not comply with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund and the firm’s bank(s).
3. The firm’s trust and related business accounts for the period subsequent to the period being audited, was last inspected by us on (insert date of last inspection), have been written up to [insert date] and the trial balance was last balanced at [insert date].
4. The management of the firm provided us with the following changes in the composition of the firm which occurred during the period from (insert date) to (insert date), namely:
.....
5. Firm’s principal place of practice (insert full physical address)
.....
6. Firm’s branch office/s is/are at (insert full physical addresses)
.....

B. The following information was extracted from the audited trust accounts:

1. Reconciliation of interest earned on the firm’s trust accounts from the beginning of the period on (insert date) to the end of the period on (insert date):

Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2) of the Act is	R.....
---	--------

Amount earned during the current period on monies deposited in trust banking accounts in terms of subsection 78(1) and monies invested in trust investment accounts in terms of section 78(2) of the Act is	R.....
---	--------

Amount incurred during the current period in respect of actual bank charges (excluding VAT – firms not liable for VAT as registered vendors may include VAT) is	R.....
---	--------

Amount already paid over to the Attorneys Fidelity Fund during the period under review in terms of section 78(3) of the Act is	R.....
--	--------

Amount carried over to the next financial year in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2) of the Act is	R.....
--	--------

2. The ratio as a percentage of total bank charges (excluding VAT) incurred during the current period to the total of interest earned during the period was _____ (*insert %*)
3. Trust creditors and trust funds available at the period end on (*insert date*) and on one other date (*insert date, being another month end within the period covered by the report*), were as follows:

	At period end	Other date selected
Trust creditors	Xxxx	Xxxx
Trust funds available in terms of:		
Section 78(1) trust money	Xx	xx
Trust cash	Xx	xx
Section 78(2) investments	Xx	xx
Section 78(2A) investments	Xx	xx
Trust surplus/ (deficit)	xxxx	xxxx

Use of the Report

This report is intended solely for the use of the sole proprietor/partners/directors of the firm, the KwaZulu-Natal Law Society and the Attorneys Fidelity Fund.

Name

Registered Accountants and Auditors

Chartered Accountants (SA)

Address

Date

[amended by GG 27370 dated 18/03/2005.]

Sixth Schedule

Contract of Service

Between _____ (the Principal) being an Attorney who is employed full-time at the _____, being a Law Clinic, _____, or the _____ office of the Legal Aid Board established under section 21 of the Legal Aid Act, 1969,* which Law Clinic has been certified by the Law Society or which Legal Aid Office has been approved by the Minister in terms of section 1 of the Attorneys Act, No. 53 of 1979, and _____ (the Candidate Attorney), a major (minor, assisted herein by his/her guardian). * **Complete that which is applicable.**

It is agreed that -

1. The duration of this contract shall be a period of _____ years commencing on the _____ day of _____ 19_____, and terminating on the _____ day of _____ 19 _____, provided that, should the Candidate Attorney become entitled to be admitted as an Attorney prior to the date of termination, this contract shall forthwith terminate upon such admission.
2. The commencing monthly salary shall be the sum of R_____ which shall be payable in arrear not later than the last day of each calendar month.
3. The Candidate Attorney hereby undertakes and agrees that he/she shall -
 - (a) diligently, honestly, properly and confidentially serve his/her Principal in his/her profession as an Attorney;
 - (b) promptly execute all lawful instructions given to him/her by his/her Principal or any other person placed in authority over him/her by his/her Principal;
 - (c) ensure that he/she does not absent himself/herself from his/her employment by his/her Principal without his/her Principal's prior consent;
 - (d) conform with the reasonable requirements of his/her Principal with regard to dress, behaviour and propriety, and do all things in his/her power to ensure that he/she obtains during the course of this agreement, such qualifications as shall entitle him/her to admission as an Attorney;
 - (e) keep a diary or other written record of the training which he/she received during the period of service and until such time as he/she is admitted as an attorney hold such diary or other record available for inspection by his/her Principal, the Council of the Natal Law Society or by the examiners responsible for conducting the Candidate Attorneys' practical examinations in terms of section 14 of the Attorneys' Act, 1979;
 - (f) not engage in any business other than that of Candidate Attorney without the written consent of his/her Principal and the Council of the Natal Law Society;
 - (g) at no time divulge any secrets of his/her Principal or his/her clients, nor discuss their affairs with any third party without their specific knowledge and consent, and that he/she will not damage, do away with or deface any records, books, documents or assets of his/her Principal or of his/her clients.

4. The Candidate Attorney hereby indemnifies his/her Principal and holds him/her harmless against any claims which may arise against him/her or them from any act, omission or default on the part of the Candidate Attorney acting in the course and scope of his/her employment under this agreement.
5. The Principal hereby undertakes and agrees that he/she shall -
- (1) use his/her best endeavours to ensure that the Candidate Attorney is properly and fully instructed in the practice, ethics and understanding of the profession of an attorney and provide the Candidate Attorney with opportunities for gaining practical experience in:
 - (a) the preparation of legal opinions and briefs for Counsel;
 - (b) interviews with clients and witnesses and the drafting of witnesses' statements;
 - (c) the identification and application of appropriate legal principles to facts;
 - (d) advocacy (the arguing of elementary cases before courts and tribunals and the effective presentation of certain legal arguments);
 - (e) negotiations and the settlement of disputes;
 - (f) the drafting of letters, contracts, wills and pleadings;
 - (g) the keeping of proper accounting records and the handling of trust money;
 - (h) routine office administration, including the proper handling of files and documents;
 - (i) the preparation of statements of account for clients and bills of cost for taxation.
 - (2) use his/her best efforts to procure the admission of the Candidate Attorney as an Attorney; provided that the Candidate Attorney has served his/her period of service properly and is in his/her Principal's opinion a fit and proper person for admission as an Attorney;
 - (3) in the event of his/her ceasing to be employed by the Principal, sign all documents and do all acts or things necessary to enable the Candidate Attorney, should he/she so desire, to cede this Contract of Service to some other suitable Principal, and use his/her best endeavours to ensure that such other suitable Principal will accept such cession.
6. Should the Candidate Attorney -
- (a) not serve his/her period of service properly in terms of this Agreement;
 - (b) commit a breach of any of the terms and conditions of this Agreement, or
 - (c) be guilty of any misconduct,

the Principal and/or the Council of the Law Society shall be entitled to cancel this Contract and dismiss the Candidate Attorney from his/her employment.

Signed by the Principal at _____ this _____ day of _____ 19__.

As Witnesses:

1. _____
Principal

2. _____

Signed by the Candidate Attorney at _____ this _____ day of _____ 19__.

As Witnesses:

1. _____
Candidate Attorney

2. _____

Duly assisted by me in my capacity as his/her lawful guardian.

Guardian

Note :

1. Clauses 4 and/or 6 may be omitted and/or amended by the parties to the Agreement.
2. A Contract of Service may not be backdated, and commences on the date of signature or on some future date stipulated therein.
3. All parties to the contract, as well as the witnesses, must sign or initial each page of the contract.

Seventh Schedule

Conveyancing and Notarial Fees

Note:

Members are requested to note that the Council has decided not to publish the fees for conveyancing and notarial work in the Manual because of the cost involved in updating the Manual when the fees are changed and because members will be advised by way of a Circular immediately after the fees have been changed.

Eighth Schedule

International Code of Ethics

Rules

1. A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.

2. Lawyers shall at all times maintain the honour and dignity of their profession.

They shall, in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members.

3. Lawyers shall preserve independence in the discharge of their professional duty.

Lawyers practising on their own account, or in partnership, where permissible, shall not engage in any other business or occupation, if by doing so, they may cease to be independent.

4. Lawyers shall treat their professional colleagues with the utmost courtesy and fairness.

Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice, and when handling a case.

For this reason it is improper for lawyers to accept a case unless they can handle it promptly and with due competence, without undue interference by the pressure of other work. Rule 19 applies to the fees in these cases.

5. Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the Court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.

6. Lawyers shall always maintain due respect towards the Court. Lawyers shall without fear defend the interests of their clients and without regard to any unpleasant consequences to themselves or to any other person.

Lawyers shall never knowingly give to the Court incorrect information or advice which is to their knowledge contrary to the law.

7. It shall be considered improper for lawyers to communicate about a particular case directly with any person whom they know to be represented in that case by another lawyer without the latter's consent.

8. A lawyer should not advertise or solicit business except to the extent and in the manner permitted by the rules of the jurisdiction to which that lawyer is subject. A lawyer should not

advertise or solicit business in any country in which such advertising or soliciting is prohibited.

9. A lawyer should never consent to handle a case unless:
 - (a) the client gives direct instructions, or
 - (b) the case is assigned by a competent body or forwarded by another lawyer, or
 - (c) instructions are given in any other manner permissible under the relevant local rules or regulations.

10. Lawyers shall at all times give clients a candid opinion on any case.

They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.

Lawyers shall at any time be free to refuse to handle a case, unless it is assigned by a competent body.

Lawyers should only withdraw from a case during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.

The loyal defence of a client's case may never cause lawyers to be other than perfectly candid, subject to any right or privilege to the contrary which clients choose them to exercise, or knowingly to go against the law.

11. Lawyers shall, when in the client's interest, endeavour to reach a solution by settlement out of Court rather than start legal proceedings.

Lawyers should never stir up litigation.

12. Lawyers should not acquire a financial interest in the subject matter of a case which they are conducting. Neither should they directly or indirectly, acquire property about which litigation is pending before the Court in which they practice.

13. Lawyers should never represent conflicting interests in litigation. In non-litigation matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This Rule also applies to all lawyers in a firm.

14. Lawyers should never disclose, unless lawfully ordered to do so by the Court or as required by Statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.

15. In pecuniary matters lawyers shall be most punctual and diligent.

They should never mingle funds of others with their own and they should at all times be able to refund money they hold for others.

They shall not retain money they receive for their clients for longer than is absolutely necessary.

16. Lawyers may require that a deposit is made to cover their expenses, but the deposit should be in accordance with the estimated amount of their charges and the probable expenses and labour required.
17. Lawyers shall never forget that they should put first, not their right to compensation for their services, but the interests of their clients and the exigencies of the administration of justice.

The lawyer's right to ask for a deposit or to demand payment of out-of-pocket expenses and commitments, failing payment of which they may withdraw from the case or refuse to handle it, should never be exercised at a moment at which the client may be unable to find other assistance in time to prevent irreparable damage being done.

Lawyers' fees should, in the absence or non-applicability of official scales, be fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.

18. A contract for a contingent fee, where sanctioned by the law or by professional rules and practice, should be reasonable under all circumstances of the case, including the risk and uncertainty of the compensation and subject to supervision of a Court as to its reasonableness.
19. Lawyers who engage a foreign colleague to advise on a case or to co-operate in handling it, are responsible for the payment of the latter's charges, except express agreement to the contrary. When lawyers direct a client to a foreign colleague they are not responsible for the payment of the latter's charges, but neither are they entitled to a share of the fee of the foreign colleague.
20. Lawyers should not permit their professional services or their names to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so.

Lawyers shall not delegate to a legally unqualified person not in their employ and control any functions which are by the law or custom of the country in which they practise only to be performed by a qualified lawyer.

21. It is not unethical for lawyers to limit or exclude professional liability subject to the Rules of their local Bar Association, and to there being no statutory or constitutional prohibitions.

Ninth Schedule

FORM OF CERTIFICATE (WHERE TRUST MONIES HAVE BEEN HELD)

The Financial Manager
KZN Law Society
P.O. Box 1454
Pietermaritzburg
3200 or
Docex 25
Pietermaritzburg

Dear Sir,

I/We, the duly designated and appointed trust account partner(s)/director(s) or sole practitioner of, _____ (name of firm), carrying on business at: _____ (address of firm), (separate certificate required for each branch office having a separate trust account), confirm that:

1. I/We have maintained the necessary accounting records as required in terms of ss 78(4) & ss 78(6) of the Attorneys Act 53 of 1979 and the Rules and Rulings as they appear in the KZN Law Society Practice Manual for the accounting period from _____ to _____.
2. I/We certify that:-
 - 2.1 the accounting records are up to date and balanced as at the last day of the accounting period (note (b)), and
 - 2.2 the accounting records, to the best of my/our knowledge and belief, are in accordance with the terms of the Attorneys Act 53 of 1979 and the KZN Law Society Rules and Rulings, and
 - 2.3 all outstanding reconciling entries noted as at the end of the accounting period (refer note (b)) in terms of Rule 20(5) and 21(7) have been entered in the records or confirmed as correct.
 - 2.4 the trust creditor's account reconciliation as at end of accounting period is as follows.

(a)	Total as per Trust Creditors listing	R_____
(b)	Total of balance standing to the credit of the firm's Trust Banking account(s), Trust Investments account(s) ss 78(2) and 78(2A) and amounts held by it as Trust cash.	R_____
(c)	Surplus/(Deficit) Trust monies (b) – (a)	R_____
- (d) A detailed explanation is required under item 2.6 below, should (c) not equal NIL, including the steps taken to rectify the discrepancy(s).

2.5 I/We have extracted the following information from the accounting records of the firm and report that during the accounting period: -

- (a) the amount which the firm has earned on monies deposited in trust banking accounts in terms of Section 78(1) and monies invested in trust investment accounts in terms of Section 78(2) of the Act is R_____
- (b) the amount which the firm has incurred in respect of trust bank charges exclusive of VAT (bank charges including VAT may have been levied against firms not being liable for VAT as registered vendors) is R_____
- (c) the amount which the firm has paid to the Attorneys Fidelity Fund or its nominee, the KwaZulu-Natal Law Society, in terms of Section 78(3) of the Act for this accounting period is R_____
- (d) the amount which the firm has to pay to the Attorneys Fidelity Fund or its nominee, the KwaZulu-Natal Law Society, in terms of Section 78(3) of the Act for this accounting period is R_____
- (e) the ratio as a percentage of total bank charges referred to in sub-paragraph (b) to the total trust interest referred to in sub-paragraph (a) [(b)÷(a)] is _____ percent (%); and
- (f) the firm (*did/did not) comply with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund/KwaZulu-Natal Law Society and the Firm's bank/s.

2.6 the other matters which require to be reported are:-

2.7 during the said accounting period the Designated Trust Account Partner(s)/Director(s) or sole practitioner in terms of Rule 21B of the KZN Law Society rules was/were as follows:-

NAME	DATE DESIGNATED	DATE DESIGNATION CEASED

I/We solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.

CURRENT DESIGNATED TRUST ACCOUNT PARTNER(S)/DIRECTOR(S) OR SOLE PRACTITIONER (where applicable)

DATE : _____

NOTES:

- (a) State addresses of all places of business of the practice in respect of which this certificate is lodged.
- (b) The Trial Balance is to be a balance of all the accounting records covering Trust and Business accounts.

[substituted by GG 29669 dated 9/03/2007.]

Tenth Schedule

**FORM OF CERTIFICATE
(WHERE NO TRUST MONIES HAVE BEEN HELD)**

The Financial Manager
KZN Law Society
P.O. Box 1454
Pietermaritzburg
3200
Docex 25
Pietermaritzburg

Dear Sir,

I/We, the duly designated and appointed trust account partner(s)/director(s) or sole practitioner of,
_____ (name of firm), carrying on business
at: _____ (address of firm),
(separate certificate required for each branch office having a separate trust account), confirm that:

1. I/We have maintained the necessary accounting records as required in terms of ss 78(6) of the Attorneys Act 53 of 1979 and the Rules and Rulings as they appear in the KZN Law Society Practice Manual for the accounting period from _____ to _____.
2. I/We certify that:-
 - 2.1 the accounting records are up to date and balanced as at the last day of the accounting period, and
 - 2.2 the accounting records, to the best of my/our knowledge and belief, are in accordance with the terms of the Attorneys Act 53 of 1979 and the KZN Law Society Rules and Rulings, and
 - 2.3 I/We have not handled Trust monies during this accounting period (note (b)).
 - 2.4 if circumstances change with the result that I am required to receive or hold Trust monies, I shall immediately advise the Society.
 - 2.5 the other matters which require to be reported are:-

2.6 during the said accounting period the Designated Trust Account Partner(s)/Director(s) or sole practitioner in terms of Rule 21B of the KZN Law Society rules was/were as follows:-

NAME	DATE DESIGNATED	DATE DESIGNATION CEASED

I/We solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.

CURRENT DESIGNATED TRUST ACCOUNT PARTNER(S)/DIRECTOR(S) OR SOLE PRACTITIONER (where applicable)

DATE : _____

NOTES:

- (a) State addresses of all places of business of the practice in respect of which this certificate is lodged.
- (b) The accounting period must be six months or less and follow immediately on from the previous accounting period without a gap or overlap in the dates concerned.

[substituted by GG 27370 dated 18/03/2005.]

Eleventh Schedule

CORRUPT PRACTICES BY LAW FIRMS

CONDUCT IN RESPECT OF CORRUPT ACTIVITIES

Part 1: General Conduct of Corruption

In this Schedule "practitioner" includes a "candidate attorney"

General Conduct of Corruption

1. Any practitioner who, directly or indirectly –
 - (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,in order to act, personally or by influencing another person so to act, in a manner –
 - (i) that amounts to the –
 - a. illegal, dishonest, unauthorised, incomplete, or biased; or
 - b. misuse or selling of information or material acquired in the course of the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to –
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - c. the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,is guilty of unprofessional, dishonourable or unworthy conduct.

Part 2: Conduct in respect of Corrupt Activities Relating to Specific Persons

Conduct in respect of Corrupt Activities Relating to Public Officers

2. (1) Any –

- (a) practitioner who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person or his law firm; or
- (b) practitioner who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner –

(i) that amounts to the –

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to –

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of unprofessional, dishonourable or unworthy conduct.

(2) Without derogating from the generality of 2(1) above, "**to act**" includes –

- (a) voting at any meeting of a public body;
- (b) performing or not adequately performing any official functions;
- (c) expediting, delaying, hindering or preventing the performance of an official act;

- (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body;
- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
- (f) showing any favour or disfavour to any person in performing a function as a public officer;
- (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
- (h) exerting any improper influence over the decision making of any person performing functions in a public body.

Conduct in respect of Corrupt Activities Relating to Foreign Public Officials

3. (1) Any practitioner who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner –
- (a) that amounts to the –
 - (i) illegal, dishonest, unauthorised, incomplete, or biased conduct; or
 - (ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (b) that amounts to –
 - (i) the abuse of a position of authority;
 - (ii) a breach of trust; or
 - (iii) the violation of a legal duty or a set of rules;
 - (c) designed to achieve an unjustified result; or
 - (d) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of unprofessional, dishonourable or unworthy conduct.

- (2) Without derogating from the generality of paragraph 3(1) above, "**to act**" includes –
- (a) The using of such foreign public official's or such other person's position to influence any acts or decisions of the foreign state or public international organisation concerned; or
 - (b) Obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation.

Conduct in respect of Corrupt Activities Relating to Agents

4. Any –

- (a) practitioner acting as an agent for someone else who, directly or indirectly –
 - (i) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (ii) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that person or for the benefit of another person; or
- (b) practitioner who, directly or indirectly –
 - (i) accepts or agrees or offers to accept any gratification from an agent, whether for the benefit of himself or herself or for the benefit of another person; or
 - (ii) gives or agrees or offers to give any gratification to an agent, whether for the benefit of that agent or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner –

- (aa) that amounts to the –
 - (aaa) illegal, dishonest, unauthorised, incomplete, or biased conduct; or
 - (bbb) misuse or selling of information or material acquired in the course of the,

exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (bb) that amounts to –
 - (aaa) the abuse of a position of authority;
 - (bbb) a breach of trust; or

- (ccc) the violation of a legal duty or a set of rules;
- (cc) designed to achieve an unjustified result; or
- (dd) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of unprofessional, dishonourable or unworthy conduct.

Conduct in respect of Corrupt Activities Relating to Members of the Council, Committee or Joint Committee of the Law Society

5. (1) Any –

- (a) member of the Council, Committee or Joint Committee of the Law Society who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) practitioner who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the Council, Committee or Joint Committee of the Law Society, whether for the benefit of that member or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner –

- (i) that amounts to the –
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased conduct; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (ii) that amounts to –
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of unprofessional, dishonourable or unworthy conduct.

- (2) Without derogating from the generality of paragraph 5(1) above, "**to act**" includes –
- (a) absenting himself or herself from;
 - (b) voting at any meeting of;
 - (c) aiding or assisting in procuring or preventing the passing of any vote in;
 - (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or
 - (e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by,
- the Council of which he or she is a member or of any committee or joint committee of that Council.

Conduct in respect of Corrupt Activities Relating to Judicial, Quasi Judicial or Administrative Duties

6. (1) Any –
- (a) practitioner acting in a judicial, quasi judicial or administrative capacity who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (b) practitioner who, directly or indirectly, gives or agrees or offers to give any gratification to a practitioner acting in a judicial, quasi judicial or administrative capacity, whether for the benefit of that practitioner or for the benefit of another person,
- in order to act, personally or by influencing another person so to act, in a manner –
- (i) that amounts to the –
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased conduct; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to –
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or

- (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of unprofessional, dishonourable or unworthy conduct.

- (2) Without derogating from the generality of paragraph 6(1) above, "**to act**" includes –
- (a) performing or not adequately performing a judicial, quasi judicial or administrative function;
 - (b) making decisions affecting life, freedoms, rights, duties, obligations and property of persons;
 - (c) delaying, hindering or preventing the performance of a judicial, quasi judicial or administrative function;
 - (d) aiding, assisting or favouring any particular person in conducting judicial, quasi judicial or administrative proceedings or judicial, quasi judicial or administrative functions;
 - (e) showing any favour or disfavour to any person in the performance of a judicial, quasi judicial or administrative function; or
 - (f) exerting any improper influence over a decision making of any person, including a practitioner acting in a judicial, quasi judicial or administrative capacity or a member leading evidence in a judicial, quasi judicial or administrative capacity, performing his or her functions.

[inserted by GG 27370 dated 18/03/2005.]

Twelfth Schedule

**INSTRUCTIONS TO MAKE AN INVESTMENT IN TERMS OF
SECTION 78(2A) OF THE ATTORNEYS ACT**

I/we, the undersigned, _____ (full names and identity number/s – to be suitably adapted for an investment in a representative capacity) of

(address) hereby confirm my/our instructions to _____
(firm's name) to invest any money deposited by me/us on account of _____, into the/a trust banking account of the firm on the basis that:

1. The amount is invested in a separate trust savings or other interest-bearing account at a registered bank.
2. The account shall contain a reference to section 78(2A) of the Attorneys Act 1979 (Act No 53 of 1979).
3. The payment of the money into the account contemplated in section 78(2A) is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of a particular matter or transaction, being (provide full details thereof) that is either already in existence or about to come into existence at the time that this investment is made and over which investment the practitioner (an attorney, notary or conveyancer in the exclusive employ of the firm) exercises exclusive control as trustee, agent or stakeholder or in any fiduciary capacity.
4. I direct that the investment be made at the following bank:

5. The firm shall report to me monthly/quarterly/on registration of transfer/on termination of my mandate (delete whichever is not applicable).
6. The interest, which accrues on such investment is to be for the benefit of _____ (provide full details) and is to be paid to _____ after deducting your professional fee and costs for administering the investment (delete if not applicable) _____ (provide full details when the interest shall be paid).
7. I am aware of the fact that while the funds are so invested with the said bank, the funds are not protected against a possible liquidation of the said bank.
8. I confirm the following other instructions (if applicable):

Signed at _____ on this _____ day of _____ 20 ____

Client/s

Accepted at _____ on this _____ day of _____ 20 ____

On behalf of firm

Full names

[inserted by GG 29669 dated 9/03/2007.]

Thirteenth Schedule

CODE OF ETHICS FOR LEGAL PRACTITIONERS

All legal practitioners shall:

1. honour, respect and promote the values enshrined in the Bill of Rights;
2. maintain the highest standards of honesty, integrity and independence at all time;
3. act with care and skill, honour undertakings and maintain the reputation and high standards required in the performance of their duties;
4. conduct themselves with courtesy and respect towards participants in proceedings, especially persons without legal representation, so as to ensure compliance with the rules and procedures for the fair conduct of such proceedings;
5. maintain the highest standards of professionalism and promptly respond to correspondence and messages from colleagues, clients and members of the public;
6. comply with all ethical and professional rules of practice;
7. respect the legal privilege and confidentiality that exists with clients and former clients;
8. subject to the laws as regards contingency fees, and the rules and guidelines as regards advertising, not engage in any form of activity that may be construed as touting;
9. extend to all colleagues, judges, academics, professionals, litigants and students, including persons from foreign jurisdictions, cordiality and respect at all times.

[inserted by GG 29669 dated 9/03/2007.]

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