

THE NATAL LAW SOCIETY
RULINGS OF THE COUNCIL

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INTRODUCTION TO THE RULINGS OF THE COUNCIL

Professional Conduct

The attorney and client relationship is characterised by the trust which the client places in his attorney. Lacking the technical skills, knowledge and objectivity necessary to form his own judgment, the client places himself in the hands of his attorney in the knowledge that his secrets will remain confidential, his property will be secure and the advice which he receives will be informed and directed towards his best interests.

Although an attorney must safeguard his client's interests, he should never accept an instruction to do anything which is dishonest nor should he give his client any assistance in the performance of any act which is a criminal offence.

As an officer of the Court, an attorney plays an important role in the administration of justice. He observes a high standard of conduct in his dealings with the Court and in his transactions with his colleagues. An attorney should never seek to obtain an advantage for himself or his client by deliberately misrepresenting either the facts or the law. Nor should he place his own interests before the professional duties he has agreed to assume.

The essence of the conduct of an attorney was expressed in very clear terms by Sir Thomas Lund CBE when he said:

"You may well ask for a short summary of a solicitor's duties. I suppose really it is the old principle of 'do unto others as you would they should do unto you'.

If I had to advise briefly the young solicitor on the guiding principles of conduct when he comes into the profession, I think I should say to him that it is clear that only the very highest conduct is consistent with membership of this profession of ours. Your client's interests are paramount - that seems to be clear - except that you should never do, or agree to do, anything dishonest or dishonourable, even in a client's interest or even under pressure from your best and most valuable client; you had better lose him. You should refuse to take any personal part in anything you yourself think is dishonourable. So far as you possibly can, consistently with not actually letting your client down, you should be completely frank in all your dealings with the Court, with your brother solicitors and with the members of the public generally.

Finally I think I would say that where your word has been pledged either by yourself or a member of your staff you should honour that word even at financial cost to yourself, because his reputation is the greatest asset a solicitor can have, and when you damage your reputation, you damage the reputation of the whole body of this very ancient and honourable profession of ours."

Rulings and the Reasons for them

It may be helpful to set out the reasons for the existence of separate Rulings of professional conduct which in most cases impose a higher standard on professional people than is required by the common law.

One of the hallmarks of a developed profession is that it lays down and maintains standards of professional conduct for its members based upon the best thinking of those members as to what constitutes proper conduct for a member of that profession. The enforcement of these standards is carried out by the profession itself.

The Ormrod Committee in their report on legal education 1971 in the United Kingdom stated:

"A profession involves a particular kind of relationship with clients, or patients, arising from the complexity of the subject matter which deprives the client of the ability to make informed judgments himself and so renders him to a large extent dependent upon the professional man. A self-imposed code of professional ethics is intended to correct the imbalance in the relationship between the professional man and his client and to resolve inevitable conflicts between the interests of the client and professional man or the community at large."

The maintenance of the professional standards expected of an attorney can best be achieved by a professional body which limits entry to the profession to those who are suitably qualified and which imposes a discipline upon its members. For more than a century the affairs of attorneys in Natal have been regulated by the Natal Law Society. Over the years the Natal Law Society accumulated a body of Rulings which were collected and published in what soon became known as the "Black Book". As the Rulings were pragmatic in their character, it is not surprising to find that some have become outdated as a result of legislative amendments. Others are not easy to understand because they relate to circumstances, which, although well understood at the time when the Rulings were made, are now forgotten.

The Rulings have been edited and republished in what it is hoped will be found to be a more readable form. Some new matter has been introduced into the Rulings. For the most part, however, the new Rulings are merely a restatement of the principles and guidelines which have been accepted by the profession in Natal over a period of many years.

The Rulings are a gloss upon and must be read in conjunction with the Attorneys Act, 1979, and the Rules of the Natal Law Society.

Disciplinary Control

Any attorney who wishes to practise in Natal must be a member of the Natal Law Society. Some of the objects of the Natal Law Society are:

1. to uphold the integrity of practitioners;
2. to uphold and improve the standards of professional conduct, and
3. to provide for the effective control of the professional conduct of practitioners.

The Natal Law Society may conduct, or may cause to be conducted, an enquiry concerning any allegation of unprofessional, dishonourable or unworthy conduct on the part of a member.

If a member is found guilty of unprofessional, dishonourable or unworthy conduct, a fine not exceeding R10 000,00 may be imposed upon such member or he may be reprimanded. The Society may also recover from him the costs incurred in connection with an enquiry. If the Council believes that the behaviour of a member has been of such a nature that he can no longer be considered a fit and proper person to practise as an attorney, an application will be made to the Provincial Division of the Supreme Court to strike that member's name from the roll of attorneys. Cases of a less serious nature may be dealt with by way of an application to suspend a member from practising as an attorney for a period of time.

RULINGS OF THE COUNCIL

The following Rulings are those referred to in Rule 14(a). Unless the context indicates otherwise, words and phrases appearing in the Rulings have the meanings defined in Rule 1.

The Rulings of the Council are not intended to include every rule of ethical conduct. Members are expected to conduct themselves as honourable men and women. An attorney's word should be his bond.

RULING 1

THE MEMBER AND HIS PROFESSION

- 1.(1) A member should at all times maintain the honour and dignity of his profession. He should in his practice, as well as in his private life, abstain from any behaviour which might tend to discredit the profession of an attorney.
- 1.(2) A member should preserve his independence in the discharge of his professional duties.
- 1.(3) A member practising on his own, in partnership or as a member of a professional company should not engage in any other business or occupation if by doing so he might cease to be independent.
- 1.(4) It shall not be permissible for professional services or the name of a firm to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so. (Rule 14(b)(x))
[amended by Council Resolution taken on 20/8/2004.]
- 1.(5) A member should exercise proper control and supervision over his employees.
- 1.(6) A member should not, without just cause, communicate with any other person in terms which are abusive or offensive.
- 1.(7) A member, who practises on his own and who may be absent from his practice at regular intervals, for example, on parliamentary or similar duties, may practise in association with another member who will supervise the administration and control of his practice during his absence, provided that –

- (a) the association agreement is entered into in writing and is confirmed by the Council,
 - (b) the association agreement provides that the supervising member will have signing powers on the absent member's trust and business banking accounts, and
 - (c) the nature of the work done by both members is such that the arrangement is possible in practice.
- 1.(8) (a) A member practising on his own shall, if he intends to be absent from his practice for a period in excess of 10 working days, apply in writing to the Council at least 30 days prior to his departure for approval of the arrangements which he has made for the supervision of his practice during his absence. The member may, in the case of urgency only, give the Council a shorter period of notice. In his application the member must inform the Council -
- (i) which other member will be supervising his practice,
 - (ii) the extent of the supervision which the other member will exercise, and
 - (iii) what arrangements he has made for the signing of his business and trust cheques.
- (b) This Ruling also applies to members who practise as partners or directors of a firm where all the partners or directors intend to be absent simultaneously from the firm for a period in excess of 10 working days.
- (c) (i) A member shall inform the Council of the reason for the late notice.
- (ii) A member who fails to observe the 30 days' notice period referred to in paragraph (a) must provide written reasons for the late notification.
[inserted by Council Resolution taken on 19/3/2003.]
- 1.(9)
[deleted by Council Resolution taken on 20/8/2004.]
- 1.(10)
- 1.(11) (a) A member who, without just cause, fails to pay a fine imposed by the Council within the time limit set by the Council in a notice advising him of the fine, shall be guilty of unprofessional conduct.
- (b) Where the Council has cause to instruct attorneys to institute Court proceedings against a member, e.g. strike off or suspension proceedings or the collection of fines or subscriptions, then the member shall, in the absence of an agreement or Court Order to the contrary, be liable for all costs incurred by the Society on such proceedings.
[amended by Council Resolution taken on 25/8/2006 published in Circular 9/2006.]
- 1.(12) A member, who is also a notary, may not act as a notary unless he practises as an attorney.

- 1.(13) An attorney is under a duty to report to the Society any serious breach of conduct or action on the part of another attorney which the attorney believes constitutes misconduct or a breach of the Society's rules or ruling.

The duty to report arises at the time the attorney becomes aware of the conduct or transgression.

RULING 2

THE MEMBER AND HIS CLIENT

2.(1) The Acceptance of Instructions

- (a) It is improper for a member to accept work unless he can attend to it promptly and with due competence, without undue interference from the pressure of other work.
- (b) A member should not accept instructions in a matter from anyone other than the person concerned or the person's authorised agent.
- (c) A member shall not accept instructions from, nor shall he assist or accept instructions to make payment to, any person (not being an attorney or an assessor acting on the instructions of a registered insurance company) connected with the business of soliciting instructions to make, or making for reward, claims for compensation resulting from death or personal injury.

2.(2) Conflict of Interests

- (a) A member must without fear and without regard to any unpleasant consequences to himself or to any other person defend the interests of his client.
- (b) A member should not, contrary to the best interests of his client, acquire a financial interest in the subject matter of the dispute in which he is acting.
- (c) A member should not represent conflicting interests in a dispute which he is handling nor should he act for and against the same party at the same time without the consent of the party concerned. This Ruling applies to all members of a firm.

This Ruling also applies in matters where one member of a firm is instructed by the Legal Aid Board to act for one of the parties. It would not assist if a guarantee is furnished to the client to the effect that no information obtained will be used against the client in a case where there is a clear conflict of interests.

- (d) The question as to whether a member who has acted for a client in criminal proceedings can thereafter act against that client in civil proceedings arising out of the same subject matter falls to be determined in accordance with the principles laid down in the cases of Robinson vs Van Hulsteyn, Feltham and Ford 1925 AD 12 and Schrolter vs Schrolter 1925 SWA 65. For example, the Council has ruled that a member who has acted for a client charged with negligent driving, which resulted in an accident, may not subsequently act against the client and his third party insurers in connection with a claim for damages arising out of the same accident.

- (e) A member should not act against a former client, without the former client's consent, if the possibility exists that the member may use information obtained from him to his prejudice.
- (f) It is improper for a member to take advantage of the inexperience, youth, want of education, ill health, lack of knowledge or unbusinesslike habits of a client. (Rule 14(b)(i))
- (g) It is improper for a member to borrow 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.
- (h) It is improper for a member to advise a client to invest in, or make a loan to, any business or organisation in which the member has a financial interest unless the client has been informed of the nature and extent of that financial interest. If it is not a part of the client's normal business to make such investments or loans, the client should be separately advised by an independent adviser who has no financial interest in the matter. (Norton vs Lord Ashburton 1914 A.C.p932)
- (i) A member who handles a conveyancing transaction owes a duty of care to all parties in regard to the conveyancing and should therefore not represent either of them in the event of a dispute where there is a conflict of interest.
[amended by Council Resolution taken on 25/8/2006 published in Circular 9/2006.]

2.(3) **Professional Secrecy**

A member must not, without the consent of his client or unless ordered to do so by the Court or as required by statute, disclose what has been communicated to him in his capacity as an attorney even after he has ceased to be the client's attorney.

2.(4) **Professional Advice**

- (a) A member should at all times give his client a candid opinion on any case. He must render his assistance with scrupulous care and diligence.
- (b) A member should never stir up, encourage or prolong litigation.
- (c) A member should, when it is in his client's interests to do so, endeavour to reach a solution to a dispute by settlement out of Court.
- (d) A member should not, in promoting his client's interests, himself do anything which is illegal or dishonourable.
- (e) Although a member is under no duty to insist on his client's obtaining legal aid, he should advise a client who qualifies for legal aid, of its availability.
- (f) A member is under a duty to reply not only to enquiries received from his own client, but also to enquiries received from the other party in a conveyancing transaction to which he is attending, and from the heirs, legatees and creditors of an estate which is being wound up by him. (Rule 14(b)(iii))

- (g) A member shall honour any undertaking given in the course of the member's practice until the undertaking is performed, released or excused.
[inserted by Council Resolution taken on 24/8/2007 published in Circular 6/2007.]

2.(5) **Fees and the Duty to Account**

- (a) A member should put first, not his right to compensation for his services, but the interests of his client and the exigencies of the administration of justice.
- (b) A member may require that a deposit be made to secure payment of his fees and disbursements but the amount of the deposit should not exceed a reasonable estimate of his charges.
- (c) In pecuniary matters, a member must be punctual and diligent. He should not retain money which he has received for his client without good reason.
- (d) In conveyancing matters members may not –
- (i) debit conveyancing fees prior to registration of transactions in the Deeds Office, and/or
 - (ii) come to any arrangements with their clients permitting them to debit such fees prior to such registration.

save in respect of wasted costs when the transaction is cancelled or the transaction is not being proceeded with.

[inserted by Council Resolution taken on 25/8/2006 published in Circular 9/2006.]

- (e)
- (f) (i) If a client, having been rendered a lump sum non-itemized account in a litigious matter, requires an itemized account, then the member must supply such account free of charge.
- (ii) A law firm, having furnished details of the services rendered on an itemised basis in a litigious matter, is not obliged to specify the actual fees charged per item. Once a member has rendered an itemised account he could not be expected to put a price on everything in the account. On taxation the fees charged by him could be reduced because of inadequate information in the first account, but that is not a matter on which the Council of the Society could make a Ruling.
- (iii) In a non-litigious matter a member is not obliged to furnish his client with an itemised account. An itemised account would be against the spirit of the Rule regulating the assessment of fees. When his account is queried by his client he should submit his fee account to the Law Society for assessment in terms of Rule 16 and he should provide the information needed to enable the assessor to apply the criteria set out in Rule 16(b).

- (iv) A member may not charge a fee for drawing an account in a matter whether the account is in the form of an itemised or non-itemised statement unless he is entitled thereto in terms of the law, or a tariff, or a prior written agreement with the client.

[inserted by Council Resolution taken on 19/3/2003.]

- (g) Unless he reserves the right to do so at the time that he renders his account, a member may not subsequently increase his own fees by reason merely of the fact that such fees were increased on taxation or on assessment by the Law Society. If his fees are taxed, the member is entitled to the tariff fee for preparing the bill and to the fee for attending the taxation. See Hershensohn vs Martens 1915 (NPD) and Hathorn vs Barton 1922 (NPD). See also the unreported case of Lancashire vs Natal Law Society NPD Case 2906/95. The following endorsement on a statement of account constitutes a sufficient reservation of the member's right to increase the amount of his fees on taxation or on assessment and has been accepted as fair by the Unfair Contracts Terms Committee of the Business Practises Committee of the Department of Trade and Industry:

'The above is a provisional estimate of fees and disbursements. If you require taxation or assessment, an itemised Bill for taxation, or a detailed account for assessment, will be prepared and submitted to taxation or assessment. Such account, as taxed or assessed, may be higher or lower than this provisional account, in which event the amount so taxed or assessed will be the amount payable.'

- (h) If a client wishes to make periodic payments to a member in contemplation of the possibility that he may subsequently become involved in a criminal or civil action, the member may accept such payments but he must deposit them to the credit of his trust account in the client's name. The credit in the trust account may be used to pay the fees and disbursements of the member when such fees have been earned and when the liability for the disbursements has arisen. With the consent of the client, the client's funds may be transferred to an interest-bearing account in the client's name. A member may not accept from his client payments in the form of "insurance" against possible criminal or civil action being instituted against him in the future.
- (i) A member may accept from a client a retainer to ensure that he will not act against the client in any matter.
- (j) A member may accept from a client a lump sum payment for advice to be given over a period of time provided that the lump sum represents a fair estimate of the fees which would be chargeable for the advice.
- (k) It is improper for a member to charge a raising fee in respect of a loan obtained from a financial institution. A member may make a charge commensurate with the work done in connection with such loan, but he should bear in mind his obligation to disclose to his client any commission, which he has received from the financial institution.
- (l) It is improper for a member, having been instructed in a legal aid matter, to receive or attempt to receive directly or indirectly from the client or any other person any payment for disbursements, fees or remuneration in excess of that allowed or approved by the Legal Aid Board, other than disbursements made prior to the granting of legal aid and an attorney and client fee commensurate with the work done and services rendered by the member for the client in the matter prior to the granting of legal aid.
- (m) From time to time the question arises whether a time constraint should be imposed on a dissatisfied client requesting an assessment of a member's fees. Frequently a dissatisfied client requests the Law Society to arrange for the assessment of a member's fees some years subsequent to the rendering of the attorney's account. The Council was requested to consider whether it would be appropriate (or more equitable as far as members are concerned) to establish a time period in which a request for an assessment must be lodged with the Society. It was pointed out that there had been instances where requests for assessments had reached the Society up to 5 years after the rendering of the member's account. The Council decided that it would not, in the absence of cogent reasons, consider any matters for assessment which reached the office more than 3 years after the account had been rendered by the member to his client.
- (n) Fee for Interpreters

- (1) Every person is entitled to communicate in the official language of his/her choice.
- (2) A member providing legal services cannot charge a fee for interpreting into the person's language of choice unless –
 - (a) The client agrees in writing to pay.
 - (b) The interpreter is not an employee of the firm of attorneys.
 - (c) The fee is fair, reasonable and necessary.

(o) Road Accident Fund: Claimants in Passed Away Matters

In third party claims where a member's client dies prior to settlement of the claim, or the claim becomes litigious and the client dies prior to *litis contestatio*, the member's mandate to act for a client is terminated; and any claim for general damages, loss of earnings, loss of earnings potential and future medical expenses falls away.

In such circumstances it will be regarded as unprofessional conduct for a member where the member becomes aware of the member's client's death:

- (1) To fail to inform the Road Accident Fund of the client's death.
- (2) Not to refund to the RAF any monies paid but which were not payable by the RAF and which were still held in trust by the member at the time that the member became aware of the client's death.

[inserted by Council Resolution published in Circular 5/2005 dated 19/5/2005.]

2.(6)

[deleted by Council Resolution taken on 20/8/2004.]

2.(7) Conveyancing Fee in Excess of the Statutory Fee

The Council is of the view that under no circumstances may a conveyancer charge a fee in excess of the statutory fee.

2.(8) Termination of a Member's Mandate

- (a) The following general principles apply to a withdrawal as attorney of record -

- (i) a member may, on good cause, withdraw;
 - (ii) he should do so timeously and give notice to his client, the Court and to the other side;
 - (iii) the period of notice will depend on varying circumstances but should be sufficient to enable the client to make alternative arrangements for the hearing and to avoid inconvenience to the Court.
- (b) In applying the aforesaid principles, a member should consider the following –
- (i) He should try to avoid inconvenience to the Court or delay in the administration of justice. Where, owing to circumstances beyond his control, he is obliged to withdraw on unreasonably short notice he should consider tendering an explanation to the Court in person, or on affidavit, or through counsel.
 - (ii) He should have due regard to the interests of other persons, such as witnesses, who may be inconvenienced by his withdrawal.
 - (iii) Without attempting to define "good cause", the following are grounds for withdrawal -
 - (aa) sickness;
 - (bb) absence on military service;
 - (cc) failure by the client to place the member in funds after the receipt of a timeous request for funds;
 - (dd) failure by the client to give the member sufficient instructions to enable the member to prosecute his client's case adequately;
 - (ee) the existence of circumstances which would render it unethical or dishonourable for the member to continue to act;
 - (ff) animosity between the member and his client.
- (c) A member's right to exercise a lien over papers and documents upon termination of his mandate is governed by the common law. See Goodricke and Son vs Auto Protection Insurance Company Limited (in liquidation) 1968(1) S.A. 717(AD). Until his account has been paid or secured to his reasonable satisfaction, a member may retain only those of his client's property and documents which were relevant to his mandate and in respect of which he had expended time and labour. (See Ruling 3(4) for the duties of a member who takes over a matter from a colleague.) Botha NO vs Mchunu 1992(4) S.A. 740(N).

2.(9) **Delegation of Responsibility**

Where a member instructs counsel or another attorney in any matter, it remains his responsibility to ensure the timeous and proper fulfilment of his mandate. Where the mandate is not properly fulfilled, the member must protect the client's interests in relation to any sums claimed by counsel or any other attorney.

RULING 3

THE MEMBER AND HIS COLLEAGUES

3.(1) **Courtesy**

A member shall treat his professional colleagues with courtesy and fairness.

3.(2) **Communications with Another Attorney's Client**

It is improper for a member to communicate about a case directly with any person, other than his own client, whom he knows to be represented in that case by another attorney without the latter's consent. This Ruling does not apply to a letter of demand or formal notice which must be delivered to a particular person or at a stipulated address, but a copy of such demand or notice should be sent to the attorney acting for the addressee.

3.(3) **Sharing of Fees**

(a) Attention is directed to the Society's Rule 18 relating to Allowances. The Council's interpretation of that Rule is that fees may be shared only with a practising attorney duly admitted to practise within any part of the Republic of South Africa and a legal practitioner outside the Republic. References in the Rulings to the sharing of fees between attorneys should be interpreted as referring to attorneys as defined in Section 83(6) of the Attorneys Act and in Rule 18.

(b) Where a member instructs a colleague, including a colleague who practises outside the Republic of South Africa, the instructing attorney is responsible for the latter's charges in the absence of an agreement to the contrary.

[amended by Council Resolution taken on 20/8/2004.]

(c) Where a member merely directs a client to a colleague and the client instructs his colleague, the member shall not be responsible for his colleague's charges nor shall he be entitled to a share of his colleague's fees.

(d)

[deleted by Council Resolution taken on 20/8/2004.]

(e) The sharing of fees between notaries is governed by the provisions of Rule 18(a)(iii).

- (f) A member who is the executor of a deceased estate is not allowed to share his professional fee with anyone other than an attorney.
[amended by Council Resolution taken on 20/8/2004.]
- (g) If a member is instructed by a trust company, which has been appointed executor, he may charge either the executor's fee or an amount commensurate with the work done.

3.(4) **Duties of a Member who takes over a matter from a Colleague**

If a client hands a matter to an attorney (the second attorney) and if the second attorney knows that another attorney (the first attorney) has previously acted in the same matter for the same client, or if such fact subsequently comes to the knowledge of the second attorney, the second attorney must cease acting for that client in respect of that matter until the account of the first attorney has been paid or secured to the reasonable satisfaction of the first attorney. This Ruling is subject to the following qualifications and exceptions -

- (a) If the first attorney's interest in the matter comes to the second attorney's notice at a late stage, the second attorney may continue acting if his refusal to do so at that stage would be unconscionable.
- (b) The first attorney is not entitled to withhold from the client documents to which the client is lawfully entitled. (With regard to an attorney's right to exercise a lien over his client's documents, see Ruling 2(8)(c).)
- (c) The first attorney must prepare his account expeditiously with a view to occasioning the client minimum prejudice.
- (d) If adequate security for payment of the account upon the final determination of the amount thereof is offered, the first attorney should accept the offer and the second attorney may act.
- (e) The Council reserves the right to relax or grant exemptions from the provisions of the Ruling in circumstances in which its strict application would, in the opinion of the Council, be unconscionable.
- (f) The Ruling does not apply to Legal Aid matters.
- (g) The Ruling does not apply to a second attorney who is instructed by the trustee, executor or curator of the estate of the client of the first attorney.
- (h) The Ruling does not apply if the first attorney ceases to act through no fault of the client, as would be the case if the first attorney withdrew as a result of a conflict of interests, or if he died before completing his mandate.

3.(5) A member should not express unsolicited opinions of an unfavourable nature regarding the work of his colleagues. It is in order for a member, acting on the instructions of a client, to give a second opinion with regard to advice given to the same client by another attorney, provided that, unless he has received contrary instructions from the client, the member shall -

- (a) disclose to the first attorney the fact that he has given a second opinion; and
- (b) make a copy of such opinion available to the first attorney, if requested to do so.

A request for a second opinion should not be regarded as an opportunity to take away work from a colleague, and the member giving the second opinion should not indulge in unnecessary or unfair criticism of his colleague.

RULING 4

THE MEMBER AND THE COURTS

4.(1) **Conduct towards the Court**

A member owes a duty not only to his client but also to the Court. The proper administration of justice requires that the Court should be able to rely upon practitioners who appear before it or have dealings with it. There must be no deception of the Court in relation to anything which the Court is entitled to know. A member should therefore -

- (a) always maintain due respect towards the Court which shall include ensuring that he is present in Court at the appointed time;
- (b) not knowingly give incorrect information or advice to the Court; and
- (c) not knowingly be a party to any conduct which is likely to result in the Court being misled, deceived or inconvenienced.

4.(2) Interviewing Witnesses

(a) State Witnesses in Criminal Cases

- (i) The Council adopted the following decision of the Constitutional Court as a Ruling:
 - (aa) Insofar as, and to the extent that, the rule of practice pertaining to the right of an accused, or his legal representative, to consult with witnesses for the State prohibits such consultation without the permission of the prosecuting authority, in all cases and regardless of the circumstances, it has been ruled by the Constitutional Court that the rule of practice is not consistent with the Constitution.
 - (bb) The accused, or his or her legal representative, should in such circumstances approach the Attorney-General, or an official authorised by the Attorney-General, for consent to hold the consultation. If consent is granted the Attorney-General, or the official, shall be entitled to be present at such consultation and to record what transpires during the consultation. If the consent of the Attorney-General, or the official, is refused, the accused shall be entitled to approach the Court in which he is required to appear for permission to consult the relevant witness.
 - (cc) Notwithstanding any rule of practice to the contrary, an accused has a right to consult with a state witness without the prior permission of the prosecuting authority in circumstances where the accused's right to a fair trial would be impaired, if, on the special facts of a particular case, the accused cannot properly obtain a fair trial without such consultation.
 - (dd) The right referred to in Ruling 4(2)(a)(i)(bb) does not entitle an accused to compel consultation with a state witness:
 - (aaa) if such state witness declines to be so consulted; or
 - (bbb) if it is established on behalf of the State that it has reasonable grounds to believe that such consultation might lead to the intimidation of the witness, a tampering of the witnesses' evidence, the disclosure of State secrets or the identity of informers, or that it might otherwise prejudice the proper ends of justice.
 - (ee) Even in the circumstances referred to in Ruling 4(2)(a)(i)(dd)(bbb), the Court may, in the circumstances of a particular case, exercise a discretion to permit such consultation in the interest of justice subject to suitable safeguards.
- (ii) It is recommended that before a member relies on the provisions of Ruling 4(2)(a)(i)(cc), he should discuss the matter with a member of the prosecuting authority to ensure that a consultation is not held with a state witness which can be regarded as improper and is not in the interest of

justice.

(b) Witnesses in Civil Cases

- (i) A litigant and/or his representative is/are entitled, at any reasonable time for the purposes of obtaining information, which may assist the litigant to prepare or to present his case, to interview any person whom he/they have reason to believe is in possession of information which may assist the litigant in his case, and he/they cannot be deprived of that right by the fact that the other side has subpoenaed, taken a statement from, or interviewed such person. However, the other side should be notified that an interview is to take place. The other side is not entitled to attend the interview.
- (ii) The only limitations to the right referred to in sub-paragraph (i) are –
 - (aa) When the litigation has commenced but before such person has testified therein, an interview with the potential witness may not be held or, if it has already commenced, proceed further once it is discovered that the other side has taken any of the abovementioned steps, unless and until the other side's legal representatives have been timeously notified by whatever means are adequate in the circumstances of the intention to hold, or to proceed, with the interview.
 - (bb) After such person has testified in the litigation as a witness for the other side, but before the litigation has been finally determined, the witness may not be interviewed in the absence of the other side's legal representatives unless the latter, having been timeously notified by whatever means are adequate in the circumstances of the intention to hold the interview, declined to attend it.
- (iii) In the case provided for in Ruling 4(2)(b)(i) –
 - (aa) It is the duty of the litigant's legal representatives, when the circumstances known to them are such that it is reasonable for them to suppose that the other side may have taken any of the aforesaid steps, to ascertain from such person whether or not the other side has in fact done so;
 - (bb) The other side is not entitled to attend, or to be represented at, the interview.
- (iv) In the cases referred to in Rulings 4(2)(b)(i) and (ii) the other side's objection to the interview does not preclude the litigant's legal representatives from holding or proceeding with it.
- (v) Statements from witnesses in civil proceedings should not be taken on affidavit. See *Kolia vs The Secretary for Interior* 1969(1) S.A. 287 at p.294.

(c) Witnesses already Sworn

- (i) It is undesirable for a member to interview any witness after the latter has been sworn, or has made a solemn declaration to speak the truth.
- (ii) A member should not interview a witness who is under cross-examination, unless it is absolutely necessary and then may be done only after informing the member's opponent of the proposed interview.

4.(3)

4.(4) Subpoena

When issuing a subpoena a member should have regard for the convenience of the witness who is to be subpoenaed. Prospective witnesses should be given as much notice as possible of the date or dates upon which they will be required to give evidence.

4.(5) Conduct in Court

- (a) A member appearing in a Division of the High Court in which he does not normally practise should observe both the rules of ethical conduct laid down by the Law Society prevailing in the Division in which he normally practises and that of the Law Society of the Division in which he is appearing.
- (b) A member should, while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person.
- (c) A member has the same privilege as his client of asserting and defending the client's rights, and of protecting the client's liability or life by the free and unfettered statement of every fact, and the use of every argument and observation, that can legitimately, according to the principles and practice of law, be conducive to this end; and any attempt to restrict that privilege should be jealously guarded.
- (d) A member is not entitled wantonly and recklessly to attribute to another person the crime with which his client is charged nor, unless the facts or circumstances given in evidence, or rational inferences drawn from them, raise at the least a not unreasonable suspicion that the crime may have been committed by the person to whom the guilt is so imputed.
- (e) Where a client makes a confession to a member instructed to appear in Court on his behalf before, or during, criminal proceedings, such member should explain to the client the basis upon which the member may continue with the case, namely:
 - (i) The member may not in the proceedings assert that which he knows to be untrue, nor may he connive at, or attempt to substantiate, a fraud. He may appropriately argue that the evidence offered by the prosecution is

insufficient to support a conviction or he may take advantage of any legal matter which might relieve the accused of criminal liability. He may not, however, set up an affirmative case which he knows to be inconsistent with the confession.

- (ii) If the client, having been so informed, desires the member to appear on the abovementioned basis, the member should continue to act in accordance with the principles set out above. If the client desires the member to cease acting for him, then he must do so.

(f) Cross-examination as to Credibility

- (i) Questions which affect the credibility of a witness by attacking his character, but are not otherwise relevant to the actual enquiry, ought not to be asked unless the cross-examiner has reasonable grounds for thinking that the imputation conveyed by the question is well founded, or true.
- (ii) A member who is instructed by another attorney that in his opinion the imputation is well founded, or true, and is not merely instructed to put the question, is entitled *prima facie* to regard such instructions as reasonable grounds for so thinking and to put the questions accordingly.
- (iii) A member should not accept as conclusive the statement of any person that the imputation is well founded or true, without ascertaining, as far as is practicable in the circumstances, whether from his client, or his instructing attorney, that such person can give satisfactory reasons for his statement.
- (iv) Such questions, whether or not the imputations they convey are well founded, should only be put if, in the opinion of the cross-examiner, the answers would, or might, materially affect the credibility of the witness; and if the imputation conveyed by the question relates to matters so remote in time, or of such a character, that it would not affect the credibility of the witness, the question should not be put.
- (v) In all cases it is the duty of the member -
 - (aa) to guard against being made the channel for questions which are only intended to insult, or annoy, either the witness or any other person;
 - (bb) to exercise his own judgment both as to the substance, and the form, of the question put.

(g) A member as a witness in a case

- (i) A member ought not to accept instructions to act, or appear, in a case in which he has reason to believe that he will be required to testify as a witness.

- (ii) When it becomes apparent, after he has accepted instructions to act for a client, or to appear, in a case, that it is necessary in his client's interests that he testifies as a witness therein, a member ought forthwith, and before so testifying, to withdraw from further participation therein as attorney appearing in the case, or as the attorney of record, unless his client's interests would be prejudiced thereby, notwithstanding the willingness of the tribunal adjudicating upon such case to adjourn its hearing to enable another attorney, or counsel, to be briefed.
- (iii) It is undesirable for a member, who is to be a witness in any matter, to act as attorney of record, or to appear in Court, in the following circumstances:
 - (aa) If his testimony is likely to compromise, or impair, his independence in relation to his client and the litigation which is being conducted.
 - (bb) If the circumstances of the case are such that his credibility may be called into question which may tarnish his independence as professional adviser to his client.
 - (cc) If his testimony will lead to him acquiring an indirect interest in the proceedings which may tend to make it difficult for him to discharge his professional duty towards his client.
 - (dd) If his impartiality as a witness may become suspect by reason of the fact that he is also the attorney of record, or appearing for one of the parties.
- (iv) The provisions of sub-paragraphs (i), (ii) and (iii) -
 - (aa) apply not only to *viva voce* evidence, but also to evidence on affidavit.
 - (bb) do not apply where a member is merely giving formal evidence such as to hand in documents from his file.
- (h) Evolving schemes on behalf of clients to evade provisions of the law
 - (i) A member is entitled to advise his client -
 - (aa) whether any proposed conduct will contravene the law;
 - (bb) on a course of conduct which will so order the affairs of the client as to avoid liability under taxation and other similar statutory provisions.
 - (ii) A member is not entitled to devise a scheme which involves his client in the commission of an offence.

(i) Personal attention to instructions to appear in Court, and avoidance of clashes

A member may not accept instructions to appear in Court unless he is satisfied, when he accepts the instructions, that he can attend to it personally, and that it will not clash with any other work. Where it becomes reasonably probable that a member will be unable personally to attend to the instructions to appear in Court, he must inform his instructing attorney, or if he was instructed by the client directly, his client, at the earliest possible moment, and request his instructions as to what is to be done with the instructions. It is improper for a member, in an endeavour to avoid a clash with other work, to arrange with any Court, tribunal, board or other body to have any matter called out of turn or stood down, save in the following special circumstances:

- (i) where the member is engaged in another Court *non lucri causa* (including *pro deo* and as assessor);
- (ii) where the member is engaged in another Motion Court in session at the same venue and time;
- (iii) where the member desires to adjourn a matter by consent.

(j) Canvassing or securing Judges/Magistrates to hear a particular case

It is improper for any member to take any steps designed to ensure that a particular Judge/Magistrate is a member of the Court hearing a particular case. In particular it is grossly improper for a member to approach a particular Judge/Magistrate to hear, or not to hear, a particular case, except when that approach is for the purpose of informing the Judge/Magistrate in question that there is some proper objection to his hearing the case.

(k) Responsibility towards the Court

The Court should always be able to rely implicitly on any information, facts or assurances given to it by a member. The Court should at all times have no hesitation in relying on the truthfulness of the member and should always be able implicitly to trust in or believe what it has been told by the member.

The requirement that a member should be honest and truthful in his dealings with the Court also applies to his dealings with other members and advocates.

(l) Conduct of Attorneys Appearing in the High Court

The Rules of Professional Conduct and Etiquette governing the conduct of Advocates apply *mutates mutandis* to attorneys appearing in the High Court in terms of the provisions of the Appearance in Court Act, Act 62 of 1995, unless the context of the Rule indicates that it applies to members of the referral profession only.

RULING 5

PRACTICE DEVELOPMENT, ADVERTISING, PUBLICITY AND TOUTING

(Refer to Rule 14(b)(vi) and 14(d))

5.(1) (a) **Introduction**

The Council has decided to adopt this Ruling to assist members to determine what may be accepted in the advertising of their practices. The Rule passed by members in 1991 to permit advertising will require all members to exercise the utmost discretion in safeguarding their professional integrity and the utmost courtesy towards their colleagues at all times. The attention of members is directed to Ruling 3(2) which deals with the communication of members with the clients of other members in specific circumstances.

(b) **General Rule**

The general rule is that a member may not attract work by touting.

(c) **Touting**

(i) A member shall not do anything which is calculated to induce others to solicit work for him, nor shall he offer any financial inducement, whether by way of a loan or gift or otherwise, to any person in order to influence that person to refer work to him or to procure that work is referred to him.

(ii) A member may not make a loan to an estate agent or broker on the basis that the loan will be repaid upon the completion of a transaction in which the member is engaged if a commission or brokerage fee is payable to the estate agent or broker in connection with that transaction.

(iii) A member may not make payments in the form of sponsorships to any person who is in a position to influence the flow of work to the member.

[inserted by Council Resolution taken on 24/8/2007 published in Circular 6/2007.]

(d) **Canvassing, Advertising & Touting for Insolvency Work**

(i) A member may advertise or make known his/her preparedness to undertake any work in connection with the administration or liquidation and distribution of the estate of any insolvent person or the judicial management or liquidation of a company.

(ii) A member may advertise, or make known his/her preparedness to do such work on his/her letterhead, in the news media, on a website or any other similar form of advertising.

Members are reminded of the general Rule against touting which includes the touting for insolvency work. What will constitute touting will depend on the circumstances of the case.

5.(2) **Publicity**

- (a) Members may take part in radio or television broadcasts and give interviews to the press or contribute articles to the lay press on legal or non-legal subjects without the consent of the Council and may do so with a view to publicising their practices subject at all times to the provisos to Rule 14(d).
- (b) A member should not permit to be published anything identifying or likely to identify clients of the firm he or his firm acts for unless the client has given his consent in writing that such identification is permitted with a view to the publicising of the member's practice.
- (c) Members should note that a member practising in Natal who wishes to address a meeting held in a province outside Natal, or to publish material in a publication which is designed exclusively for consumption outside Natal will be subject to the rules of the Law Society in the province in which the publication will exclusively be published, or in which the meeting will be held. Members are furthermore asked to note that advertising by attorneys is not permitted in certain of the provinces of the Republic.
- (d) Publications designed by members to publicise their firms and which appear in the national media will be subject to the same criteria as publications which appear exclusively within Natal.
- (e) A member may refer to himself as a specialist in any specified area of work undertaken by him in his practice as an attorney, provided that he possesses sufficient skills and experience in that area of work to be entitled to claim such specialisation. A firm may likewise refer to itself as specialists in any area of work likewise undertaken by it in its practice as attorneys, in which its members possess sufficient skills and experience in that area of work to be entitled to claim such specialisation.

Where a member's or a firm's actions reveal a lack of sufficient skills and experience in the area of work so undertaken in respect of which he or it has claimed specialisation and where such claim was not justified, it may constitute unprofessional, dishonourable or unworthy conduct.

- (f) The member is responsible for ensuring that this Ruling is adhered to.

5.(3) **Notice of Termination of Partnership**

(Refer to Rule 23)

If a partnership is dissolved in circumstances in which the former partners will continue in practice in the same area at different addresses, the Council considers that a notification should be sent in the name of the former partnership to its clients informing them of the addresses at which the former partners will practise, their telephone numbers and the names of their firms.

5.(4) **Firm Names**

- (a) A firm shall not adopt and be known by a name which is misleading with regard to the nature or the structure of the firm or which brings the profession into disrepute or which in any way contravenes any of the provisions of Ruling 5.
- (b) A firm may, without reference to the Council, utilise a name which consists solely of the name or names of any of the present or past sole practitioners or partners or directors of the firm or the name or names of any person or persons who conducted for their own account or in partnership or any practice which may reasonably be regarded as a predecessor of the firm. Such name may include the words "and partners", "and company", "and associates", "attorney" or "attorneys".
- (c) In the event of a firm wishing to adopt a name other than a name in compliance with provisions of 5(4)(b) above such firm shall be obliged to refer the name to the Council for approval.

5.(5) **Firms' Letterheads**

- (a) A firm's letterhead shall contain –
 - (i) the name of the firm, and
 - (ii) the name of the sole practitioner or the names of the partners.
- (b) Only the names of sole practitioners, partners, consultants, associates and professional assistants may appear on a firm's letterhead.
- (c)
 - (i) If the names of associates, professional assistants or consultants appear on a firm's letterhead, it should be clear from a reading of the letterhead that they are not partners.
 - (ii) A professional assistant may be described as an "associate".
- (d) A firm's letterhead should not embody any reference to any client of the firm or to any financial institution, insurance company or other organisation which is not a firm of attorneys.
[amended by Council Resolution taken on 20/8/2004.]
- (e) The firm's letterhead should not contain any wording which is likely to confuse or mislead the public.
- (f) A member shall not insert, or allow to be inserted, on his firm's letterhead any qualifications he may hold other than -

- (i) any University degree;
- (ii) any other University qualification which would entitle the member to admission as an Attorney;
- (iii) any University diploma issued in respect of any branch of the law;

provided that, if any abbreviation is used, then it must be an abbreviation recognised by the University which issued the degree or diploma.

- (g) A member may insert, or allow to be inserted, on the member's firm's letterhead and the member may describe the member's firm by the words:

- (i) "notary", "conveyancer", "patent attorney" or "trade mark agent" if such qualification is held by –

- (aa) the member, if such member is a sole practitioner; or

- (bb) a partner or director of the member's firm; or

- (cc) a professional employee being an associate, professional assistant or consultant of such member's firm;

provided that such partner, director, associate, professional assistant or consultant is in the exclusive employ of the member's firm.

- (ii) "Administrator of deceased and insolvent estates".

- (h) (i) A member may be referred to on a firm's letterhead as a consultant and he may practise as such if he meets the following conditions -

- (aa) he may not act as a consultant to more than one firm, and

- (bb) he must continue to work in the practice of law as a continuous course of conduct.

- (ii) Subject to the provisions of Ruling 5(5)(h)(i), a member who is a lecturer at a University or a Technikon may practise as a consultant in a firm, provided that no conflict arises between his position with the University or Technikon and his practising as an attorney, and that the matter in which he is engaged does not have the effect of his losing his independence as an attorney.

- (i) Only a member may be described on a firm's letterhead as an office manager.

- (j) A firm practising in Natal, which maintains more than one office, wheresoever such offices are located in the Republic, shall in any publication and on its letterheads indicate which of its partners are engaged full-time in practice at each office.

5.(5A) **Business Cards**

Members may be in possession of, and may issue, business cards which refer to their firms. Only that information which may appear on a firm's letterhead in terms of Ruling 5(5) may appear on such card. Members who consider it necessary to do so may hand to their employees who are not members, business cards containing the name of the firm, the name of the employee concerned and, in addition, a specific job description of that employee. Members are warned of their civil liability in the event that third parties are induced by such business card to believe that an employee is in fact a practising attorney, notary or conveyancer, with the necessary skill and expertise to provide legal advice, or the necessary authority to bind the firm contractually.

5.(5B) **Websites and E-mails**

- (a) The ruling applicable to firms' letterheads and business cards shall apply *mutatis mutandis* to websites and e-mails created by firms.
- (b) Firms are in addition allowed to create direct links from their home pages to the Natal Law Society website (www.lawsoc.co.za), its Library (www.lawlibrary.co.za), the Law Society of South Africa (www.lssa.org.za) and any of the other Law Societies or their subsidiary sites.
- (c) Firms may not allow any advertising of any sort anywhere on their sites and may not allow any other business or concern to appear in or use part of their websites for any purpose. However, firms can provide references to the URLs only of other businesses or concerns "behind" a hyperlink or in a general "other links" section of the website.

5.(6) **Presentations to Officials**

Moderate gifts of liquor, chocolates and the like to government, provincial or municipal officials are permissible at a time when presents are traditionally given. Save as aforesaid, no member may make a gift or presentation to a government, provincial or municipal official without the consent of the Council, or of the legal circle of which he is a member.

5.(7) **Bail**

Although it is permissible for a member, in exceptional circumstances, to stand security for bail, or to advance bail, for an accused person, he should not make a practice of doing so.

5.(8) **Undercutting**

- (a) A member may not reduce, or forgo, the fee to which he is entitled in circumstances in which such conduct is likely to attract work unfairly.

- (b) A member may reduce his fee, or forgo his fees, in circumstances in which -
 - (i) he is acting *pro deo*, in which case he must be in a position to demonstrate that his client is indigent, a charitable organisation, or a religious organisation;
 - (ii) he is acting *pro amico*, in which event he must be in a position to demonstrate that his client is a colleague, his own employee or the employee of a colleague, a relative, a friend or a club with whom his relationship is such that it is reasonable to suppose that he would not charge fees or that he would reduce his fees;
 - (iii) he is acting for a national serviceman in relation to the preparation of that serviceman's will.
- (c) A member may not act *pro amico*, or charge a reduced fee, merely because he is acquainted with his client as the employee of a bank, building society, municipality or another client.

5.(9) **Associations with Overseas Firms**

A firm may practise in association with an overseas firm of lawyers, provided that the arrangement is approved by the Council. When considering such an application, the Council will have regard to the protection clients will have by way of security or fidelity funds in regard to money entrusted to the firm at its overseas base.

RULING 6

DEBT COLLECTIONS

(Refer to Rule 14(b)(xii))

6.(1) **Recovery of Attorney and Client Costs from a Debtor**

- (a) If a debtor requests a concession, such as an extension of time within which to make payment, the creditor's attorney may on behalf of his client make it a condition of the grant of such concession that the debtor will pay costs on the attorney and client scale. The attorney and client costs to be collected from the debtor shall not exceed the costs which would normally be debited by the attorney to his client in circumstances in which attorney and client costs are not recoverable from the debtor. The Council will regard as unprofessional conduct any attempt to overreach a debtor.
- (b) A member shall not demand attorney and client costs from a debtor unless the debtor is liable to pay costs on the attorney and client scale by reason of a contractual obligation or Court Order.

- (c) A member may not allow a debtor to make an offer prior to section 65 proceedings which would place the debtor in a worse position than he would have been had he appeared at the section 65 enquiry without informing the debtor of the fact that he would not be obliged to pay more than the party and party costs to date.

6.(2) **Collection Commission Guideline**

It has become apparent that members required some guidance as to the manner in which they should charge for collections. All members are expected in any matter, including those known as "collections' matters", to charge a fee which is reasonable and commensurate with the work which the member has done.

6.(3) **...**

[deleted by Council Resolution taken on 20/8/2004.]

RULING 7

OTHER BUSINESS

7.(1) **General Rule**

A member should not engage in any activity which is likely to result in him -

- (a) compromising his professional independence; or
- (b) attracting work unfairly.

7.(2) **Sharing Offices**

- (a) A member may not conduct in his offices a business which is not normally or traditionally carried on in connection with the business of an attorney.
- (b) A member may not share offices with any person who is not an attorney, or with any partnership which has as a partner a person who is not an attorney, or with any company which has a shareholder or director who is not an attorney.
- (c) A member will not be regarded as sharing offices with a company merely by reason of the fact that his office is the registered office of a company.
- (d) A member who is registered as an estate agent in terms of the Estate Agents Act, 1976, shall conduct his estate agency business in separate premises.
- (e) A member, who is not registered as an estate agent in terms of the Estate Agents Act, 1976, and who carries on an estate agency business in the course of his practice, may carry on business as an estate agent in the same offices as those in which he conducts his professional practice.

- (f) The Rulings against the sharing of offices apply to the sharing of reception or telephone facilities and to a common entrance. In exceptional circumstances the Council may, on application by a member, permit the sharing of a common entrance with a non-attorney, provided that the Council is satisfied that the offices are clearly separate from one another. Kitchen, photostat and facsimile facilities could be shared as long as no other Rule or Ruling is thereby infringed.

7.(3) **Members Practising as Estate Agents, Insurance Brokers etc.**

- (a) A member who, in the course of his practice as an attorney, is authorised by a client to advertise the purchase and sale of his property may include, after the name of his firm, any details contemplated in Ruling 5.
- (b) A member who carries on the business of an estate agent, insurance broker or building society agent, as an integral part of his practice may actively canvas for such business provided that, in doing so, he is bound by the general rule that a member may not attract work by touting for business as defined in Ruling 5(1)(c).
- (c) Agency signs may be erected on or in a member's premises, provided that -
 - (i) the agency signs are smaller than the sign bearing the name of the member's firm, and
 - (ii) it is clear from a reading of the agency sign that the member is an agent.

7.(4) **Commissions**

- (a) A member shall not share with any person, who is not an attorney, any commissions which he earns in the course of his practice.
- (b) If a member is appointed as an agent jointly with a person who is not an attorney, the commission jointly earned by them may be apportioned between the member and the non-attorney, and such apportionment will not be regarded as the sharing of fees.

7.(5) **Standards of Business Conduct**

Members engaged in other businesses must maintain the honour and dignity of their profession. They must abstain from behaviour which will bring discredit to their profession.

7.(6) **Staff**

All staff engaged in connection with a member's practice shall be exclusively under the direction and control of the member.

7.(7) (a) **Separate Businesses**

A member may accept directorships, or he may carry on any trade in separate premises, provided that he does not attract professional work to himself unfairly.

[amended by Council Resolution taken on 20/9/2002.]

(b) **Separate Business Run as a Close Corporation (CC), Company or Trust**

A member may have an interest in, or be involved in, a business activity other than that of the member's professional practice and may operate a close corporation, company or trust as a separate business for that purposes provided that the member:

- (i) May not share premises with the separate business activity run by the close corporation, company or trust.
- (ii) May not share fees with any person who is not a practising attorney, or a non-legal business other than a legal practice, by virtue of the member's involvement in the separate business activity.
- (iii) May not tout for or attract professional work unfairly by virtue of the member's involvement in the separate business activity.
- (iv) Must preserve his/her professional independence as envisaged in the Rules and in these Rulings.

[inserted by Council Resolution taken on 20/9/2002.]

7.(8) **Fees for Expert Witnesses**

When a member requests a report, or other assistance, from an expert on behalf of a client the member must clarify with the expert at the inception –

- (1) What the terms and conditions of engaging the expert are, including whether the client or the member will be liable for the expert's reasonable costs.
- (2) Where the matter is subject to a contingency fee agreement, that the expert's costs will only be paid on the success of the claim,

and a failure to do so by the member to the prejudice of the expert shall be regarded as unprofessional conduct.

[amended by Council Resolution taken on 19/5/2006 published in Circular 7/2006.]

7.(9) **Payment of Deeds Office Registration Fees**

- (1) In addition to trust cheques the Registrar of Deeds will accept the business cheques of members in payment of registration fees. The issue of a business cheque that is subsequently dishonoured will, unless good cause is shown, constitute unprofessional conduct.

- (2) A lodging conveyancer shall pay all fees due to the Deeds Office for anything transacted by such conveyancer with the Deeds Office within 60 days of receipt of a statement of account and failure to do so without just cause shall constitute unprofessional conduct.

RULING 8

CANDIDATE ATTORNEYS

- 8.(1) Candidate Attorneys are expected to observe the same high standards of ethical conduct as those applicable to members.
- 8.(2) A Candidate Attorney, who appears in any Court or before any tribunal, does so on behalf of his Principal who must take reasonable steps to ensure that his Candidate Attorney does not appear in circumstances in which he has no right of appearance. (See Section 8 of the Act.)
- 8.(3) A member is responsible for any act of unprofessional, unworthy or dishonourable conduct committed by his Candidate Attorney if such conduct is attributable to a lack of proper supervision. (See Section 6 of the Act.)
- 8.(4) A member is required to take such steps as are reasonably necessary to procure that his Candidate Attorney is properly and fully instructed in the practice, ethics and understanding of the profession of an attorney.
- 8.(5) A Candidate Attorney shall not be required to put up a fidelity bond covering theft from, or other loss to, his employers.
- 8.(6) Articles should in terms of the Act be lodged and registered within 2 months of the date of the commencement thereof. To lodge articles a few days before the end of the two months' period could be detrimental to the Candidate Attorney in that the articles will commence on the date of registration unless registration takes place within 2 months of the date of commencement of the articles. Similarly, articles cannot commence until the contract has been signed by the Candidate Attorney and by his Principal.
- 8.(7)
- 8.(8) A Candidate Attorney who is serving under articles of clerkship with a Principal in another province where the articles have been registered, may serve articles in Natal under a partner or co-director of his Principal who is entitled in terms of Section 3 of the Act to have a Candidate Attorney without taking cession of the articles. Such Candidate Attorney may exercise his right of appearance in Natal.

RULING 9

RULINGS PERTAINING TO LAW CLINICS

- 9.(1) Subject to and conditional upon adherence by a Law Clinic, as defined in the Act and approved by the Council for the purposes of the Act, and its employees to the guidelines set out below, the following Rules and Rulings of the Society are suspended and modified in respect of members of the Society acting in the course and scope of their employment with such Law Clinic –

Rules Suspended in Whole

- 14(b)(vi) - Touting.
- 14(b)(vii) - Supervision by an attorney.
- 14(b)(ix) - Sharing of offices with persons other than attorneys.
- 18(a) - Sharing of fees.
- 20 and 21 - Keeping of proper accounting records.

Rulings Suspended in Whole

- Ruling 5(1) - Attracting work unfairly.
- Ruling 5(8) - Undercutting.
- Ruling 7(2) - Sharing of offices.
- Ruling 7(6) - Supervision of staff.

Rulings Suspended in Part

Ruling 2(4)(b) is suspended in respect of litigation which is in the nature of a test case intended to result in a judgment which will materially benefit members of the public who are not parties to the litigation.

- 9.(2) Attorneys, who are not members of the Society but are employed by a Law Clinic shall be liable to pay subscriptions for the period of their employment at the Clinic.
[amended by Council Resolution taken on 25/8/2006 published in Circular 9/2006.]
- 9.(3) This Ruling is subject to amendment by the Council and it does not give rise to any contract between the Society and such Law Clinic, or any member of such Law Clinic.

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