

Department of Justice and Constitutional Development

Regulations

made under section 94(1) of the Legal Practice Act, 28 of 2014

## **Department of Justice and Constitutional Development**

### **Regulations made under section 94(1)(a) of the Legal Practice Act, 28 of 2014**

#### **Mechanism to provide appropriate legal education and training as contemplated in section 6(5)(f)**

##### **1. Provision of legal education and training**

The Council must provide appropriate legal education and training to candidate legal practitioners, and may provide continuing education and training for admitted and enrolled legal practitioners.

##### **2. Accreditation of training institutions**

The Council may accredit training institutions that offer practical vocational training courses to candidate legal practitioners or admitted and enrolled legal practitioners and for that purpose may, subject to the provisions of the Act -

- 2.1 prescribe minimum requirements for accreditation of training institutions in addition to any requirements provided for in the Act;
- 2.2 consider and decide on any application for accreditation and grant such accreditation in full or in part, or decline such accreditation;
- 2.3 prescribe the period of validity of the accreditation;
- 2.4 keep a register of accredited training institutions and determine -
  - 2.4.1 the manner in which the register should be kept;
  - 2.4.2 the form and nature of the register; and

- 2.4.3 the reviewing of the register and the manner in which alterations thereto may be effected; and
- 2.5 terminate the accreditation if the training institutions fail to comply with the terms and conditions applicable to their accreditation.

### **3. Appropriate legal education and training**

The Council must, subject to the provisions of the Act -

- 3.1 prescribe the minimum qualifications, competency standards and requirements for the registration and administration of practical vocational training, continuing education and training and post-qualification professional development;
- 3.2 consider and decide on applications for the registration of practical vocational training contracts ;
- 3.3 regulate the administration of practical vocational training;
- 3.4 keep separate registers of practical vocational training contracts in respect of candidate attorneys and pupils and determine -
  - 3.4.1 the manner in which the registers should be kept;
  - 3.4.2 the form and nature of the registers; and
  - 3.4.3 the reviewing of the registers and the manner in which alterations thereto may be effected;
- 3.5 terminate the registration of practical vocational training contracts in accordance with the provisions of the Act and the rules or regulations made thereunder.

### **4. Functions with regard to education, training and professional development**

- 4.1 The Council must -
  - 4.1.1 either in full or in part, recognise or withdraw the recognition of the educational qualifications or programmes, or continuing education, training and professional development programmes, of accredited training institutions;
  - 4.1.2 accredit or withdraw the accreditation of any accredited training institution or professional body to conduct any qualifying examination or assessment for any purposes under the Act;

- 4.1.3 prescribe the requirements for and conditions relating to, and the nature and extent of, continuing education, training and professional development;
  - 4.1.4 make rules relating to training requirements of candidate legal practitioners and legal practitioners, including, but not limited to, the period of training and the form for practical vocational training contracts;
  - 4.1.5 approve and register practical vocational training contracts entered into by candidate legal practitioners;
  - 4.1.6 prescribe competency requirements;
  - 4.1.7 either conditionally or unconditionally, recognise or withdraw the recognition of persons acting as principals of candidate attorneys or as training supervisors of pupils.
- 4.2 The Council may -
- 4.2.1 establish and administer an education fund for the purpose of education, training, professional development, and continuing education, training and professional development, of legal practitioners and candidate legal practitioners;
  - 4.2.2 give advice to, render assistance to, consult with or interact with any organ of state, statutory body, educational institution, professional body or examining body with regard to educational facilities for and the education, training and professional development of legal practitioners and candidate legal practitioners.
- 4.3 The Council must, prior to withdrawing the recognition or accreditation referred to in regulation 4.1.1 or 4.1.2, give notice in writing to the accredited training institution concerned of its intention to withdraw the recognition or accreditation, and the reasons on which it is based, and must afford the accredited training institution a period of not less than 21 days in which to submit grounds for not proceeding with the withdrawal.
- 4.4 If the Council considers that withdrawal of recognition or accreditation would not be in the best interests of the public, the legal profession or the members of an accredited training institution, it may extend the recognition or accreditation of the accredited training institution concerned on such conditions as it considers appropriate.

- 4.5 The Council must publish the withdrawal of recognition or accreditation in terms of this regulation.

## **Department of Justice and Constitutional Development**

### **Regulations made under section 94(1)(b) of the Legal Practice Act, 28 of 2014**

#### **Empowerment of historically disadvantaged legal practitioners and candidate legal practitioners**

1. For purposes of these regulations:
  - 1.1 "designated legal practitioner" means a legal practitioner admitted and enrolled as such and practising as an attorney or as an advocate;
  - 1.2 "historically disadvantaged", with reference to legal practitioners and candidate legal practitioners, means any black person as defined in section 1 of the Broad-Based Black Economic Empowerment Act 53 of 2003, read with the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013, as a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa by birth or descent, or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994, or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date, and such other persons as may be categorised as Black Persons for purposes of that legislation;
2. The Council must from time to time develop programmes in order to empower historically disadvantaged legal practitioners and candidate legal practitioners with the objective of redressing the disadvantages experienced by them in the practice of the legal profession. Such programmes may include, but are not limited to -
  - 2.1 recruitment procedures, advertising and selection criteria;
  - 2.2 appointments and the appointment process;
  - 2.3 job classification and grading;

- 2.4 remuneration, employment benefits and terms of conditions of employment;
  - 2.5 referral of instructions and briefing patterns;
  - 2.6 quality of work;
  - 2.7 the working environment and facilities;
  - 2.8 professional training and development;
  - 2.9 performance evaluation systems;
  - 2.10 promotions.
3. The details of every programme established by the Council shall be published through appropriate media to all designated legal practitioners.
4. The programmes contemplated in regulation 2 -
- 4.1 may include measures-
    - 4.1.1 to identify and eliminate barriers to the empowerment of historically disadvantaged legal practitioners and candidate legal practitioners;
    - 4.1.2 to further diversity in the legal profession;
    - 4.1.3 to promote equitable representation of suitably qualified historically disadvantaged legal practitioners and candidate legal practitioners in all occupational levels in the legal profession;
    - 4.1.4 to implement appropriate training facilities to develop the skills of historically disadvantaged legal practitioners and candidate legal practitioners.
  - 4.2 include preferential treatment and numerical goals, but exclude quotas;
  - 4.3 do not require a designated legal practitioner to take any decision or implement any policy or practice which would establish an absolute barrier to the prospective or continued employment or advancement of persons who are not historically disadvantaged persons.
5. Where a designated legal practitioner practises in partnership or as part of a commercial juristic entity, or as part of the law clinic, or as part of Legal Aid South Africa, or as an attorney in the full time employment of the state as a state attorney or of the South African

Human Rights Commission, compliance with these regulations by the partnership, or the commercial juristic entity, or such other entity referred to in this regulation, on behalf of the designated legal practitioner will constitute sufficient compliance with the regulations by that designated legal practitioner.



## **Regulations under section 94(1)(d) of the Legal Practice Act, 28 of 2014**

It is hereby certified that, acting under the powers conferred by section 94(1)(d) of the Legal Practice Act, 28 of 2014, the Minister of Justice and Constitutional Development has made the following regulations in connection with the matters referred to therein.

### **Designation of teachers of law**

1. The members of the Council referred to in section 7(1)(b) of the Act shall be designated in the manner determined in these regulations.
2. The designation of those members of the Council who are referred to in section 7(1)(b) of the Act shall take place, in the manner prescribed in these regulations, in every third year after the year in which the first such designation is made.
3. The term of office of those members of the Council who are referred to in section 7(1)(b) of the Act shall run from 1 February in the year in which they are elected to 31 January of the year in which their term of office terminates.
4. Subject to regulation 10, the first members of the Council to be designated in terms of section 7(1)(b) shall take place within sixty days after the coming into operation of Chapter 2 of the Act for the designation of members of the Council which is to take effect on 1 February 2018.
5. During September of each year in which an election is to be held the Council shall despatch a notice to the South African Law Deans Association (SALDA) calling on that entity to designate a person, being a dean of a faculty of law at a university in the Republic, to be a member of the Council as contemplated in section 7(1)(b) of the Act, such designation to be received not later than the date stipulated in the notice. The notice shall be sent by email to the email address of SALDA provided to the Council for that purpose.
6. During September of each year in which an election is to be held the Council shall despatch a notice to the Society of Law Teachers of Southern Africa (SLTSA) calling on that entity to designate a person, being a teacher of law at a university in the Republic, to be a member of the Council as contemplated in section 7(1)(b) of the Act, such designation to be received not later than the date stipulated in the notice. The notice shall be sent by email to the email address of SLTSA provided to the Council for that purpose.

7. The dean of a faculty of law, to be designated in terms of in regulation 5, shall be elected by SALDA in accordance with the same process as SALDA applies in relation to the election of its office bearers.
8. The teacher of law to be designated in terms of regulation 6, shall be elected by SLTSA in accordance with the same process as SLTSA applies in relation to the election of its office bearers.
9. If either of the persons referred to in section 7(1)(b) of the Act ceases to be a member of the Council before the end of his or her designated term of office, the Council shall cause the vacancy to be filled in accordance with the provisions of regulation 5 or regulation 6, as the case may be, with the necessary changes required by the context.
10. The first designation of the members of the Council referred to in section 7(1)(b) shall be conducted under the authority of the National Forum on the Legal Profession established in terms of section 96(1) of the Act. These regulations will apply, with the necessary changes required by the context, to the process in respect of the first designation, and a reference in these regulations to "the Council" shall be deemed to be a reference to the executive committee of the National Forum.

## **Department of Justice and Constitutional Development**

### **Regulations made under section 94(1)(f) of the Legal Practice Act, 28 of 2014**

#### **Admission and enrolment of foreign legal practitioners**

[In terms of section 24(3)(a) the Minister may make regulations in respect of the admission and enrolment to determine the right of foreign legal practitioners to appear in courts in the Republic and to practise as legal practitioners in the Republic. However, these regulations must be made by the Minister in consultation with the Minister of Trade and Industry and after consultation with the Council. There is no purpose in preparing draft regulations until the consultations referred to in section 24(3) have taken place].

## CERTIFICATE

in terms of Section 25(3) of the Legal Practice Act, 28 of 2014

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Having read the application in terms of the abovementioned Act filed by

[•]

and having satisfied myself that the application is in accordance with the Act,  
now therefore I

[•]

Registrar of the High Court ([•] Division), [•] hereby certify that the said

[•]

has the right of appearance in the High Court of South Africa, the Supreme Court of Appeal and  
the Constitutional Court.

His/her name has been entered on the roll of attorneys who have the right of  
appearance in these courts, in accordance with Section 25(3) of the said Act.

**Signed and Sealed** at [•], on this the [•] day of [•]

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**REGISTRAR OF THE HIGH COURT**  
[•] DIVISION  
[•]

## **Recommendation to the Minister of Justice and Constitutional Development**

### **Regulation made under section 94(1)(h) of the Legal Practice Act, 28 of 2014**

#### **Right of appearance of attorneys: appropriate relevant experience**

1. The following experience or service shall be recognised as appropriate relevant experience for purposes of section 25(3)(b) of the Legal Practice Act, 28 of 2014:
  - 1.1 practise as an advocate by any person who has been admitted to practise as an advocate of the High Court of South Africa under section 3 of the Admission of Advocates Act, 74 of 1964 or who has been admitted and enrolled as an advocate under the Legal Practice Act, 14 of 2014, and who has practised in that capacity for a continuous period of not less than three years prior to the date of application: provided that this period may be reduced by the Council if the advocate has undergone a trial advocacy programme approved by the Council as set out in the rules;
  - 1.2 service as a magistrate by any person who has been appointed as a magistrate under section 9 of the Magistrates' Courts Act, 32 of 1944, read with section 10 of the Magistrates' Act, 90 of 1993 and who has served in that capacity for a continuous period of not less than three years prior to the date of application;
  - 1.3 service as a prosecutor by any person who has been appointed as a prosecutor under section 16 of the National Prosecuting Authority Act, 32 of 1998, and who has served in that capacity for a continuous period of not less than three years prior to the date of application.
2. A period of not more than ten years may elapse between the date on which such practise or service has been completed and the date on which application for the right of appearance by the attorney is made.

**Department of Justice and Constitutional Development**

**Regulations made under section 94(1)(j) of the Legal Practice Act, 28 of 2014**

**Community Service**

[The Minister has given no indication of what he has in mind for community service. There is no purpose in drafting a regulation on this issue until the Minister has had consultations with the Council as contemplated in section 29(1)].

## **Department of Justice and Constitutional Development**

### **Regulations made under section 94(k) of the Legal Practice Act, 28 of 2014**

#### **Investigation of the South African Law Reform Commission in respect of fees**

[in terms of section 35(4) of the Act the South African Law Reform Commission is required, within two years after the commencement of chapter 2 of the Act, to investigate and report back to the Minister with recommendations on certain matters relating to legal costs and legal fees. In terms of section 94(1)(k) the Minister must make regulations regarding the implementation of recommendations emanating from the investigation of the South African Law Reform Commission. However, the Minister will not be in a position to make any recommendations until the Law Reform Commission has been able to carry out its investigation and to report back to the Minister. There is accordingly no purpose in attempting to draft regulations before the investigation has been completed].

## **Department of Justice and Constitutional Development**

### **Regulations made under section 94(1)(l) of the Legal Practice Act, 28 of 2014**

#### **Manner in which application is made to court for an order to pay compensation**

1. The Council may apply to any court having jurisdiction for an order for confirmation of an order by a disciplinary committee that a legal practitioner or a juristic entity be required to pay compensation, with or without interest, to the complainant in respect of alleged misconduct on the part of a legal practitioner, candidate legal practitioner or juristic entity, as contemplated in section 40(3)(a)(i) and section 40(3)(b)(i) of the Act.
2. Any application referred to in regulation 1 shall be on notice to the legal practitioner or juristic entity concerned, and shall be made in accordance with the rules of the magistrates court or of the High Court, as the case may be.



**Department of Justice and Constitutional Development**

**Regulations made under section 94(1)(n) of the Legal Practice Act, 28 of 2014**

**Matters to be included in the annual report of the Legal Practitioners' Fidelity Fund Board**

The Board must include the following information in the annual report to be submitted to the Council and the Minister in terms of section 75(3) of the Act:

1. Any changes in the composition of the Board during the period covered by the report;
2. Where a member of the Board has been removed in terms of section 69 of the Act, details of such removal and the reasons therefor.