

The South African Legal Practice Council

Rules

made under the authority of section 95(1) of the Legal Practice Act, 28 of 2014

PART IV

PROVINCIAL COUNCILS

16. Election of Provincial Councils [section 95(1)(j) read with section 23(4)]

- 16.1. A Provincial Council shall consist of such number of members as the Council may determine from time to time, elected in accordance with the provisions of this rule. A member of a Provincial Council shall hold office for a term of three years but may serve as a member for one further term if he or she is again so elected.
- 16.2. Until otherwise determined by the Council, every Provincial Council other than the Gauteng Provincial Council will comprise six attorneys and four advocates, and the Gauteng Provincial Council will comprise eight attorneys and four advocates, constituted in accordance with the principles set out in schedule 1 (in the case of attorney members) or schedule 2 (in the case of advocate members) respectively.
- 16.3. The provisions of sections 7(3), 8, 11 and 12 of the Act shall apply, with the necessary changes required by the context, to members of a Provincial Council.
- 16.4. Within 60 days after a Provincial Council has been established by the Council in terms of the Act the Council shall organise the holding of the first election for members of that Provincial Council. In respect of such election -
 - 16.4.1. the provisions of this rule will apply;
 - 16.4.2. a member of the Council who wishes to make himself or herself available for election as a member of the Provincial Council in whose area of jurisdiction he or she practises shall not be involved in any way in the conduct of the election of members of that Provincial Council.

- 16.5. An election for members of a Provincial Council shall be held, in the manner prescribed in these rules, in every third year after the year in which the first such election is held. The term of office of members of the Provincial shall run from the date of their election to the third anniversary of that date; provided that in the case of a member elected to fill a casual vacancy in the Provincial Council, the term of office of that member shall terminate on the date on which the office of the member replaced by him or her would have terminated. The member elected to fill a casual vacancy shall be eligible for re-election.
- 16.6. During September of each year in which an election is to be held, or at such other time as the Council may determine, the Council shall despatch a notice to every attorney and every advocate admitted to practice and enrolled on the practising roll in the area of jurisdiction of the Provincial Council concerned calling for nominations of attorneys and advocates for election to the Provincial Council, such nominations to be received not later than a date stipulated in the notice but in any event not earlier than ten days from the date of the notice. The notice –
- 16.6.1. shall be sent by email to the email address of the legal practitioner concerned; where no email address has been provided to the Council by the legal practitioner concerned the notice shall be sent by prepaid post;
- 16.6.2. shall be published in the English language once in a journal published by the legal profession for attorneys practising in South Africa and once in a journal published by the legal profession for advocates practising in South Africa;
- 16.6.3. shall be published once in the government gazette on a date as close as possible to the date of dispatch of the notice;
- 16.6.4. shall give details of the number of vacancies on the Provincial Council for attorney members and advocate members respectively.
- 16.7. Any two attorneys admitted to practice and enrolled on the practising roll and practising within the area of jurisdiction of the Provincial Council may, in the manner prescribed in this rule, nominate any eligible attorney (other

than themselves) as an attorney member of the Provincial Council for the then ensuing period of office.

16.8. Any two advocates admitted to practice and enrolled on the practising roll and practising within the area of jurisdiction of the Provincial Council may, in the manner prescribed in this rule, nominate any eligible advocate (other than themselves) as an advocate member of the Provincial Council for the then ensuing period of office.

16.9. Any such nomination shall be made over the signature of the two nominating individuals in a document which shall provide the following information in relation to each nominee named therein, in not more than 600 words and in such format as the Council may require -

16.9.1. his or her name;

16.9.2. In the case of an attorney, the name of the firm of which he or she is a proprietor or a member or by which he or she is employed, stating also the status of that attorney within the firm;

16.9.3. in the case of an advocate, whether he or she renders legal services in terms of section 34(1)(2)(a)(i) or section 34(2)a)(ii) of the Act, and in either case whether or not he or she has the status of Senior Counsel.

16.9.4. his or her race, gender, date of admission and enrolment and period in practice;

16.9.5. if he or she suffers from a disability and wishes to disclose that fact, a statement to that effect and the nature of the disability;

16.9.6. the address of his or her principal place of practice

and on which shall be endorsed, over the signature of each nominee named therein, the acceptance of nomination by that nominee and his or her confirmation that the information given therein is correct and that he or she is not disqualified from membership of the Provincial Council.

- 16.10. Originally signed nominations must be lodged with the Provincial Council by not later than the date stipulated in the notice referred to in rule 16.6. Any nomination which does not comply substantially with the provisions of this rule or which is not lodged within the prescribed time must not be recognised.
- 16.11. If no greater number of candidates is nominated than the number to be elected, then the candidates who are nominated will be deemed to have been elected.
- 16.12. If the number of candidates who are nominated exceeds the number to be elected as attorney members or as advocate members, as the case may be, the Council must, within 10 days after the last day on which nominations are required to be lodged in terms of rule 16.6, send to every legal practitioner eligible to vote, by email to the legal practitioner's email address or, where the legal practitioner has not appointed an email address, by prepaid post -
- 16.12.1. an envelope on which the address of the Council is printed, together with the words "voting papers", or, where the communication is by email, directions to the legal practitioner as to the size and format of an envelope to be used by the legal practitioner;
- 16.12.2. a smaller envelope on which is printed the words "ballot paper" and nothing else, or where the communication is by email, directions to the legal practitioner as to the size and format of an envelope to be created by the legal practitioner;
- 16.12.3. a printed declaration in such form as the Council may direct containing appropriate spaces for -
- 16.12.3.1. the surname and forenames of the voting legal practitioner and a statement whether he or she is an attorney or an advocate;
- 16.12.3.2. the date of signature by that legal practitioner and that legal practitioner's signature;

- 16.12.3.3. a declaration by the legal practitioner above his or her signature that he or she has not already voted in the election concerned;
- 16.12.4. a ballot paper, substantially in the form of Schedule 1 (in the case of the election of attorney members) or Schedule 2 (in the case of the election of advocate members), containing the surnames and forenames in alphabetical order by surname of the nominated candidates and providing the information indicated in Schedule 1 or Schedule 2, as the case may be, and nothing more;
- 16.12.5. a written notice in such form as the Provincial Council may direct
 - 16.12.5.1. requesting the legal practitioner, if he or she wishes to record a vote -
 - 16.12.5.1.1. place a cross on the accompanying ballot paper against the name of each candidate for whom the legal practitioner wishes to vote and so as to indicate a vote in favour of not more than the number of candidates for which there are vacancies, and to make no other mark or alteration on the ballot paper;
 - 16.12.5.1.2 to place the ballot paper in the envelope marked "ballot paper";
 - 16.12.5.1.3 to seal the envelope containing the ballot paper;
 - 16.12.5.1.4 to complete and sign the form of declaration;
 - 16.12.5.1.5 to place a completed and signed declaration, together with the envelope containing the ballot paper in and seal the envelope marked "voting papers";

16.12.5.1.6 to despatch the envelope marked "voting papers" with its contents to the Council so as to reach the Council not later than a date referred to in the notice;

16.12.5.2 drawing the attention of legal practitioners to the fact that the profiles of candidates, containing the information set out in rule 16.9, will be published on the website of the Council for a period of 30 days commencing on the date of the written notice referred to in rule 16.12.5.

- 16.13 The notice referred to in rule 16.12.5 shall contain a warning that if a vote is cast in favour of more than the number of names referred to in rule 16.12.5.1.1, or if any mark or alteration is made on the ballot paper other than the cross indicating a vote in favour of the candidates for whom the legal practitioner intends to vote, or if the declaration referred to in rule 16.12.3 is not duly completed and signed by the voter, the ballot paper will be void.
- 16.14 The Council shall despatch separate notices to attorneys and advocates for purposes of any election in terms of this rule, and all notifications shall distinguish clearly as to whether they are intended for the election of an attorney or for the election of an advocate.
- 16.15 Within 7 days after the last date on which nominations were required to be lodged in terms of rule 16.6 the chairperson of the Council ("the chairperson") shall in writing appoint a legal practitioner of more than fifteen years standing as a referee for the purpose of performing the duties assigned to a referee under these rules . The referee shall not be a candidate for office or a legal practitioner who has nominated a candidate, or a member of the Council or of a Provincial Council, as the case may be.
- 16.6 On each day on which envelopes marked "voting papers" despatched to the Provincial Council are received by the Council, or if it is not practicable on that day, as soon as practicable thereafter, the chairperson shall, in the presence of the referee, open each such envelope and remove its contents. The chairperson and the referee shall then together examine

each declaration form, shall verify, to such extent as may appear necessary, the information contained therein against the records of the Council and shall satisfy themselves that the declaration form has been duly completed and signed by the legal practitioner, failing which it will be regarded as invalid. In the event of a disagreement between the chairperson and the referee as to the validity or otherwise of any form of declaration, the view of the referee shall prevail and his or her judgment on the matter shall be final. The referee shall endorse with his or her signature each form of declaration found to be invalid, with the reason for the invalidity. The chairperson and the referee shall together note the name and surname of each legal practitioner who has submitted a declaration and envelope marked "ballot papers", as well as whether that legal practitioner is an attorney or an advocate, in a voting register kept by the referee.

- 16.17 The chairperson shall, in the presence of the referee, in respect of each declaration form found to be valid, place its accompanying envelope marked "ballot paper" unopened through a slot in a ballot box of a design and construction approved by the Council, which shall have been securely locked and sealed in advance by the chairperson and of which the chairperson. After placing the last of such envelopes duly received in the ballot box the chairperson shall, in the presence of the referee, securely seal the slot, and shall hand the key to the referee. The chairperson shall securely retain the ballot box, locked and sealed as aforesaid, and shall deliver the ballot box in that condition to the scrutinizers appointed in terms of rule 16.19 on the day following the day referred to in rule 16.12.5.1.6. Separate ballot boxes shall be kept for ballot papers in respect of attorneys and advocates respectively.
- 16.18 An envelope marked "ballot paper" which is accompanied by a form of declaration which has been found to be invalid shall not be placed in the ballot box but the chairperson shall, in the presence of the referee, replace in the envelope marked "voting papers" in which it was received each such envelope marked "ballot paper" unopened, together with its accompanying form of declaration endorsed by the referee as provided in rule 16.16, shall securely seal all those documents and shall separately retain them in the same manner *mutatis mutandis*, as is provided for in rule 16.17, for a

period of three months after the date referred to in rule 16.12.5.1.6. The chairperson shall thereafter destroy all of them unless ordered otherwise by an order of court; provided that if there should be a dispute regarding the validity of the form of declaration the documents shall be retained until the dispute has been resolved. The chairperson shall keep a separate record of the number of declarations and envelopes thus retained by him.

16.19 Prior to or on the date referred to in rule 13.12.5.16 the Council shall appoint as scrutinizers to examine the ballot papers placed in the ballot box and of counting the votes received, not less than two legal practitioners, not being candidates for office or legal practitioners who have nominated candidates or who are members of the Council or of a Provincial Council, and none of whom shall be the legal practitioner appointed as referee under these rules. Upon receipt by the scrutinizers of the ballot box they shall break the seal, open the ballot box and remove its contents. They shall then open each of the envelopes marked "ballot paper", remove the ballot paper contained therein, examine the ballot paper and satisfy themselves of its validity in accordance with these rules or, if not so satisfied, reject the ballot paper after having endorsed on its reverse over their signatures the reason for its rejection. They shall then count the votes recorded in the remaining ballot papers and record the result in the presence of the chairperson and the referee. Thereafter they shall replace all the ballot papers, including those rejected, in the ballot box and shall lock and re-seal it, and hand it to the chairperson for safekeeping.

16.20 The number of attorney candidates in the respective categories indicated on the ballot paper who received the greatest number of votes of attorneys in diminishing order among the attorney candidates shall be deemed to have been elected as attorney members of the Provincial Council in those categories, and the advocate candidates in the respective categories indicated on the ballot paper who received the greatest number of votes of advocates in diminishing order among the advocate candidates shall be deemed to have been elected as advocate members of the Provincial Council in those categories. If there are insufficient candidates to fill a particular category the Council shall co-opt a suitable candidate to fill the

vacancy, and the co-opted candidate shall be deemed to have been elected in accordance with these rules.

16.21 If there is a tie between two or more candidates having the result of leaving undecided which of the candidates has been elected, in the relevant category, the question as to which of them shall be deemed elected shall be determined immediately by lot drawn by the scrutinizers in the manner determined by them.

16.22 Upon completion of their scrutiny the scrutinizers shall immediately report the result of the election in writing to the chairperson and referee. The referee shall immediately determine whether the election was conducted freely and fairly, and shall issue a signed declaration in that regard to the chairperson. The report shall be signed by all of the scrutinizers and shall contain the following particulars:

16.22.1 the total number of ballot papers received by them;

16.22.2 the numbers of ballot papers rejected and the grounds of rejection;

16.22.3 the total number of votes in favour of each candidate in each category;

16.22.4 the result of any lot drawn in terms of rule 16.21;

16.22.5 the names of those candidates who are deemed to have been elected.

16.23 The chairperson shall, after receipt of the report of the scrutinizers and a declaration in terms of rule 16.22 that the election was conducted freely and fairly, cause each candidate to be advised of the result of the election.

16.24 The report of the scrutinizers together with a declaration from the referee in terms of rule 16.22 that the election was conducted freely and fairly shall be conclusive as to the result of the election, notwithstanding any informality.

16.25 The scrutinizers, having completed their scrutiny, shall return the ballot box containing the examined ballot papers and which is locked in accordance

with rule 16.19 to the chairperson, together with its key. The chairperson shall securely retain the ballot box in that condition for a period of three months after the date referred to in rule 16.12.5.1.6 and shall thereupon break the seal, unlock the box, empty it of its contents and destroy the contents. The chairperson shall then also destroy all the valid declaration forms received by the Council.

- 16.26 If an election is declared to be not free and fair by the referee in terms of rule 16.22, or by a court on application brought within one month of the announcement of the result, the process for the election of members of the Provincial Council shall be conducted afresh.

Provincial Council of [●]

Ballot Paper - Attorneys

(for use in elections for all Provincial Councils except for the Gauteng Provincial Council)

Every attorney who is on the roll of practising attorneys and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of six candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the six attorneys who will serve as members of the Provincial Council:

1. the two black women¹ with the highest number of votes in this category;
2. the two black men with the highest number of votes in this category;
3. the white woman with the highest number of votes in this category;
4. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

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D
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¹ Black is used 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.

When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*
 - (iii) legal education and training;*
 - (iv) consumer affairs;*
 - (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
 - (vi) the maintenance of professional standards of persons who provide legal services;*
 - (vii) the handling of complaints; and*
 - (viii) competition law.*

Provincial Council of [●]

Ballot Paper - Advocates

(for use in elections for all Provincial Councils except for the Gauteng Provincial Council)

Every advocate who is on the roll of practising advocates and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of four candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the four advocates who will serve as members of the Provincial Council:

1. the black woman² with the highest number of votes in this category;
2. the black man with the highest number of votes in this category;
3. the white woman with the highest number of votes in this category;
4. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

A
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When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*

² Black is used 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.

- (i) the provision of legal services;*
- (ii) the principles of promoting access to justice;*
- (iii) legal education and training;*
- (iv) consumer affairs;*
- (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
- (vi) the maintenance of professional standards of persons who provide legal services;*
- (vii) the handling of complaints; and*
- (viii) competition law.*

Provincial Council of Gauteng

Ballot Paper - Attorneys

(only for use in elections for the Gauteng Provincial Council)

Every attorney who is on the roll of practising attorneys and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of eight candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the eight attorneys who will serve as members of the Provincial Council:

1. the two black women³ with the highest number of votes in this category;
2. the two black men with the highest number of votes in this category;
3. the two white women with the highest number of votes in this category;
4. the two white men with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

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When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*

³ Black is used 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.

- (i) the provision of legal services;*
- (ii) the principles of promoting access to justice;*
- (iii) legal education and training;*
- (iv) consumer affairs;*
- (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
- (vi) the maintenance of professional standards of persons who provide legal services;*
- (vii) the handling of complaints; and*
- (viii) competition law.*

Provincial Council of Gauteng

Ballot Paper - Advocates

(only for use in elections for the Gauteng Provincial Council)

Every advocate who is on the roll of practising advocates and who practises within the area of jurisdiction of the Provincial Council may vote for a maximum of four candidates from the candidates listed below. Please note, however, that in order to achieve an appropriate balance of race and gender in relation to the composition of the Provincial Council, and subject to the availability of candidates, the following individuals will constitute the four advocates who will serve as members of the Provincial Council:

1. the black woman⁴ with the highest number of votes in this category; the black man with the highest number of votes in this category;
2. the white woman with the highest number of votes in this category;
3. the white man with the highest number of votes in this category.

A short profile of each candidate is available at www.lpc.co.za.

- A**
- B**
- C**
- D**
- E**
- F**
- G**

When voting, please take into account the following considerations in relation to the constitution of the Provincial Council:

- (a) the racial and gender composition of South Africa;*
- (b) representation of persons with disabilities; and*
- (c) experience and knowledge of—*
 - (i) the provision of legal services;*
 - (ii) the principles of promoting access to justice;*

⁴ Black is used 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.

- (iii) legal education and training;*
- (iv) consumer affairs;*
- (v) civil and criminal proceedings and the functioning of the courts and tribunals in general;*
- (vi) the maintenance of professional standards of persons who provide legal services;*
- (vii) the handling of complaints; and*
- (viii) competition law.*