

Draft regulations based on the NFA Proposal

National Forum on the Legal Profession

**Recommendation to the Minister of Justice and Constitutional Development
in terms of section 97(1)(a)(v) of the Legal Practice Act, 28 of 2014**

Regulations made under section 26(1)(c) of the Legal Practice Act, 28 of 2014

Practical vocational training requirements for candidate legal practitioners

1. Candidate attorneys

1.1 Duration of practical vocational training

1.1.1 Any person intending to be admitted and enrolled as an attorney must -

1.1.1.1 serve under a practical vocational training contract for a period of twelve months after that person has satisfied all the requirements for a degree referred to in sections 26(1)(a) or (b) of the Act; and

1.1.1.2 complete, to the satisfaction of the Council, during the service under a practical vocational training contract or within a period of not longer than twelve months after the termination of the practical vocational training contract, a full time period of structured course work, comprising compulsory modules on specific topics of not less than 400 notional hours duration in the aggregate over a period of not longer than six months.

1.1.2 For purposes of regulation 1.1.1.2 a notional hour of structured course work shall mean the notional duration allocated by the Council to a learning activity to be undertaken by a student to achieve a specified learning outcome, irrespective of the actual time taken by the individual to achieve that outcome.

1.1.3 The course of structured course work may be completed during the period of service under a practical vocational training contract, or separately therefrom, but a candidate attorney may not embark on a course of structured course work before he or she has entered into a practical vocational training contract.

1.1.4 Subject to the provision of the Act, any period of service under a practical vocational training contract before the candidate attorney has satisfied the requirements of the degrees referred to in regulation 1.1.1.1 shall not be regarded as good or sufficient service in terms of a practical vocational training contract, unless the Council otherwise determines in any particular case.

1.1.5 The Council may, on application and on good cause shown, and subject to such conditions as the Council may impose, reduce the duration of practical vocational training in any particular case.

1.2 **By whom candidate attorneys may be engaged**

1.2.1 A candidate attorney may be engaged or retained under a practical vocational training contract only -

1.2.1.1 by a person practising the profession of an attorney for his own account;

1.2.1.2 by a person practising the profession of an attorney as a partner in a firm of attorneys;

1.2.1.3 by a person practising the profession of an attorney as a member of a juristic entity;

1.2.1.4 by a person practising the profession of an attorney as State Attorney or as Deputy State Attorney in the office of the State Attorney or any branch thereof;

1.2.1.5 by a person practising the profession of an attorney if he or she is an attorney who has practised as a professional assistant in a firm for a period of five years within the preceding six years;

1.2.1.6 by a registered legal practitioner in the full time employ of a legal aid institution which has been approved by the Council for the purpose of engaging candidate legal practitioners and who is responsible for supervising the training of candidate legal practitioners so engaged; or

1.2.1.7 by a registered legal practitioner in the full time employ of any other institution approved by the Council for the purpose of engaging candidate legal practitioners and who is responsible for supervising the training of candidate legal practitioners so engaged.

- 1.2.2 The person engaging the candidate attorney, as contemplated in regulation 1.2.1, must -
- 1.2.2.1 if that person is an attorney, save in the case of an attorney referred to in regulation 1.2.1.5, have practised as an attorney for a period of not less than three years, or for periods of not less than three years in the aggregate during the preceding four years;
- 1.2.2.2 in the case of an attorney referred to in regulation 1.2.1.5, have practised for the period specified in that regulation;
- 1.2.2.3 in the case of a registered legal practitioner referred to in regulations 1.2.1.6 and 1.2.1.7 who is an advocate, have practised in that capacity for a period of not less than three years, or for periods of not less than three years in the aggregate during the preceding four years prior to being engaged by the entity concerned.
- 1.2.3 Service by a candidate attorney to any legal practitioner while that legal practitioner is not practising or has not practised the profession as described in regulation 1.2.1 shall not be deemed to be good or sufficient service for purposes of these regulations.
- 1.2.4 An attorney shall at no time have more than three candidate attorneys (and in the case of attorneys employed by entities referred to in regulations 1.2.1.6 and 1.2.1.7, six candidate attorneys or pupils in the aggregate) engaged or retained in terms of a practical vocational training contract: provided that -
- 1.2.4.1 on the death or retirement from practice of any attorney (or legal practitioner in the case of entities referred to in regulations 1.2.1.6, 1.2.1.7, 2.2.1.2 and 2.2.1.3) any of his or her surviving or remaining partners, any member of the commercial juristic entity of which he or she was a member, or any other person who as a legal practitioner is employed full time at the entity concerned; or
- 1.2.4.2 where an attorney has been debarred by the Council from continuing with a practical vocational training contract, any of his or her partners, any other member of the commercial juristic entity of which he or she is a member or (in the case of entities referred to in regulations 3.1.1.6 and 3.1.1.7) any other person who as a legal practitioner who is employed full time at the entity concerned

may take cession of the practical vocational training contract of the candidate attorney, despite the fact that the cessionary may then have more than three candidate attorneys (or more than six candidate attorneys, as the case may be) under contract.

1.3 **Course work for candidate attorneys**

The course work programme to be attended by candidate attorneys shall comprise all of the following modules, attendance of which will be compulsory for candidate attorneys:

- 1.3.1 Legal accounting for attorneys;
- 1.3.2 Advocacy skills, including trial and motion court proceedings;
- 1.3.3 Alternative dispute resolution;
- 1.3.4 Civil procedure;
- 1.3.5 Criminal procedure;
- 1.3.6 Professional conduct and legal ethics;
- 1.3.7 Legal writing and drafting.
- 1.3.8 Constitutional law and customary law;
- 1.3.9 Information and communication technology for practice, and associated aspects of cyber law;
- 1.3.10 Administration of estates.

2. **Pupils**

2.1 **Duration of practical vocational training**

2.1.1 Any person intending to be admitted and enrolled as an advocate must -

2.1.1.1 serve under a practical vocational training contract for a period of not less than six months after that person has satisfied all the requirements for a degree referred to in sections 26(1)(a) or (b) of the Act; and

- 2.1.1.2 complete, to the satisfaction of the Council, during the service under a practical vocational training contract, a period of structured course work, comprising compulsory modules of specific topics of not less than 400 notional hours duration in the aggregate over a period of not longer than six months, as well as compulsory attendance as an observer of proceedings in the High Court and in the magistrates' courts.
- 2.1.2 An entity referred to in regulation 2.2.1, if so authorised by the Council, may on good cause shown and on application by any pupil, exempt that pupil from attendance of any modules forming part of the structured course work, or any court attendances, if it is of the opinion that that pupil has prior learning or experience which would prima facie enable the pupil successfully to undergo assessments or examinations without having attended those modules or having attended court.
- 2.1.3 The provisions of regulations 1.1.2, 1.1.3, 1.1.4 and 1.1.5 will apply, with the necessary changes required by the context, to practical vocational training of pupils.
- 2.2 **By whom pupils may be engaged**
- 2.2.1 A pupil may be engaged or retained under a practical vocational training contract only by an entity accredited by the Council to provide practical vocational training specifically to pupils in accordance with the requirements laid down by the Council.
- 2.2.2 The persons engaged by the entities referred to in regulation 2.2.1 to provide practical vocational training to pupils must be under the supervision of an advocate who has practised in that capacity for a period of not less than three years or for periods of not less than three years in the aggregate during the preceding four years.
- 2.2.3 Unless the provisions of regulation 2.1.2 apply, service by a pupil otherwise than under a contract of practical vocational training in terms of regulation 2.2.1 shall not be deemed to be good or sufficient service for purposes of these regulations.
- 2.2.4 An entity referred to in regulation 2.2.1 shall at no time have more than the number of pupils engaged or retained in terms of a practical vocational training contract than is permitted under the terms of accreditation determined by the Council.

2.3 **Course work for pupils**

The course work program to be attended by pupils shall comprise all of the following modules, attendance of which will be compulsory for pupils unless they are specifically exempt therefrom:

- 2.3.1 Legal accounting for pupils:
 - 2.3.1.1 Special legal accounting for pupils other than pupils wishing to be admitted as advocates referred to in section 34(2)(b) of the Act;
 - 2.3.1.2 Special legal accounting for advocates referred to in section 34(2)(b) of the Act;
- 2.3.2 Professional ethics;
- 2.3.3 Practice directives, being the directives applicable in the relevant division of the High Court where the pupil would be expected to practise, as well as directives of the Supreme Court of Appeal and the Constitutional Court;
- 2.3.4 Advocacy skills in the widest sense.
- 2.3.5 Civil practice: Motion court.
- 2.3.6 Civil procedure: Action procedure.
- 2.3.7 Criminal law practice.
 - 2.3.7.1 applications relevant to criminal trials, including applications to compel the furnishing of further particulars of charges, discovery of documents by the State, the referral of accused persons for psychiatric evaluation, recusal and special entries;
 - 2.3.7.2 inquests. .
- 2.3.8 Legal drafting.
- 2.3.9 Appeals.
- 2.3.10 Reviews.

2.4 **Court attendance by pupils**

Every pupil shall be required, during the course of his or her pupillage, unless exempted therefrom, to attend court proceedings as an observer prior to his or her undertaking any examination or assessment, which attendance will be compulsory and will be under the supervision of a practising advocate appointed by the entity referred to in regulation 2.2.1. The court proceedings to be attended by a pupil shall comprise at least the following:

- 2.4.1 High Court criminal trials (seven court days);
- 2.4.2 magistrates' court civil trials, which should include not less than two divorce matters (seven court days);
- 2.4.3 High Court application hearings, which should include opposed and unopposed applications (seven court days);
- 2.4.4 High Court civil trials (seven court days);
- 2.4.5 magistrates' court criminal trials (district or regional courts), which shall include at least two bail applications, one of which must be an opposed bail application (seven court days);
- 2.4.6 magistrates' court applications, which shall include opposed and unopposed applications (seven court days).

3. **Regulation of practical vocational training**

- 3.1 The training of a candidate legal practitioner, and service under a practical vocational training contract, shall be regulated by rules made by the Council from time to time.
- 3.2 Course work and workplace training must be in compliance with standards determined from time to time by the Council in the rules.

4. **General provisions**

- 4.1 The hours to be devoted to each of the modules referred to in regulations 1.3 and 2.3 by a candidate legal practitioner shall be as determined from time to time by the Council, but the aggregate duration of attendance on modules by a candidate

attorney or a pupil shall be not less than 400 notional hours in the case of candidate attorney and not less than 400 notional hours in the case of a pupil.

- 4.2 Any module of course work may be presented through lectures, seminars or any forms of learning requiring the physical presence of a candidate legal practitioner, or in appropriate circumstances may be presented through approved distance-learning method or digital transmission, telephone or video conference link, audio-tape or electronic network. Course work may be presented during working hours or after hours.
- 4.3 All providers of structured course work for purposes of practical vocational training must be accredited by the Council and must have an appropriate level of experience to be able to impart knowledge and skills to candidate legal practitioners.
- 4.4 If a candidate legal practitioner fails to complete, to the satisfaction of the Council, a period of structured course work, as required in regulations 1.1.1.2 or 2.1.1.2, as the case may be, within a period of three years after the date of registration of a practical vocational training contract, he or she will be required to repeat the course work program to enable him or her to qualify for admission as a legal practitioner.

5. **Assessment**

Candidate legal practitioners will be subject to continuing assessment during their periods of practical vocational training, in relation to both their attendance at the course work program and during their service under a practical vocational training contract, in accordance with procedures determined by the Council.