

**LEGAL PRACTICE COUNCIL
NOTICE 812 OF 2018**



ADDRESS & CONTACT DETAILS

NATIONAL OFFICE
Temporary address
ProcForum Building
123 Paul Kruger Street
Pretoria
Tel: +27 (0)12 338 5800

TO ALL LEGAL PRACTITIONERS AND CANDIDATE LEGAL PRACTITIONERS

**AMENDMENT TO RULE 16 OF THE RULES PUBLISHED UNDER THE AUTHORITY OF
SECTIONS 95(1), 95(3) AND 109(2) OF THE LEGAL PRACTICE ACT, 28 OF 2014 (AS
AMENDED)**

Kindly take notice that the Legal Practice Council hereby publishes an amended Rule 16 (dealing with the election of Provincial Councils) of the Rules previously published under the authority of Sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended), on 20 July 2018 in Government Gazette No 41781.

Kindly further take notice that due to the urgency and importance thereof for the Provincial Councils to be elected and constituted as soon as possible, the amended Rule 16 is published in terms of Section 95(5) of the Legal Practice Act, 28 of 2014 (as amended).

Signed at Pretoria on this 13th day of December 2018.



Ms Hlaleleni Kathleen Matolo-Dlepu
Chairperson: Legal Practice Council

PART IV**Provincial Councils**

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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 practising attorneys and four practising advocates, and the Gauteng Provincial Council will comprise eight practising attorneys and four practising advocates, constituted in accordance with the principles set out in Schedule 1A (in the case of attorney members) or Schedule 1B (in the case of advocate members) respectively.

- 16.3 The provisions of sections 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 no member of the Council may make himself or herself available for election as a member of a Provincial Council.
- 16.5 An election for members of a Provincial Council shall be held, in the manner prescribed in these rules, every third year after the year in which the first such election is held. The term of office of members of the Provincial Council shall run from the date of their election to the third anniversary of the date of the announcement of the results of the election at which they were elected.
- 16.6 Should a vacancy become available at a Provincial Council, the candidate who in the last election received the most electoral votes following a member of such a Provincial Council who received the least votes, and who falls within the same category set out in Schedule 1A (in the case of attorney members) or Schedule 1B (in the case of advocate members) as the departed member, shall be appointed to fill the vacancy, provided that if that person is not available to fill that vacancy, the Council shall conduct a by-election to fill the vacancy concerned. The term of office of the member appointed or elected as the case may be to fill a casual vacancy in the Provincial Council shall terminate on the date on which the office of the member replaced by him or her would have terminated, provided that the member appointed or elected to fill such a casual vacancy shall be eligible for re-election.
- 16.7 An election for members of a Provincial Council shall be conducted by –
- 16.7.1 electronic voting (e-voting), in the manner prescribed by the Council; and / or
- 16.7.2 paper ballot,
- in accordance with the provisions of this rule.

- 16.8 The Council shall appoint an independent electoral service provider for the purpose of performing the duties assigned to an independent electoral service provider in these rules.
- 16.9 Within 90 days prior to and by no later than 60 days prior to the third anniversary of the date of the announcement of the results of the previous election, the Council shall despatch a notice to every attorney and every advocate admitted to practise and enrolled on the practising roll in the area of jurisdiction of the Provincial Council concerned calling for nominations of eligible attorneys and eligible advocates for election to the Provincial Council, such nominations to be received not later than a date stipulated in the notice. The notice -
- 16.9.1 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 telefax;
- 16.9.2 shall be published once in the Government Gazette on a date as close as possible to the date of dispatch of the notice;
- 16.9.3 shall be published on the Council's website from the date of dispatch of the notice to the closing date of the nominations;
- 16.9.4 shall give details of the number of vacancies on the Provincial Council for attorney members and advocate members respectively;
- 16.9.5 shall contain a provision that any two nominating individuals shall only nominate one eligible candidate.
- 16.10 Any two attorneys admitted to practise and enrolled on the practising roll 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.
- 16.11 Any two advocates admitted to practise and enrolled on the practising roll 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.
- 16.12 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 the nominee, in not more than 600 words and in such format as the Council may require -

- 16.12.1 his or her name and identity number;
- 16.12.2 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;
- 16.12.3 his or her race, gender, date of admission and enrolment and period in practice;
- 16.12.4 if he or she has a disability and wishes to disclose that fact, a statement to that effect and the nature of the disability;
- 16.12.5 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.

- 16.13 Nominations must be lodged with the Provincial Council by not later than the date stipulated in the notice referred to in rule 16.9. Provided that in respect of the first election such nominations must be lodged with the Council. Any nomination which does not comply substantially with the provisions of this rule or which is not lodged within the prescribed time shall not be recognised.
- 16.14 If no greater number of eligible candidates is nominated than the number to be elected, then the eligible candidates who are nominated will be deemed to have been elected, in accordance with the categories set out in Schedule 1A (in the case of attorney members) or Schedule 1B (in the case of advocate members) provided that if the number of the candidates who are nominated or so elected is less than the number of the vacancies, the Council may call for further nominations in the manner prescribed by the Council.
- 16.15 If the number of eligible 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 16.9, publish on the Council's website and send by

email to every legal practitioner eligible to vote, to the legal practitioner's email address or, where the legal practitioner has not appointed an email address, by telefax -

- 16.15.1 directions to the legal practitioner as to the size and format of the two envelopes to be used by the legal practitioner in the case of voting by ballot paper;
- 16.15.2 a declaration in such form as the Council may direct containing appropriate spaces for -
 - 16.15.2.1 the surname and forenames of the voting legal practitioner and a statement whether he or she is an attorney or an advocate;
 - 16.15.2.2 the date of signature by that legal practitioner and that legal practitioner's signature;
 - 16.15.2.3 a declaration by the legal practitioner above his or her signature that he or she has not already voted in the election concerned;
- 16.15.3 a ballot paper, substantially in the form of Schedule 1A (in the case of the election of attorney members) or Schedule 1B (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 1A or Schedule 1B, as the case may be, and nothing more;
- 16.15.4 a written notice in such form as the Council may direct –
 - 16.15.4.1 drawing the attention of legal practitioners to the fact that votes must be cast by paper ballot or electronic means. Legal practitioners shall vote only once in the election concerned and either by paper ballot or electronic means.
 - 16.15.4.2 requesting the legal practitioner, if he or she wishes to record a vote, (in the case of voting by paper ballot)-
 - 16.15.4.2.1 to 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;
- 16.15.4.2.2 to place the ballot paper in the envelope marked "ballot paper";
- 16.15.4.2.3 to seal the envelope containing the ballot paper;
- 16.15.4.2.4 to complete and sign the declaration form;
- 16.15.4.2.5 to place a completed and signed declaration form, together with the envelope containing the ballot paper in and seal the envelope marked "voting papers";
- 16.15.4.2.6 to despatch the envelope marked "voting papers" with its contents to the Council's appointed address so as to reach the Council's appointed address not later than a date referred to in the notice.
- 16.15.4.3 requesting the legal practitioner, if he or she wishes to record his or her vote (in the case of voting by e-voting), to follow the guidelines issued by the Council for the purpose of e-voting.
- 16.15.4.4 drawing the attention of legal practitioners to the fact that the profiles of candidates, containing the information set out in rule 16.12, will be published on the website of the Council for a period starting from the date of opening of casting of votes until the date of closing of casting of votes.
- 16.15.5 guidelines as to the conduct of the e-voting, which shall be in the form and manner determined by the Council, and among other things provide for the period within which to cast the votes, the platform to be utilised for e-voting,

directions as to the completion of the declaration form and the electronic ballot, provided that-

- 16.15.5.1 an electronic identification system shall be developed;
 - 16.15.5.2 legal practitioners shall be required to authenticate themselves;
 - 16.15.5.3 the electronic ballot must exactly resemble the ballot paper referred to in rule 16.15.3;
 - 16.15.5.4 the electronic declaration form must exactly resemble the declaration form referred to in rule 16.15.2;
 - 16.15.5.5 a legal practitioner must be given an overview of all his or her votes and asked to confirm his or her choice before submitting the electronic ballot;
- 16.16 The notice referred to in rule 16.15.4 shall contain a warning that if a vote is cast in favour of more than the number of names referred to in rule 16.15.4.2.1, 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 16.15.2 is not duly completed and signed by the voter, the ballot paper will be void.
- 16.17 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. Only attorneys may elect attorneys and only advocates may elect advocates.
- 16.18 Within 7 days after the last date on which nominations were required to be lodged in terms of rule 16.9 the chairperson of the Council or in his or her absence or inability to act any member of the Council nominated for that purpose by the Council (the person who is to fulfil the functions of the chairperson of the Council for purposes of rule 16 being referred to in this rule as "the chairperson") shall in writing appoint a practising 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 Council may appoint different referees for different Provincial Councils. The referee(s) shall not be a candidate for office, a legal practitioner

who has nominated a candidate, or a member of the Council or of a Provincial Council, as the case may be.

- 16.19 On each day on which envelopes marked "voting papers", in respect of paper ballot, are received by the Council, or if it is not practicable on that day, as soon as practicable thereafter, the chairperson or the executive officer shall, in the presence of the referee, open each such envelope and remove its contents. The chairperson or the executive officer and the referee shall then together examine each declaration form, shall verify, to such extent as may appear necessary, the information contained in the declaration form 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 or the executive officer and the referee as to the validity or otherwise of any declaration form, 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 declaration form found to be invalid, with the reason for the invalidity. The chairperson or the executive officer and the referee shall together note the name and surname of each legal practitioner who has submitted a declaration form 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.
- 16.20 The chairperson or the executive officer 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 or the executive officer and for which the chairperson or the executive officer shall retain the key until the day following the day referred to in rule 16.15.4.2.6. After placing the last of such envelopes duly received in the ballot box the chairperson or the executive officer shall, in the presence of the referee, securely seal the slot, and shall hand the key to the referee. The chairperson or the executive officer shall securely retain the ballot box, locked and sealed as required, and shall deliver the ballot box in that condition to the scrutineers appointed in terms of rule 16.22 on the day following the day referred to in rule 16.15.4.2.6 Separate ballot boxes shall be kept for ballot papers in respect of attorneys and advocates respectively.

- 16.21 An envelope marked "ballot paper" which is accompanied by a declaration form 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 declaration form endorsed by the referee as provided in rule 16.19, shall securely seal all those documents and shall separately retain them in the same manner as is provided for in rule 16.21, for a period of three months after the date referred to in rule 16.15.4.2.6 The chairperson shall thereafter destroy all such envelopes unless ordered otherwise by an order of court; provided that if there should be a dispute regarding the validity of the declaration form 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.
- 16.22 Prior to or on the date referred to in rule 16.15.4.2.6 the Council shall appoint as scrutineers to observe the counting of 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 independent electoral service provider of the ballot box he or she shall break the seal, open the ballot box and remove its contents in the presence of the scrutineers and the chairperson or any member of the Council nominated for that purpose by the Council or the executive officer. He or she shall then open each of the envelopes marked "ballot paper", remove the ballot paper, 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 the signatures of the scrutineers and the chairperson or any member of the Council nominated for that purpose by the Council or the executive officer the reason for its rejection. The independent electoral service provider shall then count the votes recorded in the remaining ballot papers and record the result in the presence of the scrutineers 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.
- 16.23 On each day on which electronic ballots despatched to the Council are received by the Council, or if it is not practicable on that day, as soon as practicable

thereafter, the chairperson or the executive officer shall, in the presence of the referee, examine each electronic declaration form, shall verify, to such extent as may appear necessary, the information contained in the electronic declaration form against the records of the Council and shall satisfy themselves that the electronic 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 or the executive officer and the referee as to the validity or otherwise of any electronic declaration form, the view of the referee shall prevail and his or her judgment on the matter shall be final. The referee shall maintain a record of each electronic declaration form found to be invalid, with the reason for the invalidity and endorse the record with his or her signature. The chairperson or the executive officer and the referee shall together note the name and surname of each legal practitioner who has submitted an electronic declaration form and an electronic ballot, as well as whether that legal practitioner is an attorney or an advocate, in a voting register kept by the referee.

- 16.24 The chairperson or the executive officer shall, in the presence of the referee, securely retain or save in the form and manner approved by the Council each electronic declaration form as well as the accompanying electronic ballots found to be valid. The chairperson or the executive officer shall retain each electronic declaration form and electronic ballot in the same manner for a period of three months after the date of closing of casting of votes. The chairperson shall thereafter destroy all such electronic declaration forms and electronic ballots unless ordered otherwise by an order of court; provided that if there should be a dispute regarding the validity of the electronic declaration form, the electronic declaration forms and electronic ballots shall be retained until the dispute has been resolved. The chairperson shall keep a separate record of the number of electronic declaration forms and electronic ballots thus retained by him.
- 16.25 The independent electoral service provider shall then count the votes recorded in the e-voting system and record the result in the presence of the scrutineers and the referee. Thereafter the chairperson shall securely retain or save the electronic records in the manner determined by the Council.
- 16.26 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.

- 16.27 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.
- 16.28 If two or more candidates in any category receive the same number of votes, the question as to which of them shall be deemed elected shall be determined immediately by lot drawn by the scrutineers in the manner determined by them.
- 16.29 Upon completion of the counting of the votes (both electronic votes and paper ballots) and the scrutiny by the scrutineers, the scrutineers shall immediately report the result of the election in writing to the chairperson and the referee. The referee shall as soon as practicable thereafter 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 scrutineers and shall contain the following particulars:
- 16.29.1 the total number of ballot papers and electronic ballots received by them;
- 16.29.2 the number of ballot papers and electronic ballots rejected and the grounds of rejection;
- 16.29.3 the total number of votes in favour of each candidate in each category;
- 16.29.4 the result of any lot drawn in terms of rule 16.28;
- 16.29.5 the names of those candidates who are deemed to have been elected.
- 16.30 The chairperson shall, after receipt of the written confirmation of the scrutineers and a declaration in terms of rule 16.29 that the election was conducted freely and fairly, cause each candidate to be advised of the result of the election.
- 16.31 The written confirmation of the scrutineers together with a declaration from the referee in terms of rule 16.29 that the election was conducted freely and fairly shall be conclusive as to the result of the election.

- 16.32 The independent electoral service provider, having completed the counting, shall return the ballot box containing the examined ballot papers and which is locked in accordance with rule 16.22 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 16.15.4.2.6 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.
- 16.33 If an election is declared to be not free and fair by the referee in terms of rule 16.29, or by a court on application, the process for the election of members of the Provincial Council shall be conducted afresh, provided that such an application shall be brought within one month of the announcement of the result,