

KWAZULU-NATAL LAW SOCIETY**AMENDMENT OF THE RULES**

It is hereby notified that the following amendments to the Rules framed in terms of Section 74(1) of Act 53 of 1979, as published in Government Gazette No. 6316 dated 2 March 1979 and, as amended by

GG 6848 dated 15.2.1980
GG 7924 dated 20.11.1981
GG 9316 dated 13.7.1984
GG 10100 dated 21.2.1986
GG 10679 dated 3.4.1987
GG 12300 dated 23.2.1990
GG 13933 dated 24.4.1992
GG 14823 dated 28.5.1993
GG 15575 dated 25.3.1994
GG 16227 dated 27.1.1995
GG 16704 dated 6.10.1995
GG 17042 dated 22.3.1996
GG 17669 dated 20.12.1996
GG 18952 dated 12.6.1998
GG 19245 dated 18.9.1998
GG 22011 dated 2.2.2001
GG 23407 dated 17.5.2002
GG 24093 dated 29.11.2002
GG 25217 dated 25.7.2003
GG 25778 dated 5.12.2003
GG 27370 dated 18.03.2005
GG 29173 dated 8.09.2006
GG 29669 dated 9.03.2007

were agreed to unanimously by the members of the Society present or represented at the Annual General Meeting of the Society held on 2 November 2007 and have in terms of Section 74(2) of Act 53 of 1979, after consultation with the Judge President of the Natal Provincial Division of the High Court, been approved by the Chief Justice of South Africa.

G.M. JOHN
DIRECTOR

Explanatory Note -

[] Words in bold type in square brackets indicate proposed deletions from the existing Rules.

— Words underlined with a solid line indicate proposed insertions in the existing Rules.

RULE 1

Amend Rule 1 as follows:

Definition of "accountant" to be substituted with definition of "auditor".

"auditor" ["accountant"] means a person who is registered as an [**accountant and**] auditor in terms of the [**Public Accountants' and Auditors' Act 80 of 1991**] Auditing Profession Act 26 of 2005, and who practises as [**a public accountant as defined in that**] an auditor as defined in that Act;

RULE 14(b)(xxvi)

Add the following new sub-rule 14(b)(xxvi):

"14(b) Unprofessional, dishonourable or unworthy conduct on the part of a member shall, without restricting the generality of those terms, include:

(xxvi) Failing to comply with any of the International Bar Association General Principles for the Legal Profession 2006, as amended from time to time, and which are set, out in the Fourteenth Schedule to these Rules, save where the General Principle is in conflict with, or is superseded by a Rule of this Society or a Ruling of the Council."

RULE 14(b)(xxvii)

Add the following new sub-rule 14(b)(xxvii):

14(b) Unprofessional, dishonourable or unworthy conduct on the part of a member shall, without restricting the generality of those terms, include:

"(xxvii) Failing to disclose to the person on whose behalf the investment is made –

(aa) the reasonable fee charged for the administering of a Section 78(2A) investment, and/or

(bb) any direct or indirect payment received from any source of any commission, consideration, gift, allowance, reward or benefit for the making and/or administering of such investment."

RULE 16(a)

Amend Rule 16(a) as follows:

- "(a) It shall be competent for the Council, or any Committee appointed by the Council for that purpose, *mero motu*, or at the request of any person or member, to assess the fees and disbursements payable to a member in respect of the performance of any work other than litigious work by a member in his capacity as such; provided that the Council, or the Committee shall not assess fees and disbursements in instances –
- (i) where a state official is empowered to do so, or
 - (ii) where the work concerned is already covered by a statutory tariff, or
 - (iii) unless, in a litigious matter, the parties agree in writing that the fees and disbursements may be assessed."

RULE 17(2)

Amend Rule 17(2) as follows:

- "(2) A member carrying on an investment practice is required to obtain a certificate from the member's [**accountant**] auditor who will be required to report to the Society in terms of Rule 21A or furnish a report from the trust account partner in terms of Rule 21B to the effect that the member has complied with this Rule."

RULE 21(11)

Amend Rule 21(11) as follows:

- (11) A firm shall submit either a Rule 21A Report by [**Accountants**] Auditors or a Rule 21B Certificate in compliance with the provisions of the relevant Rule."

RULE 21A(1), (2), (3), (4), (5), (6), (7) and (8)

Amend Rule 21A(1), (2), (3), (4), (5), (6), (7) and (8) as follows:

- "(1) A firm shall at its expense once in each calendar year or at such other times as the Council may require, appoint an **[accountant]** auditor approved by the Council to act on behalf of and as the representative of the fund to discharge the duties assigned to him in terms of subrule (4).
- (2) A firm shall allow an **[accountant]** auditor appointed under subrule (1) access to such of its records as he may deem it necessary to examine for the purposes of discharging his duties under subrule (4) and shall furnish the **[accountant]** auditor with any authority which may be required to enable him to obtain such information, certificates or other evidence as he may reasonably require for such purposes.
- (3) A firm shall ensure that the report to be furnished by an **[accountant]** auditor in terms of subrule (4) is so furnished within or at the required time; provided that the Council may in its discretion and on such conditions as it may stipulate, on written application by a firm relating to a particular report, condone a failure by that firm to comply with this requirement.
- (4) Every **[accountant]** auditor who has accepted an appointment in terms of subrule (1) shall -
- (a) within 6 months of the annual closing of the accounting records of the firm concerned, or at such other times as the Council may require, furnish the Council with a report which shall be in the form set out in the Fifth Schedule to these Rules;
 - (b) without delay report in writing directly to the Council if, at any time during the discharge of his functions and duties under this Rule -
 - (i) it comes to his notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm in respect of any trust creditor, exceeded the total amount of the funds in its trust banking account and/or its trust investment account and/or its trust cash in respect of such trust creditor or that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, and/or its trust investment account and/or its trust cash;
 - (ii) any material queries regarding its accounting records which he has raised with the firm have not been dealt with to his satisfaction;
 - (iii) any reasonable request made by him for access to its records or for any authority referred to in subrule (2) has not been met to his satisfaction.

- (5) A copy of the report in the prescribed form required under subrule (4)(a) and any report made in terms of subrule (4)(b) shall be sent by the **[accountant] auditor** to the firm concerned.
- (6) The form as prescribed under subrule (4) shall be obtained only from the Secretary who shall issue it on request to any firm or to any **[accountant] auditor** appointed in terms of this Rule.
- (7) In any case where the Council is satisfied that it is not practicable to obtain the services of an **[accountant] auditor** for the issuing of a report as prescribed under subrule (4), it may in lieu thereof accept as compliance with the requirements of subrule (4) such other evidence as it may deem sufficient.
- (8) Where the **[accountant] auditor** submits a qualified audit report in accordance with the provisions of sub-rule 4 above reporting a shortfall as envisaged by sub-rule 4(b)(i) the firm shall simultaneously with the submission of such qualified audit report submit the undermentioned documentation, namely –
- (a) a schedule with the name/s of the trust account/s in debit and the debit amount/s;
 - (b) the firm's full explanation on oath of how each trust debit arose;
 - (c) the **[accountant's] auditor's** confirmation that the firm's explanation accords with the firm's accounting records;
 - (d) proof that the trust debit or shortfall has been rectified;
 - (e) the firm's full written statement as to how each trust debit or shortfall was rectified."

THIRD SCHEDULE TO THE RULES

Amend the Third Schedule as follows:

"Third Schedule

Articles of Clerkship Agreement

It is agreed that –

1. The duration of this agreement shall be a period of ___ years commencing on the _____ day of _____ [19] 20 ____, and terminating on the _____ day of _____ [19] 20 ____.

provided that, should the Candidate Attorney become entitled to be admitted as an Attorney prior to the date of termination, this agreement shall forthwith terminate upon such admission.

3. The Candidate Attorney hereby undertakes and agrees that he/she shall-
- (e) keep a diary or other written record of the training which he/she received under articles and until such time as he/she is admitted as an attorney hold such diary or other record available for inspection by his/her principal, the Council of the KwaZulu-Natal Law Society or by the examiners responsible for conducting the Candidate Attorneys' practical examinations in terms of section 14 of the Attorney's Act, 1979;
 - (f) not engage in any business other than that of Candidate Attorney without the written consent of his/her Principal and the Council of the KwaZulu-Natal Law Society;

Signed by the Principal at _____ this ____ day of _____ [19] 20__

As Witnesses:

1. _____
Principal
2. _____

Signed by the Candidate Attorney at _____ this ____ day of _____ [19] 20__

Note :

1. Clauses 4 and/or 6 may be omitted and/or amended by the parties to the Agreement.
2. Articles of Clerkship may not be backdated.
3. **[Clause 4 contains an indemnity clause requiring revenue stamps in addition to the revenue stamp required for the Agreement.] The Principal, Candidate Attorney and the witnesses to initial each page of the contract.**

SIXTH SCHEDULE TO THE RULES

Amend the Sixth Schedule as follows:

"Sixth Schedule

Contract of Service Agreement

It is agreed that -

1. The duration of this contract shall be a period of _____ years commencing on the _____ day of _____ [19] 20 _____, and terminating on the _____ day of _____ [19] 20 _____, provided that, should the Candidate Attorney become entitled to be admitted as an Attorney prior to the date of termination, this contract shall forthwith terminate upon such admission.

3. The Candidate Attorney hereby undertakes and agrees that he/she shall -

(e) keep a diary or other written record of the training which he/she received during the period of service and until such time as he/she is admitted as an attorney hold such diary or other record available for inspection by his/her Principal, the Council of the KwaZulu-Natal Law Society or by the examiners responsible for conducting the Candidate Attorneys' practical examinations in terms of section 14 of the Attorneys' Act, 1979;

(f) not engage in any business other than that of Candidate Attorney without the written consent of his/her Principal and the Council of the KwaZulu-Natal Law Society;

6. Should the Candidate Attorney -

(a) not serve his/her period of service properly in terms of this Agreement;

(b) commit a breach of any of the terms and conditions of this Agreement, or

(c) be guilty of any misconduct,

the Principal and/or the Council of the KwaZulu-Natal Law Society shall be entitled to cancel this Contract and dismiss the Candidate Attorney from his/her employment.

Signed by the Principal at _____ this _____ day of _____ [19] 20 _____

As Witnesses:

1. _____ Principal _____

2. _____

Signed by the Candidate Attorney at _____ this _____ day of _____ [19] 20 _____

NEW FOURTEENTH SCHEDULE

Add the following new Fourteenth Schedule:

"Fourteenth Schedule**IBA GENERAL PRINCIPLES FOR THE LEGAL PROFESSION 2006**

Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the Courts, and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world.

In addition, the purpose of adopting these General Principles is to promote and foster the ideals of the legal profession. These General Principles are not intended to replace or limit a lawyer's obligation under applicable laws or rules of professional conduct. They are to be used as criteria for imposing liability, sanctions, or disciplinary measures in the absence of a Rule or Ruling.

1. Independence

A lawyer shall maintain and be afforded protection of independence to allow him or her to give his or her clients unbiased advice or representation. A lawyer shall exercise his or her independent, unbiased professional judgment upon advising his or her client as to the likelihood of success of the client's case and upon the client's representation

2. Honesty, integrity and fairness

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the Court, his or her colleagues and all those with whom he or she comes professionally into contact.

3. Conflicts of interest

A lawyer shall not place himself or herself in a position in which his or her client's interests conflict with those of himself or herself, his or her partners or another client, unless otherwise permitted by law or, if permitted, by client's authorisation.

4. Confidentiality/ professional secrecy

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of his or her present or former clients, unless otherwise required or permitted by law or, if permitted, by client's authorisation.

5. Clients' interest

A lawyer shall treat the interests of his or her clients as paramount, subject always to his or her duties to the Court and the interests of justice, to observe the law and to maintain ethical standards.

6. Lawyers' undertaking

A lawyer shall honour any undertaking given in the course of his or her practice, until the undertaking is performed, released or excused.

7. Clients' freedom

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional rules or by law, a lawyer shall be free to take on or reject a case.

8. Property of clients and third parties

A lawyer shall account faithfully for any property of his or her clients or a third party which come into his or her trust, and shall keep it separate from his or her own property.

9. Competence

A lawyer shall carry out his or her work in a competent and timely manner and shall not take on work which he or she does not reasonably believe he or she will be able to carry out in that manner.

10. Fees

A lawyer is entitled to a reasonable fee for his or her work. A Lawyer shall not generate unnecessary work."
