

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 20.1.1981
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

were agreed to unanimously by the members of the Society present or represented at the Annual General Meeting of the Society held on 6 October 2006 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
ACTING 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 14(b)(xxv): New Thirteenth Schedule

Add the following new sub-rule 14(b)(xxv) as follows:

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

(xxv) Failing to comply with any Rule of the Code of Ethics for Legal Practitioners, as amended from time to time, and which are set out in the Thirteenth Schedule to these Rules, save where the Rule is in conflict with, or is superseded by a Rule of this Society or a Rulina of the Council."

RULE 14(d): Advertising

Substitute Rule 14(d) as follows:

"(d) Subject to the provisions of Rule 14(b)(vi), a member may publicise the member's practice, or permit another person to do so, provided that the member, or such other person, shall -

- (i) not attract work unfairly,
- (ii) not do anything which compromises or impairs, or is likely to compromise or impair -
 - (aa) the member's independence or integrity;
 - (bb) the client's freedom to instruct an attorney of the client's choice;
 - (cc) the member's duty to act in the best interest of the client;
 - (dd) the member's good reputation or that of the attorney's profession;
 - (ee) the member's proper standard of work;
- (iii) not advertise jointly with a non-attorney,
- (iv) not pay any of the advertising costs of a non-attorney,
- (v) be entitled to advertise informatively only e.g. the advertisements may contain the name and address details of the member's firm, the names of the professional employees of the firm and the areas of law in which they practise."

RULE 16B: COLLAPSE FEE

Add the following new Rule 16B:

"16B A member may not charge a fee where a matter which has been set down for hearing collapses for any reason unless the fee:

- (1) has been agreed to in writing in advance with the client and the client has been informed that the client is not obliged to agree to such a fee;

and

- (2) is determinable and reasonable and takes into account any work that is actually done by the member after the collapse of the matter but before the end of the period for which the matter had been scheduled to run."

RULE 20(1): Keeping of Proper Accounting Records

Substitute Rule 20(1) as follows:

- "(1) A firm shall keep in an official language of the Republic such accounting records as are necessary fairly to present in accordance with generally accepted accounting practice the state of affairs and business of the firm and to explain the transactions and financial position of the firm including, without derogating from the generality of this rule -
- (a) records containing particulars and information of all monies received, credited to, held and paid by it including interest for and on account of any person as well as of all monies invested by it in terms of section 78(2) or 78(2A) of the Act;
 - (b) records showing its assets and liabilities."

RULE 20(4)(b): Retention of Accounting Records

Amend Rule 20(4)(b) as follows:

- (4) A firm shall retain its accounting records -
- (b) save when removed therefrom under other lawful authority, -

- (i) in the case of a firm practising in KwaZulu-Natal only, at its main office or a branch office, but, in the latter case only insofar as such records relate to any part of its practice conducted at that branch office,
- (ii) in the case of a firm practising with its main office in another province and a branch office in KwaZulu-Natal, such firm shall be deemed to comply with this sub-rule where all trust monies received in KwaZulu-Natal by that firm are receipted and banked within KwaZulu-Natal, and the branch office has immediate access to the firm's computerised clients' accounting system via a terminal and printer in the branch office.
- (iii) Any firm seeking to keep such records at any other place must seek written permission from the Society."

RULE 21(1): Trust Receipts

Substitute Rule 21(1) as follows:

"21(1) A firm shall –

- (a) issue a pre-numbered trust receipt in duplicate for all money received on account of any person and such receipt shall be printed and shall provide the following details -
 - (i) date of receipt;
 - (ii) amount in words and in figures;
 - (iii) from whom received;
 - (iv) for whose credit;
 - (v) identification of transaction;
 - (vi) whether trust or business;
 - (vii) whether received in cash, by cheque or otherwise; and
- (b) on the date of the receipt of such trust money, or the first banking day following its receipt on which it might reasonably be expected that it will be banked, deposit such money in its trust bank account; and/or
- (c) record all direct deposits received on account of any person and such records shall provide the details as in (a)(i) to (vii) above."

RULE 21(9):

Substitute Rule 21(9) as follows:

- "21(9) (a) A member who invests funds on behalf of any person in terms of Section 78 (2A) of the Act with that person's prior written specific Instructions shall obtain such instructions to make such investment substantially in the form referred to in the Twelfth Schedule to these rules.
- (b) A member who invests funds on behalf of any person without that person's prior written specific or general instructions shall -
- (i) not invest such funds otherwise than in a trust savings or other interest-bearing account with a banking institution or building society;
 - (ii) obtain that person's written confirmation of the investment as soon as is reasonably possible or notify him forthwith thereof in writing, which confirmation or notification shall substantially be in the form of the instructions to make such investment referred to in the Twelfth Schedule to these Rules, and
 - (iii) forthwith cause the relative trust savings or other interest-bearing account to be endorsed in terms of section 78(2A) of the Act."

FOURTH SCHEDULE IT INVESTMENT MANDATE

Substitute the Fourth Schedule as follows:

Fourth Schedule**CLIENT INVESTMENT MANDATE**

I, the undersigned _____ (Full names and Identity Number)
 of _____
 hereby authorise and empower (firm's name) _____
 to make the following investment/s as my agent and on my behalf -

(delete words, which are not applicable or insert words if and where required)

1. TYPE OF INVESTMENT/S

- (a) Money lending (Yes/No), and/or
- (b) Money market (Yes/No), and/or
- (c) Stocks and shares on JSE (Yes/No), and/or
- (d) Call or fixed term deposit [for ___ days/months/year/s] (Yes/No), and/or
- (e) Any other type (Yes/No) [specify sufficient details thereof]

2. TYPE OF MANDATE GIVEN

- (a) Does the firm have the sole and exclusive discretion to make the investment/s? (Yes/No)
- (b) If no, the type of mandate is non-discretionary and the precise instruction/s given to the firm to invest with relevant details of such instructions are to be set out.

3. IS FIRM TO KEEP ALL SECURITIES? (Yes/No)4. IS GENERAL OR SPECIAL POWER OF ATTORNEY ATTACHED?

- (a) General power of attorney? (Yes/No)
- (b) Special power of attorney? (Yes/No)
- (c) None? (Yes/No)

5. REPORTING:

The firm shall report as follows: (Monthly/Quarterly/6 Monthly/Annually)

6. PROTECTION:

I acknowledge that I have been informed by the practitioner (attorney, notary or conveyancer) concerned of the provisions of subsection 47(1)(g) of the Attorneys Act and that I understand the effect thereof.

I acknowledge and admit that the Attorneys Fidelity Fund shall not be liable in respect of any loss suffered by me as a result of theft of money, which the practitioner has been instructed to invest on my behalf.

7. GENERAL

Any other instructions: _____

SIGNED AT _____ on this _____ day of _____ [19]20 _____

Client

ACCEPTED AT _____ on this _____ day of _____ [19]20 _____

On behalf of firm_____
Full names of practitioner**NINTH SCHEDULE RULE 21B REPORT – FORM OF CERTIFICATE WHERE TRUST MONIES
HAVE BEEN HELD**

Substitute the Ninth Schedule as follows:

Ninth Schedule**FORM OF CERTIFICATE
(WHERE TRUST MONIES HAVE BEEN HELD)**

The Financial Manager
 KZN Law Society
 P.O. Box 1454
 Pietermaritzburg
 3200 or
 Docex 25
 Pietermaritzburg

Dear Sir,

I/We, the duly designated and appointed trust account partner(s)/director(s) or sole practitioner of, _____ (name of firm), carrying on business at: _____ (address of firm), (separate certificate required for each branch office having a separate trust account), confirm that:

1. I/We have maintained the necessary accounting records as required in terms of ss 78(4) & ss 78(6) of the Attorneys Act 53 of 1979 and the Rules and Rulings as they appear in the KZN Law Society Practice Manual for the accounting period from _____ to _____
2. I/We certify that:-
 - 2.1 the accounting records are up to date and balanced as at the last day of the accounting period (note (b)), and
 - 2.2 the accounting records, to the best of my/our knowledge and belief, are in accordance with the terms of the Attorneys Act 53 of 1979 and the KZN Law Society Rules and Rulings, and
 - 2.3 all outstanding reconciling entries noted as at the end of the accounting period (refer note (b)) in terms of Rule 20(5) and 21(7) have been entered in the records or confirmed as correct.
 - 2.4 the trust creditor's account reconciliation as at end of accounting period is as follows.
 - (a) Total as per Trust Creditors listing R _____
 - (b) Total of balance standing to the credit of the firm's Trust Banking account(s), Trust Investments account(s) ss 78(2) and 78(2A) and amounts held by it as Trust cash. R _____
 - (c) Surplus/(Deficit) Trust monies (b) – (a) R _____
 - (d) A detailed explanation is required under item 2.6 below, should (c) not equal NIL, including the steps taken to rectify the discrepancy(s).
- 2.5 I/We have extracted the following information from the accounting records of the firm and report that during the accounting period: -
 - (a) the amount which the firm has earned on monies deposited in trust banking accounts in terms of Section 78(1) and monies invested in trust investment accounts in terms of Section 78(2) of the Act is R _____
 - (b) the amount which the firm has incurred in respect of trust bank charges exclusive of VAT (bank charges including VAT may have been levied against firms not being liable for VAT as registered vendors) is R _____

- (c) the amount which the firm has paid to the Attorneys Fidelity Fund or its nominee, the KwaZulu-Natal Law Society, in terms of Section 78(3) of the Act for this accounting period is R_____
- (d) the amount which the firm has to pay to the Attorneys Fidelity Fund or its nominee, the KwaZulu-Natal Law Society, in terms of Section 78(3) of the Act for this accounting period is R_____
- (e) the ratio as a percentage of total bank charges referred to in sub-paragraph (b) to the total trust interest referred to in sub-paragraph (a) $[(b) \div (a)]$ is _____ percent (%); and
- (f) the firm (*did/did not) comply with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Attorneys Fidelity Fund/KwaZulu-Natal Law Society and the Firm's bank/s.

2.6 the other matters which require to be reported are:-

27 during the said accounting period the Designated Trust Account Partner(s)/Director(s) or sole practitioner in terms of Rule 218 of the KZN Law Society rules was/were as follows:-

NAME	DATE DESIGNATED	DATE DESIGNATION CEASED

I/We solemnly and sincerely declare that the information given by me in this Certificate is true to the best of my knowledge and belief.

CURRENT DESIGNATED TRUST ACCOUNT PARTNER(S)/DIRECTOR(S) OR SOLE PRACTITIONER (where applicable) _____

DATE : _____

NOTES:

- (a) State addresses of all places of business of the practice in respect of which this certificate is lodged.
- (b) The Trial Balance is to be a balance of all the accounting records covering Trust and Business accounts.

NEW TWELFTH SCHEDULE TO THE RULES: INSTRUCTIONS TO MAKE AN INVESTMENT IN TERMS OF SECTION 78(2A) OF THE ATTORNEYS ACT

Add the following new Twelfth Schedule:

Twelfth Schedule**INSTRUCTIONS TO MAKE AN INVESTMENT IN TERMS OF SECTION 78(2A) OF THE ATTORNEYS ACT**

I/we, the undersigned, _____ (full names and identity number/s - to be suitably adapted for an investment in a representative capacity) of _____ (address) hereby confirm my/our instructions to _____ (firm's name) to invest any money deposited by me/us on account of _____, into the/a trust banking account of the firm on the basis that:

1. The amount is invested in a separate trust savings or other interest-bearing account at a registered bank.
2. The account shall contain a reference to section 78(2A) of the Attorneys Act 1979 (Act No 53 of 1979).
3. The payment of the money into the account contemplated in section 78(2A) is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of a particular matter or transaction, being (provide full details thereof) that is either already in existence or about to come into existence at the time that this investment is made and over which investment the practitioner (an attorney, notary or conveyancer in the exclusive employ of the firm) exercises exclusive control as trustee, agent or stakeholder or in any fiduciary capacity.

4. I direct that the investment be made at the following bank:

5. The firm shall report to me ~~monthly/quarterly/on~~ registration of transfer/
termination of my mandate (delete whichever is not applicable).
6. The interest, which accrues on such investment is to be for the benefit of
_____ (provide full details) and is to be paid to
_____ after deducting your professional
fee and costs for administering the investment (delete if not applicable)
_____ (provide full details when the interest shall be paid).
7. I am aware of the fact that while the funds are so invested with the said
bank, the funds are not protected against a possible liquidation of the said
bank.
8. I confirm the following other instructions (if applicable):

Signed at _____ on this _____ day of _____ 20 ____

Client/s

Accepted at _____ on this _____ day of _____ 20 ____

On behalf of firm

Full names

NEW THIRTEENTH SCHEDULE TO THE RULES: CODE OF ETHICS FOR LEGAL PRACTITIONERS

Add the following new Thirteenth Schedule:

“Thirteenth Schedule**CODE OF ETHICS FOR LEGAL PRACTITIONERS**

All legal practitioners shall:

1. honour, respect and promote the values enshrined in the Bill of Rights;
 2. maintain the highest standards of honesty, integrity and independence at all time;
 3. act with care and skill, honour undertakings and maintain the reputation and high standards required in the performance of their duties;
 4. conduct themselves with courtesy and respect towards participants in proceedings, especially persons without legal representation, so as to ensure compliance with the rules and procedures for the fair conduct of such proceedings;
 5. maintain the highest standards of professionalism and promptly respond to correspondence and messages from colleagues, clients and members of the public;
 6. comply with all ethical and professional rules of practice;
 7. respect the legal privilege and confidentiality that exists with clients and former clients;
 8. subject to the laws as regards contingency fees, and the rules and guidelines as regards advertising, not engage in any form of activity that may be construed as touting;
 9. extend to all colleagues, judges, academics, professionals, litigants and students, including persons from foreign jurisdictions, cordiality and respect at all times.”
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