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# LAW SOCIETY OF THE CAPE OF GOOD HOPE

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## CAPE LAW SOCIETY (INCORPORATED AS THE LAW SOCIETY OF THE CAPE OF GOOD HOPE) AMENDMENT OF RULES

It is hereby notified, in terms of section 74(1) of Act No.53 of 1979, that the following amendments to the Rules, as agreed by the majority of members present or represented at an Annual General Meeting of the Society is hereby promulgated by the Council of the Cape Law Society (Incorporated as the Law Society of the Cape of Good Hope), which amendments have, in terms of section 74 (2) of Act No. 53 of 1979, been approved by the Chief Justice after consultation by Council, in terms of section 74 (3) of Act No. 53 of 1979, with the Judges President of the Eastern, Northern and Western Cape High Courts of South Africa.

**L LOBI**  
**President**

### 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.

### Amendment of Rule 1.19

'Trust Banking Account means a current cheque account and includes all trust accounts kept by a firm in terms of Section 78(1) of the Act.'

### Amendment of Rule 2

The Society may subject to the approval of a general meeting of members expressed in a resolution passed without dissent appoint any attorney, whether practising or not, an honorary member of the Society. Such persons shall remain honorary members, at the pleasure of the Society, be entitled to attend all meetings of members and be entitled to vote ~~thereat~~ but shall not be liable for payment of subscriptions.

Members of the Society in a general meeting, without dissent, to appoint all attorney members who have practised for forty years as honorary members.

### Amendment of Rule 4

#### 4. CIRCLES

4.1 For the purposes of this Rule, the area of jurisdiction of the Cape Law Society, [the Province of the Cape of Good Hope] shall be divided into Circles as follows :-

- No 1: The Magisterial district of the Cape.
- No 2: The divisions of Stellenbosch, Paarl, Caledon, [and] Bredasdorp, Somerset West, Strand, Wellington and Hermanus.
- No 3: The divisions of Worcester, [Sutherland,] Laingsburg, Montagu, Robertson, Tulbagh and Ceres.
- No 4: The divisions of George, Mossel Bay, Oudtshoorn, Uniondale, Ladismith, Calitzdorp and Knysna.
- No 5: The divisions of Beaufort West, Prince Albert and Fraserburg.
- No 6: The divisions of Graaff-Reinet, Aberdeen, Jansenville, Pearston and Willowmore.
- No 7: The divisions of De Aar, Britstown, Victoria West, Prieska, Carnarvon, Hopetown, Phillipstown, Murraysburg, Hanover, Richmond and Loxton.
- No 8: The divisions of Port Elizabeth, Uitenhage, [Humansdorp] Steytleville, Kirkwood and Hankey.
- No 9: The divisions of Somerset East, Alexandria, Albany, Fort Beaufort, Bathurst and Bedford.

- No 10: The divisions of Colesberg, Middelburg, Cradock, Hofmeyr Steynsburg, Adelaide and Noupoot.
- No 11: The divisions of Aliwal North, Barkly East, Albert, Lady Grey, Venterstad and Sterkspruit (Herschel).
- No 12: The division of **[Kaffraria]** King William's Town (excluding the Magisterial District of East London), Sterkstroom, Whittlesea, Stutterheim, Zwelitsha and Keiskammahoek.
- No 13: The divisions of Queenstown, Tarka, Elliot, Cathcart, Molteno, Wodehouse and Maclear.
- No 14: **[Walvis Bay]** The divisions of Kouga, Jeffreys bay, Joubertina, Humansdorp and St Francis Bay.
- No 15: Transkei.
- No 16: The divisions of Kimberley, Herbert, Hay, Barkly West and Warrenton [(including the Magisterial district of Olifantshoek)].
- No 17: The divisions of Vryburg, Kuruman ~~([excluding])~~ including the Magisterial district of Olifantshoek), **[and]** Vaalharts, Postmasburg, Danielskuil and Hartswater.
- No 18: The divisions of Namaqualand, Vanrhynsdorp, Clanwilliam, Calvinia, Williston, Vredendal and Sutherland.
- No 19: The divisions of Gordonia and Kenhardt.
- No 20: The divisions of Malmesbury, **[and]** Piketberg, Hopefield, Vredenburg and Moorreesburg.
- No 21: The divisions of Swellendam, Riversdale and Heidelberg.
- No 22: The Magisterial district of Goodwood, Parow, Bellville, Durbanville and Kuils River.
- No 23: The Magisterial districts of Wynberg, **[and]** Simon's Town and Mitchell's Plain.
- No 24: The Magisterial district of East London (including Mdantsane and Komga).
- 4.2 The Council shall have the power from time to time to increase, reduce or in any other manner alter the number and areas of the respective Circles.
- 4.3 All members practicing or otherwise employed within the magisterial districts/divisions **[area]** of a Circle, as set out in paragraph 4.1 above, shall be members of that Circle.
- 4.4 The affairs of a Circle shall be conducted by a Circle Committee, which shall consist of three members practicing in that Circle or such greater number as the Council may determine.
- 4.5 The functions of a Circle Committee shall be, inter alia:
- 4.5.1 to consider and deal with such matters as specifically affect the members practicing or otherwise employed within its area and are not matters, which in the opinion of the Council, should properly be dealt with by the Council;
- 4.5.2 to discuss and report on matters referred to it by the Council and generally to deal with such matters when so required by the Council;
- 4.5.3 to consider and make representations to the Council upon any matter affecting the profession either in its area or as a whole or affecting the Society;
- 4.5.4 to assist where possible in the friendly settlement of disputes between its members;
- 4.5.5 such other functions as the Council may from time to time require such Committees to fulfil **[decide upon]**.
- 4.6 Where the whole area of a Circle is served by an Attorneys' Association whose constitution has been approved by the Council :
- 4.6.1 the Council may declare the Committee of such Attorneys' Association to constitute the **[shall, if the Council so decides, constitute the]** Circle Committee for **[such]** that Circle, or **[alternatively]**, if not so approved, a Circle Committee will be elected in accordance with the provisions of paragraph 4.8 hereunder, or,
- 4.6.2 the Council may **[shall]** suspend the operation of **[the whole or any part of]** this Rule insofar as it may relate to that Circle [, for as long as it shall think fit, in relation to that Circle.]
- 4.7 The headquarters of the Circle Committees shall, unless otherwise determined by the Council, be the town/city in which the practice of the Chairperson of the Circle Committee, elected from time to time, is located **[as follows:]**

[No 1	Cape Town	No 13	Queenstown
No 2	Paarl	No 14	Walvis Bay
No 3	Worcester	No 15	Umtata
No 4	George	No 16	Kimberley
No 5	Beaufort West	No 17	Vryburg
No 6	Graaff-Reinet	No 18	Calvinia
No 7	De Aar	No 19	Upington
No 8	Port Elizabeth	No 20	Moorreesburg
No 9	Grahamstown	No 21	Swellendam
No 10	Cradock	No 22	Bellville
No 11	Aliwal North	No 23	Wynberg
No 12	King William's Town	No 24	East London]

- 4.8 Members of Circle Committees shall be nominated and elected annually in the following manner : ~~[like manner *mutatis mutandis* as if such nomination and election were for members of the Council, only members practicing or otherwise employed within a Circle being entitled to nominate or vote in respect of the Committee for such Circle.]~~
- 4.8.1 The Director shall, when calling for nominations to fill vacancies in the Council, call for nominations in each of the said Circles, of candidates for election as members of the respective Circle Committees for the ensuing year.
- 4.8.2 No member whose subscription is in arrears for more than 2 months may nominate or second any candidate as member of the Circle Committee and no practicing member whose subscription is so in arrears may be nominated as a candidate for a Circle Committee.
- 4.8.3 If no greater number of candidates are duly nominated than the number of vacancies to be filled in the respective Circle Committees, then the candidates nominated shall be deemed elected to fill such vacancies.
- 4.8.4 If the number of candidates duly nominated exceeds the number of vacancies within a specific Circle, then an election may be held by the relevant Circle to appoint its Circle Committee. The Committee so elected will serve its term from date of election until the following Annual General Meeting of the Law Society.
- 4.8.5 Should a Circle, for whatever reason, not have a duly elected Circle Committee, the Council may appoint members to serve as Committee members for that Circle and for the remainder of the period until the following Annual General Meeting of the Law Society, when Circles will again be called upon to nominate Committee members in their respective Circles.
- 4.9 Members of Circle Committees shall remain in office for one year. A retiring member shall be eligible for re-election.
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- 4.10 **The Director, in calling for nominations to fill the annual vacancies in the Council, shall at the same time call for nominations in each of the said Circles of candidates for election as members of the Committee for the ensuing year.]**
- 4.11 If a member of a Committee fails to attend two consecutive meetings without leave of absence, he/she shall cease to be a member of the Committee. The Committee shall advise the Council when such a vacancy occurs. The Committee shall further advise the members of its Circle of the vacancy and call upon members to nominate a candidate to fill the position. The position shall be filled before the following scheduled meeting of the Committee takes place. Should no nominations be forthcoming within the time provided, the remaining members of the Committee shall appoint a member to fill the position. A member so elected / appointed shall remain in office for the remainder of the term for which the outgoing member had been elected.
- 4.12 Any casual vacancy occurring in any Circle Committee between the annual general meetings of the Society, may be filled by the remaining members of the Circle Committee, but their nominee shall hold office only for so long as his predecessor would have held office had his position not become vacant. The Committee shall notify the Council forthwith of any vacancy occurring during the period of office of that Committee. [Any such casual appointments shall forthwith be notified to the Council.]

- 4.13 A Circle Committee shall annually appoint a chairman and secretary and shall immediately after such appointment notify the Director of their names and addresses. It shall keep in a minute book, a proper record of all its proceedings, which minute book shall be open to the inspection of the Council at all times, and remain the property of the Council. Two members shall form a quorum.
- 4.14 Every Circle Committee shall furnish an annual report to the Council for submission to the Annual General Meeting.
- 4.15 Each member of a Circle Committee shall be entitled by written proxy to appoint another practicing member to act as his alternate to attend any meeting or meetings of the Circle Committee at which he cannot be present, and to vote thereat, and the attendance of such alternate shall be reckoned as the attendance of such member.
- 4.16 All communications addressed by the Director to a Circle Committee shall be promptly acknowledged by its secretary, and all papers or documents transmitted to any Circle Committee for its perusal and consideration shall be deemed to be confidential and shall be duly returned to the Director as required by him/her.
- 4.17 It shall be the duty of each Circle Committee to be represented by at least one representative, who shall be either one of its members or his alternate (provided he/she is a practicing member in that Circle) at each Annual General Meeting of the Society.
- 4.18 The Council may from time to time contribute to a Circle Committee or member of a Circle an amount it considers reasonable towards the expenses incurred by such Circle Committee
- 4.19 Each Circle shall be entitled to claim from the Society a specified [an] amount as a contribution towards the expenses of its delegates attending the Annual General Meeting of the Society. The amount which each Circle shall be entitled to claim shall be determined from time to time by the Council having regard to the registration fee, accommodation and travelling expenses involved in the attendance of such delegate at the Annual General Meeting.
- 4.20 The amount reflected in sub-rule 4.19 shall be paid in respect of registration fees and travelling and accommodation expenses incurred by each delegate of a Circle who has been nominated by his/her Circle Committee to attend the Annual General Meeting, provided that a Circle shall only be entitled to one contribution in terms of sub-rule 4.19 per 100 members or part thereof, practicing or otherwise employed within the area of such Circle. Circle No 24 (East London) shall, notwithstanding the above, be entitled to two such contributions towards the expenses of its delegates.

#### **Amendment to Rule 7.1**

- 7.1 Subject to sub-rule 7.3, the Council shall consist of 20 practising members, **[in good standing]**, of whom -
- 7.1.1 ten members shall be elected by members of the Society who are not members of the Black Lawyers Association or the National Association of Democratic Lawyers -
- 7.1.1.1 one shall be elected by members of the Province of the Northern Cape including the area falling under the jurisdiction of Circle No. 17;
- 7.1.1.2 three shall be elected by members of the Province of the Eastern Cape;
- 7.1.1.3 six shall be elected by members of the Province of the Western Cape; provided that at least one member shall be practising outside a radius of 90 kilometres from the Society's office in Cape Town;
- provided that no member elected to represent the Society in terms of this Rule 7.1.1 shall be a member of the Black Lawyers Association and/or the National Association of Democratic Lawyers;

- 7.1.2 ~~five~~ members, who are members of the Society and the Black Lawyers Association, elected by the Black Lawyers Association in accordance with that association's own election procedure and who shall constitute a fair representation of that Association in the three provinces in the area of jurisdiction of the Society, subject to practical considerations;
- 7.1.3 ~~five~~ members, who are members of the Society and the National Association of Democratic Lawyers, elected in accordance with that Association's own election procedure and who shall constitute a fair representation of that Association in the three provinces in the area of jurisdiction of the Society, subject to practical considerations;
- provided that if not all the members referred to in sub-rules 7.1.2 and 7.1.3 respectively are elected, the vacancies which have occurred shall remain unfilled until such time as an election has taken place.
- 7.1.4 The body of councillors elected in terms of 7.1.1 may appoint four alternate councillors and each body of councillors elected in terms of 7.1.2 and 7.1.3 respectively may appoint two alternate councillors, who may substitute for and attend in the place of any of such councillors at Council meetings. Such alternate councillors must be identified by each respective body of councillors at the commencement of the terms of office of members elected in terms of 7.1.1, 7.1.2 and 7.1.3,
- 7.1.5 A member shall not be eligible to be nominated or elected as a Councillor if such member:-
- 7.1.5.1.1 has outstanding subscriptions, fines, costs and levies or any other financial obligations due to the society; and/or
- 7.1.5.1.2 has a pending application to strike his or her name from the roll of attorneys or to interdict/suspend him or her from practising; and/or
- 7.1.5.1.3 is not in possession of a current Fidelity Fund Certificate, where applicable ; and/or
- 7.1.5.1.4 has a disciplinary record.

#### **Amendment to Rule 7 by the deletion of 7.3**

- [7.3 At the 2001 Annual General Meeting of the Society the Society's members shall decide, after consultation with the Black Lawyers Association and the National Association of Democratic Lawyers, whether the composition of the Council in terms of sub-rule 7.1 and other associated provisions of these rules shall remain in force or whether the rules concerned should be amended and/or repealed.]

#### **Amendment of Rule 8**

- 8.3 For every certificate obtained from the Director the applicant for such certificate shall on application pay the sum of R100.00.
- 8.4 A member whose annual subscription has not been paid shall not be 'in good standing' with the Society and, in consequence thereof, shall not be entitled to the issue of a Fidelity Fund certificate.

#### **Amendment of Rule 9**

- 9.5 Every member shall within 30 days of becoming a member lodge with the Director a statement of his full name and place of business with all telephone, fax and email contact particulars.
- 9.6 Every member who changes his place of business shall within 30 days of such change notify the Director in writing of his new place of business with all telephone, fax and email contact particulars, together with a statement of his full name and former address.

**Amendment of Rule 13.8**

13.8 A firm shall retain its accounting records -

13.8.1 in the case of accounting records being computerised, by making daily back-ups which shall be kept in a safe, fireproof place or a safe place remote from the firm;

13.8.2 in the case of accounting records being in the form of conventional books of account, by ensuring that, outside of normal business hours, such records are kept in a safe, fireproof place;

13.8.3 in the case of all such records, a firm shall retain them in a safe place for a period of at least five years from the date of last entry made in such records;

13.8.4 save with the prior written consent of Council or when removed by that firm's auditor and/ or under other lawful authority, and except for the back-ups of computerised records, at no place other than its main office or a branch office, but in the latter instance, only insofar as they relate to any part of its practice conducted at that branch office;

and shall forthwith report to the Society, in writing, any loss, theft or destruction of any such records.

**Amendment of Rule 13.19**

A firm shall ensure that the report to be furnished by an accountant in terms of Rule 13.20 is so furnished within the required time or on the required date; provided that on written application by a firm relating to a particular report the Council may, in its discretion and on such conditions as it may stipulate, condone a failure by that firm to comply with this requirement.

An administrative levy of R1000.00 shall be payable by all firms whose audit reports are not submitted within the period prescribed by Rule 13.20.1.

**Insertion of new rule 13.24**

13.24 Council may amend the schedule or the audit report form as may be required from time to time to report such data/ information as may be required to assess the refund of bank charges as determined by the Board of Control in terms of section 45(g) of the Attorneys Act.

**Insertion of New Rule 13.25**

13.25 All firms are obliged to report in the relevant sections of the Rule 13 report the gross interest earned and the gross charges levied in respect of the trust accounts in terms of section 78(1) or 78(2)(a) of the Act, even though no claim in respect of bank charges is to be made;

**Insertion of New Rule 13.26**

13.26 A member shall not enter into any abnormal or unusual banking arrangement in relation to trust accounts such as "no interest-no charges" or agree to or acquiesce in reduced interest or in increased charges in return for, or in the expectation or hope of, work allocated or referred to the member by the bank or corresponding advantages allowed by the bank to the member in respect of the member's business or private accounts. Failure to comply with the provisions of this Rule shall constitute unprofessional conduct.

**Insertion of New Rule 14.3.15**

14.3.15 Members should at all times exercise proper control and supervision over their staff and offices.

**Insertion of New Rules 14.3.16 and 14.3.17**

- ~~14.3.16 the failure to respond timeously and fully to the request of the Society for information and/or documentation, which he or she is able to provide, and~~  
~~14.3.17 failure to reply timeously with directions from the Society.~~

**Amendment to Rule 14.4 by the deletion of 14.4.1.6**

- 14.4.1 Members shall ensure that all written and oral approaches to clients, or potential clients, and all publicity, including the offering of services by publicity, made or published by or on behalf of a member –
- 14.4.1.1 are made in a manner which does not bring the attorney's profession into disrepute;
  - 14.4.1.2 are not offensive, inappropriate or made for the purpose of procuring work in respect of which another attorney has already received instructions;
  - 14.4.1.3 do not misrepresent the nature of the service offered;
  - 14.4.1.4 accord in every respect with the requirements of this rule;
  - 14.4.1.5 do not misrepresent, disparage, compare, criticise the quality of or claim to be superior to, the service provided by any other member, whether or not such other member is identified therein;
  - ~~[14.4.1.6 do not refer to a member's success in practice;]~~
  - 14.4.1.7 do not refer to a client by name in any advertisement, published by or on behalf of a member, unless –
    - 14.4.1.7.1 the prior written consent of the client had been obtained, or
    - 14.4.1.7.2 the advertisement relates solely to the sale or letting of a client's property.
  - 14.4.2 Members' responsibilities set out in 14.4.1 cannot be delegated. Where a member becomes aware of publicity referring to him/her which is in conflict with or infringes this rule, he/she shall immediately take appropriate steps to have the publicity rectified or withdrawn.

**Amendment to Rule 14.6.1 by the deletion of the rule and the substitution of new rule 14.6.1**

- ~~14.6.1 A member shall not enter into or continue to be a party to any arrangement or scheme of operations or any partnership (whether express, tacit or implied) the direct or indirect result whereof is –~~  
~~14.6.1.1 to secure for the practitioner the benefit of professional work solicited by the unqualified person for reward, whether in money or in kind: provided that this prohibition shall not in any way limit bona fide and proper marketing activities by full time employees of any member~~  
~~14.6.1.2 to enable an unqualified person to enjoy, share or participate in fees statutorily reserved to a practitioner only.~~

**Amendment to Rule 14.7**

- 14.7 A practising member may not, without the prior written consent of Council, share offices with a person who is not a member or an employee of a member, [provided that
- 14.7.1 this prohibition shall not apply to a private company or close corporation, registered by law, whose business is limited to such work as is commonly performed by attorneys, and which has only practising members as shareholders, directors or members; and
- 14.7.2 no provision hereof shall prohibit a practising member from using his/her office as the registered office of a company or close corporation which is not a company or close corporation other than one described in 14.7.1 and which does not engage in any trading activities in or from such office.]

**Amendment to Rule 14.9.1.2**

- 14.9.1.2 "a professional company [or close corporation], the names of all directors."

**Amendment to Rule 14.9.2**

14.9.2 14.9.2 A member who discloses in his/her letterhead or other publications the name of any person employed by a member in any capacity shall [clearly] indicate clearly that such person is not his/her partner or fellow director, [such indication shall be made by using one or more of the following words and no others - 'consultant', 'associate', 'professional assistant', 'assisted by'] provided that, without prior written consent of the Council, such indication shall be made by using one or more of the following words, and no other:

14.9.2.1. Where such person is a member, "consultant", "associate", "professional assistant" or "is assisted by"

14.9.2.2. Where such a person is not a member, candidate attorney or in the case of professionals in fields other than law such professional status as may be appropriate or in the case of management employees the descriptive management title."

**Insertion of New Rule 14.12**

14.12 Unless prevented by law from so doing, members are obliged to report to the Society dishonest conduct or contraventions of Rule 13 on the part of other members

**Insertion of New Rule 14.13**

14.13.1 A member shall not knowingly advise or permit a client to lend money-

14.13.1.1 to the member, or her/his spouse or life-partner, or a professional partner of the member, or the spouse or life-partner of such professional partner, or a member of any of their families (including relations by marriage), or,

14.13.1.2 to any corporate entity or trust in which the member or any person referred to in 14.13.1.1 has a material beneficial interest, or,

14.13.1.3 to two or more joint borrowers where one or more of such joint borrowers is the member or any person or entity referred to in 14.13.1.1 or 2

unless, prior to the receipt of any money by or on behalf of the borrower from the client-

14.13.2 the client has acknowledged in writing that she/he has been advised by the member,

14.13.2.1 that it would be advisable that the client obtain independent legal or financial advice in connection with the proposed loan, and,

14.13.2.2 that in the event of the borrower defaulting on the loan the client's recourse is against the borrower and the client will have no claim against the Attorneys Fidelity Fund or the Attorneys Insurance Indemnity Fund, and,

14.13.2.3 where the member is not personally the borrower, of the relationship between the member and the borrower, as contemplated in 14.13.1;

14.13.3 where the member holds any trust funds on behalf of the client, the client has been given a full and up to date accounting in writing in respect of such funds and the transactions relating thereto including, if that be the case, a statement of the amount of such funds to be appropriated by way of the proposed loan by the client,

14.13.4 the full terms and conditions of the loan by the client are recorded in writing and duly signed by the client and the borrower,

14.13.5 the terms and conditions are fair and reasonable in relation to the client's rights and interests as lender,

14.13.6 there is appended to such loan agreement a certificate signed by the member certifying that she/he has satisfied her/himself that the provisions of this rule have been strictly complied with,



14.13.7 this rule shall not be applicable where the lending of money is a normal part of the business carried on by the client

**Amendment to Rule 15.8.4**

15.8.4 to furnish a member, where it is of the opinion that the complaint does disclose a prima facie case of unprofessional or dishonourable or unworthy conduct on the part of such member, with such particulars of the complaint ~~[as it may consider]~~ are reasonably necessary to enable the member to appreciate the nature of the complaint made against him and to call on such member to furnish it with his explanation regarding the complaint, within a stipulated period of time.

**Amendment to Rule 15.8.7.2.1**

15.8.7.2.1 determine the complaint summarily, without a further hearing, in which event it shall at the same time make a recommendation to the Council as to whether the Council should impose a punishment provided for in sub-section (1) read with subsections (2) and (3) of section 72 of the Act and, in such event, what punishment the Council should impose or whether the Council should apply for striking off of such member from the roll of attorneys or for his suspension from practice, or

**Amendment to Rule 15.9.1**

15.9.1 determine such complaint summarily, without a further hearing, in which event it shall, after considering such representations as the member may wish to make in regard to the punishment which should be imposed upon him, impose such punishment as it considers appropriate in respect of any such determination and as is competent in terms of sub-section (1) read with sub-sections (2) and (3) of section 72 of the Act and having regard always to any recommendation made to it in such regard by the Disciplinary Committee; or

**Amended Rule 15.9.2 (last paragraph)**

Once the Council's determination and punishment has been reinstated or has become final in terms of Rule 15.10, the Council shall publish its determination and punishment, provided that in the case of minor offences – namely those where the punishment imposed is a warning, a reprimand or a fine of R6 000.00 or less – the determination and punishment will not be formally published but the information will be made available to any member of the public, on enquiry, for a period of 24 months, reckoned from the date on which the determination and punishment was reinstated or became final, as the case may be.

**Amendment to Rule 16 by insertion of new subsection 16.2.3-**

16.2.3 all funds received by the Society from members in respect of Disciplinary findings.

**Amendment to Rule 16.4 -**

16.4 The Council shall in its discretion assist from the assets of the Fund, either by special donation, grant, annuity or otherwise ~~necessitous members and their [wives] spouses and dependants and the necessitous [widows] surviving spouses and dependants of deceased members.~~

**Amendment to Rule 17.2 by the deletion of Rules 17.11, 17.12 & 17.14**

17.2 With a view to affording the practitioner reasonable and adequate remuneration for the services rendered by him, the Council or the committee, as the case may be, shall, on every assessment, allow all such fees and disbursements as appear to it to have been reasonable

for the performance of the work concerned, and in so doing shall take cognisance of the following –

- 17.2.1 the amount and importance of the work done;
- 17.2.2 the complexity of the matter or the difficulty or novelty of the work or the questions raised;
- 17.2.3 the skill labour, specialised knowledge and responsibility involved on the part of the practitioner
- 17.2.4 the number and importance of the documents prepared or perused, without necessarily having regard to length;
- 17.2.5 the place where and circumstances in which the services or any part thereof were rendered;
- 17.2.6 the time expended by the practitioner;
- 17.2.7 where money or property is involved, its amount or value;
- 17.2.8 the importance of the matter to the client;
- 17.2.9 the quality of the work done;
- 17.2.10 the experience or seniority of the practitioner;
- [17.2.11 any tariff of fees approved by the Society or any competent authority for the sole purpose of serving as a guide to practitioners;**
- 17.2.12 any tariff of fees prescribed by the Council in accordance with the provisions of section 69(d) of the Act;]**
- 17.2.11[17.2.13]** and whether the fees and disbursements have been incurred or increased through over caution, negligence or mistake on the part of the practitioner;
- [17.2.14 any material change in the purchasing power of money since the promulgation of the applicable tariff of fees framed in terms of sub-rules 17.2.11 or 17.2.12.]**

#### **Amendment to Rule 17.4-**

- 17.4 The Council or the Committee, as the case may be, shall not proceed to the assessment of fees or reasonable disbursements unless the Director of the Society or the Chairman of the particular Taxation Committee has duly given notice by pre-paid registered post to both the practitioner and the person liable to pay the fees, stating the time and place of such assessment and recording that he is entitled to be present and represented thereat and requiring the person liable for payment of the fees, or his legal representative to notify the Director and the practitioner in writing not later than one week prior to the assessment, of the items on the bill of costs he objects to and the grounds therefore, failing which the taxation committee may refuse to assess the bill, provided that such notice shall not be necessary if both the practitioner and such person have consented in writing to assessment in their absence. At the assessment the Council, or the committee, as the case may be, shall permit the practitioner and such person to submit their representations and arguments either orally or in writing. After receiving such representations and arguments, the Council or the committee, as the case may be, shall be entitled to reserve its decision.

#### **Amendment to Rule 17.6 by the deletion of the existing rule and the substitution of a new Rule 17.6**

- 17.6.1 Upon receipt of an objection in terms of Rule 17.5 the Council shall refer the matter to a Review Committee already established or as the case may be, appointed by the Council for that purpose.
- 17.6.2 If the Review Committee reports to the Council that in its opinion no *prima facie* case has been made out for the amendment or setting aside of the decision, the Council shall notify the Objector to that effect and the allocatur shall be final and binding.

#### **Amendment to Rule 17.7 by the deletion of the existing rule and the substitution of new rules 17.7.1 to 17.7.5**

- 17.7.1 If the Review Committee reports to the Council that in its opinion a *prima facie* case has been made out for the amendment or setting aside of the decision, the Council shall notify the Objector and the other party or parties concerned in the Bill to that effect and shall invite such other party or parties to submit written representations in response to the objection within a period of 21 days from date of dispatch of such notification by prepaid registered post.

- 17.7.2 If any such representations are received within the time stated (or such later period as the Council may condone on good cause) such representations shall be submitted to the Objector, who shall be given an opportunity if so advised of submitting written comments thereon within a period of 14 days from date of dispatch of such representations by prepaid registered post.
- 17.7.3 All comments and representations received from the Objector and other party or parties in terms of the foregoing sub-rules shall be submitted to the Committee against whose decision the objection has been made, and such committee shall be invited to submit to the Review Committee such comments thereon as it may deem fit.
- 17.7.4 Upon receipt of all comments, representations and reports as above provided, the Review committee shall meet and consider the matter and shall be entitled but not obliged to call upon the Objector and the other party or parties to the Bill to appear before it to answer such questions or to furnish such further information or documentation as the Review Committee may require.
- 17.7.5 At the conclusion of its deliberations, the Review Committee shall:
- 17.7.5.1 reject the objection and confirm the decision of the Committee a quo in which event, the allocatur of such Committee shall be final and binding; or
- 17.7.5.2 set aside the decision of the Committee a quo and substitute therefore its own decision and allocatur which shall be final and binding; or
- 17.7.5.3 amend the decision of the Committee a quo in such manner as it may deem fit and substitute its own allocatur which shall be final and binding.

#### **Amendment to Rule 19.5**

- 19.5 The clinic may not undertake work in connection with **[the drawing up of a will or other testamentary writing, the administration or liquidation or distributions of the estate of any deceased or insolvent person, mentally ill person or any person under any other legal disability, or the judicial management or the liquidation of a company, nor in relation to the transfer or mortgaging of immovable property, nor in relation to]** the lodging or processing of claims under the Multilateral Motor Vehicle Accidents Act, 1989, or any amendment thereof. **[or litigation in regard to matrimonial disputes]**

#### **Insertion of New Rule 22**

22. Every member shall notify the Society without delay in the event that he is sequestered or becomes aware that application is about to be made for his sequestration.
- Members who have been sequestered are prohibited from practising for own account, save with the express consent of Council on such terms and conditions as Council may deem appropriate.

#### **Insertion of New Rule 23**

23. An administrative levy of R500.00 shall be payable by all members who fail to qualify for the issue of a Fidelity Fund Certificate by 31 December, as prescribed by Section 42 of the Act, due to non-compliance with the Society's requirements.

#### **Insertion of a new Rule 24**

24. A member who practices for own account and who intends to cease practising shall, before the member so ceases to practice, provide the Society, in writing, with the following information:-
- 24.1. notice of the member's intention to cease practising for own account;

- 24.2 the member's future contact particulars, being his residential and business address, fax, e-mail and telephone details;
- 24.3 the steps to be taken to satisfy the Society that provision has been made for the effective winding up of the member's practice both in respect of current files and archived files and accounting records;
- 24.4 the name, address and telephone number of the member's bookkeeper;
- 24.5 the status of the writing up of the member's accounting records by providing the Society with a copy of the latest trust reconciliation;
- 24.6 the name of the auditor who will be submitting the final audit report.
- 24.7 Such member shall continue to provide the Society with updated contact particulars as long as the member remains on the roll of attorneys;
- 24.8 Such member shall be required to submit, within three months of the date that such member ceases to practice-
- 24.8.1 an audit report for any period for which an audit is outstanding up to date of ceasing to practice.
- 24.8.2, a final list of trust creditors as at the date on which the member ceased to practice;
- 24.8.3 confirmation from the auditor that all trust creditors have been paid;
- 24.8.4. In the event of trust creditors being taken over by another firm, a list of trust creditors, signed by the member, after the auditor confirms that that list is correct, and signed by the partners of the firm taking over the trust creditors confirming that they accept liability for claims of the trust creditors listed and that they have received the funds;
- 24.8.5 a certificate of nil balance from the member's bank confirming that the trust bank account was closed.
- 24.9 In the event of non-compliance or if at any time the Society has reason to believe that adequate provision has not been made for the winding up of the practice or for the protection of the interests of client's affairs, the Society may take such steps as it deems necessary to wind up the practice subject to the Society being entitled to recover the reasonable expenses incurred and reasonable compensation for work done in connection therewith from the member concerned.

**Amendment of the schedule to Rule 13.20 by the deletion thereof and the substitution of a new Schedule**

## **FORM OF ASSURANCE REPORT BY INDEPENDENT AUDITOR**

**The Cape Law Society  
P O Box 4528  
CAPE TOWN, 8000**

**Assurance Report of the Independent Auditor [to the <Proprietor / Partners / Directors<sup>1</sup>> of**

**, the Cape Law Society and the Attorneys Fidelity Fund**

1. We have completed our assurance engagement in respect of the attorney's trust accounts of \_\_\_\_\_ (insert the name of the attorney's firm) to determine whether those accounts were maintained in compliance with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 (the "Act"), and in terms of the Rules 13.5.3, 13.7, 13.13, 13.14.1, 13.14.2 and 13.16 and 13.20 of the Cape Law Society for the <period from \_\_\_\_\_ (insert date) to \_\_\_\_\_ (insert date)> <or year ended \_\_\_\_\_ <insert date>>.

### **2. <Proprietor/Partners/Directors> responsibility for the trust accounts**

The <proprietor/partners/directors \_\_\_\_\_ of \_\_\_\_\_ (insert the name of the

<sup>1</sup> Throughout the report - delete whichever: "proprietor/partners/directors" is "not applicable"

attorney's firm) is/are responsible for ensuring that the attorney's trust accounts are maintained in compliance with the provisions of the Act and the Rules of the Cape Law Society. The <proprietor/partners/directors> is/are also responsible for the implementation of accounting and internal control systems and the completion of the Internal Control Questionnaire in the SAICA Guide<sup>2</sup>.

### 3. Auditor's responsibility

Our responsibility is to express our conclusion on whether the attorney's trust accounts were maintained in compliance with Section 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act and in terms of the Rules 13.5.3, 13.7, 13.10, 13.13, 13.14.1, 13.14.2, 13.16 and 13.20 of the Cape Law Society for the period \_\_\_\_\_ (insert date) to \_\_\_\_\_ (insert date) <or year ended \_\_\_\_\_ <insert date> based on our assurance engagement. Our assurance engagement was conducted in accordance with the International Standards on Auditing (ISAs) including the International Standard on Assurance Engagements (ISAE 3000) *Assurance Engagements other than Audits or Reviews of Historical Financial Information* and the guide issued by the South African Institute of Chartered Accountants (SAICA), *Guidance for Auditors: The Audit of Attorneys' Trust Accounts in terms of the Attorneys Act, No 53 of 1979 and the Applicable Rules of the Provincial Law Societies* ("the Guide". The guide sets out the minimum procedures to be performed in evaluating whether the attorney's trust accounts were maintained in accordance with the relevant sections of the Act and of the Rules of the Cape Law Society. In addition, we have performed such other procedures as we considered necessary to obtain sufficient appropriate evidence to support our reasonable assurance conclusion.

We have not performed any procedures on records or documents relating to accounting for deceased and insolvent estates and trusts other than those dealt with via the firm's trust banking account(s). Accordingly, we do not express any conclusion in this regard.

We believe our assurance engagement provides a reasonable basis for our conclusion.

### 4. Basis for qualified conclusion

<sup>2</sup> Appendix II - Internal Control Questionnaire in the SAICA Guidance for Auditors: *The Audit of Attorneys' Trust Accounts in terms of the Attorneys Act, No 53 of 1979 and the Applicable Rules of the Provincial Law Societies*.

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#### \* Applicable Rules for the Provincial Law Societies

Cape Law Society	Rules 13.5.3, 13.7, 13.10, 13.13, 13.14.1, 13.14.2 and 13.16 and 20
KwaZulu-Natal Law Society	Rules 17, 20, 21 and 21A
Free State Law Society	Rules 16, 16A and 16B and 16C
Law Society of Northern Provinces:	Rules 68.1, 68.2, 68.3, 68.4, 68.5, 68.6.1, 68.6.2, 68.8, 68.9, 69.1, 69.2, 69.3, 69.4, 69.5, 69.6, 69.7, 69.9, 70, 77 and 77A

The following contravention/s of Sections of the Act and Rules of the Cape Law Society relating to the firm's trust accounts occurred which is/are regarded as material<sup>3</sup>:

(If none, state NIL)

*(Any contravention of Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Act, and any contravention of the rules of the Cape Law Society relating to trust accounts in terms of the Rules are regarded as material and should be reported. If the report is qualified then the next heading is to be changed to "Qualified conclusion" and the wording is to change to "In our opinion, except as noted in our Basis for qualified conclusion above, the ...")*

## 5. Conclusion

In our opinion, the attorney's trust accounts of \_\_\_\_\_ *(insert the name of the attorney's firm)* for the \_\_\_\_\_ *<period from (insert date) to (insert date)> / <or year ended (insert date)>* were maintained in compliance with Sections 78(1), 78(2)(a) and (b), 78(2A), 78(3) and 78(4) of the Attorneys Act, No. 53 of 1979 and in terms of the Rules 13.5.3, 13.7, 13.10, 13.13, 13.14.1, 13.14.2, 13.16 and 13.20 of the Cape Law Society.

Our report covers the accounting records relating to the attorney's trust accounts and does not extend to the financial statements of the business of \_\_\_\_\_ *(insert the name of the attorney's firm)* taken as a whole.

## 6. Supplementary information

Our assurance procedures indicated that:

- 6.1 the attorney's trust accounts for the period reported on have been updated monthly and balanced at least quarterly,
- 6.2 the firm complied/ has not complied 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 and the firm's bank(s),
- 6.3 the ratio as a percentage of total bank charges (excluding VAT) incurred during the current period to the total of interest earned during the period / year was \_\_\_\_\_
- 6.4 the firm's trust accounts for the period subsequent to the period of our assurance engagement, was last inspected by us on \_\_\_\_\_ *(insert date of last inspection)*, have been written up to \_\_\_\_\_ *(insert date)* and the trial balance was last balanced at \_\_\_\_\_ *(insert date)*

<sup>3</sup> Specify Sections and Rules contravened and provide details of contravention/s

date), and [the proprietor/partners/directors] provided us with the following changes in the composition of the firm which occurred during the period from \_\_\_\_\_ (insert date) to \_\_\_\_\_ (insert date) / <or year ended \_\_\_\_\_ <insert date>>.

\_\_\_\_\_

\_\_\_\_\_

6.5 the [proprietor/partners/directors] principal place of practice (insert full physical address) is at:

\_\_\_\_\_

\_\_\_\_\_

6.6 the firm's South African branch offices, are at (insert full physical addresses)

\_\_\_\_\_

\_\_\_\_\_

## 7. Information extracted from the trust accounting records

The following information was extracted from the trust accounting records that were the subject of our assurance engagement, in respect of the reconciliation of interest earned on the firm's section 78(1) and section (2)(a) trust accounts from the beginning of the period \_\_\_\_\_ (insert date) to the end of the period \_\_\_\_\_ (insert date):

7.1	Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979 is	
7.2	Amount earned during the current period 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)(a) of the Attorneys Act, No 53 of 1979 is	
7.3	Amount incurred during the current period in respect of refundable bank charges (excluding VAT – firms not liable for Vat as registered vendors may include VAT) is	
7.4	Amount already paid over to the Law Society as nominee of the Attorneys Fidelity Fund during the period under review in terms of section 78(3) of the Attorneys Act, No. 53 of 1979 is <b>(a schedule of the payments made is to be attached)</b>	
7.5	Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of section 78(1) and monies invested in terms of section 78(2)(a) of the Attorneys Act, No. 53 of 1979 is	

- 7.6 The amount referred to in paragraph 7.5 agrees/ does not agree with the balance as recorded in the books of account, which amount, less the amount of R \_\_\_\_\_ paid over to the Society since period end, is/ is not held in the firm's trust account. If not held in the trust account, a written explanation detailing how the trust interest has been dealt with is to be annexed to the report.

The following information was extracted from the trust accounting records that were the subject of our assurance engagement in respect of trust creditors/liabilities and trust funds available at the period / year end \_\_\_\_\_ (insert date) and on one other date \_\_\_\_\_ (insert date), were as follows:

	At period / year end	Other date selected <sup>4</sup>
<b>Trust creditors/liabilities</b>		
Trust creditors ito Section 78(1) & Section 78(2)(a)		
Trust creditors ito Section 78(2A)		
<b>Total trust creditors/liabilities</b>		
Trust funds available in terms of:		
Section 78(1) trust banking accounts		
Section 78(2)(a) trust investment accounts		
Section 78(2A) trust investment accounts		
Trust cash on hand		
Debit balances in trust ledger (details as set out in paragraph 4)		
<b>Total funds</b>		
<b>Trust surplus/ (deficit)</b>		

## 8. Investment Practices

- 8.1 The firm has/ has not carried on the business of an investment practice during the year under review;
- 8.2 the firm has/ has not complied in all respects with the provisions of Rule 20 of the Society's Rules;
- 8.3 if the answer to paragraph 8.2 is: "has not complied", list all instances in which the Rules may not have been complied with.

<sup>4</sup> The date selected must be a date, other than the financial year end, which occurs during the financial year / period to which this assurance engagement relates.



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(If space is insufficient, this may be continued on a separate sheet and attached to this assurance report).

### **Restriction on use and distribution of the report**

The layout and wording of our report is in compliance with the relevant sections of the Attorney's Act and Rules of the Cape Law Society and may not be suitable for any other purpose, consequently, it is intended solely for the use of <proprietor/partners/directors> of the firm, the Cape Law Society and the Attorneys Fidelity Fund and should not be distributed to any other parties without our prior written consent.

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*Auditor's Signature*

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*<Insert name of registered audit firm and IRBA Registration Number, if report is not on letterhead of firm>*

Per: \_\_\_\_\_

*<Insert name of sole practitioner, partner, director, >*

Registered Auditor

Chartered Accountant (SA)<sup>5</sup>

Address,

Date

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<sup>5</sup> Chartered Accountant (SA) may be omitted – depending on signing conventions adopted by audit firm

**SUPPLEMENTARY INFORMATION REQUESTED BY THE CAPE LAW SOCIETY  
– (NOT SUBJECT TO OUR ASSURANCE ENGAGEMENT)**

**FIRM** \_\_\_\_\_

**(INSERT FIRM NAME)**

**Schedule of Interest payments**

**For the financial period** \_\_\_\_\_ **to** \_\_\_\_\_

**Trust Banking Account at** \_\_\_\_\_ **<Insert Name of Bank>,**  
**Branch Code No.** \_\_\_\_\_ **and Account No.** \_\_\_\_\_

	<b>Date</b>	<b>Financial Period</b>	<b>Method of Payment (EFT / Cheque)</b>	<b>Amount</b>
<b>1.</b>				
<b>2.</b>				
<b>3.</b>				
<b>4.</b>				
<b>5.</b>				
<b>6.</b>				
<b>7.</b>				
<b>8.</b>				
<b>9.</b>				
<b>10.</b>				
<b>11.</b>				
<b>12.</b>				
<b>13.</b>				
<b>Total</b>				

**Notes:**

1. The total indicated above should agree with Par 7.4 of the assurance report
2. Kindly note that a separate schedule should be submitted for each trust bank account operated by the firm