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As Amended By GG 34683 Of 21 October 2011)

1. DEFINITIONS

1.1 Accountant means a person who is registered as an accountant and auditor in terms of the Public Accountants’ and Auditors’ Act. 1991 and who practises as a public accountant, as defined in that Act.

1.2 Accounting records means the records which a firm is required to keep in terms of Rule 13.5.

1.3 Act means the Attorneys Act 53 of 1979.

1.4 Branch office in relation to a practising member, means an office at or from which the firm of which he is the proprietor or a member or by which he is employed practises, but which is not a main office.

1.5 Business account transactions means transactions in regard to which records are required to be kept in terms of Rule 13.5.2.

1.6 Council means the Council of the Society.

1.7 Director means a director and includes an assistant, deputy, or acting director appointed in terms of Rule 9.1.

1.8 Disciplinary Committee means a committee appointed in terms of Rule 15.2.1.

1.9 Disciplinary Inquiry Committee means a committee appointed in terms of Rule 15.2.2.

1.10 Firm means –

1.10.1 partnership of practitioners;

1.10.2 sole practitioner for his own account; or

1.10.3 professional company;

who or which, in each case, conducts the practice of a practitioner;

1.11 Main office in relation to a practising member, means the premises at and from which the practice of the firm of which he is the proprietor or a member or by which he is employed is as a whole administered and controlled and includes premises in two or more buildings situate in sufficiently close proximity to one another to allow the administration of those premises as a single composite entity; and includes premises declared or determined as such in terms of Rule 13.1 or 13.4, as the case may be;

1.12 Member save as otherwise required by the context means both -

1.12.1 a practitioner who is a member of the Society by virtue of section 57(1) of the Act and

1.12.2 a person who is declared a member of the Society in terms of section 57(2) of the Act or one or the other, as required by the context.

1.13 President and Vice-President mean respectively the President and Vice-President of the Society.
1.14 **Professional work** means, in addition to work which may by law or regulation, promulgated under any law, be performed only by a practising practitioner, such other work as is properly or commonly performed by or associated with the practice of a practitioner but excludes auctioneering, the sale and letting of immovable property, insurance agency work and deposit-taking institutions work carried out by him in connection with his activities as a practising practitioner.

1.15 **Service** means service in terms of the Rules of Court of the Magistrates' Court.

1.16 **Society** means the Law Society of the Cape of Good Hope.

1.17 **Subscription** means a subscription in terms of Rule 8.1.

1.18 **Trust account transactions** means transactions in regard to which records are required to be kept in terms of Rule 13.5.3.

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.

1.20 **Trust cash** means any cash held in trust by a firm other than in a trust banking account or a trust investment account.

1.21 **Trust creditor** means a person on whose account money is held or received as contemplated by section 78(1) or invested as contemplated by section 78(2) or section 78(2A) of the Act.

1.22 **Trust Investment Account** means and includes all accounts kept by a firm in terms of section 78(2) or section 78(2A) of the Act.

1.23 **Trust money** means money held or received on account of any person as contemplated by section 78(1) or invested as contemplated by section 78(2) or section 78(2A) of the Act.

Words or expressions referred to in these Rules which are not defined herein, shall bear the meaning assigned to them by Section 1 of the Act.

2. **HONORARY MEMBERS**

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.

2bis. **DECLARED MEMBERS**

2bis.1 No person shall be declared a member of the Society under Section 57(2) of the Act unless the Council is satisfied that the applicant is a fit and proper person, regard being had to the following considerations -

2bis.1.1 the reasons advanced in support of an application for membership;

2bis.1.2 whether the applicant’s employer or partners, as may be applicable, support or object to his admission to membership and the reasons advanced for such support or objection, as the case may be;
2bis.1.3 the nature of the applicant’s employment, profession or business and the period for which he has been employed or otherwise engaged therein;

2bis.1.4 whether or not the applicant practises or resides outside the Cape Province;

2bis.1.5 the written acknowledgement of the applicant to be bound, once declared a member, by these Rules, by the ethical code of the profession and by the rulings and determinations of the Council;

2bis.1.6 any other considerations which the Council considers relevant.

2bis.2 In declaring a person a member of the Society, the Council may impose such conditions of membership as it may determine and as may be competent for it to impose, both at the time of its declaration and at any time subsequent thereto, and in the latter instance, whether by way of addition to, or variation of, any conditions previously imposed.

2bis.3 The Council shall be entitled to terminate a declared member’s membership of the Society if it deems it desirable to do so by reason of -

2bis.3.1 any change in the nature of such member’s employment subsequent to the date of his declaration as a member;

2bis.3.2 any alteration, deemed by the Council to be material, in the circumstances in the light of which the Council exercised its discretion to declare him a member including (but without derogating from the generality of the aforesaid) the reliance by the Council, in making such declaration, upon information which, in its opinion, appears to have been erroneous, false or misleading;

2bis.3.3 any other circumstances which, in the opinion of the Council, justify such a termination of membership.

The Council shall not exercise its right of termination without having first notified the member concerned in writing that it is considering exercising such right and without advising such member of the reasons for which it is considering doing so and without having afforded the member concerned an opportunity to furnish the Society within a period stipulated (which period shall not be less than 14 days calculated from the date of the Society’s notification to the member) his reasons, if any, as to why the Council should not exercise such right. The Council shall be entitled to call upon the member concerned to amplify his aforesaid reasons by way of oral representations made to the Council within such period as it shall stipulate. The Council shall make its decision as to whether or not the membership of the member concerned is to be terminated, in the light of such reasons, if any, and such oral representations, if any, as may be submitted by such member.

The Council shall notify the member concerned in writing of its decision either to terminate his membership or not to do so and, in the former instance, the member’s membership of the Society shall terminate with effect from the date of the Council’s notification.

3. MEETINGS OF MEMBERS

3.1 Annual General Meetings

3.1.1 Notice of every annual general meeting convened in terms of Section 68 of the Act shall, at least eight weeks before the date of the meeting, be -

(i) sent or posted to every member;
(ii) sent or posted to the head offices of the National Association of Democratic Lawyers as well as the Black Lawyers Association; and
(iii) advertised once in the Government Gazette.
3.1.2 Such notice shall state the business to be transacted at the meeting and shall call for notices and nominations in terms of Rule 3.1.3.7, 4.8 and 6.2 respectively.

3.1.3 The business to be transacted at an annual general meeting shall be -

3.1.3.1 the consideration of the President's Report for the year ended on the preceding 30th June;

3.1.3.2 the consideration and adoption with or without modification of the accounts for the year ended on the preceding 30th June;

3.1.3.3 to receive the result of the election of Councillors;

3.1.3.4 to announce the names of the President and the Vice-President for the ensuing year;

3.1.3.5 the election of the auditor;

3.1.3.6 the consideration of motions or other matters submitted by the Council to the meeting;

3.1.3.7 the consideration of motions of which notice in writing has been given by any member to the Director at least five weeks before the meeting.

3.1.4 The order of business at an annual general meeting shall unless varied with the approval of the meeting, be as follows -

3.1.4.1 the minutes of the preceding annual general meeting and of any intervening special general meeting shall be submitted for confirmation;

3.1.4.2 the President's report shall be considered and all matters arising therefrom shall be open for discussion;

3.1.4.3 the chairman shall announce the names of the Councillors elected or appointed for the ensuing terms of office concerned.

3.1.4.4 the audited accounts of the Society as signed by the auditor shall be submitted to the meeting for consideration and adoption with or without modification;

3.1.4.5 nominations for the office of auditor shall be called for by the chairman and if more than one person be nominated, the appointment shall be by vote of the meeting;

3.1.4.6 motions submitted by the Council shall be dealt with and, if necessary, the vote of the meeting taken thereon;

3.1.4.7 any other matter submitted by the Council shall be open for discussion;

3.1.4.8 motions submitted by members shall be dealt with;

3.1.4.9 the names of the President and Vice-President elected by the Council for the ensuing year shall be announced and they shall take office immediately after the closure of the meeting;

3.1.4.10 after any other matter allowed by the chairman has been discussed, the meeting shall be closed.

3.2 Special General Meeting

The Council -

3.2.1 may at any time and
3.2.2 shall, within fourteen days of receiving a written requisition or requisitions therefor signed by not less than twenty members, convene a special general meeting, of which written notice of not less than twenty-one days shall be sent or posted to all members of the Society provided that the Council may, in its discretion, in special circumstances give shorter notice. Such notice shall state the purpose of the meeting and no other business shall be transacted thereat.

3.3 Provisions Common to General Meetings

3.3.1 A quorum at a general meeting shall be 10 practising members personally present within 15 minutes of the time fixed for the meeting.

3.3.2 If there be no quorum at a meeting or an adjourned meeting, no business shall be transacted thereat and the meeting or adjourned meeting shall be adjourned or further adjourned for seven days, provided that if the meeting is a special general meeting requisitioned in terms of Rule 3.2.2, the meeting shall be dissolved.

3.3.3 If the date to which any meeting is adjourned is a public holiday, the adjourned meeting shall be held on the first succeeding day which is not a public holiday, a Saturday or a Sunday.

3.3.4 A general meeting at which a quorum is present may be adjourned to a time and place decided by the meeting.

3.3.5 No business shall be transacted at an adjourned general meeting other than business capable of being considered and uncompleted at the meeting which was adjourned.

3.3.6 At a general meeting the following shall be the rules of debate -

3.3.6.1 a member shall speak once only on any question save by way of explanation provided that the mover of a resolution may speak in reply, after which there will be no further debate;

3.3.6.2 a member moving a motion may not speak for more than 15 minutes and any other member may not speak for more than 10 minutes provided that the chairman may, with the consent of the meeting, extend such periods by such time as he may direct;

3.3.6.3 a member may move a question, or that the question be not put, by moving that the meeting proceed to the next business;

3.3.6.4 a member moving the adjournment of the meeting or the debate or that the question be not put or that the meeting proceed to the next business, may speak for not more than 5 minutes and such motion shall be seconded without a speech. One member (the mover of the motion or amendment under discussion having preference) may speak for 5 minutes in opposition to any such motion, which shall then be put by the chairman without debate;

3.3.6.5 whenever an amendment to an original motion has been moved and seconded no further amendment shall be moved until the first amendment has been disposed of. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the question on which any further amendment may be moved;

3.3.6.6 no member may move more than one amendment on any motion;

3.3.6.7 the chairman may call the attention of the meeting to unbecoming language or a breach of order on the part of a member and may direct such member to discontinue his speech.

3.3.7 If a member who has given proper notice of a motion is not present and has not withdrawn the motion any member present may, with the consent of the chairman, adopt the motion and move it as if notice had been given by him.
3.3.8 No member whose subscription is in arrears for more than 2 months shall be entitled to vote or be present at any general meeting.

3.3.9 All matters shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a member present at the meeting demands a poll which shall be determined by the votes of members, present in person or by proxy.

3.3.10 A poll shall be taken forthwith in the manner directed by the chairman.

3.3.11 In the event of an equality of votes on a show of hands or a poll, the chairman shall be entitled to a second or casting vote.

3.3.12 The result of the voting shall be the decision of the meeting.

3.3.13 A proxy holder shall be a member.

3.3.14 A proxy shall remain in force only for the particular meeting for which it is given and for any adjournment thereof.

3.3.15 (repealed)

3.3.16 A proxy shall be in the following form -

I, ________, of ___________ a member of the Law Society of the Cape of Good Hope, appoint ________, of ___________ also a member of the Society as my proxy to appear and vote for me upon all matters to be brought forward at a general meeting of the Society to be held on the _____ day of ___________ and at any adjournment thereof.

Dated at ___________ this ___ day of _________________.

____________________
Signature

and shall be signed by the grantor.

3.3.17 No proxy form shall be acted upon unless it is delivered to the Director at least 24 hours before the time fixed for the meeting at which it is intended to be used.

3.3.18 Minutes of the proceedings at every general meeting shall be kept by the Director or in the event of his absence by a person appointed by the chairman. The original copy of such minute shall be kept in a minute book and signed by the chairman upon confirmation at the next succeeding general meeting.

3.3.19 The President, failing whom the Vice-President, failing whom a member of the Council appointed by the Council, failing whom a member appointed by the meeting shall be the chairman of a general meeting.

4. **CIRCLES**

4.1 For the purposes of this Rule, the area of jurisdiction of the Cape Law Society shall be divided into Circles as follows -

No 1: The magisterial district of the Cape.
No 2: The divisions of Stellenbosch, Paarl, Caledon, Bredasdorp, Somerset West, Strand, Wellington and Hermanus.
No 3: The divisions of Worcester, 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, Philipstown, Murraysburg, Hanover, Richmond and Loxton.
No 8: The divisions of Port Elizabeth, Uitenhage, Steylerlerville, 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 Nypoort.
No 11: The divisions of Aliwal North, Barkly East, Albert, Lady Grey, Venterstad and Sterkspruit(Herschel)
No 12: The division of King Williams 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: 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.
No 17: The divisions of Vryburg, Kuruman, (including the Magisterial District of Olfantshoek), Vaalharts, Postmasburg, Danielskuiil 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, Piketberg, Hopefield, Vredenburg and Morrisburg.
No 21: The divisions of Swellendam, Riversdale and Heidelberg.
No 23: The Magisterial districts of Wynberg, Simon’s Town and Mitchell’s Plain.

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 practising or otherwise employed within the magisterial districts/divisions 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 practising 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 practising 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 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 fill.

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 Circle Committee for that Circle, or, 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 suspend the operation of this Rule insofar as it may relate to that Circle.

4.7 The headquarters of the Circle Committee shall, unless otherwise determined by the Council, be the town /city in which the practice of the Chairperson of the Circle Committee elected from to time to time, is located.

4.8 Members of Circle Committees shall be nominated and elected annually in the following manner;

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.

4.10 [repealed]

4.11 If a member of a Committee fails to attend two consecutive meetings without leave of absence he 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.

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 practising 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.

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 practising 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. (24/4/1998)

4.19 Each Circle shall be entitled to claim from the Society a specified 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 referred to 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 Rule 4.19 per 100 members or part thereof practising 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.

5. ARTICLES OF CLERKSHIP

5.1 Articles of clerkship shall contain the whole agreement entered into between the parties and shall be lodged with the Director within one month of their execution; should any subsequent agreement amending the articles be entered into, the amending agreement shall be lodged within 60 days of its execution.

5.2 The Council shall have the right to reject any articles of clerkship or supplementary agreement lodged as aforesaid, which are in conflict with the Act or which in the opinion of the Council contain any improper or objectionable clauses.

6. ELECTION OF COUNCILLORS

6.1 Notice in calling for nomination of Councillors shall be sent by post to every member at least 8 weeks before the holding of every annual general meeting.

6.2 After the issue of the notice referred to in sub-clause 6.1 any two members:
6.2.1 who are members in the Province of the Western Cape may nominate in writing any practising member or practising members who practice in such Province;

6.2.2 who are members in the Province of the Eastern Cape may nominate in writing any practising member or practising members who practise in such Province;

6.2.3 who are members in the Province of the Northern Cape including the area falling under the jurisdiction of Circle No. 17 may nominate in writing any practising member or practising members who practise in such Province or in the area of jurisdiction of such Circle;

to fill any vacancy or vacancies in the Council membership for the Province concerned for the term of office contemplated in sub-rule 7.2.1. Each nomination in terms of 6.2 shall bear the acceptance of the nominee concerned and be in the hands of a Director at least five weeks before the date for the holding of an annual general meeting.

6.3 No member whose subscription is in arrears for more than 2 months may nominate or second any candidate as a member of the Council and no practising member whose subscription is so in arrears may be nominated as a candidate for the Council.

6.4 If no greater number of candidates be duly nominated than the number of vacancies to be filled, the candidates nominated shall be deemed and declared to be elected.

6.5 If at the expiration of the time appointed for the receipt of nominations none be received, or if the number of candidates duly nominated for each province shall be fewer than the number of Councillors to be elected, the candidates nominated (if any) shall be deemed and declared to be duly elected.

6.6 If the number of candidates duly nominated in terms of sub-rule 6.2 above exceeds the number of Councillors required to be elected in respect of any province then an election shall be held by the members of the province concerned as contemplated in 7.1.1. A Director shall as soon as possible, forward by post to every member of the Society a printed voting paper accompanied by a printed identification envelope and an envelope bearing the address of the Society and the words 'Voting Paper' printed thereon. The form of the voting paper and of the identification envelope shall respectively be as nearly as is material, to the following:

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

VOTING PAPER

<table>
<thead>
<tr>
<th>Name of Candidate</th>
<th>Address</th>
<th>Column for Voter's Mark (X)</th>
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<tbody>
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NOTES

Note I

The names of the candidates are given in alphabetical order by province. You may vote only for the candidates nominated for the province in which you are practising.

Note II

There are "x" vacancies as follows:
1. Western Cape: ____________
2. Eastern Cape: ____________
3. Northern Cape including Circle No. 17: ____________

Note III
You may vote for any number of candidates in your province provided that the number voted for does not exceed the number of vacancies referred to in Note II above.

Note IV
No voting paper other than this will be accepted unless it is sent or delivered by you to the Director in an envelope marked ‘Voting Paper’ with a letter explaining why the printed form was not returned.

Note V
In terms of Rule 6.8, no member whose subscription is in arrears for more than two months shall be entitled to cast his vote for any candidate for election as a Councillor.

IDENTIFICATION ENVELOPE

Form of Declaration on Identification Envelope

I, (state name)

……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………
...

who practice at (state address)

……………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………
...

in the province of

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being a member of the Law Society of the Cape of Good Hope, do hereby declare that I am the person to whom the enclosed Voting Paper was addressed, that I am entitled to vote, that I am not a member of the Black Lawyers Association or the National Association of Democratic Lawyers and that I have not returned any other voting paper in this election.

_____________________
Signature of Voter

Signed at............... this............. day of .........................in the presence of the undersigned witness.

_____________________
Signature of Witness
6.7 Each member, entitled to vote in terms of 7.1.1 and desiring to vote, shall mark upon the voting paper received by him/her a cross against the names of those candidates for whom he/she intends to vote.

6.8 No member whose subscription is in arrears for more than two months shall be entitled to vote for any candidate.

6.9 A voter shall place his/her voting paper in the identification envelope, close the envelope, sign the declaration thereon in the presence of a witness who shall also sign it as such and post it in the envelope or deliver it to a Director so as to reach him/her at least seven days before the date fixed for the annual general meeting, failing which the vote will be invalid.

6.10 Any voting paper not in accordance with these rules shall be invalid, provided that a voting paper not received in an identification envelope shall not on that account be invalid if it is submitted together with an identification envelope.

6.11 A Director shall retain unopened all identification envelopes addressed or delivered to him/her as aforesaid and shall deliver the same upon the last date fixed for the receipt of voting papers to the scrutineers appointed by the President for examining the votes. There shall be at least two scrutineers; candidates for office and proposers and seconders of candidates shall not be appointed as scrutineers.

6.12 The scrutineers shall-

6.12.1 examine the identification envelopes and the declarations thereon for the purpose of determining whether or not the declarations have been completed in accordance with these Rules by persons qualified to vote;

6.12.2 reject and leave unopened those identification envelopes on which the declarations have not been completed in accordance with these Rules or have been completed by persons not qualified to vote;

6.12.3 open those identification envelopes on which declarations have been completed in accordance with these Rules by persons qualified to vote;

6.12.4 extract from the opened identification envelopes the voting papers and, keeping such voting papers folded, face inwards, place them in a closed ballot box with aperture for such purpose;

6.12.5 open the ballot box, examine the voting papers and ascertain the number of valid votes recorded for each candidate.

6.13 The candidates for whom the greatest number of votes have been recorded (according to the number of Councillors to be elected) shall be deemed to be duly elected.

6.14 Upon the completion of the scrutiny the scrutineers shall report the result in writing to the President. The report which shall be signed by them, shall contain in respect of each province the following particulars:

6.14.1 the total number of voting papers received;

6.14.2 the number (if any) rejected, and the grounds for the rejection;

6.14.3 the total number of votes in favour of each candidate;

6.14.4 the names of those who are duly elected;

6.14.5 the percentage of the poll;
The President shall, on receipt of the report, cause the candidates to be advised of the particulars set out in 6.14.1 to 6.14.5 above and such particulars shall also, in terms of Rules 3.1.3.3 and 3.1.4.3 be announced at the annual general meeting.

6.15  The report shall be conclusive as to the fact of election, notwithstanding any irregularity or informality.

6.16  In the event of a tie between two or more candidates, the question as to which candidate shall be deemed and declared to be elected shall be decided by lot to be drawn in such manner and at such time and place as the President may direct.

6.17  As soon as the voting papers have been examined and the result of the election ascertained and reported to the President, the voting papers shall be closed up under seal of the scrutineers and shall be retained by them for one month after the election, when they shall be destroyed by the scrutineers. A certificate of such destruction shall be furnished by the scrutineers to the President.

7.  THE COUNCIL

7.1  Subject to sub-rule 7.3, the Council shall consist of 20 practising members, 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 has outstanding subscriptions, fines, costs and levies or any other financial obligations due to the society; and/or
7.1.5.2 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
7.1.5.3 is not in possession of a current Fidelity Fund Certificate, where applicable; and/or
7.1.5.4 has a disciplinary record.

7.2 A member of Council elected in terms of -
7.2.1 sub-rule 7.1.1 shall hold office for three years, provided that if the member vacates his/her office before the expiration of such period of office, the Council may appoint a member of the Society practising in that Province after consultation with the Circle Chairmen of that Province to fill such vacancy for the unexpired portion of such period of office;
7.2.2 sub-rules 7.1.2 and 7.1.3 shall, subject to the provisions of 7.2.3, hold office for three years, provided that if the member vacates his/her office before the expiration of such period of office, the Council may appoint a member of the organisation concerned in consultation with such organisation to fill such vacancy for the unexpired portion of such period of office;
7.2.3 sub-rules 7.1.2 and 7.1.3 shall -
7.2.3.1 in the case of a member elected at the first election after the promulgation of this sub-rule hold office from the date of election until the end of the 1998 Annual General Meeting of the Society; and
7.2.3.2 in the case of a member declared elected at the 1998 Annual General Meeting hold office from the first day after the 1998 Annual General Meeting until the end of the 2001 Annual General Meeting of the Society;

provided that if the member vacates his/her office before the expiration of such period of office, the Council may fill such vacancy in terms of 7.2.2.

7.3 [repealed]

7.4 Should it be necessary for any directions to be given to the Society's representatives on the Council of the Law Society of South Africa to be voted on by the Council, the Councillors who are members of the Black Lawyers Association or the National Association of Democratic Lawyers and/or who hold seats on the Council by virtue of election by the Black Lawyers Association or the National Association of Democratic Lawyers, shall not participate in the voting.

7.5 All members of the Council of the Society shall hold office in terms of and by subject to the provisions of the Attorneys Act and the Rules of the Society, as amended from time to time.

7.6 The President and the Vice-President shall hold office for one year.

7.7 A member of the Council shall vacate office if he/she -
7.7.1 resigns in writing; or
7.7.2 ceases to be a practising member of the Society; or
7.7.3 is suspended from practice; or
7.7.4 surrenders his/her estate or is finally sequestrated; or
7.7.5 becomes of unsound mind; or
7.7.6 is absent without leave from 4 consecutive ordinary meetings of the Council; or
7.7.7 if his/her subscription is in arrear for more than 2 months; or
7.7.8 if a member elected in terms of 7.1.1, after his/her election becomes a member of the Black Lawyers Association or the National Association of Democratic Lawyers; or
7.7.9 if a member elected in terms of 7.1.2 and 7.1.3, after his/her election should resign as member of the Black Lawyers Association or the National Association of Democratic Lawyers.
7.8 A resolution of Council declaring the office of a member of Council vacated shall be conclusive as to the facts and grounds of such vacating of office.
7.9 Meetings of Council shall as far as possible be held once a month on dates and at the time and place fixed by Council or after 7 days' notice by a Director at such date, time and place as fixed by Council or determined by the President.
7.10 Any 3 members of Council may request the President in writing to convene a special meeting of the Council, stating the business to be considered, in such meeting shall be forthwith convened on at least 3 days' notice in writing or by telegram or telefax, specifying the business to be considered provided that, where less than 7 days' notice has been given, the business transacted at such meetings shall be submitted for confirmation at the next succeeding ordinary meeting of Council; provided further that the President may call a special meeting of Council whenever he may consider it necessary.
7.11 At any meeting of Council a quorum shall be 12 members personally present. Alternate members, as provided for in 7.1.4, may be taken into account to establish a quorum.
7.12 All sitting councillors as at the date of promulgation of this rule shall, until the expiry of their respective terms of office, be deemed to have been elected for the provinces in which they practised at the time of their election. If any sitting councillor ceased to practise in the province for which he was deemed to have been elected his term of office shall expire forthwith and his vacancy will be filled mutatis mutandis in accordance with Rule 7.2.1.

8. SUBSCRIPTION AND REGISTRATION FEES
8.1 Each member shall pay an annual subscription on the first day of July in each year in advance in an amount determined by a majority of the members who are present or represented at an annual general meeting or at a special general meeting convened for that purpose.
8.2 An attorney becoming a member of the Society during the financial year of the Society shall pay a portion of the subscription calculated pro-rata over the remaining number of months (including the month in which the attorney becomes a member) in that financial year, which shall be paid within one month of becoming a member. (Gazette 24/4/1998)
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.

9. **DIRECTORATE**

9.1 The Council may employ, fix the remuneration and other conditions of service of and discharge a Director, one or more Assistant Directors or Deputy Directors or Acting Directors and other officials and employees of the Society.

9.2 The office of the Director for the time being shall be the office of the Society.

9.3 Every practising member ceasing practice shall within 30 days thereafter give notice in writing to the Director of the date upon which he discontinued or ceased to practise.

9.4 Every attorney who intends to resume practice shall prior to commencing or resuming practice give notice in writing to the Director of the date upon which he intends to commence or resume practice.

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.

9.7 Every firm shall within 30 days of the admission to the firm of any new partner, notify the Director in writing of the full names of the partner so admitted.

9.8 Every firm shall within 30 days of the change of name of the firm notify the Director in writing of such change.

9.9 Any notification required to be given by any person to the Director in terms of these Rules shall be given by prepaid registered post.

9.10 The Director shall maintain a register of all members containing the full names and business addresses of each member and any letter or notice in connection with any business affecting the Society sent by the Council or the Director by post to any member to the address entered in the register shall be deemed to have been properly sent and the member shall be deemed to have received notice of the contents of such letter or notice at the time when the letter would have reached him in the ordinary course of post.

9.11 If a member fails to pay his annual subscription within 1 month after it has become due the Director shall, by letter, draw his attention to the fact and if the subscription in arrears is not paid within 21 days from the date of such letter or within such further time as the Council may grant, proceedings for recovery thereof shall be taken by the Council.

9.12 The Director shall maintain a list of members of the Council showing how often each member has attended meetings of the Council and how often the Council met during the past year, which list shall be available for the inspection of members of the Society in the office of the Director.

9.13 **Professional Companies**

Every member who is a shareholder of a professional company as defined in Section 1 of the Act, shall -
9.13.1 notify the Director in writing within 30 (thirty) days of the incorporation of the company or of any later date upon which the company shall first commence practice of -

9.13.1.1 the name of the company, the number and date of its incorporation and the address of its registered office;

9.13.1.2 the full names, dates of birth, domestic and business addresses of every shareholder of the company;

9.13.1.3 the address of every place of practice within the Republic where the company practises or in which it shall have any interest, with the numbers of the telephones and post office boxes used in connection with the practice carried on at each such place;

9.13.1.4 any other information which the Society may from time to time prescribe;

9.13.2 notify the Director in writing of any change in any of the information given in terms of 9.13.1 within 30 (thirty) days of such change taking place;

9.13.3 supply the Director, whenever so required, with notarially certified copies of the memorandum and articles of association, certificate of incorporation and certificate to commence business relating to such company together with all amendments made to any of the foregoing to the date of such supply.

10. **ANNUAL REPORTS AND AUDIT**

10.1 The Council shall cause proper accounts to be kept of the income and expenditure of the Society, and of the assets and liabilities of the Society; the accounts shall be closed annually on the 30th of June, up to which date the statement and balance sheet to be submitted to the next annual general meeting shall be framed. The Society's Library Fund and Benevolent Fund shall be kept apart from its other funds and from each other.

10.2 At least 14 days before every annual general meeting the President's report and the accounts for the past year, signed by the auditor, shall lie for inspection by the members at the office of the Director, and a copy of the same shall be posted to each member.

10.3 There shall be one auditor who shall be elected at the annual general meeting. He shall remain in office for one year, on the expiry of which period he shall retire and a successor shall be elected and so on from year to year, the retiring auditor being eligible for re-election. The outgoing auditor shall be deemed to continue in office till the close of the annual general meeting, or if from any cause his successor shall not be elected at such meeting, then till the election of his successor.

10.4 If any vacancy shall arise during the year in the office of auditor, such vacancy may be filled by the Council.

11. **LIBRARY**

11.1 The Council shall maintain and control the Society's library which shall be situate in Cape Town.

11.2 The Council may acquire such publications for the library as it deems fit and may dispose of and otherwise deal with publications in the library in its discretion.

11.3 The Council may fix subscriptions to be paid by any person for the use of the library provided -

11.3.1 different subscriptions may be fixed in respect of different classes of persons: and
11.3.2 no subscriptions for the use of the library by any member shall be fixed save with the consent of a majority of members at an annual general meeting of the Society.

11.4 The Council may make regulations in regard to -

11.4.1 those persons who may use the library;

11.4.2 the removal of books from the library;

11.4.3 the manner in which the library shall be used;

11.4.4 the responsibility for damage to publications in the library;

11.4.5 the hours during which the library shall be open.

12. COLLECTION COMMISSION

12.1 A practising member to whom a liquidated monetary claim is handed for collection by reason of default on the part of the debtor may -

12.1.1 raise reasonable collection charges in addition to any other professional fees and collection commission to which he may be entitled;

12.1.2 charge collection commission on the amount collected for each payment or instalment, provided that, where the practising member recovers commission from the debtor, either in terms of any law or in terms of contractual obligation, he shall credit his client therewith, to the extent of but not exceeding the commission debited to his client in terms thereof.

12.2 For the purpose of this Rule the words ‘amount collected’ include any payment made by or on behalf of any debtor direct to the client whether in cash or in kind, or by way of novation or set off, after the account is handed to the practising member for collection.

12.3 (repealed)

12.4 In the case of the final recovery or repossession of movables in terms of hire purchase agreements, suspensive sale agreements, leases or agreements of a like nature, an attorney may, in addition to any professional fees, charge a collection commission upon the value of the goods so repossessed or recovered, which value shall be -

12.4.1 the value fixed upon the movables by the Court in arriving at a final judgment, failing which

12.4.2 the value fixed upon the movables by a sworn appraiser;

provided -

12.4.2.1 where the total unpaid amounts owing under the agreement are less than the value of the movables then the collection commission shall be calculated upon such total unpaid amounts, and not upon the value of the movables;

12.4.2.2 where no value has been fixed upon the movables in terms of either sub-paragraphs 12.4.1 or 12.4.2 above, then the collection commission shall be calculated upon the total unpaid amounts owing under the agreement.
13. **ACCOUNTING RULES**

13.1 If a firm at any time administers and controls its practice as a whole from premises in two or more buildings which, in the opinion of the Council, do not constitute such a single composite entity as is contemplated in the definition of ‘main office’ in Rule 1, the Council may require the firm to declare to it in writing, within a time stipulated by the Council, which one or more of those buildings as may constitute such an entity in the opinion of the Council, contains or contain its main office, and thereafter that firm shall administer and control its practice as a whole from the premises so declared.

13.2 The Council may make such enquiry as it deems fit, including inspection of the premises concerned and the practising member concerned shall furnish the Council with such information and render such assistance as it may require to enable it to form an opinion in terms of Rule 13.1.

13.3 A declaration made by a practising member under Rule 13.1 shall remain effective until such time as he -

13.3.1 moves his main office from the premises which are the subject of the declaration or

13.3.2 makes a declaration in terms of Rule 13.1 in respect of other premises.

13.4 Should a firm fail to make a declaration under Rule 13.1 within the time stipulated by the Council, the Council may by notice in writing to the firm determine which of the premises concerned constitutes its main office, whereupon the remaining provisions of Rules 13.1, 13.2 and 13.3 shall *mutatis mutandis* apply as though those premises had been so declared by the firm.

**Accounting Requirements - General**

13.5 A firm shall keep in an official language of the Republic such accounting records as are necessary to present fairly and 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 derogation from the generality of this Rule -

13.5.1 records showing its assets and liabilities;

13.5.2 records containing entries from day to day of all monies received and paid by it on its own account;

13.5.3 records containing particulars and information of -

13.5.3.1 all monies received, held and paid by it for and on account of any person;

13.5.3.2 all monies invested by it in terms of section 78(2) or section 78(2A) of the Act;

13.5.3.3 any interest referred to in section 78(3) of the Act which is paid over or credited to it;

13.5.3.4 any interest credited to or in respect of any separate trust savings or other interest-bearing account, referred to in section 78(2A).

13.6 In determining what is meant by ‘generally accepted accounting practice’ regard shall be had, *inter alia*, to any rulings of the Council published to members.

13.7 The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.

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.

13.9 A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this Rule if, inter alia, its accounting records have not been written up for more than one month and have not been balanced within two months after each date on which the trust creditors lists referred to in Rule 13.14 are to be extracted.

13.10 Trust money shall in no circumstances be deposited in or credited to a business banking account. Money other than trust money found in a trust banking account at any time shall be transferred to a business banking account without undue delay. A firm shall be deemed to have complied sufficiently with this Rule if it -

13.10.1 makes transfers from its trust banking account to its business banking account at least once a month, and

13.10.2 ensures that each such transfer covers the total amount due to it as at a date not earlier than one week prior to the date of transfer, and

13.10.3 ensures that, when making a transfer from its trust banking account to its business banking account -

13.10.3.1 the amount transferred is identifiable with, and does not exceed, the amount due to it, and

13.10.3.2 the balance of any amount due to it remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.

13.11 Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for not less than five years; each account shall contain details of -

13.11.1 all amounts received by it in connection with the matter concerned appropriately explained;

13.11.2 all disbursements and other payments made by it in connection with the matter;

13.11.3 all fees and other charges charged to or raised against the client and where any fee represents an agreed fee, a statement that such fee was agreed upon and the amounts so agreed;

13.11.4 the amount owing to or by the client.

13.12 A firm shall, unless otherwise instructed, pay any amount due to a client within a reasonable time.
Accounting Requirements - Trust Account Transactions

13.13 A firm shall ensure that -

13.13.1 all money received by it on account of any person is deposited in its trust banking account on the date of its receipt or the first banking day following its receipt on which it might reasonably be expected that it would be banked;

13.13.2 any amount withdrawn by it from a trust investment account is deposited promptly by it in its trust banking account;

13.13.3 the total amount of money in its trust banking account, in its trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records;

13.13.4 no account of any trust creditor is in debit;

13.13.5 it employs and maintains a system to ensure that the requirements of sub-rules 13.13.3 and 13.13.4 are not infringed when amounts are transferred from its trust banking account to its business banking account;

13.13.6 amounts received in advance to cover a prospective liability for services rendered or to be rendered or disbursements (including counsel's fees) to be made are deposited forthwith to the credit of its trust banking account;

13.13.7 withdrawals from its trust banking account are made only -

13.13.7.1 to or for a trust creditor, or

13.13.7.2 as transfers to its business banking account, provided that such transfers shall be made only in respect of money claimed to be due to the firm;

13.13.8 any cheque drawn on its trust banking account is made payable to or to the order of a payee specifically designated;

13.13.9 no transfer from its trust banking account to its business banking account is made in respect of any disbursements (including counsel's fees or fees of the firm) unless -

13.13.9.1 the disbursements have actually been made by the firm, and

13.13.9.2 the fee has been correctly debited in its accounting records.

13.14 Lists of Balances

13.14.1 Every firm shall extract at intervals of not more than three calendar months and in a clearly legible manner, a list showing all persons on whose account money is held or has been received and the amount of all such moneys standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in order to ensure compliance with Rule 13.13.3.

13.14.2 The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which the balance was extracted.

13.14.3 Each such list shall be part of the accounting records of the firm to be retained for the five-year period referred to in Rule 13.8.1.

13.15 Every firm shall -
13.15.1 immediately notify the Council in writing of the name and address of the bank or banks at which its trust banking account or accounts are kept and shall thereafter notify the Council immediately of any change in the name and address of such bank or banks;

13.15.2 whenever so required by the Council, furnish to the Council within ten days or such longer period as the Council may stipulate, a signed statement issued by the bank or banks with which it keeps its trust banking account or accounts and a signed statement issued by the bank with which the firm keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account at such date or dates as may be specified by the Council.

Trust Account Investments in terms of Section 78(2a)

13.16 A member who invests funds on behalf of any person without that person's prior written instructions (specific or general) shall -

13.16.1 not invest such funds otherwise than in a trust savings or other interest-bearing account with a bank,

13.16.2 obtain that person's written confirmation of the investment as soon as is reasonably possible or notify him forthwith thereof in writing, and

13.16.3 forthwith cause the relevant trust savings or other interest-bearing account to be endorsed in terms of subsection (2A) of section 78 of the Act.

Reports by Accountants

13.17 A firm shall at its expense once in each calendar year or at such other times as the Council may require appoint an accountant 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 Rule 13.20.

13.18 A firm shall allow an accountant appointed under Rule 13.17 access to such of its records as he may deem necessary to examine for the purposes of discharging his duties under Rule 13.20 and shall furnish the accountant 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.

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.

13.20 Every accountant who has accepted an appointment in terms of Rule 13.17 shall -

13.20.1 within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require and subject to any conditions that the Council may impose, furnish the Council with a report which shall be in the form of the schedule to these Rules;

13.20.2 without delay report in writing directly to the Council if, at any time during the discharge of his functions and duties under this Rule -

13.20.2.1 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 exceeded the total amount of the funds in its trust banking account, its trust investment account and held by it as trust cash;
13.20.2.2 any material queries regarding its accounting records which he has raised with the firm have not been dealt with to his satisfaction;

13.20.2.3 any reasonable request made by him for access to its records or for any authority referred to in Rule 13.18 has not been met to his satisfaction.

13.21 A copy of the report on the prescribed form required under Rule 13.20.1 and any report made in terms of Rule 13.20.2 shall be sent by the accountant to the firm concerned.

13.22 The form as prescribed under Rule 13.20.1 shall be obtained only from the Director who shall issue it on request to any firm or to any accountant appointed in terms of this Rule.

13.23 In any case where the Council is satisfied that it is not practicable to obtain the services of an accountant for the issuing of a report as prescribed under Rule 13.20, it may in lieu thereof accept as compliance with the requirements of Rule 13.20 such other evidence as it may deem sufficient.

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.

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;

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.
SCHEDULE TO RULE 13.20

FORM OF ASSURANCE REPORT BY INDEPENDENT AUDITOR

The Cape Law Society
P 0 Box 4528
CAPE TOWN, 8000

Assurance Report of the Independent Auditor [to the <Proprietor / Partners / Directors> 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 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 Guide2.

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, 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

1 Throughout the report - delete whichever: “proprietor/partners/directors” is “not applicable”
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

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:

(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.

3 Specify Sections and Rules contravened and provide details of contravention/s
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), 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):

<table>
<thead>
<tr>
<th>7.1 Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of</th>
</tr>
</thead>
</table>
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 (a schedule of the payments made is to be attached) |
| 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:

<table>
<thead>
<tr>
<th>Trust creditors/liabilities</th>
<th>At period / year end</th>
<th>Other date selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trust creditors ito Section 78(1) &amp; Section 78(2)(a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust creditors ito Section 78(2A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total trust creditors/liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trust funds available in terms of:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4 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.
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.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

(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.

________________________________________________________________________

Auditor’s Signature
<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)\(^5\)
Address,
Date

\(^5\) 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.______________________

<table>
<thead>
<tr>
<th>Date</th>
<th>Financial Period</th>
<th>Method of Payment (EFT / Cheque)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<td>12.</td>
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<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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
14. PROFESSIONAL CONDUCT

14.1 Interpretation

In this Rule 14 -

14.1.1 “publicity” shall include any direct or indirect reference to a member, published or disseminated by any written, pictorial or aural means, in any medium (including the electronic media), irrespective of whether such publicity and/or reference -

14.1.1.1 is made in connection with any sponsorship, patronage, welfare activity, other similar benevolent purpose or supports in any cause; or

14.1.1.2 is made, or is paid for, at the instance, or with the knowledge and/or consent, of the member; or

14.1.1.3 appears, or is contained, in any editorial, advertorial or advertisement

and “publicise” has a corresponding meaning.

14.1.2 “member” includes all categories of member defined as such in the rules and any firm, partnership, professional company, association or corporation in which an attorney is involved in any way whatsoever.

14.2 Charge

Members shall comply with the rules of professional conduct set out below. A member who fails to comply shall be guilty of unprofessional and/or dishonourable and/or unworthy conduct.

14.3 General principles

Members shall at all times -

14.3.1 maintain the highest standards of honesty and integrity;

14.3.2 treat the interests of their clients as paramount, provided that their conduct shall be subject always to -

14.3.2.1 their duty to the court;

14.3.2.2. the interests of justice;

14.3.2.3 the observation of the law; and

14.3.2.4 the maintenance of the ethical standards prescribed by this rule and generally recognised by the profession;

14.3.3 honour any undertaking given in the course of their practice unless prohibited by law;

14.3.4 refrain from doing anything which places or could place them in a position in which a client's interests conflict with their own or those of other clients;

14.3.5 maintain confidentiality regarding the affairs of present or former clients, unless otherwise required by law;

14.3.6 respect the freedom of clients to be represented by the lawyer of their choice;
14.3.7 account faithfully, accurately and timeously for any of their clients’ money which comes into their possession, keep such money separate from their own money and retain such money for so long only as is strictly necessary;

14.3.8 retain the independence necessary to enable them to give their clients unbiased advice;

14.3.9 advise their clients at the earliest possible opportunity on the likely success of such clients' cases and not generate unnecessary work nor involve their clients in unnecessary expense;

14.3.10 use their best efforts to carry out work in a competent and timely manner and not take on work which they do not reasonably believe they will be able to carry out in that manner;

14.3.11 be entitled to a reasonable fee for their work provided that no member shall fail or refuse to carry out, or continue, a mandate on the ground of non-payment of fees and disbursements (or the provision of advance cover therefor) if demand for such payment or provision is made at an unreasonable time or in an unreasonable manner;

14.3.12 behave towards their colleagues, including any legal practitioner from a foreign jurisdiction, with integrity, fairness and respect;

14.3.13 refrain from claiming specialisation or expertise in any branch of the law unless such claim is justifiable, and

14.3.14 refrain from doing anything which could or might bring the attorneys' profession into disrepute.

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

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.

**14.4 Approaches and publicity**

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 [repealed]

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.

14.5 **Specialisation and expertise**

If a member claims specialisation or expertise in any branch of the law, the Council may -

14.5.1 require a member to show good cause, by a specified date, why he/she should not be ordered by the Council to cease to hold him/herself out as a specialist or as expert in any particular branch of the law;
14.5.2 order the member to cease holding him/herself out as a specialist or expert in the branch of the law concerned if it is the opinion of Council that the member's claim is not justified; and
14.5.3 declare that such order shall serve as notice in terms of rule 15.9.1 without in any way limiting Council’s powers in terms of rule 15.

14.6 **Sharing of fees**

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.

14.6.2 A member shall furnish the Council or a Director with an affidavit, within seven days of request therefor, explaining the presence and function or position of an employee and manner or form of remuneration earned by such employee, or containing similar information relating to any unqualified person who is apparently associated with the member's practice or who is continuously or repeatedly in, at or about the member’s office.

14.6.3 A member may not hold him/herself out as practising as a practitioner while in the employ of an unqualified person, save with the prior written consent of the Council.

14.7 **Sharing of offices**

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.

14.8 **Payment of commission**

A member may not effect payment, directly or indirectly, of agent's commission in advance of the date upon which such commission is due and payable, except out of funds provided by the person liable therefor and on the express authority of such person.

14.9 **Naming of partners and practice**

14.9.1 A member shall disclose his/her name on any letterhead used for the practice and, in the case of -
14.9.1.1 a partnership, the names of all the partners; or
14.9.1.2 a professional company, the names of all directors.

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 indicate clearly that such person is not his/her partner or fellow director 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.

14.9.3 A member shall practise only under such style or name which, -

14.9.3.1 is his/her own name or the name of a former proprietor of, or partner in, such practice if he/she practices without partners; or
14.9.3.2 contains the names of any or all of the present partners or former partners or proprietors of or in such firm if he/she practices in partnership; or
14.9.3.3 the Council has first approved in writing, in the case of any other name.

14.10 Replying to communications

A member shall, within a reasonable time, reply to all communications which require an answer unless good cause for refusing an answer exists.

14.11 Naming in deed of alienation

A member may not act in terms of a deed of alienation of immovable property wherein his/her name or the name of the his/her firm has been printed or duplicated as transferring attorney. This prohibition will not apply if a separate written instruction is given to the member prior to the signature of the deed of alienation.

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

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 entily 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.

15. **DISCIPLINARY**

15.1 The Council may appoint committees in terms of sub-rule 15.2 and subject to the provisions of Section 67 of the Act to assist it in the carrying out, performance and exercise of the disciplinary duties, functions and powers vested in it under the Act. Such committees shall have the duties, functions and powers prescribed under this Rule 15 subject to such further limitations as may from time to time be prescribed by resolution of the Council and provided that the Council shall itself have the same duties, functions and powers *mutatis mutandis* which it may, in its discretion and at any time, carry out, perform and exercise either to the exclusion of, or additionally to, any carrying out, performance or exercise on the part of any of such committees.

15.2 The Council may from time to time and either annually or on an *ad hoc* basis, appoint committees for the purpose specified in sub-rule 15.1 with such duties, functions and powers subject to such limitations as it may from time to time prescribe. In particular, the Council may appoint -

15.2.1 annually, a committee with the duties, functions and powers of investigation specified in sub-rule 15.8;
15.2.2 annually, or from time to time on an *ad hoc* basis, a committee with the duties, functions and powers of enquiry specified in sub-rule 15.11.

15.3.1 Both a Disciplinary Committee and a Disciplinary Enquiry Committee shall consist of as many practising members and other persons as the Council may from time to time resolve,

15.3.1.1 the members of the Disciplinary Committee shall also be members of the Council, provided that:
15.3.1.2 no member of the Council who shall have considered any complaint against a member of the nature referred to in sub-clause 15.9 may be a member of any Disciplinary Enquiry Committee to which the same complaint is referred under sub-rule 15.9.2 for the purpose of holding a formal enquiry.

15.3.2 The Council shall appoint the members of both such committees and may fill any vacancy on, and, subject to the prescribed maximum number of each committee for the time being, may appoint any additional member to, either of such committees. The Council may also from time to time appoint alternates to such committee members provided always that an alternate to a Disciplinary Committee member need not be a member of the Council.

15.3.3 The office of each member and of each alternate member of each of such committees shall terminate:-

15.3.3.1 at the end of the first Council meeting held after the Society's Annual General Meeting following his appointment;

15.3.3.2 upon the receipt by the Council of his resignation;

15.3.3.3 upon his removal from office by resolution of the Council;

15.3.3.4 in the case of an ad hoc appointment to a Disciplinary Enquiry Committee, on completion of the enquiry to which such appointment relates;

15.3.3.5 in the case of an alternate member, upon the termination of the office of the member for whom he is acting as an alternate.

15.4 The Council shall from time to time prescribe such quorum for the meetings of members of either of such committees as it shall, in its discretion, determine.

15.5 Each committee chairman shall be appointed, and shall hold office, in accordance with the provisions of Section 67(1)(c) of the Act.

15.6 Subject to the provisions of these Rules, each committee chairman shall determine the times and places at which, and where, committee meetings shall be held and the manner in which the Committee's members shall discharge their duties, functions and powers.

15.7 Any committee appointed by the Council prior to the date upon which this substituted Rule 15 shall come into force and effect, with the duties, functions and powers specified in sub-rule 15.8, shall be deemed, without further act on the part of Council, to have been appointed in terms of sub-rule 15.2.1.

15.8 Subject to any limitations prescribed hereunder and subject to any further limitations as may from time to time be prescribed by Council and subject always to the provisions of the Act, a Disciplinary Committee shall have the following duties, functions and powers, namely -

15.8.1 to consider and investigate any complaint made against any member at the instance of whomever, including any complaint made at the instance of the Council _mero motu_; and to authorise the Director to render to any complainant such assistance in connection with the lodgement of his complaint as may be reasonably necessary or desirable;

15.8.2 at any time before or during its investigation of any complaint, to require a complainant to lodge his complaint in writing, and if so required by it, to verify the complaint by way of affidavit and to furnish such further evidence, oral or otherwise, in substantiation of any such complaint as it may require and as is available;

15.8.3 to dismiss a complaint where it is of the opinion that the complaint does not disclose a _prima facie_ case of unprofessional or dishonourable or unworthy conduct on the part of a member or where a complainant neglects or refuses to comply with any requirements of
which he shall have been notified pursuant to sub-rule 15.8.2 and to notify the complainant accordingly;

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 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;

15.8.5 at any time before or during its consideration of any explanation furnished to it under sub-rule 15.8.4, to require the member furnishing such explanation to verify his explanation by way of affidavit and to furnish such further evidence regarding the complaint as it may require of such member and as may be available;

15.8.6 to require any member who is the subject matter of a complaint, to appear before it, either with or without legal representation, as the member may elect, for the purpose of furnishing it with any additional information which it may require or which the member may wish to submit with regard to the complaint forming the subject matter of its investigation;

15.8.7 to decide, on the basis of the complaint and the member's explanation, if furnished, and any other evidence available to it, whether or not the complaint establishes a case of unprofessional or dishonourable or unworthy conduct on the part of the member and-

15.8.7.1 where it is of the opinion that it does not do so, to dismiss the complaint and, in such event, to notify the complainant and the member accordingly;

15.8.7.2 where it is of the opinion that it does do so, to notify the Council of its opinion and the facts upon which such opinion is based and at the same time, and having considered the member's disciplinary record, to make a recommendation to the Council that the Council either-

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

15.8.7.2.2 hold a formal enquiry into the complaint in accordance with the provisions of sub-rule 15.11;

provided that the Disciplinary Committee shall, in making any recommendation to the Council in terms of this sub-rule 15.8.7.2, furnish the Council with all relevant information in its possession to enable the Council to consider its said recommendation;

15.8.8 *mero motu*, to treat as a separate complaint of unprofessional or dishonourable or unworthy conduct, any act or omission on the part of a member which is calculated to interfere with, or which otherwise interferes with, its proper consideration and investigation of a complaint against such member;

15.8.9 to do all things necessary to ensure that all disciplinary proceedings failing within its duties, functions and powers are dealt with justly, expeditiously and in accordance with these Rules;

15.8.10 save to the extent set forth in these Rules, to preserve the confidential nature of its proceedings.
15.9 The Council shall consider any complaint against a member forming the subject matter of a Disciplinary Committee's recommendation made to it in terms of sub-rule 15.8.7.2 and either -

15.9.1 determine such complaint summarily, without a further hearing, in which event a 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

15.9.2 resolve that a formal enquiry shall be held into such complaint in which event it shall refer the complaint to a Disciplinary Enquiry Committee with an instruction that such committee shall hold a formal enquiry into such complaint in accordance with the provisions of sub-rule 15.1 1.

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.

15.9.3 Pursuant to section 72(1) of the Attorney Act No 53 of 1979, the maximum amount of the fines which may be imposed in respect of a person found guilty of unprofessional or dishonourable or unworthy conduct shall be -

a) in the case of a practitioner - R10 000
b) in the case of a candidate attorney as defined in the Attorneys Act - R2 000. (Gazette 24/4/1998)

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 R6000 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.

The Council shall notify the complainant of any determination made by it under sub-rule 15.9.1 and shall, at the same time, notify the member concerned of any such determination and of any punishment imposed by it under the aforesaid sub-rule; provided always that the member shall, in any notification, be afforded the opportunity, instead of submitting to any such determination and punishment, to demand, within a stipulated time, that a formal enquiry be conducted into the complaint by the Disciplinary Enquiry Committee in terms of sub-rule 15.1 1; provided further that if the member so demands, a formal enquiry shall be conducted under sub-rule 15.11 in which event any determination and punishment made and imposed by the Council under sub-rule 15.9.1 shall be suspended and shall be substituted by any determination and punishment made and imposed at, or in consequence of, any such formal enquiry and failing any such determination and punishment such suspension shall lapse and be of no further force or effect with the consequent reinstatement of the Council's said determination and punishment.

15.10 Save where a formal enquiry is called for by the member under sub-rule 15.9, a finding of the Council of which such member shall have been notified under such sub-rule shall, save for any error subsequently found therein, be final and, as regards all persons affected thereby, res judicata.
15.11 Subject to the limitations prescribed thereunder and subject to any further limitations as may from time to time be prescribed by Council and subject always to the provisions of the Act, a Disciplinary Enquiry Committee shall be charged with the duty, function and power of conducting a formal enquiry, in accordance with the provisions of this sub-rule, into any complaint forming the subject matter of a request for such an enquiry received from the Council in terms of sub-rule 15.9.2 or received from a member in terms of the proviso to sub-rule 15.9; and in the conduct of which enquiry the following provisions shall apply, namely:-

15.11.1 an enquiry under this sub-rule shall be commenced by way of the service on the member personally of a summons requiring the attendance of such member at the enquiry. Such summons shall be issued under the hand of the President or the Director and shall be served not less than FOURTEEN (14) days before the date appointed for the hearing, in the computation of which period weekends and public holidays shall be excluded.

15.11.2 A member appearing at an enquiry conducted under this sub-rule shall be entitled -

15.11.2.1 to legal representation;

15.11.2.2 to decline to answer any question which may incriminate him in any criminal proceedings which may flow from such enquiry.

15.11.3 The duties, functions and powers of the Disciplinary Enquiry Committee relating to its conduct of an enquiry under this sub-rule and as aforementioned shall be the following, namely -

15.11.3.1 to determine through its chairman and subject always to the provisions of these Rules and of the Act the manner in which the enquiry shall be conducted in which regard such chairman shall, insofar as these Rules and the Act do not provide for any matter specifically, be guided by the practice and procedure prevailing in the Supreme Court criminal trials;

15.11.3.2 to appoint any practising practitioner or advocate to act as a pro forma prosecutor in the leading of evidence against, and the presentation of the case against, the member, at the enquiry;

15.11.3.3 to exercise the powers vested in the Council under sub-section 71(2)(a) of the Act;

15.11.3.4 to dispense with any requirements regarding summonses, notices, affidavits, documents, service or times in any case where it appears to it to be just so to do or to extend the time for doing anything in connection with the conduct of the enquiry;

15.11.3.5 mero motu, or upon the application of any affected party, to adjourn the enquiry upon such terms as to costs, or otherwise, as it deems fit;

15.11.3.6 to cause the enquiry proceedings to be recorded in such a manner as shall enable a true and correct record of such proceedings to be available and to procure that each of its decisions shall be recorded in writing and be prefaced by a statement of its findings in relation to the facts investigated during the course of the enquiry and shall be signed by the chairman of such committee so authorised; and to procure further, that each such decision shall be filed in the records of the Society;

15.11.3.7 mero motu, to treat as a separate complaint of unprofessional or dishonourable or unworthy conduct, any act or omission on the part of a member attending, or required to attend, an enquiry being conducted under this sub-rule where such act or omission is calculated to interfere with, or otherwise interferes with, its proper consideration, investigation and determination of the complaint forming the subject matter of such enquiry and to refer any such separate complaint to a Disciplinary Committee for consideration and investigation in accordance with the provisions of sub-rule 15.8;

15.11.3.8 to exercise such ancillary powers as it shall consider reasonably necessary to enable it to discharge its duties, functions and powers hereunder;
15.11.3.9 to do all things necessary to ensure that all disciplinary proceedings failing within its duties, functions and powers are dealt with justly, expeditiously and in accordance with these Rules;

15.11.3.10 at the conclusion of the enquiry, to find the member not guilty of the charge forming the subject matter of the enquiry or guilty of unprofessional or dishonourable or unworthy conduct in relation to such charge and in the event of a finding of not guilty, to notify the member and the complainant, if any, accordingly.

15.11.4 Upon a finding of guilty under sub-clause 15.11.3.10, the Disciplinary Enquiry Committee may, having considered the member's disciplinary record, either -

15.11.4.1 impose upon such member such punishment as is provided for in sub-section (1) read with sub-sections (2) and (3) of section 72 of the Act, in which event it shall notify the member concerned of its determination and of the punishment imposed by it and shall cause such punishment to be carried into effect and in which event, further, it may, when so authorised by the Council either generally or specially in any particular case, publish such information concerning its determination and punishment as may be determined by the Council provided that it shall not, unless authorised so to do by the Council, notify the complainant of any punishment imposed upon the member as aforesaid; or

15.11.4.2 where it is of the opinion that the nature of the charge upon which it shall have found the member guilty is such as, having regard to the member's disciplinary record, warrants an application for the striking off of such member from the roll of attorneys or for his suspension from practice, make a recommendation to the Council accordingly and simultaneously forward the record of the enquiry to the Council for such action as the Council may elect to take in terms of sub-rule 15.12, and in which event it shall notify the member concerned of its determination and recommendation aforesaid.

15.11.5 The Disciplinary Enquiry Committee shall, save to the extent set forth in these Rules, preserve the confidential nature of all its enquiry proceedings.

15.12 On receipt of a recommendation made to it by the Disciplinary Enquiry Committee under sub-rule 15.11.4.2 the Council shall consider the record of the enquiry and resolve either -

15.12.1 to adopt the recommendation of the Disciplinary Enquiry Committee, in which event it shall proceed to take action for the striking off of the member from the roll of attorneys or for his suspension from practice, as it may consider appropriate; or

15.12.2 not to adopt the recommendation of the Disciplinary Enquiry Committee, in which event, it shall advise such committee accordingly and refer the matter back to such committee whereupon such committee shall impose such punishment on the member as is referred to in sub-rule 15.11.4.1, the provisions of which sub-rule shall apply mutatis mutandis.

15.13 A member found guilty by a Disciplinary Enquiry Committee under sub-rule 15.11.3.10 shall have the right to appeal afforded him under the provisions of section 73 of the Act.

15.14 Upon a finding of guilty under sub-rule 15.11.3.10 the member shall, unless the Council waives its rights thereto, be obliged to pay the costs incurred at the instance of the Council in connection with the inquiry, which costs shall be calculated in accordance with the non-litigious tariff of the Council as amended from time to time and which costs shall be payable by the member forthwith upon his receipt of the Society's Bill of Costs assessed by a Committee appointed by the Council for that purpose."

Without derogating from the generality of the aforesaid the aforesaid costs shall include -

15.14.1 the costs of recording, transcribing and preparing copies of the enquiry record;

15.14.2 costs incurred by the Council in the employment of any pro forma prosecutor;
15.14.3 costs incurred by the Council in the employment of any accountant for the investigation of, and report on, the member's books of account, where applicable;

15.14.4 costs of procuring the attendance of witnesses at the enquiry and their travelling expenses payable on the tariff applicable to witnesses in civil cases in the Supreme Court (Cape of Good Hope Provincial Division);

15.14.5 reasonable allowances payable by the Society to the Disciplinary Enquiry Committee members arising out of the absence of such members from their offices during the hearing and determination of the enquiry.

15.15 Subject to the provisions of the Act all applicable provisions of this Rule 15 shall apply mutatis mutandis to an articled clerk provided that -

15.15.1 in the case of a complaint against an articled clerk forming the subject matter of an investigation by a Disciplinary Committee-

15.15.1.1 the Disciplinary Committee shall be entitled to furnish the principal of the articled clerk wish the same information as that furnished to the articled clerk under sub-rule 15.8.4;

15.15.1.2 the principal of the articled clerk shall, if so required by the Disciplinary Committee, verify on affidavit and insofar as his personal knowledge of the circumstances permits him so to do, any explanation furnished to the Disciplinary Committee by his articled clerk pursuant to a request for such explanation made under sub-rule 15.8.4;

15.15.1.3 the principal shall be entitled to attend, and, if so required by the Disciplinary Committee and save to such extent as he may be excused therefrom by such committee and subject always to his availability, shall attend, any appearance of his articled clerk before the Disciplinary Committee under sub-rule 15.8.6;

15.15.1.4 the principal shall, if so required by the Disciplinary Committee and subject to his availability, appear before such committee without his articled clerk and, in such instance, with or without legal representation, as the principal may elect, for the purpose of furnishing such committee with any additional information which it may require or which the member may wish to submit with regard to the complaint being investigated against his articled clerk;

15.15.2 in the case of an enquiry being conducted by the Disciplinary Enquiry Committee into a complaint against an articled clerk, the principal of such articled clerk shall be entitled to be present, and, if so required by the Disciplinary Enquiry Committee and save to such extent as he may be excused therefrom by such committee and subject to his availability, shall be present, throughout the enquiry.

16. BENEVOLENT FUND

16.1 The Council shall create and control a separate fund to be known as the Benevolent Fund of the Law Society of the Cape of Good Hope (‘the Fund’).

16.2 The Council shall credit to such Fund -

16.2.1 such assets as may be transferred to the Fund by the governing body of the Benevolent Fund of the Law Society of the Cape of Good Hope established by regulations approved by the Council of the Society at a meeting on 9 July 1935 under authority conveyed to it by the annual general meeting of the Society held at Port Elizabeth on 22 November 1934; and

16.2.2 all subscriptions and donations to the Fund received from any person.
16.2.3 all funds received by the Society from members in respect of Disciplinary findings

16.3 The Council shall from time to time in its discretion solicit donations to the Fund from members either by way of annual contributions, lump sum payments or in any other manner.

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 spouses and dependants and the necessitous surviving spouses and dependants of deceased members.

16.5 The Council may determine-

16.5.1 the form and manner of application for assistance from the Fund;

16.5.2 the conditions upon which any such assistance is given.

17. ASSESSMENT OF FEES

17.1 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 practitioner, to assess the fees and reasonable disbursements payable by such person to a practitioner who, in terms of the provisions of section 57(1) of the Act is a member of the particular Society, in respect of the performance on behalf of such person of any work other than litigious work by the practitioner in his capacity as such; provided that the Council shall not assess fees in instances where a state official is empowered to do so or where the work concerned is already covered by a statutory tariff.

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 and whether the fees and disbursements have been incurred or increased through overcaution, negligence or mistake on the part of the practitioner;
17.3 At the assessment of any practitioner's fees and disbursements, the Council or the committee, as the case may be, may call for the production of such books, documents, papers or accounts as in its opinion are necessary to enable it properly to determine any matter arising upon such assessment including whether the services were rendered or necessarily performed.

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.

17.5 As soon as the Council or the committee, as the case may be, has arrived at its decision, it shall deliver to both the practitioner and such person either by hand or prepaid registered post, a copy of the fee list submitted for assessment, duly endorsed with the allocatur of the council or the committee, as the case may be, under the hand of the Director, provided that where the decision is that of the committee, either the practitioner or such person, if he objects to the decision of the committee, shall within 10 days after the date of the allocatur or such longer period allowed by the Council on good cause shown and before taking any other steps, submit that decision to the Council with a view to having the decision amended or set aside, stating in his submission, which shall be in writing, the respect in which he takes objection to the decision and the grounds upon which he claims that amendment or setting aside of the decision is justified.

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.

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 afoforegoing 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.

17.8 The submission to the Council of an objection in terms of the proviso to rule 17.5 shall suspend the decision of the committee. The decision of the Council or the said committee as the case may be in terms of rules 17.6 and 17.7 shall be deemed to be the decision on the matter in question, and the date of the allocatur shall be the date of the decision of the Council or the said committee as the case may be in terms of those rules.

17.9 As soon as the Council or the committee, as the case may be, has arrived at its decision, it shall deliver to both the practitioner and such person either by hand or prepaid registered post, a copy of the fee list submitted for assessment, duly endorsed with the allocatur of the Council or the committee, as the case may be, under the hand of the Director of the Society. Subject to the provisions of section 74(5) of the Act, the fees and disbursements determined in terms of the allocatur shall be deemed to be a reasonable fee payable to the practitioner for the services rendered.

17.10 The Council or the committee, as the case may be, shall be entitled in its discretion at any time, to depart from any of the provisions of sub-rule 17.2 above, in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

17.11 This rule shall not apply to any work done pursuant to a mandate accepted by a practitioner prior to the date of promulgation of this rule, whether the work is actually done before or after the said date.

17.12 Failure, without reasonable cause, to submit an account for taxation or assessment, as the case may be, within a reasonable time after a request to do so by the client or the person purportedly liable for payment of the fee, or within a reasonable time fixed by the Council, shall be regarded as unprofessional conduct. (Gazette 24/4/1998)

18. DISSOLUTION OF SOCIETY

18.1 If for any reason the Society is wound up, liquidated or in any other manner dissolved and there remain after the satisfaction of its liabilities any assets whatsoever, the same shall be transferred to such other Society or Association as the members in General Meeting decide with objects similar to those of this Society.

18.2 The activities of the Society shall be wholly or mainly directed to the furtherance of its objects.

18.3 The Society shall not be permitted to distribute any of its profits or gains to any person and is required to utilise its funds solely for investment or the objects for which it has been established.
19. **ACCREDITATION OF LAW CLINICS**

Any law clinic which seeks recognition as a law clinic for the purposes of the Act and these Rules shall comply with the following requirements -

19.1 The clinic shall be properly constituted, organised and controlled to the satisfaction of the Council, either as part of the Faculty of Law at a university in the Republic or as a law centre controlled by a non-profit making organisation.

19.2 The clinic must provide legal services to the public.

19.3 The legal services provided by the clinic must be rendered free of charge, direct or indirect, to the recipient of those services, provided that -

19.3.1 the clinic may recover from the recipient of its services any amounts actually disbursed by it on behalf of the recipient;

19.3.2 where the clinic acts for the successful litigant in litigation, the clinic will be entitled to take cession from such litigant of any order for costs awarded in favour of the litigant and to recover those costs for its own account.

19.4 The services may be rendered only to persons who, in the opinion of the Council would not otherwise be able to afford them.

19.5 The clinic may not undertake work in connection with the lodging or processing of claims under the Multilateral Motor Vehicle Accidents Act, 1989, or any amendment thereof,

19.6 The name under which the clinic is to carry on its activities, and the letterheads and other stationery of the clinic, shall require the prior approval of the Council.

19.7 Attorneys in the employ of the clinic may be remunerated only by way of salary payable by the clinic or by the organisation to which it is attached.

19.8 If an attorney in the full-time employment of a clinic wishes to engage a candidate attorney under articles of clerkship he may do so only if -

19.8.1 the candidate attorney is to be under his direct personal supervision or under the direct personal supervision of another attorney who is a member of the professional staff of the clinic;

19.8.2 such attorney is a declared member of the Society;

19.8.3 the clinic is open for business during normal office hours for not less than 11 months in any year;

19.8.4 the clinic has proper office systems with telephones, typing facilities, files and filing procedures, a diary system and at least elementary library facilities;

19.8.5 the clinic has a proper bookkeeping system and accounting procedures.

19.8.6 the clinic handles a reasonably wide range of work to give the candidate attorney exposure to the kind of problems that a newly qualified attorney would expect to encounter and be able to handle competently during his first year of practice. The Council shall have the right to direct the clinic to require the candidate attorney to attend a training course approved by the Council in areas of practice which, in the opinion of the Council, are not adequately dealt with by the clinic.
20. INVESTMENT PRACTICE RULES

20.1 Definitions

20.1.1 A firm shall for the purpose of this rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients and it controls or manages, whether directly or indirectly, such investments.

20.1.2 A client shall for the purpose of this rule include any person on whose behalf a firm invests funds or manages or controls investments whether or not such person is otherwise a client of the firm concerned.

20.1.3 This rule shall not apply to -

20.1.3.1 investments made pursuant to section 78(2A) of the Attorneys Act, 53 of 1979 which are not transactions contemplated in sub-rule 20.6;

20.1.3.2 any investment of a temporary nature that is made in the course of and incidental to a conveyancing or other matter, including litigation, to which the investing client is a party;

20.1.3.3 investments made by members of firms in their capacity as executors, trustees, curators or in any similar capacity in so far as such investment is governed by any other statutory enactment or regulation.

20.1.3.4 any investment (other than referred to in sub-rule 20.6) made with a Bank in the name of that client alone and on the written instructions of that client.

20.2 Auditor's report

20.2.1 Every firm shall not later than six months after the end of its financial year furnish the Director of the Society with a report by the auditor referred to in Rule 13 stating that to the best of the auditor’s knowledge and belief -

20.2.1.1 the firm has not, during the period under review, carried on the business of an investment practice; or -

20.2.1.2 the firm has carried on the business of an investment practice and has complied with this rule 20.

20.3 Mandates

A firm carrying on an investment practice shall obtain an investment mandate from each client before or as soon as possible after investing funds for that client. The form of the investment mandate shall be substantially in the form of the Schedule to this rule.

20.4 Reports to clients

Every firm carrying on an investment practice shall report to its client in terms of the client's investment mandate at least once every twelve months on income earned and capital movements during the period of the report.

20.5 Accounting records

20.5.1 Every firm carrying on an investment practice, shall, in addition to its normal accounting records, also keep a separate trust account record and supporting documents in respect of each client, which record shall reflect -

20.5.1.1 payments of all monies entrusted to it from time to time by the client for investment pursuant to the mandate granted by the client in terms of sub-rule 20.3;
20.5.1.2 payments of all monies invested by it on the client's behalf;

20.5.1.3 payments of all amounts, both capital and income, derived from investments and received for the client's account;

20.5.1.4 all payments made by it to the client in respect of the client's investments, and

20.5.1.5 all charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate in terms of sub-rule 20.3.

20.5.2 The accounting records and other supporting documents referred to in sub-rule 20.5.1 shall be retained by the firm in such manner as to enable it to furnish each client upon request with all current details of the client's investments as recorded in sub-rule 20.5.1. Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client. The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed. Where accounting records are maintained by means other than on paper, adequate facilities shall exist for such records to be reproduced in printed form.

20.5.3 All accounting records required to be retained in terms of this sub-rule and copies of all reports despatched in terms of sub-rule 20.4 shall be retained for at least 5 years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record and shall be held at the same office as the firm's other accounting records.

20.6 Investment transactions

20.6.1 No firm may mix deposits in a pooled account or make other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a Bank on the money market on behalf of the client. The firm shall obtain from the Bank an acknowledgement of receipt of each deposit or money market investment and such written receipts shall be retained by the firm as part of its accounting records.

20.6.2 All monies received by a firm for investment with a Bank, shall be paid to such Bank as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a payment by cheque has been cleared with the issuing banker.

20.6.3 For the purpose of this rule ‘Bank’ shall mean any institution registered in terms of the Banks Act, No 94 of 1990.

20.7 Restrictions applicable to certain investments

A firm may not invest on behalf of a client -

20.7.1 in shares or debentures in any company which is not listed on the Johannesburg Stock Exchange, unless it is a subsidiary of a listed company; or

20.7.2 in loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security;

unless the client's specific written authorisation for each such investment has first been obtained.
20.8 Existing investment practices

20.8.1 Notwithstanding the terms of this rule, a firm which has an existing investment practice on the date of which this rule comes into effect -

20.8.1.1 shall not accept new funds for investment without complying with this rule;

20.8.1.2 shall in respect of all existing investments, secure compliance with this rule within 12 months from the date on which it comes into effect;

20.8.1.3 shall not be required to commence compliance with sub-rule 20.5 until the end of February of the calendar year following the year in which the period of grace stipulated in sub-rule 20.8.1.2 expires;

20.8.1.4 shall not be required to lodge its first annual auditor’s report in terms of sub-rule 20.2 until the expiry of three months after the end of the financial period in which the period of grace stipulated above in sub-rule 20.8.1.2 expires.

20.8.2 Any firm which, as part of its investment practice, already controls or manages an investment which does not comply with sub-rule 20.7 shall not later than 12 months after the date on which this rule comes into effect either obtain the client’s written consent to such investment or relinquish the control or management of such investment and shall be obliged to inform the client in writing accordingly.

20.9 Unprofessional conduct

Failure to comply with the provisions of this rule shall constitute unprofessional conduct on the part of the partners or directors of the firm in default.
SCHEDULE

CLIENT INVESTMENT MANDATE

I/We, the undersigned ____________________________ (the client)
of ____________________________
do hereby authorise and empower ____________________________ (firm's name)
to make the following investments as my/our agent and on my/our behalf -

1. TYPE OF INVESTMENTS YES / NO

   1.1 With a bank (subject to the conditions as set out at the bottom of this mandate); and/or □ □
   1.2 Stocks and shares on JSE; and/or □ □
   1.3 Money lending; and/or □ □
   1.4 Other (give details under 5 or on an annexure, if necessary) □ □

2. TYPE OF MANDATE GIVEN YES / NO

   2.1 Discretionary □ □
   2.2 Non-discretionary □ □

3. IS FIRM TO KEEP ALL SECURITIES/CERTIFICATES YES / NO □ □

4. REPORTING Monthly / Quarterly / 6-Monthly / Annually

5. GENERAL

Instructions re securities, interest payments, charges etc. ____________________________
                                                                ____________________

Signed at _________________ on this _____ day of ____________________________

__________________________________________________
Signature of client

Accepted at _________________ on this _____ day of ____________________________

__________________________________________________
Signature of the firm

To be completed and signed in duplicate and a copy to be handed to the client.

Conditions applicable to investments with a Bank
In terms of Section 1(ff) of the Banks Act 1990, the client hereby assumes all risks connected with the administration of the funds by the firm as well as the responsibility that the firm executes the instructions in this contract of agency.
21. **Pro Bono Services**

21.1 **Definitions**

*Pro Bono* services shall include, but not be limited to, the delivery of advice, opinion or assistance in matters, falling within the professional competence of an attorney, to facilitate access to justice for those who cannot afford to pay, through recognised structures, approved in terms of sub-rule 21.3 and identified in terms of sub-rule 21.4.

22. **Recognised structures** shall include, but not be limited to, the office of the Registrars of the High Court when issuing *in forma pauperis* instructions, *Legal i*, small claims courts, community (non-commercial) advice offices, university clinics, non-government organisations, the office of the Inspectorate of Prisons, Circle and specialist committees of the Society, etc., approved in terms of sub-rule 21.6 and identified in terms of sub-rule 21.8.

*Those who cannot afford to pay* shall be those who ordinarily qualify for assistance through recognised structures.

21.2 Practising members who have practiced for less than 40 years and who are less than 60 years of age, shall, subject to being asked to do so, perform *pro bono* services of not less than 24 hours per calendar year, save that –

21.2.1 an attorney who becomes a practising member during the course of a year shall perform *pro bono* services equal to not less than 2 hours per month, or part thereof, of practising member status acquired in the first year of practice;

21.2.2 in the year of publication of this Rule, practising members shall perform *pro bono* services equal to not less than 2 hours per month, or part thereof, from the month of publication to the end of that year.

21.3 Members may refer to the Society, for approval by Council as *pro bono* services, a written description of areas of professional work proposed for recognition as *pro bono* services.

21.4 The Society shall, within 30 days of publication of this Rule and from time to time, publish, through *The Cape Attorney*, a list of services which, when performed by attorneys at no charge for those who cannot afford to pay, shall be recognised as *pro bono* services capable of being delivered in compliance with the provisions of this Rule.

21.5 *Pro bono* services shall be delivered through recognised structures only to those who cannot afford to pay for professional services.

21.6 Members may refer to the Society, for approval by Council as a recognised structure, a written description of a structure proposed for recognition.

21.7 The Society is mandated by members to enter into partnership and joint venture agreements with recognised structures, the effect of which is that only matters that fall within the professional competence of attorneys are referred to practising members for advice, opinion or assistance; that briefs addressed to practising members are reasonably well formulated and that potential language and cultural barriers are overcome.

21.8 The Society shall, within 30 days of publication of this Rule and from time to time, publish, in *The Cape Attorney*, a list of recognised structures, including structures with which the Society has concluded partnership, or joint venture, agreements for the delivery of *pro bono* services.

21.9 Members shall submit to the Society a certificate providing full particulars of *pro bono* services delivered, within 60 days of delivery thereof, failing which, the service shall be treated as not having been rendered in terms of this Rule.
21.10 The Society shall, within 30 days of the publication of this Rule, publish, in *The Cape Attorney*, the form of the certificate to be submitted by practising members. Any amendments introduced to the certificate, by Council, shall be published, from time to time in *The Cape Attorney*.

21.11 The Society shall keep a record of services delivered per member, which record shall be raised from member certificates. A report of all services rendered shall be extracted annually and shall be retained by the Society but individual member records substantiating the report shall be expunged. On 1 January of each year, all individual member records shall be refreshed to show an availability of hours for the new year. The record of hours served or not served in the previous year shall then be expunged. The Society shall report to its members annually and at the Annual General Meeting, and shall make such report generally available, on the total delivery of *pro bono* services by members.

21.12 The Society shall cause particulars of *pro bono* hours still to be served by members in a calendar year to be published on its website and for reduced hours to be displayed against submission by members of certificates. This information will also be available from the Society, on request. It shall be the responsibility of practising members to ensure that the Society’s records as to *pro bono* services rendered are complete so that correct information is published on the website and generally made available.

21.13 Members may elect to deliver *pro bono* services through a single recognised structure. The Society shall cause a member’s election of the recognised structure through which he/ she chooses to deliver his/ her *pro bono* services to be published on its website. This information will also be available from the Society, on request. Members who make such an election may properly refuse calls through other recognised structures for the delivery of *pro bono* services. It shall be the responsibility of the practising member to notify the Society of his/ her election so that this information is published on the website and generally made available.

21.14 Members who travel a distance of more than 50km from their office in order to deliver *pro bono* services may, in special circumstances, make written application to the Society to recover the actual cost of travel, excluding the first 100km.

21.15 Disbursements incurred, save for travel expenses referred to in 21.14, in respect of *pro bono* services shall be borne by the client.

21.16 It shall be unprofessional conduct for a practising member who has still to perform *pro bono* service hours to refuse, with no good cause, to deliver *pro bono* services.

21.17 In the event of the Society receiving a complaint of refusal to deliver *pro bono* services, with no good cause, it shall be entitled to treat its record of services rendered as complete, save only for services rendered within 60 days of the complaint that are not on record. The member against whom the complaint is made shall be responsible to provide the Society with certificates, relating to such additional services, within 21 days of receipt by the Society of the complaint, failing which, services alleged to have been rendered, but not on record, will be treated as not having been rendered for the purpose of investigating the complaint. Pending investigation of the complaint, the Society shall refer the complainant to another practising member, for assistance.

21.18 Professional standards applicable to services rendered by attorneys shall apply to *pro bono* services.

22. Sequestration

Every member shall notify the Society without delay in the event that he is sequestrated or becomes aware that application is about to be made for his sequestration.

Members who have been sequestrated are prohibited from practising for own account, save with the express consent of Council on such terms and conditions as Council may deem appropriate.
23. **Administration Levy – Fidelity Fund Certificate**

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.

24. **Ceasing to Practice for Own Account**

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.