

**LEGAL PRACTICE COUNCIL
NOTICE 391 OF 2020**

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Date: 24 July 2020

**THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL (“COUNCIL”)
NOTICE IN TERMS OF SECTION 95(5) OF THE LEGAL PRACTICE ACT, 28 OF 2014**

Notice is hereby given that the Council amends the Rules of the Council made under the authority of Sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended) by the deletion in its entirety of Rule 46 and the substitution thereof with a new Rule 46 as attached.

The amendment is to enable Council to run the elections for the Legal Practitioners Fidelity Fund Board online, due to the current lockdown regulations brought about by the Covid-19 pandemic.

Council amends this Rule in line with the provisions of section 95(5), which provides that a rule may be amended without prior publication of a draft as provided in section 95(4) of the Act.

The amendment to the rule without prior publication is necessitated by the fact that the election must take place but cannot under the lockdown regulations. The amendment will allow legal practitioners to **[nominate candidates and]** cast their votes online and through email thereby avoiding the need for them to travel for voting stations and minimizing the risk of contracting the Covid-19 virus.

SIGNED AT MIDRAND ON THE 24th DAY OF JULY 2020



Ms Kathleen Matolo-Dlepu

Chairperson: Legal Practice Council

EXECUTIVE COMMITTEE: Ms Kathleen Matolo-Dlepu (*Chairperson*) | Adv Anthea Platt SC (*Deputy Chairperson*) |
Adv. Greg Harpur SC | Ms Trudie Nichols | Mr Lutendo Sigogo | Mr Jan Stemmett | Adv. Phillip Zilwa SC
Executive Officer: Ms Charity Nzuza

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

NOTICE IN TERMS OF SECTION 95(5) OF THE LEGAL PRACTICE ACT, 28 OF 2014

Notice is hereby given that the Council amends the Rules of the Council made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended) by the deletion in its entirety of Rule 46 and the substitution therefor of the following Rule:

"

**46. Procedure for election of legal practitioners to the Board
[section 95(1)(zJ) read with section 62(1)(a)]**

46.1 Four members shall be elected to the Board from among, and by, the practising legal practitioners who are in good standing and who have their principal place of business as such in the following geographical areas:

46.1.1 one member from the area corresponding with the area under the jurisdiction of the Gauteng division of the High Court of South Africa;

46.1.2 one member from the area corresponding with the areas under the jurisdiction of the Western Cape provincial division of the High Court of South Africa and the Northern Cape division of the High Court of South Africa;

46.1.3 one member from the area corresponding with the areas under the jurisdiction of the Free State division of the High Court of South Africa, the North West division of the High Court of South Africa, the Limpopo division of the High Court of South Africa and the Mpumalanga division of the High Court;

46.1.4 one member from the area corresponding with the areas under the jurisdiction of the KwaZulu-Natal division of the High Court of South Africa and the Eastern Cape division of the High Court of South Africa.

46.2 One member shall be elected to the Board from among the practising advocates referred to in section 34(2)(b) who are in good standing, by all the practising legal practitioners in the Republic who are in good standing.

46.3 An election for members of the Board shall be conducted -

46.3.1 by electronic voting (e-voting) in the manner prescribed by the Council; and/or

46.3.2 by paper ballot in accordance with the provisions of this rule.

46.4 The Council shall appoint an independent electoral service provider for the purpose of performing the duties assigned to an electoral independent service provider in these rules.

46.5 In relation to the initial election of members of the Board in respect of -

46.5.1 a member elected from among the legal practitioners having their principal place of business in the areas referred to in rule 46.1 respectively; or

46.5.2 the member elected to the Board from among the advocates referred to in section 34(2)(b) of the Act

and thereafter whenever a vacancy occurs in the Board the Council shall call for nominations from among the legal practitioners of the respective province or provinces and who are on the practising roll, or in the case of members of the Board referred to in rule 46.2, from among all legal practitioners in that category who are on the practising roll, as the case may be, by notice in the *Gazette* and on the Council's website, and in such other publication as may be appropriate, allowing 21 days from the date of the notice to the date on which nominations are to be submitted, and stating that nominations are to be made in writing in accordance with these rules.

46.6 A nomination may only be made –

46.6.1 in the case of a nomination in respect of a candidate referred to in rule 46.5.1, by a practising legal practitioner in good standing and having his or her principal place of business in the province concerned; and

46.6.2 in the case of a nomination in respect of a candidate referred to in rule 46.5.2, by a practising legal practitioner in good standing.

46.7 Every nomination shall be in writing, shall be signed by the person making it and shall –

46.7.1 in the case of a nomination by an attorney, state the name of that attorney, his or her date of admission as an attorney and the address of that attorney's principal place of business; and

46.7.2 in the case of an advocate, state the name of the advocate, his or her date of admission as an advocate and the address at which such advocate keeps chambers.

46.8 Every nomination shall be accompanied by –

46.8.1 written acceptance of the practising attorney or practising advocate being nominated, duly signed by the said attorney or advocate, and providing such details relating to the said attorney or advocate as is required from the attorney or advocate making the nomination in terms of rule 46.7; and

46.8.2 a comprehensive *curriculum vitae* of the person being nominated, in not more than 600 words and in such format as the Council may require, containing at least the following information:

46.8.2.1 his or her name;

46.8.2.2 in the case of an attorney, the name of the firm of which he or she is a proprietor or a member or by which he or she is employed, stating also the status of that attorney within the firm;

46.8.2.3 in the case of an advocate, whether or not he or she renders legal services in terms of section 34(2)(a)(ii) of the Act, and whether or not he or she has the status of a Senior Counsel;

46.8.2.4 his or her race, gender, date of admission and enrolment, and period in practice;

46.8.2.5 if he or she suffers from a disability and wishes to disclose that fact, a statement to that effect and the nature of the disability;

46.8.2.6 the address of his or her principal place of practice

and on which shall be endorsed, over the signature of each nominee named therein, his or her confirmation that the information given therein is correct and that he or she is not disqualified from membership of the Board;

46.8.3 a certificate, issued by the Council not earlier than one month prior to the date of acceptance of nomination by the person accepting nomination, that he or she is admitted and enrolled as a legal practitioner and is in good standing.

- 46.9 Nominations must be sent by email, or delivered by hand, to the Council by not later than the date stipulated in the notice referred to in rule 46.5.
- 46.10 Upon receipt of a nomination, the Council shall make every effort to verify the information provided in the *curriculum vitae* that accompanied such nomination.
- 46.11 If the number of eligible candidates who are nominated exceeds the number to be elected as members of the Board then within 30 days after the closing date for nominations, the Council shall publish a notice containing a list of all the persons duly nominated and who have duly accepted such nomination, by notice in the *Gazette*, on the Council's website and in such other publications as may be appropriate: provided that the Council may refuse to include the name of any person who has been nominated in respect of whom the Council has reason to believe that the information provided in the *curriculum vitae* submitted by or on behalf of such person contains material details that are untrue, and any person whose name is so omitted shall be ineligible for election to the Board.
- 46.12 The notice referred to in rule 46.11 -
- 46.12.1 shall draw the attention of legal practitioners to the fact that votes may be cast by ballot paper or by electronic means. Legal practitioners may vote only once in the election concerned, and either by ballot paper or by electronic means;
- 46.12.2 shall invite the submission of a written or electronic communication from every legal practitioner eligible to vote for the election of the member or members concerned, in such format as the Council may determine, by which such practitioner exercises his or her right to vote;
- 46.12.3 shall draw the attention of legal practitioners to the following considerations in relation to the constitution of the Board:
- 46.12.3.1 the racial and gender composition of South Africa;
- 46.12.3.2 representation of persons with disabilities;
- 46.12.3.3 provincial representation.
- 46.12.4 shall request the legal practitioner, if he or she wishes to record a vote by paper ballot, to follow the directions of the Council as to the completion of the form of communication referred to in rule 46.13.1;

- 46.12.5 shall request the legal practitioner, if he or she wishes to record his or her vote by e-voting, to follow the guidelines issued by the Council for the purpose of e-voting.
- 46.13 Every communication referred to in rule 46.12.2 which is required to be submitted by a legal practitioner, shall -
- 46.13.1 where the communication is by paper ballot -
- 46.13.1.1 in the case of a communication from an attorney, state the name of his or her practice and the address of that attorney's principal place of business; and
- 46.13.1.2 in the case of a communication from an advocate, specify the date of admission of the advocate concerned and the address at which such advocate keeps chambers;
- 46.13.2 where the communication is by electronic means, provide such information as is provided in the guidelines as to the conduct of e-voting referred to in rule 46.12.5.
- 46.14 The guidelines for e-voting, referred to in rule 46.12.5 shall be in the form and manner determined by the Council, and among other things shall provide for the period within which to cast the votes, the platform to be utilised for e-voting, directions as to the completion of a declaration form, and the electronic ballot; provided that -
- 46.14.1 an electronic identification system shall be developed;
- 46.14.2 legal practitioners shall be required to authenticate themselves;
- 46.14.3 the electronic ballot must exactly resemble the ballot paper referred to in rule 14.12.2;
- 46.14.4 a legal practitioner must be given an overview of all his or her choices on the electronic ballot and must be asked to confirm his or her choice before submitting the electronic ballot.
- 46.15 Upon the expiry of 21 days from the date of the notice referred to in rule 46.11, the Council shall, at a formal special meeting, tally all the votes received in writing by hand delivery, or by electronic mail, and all votes received by e-voting, in respect of each person duly nominated, and shall determine the names of the persons in favour

of whom the most such votes have been cast in order to fill the number of vacancies on the Board which are required to be filled.

46.16 Having made such a determination, the Council shall at such meeting declare such person or persons duly elected.

46.17 The Council shall within 7 days of having made such a declaration, by notice in the *Gazette*, publish the name of the person or persons so elected".

Signed at Midrand on the 24th day July 2020

MS K MATOLO-DLEPU



Chairperson: Legal Practice Council