

DIE PROKUREURSORDE VAN DIE VRYSTAAT
NUWE REËL EN WYSIGINGS VAN BESTAANDE REËL

Onderstaande nuwe reël en wysiging tot die bestaande reëls van die Prokureursorde van die Vrystaat, is deur die Prokureursorde aangeneem en na oorlegpleging van die Raad met die Regter-president van die Vrystaatse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika, deur die Hoofregter van Suid-Afrika kragtens die bepalings van artikel 74 van die Wet op Prokureurs, 1979, (Wet 53 van 1979) soos gewysig, goedgekeur.

THE LAW SOCIETY OF THE FREE STATE
NEW RULE AND AMENDMENTS TO EXISTING RULE

The under mentioned new rule and amendments to the existing rule of the Law Society of the Free State have been made by the Society and after consultation of the Council with the Judge-President of the Free State Provincial Division of the Supreme Court of South Africa, have been approved by the Chief Justice of South Africa in terms of section 74 of the Attorneys Act (Act No. 53 van of 1979), as amended.

19 DISCIPLINARY RULE

- (1)(a) Subject to the provisions of this rule, the Council and/or the Chief Executive Officer and/or the Executive Officer shall determine how often a Disciplinary Committee shall meet.
 - (b) The Council shall determine the manner in which the Chief Executive Officer, the Executive Officer and the Disciplinary Committee shall discharge their duties.
 - (c) The Council shall fill any vacancy on any Disciplinary Committee.
- (2) Subject to any limitation imposed by a resolution of the Council when assigning its duties, or any variation thereof, the Chief Executive Officer and/or the Executive Officer shall be charged with the following duties, namely:-
- (a) to consider and investigate any complaint formally made against a practitioner;
 - (b) before it investigates any complaint, to require a complainant to make his or her complaint formally in writing, and/or to verify it by affidavit;
 - (c) to require the complainant to furnish such further evidence, written or oral, documentary or otherwise as it may require for the purpose of ensuring that:-
 - (i) the complaint has been formally made; and
 - (ii) the Chief Executive Officer and/or the Executive Officer and/or the Disciplinary Committee is able to ascertain the precise nature of the complaint;
 - (d) where, in his or her opinion, a *prima facie* case of misconduct on the part of a practitioner has been made out, to furnish the practitioner with such particulars of the complaint as may be necessary to enable that practitioner to know the case he or she has to meet and to call on him or her to furnish a reply to the Chief Executive Officer and/or the Executive Officer within a stipulated time;
 - (e) to require a practitioner to verify his or her reply referred to in rule 2(d) by affidavit;
 - (f) to summarily to dismiss a complaint where he or she is of the opinion that it does not disclose a *prima facie* charge of misconduct or where a complainant has neglected to comply with the requirements of a Disciplinary Committee and/or the Chief Executive Officer and/or the Executive Officer;
 - (g) when, upon a consideration of the complaint and the practitioner's reply, he or she is of the opinion that no case of misconduct has been made out against the practitioner, to dismiss the complaint

- and to notify the Council, the complainant and the practitioner accordingly;
- (h) when he or she is of the opinion that a *prima facie* complaint has been made out against a practitioner, to refer such complaint in accordance with this rule to a Disciplinary Committee;
 - (i) to notify the Council, the complainant and the practitioner concerned of his or her finding, and when so authorised by a Disciplinary Committee of the Council, whether generally or specially in any particular case, to publicise such information concerning the finding as may be determined by the Council;
 - (j) save to the extent set forth in this rule, to preserve the confidential nature of the proceedings; and
 - (k) to do all things necessary to ensure that disciplinary proceedings are conducted justly, expeditiously and in accordance with this rule.
- (3) Subject to any limitation imposed by resolution of the Council when assigning its powers, or any variation thereof, and subject to the provisions of the Act, a Disciplinary Committee shall *mutatis mutandis* have the powers set out in sub-rule 2 hereof including the following, namely:-
- (a) to determine the information, if any, to be furnished by the Chief Executive Officer and/or the Executive Officer to a complainant; or what assistance, if any, shall be given by the Chief Executive Officer and/or the Executive Officer to a complainant who, for good cause, cannot lodge a complaint unaided;
 - (b) to investigate *mero motu* any complaint made by the Council;
 - (c) when upon the determination of a complaint, a Disciplinary Committee is of the opinion that *prima facie* the conduct of the practitioner constitutes misconduct and that a finding of guilt would warrant an application for the striking off of such practitioner from the roll, or his or her suspension from practicing, it shall not make a finding, but it shall make a recommendation to the Council and simultaneously therewith forward the record of the enquiry to the Council for such action as the Council may deem proper;
 - (d) in all cases other than those referred to in rule 3(c), to make a recommendation to the Council to impose such punishment as it deems fit and where after the Chief Executive Officer and/or the Executive Officer will cause it to be carried into effect;
 - (e) when, upon a consideration of the complaint and the practitioner's reply, a Disciplinary Committee is satisfied that the complaint discloses a *prima facie* case of misconduct on the part of the practitioner, a Disciplinary Committee may:-
 - (aa) determine the matter summarily without a hearing and impose a punishment; provided that at the same time as it

- notifies the practitioner in writing of the imposition of such punishment, it shall afford the practitioner the opportunity of demanding within a stipulated time, an enquiry to be conducted in terms of this rule instead of submitting to such summary punishment; or
- (bb) decide to hold a summary enquiry, or a formal enquiry in the manner hereinafter set forth in this rule in which event it may appoint an attorney (other than from amongst the members of the Council) or an advocate to present the case on behalf of the complainant, at the expense of the Society;
- (f) save in a case contemplated by in sub-rule 3, upon the summary determination of a complaint, or at the conclusion of a summary enquiry or the conclusion of a formal enquiry, to find the practitioner:-
- (i) not guilty; or
- (ii) (a) guilty of unprofessional conduct; or
(b) guilty of dishonourable conduct; or
(c) guilty of unworthy conduct; or
(d) guilty of any one or more of the above;
- (g) if at the conclusion of an enquiry, a Disciplinary Committee is of the opinion that the case is one which is contemplated by the provisions of rule 3(c), it shall not make any finding but it shall refer the matter to the Council for such action as the Council may deem proper; and
- (h) to dispense with any requirements of this rule respecting summonses, notices, affidavits, documents, service or time, in any case where it appears to be just so to do; and/or extend the time for doing anything under this rule.
- (4)(a) Whenever a Disciplinary Committee decides in terms of rule (3)(e)(bb) to hold a summary enquiry or a formal enquiry, such enquiry shall be commenced by serving on the practitioner concerned a summons substantially in the form of Schedule A, requiring the attendance of the practitioner.
- (b) When holding an enquiry not likely to result in a recommendation that a practitioner be struck off the roll or suspended from practice, a Disciplinary Committee, may, either before or at the commencement of the hearing, offer the practitioner the choice of a summary or formal enquiry.
- (c) The practitioner's choice in terms of rule 4(b) shall then be recorded; provided that in the event of the practitioner neglecting or refusing to make such choice, he or she shall be deemed to have rejected the offer of summary enquiry.