

## Memorandum

### National Forum on the Legal Profession

#### Candidate Attorneys currently serving under Articles of Clerkship

#### 1. Introduction

- 1.1 The National Forum is a transitional body established in terms of chapter 10 of the Legal Practice Act 28, of 2014 (the Act). It has been charged with various responsibilities, which include the making of recommendations to the Minister on a number of issues, the preparation and publication of a code of conduct for legal practitioners, candidate legal practitioners and juristic entities, and the making and publication of rules in terms of certain sections of the Act. Some of these functions are complete and others are on the point of being completed.
- 1.2 The National Forum has received enquiries from a number of individuals who are currently serving under articles of clerkship and who seek guidance on what their position will be after section 120(4) of the Act comes into force. On that date the provincial law societies will be dissolved and the Legal Practice Council (the Council), established in terms of section 4 of the Act, will assume jurisdiction over all legal practitioners and candidate legal practitioners. That date is expected to be 31 October 2018 (the transition date).
- 1.3 All persons who have been admitted and enrolled as attorneys on the transition date will have been admitted and enrolled in terms of the provisions of the Attorneys Act, 1979. In terms of section 114(1) of the Act, any person who has been admitted and authorised to be enrolled as an attorney in terms of the Attorneys Act must be regarded as having been admitted to practice, and must be enrolled, as a legal practitioner in terms of the Act.
- 1.4 At the transition date there will be a number of candidate attorneys who will be at various stages of their training under articles. This memorandum seeks to provide guidance to those individuals in planning their careers as attorneys. It cannot cover all circumstances but it is intended to deal with as many situations as possible.
- 1.5 **Cautionary Note:** The rules to be made in terms of section 95(1) and 109(2) of the Act are for practical purposes complete and will be published shortly: accordingly,

references to the rules can be accepted as being correct. However, the regulations to be made in terms of section 109(1) read with section 97(1) of the Act must also be approved by Parliament before they can be promulgated. If necessary, these guidelines will be updated to take account of any material changes in the regulations.

## **2. Qualification requirements for admission**

In terms of section 26(1) of the Act a person qualifies to be admitted and enrolled as a legal practitioner if he or she complies with prescribed requirements relating to his or her qualifications:

### **2.1 Academic qualifications**

The applicant must have satisfied all the requirements of an LLB degree or an equivalent law degree (section 26(1)(a) and (b)).

### **2.2 Practical vocational training (PVT)**

The applicant must have undergone all PVT requirements prescribed by the Minister (section 26(1)(c)).

### **2.3 Competency-based examination**

The applicant must have passed a competency-based examination (section 26(1)(d)).

Each of these requirements will be dealt with separately below.

## **3. LLB degree or equivalent law degree**

3.1 In terms of section 26(1)(a) a person wishing to be admitted as an attorney must have satisfied all the requirements for an LLB degree obtained at a university registered in the Republic, after pursuing a course of study for that degree of not less than four (and in certain circumstances, five) years.

3.2 Section 26(1)(b) makes provision for a degree obtained in a foreign country which is the equivalent of the LLB degree and which is recognised as such by SAQA. As far as the National Forum is aware no foreign law degree has received recognition.

3.3 After the transition date no degree other than an LLB degree, as described above, will entitle a person to admission. It is also important to note the specific

requirements for the LLB degree, namely, that is must have been obtained at a university registered in South Africa, and that the applicant must have pursued that degree for the prescribed periods.

#### 4. **Practical vocational training**

In terms of section 26(1)(c) the applicant must have undergone all practical vocational training requirements as a candidate attorney which have been prescribed by the Minister. There are a number of issues to be considered under this heading.

##### 4.1 **PVT contract**

4.1.1 Regulation 6 of the draft regulations in terms of section 109(1) sets out the PVT requirements that candidate attorneys must comply with before they can be admitted as attorneys. These are the following:

4.1.1.1 any person intending to be admitted and enrolled as an attorney must, after having satisfied all the requirements for the degree referred to in paragraph 3,

(a) serve under a PVT contract with a person as prescribed in regulation 6(5) for an uninterrupted period of 24 months; and

(b) during the service under the PVT contract, or within a period of not longer than 12 months after termination of the PVT contract, complete the programme of structured course work of not less than 150 notional hours referred to in paragraph 4.2.1; or

4.1.1.2 as alternative to the 24 months' service under a PVT contract, referred to in paragraph 4.1.1.1, a person intending to be admitted and enrolled as an attorney may, after having satisfied the requirements of the degree, serve under a PVT contract for an uninterrupted period of 12 months if, prior to (but not during or after the PVT contract) he or she has completed a programme of structured course work of not less than 400 notional hours duration referred to in paragraph 4.2.2.

4.1.2 A person who has entered into a PVT contract for 24 months may, after having served a period of 12 months, under that contract, apply for admission and enrolment as an attorney if, during the course of that period of 12 months but outside of normal working hours, he or she has completed a programme of

structured course work, comprising compulsory modules, of not less than 400 notional hours duration in the aggregate.

4.1.3 Any period of PVT undergone by a candidate attorney under articles of clerkship before the transition date will be regarded as having been a period of PVT under supervision of a legal practitioner in terms of the Act (see section 112(1)(b) of the Act).

#### 4.2 **Structured course work**

4.2.1 A candidate attorney serving under a PVT contract for a period of 24 months will be required, during service under that contract, or within a period of no longer than 12 months after termination of the contract, complete a programme of structured course work of not less than 150 notional hours, as prescribed in regulation 6(10). That course is the equivalent of the 5 week course justly presented by LEAD. If the course has not been completed satisfactorily within 36 months from the date of registration of the PVT contract the candidate attorney will be required to repeat the course work programme.

4.2.2 A person who has entered into a PVT contract for a period of 12 months must, prior to registration of that contract, have completed a programme of structured course work, comprising compulsory modules, of not less than 400 notional hours duration in the aggregate over a period of no longer than six months. The course must comprise the modules prescribed in regulation 6(11).

4.2.3 A person who has entered into a PVT contract for 24 months may, after having served 12 under that contract, apply for admission and enrolment as an attorney if, during that period of 12 months, but outside of normal working hours, he or she has completed the programme structured course work of 400 notional hours referred to in paragraph 4.2.2.

4.2.4 In terms of regulation 6(3), attendance at any training course presented at a practical legal training school of the Law Society of South Africa (LSSA) for purposes of the Attorneys Act, for which the candidate attorney had registered before the transition date and in respect of which the required attendance was completed within twelve months after that date, will be regarded for purposes of the regulations as compliance with the requirement of regulations 6(1)(a) and 6(1)(b).

### 4.3 **Community service**

In terms of section 26(1)(c)(i) an applicant for admission as an attorney must have satisfied the requirements of community service, as contemplated in section 29, prescribed by the Minister. No requirements for community service have as yet been prescribed, and therefore community service is not yet a requirement for admission.

### 4.4 **Legal practice management course**

4.4.1 In terms of section 26(1)(c)(ii) a person wishing to be admitted as an attorney or as a trust account advocate must have completed a legal practice management course prescribed by the Minister. That course is for candidate legal practitioners only.

4.4.2 Until the Minister has prescribed the requirements of the legal practice management course, the requirement to complete the course is not necessary for admission.

4.4.3 In terms of section 85(1)(b) of the Act every legal practitioner who is obliged to be in possession of a Fidelity Fund certificate and who, for the first time, practises as such must, within the period and after payment of fees determined by the Council in the rules, complete a legal practice management course approved by the Council determined in the rules. Rule 27 of the rules sets out the requirements of the legal practice management course, which must be completed within one year after the date on which the legal practitioner was required for the first time to be in possession of a Fidelity Fund certificate, or within such further period as may be determined by the Council in any specific case.

4.4.4 It should be noted that the practice management course referred to in section 26(1)(c)(ii) is a different legal practice management course from that referred to in rule 27: the former is for candidate legal practitioners, while the latter is for legal practitioners.

4.4.5 In consequence, if a candidate legal practitioner completes the course prescribed by the Minister in terms of section 26(1)(c)(ii) (if and when it is prescribed) that will not assist him or her for purposes of section 85(1)(b): he or she will still be required to complete the legal practice management course approved by the Council in terms of rule 27.

#### 4.5 **Competency-based examination**

4.5.1 In terms of section 26(1)(d) an applicant for admission must have passed a competency-based examination or assessment as determined in the rules.

4.5.2 Rule 21 deals with the competency-based examination or assessment. The Act does not deal specifically with examinations passed in terms of the Attorneys Act, but provision is made in rule 21.3 for the recognition of practical examinations which are provided for in section 14 of the Attorneys Act.

4.5.3 Rule 21.4 provides for candidate attorneys who, before the transition date, have passed some parts of the practical examinations provided for in the Attorneys Act, but not all parts, to complete the parts not yet passed within the period of three years after that date. Candidate attorneys who fall into that category will therefore have three years to complete the attorneys admission examinations (which will continue to be presented for three years), and will not be required to sit for examinations under the Act.

5. This memorandum does not constitute legal advice and may not be relied upon in any application for admission by a candidate attorney. It is intended as guidance only, and applicants for admission as attorneys must seek independent legal advice.

\*This memorandum was approved by the National Forum's Rules Review Committee on 9 June 2018.