

Legal Practitioners (Code of Conduct) By-laws, 2018

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 63 of the Legal Practitioners Act [*Chapter 27:07*], approved the by-laws set out in the Schedule, which were adopted by a majority of members present at a general meeting of the Law Society of Zimbabwe.

SCHEDULE

LEGAL PRACTITIONERS (CODE OF CONDUCT) BY-LAWS, 2018

PREAMBLE

WHEREAS section 23 of the Act prescribes certain acts and omissions which constitute unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner in the course of his or her practice as such or as a notary public or conveyancer;

AND WHEREAS the said section provides that the said prescription shall not preclude the Society from prescribing by-laws, further acts which shall constitute such unprofessional, dishonourable or unworthy conduct;

AND WHEREAS section 63(2)(k) of the Act provides that by-laws may be made by the Society if adopted by a majority of members present personally or by proxy at a General Meeting of the Society, defining acts which constitute unprofessional, dishonourable or unworthy conduct on the part of legal practitioners;

AND WHEREAS the Council resolved on the 2nd of December, 2013, to prescribe further acts and omissions which will constitute unprofessional, dishonourable and unworthy conduct, to consolidate these with the acts and omissions contained in section 23 of the Act in order to produce a comprehensive code and convert such code into by-laws:

NOW, THEREFORE, it is provided that unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, a notary public or a conveyancer shall include, but not to be limited to, any of the following acts or omissions—

Title

1. These by-laws may be cited as the Legal Practitioners (Code of Conduct) By-laws, 2018.

Interpretation

2. In this code —

“Act” means the Legal Practitioners Act [*Chapter 27:07*];

“by-laws” means the by-laws made by the Society in terms of section 63 of the Act and contained in Statutory Instrument 314 of 1982, together with any further by-laws which are published by the Minister in a statutory instrument;

“client” means a person who avails himself or herself of the services of a legal practitioner, notary public or conveyancer and whose mandate has been accepted by such legal practitioner, notary public or conveyancer;

“code” means this code of conduct;

“complaint” means an allegation by any person or the Council of unprofessional, dishonourable or unworthy conduct on the part of a legal practitioner, notary public or conveyancer;

“compensation Fund” means the Law Society Compensation Fund which is referred to in section sixty-four of the Act;

“conveyancer” means an individual whose name appears as such in the Register of Legal Practitioners, Notaries Public and Conveyancers which is kept in terms of section 3 of the Act;

“council” means the Council of the Law Society of Zimbabwe as constituted in terms of section 44 of the Act;

“court” means any court or tribunal of competent civil or criminal jurisdiction and an arbitration, conciliation or disciplinary authority before whom a legal practitioner appears, or may appear, as a legal practitioner;

“criminal offence” means any criminal offence which is committed either within or outside Zimbabwe and which constitutes an offence in terms of the laws of Zimbabwe;

“disciplinary Tribunal” means the Disciplinary Tribunal which is established in terms of section 24 of the Act;

“instructions” means instructions or directions in any form, including a brief, which are given to a legal practitioner.

notary public or conveyancer for the performance of his or her services in his or her capacity as such, whether in a contentious or non-contentious matter, and "instructed" shall be construed accordingly;

"legal practitioner" means an individual whose name appears as such in the Register of Legal Practitioners, Notaries Public or Conveyancers which is established in terms of section 3 of the Act;

"legal services" includes the legal advice to and the legal frame work performed for a client by a legal practitioner;

"notary Public" means an individual whose name appears as such in the Register of Legal Practitioners, Notaries Public and Conveyancers which is established in terms of section 3 of the Act;

"practising certificate" means any practising certificate which is issued in terms of section 75 of the Act and includes a limited practising certificate;

"register" means the Register of Legal Practitioners, Notaries Public and Conveyancers, as referred to in section 3 of the Act;

"registered legal practitioner" means a legal practitioner whose name has been entered in the register;

"Regulations" means regulations made by the Minister in terms of section 87 of the Act;

"serious criminal offence" means an offence involving dishonesty, deception, violence or force for which upon conviction the sentence may be one of imprisonment without the option of a fine.

"society" means the Law Society of Zimbabwe referred to in section 51 of the Act.

3. Unprofessional, dishonourable or unworthy conduct

- (1) Touting, subject to such guidelines as are duly published by the Council from time to time.
- (2) Advertising, subject to such guidelines as are duly published by the Council from time to time.

- (3) Engaging in or allowing publicity of his or her practice or firm in disregard of such guidelines as are duly published by the Council from time to time.
- (4) In the case of a legal practitioner, notary public or conveyancer who also carries on the business of an auctioneer, referring to or mentioning any of his or her professional qualifications on his or her advertisements in respect of such business.
- (5) Allowing his or her name, either with or without any of his or her qualifications as a legal practitioner, notary public or conveyancer, to appear by way of advertisement, notification or information upon any business letterheads, account or other documents whatsoever in conjunction with the name of an unregistered person and in such a manner as to convey, or be likely to convey, the impression that he or she is associated in the legal profession with that person.
- (6) Contravening any provision of the Act or any regulations made thereunder.
- (7) Withholding the payment of trust money without lawful cause.
- (8) Handling any money, securities or other assets received for a client or in the course of his or her practice dishonestly, negligently or in a manner other than is required by law regarding the handling thereof.
- (9) Failing or neglecting to protect a client's money, securities or assets where such protection could reasonably have been expected.
- (10) Intermingling his or her funds with those of any of his or her clients.
- (11) Champerty, subject to the provisions of Part IVA of the Act and any regulations made thereunder.
- (12) In any way assisting, allowing or enabling an unregistered person to charge, recover or receive any fee or derive any remuneration or benefit in respect of or in connection with the preparation or execution of any document or the performance of any professional work which only a registered legal practitioner,

notary public or conveyance, as the case may be, is qualified by law to prepare, execute or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever in terms of which any such fee, remuneration or benefit shall be charged, recovered or received by any such unregistered person.

- (13) being party to any contract or arrangement with an unregistered person, the direct or indirect result of which is either to enable that person to receive any fees due to the legal practitioner, notary public or conveyancer or other remuneration for the services provided by him or her in such capacity, or to secure for the legal practitioner, notary public or conveyancer the benefit of professional business solicited, facilitated or recommended by the unregistered person.
- (14) Remunerating an employee who is an unregistered person by way of a share in the profits of his or her practice or firm.
- (15) Assisting any unregistered person to recover that person's charges for services rendered, by including such charges in any bill of costs or account of charges rendered by him or her without fully disclosing this in such bill or account.
- (16) Being party to any contract or arrangement with an unregistered person, the effect of which is to place the legal practitioner under such control on the part of that person as may interfere with his or her professional independence.
- (17) Being party to any contract or arrangement with any person which would or might preclude the Society from investigating any actual or potential unprofessional, dishonourable or unworthy conduct.
- (18) Keeping the accounts of his or her practice or firm in or as part of the books of account utilised in connection with any business in which he or she may be interested jointly with an unregistered person.
- (19) Opening or maintaining any office or branch of his or her practice or firm which is not under the continuous personal supervision of a registered legal practitioner.

- (20) Engaging in conduct that is likely either to diminish public confidence in the legal profession and or the administration of justice or to bring the legal profession into disrepute.
- (21) Failing or neglecting to act with integrity, whether in the course of his or her practice or otherwise.
- (22) Allowing his or her professional independence to be compromised.
- (23) Failing or neglecting to treat professional colleagues with courtesy, respect and fairness.
- (24) Knowingly supplying false information to the Council
- (25) Failing or neglecting to report promptly to the Council if—
 - (a) he or she is charged with a serious criminal offence;
 - (b) he or she is convicted of any serious criminal offence and is sentenced to imprisonment without the option of a fine; or
 - (c) he or she is convicted of a disciplinary offence by another professional body.
- (26) Failing or neglecting to report promptly to the Council if—
 - (a) insolvency proceedings are initiated against him or her;
 - (b) director's qualification proceedings are initiated against him or her;
 - (c) an insolvency order or director's disqualification order is made against him or her; or
 - (d) he or she enters into an individual voluntary arrangement with his or her own creditors.
- (27) Failing or neglecting to comply with guidelines duly issued by the Council regarding—
 - (a) the administration of practices or firms;
 - (b) professional development and training;
 - (c) creating a complaints procedure which is available to any client on request dealing with complaints.
- (28) Failing or neglecting to ensure that—

- (a) his or her practice of firm is efficiently and properly administered, including in relation to due payment for practising certificates and other lawfully-imposed fees and levies, having regard to the nature of his or her practice;
 - (b) proper records and books of account are kept in relation to his or her practice or firm;
 - (c) he or she promptly furnishes any comments, reports or documents in relation to his or her practice or firm which the Council or the Compensation Fund may require;
 - (d) the Council or any agent appointed by it may inspect forthwith and at any time which is reasonable, having regard to the circumstances and the urgency of the matter, any premises from which he or she, she or any associate practices or is believed to practice, the arrangements made for administering his or her practice or her practice or firm and any records relating to such practice or to the administration of his or her firm or practice.
- (29) Failing or neglecting to ensure that he or she has a valid practising certificate at all material times.
- (30) Failing or neglecting as either the sole practitioner or a partner of his or her practice or firm to ensure that the affairs of his or her practice or firm are administered competently and efficiently and that the practice or firm is appropriately staffed, resourced and equipped.
- (31) Failing or neglecting as either the sole practitioner or a partner of his or her practice or firm to ensure that proper arrangements are made for the training of any persons serving pupillage in his or her practice of firm.
- (32) Failing or neglecting to run his or her practice or firm or to carry out his or her role in such practice or firm in a way that encourages both equality of opportunity, regardless of race, ethnic origin, gender or physical disability, and respect for diversity.

- (33) Accepting instructions in a manner in which he or she becomes professionally embarrassed, for example—
- (a) if, having regard to his or her other professional commitments, he or she will be unable to perform the services required or will not have adequate time and opportunity to prepare for and provide for such services;
 - (b) if his or her instructions seek to limit his or her ordinary authority or discretion in the conduct of proceedings in Court or to require him or her to act otherwise than in conformity with law or with the provisions of this code;
 - (c) if the matter is one in which he or she has reason to believe that he or she is likely to be a witness or in which, whether by reason of any connection with the client, the Court, a member of the Court or otherwise, it will be difficult for him or her to maintain his or her professional independence or in which the administration of justice might be or appear to be prejudiced;
 - (d) if there is, or appears to be a conflict either between the interests of the legal practitioner and his or her client or between the interests of any two or more of his or her clients, unless consent is given by the client or clients to his or her accepting the instructions;
 - (e) if there is a risk which is or should reasonably be appreciated by the legal practitioner that information which is confidential to a client or former client may be communicated or used for the benefit of anyone other than that client or former client which may be used for the benefit of anyone other than that client or former client without his or her consent;
- (34) Failing or neglecting—
- (a) to give a client a candid opinion in relation to the client's matter.
 - (b) to keep a client reasonably informed about the status of the client's matter.

- (c) to comply promptly with a client's reasonably necessary to permit the client to make informed decisions.
- (35) Failing or neglecting to treat a client fairly or to take reasonable steps to preserve or protect a client's best interests.
- (36) Acting for a client when instructions are given by someone else or acting for two or more clients when instructions are given by only one of them, unless he or she is satisfied that the person providing the instructions has the proper authority.
- (37) Acting for a client when there are reasonable grounds for believing that the instructions are affected by incapacity, duress or undue influence, without satisfying himself or herself that the instructions in fact represent the client's true wishes.
- (38) Pitching an estimated or fixed fee or charge without making it clear that an additional fee or charge may be payable, if that is the case.
- (39) Pitching as estimated fee at an unrealistically low level and subsequently charging a substantially higher fee.
- (40) Charging a fee which is materially in excess of that which would be fair and reasonable in respect of the services performed.
- (41) Failing or neglecting to pay timeously and in full any fee or disbursement due by him or her to a correspondent or instructing legal practitioner.
- (42) Failing or neglecting to properly account to a client for any financial benefit that he or she receives as a result of providing his or her services to or on behalf of such client.
- (43) Disclosing details of an account sent to a client to third party (such as debt factoring company in relation to the collection of book debts), without the consent of the client.
- (44) Failing to observe the principle of confidentiality, whether or not the relationship of the legal practitioner with his or her client is still in existence.
- (45) Advising a client to invest in a business in which he or she has an interest, where his or her ability to provide impartial advice is affected.

- (46) If he or she holds a power of attorney for client, using that power to gain a benefit for himself or herself when, if acting in his or her professional capacity, he or she would not have been prepared to allow that benefit to a third party.
- (47) Representing conflicting interests in litigation matters or representing conflicting interests in non-litigation matters without first declaring the position to all interested parties and obtaining their consent.
- (48) Ceasing to act for a client or renouncing agency on behalf of a client without good cause and without having first explained to the client his or her reasons, or ceasing to act or renouncing agency in such a manner as to cause undue and unexpected prejudice to the client, due regard being had to such prejudice as would otherwise be caused to the legal practitioner.
- (49) Returning a brief which he or she has accepted and for which a fixed date has been obtained or breaking any other engagement to supply legal services in order to enable him or her to attend or fulfil another engagement of any kind, except with the consent of the client or other justifiable excuse (in which event the client shall be notified as soon as possible).
- (50) Drafting any statement, affidavit, notice of appeal or other document which contains—
 - (a) any statement of fact or contention which is not supported by the maker thereof or the instructions of his or her client;
 - (b) any allegation of dishonesty unless he or she has clear instructions to make such allegation or has before him or her reasonably credible material which as it stands establishes a *prima facie* case of fraud;
 - (c) in the case of a witness statement or affidavit, any statement of fact other than the evidence which, in substance and according to his or her instructions, he or she reasonably believes the witness would make if the evidence contained in the statement or affidavit were being given orally; but nothing in this paragraph shall prevent a legal practitioner; notary public or conveyancer from drafting a document

containing specific factual statements or contentions which are included on the basis that their accuracy is subject to confirmation by the maker of the statement or affidavit.

- (51) Encouraging a witness, including his or her client, to give evidence which is untruthful or which is not the whole truth.
- (52) Communicating about anything relating to a case on trial with a witness, whether or not the witness is that of his or her client, after the witness has begun to give evidence and before the witness's evidence has been concluded, without the consent of the Court or the opposing party.
- (53) Communicating about anything relating to a case on trial, dispute or any other matter with the opposing party, without the consent of that party's legal practitioner.
- (54) Such other acts or omissions, not being specified above or in subsequent by-laws, as may in the discretion of the Council, a Disciplinary Tribunal or a Court be determined to constitute unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, notary public or conveyancer.

