Reproduced by Data Dynamics under Government Printers' Copyright Authority 9294 dated 24 September 1991

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

LEGAL PRACTICE COUNCIL

NOTICE 4256 OF 2026

NATIONAL OFFICE
Building 10
Riverview Office Park
100 River View Park Street
Halfway Gardens
Midrand 1686

Tel: 010 001 8500

THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

NOTICE IN TERMS OF SECTION 95(1) & (4) OF THE LEGAL PRACTICE ACT, 28 OF 2014

PROPOSED AMENDMENT OF THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL RULES: INSERTION OF RULES 47.7.3 AND 54.37 (MANDATORY SUCCESSION PLANNING: DESIGNATION OF AN ALTERNATIVE LEGAL PRACTITIONER)

Notice is hereby given that the Council intends to amend the South African Legal Practice Council Rules in terms of sections 95(1)(zK) read with section 85(1)(a) of the Legal Practice Act, 28 of 2014 (as amended) and by the insertion of a new heading and a new rule 54.37 in rule 54 (Accounting Rules) of Part XII of the Rules in the following respects:

Explanatory Note

The proposed amendments introduce a mandatory succession planning framework for legal practitioners who conduct a trust account practice for their own account without partners or co-directors, namely attorneys practising as sole proprietors, attorneys who are the sole directors of juristic entities, and advocates referred to in section 34(2)(b) of the Act. Such practitioners will be required to designate, and to keep current, one or more alternative legal practitioners who will receive the current and archived files of the practice for safekeeping and transition management in the event of the death or permanent incapacity of the designating practitioner.

Corresponding amendments to the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities, namely the insertion of paragraphs 18.23 and 46.6 requiring a succession clause in every written mandate, fee agreement or letter of engagement concluded by such legal practitioners, are published for comment in a separate notice in terms of section 36 of the Act.

Words in bold type in square brackets **[ ]** indicate proposed deletions from the existing Rule.

Words in italics and underlined with a solid line indicate proposed insertions to the existing Rule.

Executive Committee: Adv Pule Seleka (SC) – Chairperson, Dr Llewelyn Curlewis - Deputy Chairperson, Adv Craig Watt-Pringle (SC), Mr Martus De Wet, Ms Nonduduzo Khanyile, Mr Sello Phajane, Adv. Matshoge Chabedi (SC), Acting Executive Officer: Ms. Pearl Arnold Mfusi

Reproduced by Data Dynamics under Government Printers' Copyright Authority 9294 dated 24 September 1991

Proposed amendment to rule 47 (Application for Fidelity Fund certificates) of the Legal Practice Council Rules: insertion of rule 47.7.3 and consequential amendment of rule 47.7.2

47.7 Every such application shall be accompanied by-

47.7.2 in the case of a legal practitioner other than one referred to in rule 47.7.1, the certificate of an auditor in respect of an audit of his or her trust accounts that had been performed for the year ended immediately prior to the application**[.]**; *and*

47.7.3 in the case of an attorney who practises for his or her own account as a sole proprietor, an attorney who is the sole director of a juristic entity, or an advocate referred to in section 34(2)(b) of the Act, a prescribed declaration confirming the designation and written acceptance of an alternative legal practitioner in accordance with the mandatory succession planning requirements set out in rule 54.37.

Proposed amendment to rule 54 (Accounting Rules) of the Legal Practice Council Rules: insertion of a new heading and a new rule 54.37 after rule 54.36

54.37 Death or permanent incapacity of a sole practitioner

54.37.1 Every attorney practising for his or her own account as a sole proprietor, every attorney who is the sole director of a juristic entity, and every advocate referred to in section 34(2)(b) of the Act, shall continuously maintain a valid succession plan for the firm and shall lodge it with the Provincial Council having jurisdiction, in the form prescribed by the Council from time to time. The legal practitioner shall ensure that the designation remains valid and current at all times and shall update the succession plan forthwith should a designated alternative legal practitioner die, cease to practise, no longer meet a requirement of rule 54.37.3, or otherwise become unavailable or unable to act.

54.37.2 For the purposes of compliance with rule 54.37.1, the legal practitioner shall nominate and designate one or more alternative legal practitioners who shall act in the event of the death or permanent incapacity of the designating legal practitioner. For the purpose of this rule, permanent incapacity is established by an order of court declaring the designating legal practitioner incapable of managing his or her affairs, or by the written opinion of two medical practitioners registered with the Health Professions Council of South Africa that the designating legal practitioner is, and is likely to remain, unable to conduct a legal practice. Where the designating legal practitioner conducts more than one category of legal work, a separate alternative legal practitioner may be designated in respect of each category of work.

54.37.3 Each designated alternative legal practitioner shall, both at the date of designation and at the date of the death or permanent incapacity of the designating legal practitioner-

54.37.3.1 be duly admitted and enrolled as a legal practitioner and practise in the same branch of the profession as the designating legal practitioner;

54.37.3.2 be in possession of a valid Fidelity Fund certificate;

54.37.3.3 conduct a firm located within the jurisdictional area of the same Provincial Council as the designating legal practitioner, unless the Council, on good cause shown, directs otherwise;

54.37.3.4 be in good standing as contemplated in rule 1.20;

Reproduced by Data Dynamics under Government Printers' Copyright Authority 9294 dated 24 September 1991

54.37.3.5 where the designation covers conveyancing or notarial work, be enrolled as a conveyancer or a notary, as the case may be; and

54.37.3.6 formally accept the contingency appointment in writing, in the form prescribed by the Council from time to time.

54.37.4 The written acceptance by the alternative legal practitioner shall contain an explicit acknowledgement and confirmation that-

54.37.4.1 the mandate to act is dormant and is triggered only upon the death or permanent incapacity of the designating legal practitioner;

54.37.4.2 the succession plan does not affect the appointment of a curator bonis in terms of section 90 of the Act;

54.37.4.3 upon the death or permanent incapacity of the designating legal practitioner the alternative legal practitioner does not become the legal representative of that practitioner's clients but receives the clients' files for safekeeping and may take only the steps contemplated in rule 54.37.6 until a client gives a new mandate. Every client thus retains the right to instruct a legal practitioner of the client's choice;

54.37.4.4 the alternative legal practitioner will bear no liability for any prior acts, omissions, or trust account deficits of the designating legal practitioner;

54.37.4.5 trust monies belonging to clients will not be transferred to the alternative legal practitioner automatically, but only upon the submission and approval of a formal claim to the appointed curator bonis; and

54.37.4.6 the alternative legal practitioner will receive and retain custody of the current files and archived files of the firm, in both physical and electronic form, and will be responsible for their safe custody and for the duty of confidentiality and legal professional privilege attaching to them, until they are delivered to the client or to another legal practitioner or are lawfully disposed of.

54.37.5 Where a legal practitioner referred to in rule 54.37.1 dies or becomes permanently incapacitated, the Council shall apply to the High Court for the appointment of a curator bonis in terms of section 90 of the Act, and shall in that application request the court to confer on the curator bonis the power to-

54.37.5.1 secure and assume exclusive control of the trust banking accounts of the firm;

54.37.5.2 conduct trust reconciliations and identify trust creditors;

54.37.5.3 preserve the accounting records of the firm;

and, where a valid succession plan is in place, the Council shall further request the court to direct that-

54.37.5.4 the curator bonis notify each client, from the records of the firm, of the death or permanent incapacity, of the identity and practice particulars of the alternative legal practitioner, and of the client's right to instruct a legal practitioner of the client's choice;

54.37.5.5 the current files and archived files of the firm, in both physical and electronic form, be delivered directly to the alternative legal practitioner under the supervision of the curator bonis, and that

Reproduced by Data Dynamics under Government Printers' Copyright Authority 9294 dated 24 September 1991

such files do not vest in, and need not be taken into the possession or storage of, the curator bonis; and

54.37.5.6 *the curator bonis administer, verify, and pay claims for the transfer of trust funds lodged by the alternative legal practitioner on behalf of clients in terms of rule 54.37.7.*

54.37.6 *Where, upon the death or permanent incapacity of the designating legal practitioner, the file of a client has been delivered to the alternative legal practitioner, the alternative legal practitioner-*

54.37.6.1 *assumes responsibility for the safe custody of the file;*

54.37.6.2 *may, pending the giving of a new mandate by the client, take such steps as are reasonably necessary to preserve the rights and interests of the client and to prevent prejudice to the client, including the service of process to interrupt prescription and compliance with any time limit which is about to expire;*

54.37.6.3 *shall, within 30 days after delivery of the file, inform the client in writing of his or her identity and practice particulars, of any step taken in terms of rule 54.37.6.2 and of the status of the matter, of the client's right to instruct a legal practitioner of the client's choice, and of the manner in which the client may obtain delivery of the file;*

54.37.6.4 *shall inform the client of any further steps taken in terms of rule 54.37.6.2 at the earliest opportunity;*

54.37.6.5 *may not take any step in terms of rule 54.37.6.2 where he or she would be conflicted from acting for the client, in which event he or she shall forthwith notify the client and the curator bonis and deliver the file as the client directs; and*

54.37.6.6 *shall, where the client instructs another legal practitioner, deliver the file as the client directs, subject to any valid lien, and shall, where the client gives no new mandate, retain the file in safe custody and report the position to the Provincial Council, which may direct how that file is to be dealt with.*

54.37.7 *Where a client elects to provide a new mandate to the alternative legal practitioner, the alternative legal practitioner shall lodge a formal claim with the curator bonis for the transfer of that specific client's trust funds. The claim shall be submitted in the prescribed format and shall include-*

54.37.7.1 *a copy of the new written mandate signed by the client;*

54.37.7.2 *a confirmatory affidavit from the alternative legal practitioner detailing the particulars of the claim; and*

54.37.7.3 *bank confirmation details of the receiving trust account of the alternative legal practitioner.*

54.37.8 *Upon receipt of a claim in terms of rule 54.37.7, the curator bonis shall individually verify the balance due to the specific claimant and confirm the absence of any competing claims. The curator bonis shall transfer the verified amount in respect of each client individually, and no bulk transfer is permissible.*

54.37.9 *The auditor or inspector appointed in terms of rule 54.20 shall, as part of the annual audit process, verify the existence of a valid, signed acceptance by the alternative legal practitioner and report on such compliance in the report furnished to the Council in terms of rule 54.24.1.*

Reproduced by Data Dynamics under Government Printers' Copyright Authority 9294 dated 24 September 1991

54.37.10 *In the event of non-compliance with rule 54.37, or where a legal practitioner referred to in rule 54.37.1 dies or becomes permanently incapacitated and no valid succession plan is in place, or if at any time the Council has reason to believe that adequate provision has not been made for the safe custody of client files or for the protection of the interests of clients' affairs, the Council may take such steps as it deems necessary, subject to the Council being entitled to recover the reasonable expenses incurred and reasonable compensation for work done in connection therewith from the legal practitioner concerned or from his or her estate.*

In terms of section 95(4)(a) of the Act, legal practitioners and any other interested persons are hereby invited to submit comment to the Council in writing on the proposed amendments.

Please note that all comments must be sent by email to rules@lpc.org.za by no later than **14 December 2026**.

Signed at **Midrand** on **26 October 2026**.

ADV PG SELEKA SC
Chairperson: Legal Practice Council