ALLIS ATTORNEYS

62 2nd Street Orange Grove, Johannesburg
P O Box 87591, Houghton, 2041

Tel: (011) 483 2275 // Fax: (011) 483 0749
F-M: 086 527 4819 Cell Phone 082 775 6554.
E-mail:allisattorneys@gmail.com

MASTER OF THE HIGH COURT

LIQUIDATORS OF MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)

Dear Sirs

RE: **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

We act on behalf of Adv Hendrik van Staden, in his capacity as the nominated party who holds the power of substitution for over 2000 creditors and he is their duly appointed agent to represent creditors/investors in MTI.

This is a fact of which the liquidators are aware since they prepared a schedule which was submitted to the office of the Master.

THE SECOND MEETING OF CREDITORS

Since the sharp increase in positive Covid cases in the Republic of South Africa, it is requested that the second meeting of Creditors be held virtually on 10 December 2021.

IAN ALLIS – DIRECTOR
BCOM LLB - WITS

It is also requested that the link to the meeting be distributed to the creditors so as to enable them to attend.

It is a point of concern, that despite the instructions from the Master for the First Meeting of Creditors, the liquidator who organized such a meeting failed to share the link for the meeting with the creditors/investors of MTI

This glaring omission took place, despite the fact they they do have the email addresses of investors/creditors in MTI which is held on the server copy in their possession.

THE BACK OFFICE

It is very concerning that despite the fact that the liquidators do have the Back Office or a copy thereof in their possession, which contains the transactions with MTI between the creditor/investor and MTI, they failed to make the details available.

The information contained on the server or the copy thereof is of the utmost importance for creditors to successfully complete their claims, as many creditors/investors do not have proof anymore of transactions done with MTI.

Access to the server is thus of the utmost importance.

The liquidators failed to pursue this action in the best interest of creditors/investors , which is within their means. It must also be taken into account that despite a telephone number being made available for investors to phone, in order to complete their claims, same cannot be utilised as many investors are in foreign countries worldwide as well as many people are not fluent in English and not all investors are able to communicate directly with the office of the liquidators.

Without the back office being available creditors/investors, who do have all their documentation relating to transactions with MTI are denied the opportunity to verify if the data integrity of the copy on the server, which is in the possession of the liquidators is indeed correct.

It is known that there were hacks by an group Anonymous ZA on the server of MTI during September 2020 (Link on the internet https://www.moneyweb.co.za/in-depth/investigations/anonymous-data-dump-spills-the-beans-on-mirror-trading-international/) during which time data could have been tampered with, as it would also appear that the physical server is not in possession of the liquidators.

It thus leaves the door open that persons who could have had access to the back office between December 2020 and the time when the liquidators got a copy (in circa March 2021) and could have changed the data on the server.

CLAIMS PROVISIONALLY REJECTED DURING THE FIRST MEETING OF CREDITORS

During the First meeting of creditors all claims were provisionally rejected with the purposes so as not to vote for liquidators and accept Mr Cehvonne Cooper as an additional liquidator.

Clarity is hereby sought as to whether the provisionally rejected claims will be reinstated, so as to include claims completed with the assistance from the liquidators and or their representatives/employees .

Clarity is also needed in respect of claims that were completed after the first meeting of creditors as to confirm these were accepted and also completed with assistance from the liquidators and or their representatives/employees, or without their assistance .

These need to be clarified as some of the people did give Adv van Staden the necessary Power of Attorney to act on their behalf, and some of the claims were also sent to him.

CURRENT STATUS OF ASSETS AND CLAIMS

It is requested that the liquidators state the value of the claims that they have received from the creditors/investors in the estate as such information is lacking in their report, as opposed to the amount of the assets recovered in the Estate.

It must be taken into account that it need to be determined if the estate is indeed insolvent,

as the liquidation was granted on the basis that it was " just and equitable" to do as the sole Director in MTI disappeared , leaving the ship (MTI) without a captain.

It was claimed in an interview and according to our knowledge, Mr Riaan van Rooyen one of the liquidators published on 2 July 2021 (internet page https://moneyweb.co.za/moneyweb-crypto/mti-placed-in final-liquidation-8-000-more-bitcoin-traced/) that the liquidators managed to trace an additional 8000 bitcoin connected to MTI.

It is questionable as to why no apparent action has been taken to freeze the bitcoin or get it under their control. It is important that creditors/investors be informed in relation to the stratagem of the liquidators or answer for their failures to recover known assets in the best interest of the creditors/investors.

The above mentioned facts are not addressed properly in the feedback by the liquidators to the creditors/investors.

POSSIBLE FRAUDULANT AFFIDAVITS SUPPLIED BY THE LIQUIDATORS/OR PERSON(S) IN THEIR LEGAL TEAM IN COURT PAPERS PERTAINING TO THE AFFIDAVIT OF MR DANIEL STEVENSON OF FX CHOICE

It has been brought to our attention that the documents, which on face value purport to be the affidavits of a Mr Daniel Stevenson, an alleged employee of FX Choice, were deposed to in order to support the case of the liquidators. While the signatures differ clearly with the last document with the indication that it was most probably falsified, which would have been clearly interrogated in action proceedings before court instead of the current motion application before court.

When comparing the Meta data of the Affidavit of Mr Craig Pederson and Mr Daniel Stevenson it appears that it was drafted on the same computer, giving rise to the suspicion that the last affidavit of Mr Stevenson was most probably drafted fraudulently by a person linked to the legal team of the liquidators.

In fact there is doubt if Mr Stevenson does exist.

POSSIBLE CONFLICT OF INTERIST FROM TWO OF THE LIQUDATORS

Herman Bester

It came to our attention that Mr Herman Bester of Tygerberg Trust can have a possible conflict of interest in the liquidation of MTI as his brother Mr Pieter Bester (Facebook profile https://m.facebook.com/profile.php?id=100014317475185) can be linked according to information received as having invested in MTI with Registration date 2020/08/09, email address Pieter.bester@imperiallogistics.com, with investor ID 34901335 and that he was a nett winner of over R 200 000.

Chevonne Cooper

It came to our attention that Mr Chris Edeling a disgraced Advocate who has been struck off the roll of advocates twice, with his last know application to be readmitted as an advocate of the High Court, was a reported case with the citation ***Johannesburg Society of Advocates v Edeling (326/2018){2019} ZASCA 40;2019 (5) SA 79 (SCA)*** delivered 29 March 2019 (Internet weblink http://www.saflii.org/za/cases/ZASCA/2019/40.html) It must be noted that the High Court concluded that he was not a fit and proper person to be an advocate as he was party to dishonest and simulated transactions.

It is therefore unconceivable that Mr Edeling can be punted as the representative of the creditors/investors or used in any role by the liquidators in MTI due to he previous conduct.

It was also apparently indicated to the previous attorney of Adv van Staden, Mr Schalk Marais that the involvement of Mr Edeling would only be there so as to attend the first meeting of creditors, with no other involvement thereafter.

According to information received Mr Edeling is related to Mr Chevonne Cooper in that they are cousins.

AMOUNTS CLAIMABLE BY INVESTORS/CREDITORS

Since the MTI liquidation case is a watershed case in the history of South African Law, it would have been conceivable that by now the liquidators would have applied to court to get

a declaratory order upon which to clarify the following points which are important to the investors/creditors and to themselves when it comes to the winding up of the estate:

1. What is the value date of the Bitcoin that members/creditors are entitled be it to the date of investment or liquidation?
2. What are the amounts that can be claimed the creditors/investors, and do they include perceived trade profits such as binary bonuses?
3. Should members who have claims be paid out in Bitcoin *pro rata* or in Rand , especially the large number of foreign investors whose payment of claims could result in large amounts of foreign currency leaving the Republic of South Africa, which would not necessarily be in the best interest of the Rand or South Africa as a whole?

UNDUE INFLEUNCE TO PREVENT A FAIR ELECTIONS OF LIQUDATORS DURING THE FIRST MEETING OF CREDITORS

When comparing the initial Schedules supplied by Adv Victor and Mr Christopher Roos, one of the liquidators, containing persons who gave Adv van Staden their Power of Attorney to vote on his behalf.

This document was very different from the list emailed by Mr Riaan van Rooyen to our client on 21 October 2021 which according to him contained client's final list.

As Adv van Staden believed that liquidators are fair, sincere, can be trusted and would act with good faith in the best interest of creditors/investors.

Client as such was shocked to learn that the list submitted by Mrs Niki Fourie on behalf of Mr Kobus Schabbort on 29 October 2021 contained persons who explicitly gave their power of attorney to Advocate van Staden, as they completed forms on which his name were printed and he received a copy of the POA.

Mysteriously people our client knew personally appeared on the list of Mr Schabbort.

Also there were people who withdrew their previous POA and informed the liquidators that they changed their POA to Adv van Staden.

The names include but is not limited to the following people:

Izak Jacobus Maartens

Pauliwe Bergamako

Julie Elaine Boshoff

Bernardus Jacobus van Biljon

Andries Hendrik Nel Brits

Carol Valerie Blanks

Brendan De Lange

Cecilia Anna Schlebusch

Christiaan Hendrik Pauley

Debbie-Sue Blanks

Edwin William Banks

Esmatraldi Maritz

Hendrik. A, Eksteen

Jacobus Willem Mostert

Jan Harm Steenkamp

Lance Alain Derman

Lynn Logie Erasmus

Piere van der Merwe

Pieter Pienaar

John Bauce

It would appear that at least 193 names were removed from our client's schedule and were either left out or included fraudulently in the schedule of Mr Kobus Schabbort with the intention to diminish the voting power of the persons who gave Adv van Staden their power of attorney as to influence the outcome of the voting should it take place.

When comparing the revised lists with the values unjustly added to the schedule of Mr Schabort, it is evident that he would not have had the highest value nor highest number to vote for him as the preferred candidate, without the apparent fraud that was perpetrated.

It was also shocking to find out that the name of Mr Schabbort was inserted by pen next to the printed name of Adv van Staden on the POA without his consent or that of the persons

who gave him the POA.

A bundle was prepared for the Master to bring it to the fore during the first meeting of creditors, however voting did not take place as according to the then instructing attorney Mr Schalk Marais, he was informed by Mr Kriek and Cooper when they met in the chambers of Adv Allan Newton that the Master was impatient and if our client would question the apparent contradictions on the list or attack any claims the Master would remove all the liquidators and appoint persons of his choice.

This led to concessions being made in the best interest of the investors/creditors which were not kept, and turned out to be empty promises and possibly lies.

FAILURE TO INFORM THE MASTER

It have come to our attention that an individual namely Matthys Potgieter from Coombe Attorneys gave himself out as an attorney to both the Applicant in the liquidation case as well as to the liquidators.

Mr Potgieter is not registered with the Legal Practice Council nor has he been previously admitted as an attorney and thus are not entitled to act as one.

It is known that under this false pretext Mr Potgieter conducted work for the liquidators including drafting legal documentation and participating in enquiries. This fact has been known to the liquidators for some time and they failed to address it in their report, failed to report it to the office of the Master, failed to determine the effect it will have in the liquidation and failed to report the fraudulent action to the South African Police Service.

The circumstances pertaining to the fees paid for the fraudulent action has also not been discussed or disseminated in any feedback.

Clearly this action is not transparent nor in the best interest of the shareholder or creditors/investors.

It must also be noted that Mr Anton Lee acknowledged that had he known Mr Potgieter was

not an attorney and he would not have signed an affidavit supporting the application of the liquidators to have MTI declared an irregular business or Ponzi as he relied hereupon solely based on information in the Affidavit supplied by Mr Potgieter.

INSOLVENT VERSUS IN LIQUIDATION

The fact that MTI was liquidated as it was just and equitable, do not mean the estate is indeed insolvent as the liquidators failed to prove the amount of claims against the MTI Estate.

It is thus inconceivable that Insolvency enquiries in terms of Section 414 and 417 is being held without the determination that the estate is indeed insolvent. This is resulting in unnecessary, fruitless and wasteful costs to the estate which only negatively impact the shareholders/creditors with the legal teams being used laughing all the way to the bank.

THE FINANCIAL SERVICES CONDUCT AUTHORITY

The FSCA press release dated 19 January 2021 in relation to the Completed Investigation into Mirror Trading International stated that it is considering taking administrative action against individuals and entities involved in the matter.

None of this has can happen as the FSCA does not have jurisdiction over MTI as Crypto currencies are classified as an asset by the South African Revenue Service and not a Financial Instrument hence the FSCA do not have any authority over MTI.

This is strengthened by the press release by the FSCA dated 24 June 2021 where it acknowledges that they do not have jurisdiction currently over crypto currencies.

Since at least some of the liquidators met with the FSCA it would appear that the liquidators are pressing the agenda of the FSCA to have MTI declared a Ponzi or irregular business practice, yet again not working in the best interest of the shareholders and creditors of the estate.

RESPONSIBILITIES OF LIQUDATORS AND WINDING UP OF THE MTI ESTATE

The liquidators are reminded that they are working for the investors/creditors/shareholders, as to protect the interest of the afore mentioned.

They are to act with the utmost transparency and integrity at all times, the drive in the case of MTI however appears to be that the main aim of the liquidators is to be declaring MTI an irregular business scheme or Ponzi scheme, without taking into account their responsibilities.

It must be stated that MTI have not been declared an irregular business practice of Ponzi Scheme and as such the winding up of the Estate is to be done in accordance with the Insolvency Act , Act 24 of 1936 and the Companies Act, Act 61 of 1973.

The current actions of the liquidators are not supporting the thousands of investors/creditors who lost much if not everything or a large part of what they owned.

There are reports of MTI members who committed suicide as they were ruined financially and had their dignity taken away from them, which is totally unacceptable when the liquidators are not acting in the best interest of the role players they are responsible to.

GROUND TO REMOVE LIQUIDATORS

The following case law and legislation is brought to your attention when it comes to the removal of liquidators , or some of the liquidators in an estate:

Standard Bank of SA Ltd v The Master of the High Court and Others2010 (4) SA 404 (SCA)Para [1]; Bertelsman *et al Mars: The Law of Insolvency* 9thed (2008) pages 293-294

"*In the winding-up of companies liquidators occupy a position of trust, not only towards creditors but also the companies in liquidation whose assets vests in them. Liquidators are required to act in the best interests of creditors. A liquidator should be wholly independent, should regard equally the interests of all creditors, and should carry out his or her duties without fear, favour or prejudice".*

Section 379(2) of the Companies Act 61 of 1973 provides:

'The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.'

The relevant circumstances mentioned in subsec (1) are as follows:

'(b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or

...

(e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned.'

[125] In Hudson and others NNO v Wilkins NO and others **2003 (6) SA 234** *(T) (at para 13) the following appears:*

'[13] A liquidator may be removed from office if there is sufficient suspicion of partiality or conflict of interest, since a liquidator must be and appear to be independent and impartial. He or she must be seen to be independent since his duties as liquidator may require him or her to investigate. (See Re Giant Resources Ltd **[1991] 1 Qd R 107** *at 117; Re National Safety Council of Australia (Vic Division)* **[1990] VR 29** *([1989]* **15 ACLR 355** *(SC Vic); City of Suburban Ltd v Smith* **[1998] 28 ACSR 328** *(FC of A) at 336.) A Court will exercise its discretion to remove a liquidator if it appears that he or she, through some relationship, direct or indirect, with the company or its management or any particular person concerned in its affairs, is in a position of actual or apparent conflict of interest. In exercising that discretion Bowen LJ in Re Adam: Eyton Ltd: Ex parte Charlesworth* **(1887) 36 Ch D 299** *at 306 said:*

"Of course fair play to the liquidator himself is not to be left out of sight, but the measure of course is the substantial and real interest of liquidation." '

[126] In Ma-Afrika Groepbelange (Pty) Ltd v Millman and Powell NNO **1997 (1) SA 547** *(C) at 561H-J the following is stated:*

'Good cause for the removal of a liquidator has also been held to have been shown where a liquidator has not been independent. This was the ratio of the judgment in Re Sir John Moore Gold Mining Co **(1879) 12 ChD 325** *(CA) at 332, where a liquidator was removed because his "interests may conflict with his duty". See also Re P Turner (Wilsden) Ltd* **(1986) 2 BCC 99**, *567 (CA) at 99, 570 and Re London Flats Ltd* **[1969] 2 All ER 744** *(Ch) at 752E-F, where it was held that a liquidator should be "wholly independent" and that the removal of a liquidator should be "in the interests of every one concerned in the liquidation." '*

[127] In 4(3) Lawsa under the titles Companies and Winding-up M S Blackman at para 281 states the following:

'The court will remove a liquidator if some unfitness, in the wide sense of that term, is shown in the liquidator, whether it be from personal character or from his connection with other parties or from circumstances in which he is involved. Thus, even though no bad faith was alleged, the court removed a liquidator where he had become so engrossed in his own view that he was unable to see the reasonableness of the proposals of those interested in the liquidation and threw obstacles in their way; ... where it was prima facie established that the liquidator and two directors were liable to account to the company for certain sums and the liquidator refused to take proceedings against the directors; ...'

Further on, the following appears:

'Although there may be no individual characteristic in itself sufficient on which to base a conclusion that a liquidator is unfit, there may be a number of circumstances which combined might force the court to that conclusion. Also, the court might take into account some unfitness on the part of the liquidator together with what might be in the interests of those persons interested in the liquidation. A relevant factor is also the costs that would be incurred if another liquidator has to come in and complete the work that the present liquidator has already done. Thus, in the circumstances, the

court will be less likely to discharge a liquidator towards the end of the winding-up, after he has become acquainted with the affairs of the company, than it would early in the winding-up. Although each one of these considerations taken singly might not be sufficient to justify the removal of the liquidator, taken together they might be.'

When interpretation of the aforementioned legal presentences is done and combined with the points raised since the beginning of this letter, there appears to be grounds to request the Master to consider either of the three suggested courses of action that can be taken in the current situation, when taking into account the best interest of justice, the creditor/investors in MTI and its shareholders:

1. The voting for the appointment of the liquidators are done *de novo* with the creditor claims originally submitted to the Master prior to the first meeting of creditors with reference to Hendrik van Staden being taken into account without the fraudulent insertion of alternate parties other than Hendrik van Staden.
2. The Master is requested to immediately undertake voting by the general body of creditors represented by their nominees, on the removal of all present liquidators.
3. The removal of liquidators currently appointed who have a conflict of interest or sufficient suspicion that they have a conflict of interest or where the aforementioned contact failed to perform duties satisfactorily as it will be in the interest of all concerned.

It is in the best interest of all concerned Parties that the above mentioned issues be address before the second meeting of creditors scheduled to take place on 10 December 2021 and the guidance from the master in a speedy reply will be in the best interest of justice.

In the interim all our client's rights remain strictly reserved

Yours faithfully

IAN THEO ALLIS

IAN ALLIS – DIRECTOR
BCOM LLB - WITS

Subject: INSOLVENT ESTATE MIRROR TRADING INTERNATIONAL (PTY) LTD (MTI1/0027)
Date: Thursday, 09 December 2021 at 21:01:30 South Africa Standard Time
From: Susan Strydom <susan@srhfinc.co.za>
To: allisattorneys@gmail.com <allisattorneys@gmail.com>
Attachments: code of conduct.pdf, Fourie NO v Edeling NO.pdf, image001.jpg, LEKEUR v SANTAM INSURANCE CO LTD 1969 3 All SA 144 (C).pdf, MTI1.0027.LETTER TO ALLIS ATTORNEYS.pdf

Good evening

The above matter refers.

Please find attached hereto a letter for your attention.

Regards

Susan Strydom

STRYDOM, RABIE, HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

In Association with Tintingers Inc.

012 786 0954 | susan@srhfinc.co.za | www.srhfinc.co.za
Delmondo Office Park, Sorrento Building, Block A,
169 Garsfontein Rd, Ashlea Gardens, Pretoria

STRYDOM, RABIE,
HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

Our Ref: S STRYDOM/MTI1/0027
Your Ref: MR IT ALLIS
Date: 9 December 2021

ALLIS ATTORNEYS
62 2nd Street,
Orange Grove
Johannesburg
For attention: Mr IT Allis
BY EMAIL: allisattorneys@gmail.com

Dear Mr Allis,

IN RE: **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

1. We act on behalf of the joint liquidators of Mirror Trading International (Pty) Ltd (In Liquidation) (hereinafter "MTI").

2. We were requested by our clients to respond to your undated letter to the Master, sent under cover of an email dated 08 December 2021.

3. Given the unreasonable dictate in the ultimate paragraph of the letter, that your encyclopaedic letter consisting of 13 pages, be responded to literally in 1 business day, before the second meeting, we record that it is not the intention of the liquidators to respond to each and every allegation of the letter in detail now, strictly reserving the right of the liquidators to do so at a later stage and/or in the appropriate forum, if necessary.

4. Allegations not responded to should be regarded as being in dispute.

5. **Who do you act for?**

   5.1. We note that you allege that you act for Adv Hendrik Van Staden, who, in turn alleges to act for over 2000 creditors.

   5.2. Your letter does not clarify at all whether you are now the instructing attorney for Adv Van Staden, on brief, or whether your client is Adv Van Staden. In the absence of clarification, we shall assume that the latter position obtains.

   5.3. Whatever the position may be, it does not affect what is recorded below, concerning your representation for the actual clients.

5.4. Both you and Adv Van Staden should be aware of your duties as legal practitioners.

5.5. The liquidators have very serious concerns about Adv Van Staden interposing himself as an agent between you and the actual clients, being the more than 2000 creditors allegedly having instructed Adv Van Staden to act their behalf. No doubt, you are fully aware of the evils that may flow from the interposition of an agency between an attorney and client. We need not teach you the law, but you are more than welcome to have reference to, inter alia, **LEKEUR v SANTAM INSURANCE CO LTD [1969] 3 All SA 144 (C)**, in particular your attention is directed to the yellow highlighted portion on page 152 of the attached judgment. The liquidators believe that some of the evils that the learned Justice Corbett J (as he was then), contemplated, may very well present themselves in this matter too, and we would be remiss in our duty to immediately caution you about your role and the role of Adv Van Staden in your further representation on behalf of the alleged 2000 creditors.

5.6. We say this particularly in the context of you also having recorded in a further letter to the liquidators, that you have also received instructions from Mr and Mrs Marks.

5.7. Your group of 2000 creditors are not all creditors. Many creditors alleging to be creditors in MTI, may very well be debtors, in the sense that, although they have outstanding claims, they have been paid in respect of previous Bitcoin transactions much more than what they have invested in MTI.

5.8. The Marks couple were major promotors of MTI, received massive commissions in the form of Bitcoins in the multi-tier scheme promoted by them, and are probably some of the largest winners, if not the largest, in the estate. The exact extent of their winnings still needs to be explored at a Section 418 enquiry. Preliminary investigations (subject of course to their right to present more accurate information about this), suggest that Mr Marks is a winner in the scheme of some R53,9 million, and Mrs Marks of some R9 million.

5.9. It is therefore of serious concern that you have taken a mandate through an agent, Adv Van Staden. As a legal practitioner, the duty upon you addressing letters on behalf of creditors, is to ensure that your letters accord with the instructions of all of your clients in a group. We have reason to believe that you have, in the short time available, not had any opportunity to consult with any one of the 2000 creditors whom you ultimately allege to represent, let alone each one of them. You representation may therefore be irresponsible and if there is a conflict in interests involved, may constitute unprofessional conduct.

5.10. You are, no doubt, aware of judgments such as **WISHART and OTHERS v BLIEDEN NO and Others 2013 (6) SA 59 (KZN),** where the following was stated:

> *"An attorney-client contract, which of course includes that with an advocate if one is briefed, gives rise to a fiduciary duty towards the client. This fiduciary duty precludes a legal professional from acting for two clients with conflicting interests at the same time."*

5.11 If an attorney breaches his fiduciary duty towards his client, that attorney acts improperly and unprofessionally. See: **INCORPORATED LAW SOCIETY, TRANSVAAL v MEYER and ANOTHER 1981 (3) SA 962 (T) at 971 C.**

5.12 In the above context, the position of an attorney, faced with conflicting interest, and taking instructions through third parties, is crystalised in the Code of Conduct for Legal Practioners (attached). Your attention is drawn to the following clauses of the Code of Conduct:

> *" 3. **Legal practitioners, candidate legal practitioners and juristic entities shall -***
>
> .....
>
> *3.5 refrain from doing anything in a manner prohibited by law or by the code of conduct which places or could place them in a position in which a client's interests conflict with their own or those of other clients;*
>
> .....
>
> *18. **Specific provisions relating to conduct of attorneys***
>
> *An attorney shall -*
>
> .....
>
> *18.11 use the services of a third party (including services for the purpose of gathering evidence) only where the attorney has established a bona fide attorney and client relationship with the client, such that -*
>
> *18.11.1 the client is free to elect whether or not to use the services of the third party;*
>
> *18.11.2 the attorney takes proper instructions directly from the client; and*
>
> *18.11.3 the attorney is mandated to engage the third party at the client's cost,*
>
> *in which event the attorney may issue an instruction to a third party whom the attorney considers will be competent to do specific work, and the attorney may, on the client's behalf, pay to the third party a fair and reasonable fee, consistent with the value of the work actually done by the third party;*
>
> .....
>
> *28. **Acceptance of briefs: implied undertaking of diligence***
>
> .....
>
> *28.6 Counsel must decline the offer of a brief if their other commitments do not reasonably allow them to discharge their duty of diligence in the preparation of the brief. In particular, counsel shall not accept any brief if it is reasonably foreseeable that -*
>
> *28.6.1 counsel shall be unable to attend to all of the necessary work within a reasonable time;*

28.6.2 the risk exists that counsel might, because of a conflict of interest or any other reason, have to surrender the brief;

28.6.3 the failure to attend to the brief timeously or the surrender of the brief is likely to result in embarrassment, inconvenience or prejudice to the instructing attorney or the client or a fellow counsel who might be briefed thereafter, or to the court.

.....

*59. **Conflicts of interest among clients of legal practitioners***

59.1 A legal practitioner shall, when acting for two or more clients, be aware of the risk of a conflict of interests existing or arising in the course of the proceedings, whether criminal or civil, and once the legal practitioner is alerted to the existence of a conflict he or she shall withdraw from acting for one or all clients in those proceedings as soon as possible, and in particular -

59.1.1 if the legal practitioner has become aware of privileged or confidential information of any one client relevant to the proceedings that could be used to the prejudice of any other client, the legal practitioner may not act in any proceedings in which the prejudiced client is a party;

59.1.2 if the legal practitioner learns of a conflict of interest among clients at a time and under circumstances where the legal practitioner is not made aware of any privileged information, the legal practitioner may continue to act for one or other client as nominated by the instructing attorney (where one is appointed). "

6. In addition, you are quick to point out Mr Edeling's history. No doubt, you are then also aware of his previous role as investor representative in the Krion scheme. You should then also be aware of the concern expressed by the SCA concerning the role that Mr Edeling adopted there. Curiously, that same criticism should therefore apply equally to you. In this regard, we refer to the dictum of JA Conradie in **FOURIE NO and OTHERS v EDELING NO and OTHERS (522/2003) [2004] ZASCA 28 (1 April 2004)**, also attached:

> *" [11] ..... Leaving aside that fact and the grave doubt whether the mandate given to the first respondent by investors was broad enough to permit him to make admissions on behalf of those whose agent he professed to be, the most fundamental objection to the first respondent's representation of a large body of scheme investors is that in discharging what was after all a fiduciary duty he was faced with a major conflict of interest between those investors who had lost money in the liquidation of the scheme and therefore were creditors of the scheme and those who were not. There were investors who were not scheme creditors at the date of its liquidation (those who had put money into the scheme, taken their gains and wisely not re-invested) who could not have been parties to an arrangement under section 311 of the Companies Act. On behalf of them he could have had no authority to act. Even among the scheme's creditors there were divergent interests. The interests of a multiple investor would be quite distinct from those of a once only investor. The difficulty around the first respondent's conflict of interests did not pass unnoticed. The court a quo sought to address it by appointing an amicus curiae. The latter made submissions to the court a quo and presented helpful argument to this Court;*

but his appointment could not overcome the fundamental flaw that the first respondent was not empowered to make the admissions that he purported to make. ....."

7. In light of the above, the most apparent evil flowing from representing a group as you purport to do, which group includes winners, such as the Marks couple, is that, relying on the above authority, you cannot make any admissions on behalf of the group that the liquidators can rely on. Moreover,

   7.1. You are duty bound to protect the interests of all of your clients. This includes the interests of the winners, at the cost of the losers. Were the losers (the innocent creditors who still will receive a dividend in the estate) fully informed that you also represent the winners and will have to advance their interests?

   7.2. Did Adv Van Staden consult with all of the winners and losers, and disclose to them that there might me be conflicting interests across the group?

   7.3. Do the losers even know that you act for winners too? Was this disclosed, and would they know that whatever you say on their behalf cannot be used because of these conflicting interests? Similarly, how can the liquidators rely on any admissions you make?

   7.4. How does one know whether the voice of Van Staden, representing the group, represents the voice of every individual investor and how would you know, if you did not take instructions from each one of them separately?

   7.5. Moreover, if you make certain admissions on behalf of your group, and it transpires afterwards that your individual clients did not know about this, then it serves no purpose for the liquidators to have engaged you in any communications at all.

   7.6. In line with the LPC code, were investors advised of their choice to seek independent representation?

8. Your criticism levelled at the liquidators may very well have been motivated by the winners, while the losers do not share the same criticism. Objectively speaking, and once all the winners and losers are fully appraised of what the liquidators are doing, we can assure you that all innocent creditors (again, simply referred to as "the losers"), would fully support what the liquidators are currently doing.

9. In light of the above, the liquidators demand to first know, with satisfactory proof, that you represent each creditor whom you say you represent, without the interposition of an agent. Absent that, the liquidators are not prepared to enter into correspondence with attorneys saying that they represent persons, but without being able to prove so, in light of this issue not being a novel issue and particularly not in schemes and giving rise to all sorts of problems before, as quoted above.

10. Please address the above issues and provide us with your authority to represent the ultimate clients, with reference to each client, before the liquidators will accept that you have a mandate to act for each investor.

11. Proof of authority for each investor is required. In the proof of authority, each investor must indicate whether it is a winner or a loser, since all of your clients in you alleged group of creditors, are entitled to know what conflicting interests, if any, may be at stake when they are part of one group represented by one attorney, where, admittedly, you also act for winners. The very least you can do, and which the liquidators will ensure gets done, is that creditors know who would serve their interests best.

12. As you know, Court Rule 7 of the High Court Rules, require a written authority if authority is disputed. Until then, proceedings are suspended. Our clients will adopt that same approach here and request the Master to await your proof of authority, before it is necessary for the liquidators to respond to the remainder of your letter.

13. We record that the remainder of your letter contains information that is patently false, and also defamatory, and you can rest assured that the liquidators have very cogent answers to the issues raised by you in your letter. They will, if the Master requires of them to do so, answer the Master on those issues, but not you, until your authority is provided, and the liquidators are satisfied that you do not serve two groups of masters, with different (and hidden) agendas.

14. PS: As far as Adv Van Staden,
    - 14.1. Of which bar is he a member?
    - 14.2. On whose brief is he acting?
    - 14.3. What is his exact role?
    - 14.4. Does he have a trust account? If not, how is he taking instructions directly from public?

*** *ATTACHED:*

- *LEKEUR JUDGMENT*
- *CODE OF CONDUCT*
- *FOURIE JUDGMENT*

Yours faithfully,

Susan Strydom

LEKEUR v SANTAM INSURANCE CO LTD
[1969] 3 All SA 144 (C)

Division:	Cape Provincial Division
Judgment Date:	18 April 1969
Case No:	not recorded
Before:	Corbett J
Parallel Citation:	1969 (3) SA 1 (C)

• Keywords • Cases referred to • Judgment •

Keywords

Attorney - Contractual relationship - Champertous agreement - "Representation" agreement

Attorney - Misconduct - Champertous agreement

Contract - Enforceability - Champertous agreement

Practice and Procedure - Champertous agreement - Effect of champertous representation agreement on legal proceedings

Practice and Procedure - Tender - Vagueness - "Agreed damages" - Absence of any specific figure offered

Cases referred to:

Campbell v Welverdiend Diamonds Ltd 1930 TPD 287 - Considered

Fouche v The Corporation of The London Assurance 1931 WLD 145 - Referred to

Green v De Villiers (1895) 2 OR 289 - Referred to

Hilton v Woods LR 4 Eq 432 (Eq) - Discussed

Hugo and Others v Transvaal Loan, F and M Co (1894) 1 OR 336 - Referred to

Schweizer's Claimholders Rights Syndicate Ltd v Rand Exploring Syndicate Ltd (1896) 3 OR 140 - Applied

Shelton v Baxter (1916) 1 KB 321 (KB) - Applied

Page 145 of [1969] 3 All SA 144 (C)
View Parallel Citation

Judgment

CORBETT, J.: This is an action for damages for personal injury claimed in terms of the Motor Vehicle Insurance Act, 29 of 1942, as amended. The action arises from a collision which occurred between two motor vehicles on the National Road near Klapmuts, Cape Province, on 21st November, 1965. The plaintiff was a non-fare paying passenger in one of these vehicles and her claim for compensation against the defendant is based upon the averment that the collision was caused solely by the negligence of the driver of the other vehicle, which was. insured in terms of the Act by the defendant. Although these matters had been put in issue in the pleadings it was formally admitted by defendant at the commencement of the trial that plaintiff's injuries were sustained as a result of a motor collision caused by the negligence of the driver of the vehicle insured in terms of the Act by the defendant. Consequently, but for an issue with which I shall deal later, the question of liability was eliminated by this admission. Moreover, although the plaintiff had been put to the proof of her damages in the pleadings, it was announced, during the. course of the trial, that the parties had reached agreement as to the amount of certain items of damages and, apart from this, defendant virtually did not challenge the plaintiff's evidence relating to the *quantum* of damages.

The real substance of defendant's opposition to the claim is based on somewhat unusual grounds. It appeared

from the evidence (and this evidence was not disputed) that shortly after the collision and while plaintiff was a patient in the Groote Schuur Hospital she was approached by one Scholtz, a director of a firm known as Cape Claims Assessors (Pty.) Ltd. This company, to which I shall for convenience refer as "Cape Claims", was formed approximately five years ago and had as its directors during the material period the aforesaid Scholtz and one Nel. In addition one du Plessis was employed by Cape Claims. The business of the company apparently consisted of canvassing persons, more particularly those in the lower income groups, who were known to have claims under the Motor Vehicle Insurance Act and to induce such persons to appoint Cape Claims as their agent and representative in the handling and prosecution of such claims. In return for these services and in return for an undertaking by Cape Claims to be responsible for the costs of any legal action that might be necessary in order to enforce the claim, the client undertook to pay a fee amounting to 25 per cent of the gross sum received in pursuance of the claim.

In this particular case the plaintiff, having thus been approached by Scholtz, was asked by him whether Cape Claims could handle her claim for compensation arising from the collision on 21st November, 1965. She agreed to this proposal. On 14th January, 1966, and after she had returned to her home in Tiervlei, the plaintiff was visited by du Plessis who caused her to sign a document in the form of a letter addressed to Cape Claims and reading as follows:

> "Dear Sirs,
>
> I hereby appoint you my sole agents and consultants to act for and represent me in all matters concerning any claims of whatever nature which I Ann Leibrandt may have against any person or company arising out of an accident which took place on 21.11.1965 at/in National Roads, Klapmuts.
>
> I authorise you on my behalf to take all steps necessary to prosecute my said claims, to obtain reports from any hospital or medical practitioner in respect thereof, to interview witnesses, attorneys, insurance representatives and

> others, to engage and instruct attorneys and counsel on my behalf and generally to represent me in these matters.
>
> In the event of your being successful in obtaining payment of any money on my behalf in respect of any such claim either by way of court action or by settlement negotiations or otherwise, I hereby undertake and agree to pay you as your fee for the services set out above, an amount equal to 25 per cent of the gross sum so received.
>
> I hereby irrevocably authorise and request any person who may at any time be in possession of money due to me as aforesaid to pay to you out of such money the aforesaid fee of 25 per cent."

Thereafter the plaintiff was brought and introduced by du Plessis to her present attorneys of record. Messrs. Harry Getz and Co., who have handled the action on her behalf.

In terms of the letter of 14th January, 1966 referred to above (which I shall term the "representation agreement") Cape Claims is authorised by the plaintiff, *inter alia*, to engage and instruct attorneys and counsel on the plaintiff's behalf and it is clear that the plaintiff's attorneys of record were in fact appointed by Cape Claims without reference to the plaintiff herself. Although this aspect of the matter is not covered by the representation agreement it would seem that Cape Claims have at all times recognised that, in accordance with their usual practice, it, and not the plaintiff, would be liable for any legal fees payable to the attorneys. The plaintiff signed a power of attorney in the usual form authorising the members of the firm of Harry Getz and Co. to institute proceedings against the defendant for the payment of damages and the attorneys took the usual instructions from the plaintiff for the further prosecution of this claim.

Although they were thus instructed by the plaintiff to act on her behalf, it appears that the attorneys nevertheless kept in close contact with Cape Claims in regard to this particular action. Copies of all letters written by the plaintiff's attorney in connection with the case were sent to Cape Claims and periodically discussions would take place between this firm of attorneys and Cape Claims in regard to a number of cases, including this particular one, which were being handled by the attorneys upon behalf of clients introduced to them in this manner by Cape Claims.

The *modus operandi* which was normally adopted when payment was received in respect of such a claim was briefly as follows. The moneys would be received, generally in the form of a cheque, by the attorneys who would then deduct the fees owing to them and pay over the balance by means of a cheque drawn in favour of the client. As a rule Cape Claims would be apprised of the fact that such a payment was to be made and a representative of the company would be present when a client came to collect his or her cheque. This degree of liaison between the attorneys and Cape Claims no doubt enabled the latter to ensure that it received payment

of its fee of 25 per cent.

Finally, in stating the facts relative to this aspect of the matter, mention must be made of an incident which took place at the pre-trial conference held on 15th October, 1968, between the attorneys of record in this matter. Present at this conference were Mr. Surdut of Messrs. Harry Getz and Co. and Mr. Dower of Messrs Jan S. de Villiers and Son, the defendant's attorneys of record. Mr. Dower was called as a witness by the defendant and he stated that at the conference he made an

Page 147 of [1969] 3 All SA 144 (C)
View Parallel Citation

open offer upon the defendant's behalf to the effect that the defendant was prepared to pay agreed damages after receipt of a disclaimer from Cape Claims to any right to share in the proceeds of such settlement. According to Mr. Dower this offer was really a repetition of a previous offer made by him and he explained that the reason for the condition attached to the offer was that he was aware of the representation agreement, that he regarded it as an illegal agreement, and that he did not wish his client in any way to be party to Cape Claims receiving, in terms of that agreement, any portion of the compensation paid to the plaintiff. Dower stated further that Surdut informed him that this condition was totally unacceptable. While in the witness-box the plaintiff herself was questioned about this matter and she stated that she knew nothing about the offer and that she was never informed thereof either by her attorneys or by Cape Claims.

Upon the basis of these facts and circumstances it was argued by Mr. *Griessel*, who appeared on behalf of the defendant, that the real plaintiff in this matter was in fact Cape Claims and that the representation agreement was champertous in character and therefore illegal. He contended that, in the circumstances, the Court should non-suit the plaintiff and give judgment for the defendant. Inasmuch as these defences were not pertinently raised in the plea originally filed on behalf of the defendant, application was made during the course of argument for an appropriate amendment of the plea. This was granted subject to the parties being entitled to lead such further evidence as they might wish to adduce in regard to these issues. Both parties availed themselves of this opportunity to lead further evidence. Plaintiff's counsel called Scholtz who stated that the offer made by Dower on defendant's behalf to pay agreed damages subject to Cape Claims waiving its claim to a 25 per cent share thereof was twice conveyed to him by Mr. Hyams of Messrs. Harry Getz and Co. but that on both occasions he, on behalf of the firm, refused to agree to such a waiver. Scholtz stated further that during the course of the present trial the matter of a waiver had again been raised and that he now formally agreed to such a waiver and undertook that Cape Claims would not make claim to any portion of such damages as might be awarded to the plaintiff.

It was conceded by Mr. *Hoberman*, who appeared on behalf of the plaintiff, that the representation agreement was champertous in character and I think that this concession was correctly made. The question is whether that circumstance constitutes good ground for non-suiting the plaintiff in the present action.

This type of problem has previously arisen in our Courts. In *Hugo and Möller, N.O.* v. *Transvaal Loan, Finance and Mortgage Co.*, (1894) 1 O.R. 336, action had been instituted by the trustees in an insolvent estate to have the cession of a certain township, known as "Ingram's Township", to the defendant by the insolvent declared void on the ground that it constituted an undue preference. In the course of the trial it appeared that one King, thinking that there was a possibility of an attack upon the cession being successful, submitted a proposal to the creditors of the insolvent in terms of which he offered to pay the costs of the action and, if it were successful, the sum of £2,000 to the creditors (that being the amount of their claims) in consideration of

Page 148 of [1969] 3 All SA 144 (C)
View Parallel Citation

which he, King, should receive the township. This proposal was accepted at a meeting of creditors and in fulfilment of this agreement the trustees instituted the action in question. The Court held that the agreement was champertous and illegal and upon that ground dismissed the action. In the course of his judgment KOTZE, C.J., stated with reference to the facts of the case (at pp. 340-1):

> "It is quite clear that this is the promoting of legal proceedings for an improper purpose. It is—to use the language of the Privy Council—'a gambling in litigation', and obviously unlawful. The trustees are the plaintiffs only in name; the real plaintiff is King. The trustees are no parties to the agreement, and their conduct is blameless, for they are merely carrying out the instructions of the creditors. But the action now instituted has been brought under circumstances which the law does not permit, and it is our duty not to countenance it.

.....

> I do not, however, hesitate to say that, both on principle and authority, it is not only the right, but also the duty, of the Court to refuse to lend its assistance to the execution of agreements and transactions which are contrary to law. This has always been the practice of this Court."

This decision was followed in the case of *Green* v. *De Villiers and Others*, (1895) 2 O.R. 289, an action in respect of certain mining claims which had been made the subject-matter of a champertous agreement. (See also *Schweizer's Claimholders' Rights Syndicate, Ltd.* v. *The Rand Exploring Syndicate, Ltd.*, (1896) 3 O.R. 140).

The matter was again fully considered in the case of *Campbell* v. *Welverdiend Diamonds Ltd.*, 1930 T.P.D. 287. This was an action wherein the plaintiff claimed the sum of £11,000 by way of damages for breach of contract. In the course of the trial it transpired that, after the pleadings had been filed, plaintiff had ceded his rights under the contract to one Hutchinson for the sum of £2,700 and that this transaction was entered into not for the purpose of assisting the plaintiff in his action for a fair recompense but as a speculation or for some ulterior motive other than a desire to assist the plaintiff. Holding that the cession agreement was a champertous one, FEETHAM, J. (with whom BARRY, J., concurred) stated (at p. 294):

> "It is clear from the authorities, that while a transaction of this kind may be properly entered into, and may be supported where it is a genuine case of assisting a litigant for a fair recompense, it cannot be supported in other cases; the Court is not to give effect to arrangements which are made by persons who traffic in litigation."

The action was accordingly dismissed.

Campbell's case, *supra*, was subsequently distinguished in *Fouche* v. *The Corporation of the London Assurance*, 1931 W.L.D. 145. In the latter case plaintiff had sued the defendant upon a policy of fire insurance and it was revealed at the trial that plaintiff's attorney had arranged with his client that over and above his ordinary legal charges he would be entitled to retain 5 per cent of the amount recovered. Upon defendant's behalf it was argued that a champertous agreement had been disclosed and that this should induce the Court to dismiss the action. The Court (TINDALL, J.) rejected this argument in the following terms:

> "It was argued that if the Court gave judgment for the plaintiff it would put him in a position to perform an illegal agreement. I am not prepared to dismiss the action on that ground. I am prepared to assume that such an agreement is unenforceable. But even if that be so it does not follow that the action must be dismissed on the ground of champerty. I do not think that the mere fact that an attorney has prevailed on his client to enter into such an agreement should induce the Court to penalise the client by refusing to try his claim; compare *Hilton* v *Woods*, L.R. 4 Eq. 432.

Page 149 of [1969] 3 All SA 144 (C)
View Parallel Citation

> The case bears no resemblance to *Campbell* v. *Welverdiend Diamonds, Ltd.*, 1930 T.P.D. 287."

The English case of *Hilton* v. *Woods*, L.R. 4 Eq. 432, referred to in the above-quoted passage from the judgment of TINDALL, J., is also instructive. In that case action was instituted to establish the plaintiff's title to certain mineral rights. Plaintiff had agreed with a solicitor that if he (plaintiff) took such action the solicitor would guarantee him against costs and would be entitled to receive a proportion of the value of the property when recovered. It was contended on behalf of the defendant that this arrangement between plaintiff and his attorney amounted to champerty and consequently disqualified the plaintiff from suing. MALINS, V.C., rejected this argument stating—

> "I have carefully examined all the authorities which were referred to in support of this argument, and they clearly establish that whenever the right of the plaintiff, in respect of which he sues, is derived under a title founded on champerty or maintenance, his suit will on that account necessarily fail. But no authority was cited, nor have I met with any, which goes the length of deciding that where a plaintiff has an original and good title to property, he becomes disqualified to sue for it by having entered into an improper bargain with his solicitor as to the mode of remunerating him for his professional services in the suit or otherwise."

It is to be noted that in all these cases the champertous agreement did not found the plaintiff's cause of action but was merely an ancillary matter. Had it been otherwise there would have been no problem because such an agreement is unenforceable and could not possibly sustain a cause of action. It is also to be noted that, in all of the above-cited cases where the champertous agreement was held to non-suit the plaintiff, the entire subject-matter of the suit had been ceded under the agreement. Consequently, as was pointed out in those cases, the real plaintiff was the cessionary and the purpose of the action was to implement and give effect to a champertous agreement. It was because of this that the Court refused to entertain the action. Where, on the

other hand, the plaintiff has an original and valid cause of action and he pursues that cause of action as the real plaintiff and for his own benefit, then, in my view, the Court should not refuse to entertain the action merely because he may have made a champertous agreement in regard to a portion of the proceeds of the action. *Fouche* v. *The Corporation of the London Assurance, supra*, and *Hilton* v. *Woods, supra*, are instances of this type of case. The distinction between these two classes of case may ultimately depend upon the extent to which the subject-matter of the action has been alienated under the champertous agreement and other similar factors which are largely matters of degree but the basis of the distinction is clear.

In the present case I am satisfied that the nominal plaintiff is also the real plaintiff. She herself suffered the personal injuries which constitute the basis of her cause of action. She herself is pursuing this action in order to obtain compensation for those injuries and I do not think that the fact that she originally undertook to pay 25 per cent of her damages to Cape Claims or that Cape Claims intended to meet the costs of the litigation detracts substantially from the conclusion that it is her action (cf. *Shelton* v. *Baxter*, (1916) 1 K.B. 321). It is true that the attorneys were nominated by Cape Claims but they were appointed by plaintiff to act on her behalf by means of the usual power of attorney signed by her and once so appointed they were under a

Page 150 of [1969] 3 All SA 144 (C)
View Parallel Citation

professional obligation to regard her as their client and to act with proper professional skill and diligence upon her behalf. Whether they in fact did so is a matter to which I shall allude later. I am furthermore satisfied that the purpose of plaintiff's action is not to give effect to the champertous agreement. The prime purpose of the action always has been to recover compensation for the benefit of plaintiff. Admittedly under the champertous agreement one-quarter of that compensation would have found its way into the coffers of Cape Claims but in view of the formal waiver given by Scholtz in the witness-box that factor now falls away.

For these reasons I have come to the conclusion that the existence of the representation agreement is not a good ground for non-suiting the plaintiff. Inasmuch as no other substantial defence on the issue of liability was raised at the trial, I shall now proceed to an assessment of the damages to be awarded to plaintiff

[The learned Judge then set out certain evidence and proceeded.]

Plaintiff's claim for damages, as amended, amounts to R5,804-02 and is made up as follows:

(i) Medical and hospital expenses to date	R91.50
(ii) Future medical and hospital expenses	150.00
(iii) Actual loss of earnings to date of summons	812.52
(iv) Future loss of earnings	750.00
(v) Pain, suffering, shock and loss of amenities	4,000.00
	R5,804.02

[The learned Judge then dealt with each item and proceeded.]

The total award of damages will thus be R3,515-04, made up as follows:

Future medical and hospital expenses	R140.00
Loss of earnings to date of summons	812.52
Future loss of earnings	812.52
Pain and suffering, shock and loss of amenities	1,750.00
	R3,515.04

The plaintiff, having thus been successful would normally be entitled to the costs of the action. Mr. *Griessel*, however, submitted that the Court should make a special order as to costs. This submission was based upon the aforementioned offer made by defendant's attorney at the pre-trial conference of 15th October, 1968. Mr. *Griessel* argued that the defendant's offer very properly contained the condition as to a disclaimer by Cape Claims since the defendant could not make itself party to the implementation of a champertous agreement and that the conduct of plaintiff's attorney in refusing this offer was the direct cause of the continuation of legal proceedings after that date and of the parties going to trial. Defendant's counsel accordingly suggested that defendant be awarded all costs after 15th October, 1968, such costs to be paid either by plaintiff of by plaintiff's attorneys *de bonis propriis.*

It is not clear to me that defendant was entitled to annex to its offer the condition as to a disclaimer or that a conditional offer of this nature

Page 151 of [1969] 3 All SA 144 (C)
View Parallel Citation

should protect defendant against subsequent costs. Assuming these points in defendant's favour, however, it seems to me that the fatal weakness in this submission is that no fixed amount of compensation was specified in the offer: it merely referred to "agreed damages". Nor had there been any actual agreement between the parties as to the amount of the damages. Mr. *Griessel* argued nevertheless that but for the rejection of the offer on the ground that the disclaimer condition was unacceptable the parties would have agreed upon a figure and have settled the case. I am unable to conclude as a matter of probability that this would have been the case. As I see it, the parties might have settled or they might not have. Judging from the substantial gap separating the figures for general damages contended for by their respective counsel at the trial, it seems at least very doubtful whether they would have reached agreement. Moreover, the absence from the offer of any specific figure prevents it being used as a tender which might have protected the defendant from costs had it transpired that the tender amount was equal to or exceeded the amount actually awarded by me. Accordingly, I do not think that it can be said that the refusal of the offer of 15th October, 1968 was the cause of the continuation of the legal proceedings. Nor do I consider that the existence of the representation agreement in itself provides a good ground for making a special order as to costs.

At the same time I feel obliged to pass certain remarks about the activities of Cape Claims and about the conduct of the plaintiff's attorneys in this matter. As regards the former, I cannot deprecate these activities too strongly. Admittedly there was not a complete investigation of this matter but such evidence concerning the affairs of Cape Claims as was adduced satisfies me, *prima facie*, that its activities constituted an unnecessary and deleterious interference with the proper adjustment of claims arising from personal injury. I understand that the firm Cape Claims has in fact ceased to operate as far as new business is concerned but inasmuch as Scholtz still carries on the same activities under his own name what I have to say in regard thereto continues to have contemporary relevance. For simplicity's sake I shall simply refer to Cape Claims. I can see no virtue in interposing an agency such as Cape Claims between the litigant and his attorney and there are a number of evils which flow from it. It was suggested by Mr. Scholtz that Cape Claims performed valuable services in assisting clients financially while awaiting their compensation. This alleged benefit is not mentioned in the representation agreement and I should be surprised to learn that Cape Claims had done much for clients in this respect. On the other hand, Cape Claims receives a substantial proportion of the damages recovered for performing entirely unnecessary services-unnecessary in the sense that they are all matters which could, and should, properly be attended to by the client himself or by his attorney. Furthermore, Cape Claims not only interposes itself in this way but establishes a relationship with the attorney appointed to act in the matter which could result in there being a clash between the interests of the client and those of Cape Claims. In this particular case that very thing appears to have occurred. When the offer of 15th October was communicated to plaintiff's attorneys it was their duty to communicate

Page 152 of [1969] 3 All SA 144 (C)
View Parallel Citation

his to their client, the plaintiff, and to advise their client as to her legal position in regard to the representation agreement. According to the evidence this was not done. In fact the attorneys discussed the offer only with Cape Claims. If this evidence is correct, then the attorneys appear to have failed in their duty to their client.

Moreover, the whole relationship between Cape Claims and the three or four firms of attorneys usually employed by it seems to me to be an unhealthy one. Apart from the potential clashes of interest referred to above, the attorney allies himself to an organisation which freely touts for clients in a manner contrary to the attorney's code of ethics and enters into champertous agreements with them. In addition, the fact that all work canvassed by Cape Claims is channelled through a small group of attorneys is a most undesirable feature. An attorney enjoying a large volume of work from a firm of this nature would find it very difficult not to regard the firm as his effective client and not to make the interests of the true client subservient to those of the firm.

It would appear that Cape Claims conducted its activities on a fairly large scale and it concentrated its endeavour upon persons in the lower income groups. No doubt Scholtz' own business is similar in character. In my opinion, this battening upon underprivileged litigants should be stopped or, at any rate, subjected to very strict controls. I accordingly propose to refer this whole matter to the president of the Cape Law Society in the hopes that appropriate action may be taken both in regard to the activities of Cape Claims and similar firms and in regard to the conduct of plaintiff's attorneys in this particular case.

There will be judgment for the plaintiff in the sum of R3,515.04 with costs.

Appearances

GD Griessel - Advocate/s for the Defendant/s

B Hoberman - Advocate/s for the Plaintiff/s

Jan S de Villiers and Son - Attorney/s for the Defendant/s

Harry Getz and Company - Attorney/s for the Plaintiff/s

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

LEGAL PRACTICE COUNCIL

NOTICE 198 OF 2019

CORRECTION NOTICE

CODE OF CONDUCT FOR ALL LEGAL PRACTITIONERS, CANDIDATE LEGAL PRACTITIONERS AND JURISTIC ENTITIES

Notice is hereby given that the Government Printing Works erroneously published General Notice No. 168, which appeared in Government Gazette No. 42337 on 29 March 2019, under the auspices of the ***Law Society of the Cape of Good Hope*** instead of the **Legal Practice Council.**

Notice is further given that General Notice No. 168 published in Ordinary Government Gazette No. 42337 on 29 March 2019 is corrected as follows:

- in the Index on page 9 of the gazette, change "**Law Society of the Cape of Good Hope/ Wetsgenootskap van Kaap die Goeie Hoop**" to "**Legal Practice Council**"; and
- on page 683 change "**LAW SOCIETY OF THE CAPE OF GOOD HOPE**" (where it appears above the Notice number on top of the page) to **"LEGAL PRACTICE COUNCIL"**

LAW SOCIETY OF THE CAPE OF GOOD HOPE

NOTICE 168 OF 2019

CODE OF CONDUCT FOR ALL LEGAL PRACTITIONERS, CANDIDATE LEGAL PRACTITIONERS AND JURISTIC ENTITIES

This final Code of Conduct is published in terms of Section 36(1) of the Legal Practice Act 28 of 2014 (as amended) ("Act").

The Code of Conduct applies to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined, and is effective from date of publication in the Gazette.

A draft amendment of the Code of Conduct previously published on 10 February 2017 in Government Gazette No 40610 in terms of Section 97(1)(b) of the Act, was published on 21 December 2018 in Government Gazette No 42127 in terms of Section 36(5) of the Act for comment. All interested parties were called upon to submit their comments in writing by 7 February 2019. These comments were considered by the Legal Practice Council when it drafted the final version now being published.

The Code of Conduct serves as the prevailing standard of conduct and will be enforced by the Legal Practice Council. It consists of the following parts:

I. Definitions;
II. Code of conduct: general provisions;
III. Conduct of attorneys;
IV. Conduct of advocates contemplated in section 34(2)(a)(i) of the Act;
V. Conduct of advocates contemplated in section 34(2)(a)(ii) of the Act;
VI. Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals; and
VII. Conduct of legal practitioners not in private practice.

Failure to adhere to the Code of Conduct will constitute misconduct and transgressors will be subjected to disciplinary proceedings in terms of the Rules promulgated under Sections 95(1), 95(3) and 109(2) of the Act as per Government Gazette number 41781 of 20 July 2018.

Signed at Pretoria on this 19th day of March 2018.

Ms Hlaleleni Kathleen Dlepu

Chairperson: Legal Practice Council

South African Legal Practice Council

Code of Conduct

made under the authority of section 36(1) of the Legal Practice Act, 28 of 2014

Table of Contents

Page No

PART I

Definitions

1. In this code, unless the context otherwise indicates:

1.1 "**the Act**" means the Legal Practice Act, 28 of 2014;

1.2 "**advocate**" means a legal practitioner who is admitted and enrolled as such under the Act;

1.3 "**attorney**" means a legal practitioner who is admitted and enrolled as such under the Act;

1.4 "**branch office**" means an office at or from which the firm practises, but which is not a main office;

1.5 "**candidate attorney**" means a person undergoing practical vocational training with a view to being admitted and enrolled as an attorney;

1.6 "**candidate legal practitioner**" means a person undergoing practical vocational training, either as a candidate attorney or as a pupil;

1.7 "**chambers**" means premises suitable for the practice of an advocate;

1.8 "**code of conduct" or "code"** means this code;

1.9 "**conveyancer**" means any practising attorney who is admitted and enrolled to practice as a conveyancer in terms of the Act;

1.10 "**Council**" means the South African Legal Practice Council established in terms of section 4 of the Act;

1.11 "**counsel**" means an advocate referred to in section 34(2)(a)(i) of the Act;

1.12 "**court**" means any court in the Republic as defined in section 166 of the Constitution of the Republic;

1.13 "**disciplinary body**" means -

1.13.1 an investigating committee;

1.13.2 a disciplinary committee; or

1.13.3 an appeal tribunal.

1.14 "**Fidelity Fund Certificate**" means the certificate referred to in section 85 of the Act;

1.15 "**firm**" means -

1.15.1 a partnership of attorneys;

1.15.2 an attorney practising for his or her own account; or

1.15.3 a juristic entity

who or which in each case conducts the practice of an attorney;

1.16 "**Fund**" means the Legal Practitioners' Fidelity Fund referred to in section 53 of the Act;

1.17 "**High Court**" means the High Court of South Africa established by section 6 of the Superior Courts Act, 10 of 2013 or, if the context indicates otherwise, the Division thereof having jurisdiction;

1.18 "**juristic entity**" means a commercial juristic entity established to conduct a legal practice as an attorney, as contemplated in section 34(7) of the Act and a limited liability legal practice as contemplated in section 34(9) of the Act;

1.19 "**legal practitioner**" means an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30 respectively of the Act;

1.20 "**main office**" means the premises at and from which the practice of a firm is as a whole administered and controlled, including such premises in two or more buildings situated in sufficiently close proximity to one another to allow the administration of that practice as a single composite entity, and includes premises declared or determined as such in terms of accounting rules 54.2 or 54.5, as the case may be;

1.21 "**Minister**" means the Minister of Justice and Correctional Services;

1.22 "**notary**" means any practising attorney who is admitted and enrolled to practise as a notary in terms of this Act;

1.23 "**private practice**" means the practice of a legal practitioner who places legal services at the disposal of the public for reward and is actively engaged in the profession either as an attorney or as an advocate, or the practice of a legal practitioner as contemplated in sections 34(5)(c), (d) or (e) or section 34(6)(b), (c) or (d), and "**practise**" has a corresponding meaning; and for purposes of this definition -

1.23.1 attorneys referred to in sections 34(5)(c), (d) and (e) of the Act will be regarded as being attorneys in private practice;

1.23.2 advocates referred to in sections 34(6)(b), (c) and (d) will be regarded as being advocates in private practice;

1.24 "**pupil**" means a person undergoing practical vocational training with a view to being admitted and enrolled as an advocate;

1.25 "**Republic**" means the Republic of South Africa;

1.26 "**roll**" means the roll of legal practitioners referred to in section 30(3) of the Act;

1.27 "**rules**" means the rules made in terms of the Act;

1.28 "**trust account practice**" means a practice conducted by -

1.28.1 one or more attorneys who are; or

1.28.2 an advocate referred to in section 34(2)(b) of the Act who is,

in terms of the Act, required to hold a Fidelity Fund certificate.

1.29 Words or expressions referred to in this code which are not defined shall bear the respective meanings assigned to them by section 1 of the Act.

PART II

Code of Conduct: general provisions

2. The provisions of Part II of the code shall apply to, and be observed by, all legal practitioners, candidate legal practitioners and juristic entities including, where the context requires, legal practitioners who are not in private practice, but are not exhaustive. If legal practitioners, candidate legal practitioners and juristic entities are

at any time in doubt about the meaning or applicability of any part of this code they may apply for a ruling from the Council.

3. Legal practitioners, candidate legal practitioners and juristic entities shall -

3.1 maintain the highest standards of honesty and integrity;

3.2 uphold the Constitution of the Republic and the principles and values enshrined in the Constitution, and without limiting the generality of these principles and values, shall not, in the course of his or her or its practice or business activities, discriminate against any person on any grounds prohibited in the Constitution;

3.3 treat the interests of their clients as paramount, provided that their conduct shall be subject always to:

3.3.1 their duty to the court;

3.3.2 the interests of justice;

3.3.3 observance of the law; and

3.3.4 the maintenance of the ethical standards prescribed by this code, and any ethical standards generally recognised by the profession;

3.4 honour any undertaking given by them in the course of their business or practice, unless prohibited by law;

3.5 refrain from doing anything in a manner prohibited by law or by the code of conduct which places or could place them in a position in which a client's interests conflict with their own or those of other clients;

3.6 maintain legal professional privilege and confidentiality regarding the affairs of present or former clients or employers, according to law;

3.7 respect the freedom of clients to be represented by a legal practitioner of their choice;

3.8 account faithfully, accurately and timeously for any of their clients' money which comes into their possession, keep such money separate from their own money, and retain such money for only as long only as is strictly necessary;

3.9 retain the independence necessary to enable them to give their clients or employers unbiased advice;

3.10 advise their clients at the earliest possible opportunity on the likely success of such clients' cases and not generate unnecessary work, nor involve their clients in unnecessary expense;

3.11 use their best efforts to carry out work in a competent and timely manner and not take on work which they do not reasonably believe they will be able to carry out in that manner;

3.12 be entitled to a reasonable fee for their work, provided that no legal practitioner shall fail or refuse to carry out, or continue, a mandate on the ground of non-payment of fees and disbursements (or the provision of advance cover therefor) if demand for such payment or provision is made at an unreasonable time or in an unreasonable manner, having regard to the particular circumstances.

3.13 remain reasonably abreast of legal developments, applicable laws and regulations, legal theory and the common law, and legal practice in the fields in which they practise;

3.14 behave towards their colleagues, whether in private practice or otherwise, including any legal practitioner from a foreign jurisdiction, and towards members of the public, with integrity, fairness and respect and without unfair discrimination, and shall avoid any behaviour which is insulting or demeaning;

3.15 refrain from doing anything which could or might bring the legal profession into disrepute;

3.16 unless exempted therefrom, pay promptly to the Council or any organ of the Council, or to the Fund, all amounts which are legally due or payable in respect of fees, charges, levies, subscriptions, penalties, fines or any other amounts of whatsoever nature levied on legal practitioners, candidate legal practitioners or juristic entities in terms of any powers arising under the Act or the rules;

4. Legal practitioners, candidate legal practitioners and juristic entities are required to become fully acquainted with this code and comply with its provisions;

5. Legal practitioners, candidate legal practitioners and juristic entities are encouraged to report unprofessional conduct by other legal practitioners, candidate legal practitioners or juristic entities to the Council in the manner prescribed in the rules prescribing the disciplinary procedure.

6. **Harassment and sexual harassment**

6.1 No legal practitioner or candidate legal practitioner may subject any person to sexual harassment.

6.2 No legal practitioner or candidate legal practitioner may subject any person to harassment, including sexual harassment.

6.3 For purposes of this paragraph 6:

6.3.1 "sexual harassment" is unwanted conduct of a sexual nature, or other unwelcome conduct base don the ge nde ror se xualorie ntationof a pe rson, which has the purpose or effect of violating a person's rights, or creating an uncomfortable ,de g radinghumiliating or hostile e nvironme ntor has the effect of violating a person's dignity;

6.3.2 "harassment" is unwanted conduct which is persistent or serious and de me anshumiliate sor cre ate sa hostile or intimidating e nvironme ntor is calculate d to induce submission by actual or thre ate ne dadve rse consequences and which is related to a person's membership or presumed me mbe rship of a g roupide ntifie d by one or more of the constitutionally prohibite ddiscriminatory g roundsor a characte ristic associate dwith such g roup

6.3.3 "conduct" may take the form of non-ve rbal conduct, ve rbal conduct, and/or physical conduct. Conduct qualifying as se xualharassme ntmay occur in a sing leinstance or may include conduct that occurs on a re pe ate dbasis whe rethe effect is to se xuallyharass the pe rson

7. Approaches and publicity

7.1 For purpose sof Part II of this code:

7.1.1 **"publicity"** shall include any direct or indirect refe re nce to a le g al practitione r or firm, publishe d or disse minate dby any writte n, pictorial or oral me ans, in any me dium (including e lectronic and social me dia), irre spective of whe the rsuch publicity or refe re nce:

7.1.1.1 is made in connection with any sponsorship, patronag e ,we fare activity, othe rsimilar be ne vole npurpose or support in any cause; or

7.1.1.2 is made ,or is paid for, at the instance , or with the knowle dg eor conse nt,of the le g alpractitione r or firm; or

7.1.1.3 appears, or is contained in any editorial, advertorial or advertisement

and "**publicise**" has a corresponding meaning.

7.2 Legal practitioners shall ensure that all written and oral approaches (including letterheads) to clients, or potential clients, and all publicity, including the offering of services by publicity, made or published by or on behalf of a legal practitioner:

7.2.1 are made in a manner which does not bring the legal profession into disrepute;

7.2.2 are not offensive or inappropriate or do not constitute conduct which is in bad faith, unreasonable or unfair in respect of a matter in which another legal practitioner has already received instructions;

7.2.3 do not misrepresent the nature of the service offered;

7.2.4 accord in every respect with the requirements of this paragraph;

7.2.5 do not misrepresent, disparage, compare, criticise the quality of or claim to be superior to, the service provided by any other legal practitioner, whether or not such other legal practitioner is identified;

7.2.6 do not refer to a client by name in any publicity or advertisement published by or on behalf of a legal practitioner unless:

7.2.6.1 the prior written consent of the client had been obtained; or

7.2.6.2 the advertisement relates solely to the sale or letting of a client's property.

7.3 Legal practitioners' responsibilities set out in paragraph 7.2 cannot be delegated. Where a legal practitioner or a firm becomes aware of publicity referring to him or her or it which is in conflict with or infringes this paragraph 6, he or she or it shall immediately take appropriate steps reasonably necessary to have the publicity rectified or withdrawn and to further publish the rectification in the same medium or media as that in which the conflicting or infringing publicity appeared.

8. **Specialisation and expertise**

Legal practitioners may, on the basis of specialised qualifications or experience -

8.1 advertise or hold themselves out as being specialists or as offering specialist services, provided that if a legal practitioner claims specialisation or expertise in any branch of the law, the Council may:

8.1.1 require the legal practitioner to show good cause by a specified date why he or she should not be ordered by the Council to cease to hold himself or herself out as a specialist or as expert in any particular branch of the law;

8.1.2 order him or her to cease holding himself or herself out as a specialist or expert in the branch of the law concerned if it is the opinion of the Council that the claim is not justified; and

8.1.3 declare that such order shall serve as notice in terms of the rules relating to disciplinary procedures without in any way limiting the Council's powers in terms of those rules;

8.2 be accorded senior counsel or senior attorney status in accordance with criteria and procedures prescribed by the Council.

9. **Integrity in performance of professional services**

9.1 A legal practitioner and a firm shall take reasonable steps to avoid and prevent any reasonable suspicion arising that his, her, or its integrity is compromised in any respect.

9.2 A legal practitioner shall not, in giving advice to a client, advise conduct that would contravene any law; more particularly, a legal practitioner shall not devise any scheme which involves the commission of any offence.

9.3 A legal practitioner may give advice about whether any act, omission or course of conduct may contravene any law.

9.4 Whenever a legal practitioner performs any act in a personal capacity, which is ostensibly of a professional nature, he or she shall not permit any confusion to exist on the part of any interested person about whether he or she acts in a personal or professional role or both.

9.5 Whenever a client charged with an offence confesses at any time to a legal practitioner that the client is guilty of the offence, the legal practitioner must at once explain to that client that the future conduct of the matter shall be subject to these strictures:

9.5.1 the legal practitioner shall not assert or imply any fact, or permit the assertion or implication of any fact, which he or she knows to be untrue, nor shall he or she connive to substantiate a falsehood;

9.5.2 the legal practitioner shall not put forward any affirmative case inconsistent with the confession of the client;

9.5.3 the legal practitioner may argue that the evidence adduced to support the charge is insufficient to justify a conviction;

9.5.4 the legal practitioner may invoke or assert any point of law that might be of advantage to a resistance to a conviction;

9.5.5 the client may choose to retain the legal practitioner on the basis set out or choose to relieve the legal practitioner of the brief.

9.6 A legal practitioner shall, when a client gives conflicting instructions, or attempts to retract earlier instructions, withdraw from the matter if continuing to act for the client would cause unavoidable embarrassment to the legal practitioner.

9.7 A legal practitioner shall in the composition of pleadings and of affidavits rely upon the facts given to him or her by the instructing attorney or client, as the case may be, and in so doing:

9.7.1 shall not gratuitously disparage, defame or otherwise use invective;

9.7.2 shall not recklessly make averments or allegations unsubstantiated by the information given to the legal practitioner.

9.8 A legal practitioner who is briefed to prepare a document articulating the reasons relied upon by any entity or person whose decision is being reviewed or subjected to administrative appeal, must scrupulously express the reasons, as instructed, and must not distort their meaning by the manner of formulation or by the addition or subtraction of additional material.

9.9 A legal practitioner shall, in giving any advice about the prospects of success in any matter, give a true account of his or her opinion and shall not pander to a client's whims or desires. However, in any matter in which the legal practitioner's opinion is adverse to the prospects of success, the legal practitioner may upon client's insistence place before a court the client's case for the adjudicating officer to d œid ethe matter and the legal practitioner shall advance that case as best as

9.10 Legal practitioners shall not abuse their positions of influence over clients by undue pressure upon them to:

9.10.1 plead guilty or plead guilty to a lesser charge;

9.10.2 accept a settlement of a matter.

10. **Disputes about fees in non-litigious matters**

10.1 Any disputes about the quantum or rate of fees charged by a legal practitioner or about work done by and value received from a legal practitioner in relation to non-litigious matters shall be subjected to a fees enquiry to be conducted by an authorised sub-structure of the Council.

10.2 An onus shall rest on the legal practitioner to justify the reasonableness of fees charged and that the work charged for was done and was reasonably necessary to be done, or was done at the request of the client or of the instructing attorney, as the case may be.

PART III

Conduct of attorneys

11. **Preamble**

11.1 Unless otherwise stated or unless the context indicates otherwise, Part III of this code applies only to attorneys, candidate attorneys and juristic entities who are in private practice (all of whom, for purposes of this code, and unless the context otherwise requires, shall be referred to as "**attorneys**"). If Part III of this code conflicts with the provisions of Part II then the provisions of Part II will prevail and take precedence over the provisions of Part III.

11.2 Part III of this code is applicable to the professional conduct of attorneys.

12. **Sharing of fees**

12.1 An attorney or a firm shall not, directly or indirectly, enter into any express or tacit agreement, arrangement or scheme of operation or any partnership (express, tacit or implied), the result or potential result whereof is to secure for him or her or it the benefit of professional work, solicited by a person who is not an attorney,

for reward, whether in money or in kind; but this prohibition shall not in any way limit *bona fide* and proper marketing activities.

12.2 An attorney shall furnish the Council with an affidavit, within seven days of request, explaining the presence and function or position of an employee and manner or form of remuneration earned by such employee, or containing similar information relating to any person who is not an attorney who is apparently associated with the attorney's practice or who is continuously or repeatedly in, at or about the attorney's office.

12.3 An attorney may not hold himself or herself out as practising as an attorney while in the employ of a person who is not an attorney otherwise than as permitted in terms of section 34 of the Act.

13. **Sharing of offices**

An attorney, other than an attorney referred to in sections 34(5) (c), (d) and (e) of the Act, may not, without the prior written consent of the Council, share offices with a person who is not an attorney or an employee of an attorney.

14. **Payment of commission**

An attorney or firm may not effect payment, directly or indirectly, of agent's commission in advance of the date upon which such commission is due and payable, except out of funds provided by the person liable for such commission and on the express authority of such person.

15. **Naming of partners and practice**

15.1 Subject to paragraph 15.4, an attorney shall disclose his or her name on any letterhead used for the practice and, in the case of -

15.1.1 a partnership, the names of all the partners; or

15.1.2 a juristic entity, the names of all directors

and, where the attorney has also been admitted as a notary or as a conveyancer, may disclose that fact on the letterhead of his or her firm.

15.2 An attorney who discloses in his or her letterhead or in other publications the name of any person employed by him or her or his or her firm in any capacity shall indicate clearly whether or not such person is an attorney or his or her partner or fellow director; provided that, without prior written consent of the

Council, such indication shall be made by using one or more of the following words and no others:

15.2.1 where such person is an attorney, "consultant", "senior associate", "associate", "professional assistant" or "assisted by";

15.2.2 where such person is not an attorney, "candidate attorney", or in the case of professionals in fields other than law, such professional status as may be appropriate, or in the case of management employees, the descriptive management title.

15.3 An attorney in private practice shall practise only under a style or name which -

15.3.1 is his or her own name or the name of a former proprietor of, or partner or director in, such practice if he or she practises without partners; or

15.3.2 contains the names of any or all of the present partners or directors or former partners or directors of or in such firm if he or she practises in partnership or as a juristic entity; or

15.3.3 is a derivative of the names referred to in paragraphs 15.3.1 or 15.3.2, or is the name of a national or international legal practice of which the attorney is an employee or with which the attorney or his or her firm is associated or of which he or she or his or her firm forms part, unless the Council in the particular circumstances prohibits the use of that name; or

15.3.4 the Council has first approved in writing, in the case of any other name.

15.4 Notwithstanding the provisions of paragraph 15.1, it will be sufficient compliance with that rule:

15.4.1 in the case of a partnership consisting of more than twenty partners, if the names of the senior partner and managing partner (and in the case of a branch office, the names of the senior partner of the partnership and the managing partner of the branch) are disclosed on the letterhead, provided the letterhead contains a note indicating the address at which the names of all the partners will be available for inspection;

15.4.2 in the case of a juristic entity, if the names of the directors are disclosed in the same manner as if the directors are partners in a partnership.

16. **Replying to communications**

An attorney -

16.1 shall within a reasonable time reply to all communications which require an answer unless there is good cause for refusing an answer;

16.2 shall respond timeously and fully to requests from the Council for information and/or documentation which he or she is able to provide;

16.3 shall comply timeously with directions from the Council; and

16.4 shall refrain from doing anything that may hamper the ability of the Council to carry out its functions.

17. **Naming in deed of sale or alienation**

An attorney may not act in terms of a deed of sale or alienation of immovable property in which the attorney's name or the name of the attorney's firm has been pre-printed or duplicated as the transferring attorney. This prohibition will not, however, apply if a separate written instruction is given to the attorney prior to the signature of the deed of sale or alienation or to an agreement prepared by the attorney on instruction from the client.

18. **Specific provisions relating to conduct of attorneys**

An attorney shall -

18.1 refrain from accepting from any person directly or indirectly any sum of money or financial reward which it is agreed or intended should be used as payment or part payment for services to be rendered or for disbursements to be made in the future in the event of any future act or omission forming the basis of any criminal charge against the person by or for whose benefit such payment was made;

18.2 issue and, on request, hand over or otherwise deliver to the person making payment, a receipt for any money received;

18.3 exercise proper control and supervision over his or her staff and offices;

18.4 not abandon his or her practice;

18.5 not close his or her practice without prior written notice to the Council and to his or her clients and without arranging with the clients for the dispatch of their business or the care of their property in his or her possession or under his or her control;

18.6 if he or she is practising as a sole practitioner, and intends to be absent from his or her practice for a period in excess of 30 consecutive days, give notice in writing to the Council at least 14 days prior to his or her departure of the arrangements which he or she has made for the supervision of the practice during his or her absence. The attorney may, in the case of urgency only, give the Council a shorter period of notice. In the notice the attorney must inform the Council -

18.6.1 which other attorney will be supervising his or her practice;

18.6.2 the extent of the supervision which the other attorney will exercise;

18.6.3 what arrangements he or she has made for the payment of business and trust creditors; and

18.6.4 the reason for the late notice, if applicable.

This paragraph 18.6 applies also to attorneys who practise as partners or directors of a firm where all the partners or directors intend to be absent simultaneously from the firm for a period in excess of 30 consecutive days;

18.7 not overreach a client or overcharge the debtor of a client, or charge a fee which is unreasonably high, having regard to the circumstances of the matter. Any disputes about the quantum or rate of fees by an attorney or by work done by and value received from an attorney shall be subject to a fees enquiry conducted by the Council or an authorised sub-structure of the Council, and an onus shall rest on the attorney to justify the reasonableness of fees charged and that the work charged for was done and was reasonably necessary to do, or was done at the request of the client;

18.8 submit an account for taxation or assessment, as the case may be, within a reasonable time after a request to do so by the Council, the client or the person purportedly liable for payment of the fee;

18.9 not act in association with any organisation or person whose business or part of whose business it is to solicit instructions for the attorney;

18.10 not buy instructions in matters from a third party and may not, directly or indirectly, pay or reward a third party, or give any other consideration for the referral of clients other than an allowance on fees to an attorney for the referral of work;

18.11 use the services of a third party (including services for the purpose of gathering evidence) only where the attorney has established a *bona fide* attorney and client relationship with the client, such that -

18.11.1 the client is free to elect whether or not to use the services of the third party;

18.11.2 the attorney takes proper instructions directly from the client; and

18.11.3 the attorney is mandated to engage the third party at the client's cost,

in which event the attorney may issue an instruction to a third party whom the attorney considers will be competent to do specific work, and the attorney may, on the client's behalf, pay to the third party a fair and reasonable fee, consistent with the value of the work actually done by the third party;

18.12 when using the services of a third party, render an account to the client which discloses the payment to the third party as a disbursement;

18.13 not accept a mandate -

18.13.1 knowing there to be an existing mandate, or a freshly terminated mandate, given to another attorney without explaining to the client all the implications of his doing so, including in particular the cost implications;

18.13.2 in a matter taken on a contingency fee basis where he or she knows or ought reasonably to know that there were no good grounds for the potential client to terminate the existing mandate;

18.14 perform professional work or work of a kind commonly performed by an attorney with such a degree of skill, care or attention, or of such a quality or standard, as may reasonably be expected of an attorney;

18.15 in any communication with another person on behalf of a client -

18.15.1 not represent to that person that anything is true which the attorney knows, or reasonably ought to know, or reasonably believes, is untrue; or

18.15.2 not make any statement that is calculated to mislead or intimidate that other person, and which materially exceeds the legitimate assertion of the rights or entitlement of the attorney's client; or

18.15.3 not threaten the institution of criminal proceedings against any other person in default of that person's satisfying a concurrent civil liability to the attorney's client; or

18.15.4 not demand the payment of any costs to the attorney in the absence of an existing liability owed by the person to the attorney's client;

18.16 be in attendance, or immediately accessible, during a consultation with counsel or an attorney acting as counsel, or at court during the hearing of a matter (other than an unopposed application) in which he or she is the attorney of record, in person or through a partner or employee, being an attorney or a candidate attorney;

18.17 take all such steps as may be necessary from time to time to ensure compliance at all times as an accountable institution with the requirements of the Financial Intelligence Centre Act, 38 of 2001;

18.18 pay timeously, in accordance with any contractual terms or, in the absence of contractual terms, in accordance with the standard terms of payment, the reasonable charges of any legal practitioner, whether an advocate or an attorney, whom he or she has instructed to provide legal services to or on behalf of a client; such liability shall extend to every partner of a firm or member of an incorporated practice, and if the firm is dissolved or the incorporated practice is wound up, liability shall remain with each partner or member, as the case may be, the one paying, the others to be absolved;

18.19 dress appropriately when rendering services to or on behalf of a client;

18.20 not have a branch office unless, at all times when practice is being conducted there, that office is under the effective supervision of a practising attorney. The decision of the Council as to whether or not a branch office is under effective supervision shall be binding on the attorney and, if negative, shall entitle the Council to order that the matter be rectified or that the branch office be closed;

18.21 if he or she accepts appointment as an acting judge, adhere to the code of conduct applicable to judges;

18.22 not tout for professional work. An attorney will be regarded as being guilty of touting for professional work if he or she either personally or through the agency of another, procures or seeks to procure, or solicits for, professional work in an

improper or unprofessional manner or by unfair or unethical means, all of which for purposes of this rule will include, but not be limited to -

18.22.1 the payment of money, or the offering of any financial reward or other inducement of any kind whatsoever, directly or indirectly, to any person in return for the referral of professional work; or

18.22.2 directly or indirectly participating in an arrangement or scheme of operation resulting in, or calculated to result in, the attorney's securing professional work solicited by a third party.

For purposes of this paragraph 18.22 "professional work", in addition to work which may by law or regulation promulgated under any law be performed only by an attorney, means such other work as is properly or commonly performed by or associated with the practice of an attorney.

19. **Pro bono instructions**

19.1 An attorney who accepts *pro bono* instructions shall not, after acceptance, seek to charge a fee except as may be permissible under section 92 of the Act.

19.2 Attorneys who appear in court proceedings *pro bono* shall disclose that fact to all interested parties and to the court.

20. **Instructions involving court appearance**

20.1 The provisions of paragraphs 28.1, 28.4, 28.5, 28.6, 28.8, 28.9, 28.10, 28.11, 28.12 and 28.13 of this code applicable to the acceptance of briefs by advocates apply, with the necessary changes required by the context, to attorneys who accept instructions to appear in court.

20.2 An attorney who accepts an instruction to appear in court on behalf of a client shall not resile from the undertaking to carry out the instruction in order to attend to another instruction offered later, except for good cause, which shall be deemed to be present under either of the following circumstances -

20.2.1 the interests of justice would otherwise be impaired;

20.2.2 the instructing clients of both the initially offered instruction and of the later offered instruction agree in writing to release the attorney from the initially offered instruction.

20.3 If, after an attorney has accepted an instruction to appear in court on behalf of a client, any circumstances arise that imperil the proper discharge of his or her duties of diligence, he or she shall, once such eventuality is apparent, especially in relating to trials, report such circumstances to the client to facilitate timeous steps to inhibit prejudice to the client and facilitate a successor to be instructed in time to take over the instructions.

21. **Misconduct**

Misconduct on the part of any attorney will include (without limiting the generality of these rules) -

21.1 a breach of the Act or of the code or of any of the rules, or a failure to comply with the Act or the code or any rule with which it is the attorney's duty to comply;

21.2 any conduct which would reasonably be considered as misconduct on the part of an attorney or which tends to bring the attorney's profession into disrepute.

PART IV

Conduct of advocates contemplated in section 34(2)(a)(i) of the Act

22. **Preamble**

22.1 Part IV of this code is applicable to, and binding upon, every person who has been admitted and enrolled to practice as an advocate in South Africa and who is an independent practitioner of advocacy as contemplated in section 34(2)(a)(i) of the Act, called in Part IV of this code, "**counsel**".

22.2 Part IV of this code is applicable to the professional conduct of counsel.

22.3 The interpretation of Part IV of this code shall be effected purposively and aimed to give the fullest effect to the fundamental principles that shape, guide and express the essence of the profession of advocacy, which principles are that -

22.3.1 counsel are independent practitioners of advocacy and agents of the rule of law, who resist any undue influence from anyone, whose specialised services are available to all persons, in particular indigent people, regardless of any disregard in which persons requiring the services of counsel may be held by anyone;

22.3.2 counsel understand that the profession of advocacy is primarily vocational and serves the public interest and accordingly acknowledge fiduciary duties towards the courts and to their clients and to all professional colleagues.

23. **The nature of work undertaken by counsel**

23.1 Counsel undertake to perform professional legal services for a reasonable reward.

23.2 There is no closed list of subject matter about which a brief may be accepted by counsel provided the brief does not require counsel to undertake work which is properly that of an attorney. In particular, counsel may accept a brief:

23.2.1 to give legal advice orally or in a written opinion;

23.2.2 to prepare any documents required for use in any court or arbitration or other adjudicative proceedings;

2 32.4 to argue an application;

2 32.5 to argue an appeal;

2 32.6 to move an unopposed matter;

2 32.7 to appear in a trial or in an arbitration or in any other decision-making forum;

2 32.8 to negotiate on behalf of a client;

2 32.9 to settle a matter, whether on trial or otherwise;

2 32.10 to argue a matter on taxation before a taxing master;

2 32.1 1 to make representations to the National Prosecution Authority about whether or not to charge a person with a criminal offence;

2 32.12 to undertake a criminal prosecution on behalf of the State or on behalf of, or as, a private prosecutor;

2 32.13 to preside as an arbitrator, or as the chair of a disciplinary enquiry, or as presiding officer in any other adversarial proceedings, or to conduct any inquisitorial proceedings;

23.2.14 to act as an expert or as a referee;

23.2.15 to act as a mediator, facilitator or adjudicator;

23.2.16 to conduct an investigation and furnish a report with recommendations as to facts found and to make recommendations as to future action;

23.2.17 to act as a curator *ad litem*;

23.2.18 to make representations to a statutory or voluntary body or any state official;

23.2.19 to act as a commissioner in any enquiry.

23.3 Counsel shall comply with these rules of conduct and the rules of conduct applicable to prosecutors issued by the National Prosecution Authority whenever briefed on behalf of the State to conduct a prosecution, and in the event that any conflict might arise between the sets of rules, these rules of conduct shall prevail.

24. **Counsel's commitment to the practice of advocacy**

24.1 Counsel shall, in general, devote themselves to the practice of advocacy and to this end shall not engage in any other occupation or activity which is likely to compromise counsel's ability diligently to perform the work on any briefs or to diminish counsel's standing within the profession of advocacy or adversely affect the reputation of the profession of advocacy itself.

24.2 Counsel, in their professional capacity, shall not be involved in any way in any relationship or arrangement which resembles a partnership

25. **Independence of counsel**

25.1 Counsel shall, in the advancement of the client's cause, resist any conduct calculated to deflect counsel from acting in the best interests of the client and to that end counsel shall be fearless in the conduct of the client's case, and shall not be deterred by the threat of or the prospects of adverse consequences to counsel or any other person.

25.2 Counsel shall unreservedly assert and defend the rights of the client and in particular in order to protect the client's liberty, to the best of counsel's ability and with in lawful bounds.

25.3 Counsel shall upon acceptance of a brief exercise personal judgment over all aspects of the brief and shall not permit any person to dictate how the matter is to be conducted. If the decisions made or advice given by counsel are not acceptable to the instructing attorney or to the client, counsel must offer to surrender the brief, and if the instructing attorney elects to accept the surrender, counsel must forthwith withdraw.

25.4 Counsel shall not appear in any superior court in the absence of their instructing attorneys or instructing attorney's candidate attorneys, or other representatives, save as provided below.

25.5 Counsel may, when appearing in a matter before any court or tribunal of any kind, appear unaccompanied by their instructing attorney or the instructing attorney's candidate attorney or other representative, provided that the instructing attorney or a partner or employee of the instructing attorney (being an attorney or a candidate attorney) is immediately accessible to counsel at all times.

25.6 Counsel shall not bring about a binding settlement of any matter without an express and specific mandate by the instructing attorney as to the terms and conditions of an agreement of settlement.

25.7 Counsel shall ordinarily consult with instructing attorneys, clients and witnesses at counsel's chambers.

25.8 In circumstances which reasonably indicate that consultations cannot conveniently be held at the chambers of counsel, counsel may exercise a discretion to consult at some other place appropriate to the circumstances, which places include the home of counsel or the offices of the instructing attorney or the offices of the client, provided that counsel in so doing guards against compromising counsel's independent status, which circumstances may include -

25.8.1 where the large volume of documents to be scrutinised cannot usefully be accommodated in or transported to or from counsel's chambers;

25.8.2 where the great number of witnesses to be interviewed make it more convenient to meet at the place where they can be conveniently assembled;

25.8.3 where the consultations are to be held after hours or on weekends;

25.8.4 where the persons to be interviewed are located in places distant from counsel's chambers;

25.8.5 where counsel is to appear in proceedings occurring in a place other than counsel's home centre.

26. **Acceptance of briefs and the cab-rank rule**

26.1 Counsel are at liberty to limit in what areas of practice, and in which courts, they wish to accept briefs and to appear, and to profess to practise in such limited areas and courts. In the absence of expressly professing to practise in limited areas and in certain courts only, counsel shall be deemed to profess to practice in all areas of practice and in all courts.

26.2 Counsel shall not refuse to accept briefs in an area of practice in which they profess to practise or in a court in which they profess to practise on the grounds that they disapprove of the client or of the client's opinions or alleged conduct or because of any disregard in which such person might be held.

26.3 Counsel shall, unless they reasonably believe they are not professionally competent to do so, accept the offers of briefs to defend persons charged with criminal offences and shall resist any conduct designed to inhibit or discourage the acceptance of such a brief on any grounds, especially any disregard in which such accused person or the cause with which such accused person is associated, may be held by anyone.

26.4 Counsel may decline offers of briefs in matters in which they believe they are not competent to render professional services at the appropriate standard reasonably expected of a counsel in such matters or to discharge their duty of diligence, and when declining such offers counsel shall disclose those reasons to the instructing attorneys.

26.5 Counsel may decline the offer of a brief if agreement between counsel and the instructing attorney cannot be reached on the fee to be charged by counsel; provided that the fee proposed by counsel must satisfy the norm of the reasonable fee, as dealt with in paragraph 29 of the code.

26.6 Counsel shall, once alerted to the fact that the court or other adjudicative body is to be presided over by a member of counsel's family or other person with a close personal relationship with counsel, disclose that fact to the instructing attorney and to opposing counsel.

26.7 Counsel shall, once counsel is alerted to the fact that a family member or other person with a close personal relationship to counsel is opposing counsel or is an attorney in the opposing party's attorney's firm, notify the instructing attorney of such relationship.

26.8 Counsel may continue to act in any civil proceedings despite a family member or other person with a close personal relationship presiding over the matter, provided that none of the parties, having been informed of this, raises an objection. Whenever an objection is raised counsel must either withdraw, or the parties must jointly request and procure the recusal of the presiding officer.

26.9 Counsel shall not in a criminal trial, whether acting for the State or the defence, appear before a court presided over by his or her family member or other person with a close personal relationship to counsel.

26.10 Counsel may refuse to accept a brief if:

26.10.1 counsel is a senior counsel and considers that the nature of the brief and the work involved does not reasonably require the engagement of senior counsel;

26.10.2 the scale and duration of the work involved in undertaking the brief is such that counsel is apprehensive, on reasonable grounds, that commitment to the brief would prejudice counsel's practice or other professional or personal commitments;

26.10.3 the instructing attorney is reasonably suspected by counsel of being unlikely to pay the fees due to counsel timeously or at all.

27. **Acceptance of briefs: the referral rule**

27.1 Counsel undertakes to perform legal professional services in court-craft and knowledge of the law only upon the offer and acceptance of a brief.

27.2 Counsel shall accept a brief only from an attorney, and counsel shall not accept a brief directly from any other person or entity for either litigious or non-litigious work of any kind, save that counsel may accept a brief -

27.2.1 from a justice centre;

27.2.2 to perform professional services on brief from an attorney or legal practitioner in another country, including the equivalent of a state attorney or the attorney general or director of public prosecutions, without the intervention of a South African attorney;

27.3 Counsel who act as arbitrators or umpires shall do so only on receipt of a brief from the parties' attorneys, or on receipt of instructions from an arbitration body.

27.4 Counsel shall receive fees charged only from or through the instructing attorney who gave the brief to counsel, except where such attorney, for reasons of insolvency, or for any other reason, is unable to pay, in which circumstances, with leave from the Provincial Council, counsel may receive the fees due from another source in discharge of the indebtedness of the attorney.

28. **Acceptance of briefs: implied undertaking of diligence**

28.1 Counsel shall ordinarily only accept a brief given in writing or by email, but in circumstances of urgency counsel may accept an oral brief but must insist on

receipt, as soon as practicable, of a written or emailed brief, failing which counsel shall in writing or by email confirm the terms of the oral brief.

28.2 Counsel shall, upon accepting a brief, not resile from the undertaking to fulfil the brief in order to attend to another brief offered later, except for good cause; which cause shall be deemed to be present under either of the following circumstances:

28.2.1 the interests of justice would otherwise be impaired;

28.2.2 the instructing attorneys of both the initially offered brief and of the later offered brief agree in writing to release counsel from the initially offered brief.

28.3 Counsel shall not pass on a brief to another counsel except on the express prior agreement of the instructing attorney.

28.4 Counsel shall personally attend to all of the work involved in the briefs accepted by them, save as undertaken by leading counsel and one or more junior counsel briefed together, and subject to the long-standing practice of employing a "devil" in terms of which counsel shall be entitled, by agreement with another counsel, to have that counsel undertake research work in a particular brief in return for a fee agreed between counsel, and paid by the counsel on brief, provided that this shall not be converted into a permanent arrangement akin to employment of one counsel by another.

28.5 Counsel, upon accepting a brief, shall perform the necessary work to the best of their abilities, in keeping with counsels' seniority and relevant experience and:

28.5.1 counsel, upon acceptance of a trial brief, tacitly represent that they can properly commit themselves to remaining available throughout the period of the trial without compromising such commitment by reason of any prior commitments in other matters, regardless of whether such other matters have been set down at a time before or after the period estimated for the duration of the trial;

28.5.2 counsel, upon acceptance of a brief in any opposed application, tacitly represent that they can properly commit themselves to remaining available throughout the period during which that opposed application may be heard without compromising such commitment by reason of any prior commitments in other matters, regardless of whether such other matters

have been set down at a time before or after the period during which the opposed application may be heard.

28.6 Counsel must decline the offer of a brief if their other commitments do not reasonably allow them to discharge their duty of diligence in the preparation of the brief. In particular, counsel shall not accept any brief if it is reasonably foreseeable that -

28.6.1 counsel shall be unable to attend to all of the necessary work within a reasonable time;

28.6.2 the risk exists that counsel might, because of a conflict of interest or any other reason, have to surrender the brief;

28.6.3 the failure to attend to the brief timeously or the surrender of the brief is likely to result in embarrassment, inconvenience or prejudice to the instructing attorney or the client or a fellow counsel wh omight be briefed thereafter, or to the court.

28.7 If, after counsel has accepted a brief in any matter, any circumstance arises that imperils the proper discharge of counsel's duty of diligence, counsel shall, once such eventuality is apparent, especially in respect of trial briefs, report such circumstances to the instructing attorney to facilitate timeous steps to inhibit prejudice to the client and facilitate a successor to be briefed in time to take over the brief.

28.8 Counsel shall not accept more than one brief on trial for the same day.

28.9 C ounselshall not, when briefed on trial on a given day, also accept a brief to appear in any other opposed matter, save an application for leave to appeal, provided such proceedings are arranged to ensure no interference with the matter in which counsel is briefed on trial.

28.10 C ounselmay, on a day on which counsel is briefed on trial, accept a further brief only on matters listed below, provided that the performance of that further brief does not interfere with the conduct of the matter in which counsel is briefed on trial:

28.10.1 a brief to mention, at a roll call, a trial matter for postponement by agreement;

28.10.2 a brief to record, at the roll call, the fact of a settlement of a trial matter and submit a settlement agreement to be made an order of court;

28.10.3 a brief to note a judgment in a matter in which counsel had been briefed to conduct the case;

28.10.4 a brief to attend to any matter during a period outside of court hours.

28.11 Counsel may, once released from any obligation to remain available in relation to a trial matter, accept any other brief for that period.

28.12 Counsel shall in appropriate circumstances expressly advise the client about the prospects of and availability of dispute resolution options other than litigation.

28.13 Counsel shall upon acceptance of a brief take reasonable steps to determine whether or not prescription might be imminent and if so deal with the matter to avoid that consequence.

29. **Counsel's fees: the norm of the reasonable fee**

29.1 Counsel shall, in calculating a fee for services rendered or to be rendered, be mindful that the profession of advocacy is primarily vocational and exists to serve the public interest, and accordingly, shall charge only reasonable fees for all work undertaken.

29.2 Counsel shall calculate a reasonable fee by having regard to the following factors, none of which is determinative and all of which are simply guides to a fair calculation:

29.2.1 the time and labour required;

29.2.2 the customary charges by counsel of comparable standing for similar services;

29.2.3 the novelty and difficulty of the issues involved;

29.2.4 the skill and expertise required to properly address the matter;

29.2.5 the amount at stake in the matter;

29.2.6 the importance of the matter to the client.

29.3 Counsel shall, in calculating a fee, guard against both overvaluing and undervaluing the services to be rendered.

29.4 Counsel shall not, in calculating a fee, inflate the amount because the client is able to pay generously.

29.5 Counsel may, in calculating a fee, on the grounds of a client's lack of means to pay fees, charge the client an amount less than would otherwise be reasonable for the services rendered, or charge no fee at all.

29.6 Upon acceptance of a brief counsel must, at the request of the instructing attorney, provide details to the attorney of counsel's estimate of the fees to be charged. Upon completion of the work, or item of work, which has been performed counsel must provide the instructing attorney with details of the make-up of the fee that has been charged.

30. **Agreements about fees**

30.1 If an attorney offers a brief to counsel which is already marked with a fee, counsel upon acceptance of the brief tacitly agrees to that fee; if counsel chooses to refuse the brief on those terms, counsel and the instructing attorney must expressly agree in writing or by email to a different fee, otherwise, if counsel performs the work mandated by the brief, the initial marked fee shall bind counsel.

30.2 Counsel shall, at the time of accepting a brief, stipulate to the instructing attorney the fee that will be charged for the service or the daily or hourly rate that shall be applied to computing a fee.

30.3 Counsel shall, in respect of every brief, expressly agree with the instructing attorney the fee or the rate of fees to be charged, unless there is a tacit understanding between counsel and the instructing attorney about the fees or the rate of fees usually charged by counsel for the particular kind of work mandated by the brief.

30.4 Counsel who is briefed under circumstances of urgency which are such that an agreement on the fees or the rate of the fees to be charged cannot reasonably be concluded immediately when the brief is offered, must take reasonable steps to agree a fee as soon as possible thereafter.

30.5 If for any reason, despite reasonable steps by counsel to reach an agreement about the amount or the rate of fees, no agreement is achieved, counsel shall be entitled to decline the brief.

30.6 The following standard terms, which counsel must draw to the attention of the instructing attorney, shall be implied in a brief offered to and accepted by counsel:

30.6.1 no amount agreed upon shall exceed a reasonable fee;

30.6.2 counsel may charge a reasonable fee for a reserved hearing date unless the instructing attorney releases counsel on reasonable notice;

30.6.3 counsel who charges a fee for a reserved hearing date shall deliver to the instructing attorney a certificate to the effect that counsel did not undertake any other brief for a hearing for the reserved date.

30.7 Counsel may expressly, in writing or in an email, conclude an agreement with an instructing attorney which includes provision for any or all of the following:

30.7.1 that the fees, or a specified amount as cover for counsel's fees, must be paid to the instructing attorney prior to the performance of any obligation in terms of the brief and that the attorney will hold the money in trust for payment of counsel's fees subject to counsel performing the brief;

30.7.2 that a special collapse fee shall be payable to counsel in the event that proceedings in a court or before a tribunal, for which counsel has, at the request of the instructing attorney, reserved a number of days, not proceed as envisaged, whether as a result of the matter being settled, postponed by agreement between the parties or by an order of court, or concludes earlier than the end of the period reserved by counsel, provided that the fee actually charged is a reasonable fee.

31. ***Pro bono* briefs**

31.1 Counsel who accept *pro bono* briefs shall not, after acceptance, seek to charge a fee except as may be permissible under section 92 of the Act.

31.2 Counsel who appear in proceedings *pro bono* shall disclose that fact to all interested parties and to the court.

32. **Prohibited fee agreements**

32.1 Counsel shall not agree to charge on results or agree to reduce or waive fees if a positive result is not achieved, except in a matter taken on contingency in terms

of the Contingency Fees Act 66 of 1997 and/or save as contemplated in section 92 of the Act.

32.2 Counsel shall not agree to charge a fee as allowed on taxation except in a matter undertaken on contingency, or as permitted in terms of section 92 of the Act.

33. **Acceptance of gifts by counsel**

33.1 Counsel shall guard against compromising their independence by the acceptance of gifts from a client or an attorney, and whenever it is not inappropriate to accept a gift from a client it shall be received by counsel through the agency of the instructing attorney.

33.2 Counsel may, whenever gifts of substantial value are offered, seek advice from the Council or the authorised sub-structure of the Council about the appropriateness of acceptance, before acceptance of such gift.

34. **Marking briefs and submitting fees accounts**

34.1 Counsel shall mark a fee as soon as practicable after the specific service has been rendered and shall render an account monthly of all fees owing by every debtor.

34.2 Counsel shall render accounts to the instructing attorney or arbitration body contemplated in paragraph 27.3, and shall receive payment only from the instructing attorney or arbitration body.

34.3 Counsel shall not submit an account directly to a client except by agreement with the instructing attorney and client and on condition that the same account is simultaneously submitted to the instructing attorney, nor receive payment directly from a client.

34.4 Counsel shall maintain a banking account into which every fee received shall be deposited.

34.5 Counsel shall keep and preserve records of account, in either physical or electronic format, up to date, for five years or for such longer period as may be required by any law, and hold them available for inspection by the Council at all times. Such records of account shall accurately record every fee marked, the instructing attorneys or other accredited entities who gave the briefs, the nature of the service rendered, the dates of performance, and every payment received.

34.6 Counsel shall not mark a brief, or in any form record a description of fees in any record of account, which is false or misleading as to the true nature of the brief or of the services rendered; in particular:

34.6.1 a brief to settle an agreement to resolve litigation shall not be recorded as a brief on trial;

34.6.2 a brief to negotiate a settlement shall not be recorded as a brief on trial.

35. **Recovery by counsel of fees owing and payable**

Counsel may sue an attorney or arbitration body for fees due and payable to him or her.

36. **Appropriate dress**

Counsel shall dress appropriately when rendering services to or on behalf of a client.

37. **Abandonment of practice**

37.1 Counsel shall not abandon his or her practice.

37.2 Counsel shall not close his or her practice without prior notice to the Council and to all attorneys by whom he or she has been briefed and in respect of whom work remains to be done, and without arranging with those attorneys for the manner in which their briefs are to be dealt with.

PART V

Conduct of advocates contemplated in section 34(2)(a)(ii) of the Act

38. **Preamble**

38.1 The rules of conduct in Part V of this code of conduct are applicable to, and binding upon, every person who has been admitted and enrolled to practice as an advocate in South Africa in terms of section 34(2)(a)(ii) of the Act, called in Part V of this code "**a trust account advocate**".

38.2 The provisions of paragraphs 18.1, 18.2, 18.3, 18.10, 18.11, 18.13, 18.15, 18.17, and 18.8 which apply to the attorneys, and paragraphs 22 to 22.3 inclusive, which apply to counsel, will apply, with the necessary changes required by the context, to trust account advocates.

38.3 For purposes of this Part V a reference to a trust account advocate accepting a brief shall include his or her accepting an instruction from an attorney or directly from a member of the public or from a justice centre.

39. **Nature of work undertaken by trust account advocates**

39.1 The provisions of paragraph 23.1 and 23.2 of this code apply, with the necessary changes required by the context, to trust account advocates.

39.2 A trust account advocate shall comply with the requirement to be in possession of a Fidelity Fund certificate and shall conduct his or her practice in accordance with the relevant provisions of chapter 7 of the Act and the rules relating to the opening and keeping of trust accounts and the handling of trust monies.

39.3 The provisions of paragraph 23.3 of this code apply, with the necessary changes required by the context, to trust account advocates.

40. **Trust account advocate's commitment to the practice of advocacy**

The provisions of paragraph 24 of this code apply, with the necessary changes required by the context, to trust account advocates.

41. **Independence of trust account advocates**

41.1 The provisions of paragraph 25.1, 25.2, 25.7 and 25.8 of this code apply, with the necessary changes required by the context, to trust account advocates.

41.2 A trust account advocate shall upon acceptance of a brief, whether from an instructing attorney or from a client directly, exercise personal judgment over all aspects of the brief and shall not permit any person to dictate how the matter is to be conducted. If the decisions made or advice given by the trust account advocate are not acceptable to the instructing attorney or to the client, the trust account advocate must offer to surrender the brief, and if the instructing attorney or the client elects to accept the surrender, the trust account advocate must forthwith withdraw.

41.3 A trust account advocate shall not appear in any superior court in the absence of his or her instructing attorney or instructing attorney's candidate attorney, or the client where the trust account advocate has taken an instruction directly from a member of the public, save as provided below.

41.4 A trust account advocate may, when appearing in a matter before any court or tribunal of any kind, appear unaccompanied by the instructing attorney or the instructing attorney's representative, or the client where the trust account advocate has been instructed directly by a member of the public, provided that the trust account advocate is able to remain in contact with the instructing attorney (or where the trust account advocate has been instructed directly by a member of the public, the client) at all times.

41.5 The trust account advocate shall not bring about a binding settlement of any matter without an express and specific mandate by the instructing attorney or by the client, as the case may be, as to the terms and conditions of an agreement of settlement.

42. **Acceptance of briefs and instructions and the cab-rank rule**

42.1 The provisions of paragraphs 26.1, 26.2, 26.3, 26.8, 26.9 and 26.10 of this code apply, with the necessary changes required by the context, to trust account advocates.

42.2 A trust account advocate may decline offers of briefs in matters in which the trust account advocate believes he or she is not competent to render professional services at the appropriate standard reasonably expected of a trust account advocate in such matters or to discharge his or her duty of diligence, and when declining such offers the trust account advocate must disclose those reasons to the instructing attorney, or to the client where the trust account advocate has accepted an instruction directly from a member of the public.

42.3 A trust account advocate may decline the offer of a brief if agreement between him or her and the instructing attorney or the client (where the trust account advocate has been approached directly by a member of the public) cannot be reached on a fee to be charged in the matter; provided that the fee proposed by the trust account advocate must satisfy the norm of the reasonable fee, as dealt with in paragraph 29 of this code.

42.4 A trust account advocate shall, once he or she is alerted to the fact that the court or other adjudicative body is to be presided over by a member of his or her family or other person with a close personal relationship with him or her, disclose that fact to the instructing attorney, or to the client (where the trust account advocate has received an instruction directly from a member of the public), and to opposing counsel.

42.5 A trust account advocate shall, once he or she is alerted to the fact that a family member or other person with a close personal relationship to him or her is opposing counsel or is an attorney in the opposing party's attorneys' firm, notify the instructing attorney or the client (where the instruction has come directly from a member of the public) of such relationship.

43. **Acceptance of briefs and instructions**

43.1 A trust account advocate shall perform legal professional services in court-craft and knowledge of the law only upon the offer and acceptance of a brief.

43.2 A trust account advocate may accept a brief from an attorney or from a member of the public or from a justice centre.

43.3 Where a trust account advocate accepts a brief from an attorney or from an arbitration body as contemplated in paragraph 27.3, the trust account advocate shall receive deposits and payment of accounts only from or through the instructing attorney or from or through the arbitration body which gave the brief to him or her, except where the attorney or arbitration body, for reasons of insolvency or for any other reason, is unable to pay, in which circumstances, with leave from the authorised sub-structure of the Council, a trust account advocate may receive payments due from another source in discharge of the indebtedness of the attorney or arbitration body.

43.4 Where a trust account advocate receives instructions directly from a member of the public or from a justice centre, he or she may receive fees from that member

of the public or justice centre or from any other source, subject to his or her complying with chapter 7 of the Act.

44. **Acceptance of briefs: implied undertaking of diligence**

44.1 The provisions of paragraphs 28.1, 28.4, 28.5, 28.6, 28.8, 28.9, 28.10, 28.11, 28.12 and 28.13 of this code apply, with the necessary changes required by the context, to trust account advocates.

44.2 A trust account advocate shall, upon accepting a brief, not resile from the undertaking to fulfil the brief in order to attend to another brief offered later, except for good cause, which shall be deemed to be present under either of the following circumstances -

44.2.1 the interest of justice would otherwise be impaired;

44.2.2 the instructing attorneys or the instructing clients of both the initially offered brief and of the later offered brief agree in writing to release the trust account advocate from the initially offered brief.

44.3 A trust account advocate shall not pass on a brief to another advocate except on the express prior agreement of the instructing attorney or of the client where the trust account advocate has been instructed directly by the client.

44.4 If, after a trust account advocate has accepted a brief in any matter, any circumstances arise that imperil the proper discharge of his or her duty of diligence, he or she shall, once such eventuality is apparent, especially in respect of trial briefs, report such circumstances to the instructing attorney or to the instructing client, as the case may be, to facilitate timeous steps to inhibit prejudice to the client and facilitate a successor to be briefed in time to take over the brief.

45. **Advocate's fees: The norm of the reasonable fee**

The provisions of paragraph 29 of this code apply, with the necessary changes required by the context, to trust account advocates.

46. **Agreements about fees**

46.1 The provisions of paragraph 30.1, 30.4 and 30.5 of this code apply, with the necessary changes required by the context, to trust account advocates.

46.2 A trust account advocate shall at the time of accepting a brief or an instruction, stipulate to the instructing attorney or to the client, as the case may be, the fee that will be charged for the service or the daily or hourly rate that will be applied to computing a fee.

46.3 A trust account advocate shall, in respect of every brief, expressly agree with the instructing attorney (or with the client, where the trust account advocate is instructed directly) the fee or the rate of fees to be charged, unless there is a tacit understanding between the trust account advocate and the instructing attorney or the client, as the case may be, about the fees or the rate of fees usually charged by the trust account advocate for the particular kind of work mandated by the brief or instruction.

46.4 The following standard terms, which the trust account advocate must draw to the attention of the instructing attorney and to the client where the instruction comes from a member of the public, shall be implied in a brief or instruction offered to and accepted by the trust account advocate:

46.4.1 no amount agreed upon shall exceed a reasonable fee;

46.4.2 the trust account advocate may charge a reasonable fee for a reserved hearing date unless the instructing attorney or the client, as the case may be, releases the trust account advocate on reasonable notice;

46.4.3 a trust account advocate who charges a fee for a reserved hearing date shall deliver to the instructing attorney or to the client, as the case may be, a certificate to the effect that the trust account advocate did not undertake any other brief for a hearing for the reserved date.

46.5 A trust account advocate may expressly, in writing or in an email, conclude an agreement with an instructing attorney, or with a client, as the case may be, which includes a provision for any or all of the following:

46.5.1 that payment of fees or a specified amount as cover for the fees must be made prior to the performance of any obligation in terms of the brief; provided that in such a case the payment shall be held in a trust account in accordance with chapter 7 of the Act and the accounting rules applicable to a trust account advocate;

46.5.2 that a special collapse fee shall be payable to the trust account advocate in the event that proceedings in a court or before a tribunal, for which the

trust account advocate has, at the request of the instructing attorney or the client, reserved a number of dates, not proceed as envisaged, whether as a result of the matter being settled, postponed by agreement between the parties or by a court order, or concludes earlier than the end of the period reserved by the trust account advocate, provided that the fee actually charged is a reasonable fee.

47. ***Pro bono* instructions**

Paragraphs 31.1 and 31.2 of this code apply, with the necessary changes required by the context, to trust account advocates.

48. **Prohibited fee agreements**

The provisions of paragraph 32 of this code apply, with the necessary changes required by the context, to trust account advocates.

49. **Acceptance of gifts by advocates**

49.1 Trust account advocates shall guard against compromising their independence by the acceptance of gifts from a client or an attorney, and whenever it is not inappropriate to accept a gift from a client it shall be received by the advocate through the agency of the instructing attorney, where the advocate is briefed by an attorney.

49.2 The provisions of paragraph 33.2 of this code applies, with the necessary changes required by the context, to trust account advocates.

50. **Marking briefs and submitting fees accounts**

50.1 The provisions of paragraphs 34.1, 34.4, 34.5 and 34.6 of this code apply, with the necessary changes required by the context, to trust account advocates.

50.2 A trust account advocate shall render accounts to the instructing attorney or accredited entity and shall receive payment only from the instructing attorney or accredited entity. Where a trust account advocate receives an instruction directly from a member of the public or from a justice centre accounts shall be rendered to the client directly, and payment may be received from a client or from a third party.

50.3 A trust account advocate shall not submit an account directly to a client nor receive payment directly from a client where the trust account advocate has been instructed by an attorney.

50.4 A trust account advocate shall maintain banking accounts in accordance with chapter 7 of the Act and the accounting rules applicable to trust account advocates, and shall cause payments in respect of accounts to be paid into the appropriate banking account in accordance with chapter 7 of the Act and the accounting rules.

51. **Recovery by trust account advocates of fees owing and payable**

51.1 The provisions of paragraph 35 of this code apply, with the necessary changes required by the context, to trust account advocates in respect of accounts owing arising from briefs from attorneys.

51.2 A trust account advocate acting in terms of an instruction received directly from a member of the public or from a justice centre shall be entitled to recover directly from the client any accounts owing and payable by that client.

52. **Professional etiquette**

The provisions of paragraph 61.3 of this code apply, with the necessary changes required by the context, to trust account advocates.

53. **Abandonment of practice**

53.1 A trust account advocate shall not abandon his or her practice.

53.2 A trust account advocate shall not close his or her practice without prior notice to the Council and to his or her clients and to attorneys by whom he or she has been briefed without arranging with the clients and the attorneys for the despatch of their business or the care of their property in his or her possession or under his or her control.

PART VI

Conduct of legal practitioners and candidate legal practitioners in relation to appearances in court and before tribunals.

54. **Appearances**

54.1 Unless otherwise stated or unless the context dictates otherwise, Part VI of this code applies to all legal practitioners and candidate legal practitioners in relation to appearances in any court in which they have the right of appearance or before any tribunal which performs a judicial, quasi-judicial or administrative function.

54.2 If Part VI of this code conflicts with any of the other provisions of this code then those other provisions will prevail and take precedence over the provisions of Part VI.

55. **Interviewing of Witnesses**

General

55.1 A legal practitioner shall ordinarily interview clients and witnesses in the presence of the instructing attorney or other representative of the instructing attorney (where an instructing attorney has been appointed).

55.2 A legal practitioner who is an advocate as contemplated in section 34(2)(a)(i) of the Act may interview a witness in the absence of the instructing attorney or other representative of the instructing attorney in the following instances ;

55.2.1 when the matter is undertaken on brief from Legal Aid South Africa or a law clinic;

55.2.2 when there is a need to interview a witness and the instructing attorney cannot reasonably attend;

55.2.3 when the legal practitioner is at court or before the tribunal with the client and the instructing attorney is absent;

55.2.4 when the instructing attorney gives permission.

55.3 A legal practitioner shall ordinarily interview witnesses whose credibility might be in issue separately from other witnesses.

55.4 Unless a legal practitioner intends to present evidence by way of affidavit to a court or a tribunal, the written statements made by witnesses in an interview with the legal practitioner or written statements made by witnesses that are given to the legal practitioner by the instructing attorney (where applicable) may not be obtained on affidavit.

55.5 Once a legal practitioner has called a witness to testify, the legal practitioner shall not again interview that witness until after cross examination and re-examination, if any, have been completed, unless circumstances arise that make such an interview necessary. When a proper case for such a necessary interview exists, the legal practitioner shall prior to any interview inform the opposing legal practitioner of such need and unless the opposing legal practitioner consents, no such interview shall be held unless the court or tribunal grants permission to do so.

Interviewing of witnesses of the opposing party in civil proceedings

55.6 A legal practitioner shall not be prevented from interviewing any person, at any time before or during any trial, from whom it is believed useful information may be obtained, and in particular, it shall not be a reason to prevent such an interview that the opposing party has -

55.6.1 subpoenaed or contemplates subpoenaing that person;

55.6.2 already interviewed or has arranged to interview that person.

55.7 Whenever, after the commencement of a case, a legal practitioner has reason to suspect that a person with whom an interview is then sought may have been in touch with the opposing party with a view to testifying, the legal practitioner shall, either before or at the outset of an interview, or if the suspicion arises only during the interview, once the suspicion arises, ascertain if that person has been in touch with the opposing party and whether such person has been subpoenaed or is likely to be subpoenaed by the opposing party or has already been interviewed or an interview has been arranged with the opposing party, and if informed that any of these steps have been taken by the opposing party, the legal practitioner shall at once notify the opposing party of the intention to interview that person, and shall not commence or continue with an interview until such notification has been received by the opposing party, and thereafter the interview may take place in the absence of any representative of the opposing party.

55.8 Whenever a legal practitioner arranges to interview a person who has already testified for the opposing party, before such interview may be conducted, the legal practitioner must invite the opposing party to attend the interview, on reasonable notice. However, regardless of the presence or absence of the opposing party, the interview may be conducted as arranged in the notification.

Interviewing of prosecution witnesses by defence legal practitioner

55.9 A legal practitioner shall, except as provided hereafter, when conducting criminal defences, take reasonable steps to prevent inadvertent contact with any person who is, or is likely to be, a state witness, for as long as that person is or is likely to be a state witness, and whenever the legal practitioner proposes to interview any person he or she shall ascertain whether such person is a state witness before conducting the interview.

55.10 A legal practitioner may interview a state witness if the prosecution consents, or, failing such consent, if a court grants permission to do so, and if permission is subject to conditions, in strict accordance with those conditions.

55.11 For the purposes of these rules of conduct, a state witness in relation to a particular charge includes anyone from whom a statement has been taken by the South African Police Service about a crime or alleged crime, regardless of whether the prosecution is committed to calling such person or not, and anyone who has already testified for the state.

56. **The scope and limits of legitimate cross-examination**

56.1 A legal practitioner shall cross-examine a witness with due regard to the right to dignity of the witness.

56.2 A legal practitioner shall guard against being influenced by any person to become a channel for the infliction of gratuitous embarrassment, insult or annoyance of a witness, and shall retain personal control over what is asked or put in cross-examination by exercising personal judgment about the propriety of all and any imputations.

56.3 A legal practitioner shall not put to a witness an allegation of fact if the legal practitioner has no reasonable expectation that admissible evidence, whether oral or otherwise, is available to be adduced to substantiate the allegation of fact.

56.4 A legal practitioner shall not impugn the character of a witness unless he or she has good grounds to do so. In this regard, good grounds are deemed to be present if -

56.4.1 the instructing attorney (if one is appointed) informs the legal practitioner that the attorney is satisfied that the imputation is well-founded and true. However, a mere instruction to put an imputation shall be inadequate;

56.4.2 the source of the imputation is the statement of any person other than the instructing attorney, and the legal practitioner ascertains from that person, or any other source, reliable information or reasons to believe that the statement is well-founded or true.

56.5 Regardless of whether the imputations about the witness are well-founded or true, the legal practitioner shall not put such imputations to a witness unless the answers that might be given could reasonably be believed to be material to the credibility of that witness or to be material to any issue in the case.

56.6 A legal practitioner shall not, in the conduct of a criminal defence, recklessly attribute to, or accuse, a witness or other person of the crime with which the client is being tried. Such an attribution or accusation may be made only if the facts adduced, or to be adduced, in evidence, and the circumstances which the evidence suggest, afford a reasonable basis from which rational inferences may be drawn to justify at least a reasonable suspicion that the crime might have been committed by that witness or other person.

57. **Disclosures and non-disclosures by legal practitioner**

57.1 A legal practitioner shall take all reasonable steps to avoid, directly or indirectly, misleading a court or a tribunal on any matter of fact or question of law. In particular, a legal practitioner shall not mislead a court or a tribunal in respect of what is in papers before the court or tribunal, including any transcript of evidence.

57.2 A legal practitioner shall scrupulously preserve the personal and confidential information of a client communicated to him or her, unless the information is not privileged and disclosure is required by law.

57.3 A legal practitioner shall not waive or purport to waive privilege in respect of privileged information; the decision to waive professional privilege is that of the client, not of the legal practitioner.

57.4 A legal practitioner shall, in any ex parte proceedings, disclose to a court every fact (save those covered by professional privilege or client confidentiality) known to the legal practitioner that might reasonably have a material bearing on the decision the court is required to make.

57.5 A legal practitioner shall, in all proceedings, disclose to a court or a tribunal all relevant authorities of which the legal practitioner is aware that might reasonably have a material bearing on the decision the court or tribunal is required to make.

57.6 A legal practitioner shall, if the interests of justice require the disclosure to a court or tribunal of information covered by professional privilege, seek from the instructing attorney (where one is appointed) and the client permission to make the disclosure, and if permission is withheld, the legal practitioner shall scrupulously avoid any insinuation in any remarks made to a court or tribunal that all information that would serve the interests of justice has been disclosed.

57.7 A legal practitioner shall not, in the event of being obliged to withdraw from representing a client in any proceedings, offer an explanation that would disclose the client's confidential or privileged information.

57.8 A legal practitioner shall, if a draft order is presented to a court that deviates in any respect from standard form orders routinely made in that court, expressly draw such deviations to the attention of the court and offer a justification for such deviations.

57.9 A legal practitioner shall not rely on any statement made in evidence which he or she knows to be incorrect or false.

57.10 A legal practitioner shall not make use of any privileged information of the opposing party that has accidentally or unlawfully come into the possession of the legal practitioner, and shall at once he or she has knowledge of such circumstances, notify the legal representatives for the opposing party. However, if such information subsequently becomes available to the legal practitioner through lawful means, he or she shall not be prohibited from making use thereof.

58. **Conflicts of interests involving legal practitioners**

58.1 A legal practitioner shall guard against becoming personally, as distinct from professionally, associated with the interests of the client.

58.2 A legal practitioner shall not stand bail for the client.

58.3 A legal practitioner shall not accept a brief to appear before any court, council, board or other adjudicative tribunal, and whether statutory or voluntary in nature, if the legal practitioner is contemporaneously a member of that court, council, board or adjudicative tribunal, whether by election or appointment, and whether such membership is permanent, temporary or in an acting capacity.

58.4 A legal practitioner shall not be obliged to accept a brief if he or she has previously accepted a brief to advise another interested party about the matter. The legal practitioner must refuse such a brief if any confidential information having any bearing on the matter had been received by him or her with the earlier brief or a reasonable belief might exist that the client in the earlier brief might be prejudiced by such acceptance.

58.5 A legal practitioner may accept a brief to argue a case for a party despite having earlier given an opinion on the issues to the opposing party, provided that -

58.5.1 no information had been received by the legal practitioner for the purpose of giving the opinion about which a reasonable belief might exist that the client in the earlier brief might be prejudiced by acceptance of the later brief; and

58.5.2 the attorneys for both parties (where appointed), or an unrepresented party, agree to the offer of the later brief before an acceptance.

58.6 A legal practitioner may not accept a brief on appeal if the legal practitioner has accepted a brief for the opposing party at any stage of the proceedings.

58.7 A legal practitioner who has presided at an enquiry in terms of the company laws shall not at any time accept a brief to act in any capacity for any interested party in any subsequent proceedings related in any way to the subject matter of the enquiry.

58.8 A legal practitioner who has accepted a brief from a liquidator or from a trustee of an insolvent estate shall not at any time accept a brief to act in any capacity for any interested party in subsequent proceedings in the liquidation or the insolvency.

58.9 A legal practitioner shall not accept a brief if he or she has any form of relationship, including a family relationship, with the client or an opposing party which compromises, or which might reasonably be expected to compromise, the legal practitioner's independence.

58.10 A legal practitioner shall not accept a brief where a position or office previously occupied by him or her with a client or with an opposing party compromises, or might reasonably be expected to compromise, his or her independence.

58.11 A legal practitioner shall not accept a brief on behalf of a provincial or municipal council of which he or she is a member.

58.12 An advocate who was previously an attorney acting for the client in a matter should not accept a brief as a legal practitioner in the same matter where the advocate's former capacity, the extent of control and direction exercised by him or her as an attorney, or his or her established relationship as attorney with the client is likely to compromise the expectation that the advocate's advice about the conduct of the matter will be independent.

59. **Conflicts of interest among clients of legal practitioners**

59.1 A legal practitioner shall, when acting for two or more clients, be aware of the risk of a conflict of interests existing or arising in the course of the proceedings, whether criminal or civil, and once the legal practitioner is alerted to the existence of a conflict he or she shall withdraw from acting for one or all clients in those proceedings as soon as possible, and in particular -

59.1.1 if the legal practitioner has become aware of privileged or confidential information of any one client relevant to the proceedings that could be used to the prejudice of any other client, the legal practitioner may not act in any proceedings in which the prejudiced client is a party;

59.1.2 if the legal practitioner learns of a conflict of interest among clients at a time and under circumstances where the legal practitioner is not made aware of any privileged information, the legal practitioner may continue to act for one or other client as nominated by the instructing attorney (where one is appointed).

59.2 A legal practitioner may act for two or more adversaries in drawing a settlement agreement to capture their agreement, but must advise the parties of their rights to independent legal advice. Moreover, in any matter involving a settlement of a matrimonial dispute or a matter involving the regulation of care and residence of children, the legal practitioner shall take active steps to ensure that all aspects of any contemplated settlement is equitable to all parties and in the best interests of the children.

60 . **Commitment of legal practitioner to an effective court process**

60 .1 A legal practitioner shall not a buse or permit a buse of the process of court or tribunal and shall act in a m aner that shall promote and advance efficacy of the legal process.

60 .2 A legal practitioner shall not deliberately protract the duration of a case before a court or tribunal.

60 .3 A legal practitioner shall take all reasona ble steps to arrive promptly in a court or tribunal where the legal practitioner is expected to appear, and shall in this regard take reasona ble steps to allow for ha bitual events that might inhibit prompt arrival.

60 .4 A legal practitioner who is expected to appear in a court or before a tribunal at a given time shall honour that com mitment and shall organise other com mitments to prevent interference with the scheduled court hearings. In particular, the legal practitioner shall not endeavour to seek or arrange a postponement of the m atter or a change to a different time to suit his or her convenience, except when the instructing attorney (where appointed) and the client, having been fully and accurately informed of the reasons relied upon by the legal practitioner, have agreed, and

60 .4.1 when an opposing party is affected, the opposition legal representatives, if any, having been fully and accurately informed, have agreed, and

60 .4.2 the business of the court or tribunal is not m aterially compromised.

61. **Public comment by legal practitioner**

61.1 A legal practitioner shall not com ment publicly nor publish any opinions a bout m atters which are before a court or other tribunal in which the litigation process is incomplete, except for the purposes of guiding public understanding of the issues that have arisen or m ay arise in the course of such proceedings.

61.2 A legal practitioner m ay publicly express opinions a bout any question of law or prospective law provided that the opinion is not likely to be construed as pre-judging an actual case before the courts or any tribunal at that time.

61.3 **Professional etiquette**

61.4 Legal practitioners shall, upon a first appearance before a judicial officer, approach the registrar of the judicial officer (if the judicial officer is a judge), or the equivalent official in any other court, before the hearing in order to present themselves to the judicial officer; the rule is applicable to acting judges as well, and any prior professional or personal acquaintance with the acting judge is irrelevant.

61.5 At the trial court roll call, in the motion courts and in the divorce courts, legal practitioners shall seat themselves from the front row with regard to seniority.

61.6 Legal practitioners shall deal with the judicial officer, court staff and all other persons in court with civility and respect.

61.7 A legal practitioner shall, on the completion of his or her matter, remain in the courtroom until the legal practitioner in the next matter has risen, or if the legal practitioner is the last legal practitioner in court, until the court has risen.

61.8 A legal practitioner shall not, when briefed in an opposed matter, approach a judicial officer in the absence of the opposing legal practitioner, unless the opposing legal practitioner has expressly agreed thereto.

61.9 Legal practitioners shall not allow any ill-feeling between litigants or legal practitioners to interfere with the civil and professional conduct of the matter.

61.10 Legal practitioners shall not indulge in personal remarks about opposing legal practitioners or witnesses, whether in court or out of court, and shall not allow any antipathy that might exist between the legal practitioner and the opposing legal practitioners personally to intrude upon the conduct of the matter.

61.11 After a hearing when judgment is awaited, a legal practitioner shall not place before, or try to send to, a judicial officer any further material of whatever nature, except by agreement among representatives of all parties; provided that, if consent is unreasonably withheld, the placing of such further material may, in an appropriate case, be the subject matter of an application to re-open the hearing to receive it or, if the further material consists only of references to authorities which might offer assistance to deciding a question, a legal practitioner may address a request in writing to the judge's registrar or equivalent court official to approach the judicial officer with an invitation to receive the references.

61 .12 A legal practitioner shall not deliberately seek to catch an opposing legal practitioner off-guard. Accordingly -

61 12.1 whenever a legal practitioner has prepared heads of argument, other than when compelled to do so in terms of the rules of conduct of court, he or she shall not later than the time when the heads are presented to a court also give the opposing legal practitioner an identical set of such heads;

61 12.2 whenever a legal practitioner gives a bundle of authorities to the court, he or she shall also give at least a list containing the authorities to the opposing legal practitioner;

61 12.3 whenever a legal practitioner makes use of a transcript of proceedings, he or she shall give the opposing legal practitioner a copy no later than the first time that reference is made to the transcript;

61 12.4 whenever a legal practitioner is intent on taking a point of law not evident from the papers, independently of any rule of court that might apply, he or she shall notify the opposing legal practitioner in good time to avoid that opposing legal practitioner being taken unawares;

61 12.5 whenever a legal practitioner intends presenting the court with an unreported judgment, he or she shall, in advance of the hearing, notify and give a copy of the judgment to the opposing legal practitioner in good time to avoid the latter being taken unawares.

61 13 Legal practitioners who have cause to lodge formal complaints about the conduct of other legal practitioners shall compose a full account of the circumstances giving rise to the complaint and shall submit the complaint to the authorised sub-structure of the Council.

61.14 Complaints shall be dealt with in accordance with prescribed procedures for the regulation of professional conduct.

62. **Additional provisio n sel ating to legal prac titio n ers**

The provisions of paragraph 26 shall apply to legal practitioners, with the necessary changes required in the context, as if they were included specifically in this Part.

PART VII

Conduct of legal practitioners not in private practice

63.1 Unless otherwise stated or unless the context indicates otherwise, Part VII of this code applies only to legal practitioners who are not in private practice and who are employed by an employer for the purpose of providing that employer with a dedicated source of legal services and advice in exchange for a salary or remuneration (all of whom, for purposes of Part VII, and unless the context otherwise requires, shall be referred to as "**corporate counsel**"). If Part VII of this code conflicts with the provisions of Part II then the provisions of Part II will prevail and take precedence over the provisions of Part VII.

63.2 Corporate counsel must at all times act in an ethical manner and should, without limiting the general nature of this duty, adhere to the following standards of conduct:

63.2.1 act in a fair, honest and transparent manner, and with dignity and integrity;

63.2.2 remain impartial and objective, and avoid subordination or undue influence of their judgment by others;

63.2.3 give effect to legal and ethical values and requirements, and treat any gap or deficiency in a law, regulation, standard or code in an ethical and responsible manner;

63.2.4 not engage in any act of dishonesty, corruption or bribery;

63.2.5 make disclosure to any relevant party any personal, business or financial interest in his or her employer or its business or in any stakeholder so as to avoid any perceived, real or potential conflict of interest;

63.2.6 not knowingly misrepresent or permit misrepresentation of any fact;

63.2.7 provide opinions, decisions, advice, legal services or recommendations that are honest and objective.

63.3 Corporate counsel must, when providing legal services or advice to his or her employer, be free from any conflict of interest, financial interest or self interest in discharging his or her duty to the employer. Without limiting the generality of this duty, a corporate counsel must -

63.3.1 be and appear to be free of any undue influence or self-interest, direct or indirect, which may be regarded as being incompatible with his or her integrity or objectivity;

63.3.2 assess every situation for possible conflict of interest or financial interest, and be alert to the possibility of conflicts of interest;

63.3.3 immediately declare any conflict of interest or financial interest in a matter, and must recuse himself or herself from any involvement in the matter;

63.3.4 be aware of and discourage potential relationships which could give rise to the possibility or appearance of a conflict of interest;

63.3.5 not accept any gift, benefit, consideration or compensation that may compromise or may be perceived as compromising his or her independence or judgment.

63.4 Corporate counsel must at all times act in a professional manner. Without limiting the generality of this duty corporate counsel must -

63.4.1 act with such a degree of skill, care, attention and diligence as may reasonably be expected from a corporate counsel;

63.4.2 communicate in an open and transparent manner with his or her employer and with third parties, and not intentionally mislead his or her employer or any third party;

63.4.3 make objective and impartial decisions based on thorough research and on an assessment of the facts and the context of the matter;

63.4.4 exercise independent and professional judgment in all dealings with his or her employer and with third parties;

63.4.5 remain reasonably abreast of legal developments, applicable laws, regulations, legal theory and the common law, particularly where they apply to his or her employer and the industry within which he or she operates;

63.4.6 comply with and observe the letter and the spirit of the law, and in particular those relevant to his or her employer or to the industry in which he or she operates, including internal binding and non-binding codes, principles and standards of conduct;

63.4.7 observe and protect confidentiality and privacy of all information made available to him or her and received during the course of performing his or her duties, unless there is a legal obligation to disclose that information;

63.4.8 generally act in a manner consistent with the good reputation of legal practitioners and of the legal profession, and refrain from conduct which may harm the public, the legal profession or legal practitioners or which may bring the legal profession or legal practitioners into disrepute.

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE

Case no: 522/2003

In the matter between

P FOURIE N.O.	1ST APPELLANT
J H J VAN RENSBURG N.O.	2ND APPELLANT
J L LUBISI N.O.	3RD APPELLANT
L M M TEFFO N.O.	4TH APPELLANT

and

C S EDELING N.O.	1ST RESPONDENT
D ABEY	2ND RESPONDENT
J A A DA COSTA	3RD RESPONDENT
H CRONJE	4TH RESPONDENT
J A LANDSBERG	5TH RESPONDENT

Coram: HARMS, ZULMAN, CONRADIE, HEHER JJA and VAN HEERDEN AJA

Date of hearing: 23 MARCH 2004
Date of delivery: 1 APRIL 2004
Summary: Liquidation of unlawful pyramid scheme – whether repayment by scheme of participants' contributions was undue preference – whether payment by scheme of gains to participants was a disposition without value

---

JUDGMENT

CONRADIE JA:

[1] The audacity of its perpetrators and the credulity of its participants combined to produce a gargantuan fraud notoriously known as the Krion Pyramid Investment Scheme. It was operated from the beginning of 1998 and, as all these schemes do, collapsed when the inflow of funds could no longer sustain the outflow of extravagant returns to participants. Each participant on average 'invested' in the scheme three times. Its turnover was some R1.5 billion. In order to throw regulatory authorities off the trail it was at one time or another conducted by entities called M P Finance Consultants CC, Madicor Twintig (Pty) Ltd, Martburt Financial Services Ltd, M & B Kooperasie Beperk and Krion Financial Services Ltd. The way in which the scheme was conducted made it attractive for investors to invest for periods as short as three months. When the loan capital with 'interest' was repaid at the end of the agreed investment period, the investor would more often than not reinvest the capital and interest. The advantage for the investor of doing business in this way was of course that his already enormous interest was compounded. Typically an investor would invest an amount in the scheme having been promised a return of 10% per month, capital and profit repayable within three months. Until the collapse of the scheme, investors received repayment of their capital and their profit when due. Sometimes an investor would leave the capital and/or the profit in the scheme and this would then have been reflected by means of a book entry as a payment and a new investment.

Other investors would take their capital and profit on the due date, some of whom returned after a while to reinvest a similar amount.

[2] The appellants are the joint provisional liquidators of the companies and the joint liquidators of the close corporation. The first respondent is someone called the 'investor representative'. I shall say more about him shortly. The other respondents are from the ranks of the investors. Only the third, fourth and fifth respondents are parties to the appeal. It is anomalous to speak of investors in a scheme that was illegal from beginning to end but everyone else has done so and I shall do so too.

[3] In an attempt to simplify the administration of the various insolvent estates the liquidators proposed a scheme of arrangement in terms of s 311 of the Companies Act 61 of 1973 between those of the entities that are companies and their creditors. The scheme, sanctioned on 22 November 2002, purported to ratify and confirm the consolidation of the assets and liabilities of the companies in the MP Finance Group. In fact, an order for such consolidation was only granted on 4 February 2003. Nothing turns on this small irregularity. MP Finance Group is cited in the papers as a close corporation but in fact is not a legal persona. It is no more than the name under which the liquidators are winding up the affairs of the Krion scheme. What became of the assets and liabilities of MP Finance Consultants CC, a close corporation at one time used in the Krion scheme, is not clear. Being a close corporation, it could not have been a party to the scheme of arrangement. However, the uncertainty does not matter because it probably had no assets at the time of its liquidation and the entitlement of

its creditors to lodge claims against MP Finance Group is not in dispute.

[4] The appeal arises from an order made by Hartzenberg J on 28 February 2003 confirming in part a rule *nisi* issued pursuant to an application launched by the appellants for orders under ss 26 and 30 of the Insolvency Act 24 of 1936. He declared inter alia that the investment scheme was at all material times (from and after 1 March 1999) insolvent in that its liabilities exceeded its assets and that contracts concluded between the investment scheme and investors in the scheme were illegal and null and void. The order was in these terms:

> '1. It is declared that the investment scheme [concluded] by Marietjie Prinsloo (formerly Pelser) during the period 1998 to June 2002 under various names including M P Finance Consultants CC, Madikor Twintig (Pty) Ltd, Martburt Financial Services Limited, M & B Ko-operasie Beperk en Krion Financial Services Limited ("the investment scheme") was at all material times from and after 1 March 1999, insolvent in that its liabilities exceeded its assets.
>
> 2. All contracts concluded between the investment scheme and investors in the scheme were illegal and null and void.
>
> 3. All actual payments from and after March 1999 by the aforesaid investment scheme to investors, including the Second and further respondents are set aside as dispositions by the scheme to investors at times when its liabilities exceeded its assets with the intention of preferring the particular investor above other investors in terms of section 30 of the Insolvency Act, provided that a reinvestment is not to be regarded as a payment and that the right of investors to rely on the provisions of section 33 of the Insolvency Act is in no way affected by this order.
>
> 4. An inquiry is ordered into the details of the amounts of the aforesaid payments and the examination and investigation provisions of paragraph 38 of the scheme of arrangement, sanctioned

on 22 November 2002 under case number 27035/2002, shall apply *mutatis mutandis* for the purposes of this inquiry.

5. The applicants may set the matter down for judgment against any investor, at any time, on the same papers, duly supplemented by evidence, as to the *quantum* of the claim.

6. The costs of all parties who appeared in the matter, and of the *amicus curiae*, are payable as costs of the administration and liquidation of the investment scheme. Where applicable such costs are to include the costs of two counsel.'

[5] The part of the order in para 3 setting aside 'all actual payments' read with the reasons given by Hartzenberg J shortly after the granting of the order soon gave rise to an interpretational difficulty. It was not clear whether the order meant that all payments to investors, including capital repayments, were set aside or whether it meant that only the gain of each investor was set aside.

[6] The appellants and the first respondent interpreted the order in the first sense while the third to fifth respondents thought it meant that they needed to repay only their 'profit'. Everyone was agreed, though, that book-entry type reinvestments, that is to say, investments that were not paid out before being reinvested but were simply 'rolled over' in the scheme's books did not qualify as 'dispositions' and were therefore untouched by the order. That explains the use of the term 'all actual payments' at the outset of para 3.

[7] This difference of opinion on the meaning of the order persuaded the appellants to ask the court for its clarification. This application resulted in an amended order being granted by Hartzenberg J on 10 November 2003, an order which made it clear

that only that amount which exceeded the investment of each investor, in other words, the gain made by each investor, was set aside in terms of s 30(1) of the Insolvency Act and recorded that the question whether a reinvestment qualified as a new investment was to be determined according to the facts of each case. The amended para 3 then read (with the changes italicized):

'3. All actual payments from and after March 1999 by the aforesaid investment scheme to investors including the Second and further respondents *in so far as they exceed the investment of each particular investor* are set aside as dispositions by the scheme to investors at times when its liabilities exceeded its assets with the intention of preferring the particular investor above other investors in terms of section 30 of the Insolvency Act, provided that a reinvestment is not to be regarded as a payment and that the right of investors to rely on the provisions of section 33 of the Insolvency Act is in no way affected by this order; *what is to be regarded as a re-investment is to be determined objectively in each case.'*

[8] It is unnecessary to decide whether, in interpreting the first order, Hartzenberg J was empowered to amend it by way of the second order to make it conform to what he had intended to say in the earlier order. He then and there granted leave to the appellants and to the first respondent (who had purported on behalf of investors to agree to the first order) to appeal to this Court against the second order. The other respondents received leave to cross-appeal against para 3 of the first order in case it should be found that it ought not to have been amended. The practical effect of this is that the first order is open for reconsideration.

[9] Section 30(1) of the Insolvency Act deals with undue preferences:

'(1) If a debtor made a disposition of his property at a time when his liabilities exceeded his assets, with the intention of preferring one of his creditors above another, and his estate is thereafter sequestrated, the court may set aside the disposition.'

A colourless disposition, one not made with the required intent, is not caught by the provisions of s 30(1). In attempting to discharge the onus of proving that Ms Marietjie Prinsloo as the directing mind of the scheme had the intention to prefer one creditor above another, the appellants relied upon the content of a report from the first respondent to the Master. I demonstrate its fatuousness by quoting the relevant paragraph in the founding affidavit in full:

'On the question of intention to prefer, as required in section 30 of the Insolvency Act, I [the deponent is the first applicant] respectfully refer to the content of the first respondent's report to the Master, specifically paragraphs 112 to 115 thereof which read as follows:

"112 I am prima facie of the view that it will be the duty of the liquidators to apply for the setting aside of many transactions in terms of sections 26 and 30 of the Insolvency Act or under the Actio Pauliana (common law setting aside for fraud).

113 It is probable that:

113.1 The scheme business (regardless of which entity was being used at any particular time) was insolvent at all material times and that the liabilities substantially exceeded the assets;

113.2 Almost all the payments, whether to agents or investors and whether for interest, dividends or redemption of capital, were made under insolvent circumstances;

113.3 Those in control knew, at all material times, that:

113.3.1 The liabilities of the business exceeded the assets;

113.3.2 The scheme was fraudulent and that there was no underlying genuine profit producing business activity;

113.3.3 Every payment would have the effect of preferring the payee, and prejudicing unpaid creditors (as a class regardless of the identity of the members of that class at any given time);

113.4 Such knowledge is, in my view, sufficient to establish an intention to prefer. The payment under insolvent circumstances objectively establishes the preference which is the natural consequence of making the payment.

113.5 Knowledge of the fact of insolvency, coupled with the doctrine that one is presumed to intend the natural consequences of one's actions, suffice to prove the requisite intention to prefer.

114 Furthermore, since the scheme was illegal and there were no valid underlying causae for the payments in question, it would follow that the payments were 'without value' as contemplated in section 26.

115 For these reasons it will appear that the liquidators have good prospects of success in claiming back moneys received by investors and gang members."

[10] The only other material on this topic in the papers is an answering affidavit from the investor representative, the very person whose views as to the probable solvency of the scheme and the knowledge of those in control of the scheme of this state of affairs are relied on in para [9]. Although meant to bolster the appellants' case, it adds nothing to it, being merely the investor representative's summary of certain evidence given at an enquiry in the insolvent estate of Prinsloo as well as some other odds and

ends that are of no use in the determination of any of the issues.

[11] The nature of the evidence presented in the founding affidavit and the affidavit of the first respondent leaves one with no doubt that it was hoped that agreement between the appellants and the first respondent on all the essential issues would carry the day. Relying on authority supposedly given to him by a large number of investors to consent to the terms of the first order, the first respondent agreed that all dispositions by the scheme to creditors after March 1999 ought to be set aside. There are many reasons why he was not competent to have represented the investors or made such an admission on behalf of investors. They were debated before us in argument. He relied first on an appointment or authorization by the Master to the liquidators to appoint him to represent investors. Neither the Insolvency Act nor the Companies Act confers any such power on a Master. The first respondent's other ground is that he was appointed by the court in terms of the scheme of arrangement. Apart from the fact that the court did not have the power to appoint him, the worrying feature of the appointment (and that by the liquidators supposedly authorized by the Master) is that someone who had been struck from the roll of advocates was appointed in a fiduciary position. (The grounds for his striking off have been reported: *Society of Advocates of South Africa (Witwatersrand Local Division) v Edeling* 1998 (2) SA 852 (W) at 898H-899F.) Whether due disclosure of these facts had been made we do not know. Leaving aside that fact and the grave doubt whether the mandate given to the first respondent by investors was broad enough to permit him to make admissions on behalf of those

whose agent he professed to be, the most fundamental objection to the first respondent's representation of a large body of scheme investors is that in discharging what was after all a fiduciary duty he was faced with a major conflict of interest between those investors who had lost money in the liquidation of the scheme and therefore were creditors of the scheme and those who were not. There were investors who were not scheme creditors at the date of its liquidation (those who had put money into the scheme, taken their gains and wisely not re-invested) who could not have been parties to an arrangement under section 311 of the Companies Act. On behalf of them he could have had no authority to act. Even among the scheme's creditors there were divergent interests. The interests of a multiple investor would be quite distinct from those of a once only investor. The difficulty around the first respondent's conflict of interests did not pass unnoticed. The court *a quo* sought to address it by appointing an *amicus curiae*. The latter made submissions to the court *a quo* and presented helpful argument to this Court; but his appointment could not overcome the fundamental flaw that the first respondent was not empowered to make the admissions that he purported to make. Finally the first respondent is not in the position of a *curator ad litem* who could litigate on behalf of someone else.

[12] When the hope that consensus between the appellants and the first respondent might carry the day was dashed by the third respondent's answering affidavit, the first respondent, taking up the cudgels on behalf of the liquidators, delivered another affidavit, annexing to it extracts from the evidence of Prinsloo and others at an enquiry

held in terms of s 152(2) of the Insolvency Act. It could not aid the appellants in establishing a cause of action based on s 30(1) of the Insolvency Act which they were obliged to include in their founding papers; that defect alone was fatal to the success of the application. Apart from that, it was not satisfactorily explained how the annexing of extracts from the evidence could, at any rate in the absence of any reliance on s 3 of the Law of Evidence Amendment Act 45 of 1988, possibly have made them admissible as testimony.

[13] It is best therefore to do as the court *a quo* appears to have done and ignore any factual material that is not common cause between the appellants and their supporter the first respondent on the one hand and the remaining respondents on the other. The only material of this kind which is of any use is the admitted fact that the scheme's liabilities exceeded its assets on and after 1 March 1999. On the probabilities it is correct. All loans made to the scheme were – in the light of at least the provisions of s 11 of the Banks Act 94 of 1990 and a prohibition under the Consumer Affairs (Unfair Business Practices) Act 71 of 1988 – illegal and therefore void; this proposition of law is uncontested. The scheme never had the least entitlement to retain investors' money until the date which had supposedly been agreed as the due date for repayment. The perpetrators of the scheme knew the investments to be illegal. There is, on the other hand, no evidence that any of the investors knew their investments to be tainted, nothing from which to infer that any of them acted *ex turpi causa.* That being so, no question arises of relaxing the *in pari delicto potior est defendentis* rule

and the ratio in *Visser en 'n ander v Rousseau en andere NNO* 1990 (1) SA 139 (A) is not applicable to the facts of this case. Upon receipt of a payment the scheme was liable promptly to repay it to the investor who had a claim for it under the *condictio ob iniustam causam*. Instead, it used the money to pay the claims of other investors who had invested earlier. That was the whole idea of the scheme. The interest realized by the micro-lending business carried on by the scheme as a cover for its illegal activities came to a mere R1,76 m. The profit before tax was a paltry R4 530,77. The returns to investors on the other hand totalled some R30m. There was no income from which to pay this. Not only was the capital of later investors being unlawfully retained, but it was being used to pay others their capital and extravagant returns while their only chance of recovery was that yet other investors might be found whose money could in turn be used to pay them. The nature of the scheme dictated its insolvency. It had no assets of any importance and huge liabilities, all of which were due and payable and very few of which could be met except by incurring further liabilities; so later investors were clearly prejudiced. But the effect of the transactions does not by itself demonstrate any undue preference. The issue is whether earlier investors were deliberately unduly preferred, not whether they were prejudiced.

[14] In the incestuous eagerness of the appellants and the first respondent to augment the scheme estate the many judicial *dicta* that a trustee or liquidator cannot show an intention to prefer simply by proving insolvency and then relying on an inference that the insolvent debtor must have intended the natural consequences of an act of disposal

were forgotten or perhaps ignored.

[15] It is established law that in considering whether an intention to prefer has been shown, all the relevant facts must be considered. One such relevant (and important) fact is whether the insolvent at the time of the disposition contemplated insolvency (*Pretorius NO v Stock Owners' Co-Operative Co Ltd* 1959 (4) SA 462 (A) at 472E–G); proof of such a contemplation (of which there was none) would have brought the appellants some distance but possibly not far enough since the inference to be drawn from a contemplation of sequestration is not necessarily that the insolvent's subjective 'dominant, operative or effectual intention' in making the disposition (see *Cooper and Another NNO v Merchant Trade Finance Ltd* 2000 (3) SA 1009 (SCA) at 1026G) was the intention to prefer. The intention to prefer is nothing but a resolve 'to disturb what would be the proper distribution of assets' in insolvency. (*Pretorius NO* at 476D–F, a passage cited with approval in *Gert de Jager Bpk v Jones NO en McHardie NO* 1964 (3) SA 325 (A) at 331E–F.) From the scanty material in the founding affidavit, shored up by the probabilities, it seems that Prinsloo knew that continuing to make dispositions to creditors was the only way to give credibility to the scheme and so keep it afloat and that this was her dominant intention. She envisaged not the liquidation but the continuation of her fraudulent business. Depending on how convincingly she did this, and Marietjie Prinsloo was a gifted swindler, liquidation might be some way off. She also made attempts to recapitalize the scheme by converting loan into equity capital and issuing share certificates to investors. This

exploit, as deceitful as the rest of her business dealings, nevertheless demonstrates that she did not consider her enterprise lost.

[16] The order of the court *a quo* set aside the gains of each investor under section 30(1) of the Insolvency Act. All parties are agreed that the gains were illegal and that investors may not retain them. Making the order under s 30(1) was, however, an error. There was no evidence that the gains were paid over with the intention to prefer one creditor above another any more than that the investments were repaid with that intention.

[17] An order could have been made under s 26 of the Act, the first subsection of which reads:

'26 (1) Every disposition of property not made for value may be set aside by the court if such disposition was made by an insolvent –

(a) more than two years before the sequestration of his estate, and it is proved that immediately after the disposition was made, the liabilities of the insolvent exceeded his assets;

(b) within two years of the sequestration of his estate, and the person claiming or benefited by the disposition is unable to prove that immediately after the disposition was made, the assets of the insolvent exceeded his liabilities:'

The proviso that follows the subsection does not concern us.

[18] A disposition, it has been decided on more than one occasion, is not made for value if the payment is illegal. *Estate Jager v Whittaker and Another* 1944 AD 246 dealt with the payment of usurious interest. 'No obligation of any sort,' said Watermeyer CJ at 251-52, 'to pay a higher rate of interest than that permitted by the

Act can arise from a promise to pay a higher rate, and it therefore follows that such a promise is a mere nullity, and any payment of such a higher rate in pursuance of such promise is in effect a donation, or disposition not made for value, and is consequently liable to be set aside under sec. 26 of the Insolvency Act.' In *Rousseau en Andere v Malan en 'n Ander* 1989 (2) SA 451 (C) at 459I-J this dictum was applied to illegal commission payments from a scheme found to have been a lottery. In *Visser en 'n ander v Rousseau en andere NNO* 1990 (1) SA 139 (A) where the operators of a pyramid scheme paid participants for a useless product such payments were (at 154I–156F) found to be dispositions without value.

[19] The promise to reward investors with the returns paid by the scheme was a 'mere nullity' and any payment of a profit or interest would have been a disposition not made for value. Although the application was, *inter alia*, premised on a contention which was suggested by the first respondent to the liquidators that book-entry repayments by the scheme were dispositions, they, during argument before Hartzenberg J, prior to the granting of the first order, decided not to persist in this contention. They did not in this court depart from that attitude. If a 'repayment' of capital retained in the scheme by way of a book entry re-investment does not qualify as a disposition, then the 'payment' of gains retained in the scheme is not a disposition either. Where gains on retained gains were made (in the manner that compound interest might be earned by capitalising it) only the actual payment of the accumulated gains would be a disposition without value. The question that arose in the court *a quo*

in relation to a disposition of capital under s 30(1) of the Insolvency Act regarding the circumstances under which the repayment of a re-investment could be characterized as a disposition does not arise in the case of the payment of a gain. It is accordingly not necessary to issue any order in that regard. All the parties before the court accepted that the repayment of an investor's capital was not a disposition without value: the investor's *condictio* prevented it from taking on that character: where a disposition was made it was made in discharge of an obligation to return the illegal payment.

[20] An investor who was the recipient of a disposition defeasible as one without value and who parted with property or security held by him, or lost a right against another as consideration for a disposition of this kind need not restore anything received under the disposition if he acted in good faith unless the liquidators indemnify him for parting with such property or security or for losing such right (s 33 of the Insolvency Act). The court *a quo*, *ex abundanti cautela* it seems to me, preserved this right in its order. The appellants have not suggested that this ought not to have been done.

[21] The order granted by the court below purported to bind all investors, or at least all those whose names appeared as respondents on a list appended to the notice of motion, on the footing that a rule nisi was issued and published according to directions from the court calling upon those respondents who wished to do so to object to confirmation of the rule on the return day. Normally, citing multiple parties and serving an application by publication in the manner adopted here might have sufficed.

In the present case, however, service fell gravely short of what would have been required to ensure that the investors receive a fair trial. The publication as ordered by the court described the role and set out the recommendations of the first respondent who was held out to be the 'investors' representative'. There is in this scenario a great danger that investors might have considered their interests to be adequately represented by a court-appointed guardian and for that reason might have neglected to take steps to put their views before the court or even to obtain legal advice. The sad truth of the matter is that those investors who were informed of the application were probably at the same time discouraged from defending the proceedings. The third, fourth and fifth respondents do not fall into this category. They defended the proceedings; they did not suffer from any misunderstanding that their interests would be protected by the first respondent; there is no reason why they should not be bound by a declaration of this court that places no reliance on any contribution to the proceedings made by the first respondent.

[22] Section 32(3) of the Insolvency Act is in these terms-

'When the court sets aside any disposition of property under any of the said sections, [which include s 26], it shall declare the trustee entitled to recover any property alienated under the said disposition or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher'.

Para 5 of the order confirming the rule envisages recovery proceedings. Any investor against whom such recovery proceedings are brought would be free to maintain that

he or she is, for lack of notification or by reason of having been misled by the terms of the publication, not bound by the order of Hartzenberg J. It may be that fresh setting aside proceedings against such an investor would then have to be combined with the recovery proceedings. It seems unlikely that it will come to this since an investor would have to deny that the gains paid out by the scheme were dispositions without value, a proposition that has not been challenged by any of the parties and one that I consider to be correct.

[23] The contention that Hartzenberg J had no power to amend para 3 of the first order granted by him was not pressed before us. If it had been and had succeeded it would have made no difference to the result or to the costs orders.

[24] The following order issues:

A. The appellants' and the first respondent's appeals are dismissed with costs that include the costs of two counsel.

B. The cross-appeals of the third, fourth and fifth respondents succeed with costs that include the costs of two counsel. Paragraph 3 of the order is set aside and replaced by the following paragraph:

'3. All actual payments, whether as profit or interest, from and after 1 March 1999 by the aforesaid investment scheme to the second, third, fourth , fifth and further respondents, in so far as they exceed the investment of each particular investor are set aside, under s 26 of the Insolvency Act as dispositions without value by the scheme to investors at times when its liabilities exceeded its assets, provided that the right of investors to rely on the provisions of s 33 of the Insolvency Act is

in no way affected by this order.'

C. The costs of the *amicus curiae* are to be costs in the liquidation.

J H CONRADIE
JUDGE OF APPEAL

HARMS JA)**Concur**
ZULMAN JA)
HEHER JA)
VAN HEERDEN AJA)

Subject: Mirror Trading International (in Liquidation)
Date: Tuesday, 04 January 2022 at 16:55:51 South Africa Standard Time
From: Ian Allis <allisattorneys@gmail.com>
To: Susan Strydom <susan@srhfinc.co.za>
Attachments: image001.jpg, STRYDOM RABIE HEIJSTEK AND FAUL INC revised.pdf

Dear Madam

Please see attached correspondence

Regards

Ian Theo Allis
Allis Attorneys
Tel. (+27 11) 026 3641/2
Fax. (+27 86) 527 4819
Cell. (+27 82) 776 6554
62 2nd STREET, ORANGE GROVE
Email: allisattorneys@gmail.com

****

ALLIS ATTORNEYS

62 2nd Street Orange Grove, Johannesburg
P O Box 87591, Houghton, 2041

Tel: (011) 483 2275 // Fax: (011) 483 0749
F-M: 086 527 4819 Cell Phone 082 776 6554.
E-mail:allisattorneys@gmail.com

STRYDOM, RABIE, HEIJSTEK AND FAUL INC **20 DECEMBER 2021**

RE: MIRROR TRADING INTERNATIONAL

Dear Sirs

We refer to your letter dated 9th December 2021 and are instructed to address you as follows and clarify what may be perceived as any misunderstanding from your side.

At the outset we confirm that we act on behalf of various claimants including but not limited to Mr A Lee and have also been instructed to assist Advocate van Staden who holds the power of attorney in respect of this parties.

We also wish to advice that we have now assumed the representative capacity that previously held by Mr Schalk Marais and are instructed to address you as follows:

1. Any failure to address the allegations raised by yourself must not be construed as an admission of any type and in fact would constitute denial of the accuracy thereof.
2. At the outset we note the fact that you have elected to take the personal line pertaining to the ethics and conduct yet your firm elected to unilaterally publish your letter over social media which was as a direct response without having published our communications.
3. We wish to place on record that issues of law are argued in a Court and not via the press or social media.
4. Your deliberate intent to incite a frenzy and to create unnecessary public outcry and hysteria is viewed with contempt and concern in the circumstances.
5. You claim to act on behalf of all the liquidators however in reality it appears to you are answerable to a specific few who are the parties are deliberately pursuing their own interest in respect of the matter.
6. We note further your involvement and vigour in trying to declare the entity in liquidation as an unlawful Ponzi scheme, which application would see harm suffered to the creditors and investors however, your clients and yourselves would be reaping the benefits of the rewards.
7. The clear and blatant attempt to play the man and not the ball is viewed in a serious light.

8. We wish to address your comments in respect of the winners and nett losers and confirm that we hold instruction on behalf of the nett losers only and not on behalf of the nett winners.

9. It unfortunate that you misconstrued a simple typographical error in respect of the Marks family and we confirm that we do not act on behalf of either Clynton or Cheri Marks.

10. On the issue of the liquidators been your clients, we wish to place on record that in terms of the report published by the liquidators, there have been glaring omissions and inaccuracies as to what has to date been collected in respect of the Bitcoin and furthermore that the report does not disclose the full details of the collection of monies and the details of what is currently held by the liquidators after the collection of the various Bitcoin seized.

11. Based on your letter, we note the fact that you have been quick to attack advocate Van Staden who is the member of the National Bar Council but you failed to address the allegations pertaining to the conflicts of interest as well as nepotistic relationships that exist between the liquidators and several other parties including but not limited to Mr Chris Edling.

12. We further note your glaring omission to deal with the fraudulent actions perpetuated by Mr Kobus Schabort in the manipulation and variation of the power of attorney's signed in favour of advocate Van Staden.

13. We note with contempt your submissions pertaining the ethical conduct of professionals within the legal history however this seem to be subjective in your opinion as to what deeds constitutes inappropriate conduct by professional and who they are representing.

14. We wish to turn our attention the various glaring omissions in respect of the reports provided by the liquidators which is of great concern to not only ourselves but Adv Van Staden and the rest of the claimants.

15. At this juncture there have been great deal of submissions contained in the report however none addresses the primary issue which is the number of investors as well as the manner in which the liquidators have investigated the claims as well as the trading that was ongoing for a period of time after the alleged closure of the accounts.

16. The grievance which, is clear with Mr Van Staden from yourselves is that he has been asking to many questions in relation hereto and your clients are clearly unhappy about the nature thereof.

17. The fact that a further liquidator was appointed despite there being need for Mr Cooper, corroborates the need for the removal of this liquidators and reconstitution thereof with the appointment of a new set of liquidators in the matter.

18. Our clients are highly dismayed with the manner in which the liquidators conducted themselves investigating the claims and it is clear that same has been done with no intend to assist disenfranchised parties and to merely to service the needs of select few.

19. It is clear that the current liquidators must be removed and a new body of liquidators appointed.

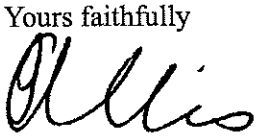
20. Furthermore, on a question of law it is still disputed especially in light of the compromised computer systems and that the evidence has not been protected and determination of solvency has not been dispensed with in regard to trading of the company.

21. We as such urge your offices that instead of trying to split hairs in regard to advocate Van Staden that yourselves practice the necessary due care an ethical conduct of advising your

clients about proper manner in which a claim must be investigated and to advise them further to resign as liquidators in this matter

22. Furthermore, we are also of the view that your offices withdraw this application as well as retract the advice given to people to have the entity declared a Ponzi scheme knowing full well that same will compromise potential creditors and claimants more than anything.
23. We await your responses and the interim all our clients' rights remain strictly reserved

Yours faithfully



IAN THEO ALLIS

Subject: Re: Mirror Trading International (in Liquidation)
Date: Thursday, 06 January 2022 at 18:41:22 South Africa Standard Time
From: Susan Strydom <susan@srhfinc.co.za>
To: Ian Allis <allisattorneys@gmail.com>
Attachments: image001.jpg, image002.jpg, MTI1.0027.LETTER TO ALLIS ATTORNEYS.6.2[36].pdf

Sir

The above matter refers.

Please find attached hereto a letter for your attention.

Regards

Susan Strydom

STRYDOM, RABIE, HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

In Association with Tintingers Inc.

012 786 0954 | susan@srhfinc.co.za | www.srhfinc.co.za
Delmondo Office Park, Sorrento Building, Block A,
169 Garsfontein Rd, Ashlea Gardens, Pretoria

From: Ian Allis <allisattorneys@gmail.com>
Date: Tuesday, 04 January 2022 at 16:55
To: Susan Strydom <susan@srhfinc.co.za>
Subject: Mirror Trading International (in Liquidation)

Dear Madam

Please see attached correspondence

Regards

ALLIS ATTORNEYS

Ian Theo Allis
Allis Attorneys
Tel. (+27 11) 026 3641/2
Fax. (+27 86) 527 4819

Cell. (+27 82) 776 6554
62 2nd STREET, ORANGE GROVE
Email: allisattorneys@gmail.com

****

STRYDOM, RABIE,
HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

Our Ref: S STRYDOM/MTI1/0027
Your Ref: MR IT ALLIS
Date: 6 January 2022

ALLIS ATTORNEYS
62 2nd Street,
Orange Grove
Johannesburg
For attention: Mr IT Allis
BY EMAIL: allisattorneys@gmail.com

Dear Mr Allis,

IN RE: **MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)**

1. Thank you for your letter dated 20 December 2021, that was only received by email on 4 January 2022.

2. We have made it clear in our letter to you dated 9 December 2021, that our clients will not enter into further correspondence with you unless you have satisfied us that you actually represent the people you say you represent.

3. We have referred you to the normal effect of the challenge of a mandate in court process entitling the liquidators to adopt a view that they need not do anything further until you can prove a mandate. You have not done so.

4. In spite of your letter, you have not touched on this very basic, but important, point of departure. Accordingly, our clients will not answer to your letter and we regard your avoidance of such an important issue in an estate involving such important interests, as unprofessional and all rights in that regard remain reserved.

5. We see that you also repond on behalf of Advocate van Staden. In spite of issues requiring a definitive response from him too, those issues are equally avoided by him and you in your replies, meriting an adverse conclusion.

6. Therefore, deal first with the issues raised in our previous correspondence, and then we will gladly deal with the other issues. Until then, your letter will receive no further response from

us.

7. You are welcome to refer the matter to the Master, but the Master will no doubt then require the very same, and basic information that our clients have requested from you.

8. Please don't send us further letters unless they are accompanied by a full list of the creditors you claim to represent, their status as creditors in the estate and powers of attorney.

9. Our clients' rights remain reserved.

Yours faithfully,

Susan Strydom

Subject: Final letter STRYDOM RABIE HEIJSTEK AND FAUL INC
Date: Tuesday, 01 February 2022 at 21:35:25 South Africa Standard Time
From: Ian Allis <allisattorneys@gmail.com>
To: Susan Strydom <susan@srhfinc.co.za>
Attachments: Final letter STRYDOM RABIE HEIJSTEK AND FAUL INC .pdf

Dear Madam

Please see attached correspondence

ALLIS ATTORNEYS

62 2nd Street Orange Grove, Johannesburg
P O Box 87591, Houghton, 2041

Tel: (011) 483 2275 // Fax: (011) 483 0749
F-M: 086 527 4819 Cell Phone 082 776 6554.
E-mail:allisattorneys@gmail.com

STRYDOM, RABIE, HEIJSTEK AND FAUL INC **27 JANUARYN 2021**

RE: MIRROR TRADING INTERNATIONAL

Dear Sirs

We hereby confirm that we act on behalf of Mr Anton Lee who was the applicant in the liquidation application against Mirror Trading International

We confirm that we act on behalf of various claimants including but not limited to Mr A Lee and have also been instructed to assist Advocate van Staden who holds the power of attorney in respect of this parties.

The number of Power of Attorneys held by Adv van Staden is known to the liquidators, especially Mr Riaan van Rooyen and Mr Christopher Roos.
Should your clients not have made this known to you kindly do the necessary enquiries.

We hereby request the feedback from the liquidators on the following aspects, which is in the interest of our client and persons who gave power of attorney to Adv van Staden:

CLAIMS PROVISIONALLY REJECTED DURING THE FIRST MEETING OF CREDITORS

During the First meeting of creditors all claims were provisionally rejected with the purposes as not to vote for liquidators and accept Mr ChevonneCooper as an additional liquidator.
Clarity is hereby requested that the provisionally rejected claims will be reinstated, as these include claims completed with assistance from the liquidators and or their representatives/employees.
Clarity is also needed on claims that were compiled after the first meeting of creditors as to confirm they were accepted and also completed with assistance from the liquidators and or their representatives/employees, or without the assistance, which needs to be clarified as some of the people did provide Adv van Staden the necessary Power of Attorney to act on their behalf, the original claims were also sent to the liquidators and many copies of the claims to him aswell.

CURRENT STATE OF ASSETS AND CLAIMS

It is requested that the liquidators state the value of the claims that they have received from the creditors/investors in the estate as it is lacking in their report, versus the amount of the assets recovered in the Estate.

It must be taken into account that it need to be determined if the estate is indeed insolvent, as the liquidation was granted on the basis that it was " just and equitable" to do as the sole Director in MTI disappeared , leaving the ship (MTI) without a captain.
It was claimed in an interview with according to our knowledge Mr Riaan van Rooyen one of the liquidators published on 2 July 2021 (internet page https://moneyweb.co.za/moneyweb-crypto/mti-placed-in final-liquidation-8-000-more-bitcoin-traced/) where it was confirmed that the liquidators managed to trace an additional 8000 bitcoin connected to MTI.
It is questionable as to why no apparent action has been taken to freeze the bitcoin or get it under their control. It is important that creditors/investors get informed in relation to the actions of the liquidators or answer for their failures to recover know assets in the best interest of the creditors/investors.
The above mentioned are not addressed properly in the feedback by the liquidators to the creditors/investors.

POSSIBLE FRAUDULANT AFFIDAVITS SUPPLIED BY THE LIQUIDATORS/OR PERSON(S) IN THEIR LEGAL TEAM IN COURT PAPERS PERTAINING TO THE AFFIDAVIT OF MR DANIEL STEVENSON OF FX CHOICE

It has been brought to our attention that the documents which on face value are affidavits of a Mr Daniel Stevenson, an alleged employee of FX Choice, was made to support the case of the liquidators while the signatures differ clearly with the last document with the indication that it was most probably falsified, which would have been clearly interrogated in action proceedings before court instead of the current motion application before court.
When comparing the Meta data of the Affidavit of Mr Craig Pederson and Mr Daniel Stevenson it appears that it was drafted on the same computer, giving rise to the suspicion that the last affidavit of Mr Stevenson was most probably drafted fraudulently by a person linked to the legal team of the liquidators.
In fact there is doubt if Mr Stevenson does exist.

UNDUE INFLEUNCE TO PREVENT A FAIR ELECTIONS OF LIQUDATORS DURING THE FIRST MEETING OF CREDITORS

When comparing the initial Schedules supplied by Adv Victor and Mr Christopher Roos(one of the liquidators) contained persons who gave Adv van Staden their Power of Attorney to vote on their behalf which schedules were very different from the list emailed by Mr Riaan van Rooyen to him on 21 October 2021 which according to van Rooyen contained the final list.
As Adv van Staden believed that liquidators are fair, sincere, can be trusted and would act with good faith in the best interest of creditors/investors he was shocked to learn that the list submitted by Mrs Niki Fourie on the instruction of Mr Kobus Schabbort on 29 October 2021, contained persons who explicitly gave their power of attorney to Advocate van Staden, where they completed forms on which his name were printed, received copies of the POA and even people he knows personally appeared on the list of Mr Schabbort.

There were people who withdrew their previous POA and informed the liquidators that they changed their POA to Adv van Staden, which names have been made known to yourself earlier:

Also take note that during August 2021, Mr Anton Lee withdrew his POA from the liquidators in favour of Adv van Staden, his name is however still appearing on the list reflecting him having given his power of attorney to Mr Kobus Schabbort.

FAILURE TO INFORM THE MASTER

It has come to our attention that one Matthys Potgieter from Coombe Attorneys gave himself out as an attorney to both the Applicant in the liquidation case as well as the liquidators.

Mr Potgieter is not registered with the Legal Practice Council nor has he been previously admitted as an attorney and thus is not entitled to act as one. It is known that under this false pretext Mr Potgieter conducted work for the liquidators including drafting legal documentation and participating in enquiries. This fact has been known to the liquidators for some time and they failed to address it in their report, failed to report it to the office of the Master, failed to determine the effect it will have in the liquidation and failed to report the fraudulent action to the South African Police Service.
The circumstances pertaining to the fees paid for the fraudulent action has also not been discussed or disseminated in any feedback.
Clearly this action is not transparent or in the best interest of the shareholder or creditors/investors.
It must also be noted that Mr Anton Lee acknowledged that had he known Mr Potgieter was not an attorney he would not have signed affidavit supporting the application of the liquidators to have MTI declared an irregular business or Ponzi as he did so solely based on information in the Affidavit supplied by Mr Potgieter.
Please note a fraud case has been opened against Mr Potgieter.

INSOLVENT VERSUS IN LIQUIDATION
The fact that MTI was liquidated as it was just and equitable, do not mean the estate is indeed insolvent as the liquidators failed to prove the amount of claims against the MTI Estate.It is thus inconceivable that Insolvency enquiries in terms of Section 414 and 417 is being held without the determination that the estate is indeed insolvent. This is resulting in additional, fruitless and wasteful costs to the estate which only negatively impact the shareholders/creditors with the legal teams being used laughing all the way to the bank.
Find attached the latest precedence in this regard being the case Massyn v De Villiers NO and others 2021-3 All SA 578 WCC.

THE FINANCIAL SERVICES CONDUCT AUTHORITY
The FSCA press release dd 19 January 2021 in relation to the Completed Investigation into Mirror Trading International stated that it is considering taking administrative action against individuals and entities involved in the matter.None of this has can happen as the FSCA does not have jurisdiction over MTI as Crypto currencies are classified as an asset by the South African Revenue Service and not a Financial Instrument, hence the FSCA do not have any authority over MTI.
This is strengthened by the press release by the FSCA dated 24 June 2021 where it acknowledges that they do not have jurisdiction currently over crypto currencies.
Since at least some of the liquidators met with the FSCA,it would appear that the liquidators are pressing the agenda of the FSCA to have MTI declared a Ponzi or irregular business practice, which yet again is not working in the best interest of the shareholders and creditors of the estate.

RESPONSIBILITIES OF LIQUDATORS AND WINDING UP OF THE MTI ESTATE
The liquidators are reminded that they are working for the investors/creditors/shareholders, as to protect the interest of the aforementioned.
They are to act with the utmost transparency and integrity at all times, however the drive in the case of MTI, appears that the main aim of the liquidators is to declare MTI an irregular business scheme or Ponzi scheme, without taking into account their responsibilities.
It must be stated that MTI has not been declared an irregular business practice of Ponzi Scheme and as such the winding up of the Estate is to be done in accordance with the Insolvency Act , Act 24 of 1936 and the Companies Act, Act 61 of 1973.
The current actions of the liquidators are not supporting the thousands of investors/creditors who incurred a loss in varying amounts.
There are reports of MTI members who committed suicide as they were ruined financially and had their dignity taken away from them, whcih is totally unacceptable when liquidators are not acting in

the best interest of the role players they are responsible to.

THE DATA INTEGRITY OF THE SERVER IN POSSESION OF THE LIQUDATORS
When Mr Lee completed his claim with assistance from Nicolene from Investtrust during May/June 2021 it indicated that he is a nett looser of R450 000, however after he registered on the website of the liquidators, a total of minus .15 bitcoin was shown in the account.
Clarity is requested on this as the online platform is linked to the server with the same information which was used to complete his original claim.

We await your responses and the interim all our clients' rights remain strictly reserved

Yours faithfully

IAN THEO ALLIS

Subject: Re: Final letter STRYDOM RABIE HEIJSTEK AND FAUL INC
Date: Wednesday, 02 February 2022 at 13:24:09 South Africa Standard Time
From: Susan Strydom <susan@srhfinc.co.za>
To: Ian Allis <allisattorneys@gmail.com>
Attachments: image001.jpg, MTI1.0027.LETTER TO ALLIS ATTORNEYS.2.2.pdf

Good day

Please find attached hereto a letter for your attention.

Regards

Susan Strydom

STRYDOM, RABIE,
HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

In Association with Tintingers Inc.

012 786 0954 | susan@srhfinc.co.za | www.srhfinc.co.za
Delmondo Office Park, Sorrento Building, Block A,
169 Garsfontein Rd, Ashlea Gardens, Pretoria

From: Ian Allis <allisattorneys@gmail.com>
Date: Tuesday, 01 February 2022 at 21:35
To: Susan Strydom <susan@srhfinc.co.za>
Subject: Final letter STRYDOM RABIE HEIJSTEK AND FAUL INC

Dear Madam

Please see attached correspondence

STRYDOM, RABIE,
HEIJSTEK & FAUL INC.
ATTORNEYS · CONVEYANCERS · NOTARIES

Our Ref: S STRYDOM/MTI1/0027
Your Ref: MR IT ALLIS
Date: 1 February 2022

ALLIS ATTORNEYS
BY EMAIL: allisattorneys@gmail.com **For attention: Mr IT Allis**

Mr Allis,

IN RE: MIRROR TRADING INTERNATIONAL (PTY) LTD (IN LIQUIDATION)

1. Your letter dated 27 January 2022, received on 1 February 2022 at 21h35 refers.

2. We wouldn't have asked you to prove your mandate if the liquidators were satisfied that you and Adv. van Staden hold proper mandates and are not conflicted.

3. We asked you for a list of your clients, the status of each one of them in the scheme (either winner or loser), their power of attorney, how Adv. van Staden fits in and why Adv. van Staden is between you and the clients.

4. This is now the third request and it is clear that neither you not Mr van Staden are prepared to take the liquidators into your confidence concerning these very basics requests.

5. We reiterate, once these issues are clarified and fully answered by you, instead of you trying to deflect and avoid, your letters will be answered in so far any of the issues raised therein merit an answer.

6. A copy of this letter will be filed on the Master's file. We want to ensure that the true losers in the MTI scheme are properly represented.

7. Our clients' rights remain reserved.

Yours faithfully,

Susan Strydom