

## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

### LEGAL PRACTICE COUNCIL

#### NOTICE 2682 OF 2024

#### NATIONAL OFFICE

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#### THE SOUTH AFRICAN LEGAL PRACTICE COUNCIL

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

Notice is hereby given that the Council intends to amend the Rules of the Council made under the authority of sections 95(1), 95(3) and 109(2) of the Legal Practice Act, 28 of 2014 (as amended) by the amendment of Rules 1, 40.5 and 40.7 of the Legal Practice Council Rules:

#### Explanatory Note

Rule 40.5 of the Legal Practice Council Rules only allows an investigating committee, where there is *prima facie* evidence of misconduct, to refer complaints for adjudication by a disciplinary committee. The rule does not differentiate between minor or serious offences. The Council has resolved to amend rule 40.5 of the Rules in order to empower an investigating committee to differentiate between minor and serious transgressions, and to further enable the finalisation of complaints of a minor transgression by the investigating committee, in the form of a caution, a warning or a fine.

As '*minor transgression*' and '*serious transgression*' are not defined in the current rules, and to prevent confusion, the Council proposes an amendment by the inclusion of these definitions into the rules. The inclusion in Rule 1 of definitions for "*minor transgression*" and "*serious transgression*" in the Legal Practice Council Rules is intended to provide clear and precise guidelines for the investigation and adjudication of misconduct. By distinguishing between minor and serious transgressions, the Council aims to ensure that the investigative and disciplinary processes are proportionate to the nature of the misconduct.

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

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

Amendment to Rule 1 (Definitions) of the Legal Practice Council Rules by the inclusion of the following new definitions:

1.26 **'minor transgression'** means conduct which, in the opinion of the investigating committee, on the basis of the prima facie evidence, is misconduct of a minor nature which does not warrant a sanction more severe than those contained in rule 40.5.3.

1.33 **'serious transgression'** *means conduct which, in the opinion of the investigating committee, on the basis of the prima facie evidence, is of such a nature that it warrants a sanction more severe than those provided for minor transgressions in rule 40.5.3.*

Amendment to Rule 40.5 of the Legal Practice Council Rules.

40.5 If after investigating allegations of misconduct against the respondent the investigating committee is satisfied:

40.5.1 that the respondent, on the basis of available *prima facie* evidence, is guilty of misconduct which, on account of the nature of conduct, warrants misconduct proceedings, the investigating committee must refer the matter to the Council or to a committee of the Council established for that purpose for adjudication by a disciplinary committee;

40.5.2 *that, notwithstanding the provisions of Rule 40.5.1 above, and upon reviewing the available prima facie evidence, the respondent's misconduct, while warranting misconduct proceedings, constitutes only a minor transgression, the following procedures may apply:*

40.5.2.1 *the investigating committee shall formulate the charges in respect of the transgression and determine an appropriate sanction, or combination of sanctions, from those provided for under Rule 40.5.3:*

40.5.2.2 *the investigating committee shall communicate both the charges and its proposed sanction to the respondent:*

40.5.2.3 *the respondent shall within 15 days from the date of receipt of the communication accept or reject the proposed sanction imposed by the investigating committee:*

40.5.2.4 *if the respondent accepts the proposed sanction in writing, or if no response is received from the respondent within 15 days from the date of receipt of the communication, the respondent shall be deemed to have been found guilty on the charges and the proposed sanction shall be deemed imposed by the investigating committee, and the matter shall be considered concluded: and*

40.5.2.5 *if the respondent rejects the proposed sanction in writing within 15 days from the date of receipt of the communication, the investigating committee must refer the matter to the Council, or to a committee of the Council as provided in rule 40.5.1. In such cases, the proposed sanction shall no longer be applicable to the matter.*

40.5.3 *if the respondent is deemed to be guilty of misconduct in terms of rule 40.5.2.4 the investigating committee may impose the following sanctions-*

40.5.3.1. in the case of a legal practitioner:

40.5.3.1.1. a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister in terms of section 40(3)(a) of the Act by notice in the Gazette, on the advice of the Council;

40.5.3.1.2. warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or

40.5.3.1.3. caution or reprimand him or her;

40.5.3.2. in the case of a juristic entity:

40.5.3.2.1. a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister in terms of section 40(3)(a) of the Act by notice in the Gazette, on the advice of the Council;

40.5.3.2.2. warn it against certain conduct; or

40.5.3.2.3. caution or reprimand it;

40.5.3.3. in the case of a candidate legal practitioner:

40.5.3.3.1. a fine, payable to the Council, not exceeding the amount determined from time to time by the Minister in terms of section 40(3)(a) of the Act by notice in the Gazette, on the advice of the Council; or

40.5.3.3.2. caution or reprimand him or her.

40.5.4. that the complaint should be dismissed on the grounds that the conduct in question does not necessarily warrant misconduct proceedings, it must dismiss the complaint and inform the Council, the complainant and the respondent of its decision and the reasons for it. Without limiting the discretion of the investigating committee, the following may be grounds for determining that the conduct in question does not warrant misconduct proceedings:

40.5.4.1. that the respondent is not guilty of misconduct; or

40.5.4.2. that the respondent has given a reasonable explanation for his or her conduct; or

40.5.4.3. that the conduct of which the respondent may be guilty is of an inconsequential nature; or

40.5.4.4. that there is no reasonable prospect of success in preferring a charge of misconduct against the respondent;

40.5.4.5. that the complaint is vexatious or that in all the circumstances it is not appropriate to charge the respondent with misconduct.

40.6. If a complainant is aggrieved by:

40.6.1 the manner in which the investigating committee conducted its investigation; or

40.6.2 the outcome of the investigation, he or she may appeal to the appeal tribunal in terms of section 41 of the Act.

40.7 When the Council, or a committee of the Council established for that purpose, receives a referral from the investigating committee in terms of rule 40.5.1 *and rule 40.5.2.5* that the legal practitioner be charged with misconduct, it must refer the matter to a disciplinary committee for adjudication.

In terms of Section 95(4)(a) of the Legal Practice Act, interested persons are called upon to comment to the Council in writing on the proposed amendments.

Please note that all comments must be sent by email to [rules@lpc.org.za](mailto:rules@lpc.org.za) by no later than 16 September 2024.

Signed at Midrand on 5 August 2024.



Ms C Nzuzi

Executive Officer: Legal Practice Council

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