IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA DIVISION,)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

12/12/2016
DATE

SIGNATURE

Case No: 15293 / 2016

In the matter between:

THE LEGAL PRACTICE COUNCIL Applicant

and

PULE ABRAM MOROBADI Respondent

JUDGMENT

HOLLAND-MÜTER A/J:

INTRODUCTION:

[1] The application was brought by the current applicant's predecessor in law, **The Law Society of the Northern Provinces** (Law Society) during 2016. The applicant (**Legal Practice Council** or LPC) became the successor of the Law Society and the necessary interim measures are in place to enable the LPC to continue with the application. See **Legal Practice Act 28 of 2014.** This application was the result of various complaints against the respondent from various members of public.

[2] The matter was heard by the Gauteng Division of the High Court on 1 December 2016 and the application to remove the respondent's name from the roll of attorney was dismissed by the court.

[3] The Applicant appealed the order to the Supreme Court of Appeal (SCA), the matter heard on 21 November 2018, resulting in the judgment handed down on 11 December 2018, suspending the respondent in the interim from practicing as an attorney pending a disciplinary enquiry concerning the professional conduct. The enquiry referred to had to instituted and finalized within 3 months from date of the SCA judgment. The parties were also given the opportunity to supplement the

existing papers if necessary pending matters emanating from the enquiry. Counsel on behalf of the respondent on behalf of the respondent undertook to co-operate with the applicant and not to be dilatory.

THE ALLEGED MISCONDUCT:

[4] The application was instituted as a result of the report by Mr. Reddy, a Chartered Accountant and Auditor in the employ of the Applicant's Monitoring Unit after the Society receiving two complaints. One was from Haasbroek & Boezaart Attorneys on behalf of a Dr. Kgarume on 2 March 2015.

[5] This complaint was:

(i) Dr. Kgarume instructed the respondent to attend to the administration of the estate of the late France Ponkey Kgarume under a special power of attorney. The respondent purportedly concluded a contingency fee agreement with Dr. Kgarume charging a fee of 15 % on the gross asset value of R 835 652, 99 of the estate. Dr. Kgarume contended this was in

excess of 3, 5% of the gross value of the estate in terms of the prescribed tariff of section 51(1)(b) of the Administration of Estates Act 66 of 1965. The amount charged by the respondent was R 67 726, 80, 50% of the stipulated fee in the aforesaid contingency agreement. It amounts to 7, 5% which is still more than the prescribed tariff, 3, 5 % amounts to R 29 247,86, resulting in an overcharging of R 38 479,21.

(ii) The second aspect was that the respondent transferred funds from the estate bank account to his business account before the estate was distributed and without the consent of the Master of the High Court. (Master)

(iii) The respondent "loaned" the amount of R 48 000, 00 from the estate account without the authority of the Master. The respondent admitted such action.

[6] Reddy was instructed by the Applicant's Disciplinary Department to inspect the respondent's firm's financial records, resulting in the Reddy report. Reddy's initial mandate was to investigate the alleged mismanagement by the respondent of the Kgarume estate, but Reddy also investigated the trust ledger account of a Dr.

Manganya, a client of the respondent in a Road Accident Fund (RAF) claim. This did not form part of the Kgarume complaint. Reddy established that the respondent received the amounts of R 1 352 780, 00 (on 5 June 2014) and
R 103 781, 59 (on 25 June 2014) from the RAF on behalf of Manganya. An amount of R 591 976, 59 was paid into the respondent's business banking account.

[7] The investigation revealed that the respondent charged his client a fee of
R 338 195, 00, amounting to 25% of the capital awarded by the RAF. The balance of R 103 781, 59 was retained by the respondent as party and party costs recovered from the RAF. The ledger further reflected an amount of
R 150 000, 00 received by the respondent from the client, Manganya. The respondent claimed this was an extra gratuitous gesture from Manganya in the matter. The respondent produced a letter from Manganya purported mandating the respondent to do so.

[8] I intermit to remark that it is trite in terms of the Contingency Fees Agreement Act 66 of 1997 that a practitioner may retain either 25 % of the capital recovered in claims sounding in money **or** fees other than the normal fees of the practitioner which do not exceed such normal fee by more than 100%, whichever is the lowest.

A practitioner cannot recover 25% of the capital **and** the re-covered party and party costs as in this instance.

[9] The applicant in the meantime also received a complaint from the Gauteng Department of Human Settlements (the department) about the conduct of the respondent. Mr. Radebe from the Anti-Fraud and Corruption Unit from the department requested a meeting with the respondent with regard to a review of work allegedly done by the respondent and payments made by the department to him. The department paid the respondent R 1 865 989, 00 for work done but the underlying documentation could not be found. The respondent refused to meet with Radebe and this formed the basis of the complaint against the respondent.

[10] The investigation by Radebe ultimately resulted in a report to the applicant and the gist of the findings and recommendation by the Fraud Unit was that Ms. Gomba of the department colluded with the respondent's firm to defraud the department in an amount of R 1 687 844,00 and submitted for payment further invoices amounting to R 1 226 194,40 for work the respondent did not do. The

Unit recommended that the department recover the amount of R 1 687 844, 00 from Gomba and the respondent.

[11] The Council of the Law Society met on 27 November 2015 and a resolution was taken to institute motion proceedings against the respondent to have his name removed from the roll of attorneys as a result of the complaint by Dr. Kgarume and the respondent's handling of the DK Manganya matter. The resolution taken by the Council was based on the Reddy report. A copy of the report is found on p 416-469 in volume 2.

[12] The Investigation and Disciplinary Committee of the Law Society recommended that the respondent be summons to appear before the Committee to answer to all the allegations but due to the egregious nature of the alleged con-duct no enquiry took place but the Council decided to institute the motion proceedings.

THE INITIAL PROCEEDINGS IN THE PRETORIA HIGH COURT:

[13] The application was instituted and enrolled for 1 December 2015. The respondent opposed the application on various grounds and there is no need to repeat all. The objection that no disciplinary proceedings were held was rejected. The SCA later agreed with the finding on this aspect.

[14] The High Court found that an unprofessional and dishonest conduct had been established, but that it did not warrant a suspension from practice or a striking from the roll. This decision was appealed and the appeal upheld. The SCA suspended the respondent in the interim and ordered that a disciplinary enquiry be conducted concerning the conduct of the respondent. The SCA ordered that such enquiry be concluded within 3 months from date of the SCA order. And that the parties may supplement their papers on matters emanating from the enquiry.

TRANSITION OF THE LAW SOCIETY OF THE NORTHERN PROVINCES TO THE LEGAL PRACTICE COUNCIL:

[15] The Law Society of Transvaal came into existence on 19 October 1892 by way of Volksraadbesluit 1307. This body continued to exist by virtue of the provisions of the **Attorneys, Notaries and Conveyancers Admissions Act, No 23**

of 1934 until incorporated by virtue of section 56 of the **Attorneys Act, No 53 of 1979.** This act was repealed and replaced by the **Legal Practitioners Act, No 28 of 2014 (LPA)** with full legal capacity over all legal practitioners as contemplated in the LPA. The act came into operation from 1 November 2018 (Chapter 2 of the LPA) and the dissolution of all existing provincial law societies.

[16] Section 116(2) of the LPA provides that any proceedings in respect of the suspension of any legal practitioner (advocate, attorney, conveyancer or notary) which has been instituted in terms of any law repealed by the LPA and which have not been concluded at the commencement of the LPA, must be continued and concluded as if that law had not been repealed. The LPA may therefore continue as applicant in this matter. No objection was received from the respondent after the SCA order was made as to the jurisdiction of the LPA to continue with this application. In terms of Section 119(3) of the LPA anything done in terms of repealed laws by the LPA remains valid if consistent with the LPA.

THE PROCEEDINGS AFTER THE SCA JUDGMENT:

[17] The SCA ordered that a disciplinary enquiry concerning the professional conduct of the respondent be instituted and that it be instituted and finalized within

3 (three) months from date of the order and that the application for the removal of the respondent's name from the roll of attorneys be postponed.

[18] The applicant amplified its papers and contend that, if the *dies non* (*from 15 December 2018 to 15 January 2019)* are taken into account, the applicant had until 9 April 2019 to institute and finalize the enquiry referred to above. Rule 19(1) of the Uniform Rules stipulate that the period between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which a notice of intention to defend shall be delivered. Rule 19 refers to actions and not to applications or other proceedings. The submission advanced on behalf of the applicant is in my view not correct.

[19] The respondent was notified in writing on 8 February 2019 of the disciplinary hearing to be conducted on 5 March 2019. The respondent presented a letter outlining *"preliminary issues"* the day before the scheduled hearing necessitating a postponement. The applicant considered the "issues" raised by the respondent and replied thereto on writing on 15 March 2019. The complaints in essence were that the charges now leveled against the respondent differ from the original charges.

The respondent submitted that this amounted to an administrative body acting beyond the scope of its statutory powers. The applicant dismissed the complaints leveled in writing.

[20] The metamorphosis from the Law Society to the Legal Practice Council after the implementation of the LPA resulted in changes to staff and administrative processes at the LPC. The applicant could not obtain a new hearing date for the postponed enquiry on or before the lapsing of the three (3) month period in the SCA order. Eventually a date was determined for 4 July 2019 and the respondent was notified in writing on 12 June 2019 of this date. He was informed that the Investigating Committee of the LPA would deal with the enquiry as envisaged in the SCA order.

[21] The respondent again, two days before the date set down, informed the applicant that he will not participate in the process because it was now outside the three (3) months schedule in the SCA order. The respondent now doubted the legitimacy of the process. The applicant again responded in writing but cautioned

the respondent to be present on the 4th of July 2019 and that the process will proceed.

[22] The respondent appeared on the 4th of July 2019 but excused himself and indicated that he was not prepared to avail himself for the process and would not present his side of the matter. He was excused and the hearing continued in his absence. The attitude of the respondent is similar to what happened in **Berg v Prokureur-Generaal, Transvaal 1995 (2) SACL 623 T.** In this case the matter was postpone on numerous occasions mostly at the request of Berg, only to bemoan the long period of time before the matter eventually went on trial. The respondent in the present matter occasioned the postponements resulting in the matter not to be finalized within the three (3) month period in the SCA order, but that order does not affect the jurisdiction of the LPC to institute and proceed with the matter. In my view the continuation of the proceedings be-yond the three (3) months does not invalidate the proceedings. The applicant was well within its rights to proceed with the matter after the three (3) months lapsed. The Committee derives its jurisdiction from the LPA and not from the SCA order. The SCA order merely laid down time frames for the continued investigation.

[23] The committee then proceeded and evidence was presented to the Committee relating to the report by Radebe and an investigation report compiled by Ms. Dapheny Ngoasheng and a supplementary report compiled by the Anti-Fraud and Corruption Unit of the Department of Human Settlements. The re-ports are annexed to the supplementary affidavit of the deponent Hlalelenito Kathleen Matolo-Dlepu, the chairperson of the LPC. I deem it not necessary to summarize the reports in this judgment but safe to accept that the contents of the reports are rather damming towards the respondent. The court perused these affidavits and the Reddy report.

[24] The committee recommended how the charges should have been formulated and this was canvassed in writing to the respondent on 22 July 2019. He was also informed that the disciplinary committee will proceed on 22 August 2019 and that the same bundles that he was provided with will be used during the trial. The respondent's attorney replied advising the applicant that he was no longer mandated to deal with the matter.

[25] The disciplinary hearing commenced on 22 August 2019, and after standing down until 10:05 to ensure that the respondent was not attending, the proceedings started.

[26] A plea of not guilty was entered into on behalf of the respondent in his absence. A copy of the nine charges are found in Volume 5 Annexure "11" on pages 859-861 of the Bundle. A copy is annexed hereto as **annexure "A"**. The evidence of Radebe was presented and sworn affidavits of Mr. Oupa Motango, Mr. Themba Mahawane and Mr. Mongezi were handed up to the Committee. The evidence was overwhelming condemning towards the respondent.

[27] The evidence in brief is that the respondent on several occasions mispresented to the Bid Adjudication Committee of the Department of Human Settlements, Gauteng, that he drafted certain opinions, Record Management Manuals, and a Promotion of Access to Information Manual. He invoiced the Department for other legal opinions knowing that he did not do the work and/or copied and plagiarized such documents drafted by other persons and received payment for such mispresenting in the amounts of R 495 689, 00 on 22 October 2014; R 460 560,00 on 22 October 2014; R458 720,00 on 22 October 2014 and R277 875,00 on 22 October 2014. There were two further charges of plagiarism against the respondent, by mispresenting to the Department that certain manuals and affidavits were his work knowing it was prepared by Malebye Motaung Mtembe Inc. and Leftapa Consulting. These plagiarized papers were submitted by the respondent in order to claim some of the above mentioned amounts. The respondent also mispresented to the Department that he compiled other documentation for the Department but was not paid for these as the Department

became aware of the fraudulent collusion between the respondent and Ms. Gombo of the Department. The amounts fraudulently received by the respondent amount s to R 1 692 844, 00. The respondent was convicted on all nine (9) charges by the Disciplinary Committee of the LPC.

[28] The charges before the Committee did not deal with initial complaints which triggered the investigations resulting in the Reddy report nor the complaints by Dr. Kgarume or the Manganya RAF complaint. The SCA in its judgment remarked that the evidence before the High Court was sufficient to proceed to the second and third legs of the enquiry. See **Malan** below. See par 34 of the SCA judgment.

LEGAL POSITION:

[29] Applications for striking off of an attorney's name from the roll of practitioners are not ordinary civil proceedings; they are proceedings of disciplinary nature and *sui generis* in kind. See **Solomon v Law Society of the Cape of Good Hope 1934 AD 401** at **408-409.**

[30] In **Malan & Another v Law Society of the Northern Provinces 2009 (1) SA 216 SCA** it was held that the application for the removal of an attorney's name from the roll, or a suspension from practice, involves a three-stage

enquiry. The court first has to determine on a balance of probabilities whether the alleged conduct has been established. This is a factual enquiry. Secondly the question as to whether the person concerned is a *'fit and proper person to continue practicing as an attorney"*. The court has discretion in this regard. The court ought to weigh up the conduct complained about against the conduct expected of an attorney. This is a value judgment. Thirdly the court must decide whether, in view of all the circumstances, whether the name of the attorney should be removed from the roll or be suspended from practice.

[30] The respondent, an admitted attorney since 26 June 2009, falls under the jurisdiction of the LPC (the successor of the then Law Society of the Northern Provinces) in terms of the provisions of the new LPA. One of the objects of the LPC is to regulate the professional conduct of legal practitioners. The Rules of the LPC (formally the Rules for the Attorneys' Profession) and the subsequent Code of Conduct and the Common law is inter alia to enhance and protect the integrity and the status of the legal profession. This necessitate to exercise disciplinary jurisdiction over all legal practitioners which are allegedly unprofessional or dishonest and, to in appropriate cases in terms of sections 44(3)(a)(iv) and 44(1) of the LPA to launch applications for the striking off or suspension from practice of legal practitioners should the court be satisfied that the practitioner is not a fit and proper person to continue to practice.

THE APPLICATION BEFORE THE COURT:

[31] The SCA postponed the application upon condition that an enquiry be instituted and completed within three (3) from the court order and that when reenrolled it should be heard by the high court differently constituted. This was done but the respondent refused to participate in the final proceedings.

[32] The matter came before this court on 3 December 2019. The applicant was represented by Mr. C Jooste and Mr. Bayoli appeared on behalf of the respondent. Mr. Baloyi was asked who his instructing attorney was because the previous attorneys withdrew on 30 July 2019. Mr. Baloyi informed the court that his instructing attorney was Victor Mabe Inc. There was however no notice by this attorney coming onto record. The court continued to hear the matter although Mr. Baloyi was in fact without an attorney of record.

[33] Mr. Baloyi requested that the matter be postponed, but in view of the ongoing delaying tactics of the respondent since the SCA Judgment, the request was refused. Mr. Baloyi then requested that the matter be removed from the role because the disciplinary hearing was not finalized within three months from the SCA Judgment. In view of the restructuring of the LPC replacing the Law Society at the beginning of 2019, and the delaying tactics of the respondent, this

request was refused. In paragraph 24 above the aspect of the three month time frame in the SCA Judgment was dealt with.

[34] The respondent was informed on 22 July 2019 of the hearing on 22 August 2019, but once again the respondent tried to derail the process by alleging that the matter was res judicata.

[35] Mr. Baloyi tried a different angle by submitting that the hearing before this court was invalid and that the applicant ought to approach the SCA for condonation for not completing the disciplinary hearing within three months. This submission cannot succeed.

[36] Mr. Baloyi then argued that the "Rule of Law" prohibits this hearing. This was not a valid argument because there was no constitutional challenge before the court.

[37] The last submission by Mr. Baloyi was that the applicant's supplementary papers were filed without the court's consent. Like above this submission holds no water in view of the SCA Judgment granting the parties the necessary consent to supplement the papers after concluding the disciplinary hearing. The matter then proceeded on the merits of the application.

[38] Mr. Jooste referred the court to the record of the disciplinary hearing and from the founding and supplementary affidavits it is clear that the respondent is guilty of serious transgressions ranging from dishonesty, fraudulently colluding with an official from the Gauteng Department of Human Settlement resulting in the respondent being paid by the Department the amount of R 1 692 844,00 during 2014 (see par 27 above); two further counts of attempted fraudulent collusive dealings towards the Department and two charges of plagiarism with regard to work done by other people and claiming payment from the Department under the disguise that the work was done by the respondent.

[39] The response by the respondent in the answering affidavit is with respect vague and does not advance his defense thereto. He did not file any supplementary papers after the SCA ruling, failed to participate in the subsequent proceedings and indicated that he would not participate further in the process as he deemed the matter closed. He also stated that he will leave it to the court to decide. See his E-mail dated 31 July 2019 on p 872.

[40] The respondent earlier admitted "loaning" the R 48 000, 00 from the estate account's banking account because he at that stage had financial difficulties. This amounts to the misappropriation of estate funds irrespective of what it is

called. This misappropriation of the trust monies amounts to dishonesty. In **Malan supra** at **137 D-E** it was held that "*...if a court finds dishonesty, the circumstances must be exceptional before a court will order a suspension instead of a removal...*" An attorney's duty in regard of trust monies was defined in **Law Society, Transvaal v Matthews 1989 (4) SA 389 (T)** at **394 B** to be "*...a fundamental, positive and unqualified duty to preserve the trust money...*" I am of the view that the respondent breached this duty grossly and acted in his own interest in this instance and disregarded his client's interests or mandate and that there are no exceptional circumstances not to strike the respondent's name from the roll of attorneys.

[41] The court must consider all facts before arriving at a verdict. In this matter the respondent acted fraudulently resulting in payments towards him from the Department of Human Settlements to the amount of R 1 692 844, 00. He also colluded with his "partner in crime", Ms. Gombo at the Department further which almost led to other unlawful fraudulent payments to him. He blatantly committed plagiarism of other person's work to benefit himself. He contravened the Contingency Fees Act to recover 25% of the value of the award to his client from the RAF **and** retained the taxed party and party costs recovered from the RAF.

[42] All in all I am satisfied that the respondent's conduct is contrary what that of an attorney ought to be. The court has to exercise its discretion when deciding what to do with the application. In **Summerley v Law Society, Northern Provinces 2006 (5) SA 613 SCA** at **par 2** it was held that in exercising its discretion, the court must decide whether the person deserves the ultimate sanction of being struck from the roll of attorneys or whether an order of suspension from practice will suffice. I am of the view, taken into account all the evidence of fraudulent action, the misappropriation of estate funds and contravention of the Contingency Fees Act, the only sanction is to remove the respondent's name from the roll of attorneys. Any other order will send the wrong message to the public in general that misconduct of this serious nature is condoned with a slap on the wrists.

ORDER:

[49] The following order is made:

1. The respondent's name is removed from the roll of attorneys (legal practitioners) held by the Legal Practitioners Council.

2. The draft order marked "X" appearing on pages 954 - 964 is incorporated into this order, with the following amendment thereto in clause 1 to delete

the following words "*of this Honorable Court*" and substitute it with "*held by the Legal Practitioners* Council". See annexed order.

3. The cost order is as set out in par 10 and 1 of the draft order "X".

4. A copy of the charges annexed as annexure "A".

J HOLLAND-MÜTER A/J
ACTING JUDGE OF THE PRETORIA HIGH COURT

I agree and it is so ordered.

H FABRICIUS J
JUDGE OF THE PRETORIA HIGH COURT

HEARD ON 3 DECEMBER 2019

JUDGMENT DELIVERED ON 12 December 2019

ATTORNEYS FOR APPLICANT
IQBAL MAHOMED ATTORNEYS
Suite 786, 7th Floor
Karl Kling Building
262 Madiba Street
Pretoria
REF: M006/LSNP/AS
Tel: 012-325 2207
Fax: 012-325 3061
Counsel: Adv. C Jooste (082 575 7432)

RESPONDENT:
Pule Abram Morobadi
Unit 96 Silver Oak
20 Wren Street
Centurion
E-mail: pule@morobadiinc.co.za

RESPONDENT'S PREVIOUS ATTOENEYS
VICTOR MABE INC ATTORNEYS
Mabe Law Chambers
545 Bergmann Street
Eloffsdal
Pretoria
REF: VPM/CIV/morobanipa/16
Tel: 012- 335 4455
Fax: 012-335 6885
E-mail: victamabe@gmail.co.za

ANNEXURE "X"

954

PH 633

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

AT PRETORIA ON THUESDAY 3 DECEMBER 2019

BEFORE THE HONOURABLE JUDGES, JUDGE Fabricius **and JUDGE** Holland-Muter AJ

In the matter between: Case no: **15293/16**

THE LEGAL PRACTICE COUNCIL Applicant

and

PULE ABRAM MOROBADI Respondent

DRAFT ORDER

IT IS ORDERED THAT IN TERMS OF THE PRAYERS IN THE NOTICE OF MOTION:

1. That the name of **PULE ABRAM MOROBADI** (the respondent) be removed from the roll of attorneys (legal practitioners) of this Honourable Court.

2. That respondent immediately surrenders and delivers to the registrar of this Honourable Court his certificate of enrolment as an attorney and conveyancer of this Honourable Court.

3. That in the event of the respondent failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificates are, be authorised and directed to take possession of the certificates and to hand them to the Registrar of this Honourable Court.

4. That respondent be prohibited from handling or operating on his trust accounts as detailed in paragraph 5 hereof.

5. That Johan van Staden, the head : legal practitioner's affairs of applicant or any person nominated by him, be appointed as *curator bonis* (curator) to administer and control the trust accounts of respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by respondent at a bank in the Republic of South Africa in terms of section 78(1) of Act No 53 of 1979 and/or any separate savings or interest-bearing accounts as contemplated by section 78(2) and/or section 78 (2A) of Act No. 53 of 1979, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or

in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:

5.1 immediately to take possession of respondent's accounting records, records, files and documents as referred to in paragraph 6 and subject to the approval of the board of control of the attorneys fidelity fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which respondent was acting at the date of this order;

5.2 subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against respondent in respect of monies held, received and/or invested by respondent in terms of section 78(1) and/or section 78(2) and/or section 78 (2A) of Act No 53 of 1979 (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions, if any, in which respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

5.3 to ascertain from respondent's accounting records the names of all persons on whose account respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors); to call upon respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

5.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determinewhether any such trust creditor has a claim in respect of monies in the trust account(s) of respondent and, if so, the amount of such claim;

5.5 to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;

5.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;

5.7 in the event of there being any surplus in the trust account(s) of respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 78(3) of Act No 53 of 1979 in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of respondent, the costs, fees and expenses referred to in paragraph 10 of this order, or such portion thereof as has not already been separately paid by respondent to applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to respondent, if he is solvent, or, if respondent is insolvent, to the trustee(s) of respondent's insolvent estate;

5.8 in the event of there being insufficient trust monies in the trust banking account(s) of respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Legal Practitioner's Fidelity Fund;

5.9 subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage

the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

5.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

6. That respondent immediately delivers his accounting records, records, files and documents containing particulars and information relating to:

6.1 any monies received, held or paid by respondent for or on account of any person while practising as an attorney;

6.2 any monies invested by respondent in terms of section 78(2) and/or section 78 (2A) of Act No 53 of 1979;

6.3 any interest on monies so invested which was paid over or credited to respondent;

6.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

6.5 any insolvent estate administered by respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

6.6 any trust administered by respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

6.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by respondent as or on behalf of the liquidator;

6.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by respondent as or on behalf of the liquidator; and

6.9 respondent's practice as an attorney of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, files and documents are concerned, respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

7. That should respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on respondent (as the case may be), the sheriff for

the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.

8. That the curator shall be entitled to:

8.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

8.2 require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or respondent and/or respondent's clients and/or fund in respect of money and/or other property entrusted to respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 wind-up of the respondent's practice.

9. That respondent be and is hereby removed from office as –

9.1 executor of any estate of which respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

9.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;

9.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

9.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;

9.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

9.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

9.7 administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.

10. That respondent be and is hereby directed:

10.1 to pay, in terms of section 78(5) of Act No. 53 of 1979, the reasonable costs of the inspection of the accounting records of respondent;

10.2 to pay the reasonable fees of the auditor engaged by applicant;

10.3 to pay the reasonable fees and expenses of the curator, including travelling time;

10.4 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

10.5 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

10.6 to pay the costs of this application on an attorney-and-client scale.

11. That if there are any trust funds available the respondent shall within 6 (six) months after having been requested to do so by the curator, or within such

longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to him (respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the trust creditor(s) concerned for payment or recovery thereof;

12. That a certificate issued by a director of the Legal Practitioner's Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

13. That further and/or alternative relief be granted to applicant.

BY ORDER OF THE COURT

_____

COURT REGISTRAR

Applicant's Attorney: Amelia Strecker (Iqbal Mahomed Attorneys) 072 211 6860