



**LEGAL
PRACTITIONERS
FIDELITY FUND**

SOUTH AFRICA

THE IMPACT OF NON-COMPLIANCE BY LEGAL PRACTITIONERS



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ETHICAL BEHAVIOUR

Ethical and Unethical Behaviour



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- Professional ethics encompasses an ethical code governing the conduct of persons engaged in the practice of law as well as persons engaged with the legal sector.
- Ethical Behaviour involves acting in a manner consistent with the good reputation of legal practitioners and of the legal profession.
- It involves refraining from conduct which may harm the public or which may bring the legal profession and legal practitioner into disrepute.

Ethical and Unethical Behaviour



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Legal Practice Act 28 of 2014 (LPA)

- Section 3: The purpose of this Act is to-
 - (g)(i) – create a framework for the development and maintenance of appropriate professional and **ethical** norms and standards for the rendering of legal services by legal practitioners and candidate legal practitioners

LPA – Code of Conduct

- Section 9 – Integrity in performance of professional services
 - 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

Ethical and Unethical Behaviour



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- The common standard before the advent of the LPA was that of a “fit and proper person”, which was expounded in the matter of General Council of the Bar of South v Jiba and others (2017) wherein Judge Legodi described this as someone “possessing integrity, objectivity, dignity, capacity for hard work, respect for legal order and a sense of equality or fairness” [Edmunson Kerron, 27 July 2020]



- *Law Society, Transvaal v Matthews* 1989 (4) SA 389 (T) at 395:

"The attorney is a person from whom the highest standards are expected by the profession and [the] Court. ... The profession itself is not a mere calling or occupation by which a person earns his living. An attorney is a member of a learned, respected and honourable profession and, by entering it, he pledges himself with total and unquestionable integrity to society at large, to the courts and to the profession ... only the very highest standard of conduct and repute and good faith are consistent with membership of the profession which can indeed only function effectively if it inspires the unconditional confidence and trust of the public. The image and standing of the profession are judged by the conduct and reputation of all its members and, to maintain this confidence and trust, all members of the profession must exhibit the qualities set out above at all times."



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LAWFULNESS



“Lawful” and “Legal”

- The former contemplates the substance of law, whereas the latter alludes to the form of law
- “Lawful” more clearly suggests an ethical content than the term “legal”, with the latter merely denoting compliance with technical or formal rules, whilst the former signifies a moral substance or ethical permissibility.
- These suggest that legal practitioners should aim to conduct themselves in a manner that is “lawful”.



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FIDELITY FUND CERTIFICATE

Fidelity Fund Certificates



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LPA – Section 84(1):

Every attorney or any advocate... who practices or is deemed to practice –

(a) for his or her own account either alone or in partnership;

(b) as a director of a practice which is a juristic entity,

must be in possession of a Fidelity Fund Certificate

Fidelity Fund Certificates



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LPA – Section 84(2):

No legal practitioner referred to in subsection (1) or person employed or supervised by that legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner concerned is in possession of a Fidelity Fund certificate

Application for and issue of Fidelity Fund certificates



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LPA – Section 85:

- (1) (a) – A legal practitioner who is obliged in terms of Section 84(1) to be in possession of a Fidelity Fund certificate must apply to the Council for such a certificate as determined in the rules.
- (1) (b) - Every legal practitioner referred to in (a) who, for the first time, practices as such, must, within the period and after payment of the fee determined by the Council in the rules, complete a legal practice management course approved by the Council determined in the rules.
- (2) - An application in terms of subsection (1)(a) must be accompanied by the contribution payable by applicants as determined in the rules.

Application for and issue of Fidelity Fund certificates



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LPA – Section 85:

- (2) - An application in terms of subsection (1)(a) must be accompanied by the contribution payable by applicants as determined in the rules.

Application for and issue of Fidelity Fund certificates



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In addition, legal practitioners should ensure that:

- the Legal Practice Council has received and approved audit report/s for all firm/s that legal practitioners are linked to.
- The LPIIF risk questionnaire has been completed and submitted
- The LPFF online Fidelity Fund certificate application form has been completed and submitted
- The requirements for FICA have been satisfied and provide relevant FICA registration number.

Withdrawal of Fidelity Fund certificates



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- In terms of the LPA, only the Legal Practice Council may withdraw the Fidelity Fund certificate of a legal practitioner

Withdrawal of Fidelity Fund certificate



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LPA – Section 84(6):

- The Council may withdraw a Fidelity Fund certificate and, where necessary, obtain an interdict against the legal practitioner concerned if he or she fails to comply with the provisions of this Act or in any way acts unlawfully or unethically.

LPA – Section 40(3)

- If found guilty of misconduct, the disciplinary committee concerned ... may –
 - (a) in the case of a legal practitioner –
 - (vi) order that his or her Fidelity Fund certificate be withdrawn, where applicable.



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END