

PROCLAMATION NOTICES • PROKLAMASIE KENNISGEWINGS

PROCLAMATION 59 OF 2022



No. R.

LEGAL PRACTICE ACT, 2014

OFFICE OF THE LEGAL SERVICES OMBUD: RULES

I, Judge Sirajudien Desai, the Legal Services Ombud, hereby, in terms of section 95(2) and (5) of the Legal Practice Act, 2014 (Act No. 28 of 2014), make the rules in the Schedule hereto.

The making of the rules herein without prior publication for comment is necessitated by the Legal Practice Act (the Act) coming into operation in a staggered manner. The establishment of the Legal Practice Council (LPC) and other related provisions came into operation first. The LPC came into operation two (2) years before the appointment of the Ombud.

This staggered approach has impacted on the disciplinary processes of the LPC. Section 37 establishes the disciplinary bodies. Section 37 (5) provides for the guidelines in the composition of the disciplinary bodies.

Section 41 provides for the Appeal against conduct or finding of disciplinary committees of the LPC. Section 41 (2), which is peremptory, provides for the composition of the appeal tribunal of the LPC.

Due to the peremptory nature of section 41 (2), the appeal proceedings of the LPC cannot be proceeded with as the Office of the Legal Services Ombud has not yet being established and become operational, although the Ombud has been appointed. This has a negative impact on the perception by the public of the legal profession. It also has a negative impact on the resolution of disputes and in affording redress to the public's complaints.

The establishment and maintenance of the lay person list as contemplated in section 37, requires the Office of the Legal Services Ombud to be in operation.

Section 34 of the Constitution provides that:



“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

The reasoning of approaching this through section 95 (5) is to realise the provisions of section 34 of the Constitution. To afford both the members of the public and the profession a speedy resolution of the disputes and avoid further delays in the implementation of the above-mentioned sections of the Act.

Any person who is aggrieved by the rules made herein may make representations to the Ombud within a period of 30 work days from the date of publication of this notice by—

- (a) posting such representations to the following address:
[P O BOX 1202, Pretoria, 0001];
- (b) delivering such representations by hand at the following address:
[Sporal Park Building, 2007 Lenchen Avenue South, Centurion, Pretoria];
- (c) e-mailing such representations to the following address:
[Vseroka@justice.gov.za].



SCHEDULE

Definitions

1. In these Rules any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context indicates otherwise—

“**Office of the Ombud**” means the Office of the Legal Services Ombud established by section 45(1) of the Act;

“**service**” means the official process of delivering a notice or documents to another party;

“**summons**” means a document by which a person or entity is called upon to attend an enquiry or investigation, as contemplated in section 48(2) of the Act; and

“**the Act**” means the Legal Practice Act, 2014 (Act No. 28 of 2014).

Submission of complaints

2. (1) A complaint lodged with the Ombud must be lodged on Form 1 or a form substantially similar to the Form 1 contained in the Annexure hereto.

(2) The form referred to in sub-rule (1)—

- (a) may be obtainable from the Office of the Ombud;
- (b) must be completed accurately and contain all the information required; and
- (c) once completed, must be hand delivered, posted or submitted electronically to the Office of the Ombud, at any of the following relevant addresses:
 - (i) [Spooral Park Building, 2007 Lenchen Avenue South, Centurion, Pretoria];
 - (ii) [P O BOX 1202, Pretoria, 0002]; or
 - (iii) [VSeroka@justice.gov.za].

(3) Non-compliance with sub-rule (2)(b) may be condoned on application to the Office of the Ombud and approval thereof.

Summons

3. A summons referred to in section 48(2)(a) of the Act must—

- (a) be in accordance with Form 2 contained in the Annexure hereto; and



- (b) be served in accordance with rule 4.

Service of summons

4. (1) A summons must be served by an official within the Office of the Ombud or by Sheriff of the court upon the person affected thereby and mentioned therein by delivery of a copy thereof in accordance with sub-rule (2) and the relevant provisions of sub-rule (3), (4) or (5), as the case may be.

(2) A summons must—

- (a) not be served on a Sunday or public holiday; and
- (b) be effected between the hours of 7h00 and 19h00.

(3) In the case of a service of summons upon a natural person, the summons must—

- (a) be served at the residence, place of business or work place of the person mentioned therein;
- (b) be served, subject to paragraphs (c), (d) and (e), upon the person mentioned therein or his or her duly authorised agent;
- (c) be served upon the person mentioned therein: Provided that, where such a person is a minor or a person under legal disability, service must be effected upon the guardian, tutor, curator or the like of such person; or
- (d) in the case of service at the residence, be handed to some other person who is not less than 16 years of age and apparently residing in the same residence as the person mentioned in the summons; or
- (e) in the case of service at the place of business or work place, be handed to some other person who is not less than 16 years of age and apparently in authority over the person to be served or, in the absence of such person in authority, to a person who is not less than 16 years of age and apparently in charge at his or her place of employment.

(4) In the case of service of a summons upon a body corporate, a summons must be served—

- (a) at such body corporate's local office or principal place of business to a responsible employee thereof; or
- (b) by delivering a copy thereof to any agent who is duly authorised, in writing, to accept service on behalf of the body corporate upon whom service is to be effected.



(5) In the case of a service of summons to a Minister of a State department, in his or her official capacity, must be served at—

- (a) the national office of the State department concerned; or
- (b) at the Office of the Solicitor-General (State Attorney) in Pretoria, or a branch of that Office.

(6) In the case of a service of summons upon a syndicate, unincorporated company, club, society, church, public institution or public body, service may be effected—

- (a) by delivery at the local office or place of business of such syndicate, unincorporated company, club, society, church, public institution or public body; or
- (b) if there be no such place, by delivery to the chairperson or secretary or similar officer.

(7) In the case of service of summons upon a local authority or statutory body, service must be effected by delivering a copy of the summons to the town clerk or assistant town clerk or mayor of such local authority or to the secretary or similar officer or member of the board or committee of such statutory body.

(8) The person serving a summons must, on demand by the person upon or against whom summons is served, exhibit to that person the original summons.

(9) Where two or more persons are to be served with the same summons, service must be effected upon each of the persons, except—

- (a) (i) where any partnership, firm or voluntary association is to be served, service must be effected in the manner referred to in sub-rule (4), at the place of business of such partnership, firm or voluntary association; or
- (ii) where such partnership, firm or voluntary association has no place of business, service must be effected on a partner, the proprietor or the chairperson or secretary of the committee or other managing body of such association; or
- (b) where two or more persons are to be served in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, service may be effected by delivery to any one of such persons in accordance with sub-rule (3).

(10) Service of a summons on a witness must be effected at least 15 work days before the attendance of such witness is required on the date specified in the summons.

(11) Service of any notice, request, statement or other document, which is not a summons, may be effected by delivery by hand at the address for service given by the Respondent.