

Zambia

## Legal Practitioners Act, 1973

### Chapter 30

Legislation as at 31 August 2009

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# Zambia

## Legal Practitioners Act, 1973

### Chapter 30

Commenced on 23 March 1973

*[This is the version of this document as it was from 31 August 2009 to 23 March 2014.]*

*[Amended by [Legal Practitioners \(Amendment\) Act, 2006 \(Act 14 of 2006\)](#) on 19 May 2006]  
[Amended by [Legal Practitioners \(Amendment\) Act, 2009 \(Act 17 of 2009\)](#) on 31 August 2009]*

*[22 of 1973; 21 of 1981; 13 of 1994]*

**An Act to amend and consolidate the law relating to legal practitioners**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Legal Practitioners Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Association**" means the Law Association of Zambia established by the Law Association of Zambia Act;

*[Cap. 31]*

"**client**" includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs a practitioner and any person who is or may be liable to pay to a practitioner any costs;

"**the Compensation Fund**" means the Compensation Fund to be established under the provisions of section forty;

"**contentious business**" includes any business done by a practitioner in any court;

"**costs**" includes fees, charges, disbursements, expenses and remuneration;

"**the Council**" means the Council of the Association;

"**the Court**" means the High Court;

"**the Disciplinary Committee**" means the Disciplinary Committee to be established under the provisions of section four;

"**the Legal Practitioners Qualifying Examination**" means the examination set by the Council of Legal Education, whereby qualification for admission as a practitioner may be granted pursuant to section eleven or twelve;

"**non-contentious business**" means any business in which a practitioner is employed other than contentious business;

"**practice**" means the practice of the profession of an advocate, and "practise" and "practising" shall be construed accordingly;

"**practising certificate**" means a certificate issued by the Association under the provisions of section thirty-five;

"**practitioner**" means a person who has been admitted to practice as an advocate under the provisions of this Act and whose name is duly entered on the Roll;

"**a practitioner of the prescribed standing**" means a practitioner of not less than five years' standing in Zambia or such lesser period as the Council of Legal Education may, in any particular case, prescribe;

"**the Registrar**" means the Registrar of the High Court;

"**the Remuneration Committee**" means the committee to be established to deal with the remuneration of practitioners in accordance with the provisions of Part IX;

"**the Roll**" means the list of practitioners kept in accordance with the provisions of this Act;

"**State Counsel for Zambia**" means—

- (a) a person who attained the rank of Queen's Counsel for the former Protectorate of Northern Rhodesia; and
- (b) a person admitted to the Inner Bar of Zambia;

"**unqualified person**" means a person who is not a practitioner and includes a practitioner who has not in force a practising certificate.

### 3. Certain officers exempt from provisions of this Act

- (1) Every officer to whom this section applies shall, in connection with the duties of his office, be entitled to practise, and shall not, except as in this Act expressly provided, be subject to the provisions of this Act.
- (2) The officers to whom this section applies are—
  - (a) the Attorney-General, the Solicitor-General, the Parliamentary Draftsmen, the Director of Public Prosecutions, the International Law Adviser and any Assistant International Law Adviser, the Assistant Parliamentary Draftsmen and all Senior State Advocates and State Advocates for the time being employed in the Attorney-General's Chambers;
  - (b) the Administrator-General and any qualified person for the time being employed in the Administrator-General's Department;
  - (c) the Local Courts Adviser, if a qualified person;
  - (d) any officer of a municipal council, if a qualified person;
  - (e) the Director of Legal Aid and legal aid counsel appointed under the Legal Aid Act, if qualified persons.

*[Cap. 34]*

- (3) Nothing in this Act contained shall be construed or deemed to prevent—
  - (a) an unqualified person from appearing for and representing in a court any party to any civil cause or matter, if duly authorised thereto by any rule of the Court or of subordinate courts;
  - (b) a District Secretary, an Assistant District Secretary or a Labour Officer, by leave of the Court or a subordinate court, as the case may be, from appearing for and representing in that court an African in any cause or matter;
  - (c) a Government officer, for good cause shown to the satisfaction of a court, from appearing for and representing the People, the Government, the President or the head of any Government department in any proceedings, cause or matter to which the People, the Government, the President or the head of any Government department, as the case may be, may be a party.

- (4) For the purposes of this section, "qualified person" means—
- (a) any person admitted as a practitioner under the provisions of this Act;
  - (b) any person admitted as a qualified lawyer (by whatever name called) and thereby having a right of audience before courts exercising original civil or criminal jurisdiction in a self-governing State being, in the opinion of the Council of Legal Education established pursuant to section seven, a State which is, or was at any time, a member State, or was part of a member State, of the Commonwealth of Nations and which applies as its predominant basic system of law the Common Law or a legal system founded upon the Common Law.

## Part II – Disciplinary Committee

### 4. Establishment of a Disciplinary Committee

- (1) There shall be established for the purposes of this Act a committee to be called the Disciplinary Committee consisting of—
- (a) the Attorney-General and the Solicitor-General; and
  - (b) five practitioners (hereinafter referred to as nominated members) being members of and nominated by the Association, and appointed by the Minister.
- (2) Every nominated member shall hold office for three years from the date of his nomination and shall be eligible for renomination.

*[subsection (2) amended by section 2 of [Act 14 of 2006](#)]*

- (3) During the temporary absence from Zambia of any nominated member, the Disciplinary Committee may nominate any practitioner to act as a temporary nominated member in the place of such absentee until his return or until the expiration of his period of office, whichever first occurs.
- (4) The Attorney-General shall be chairman of the Disciplinary Committee and shall preside at all meetings at which he is present. In the absence of the Attorney-General, the Solicitor-General, if present, shall preside. In the absence of both the Attorney-General and the Solicitor-General at any meeting of the Disciplinary Committee, the members present shall elect a member to preside at such meeting.
- (5) Three members of the Disciplinary Committee shall form a quorum:  
Provided that the Committee shall not sit unless it is made up of an unequal number of members.
- (6) Any question before the Disciplinary Committee shall be decided by a majority of votes of the members present and every member so present shall record a vote.
- (7) Members of the Disciplinary Committee, other than the Attorney-General and the Solicitor-General, shall be paid, in respect of expenses incurred by them in travelling and subsistence when discharging their duties, such sums as may be prescribed by the Minister.

## Part III – Admission and enrolment

### 5. Roll of practitioners

- (1) The Registrar shall keep, in accordance with the provisions of this Act and of any regulations made thereunder, a list of all the practitioners to be known as the Roll.
- (2) Any name of any practitioner which immediately prior to the commencement of this Act was entered upon the Roll shall remain thereafter so entered unless removed from, or struck off the Roll pursuant to Part IV, and, subject to the provisions of section twenty, the order of precedence of such practitioners shall be according to the priority shown on the Roll existing at that date.



## 6. Qualification for admission as a legal practitioner

No person shall be admitted as a practitioner unless he is duly qualified in accordance with the provisions of section eleven or twelve.

### 7. \*\*\*

*[Repealed by Act No. 10 of 1996]*

### 8. \*\*\*

*[Repealed by Act No. 10 of 1996]*

### 9. \*\*\*

*[Repealed by Act No. 10 of 1996]*

### 10. \*\*\*

*[Repealed by Act No. 10 of 1996]*

## 11. Professional and academic qualifications

(1) Subject to subsection (1) of section thirteen, a person may be admitted as a practitioner if that person—

- (a) is a holder of a degree in law obtained from a public university established under the University Act, 1999, and whose programme has been accredited by the Council of the Zambia Institute of Advanced Legal Education; or
- (b) is a holder of a degree in law obtained from a private university registered in accordance with the provisions of the University Act, 1999, and whose programme has been accredited by the Council of the Zambia Institute of Advanced Legal Education; or

*[Act No. 11 of 1999]*

- (c) is a holder of a degree in law obtained from a university outside Zambia in a country operating the Common Law system approved by the Council of the Zambia Institute of Advanced Legal Education and whose degree in law is recognised by a university accredited under the Zambia Institute of Advanced Legal Education Act as academically equivalent to a degree of that accredited university; and

*[Cap. 49]*

- (d) has—
  - (i) for one year, attended a course of post graduate study required by the Council of the Zambia Institute of Advanced Legal Education and provided by the Zambia Institute of Advanced Legal Education and has been duly certified as having fulfilled the requirements of such course by the Director of the Institute; or
  - (ii) after having obtained a degree, completed two years' service in Zambia as an articled clerk under articles of clerkship to a practitioner; and
- (e) has passed the Legal Practitioners Qualifying Examination.

(2) Notwithstanding subsection (1), a person may be admitted as a practitioner if that person is a qualified lawyer, by whatever name called, and thereby has a right of audience before courts exercising original civil or criminal jurisdiction in a self-governing State which is, or was at any time, a Member State, or was part of a Member State, of the Commonwealth of Nations and which

applies as its predominant basic system of law the Common Law or a legal system founded upon the Common Law and—

- (a) that person—
- (i) has been a practising lawyer of not less than three years' standing in the State in which the person is entitled to practice;
  - (ii) has been actively employed for not less than six months in Zambia—
    - (A) in a legal capacity in the office of a practitioner of prescribed standing;
    - (B) in a judicial or legal capacity in a department of Government prescribed by the Minister; or
    - (C) in the department of a town clerk who is admitted as a practitioner under this Act and is the person's employer, or the public officer in charge of the department of Government in which the person has served, or under whom the person has worked, as the case may be, has certified the person's work as being satisfactory; or
  - (iii) has for one year attended a course of post graduate study required by the Council of the Zambia Institute of Advanced Legal Education, and has been duly certified as having fulfilled the requirements of such course by the Director of the Institute; and
  - (iv) has passed such parts of the Legal Practitioners' Qualifying Examination set by the Council of the Zambia Institute of Advanced Legal Education as may be specified by the Council; or
- (b) that person—
- (i) has been a practising lawyer of not less than three years' standing in the State in which the person is entitled to practice and the Council of the Zambia Institute of Advanced Legal Education, after consultation with the Minister and the Chief Justice, deems the person's qualifications to be sufficient for the purposes of this section;
  - (ii) has been actively employed for not less than one year in Zambia—
    - (A) in a legal capacity in the office of a practitioner of prescribed standing;
    - (B) in a judicial or legal capacity in a department of Government prescribed by the Minister; or
    - (C) in the department of a town clerk who is admitted as a practitioner under this Act and is the person's employer, or the public officer in charge of the department of Government in which the person has served, or the town clerk under whom the person has worked, as the case may be, has certified the person's work as being satisfactory; or
  - (iii) has for one year attended a course of post graduate study required by the Council of the Zambia Institute of Advanced Legal Education, and has been duly certified as having fulfilled the requirements of such course by the Director of the Institute; and
  - (iv) has passed the Legal Practitioners Qualifying Examination set by the Council of the Zambia Institute of Advanced Legal Education.

*[Act No. 11 of 1999]*

*[section 11 substituted by section 2 of Act 17 of 2009]*

## 12. Apprenticeship qualifications

- (1) Notwithstanding the provisions of section eleven and subject to the provisions of subsection (1) of section thirteen, a person shall be admitted as a practitioner if—
  - (a) he has completed the prescribed period of service in the Republic as an articled clerk under articles of clerkship to a practitioner of the prescribed standing; and
  - (b) the person has obtained a degree in law from a university established under, or registered in accordance with, the University Act, 1999, and whose programme has been accredited by the Council of the Zambia Institute of Advanced Legal Education; and

*[Act No. 11 of 1999]*

*[paragraph (b) substituted by section 3 of Act 17 of 2009]*

  - (c) he has passed the Legal Practitioners Qualifying Examination set by the Council of Legal Education.
- (2) For the purposes of this section—
  - (a) the term "prescribed period of service" means such period of service as is prescribed by the Council of Legal Education, and in this regard the Council of Legal Education may prescribe different periods for different persons or different classes of persons having regard to the actual experience of such persons in the office of a practitioner of the prescribed standing and to such other matters as the said Council may deem relevant;
  - (b) the term "prescribed examination" means such examination as the Council of Legal Education may require to be undergone by any person or class of persons in lieu of the obtaining of a degree in law from the University of Zambia.

## 13. Admission by the Chief Justice

- (1) Any person who—
  - (a) produces to the Chief Justice a certificate issued by the Council of Legal Education certifying him as having complied with the applicable provisions of section eleven or twelve; and
  - (b) satisfies the Chief Justice that he is of good character;may apply to the Chief Justice to be admitted as a practitioner.
- (2) Every application made under the provisions of subsection (1) shall be by petition to the Chief Justice and shall include an undertaking in writing as to requisite practical experience in such form and manner as the Chief Justice may prescribe.
- (3) Upon application being made pursuant to this section and upon production of such testimonials as to character as he may require, the Chief Justice may, in his discretion, after the applicant has taken the oath or oaths set forth in the First Schedule, by writing under his hand grant to the applicant a certificate of admission as a practitioner.

*[As amended by Act No. 21 of 1981]*

### 13A. Undertaking as to requisite practical experience

- (1) An applicant to whom section thirteen applies shall be deemed, in his undertaking as to requisite practical experience, to have undertaken—
  - (a) that he shall not, until he has satisfied the Association that he has gained the requisite practical experience—
    - (i) set up a legal practice, open a law office or in any way practice law on his own account;
    - (ii) establish or become a partner in, any firm of lawyers; or
    - (iii) appear before the Supreme Court; and
  - (b) that if he violates any of the terms of the undertaking, he shall, in addition to being in contempt of court, be deemed to be guilty of professional misconduct.
- (2) In this part, "requisite practical experience" means such active employment for a continuous period of, or for periods amounting in all to, five years as shall have been certified as being satisfactory by the relevant practitioner of the prescribed standing or head of the relevant department, as the case may be, in—
  - (a) the office of a practitioner of the prescribed standing;
  - (b) a firm of practitioners where at least one supervising partner was, throughout the period of such employment, a practitioner of the prescribed standing;
  - (c) a judicial or legal capacity in the Judicial Department, the Attorney General's Chambers, the Directorate of Legal Aid, the Lands Department, the Chambers of the Director of Public Prosecutions, the Administrator-General's Department, or any other department of the Government which may be approved for the purpose by the Chief Justice in consultation with the Attorney-General;
  - (d) the legal department of a district council, a statutory corporation, a company or organisation, where at least one supervising officer was, throughout the period of such employment, a practitioner of the prescribed standing; or
  - (e) such other capacity or office as the Chief Justice may, in consultation with the Association, approve for the purpose: Provided that for purposes of appearing before the Supreme Court "requisite practical experience" means active employment for a continuous period of, or for periods amounting in all to, three years:

*[paragraph (e) amended by section 3(b) of [Act 14 of 2006](#)]*

Provided that for purposes of appearing before the Supreme Court "requisite practical experience" means active employment for a continuous period of, or for periods amounting in all to, three years.

*[subsection (2) amended by [Act No. 21 of 1981](#) and section 3(a) and (c) of [Act 14 of 2006](#)]*

### 14. Admission fee

Every person admitted as a practitioner under the provisions of section thirteen shall pay to the Association the sum of four hundred fee units.

*[As amended by [Act No. 13 of 1994](#)]*

## 15. Entry of name on Roll

The Registrar upon production of—

- (a) a certificate of admission signed by the Chief Justice pursuant to subsection (3) of section thirteen; and
- (b) a receipt from the Association acknowledging the payment of the fee prescribed by section fourteen;

shall enter upon the Roll the name of the person admitted.

## 16. Attorney-General, Solicitor-General and Director of Public Prosecutions to be appointed State Counsel for Zambia

- (1) Upon the appointment of any person to the office of Attorney-General, Solicitor-General or Director of Public Prosecutions, the rank and dignity of a State Counsel for Zambia shall be conferred upon that person by the President.
- (2) The person holding the office of Director of Public Prosecutions, shall, on the commencement of this Act, be conferred with the rank and dignity of State Counsel by the President.

*[section 16 substituted by section 4 of [Act 14 of 2006](#)]*

## 17. Power of the President to appoint a State Counsel for Zambia and procedure for appointment

- (1) Any practitioner wishing the rank and dignity of a State Counsel for Zambia to be conferred upon him shall submit his application, accompanied by the recommendation of two State Counsel, in that behalf to the Attorney-General.
- (2) On receiving such an application, the Attorney-General shall, after consultation with the Chief Justice and the Association, make such recommendation thereon to the President as he thinks fit, and the President may, after taking such recommendation into consideration, in his discretion, either reject the application or, subject to the other provisions of this Act, appoint, by Letters Patent under the Seal of the Republic, the applicant a State Counsel for Zambia.

*[subsection (2) amended by section 5 of [Act 14 of 2006](#)]*

## 18. Limitation on appointments of State Counsel for Zambia

- (1) Subject to the provisions of subsections (2) and (3), not more than three State Counsel for Zambia shall be appointed in any one calendar year.
- (2) The quota for a calendar year fixed under subsection (1) may be increased up to the aggregate number by which the number of State Counsel for Zambia appointed in any preceding year or years falls short of the number arrived at by counting three for each year from the 31st March, 1972.
- (3) The appointment of a State Counsel for Zambia by virtue of his appointment to the office of Attorney-General or Solicitor-General shall not be considered as an appointment for the purpose of subsection (1) or (2).

*[subsection (3) amended by section 6 of [Act 14 of 2006](#)]*

- (4) Subject to the provisions of this section, appointments of State Counsel for Zambia may be made at one time or partly at one time and partly at another time or times during a calendar year.

## 19. Qualification for appointment as a State Counsel for Zambia

- (1) Subject to subsection (2), a person shall not be appointed as a State Counsel for Zambia unless he is qualified for appointment as a puisne Judge of the High Court.
- (2) The provisions of subsection (1) shall not apply to an appointment of the Attorney-General or the Solicitor-General as a State Counsel.

*[subsection (2) amended by section 7 of [Act 14 of 2006](#)]*

## 20. Precedence of practitioners

Practitioners shall take precedence in the following order:

- (a) the Attorney-General;
- (b) the practitioners who had filled the office of Attorney-General, in the order of the dates of their appointment as Attorney-General;
- (c) the Solicitor-General of Zambia;
- (d) the practitioners who had filled the office of Solicitor-General of Zambia, in the order of the dates of their appointment as Solicitor-General of Zambia;
- (e) all State Counsel for Zambia, in the order of the dates on which the dignity of State Counsel for Zambia was conferred upon them; and
- (f) all other practitioners according to the order of entry of their respective names on the Roll.

## 21. \*\*\*

*[Spent]*

## Part IV – Removal from and restoration to the Roll

### 22. Removal from Roll and procedure of Disciplinary Committee

- (1) Any application—
  - (a) by a practitioner to procure his name to be removed from the Roll; or
  - (b) by any person to strike the name of a practitioner off the Roll, or to require a practitioner to answer allegations made in an affidavit;

shall be made to and heard by the Disciplinary Committee in accordance with the rules made under the provisions of section twenty-three:

Provided that where, in the opinion of the Disciplinary Committee, an application under paragraph (b) does not disclose any *prima facie* case, the Disciplinary Committee may refuse such application without requiring the practitioner to whom the application relates to answer the allegations and without hearing the applicant.

- (2) On the hearing of an application under paragraph (a) of subsection (1), the Disciplinary Committee may recommend to the Chief Justice that the name of such practitioner be removed from the Roll, and, upon such recommendation, the Chief Justice may order that the name be removed or make such other order in relation to the case as he may think fit.
- (3) On the hearing of an application under paragraph (b) of subsection (1)—
  - (a) the Disciplinary Committee shall give the practitioner whose conduct is the subject-matter of the application an opportunity to appear before it, and shall furnish him with a copy

of any affidavit made in support of the application, and shall give him an opportunity of inspecting any other relevant document not less than seven days before the date fixed for the hearing;

- (b) the Disciplinary Committee, on the termination of the hearing, shall embody its findings in the form of a report to the Court which shall be signed and filed with the Registrar, and shall be open to inspection by the practitioner to whom the application relates and his counsel, if any, and also by the applicant, but shall not be open to public inspection;
  - (c)
    - (i) if the Disciplinary Committee, at the close of the hearing of the application, is satisfied that a case for the application or a case of any other misconduct on the part of the practitioner to whom the application relates has been made out it shall, unless it considers that the case may properly be dealt with under the provisions of sub-paragraph (ii), lay a signed copy of the report before the Court together with the evidence taken and the documents put in evidence at the hearing and serve copies thereof on the practitioner;
    - (ii) if the Disciplinary Committee, at the close of the hearing, is satisfied that a case of misconduct has been made out on the part of the practitioner to whom the application relates and that such misconduct may adequately be dealt with by the Disciplinary Committee, it may admonish such practitioner or may admonish and impose a penalty not exceeding one hundred thousand penalty units upon such practitioner, which penalty may be recovered by the Republic as a civil debt;
- [subparagraph (ii) amended by section 8 of Act 14 of 2006]*
- (d) the Disciplinary Committee shall have power to make any such order as to payment by any party of any costs or witnesses' expenses as it may think fit, and such costs shall be recoverable as a civil debt.

- (4) The practitioner to whom the application relates may, within thirty days of the notification to him of the decision, appeal to the Court against any decision of the Disciplinary Committee under sub-paragraph (ii) of paragraph (c) of subsection (3).

*[As amended by Act No. 13 of 1994]*

## 22A. Suspension of Legal Practitioner from practice

- (1) Where an application under paragraph (b) of subsection (1) of section twenty-two discloses a *prima facie* case of misconduct, the Disciplinary Committee may advise the Practitioners' Committee, appointed under section thirteen of the Law Association of Zambia Act, to suspend the practising certificate of the practitioner to whom the application relates for such period as the Practitioners' Committee may determine pending the determination of the case, if the Disciplinary Committee is satisfied that such suspension is necessary in order to safeguard the interests of the public.

*[Cap. 31]*

- (2) Notwithstanding subsection (1), the Legal Practitioners Committee may on its own volition, where it considers it fit, suspend, for such period as the Committee may determine, the practising certificate of a practitioner against whom disciplinary proceedings have been instituted for misconduct and shall submit the matter to the Disciplinary Committee.

*[section 22 A inserted by section 9 of Act 14 of 2006]*

## 23. Rules governing Disciplinary Committee

- (1) The Disciplinary Committee, with the concurrence of the Chief Justice, may from time to time make rules, by statutory instrument, for regulating the making, hearing and determining of applications to such Disciplinary Committee under this Part.

- (2) For the purposes of any application made to it under this Part, the Disciplinary Committee may administer oaths and the applicant and the practitioner to whom the application relates or the Disciplinary Committee may apply to the Court for the issue of a summons to give evidence or to produce documents, but no person shall be compelled under any such summons to produce any document which he could not be compelled to produce on the trial of an action.
- (3) The hearing of an application under section twenty-two shall, for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding.

*[Cap. 87]*

#### **24. Powers of Court under sections 22, 25, 27 and 28 to be exercised by two Judges**

- (1) The powers conferred upon the Court by sections twenty-two, twenty-five, twenty-seven and twenty-eight shall be exercised by not less than two of the Judges of the Court.
- (2) If such powers are exercised by two Judges and the Court is equally divided, the matter shall be reheard by three Judges.
- (3) If such powers are exercised by three Judges and they do not agree in their opinion, the decision of the majority shall be taken to be the decision of the Court.

#### **25. Consideration of report by Court**

- (1) Where a report is laid before the Court under the provisions of paragraph (c) of subsection (3) of section twenty-two, the Court may set down such report for consideration.
- (2) Not less than fourteen days' notice of the date for such consideration shall be given by the Registrar to the Disciplinary Committee and to the practitioner to whom the application relates.
- (3) The notice mentioned in subsection (2) shall be in such form as may be prescribed and shall be accompanied by a copy of the report as laid before the Court.

#### **26. Representation by counsel**

Both the Disciplinary Committee and the practitioner to whom the application relates may be legally represented before the Court.

#### **27. Reference of report back to Disciplinary Committee**

The Court may, upon the consideration of any report, refer it back to the Disciplinary Committee for the elucidation of any particular point.

#### **28. Power of Court to deal with practitioner**

- (1) The Court, after considering the evidence taken by the Disciplinary Committee and the report and having heard counsel, if any, for such committee and the practitioner to whom the application relates or his counsel, and after taking any further evidence, if it thinks fit to do so, may admonish the practitioner to whom the application relates or may make any such order as to removing or striking his name from the Roll, as to suspending him from practice, as to payment by him of a fine not exceeding ten thousand penalty units, as to the payment of costs, and as to restitution or otherwise in relation to the case, as it may think fit, or may exonerate the practitioner.
- (2) Where the Court imposes a fine under the provisions of subsection (1), it may order the whole or any part of such fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the matters to which the application relates.

*[As amended by Act No. 13 of 1994]*



**29. Disciplinary powers of Court or Judge apart from inquiry by Disciplinary Committee**

Nothing in this Act contained shall supersede, lessen or interfere with the powers vested in the Chief Justice or any of the Judges of the Court to deal with misconduct or offences by practitioners.

**30. Power of Registrar to draw up orders**

Where an order has been made by the Court upon an application to remove from, or strike off, the Roll the name of a practitioner, or to require a practitioner to answer allegations contained in an affidavit, and has not been drawn up by the applicant within one week after it was made, the Registrar may cause the order to be drawn up, and all future proceedings thereon shall be taken as if the application had been made by the Registrar.

**31. Orders of Court to be noted on Roll**

Where, in proceedings under or by virtue of this Act, any practitioner is admonished, or an order is made as to removing or striking his name from the Roll, as to suspending him from practice, or as to payment by him of a fine or costs, the Registrar shall cause a note of the effect of such admonition or order to be entered against the name of the practitioner on the Roll, and, where the order so directs, shall remove, or strike off, the name.

**32. Limitation of time for certain applications to strike names off Roll**

Subject as hereinafter provided, no practitioner shall be liable to have his name struck off the Roll on account of any defect in his admission and enrolment, unless the application so to strike his name off the Roll is made within twelve months after the date of his enrolment:

Provided that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment.

**33. Restoration to Roll**

The Chief Justice may, if he thinks fit, either on his own initiative or on the recommendation of the Disciplinary Committee, at any time order the Registrar to replace on the Roll the name of a practitioner whose name has been removed from or struck off the Roll.

**34. Disciplinary powers as to clerks**

(1) Where—

- (a) a person who is or was a clerk to a practitioner, but is not himself a practitioner, has been convicted of larceny, embezzlement, fraudulent conversion or any other criminal offence in respect of any money or property belonging to or held or controlled by the practitioner by whom he is or was employed or any clerk of such practitioner; or
- (b) it appears to the Association—
  - (i) in the course of or as a result of any proceedings before the Disciplinary Committee under this Act; or
  - (ii) in the exercise of its powers under rules made under this Act;

that a person who is or was a clerk to a practitioner, but is not himself a practitioner, has been a party to any act or default of such practitioner, in respect of which an application or complaint has been or might be made against such a practitioner to the Disciplinary Committee;

an application may be made by or on behalf of the Association to the Disciplinary Committee that an order be made directing that, as from a date to be specified in such order, no practitioner shall,

in connection with his practice as such, take or retain the said person into or in his employment or remunerate the said person without the written permission of the Association, which may be given for such period and subject to such conditions as the Association may think fit.

- (2) An application under this section shall be made to and be heard by the Disciplinary Committee in accordance with rules made under this section, and, on the hearing of any such application, the Disciplinary Committee shall have power to make such order as is referred to in this section and an order as to payment by any party of costs.
- (3) Every order made by the Disciplinary Committee under this section shall be prefaced by a statement of its findings in relation to the facts of the case and shall be signed by the chairman of the said committee, or by a member of the said committee authorised by the said committee to sign the same, and any document purporting to be an order so signed shall be received in evidence in any criminal proceedings or in any proceedings under this Act and shall be deemed to be such an order without further proof unless the contrary is shown.
- (4) Every order made by the Disciplinary Committee under this section shall be filed with the secretary to the said committee, and the file kept by him for that purpose may be inspected by any practitioner during office hours without payment, but shall not be open to the inspection of any person other than a practitioner.
- (5) For the purposes of any application made to it under this section, the Disciplinary Committee may administer oaths, and the applicant and any person with respect to whom the application is made may take out a summons requiring any person to give evidence or to produce documents, but no person shall be compelled under any such summons to produce any document which he could not be compelled to produce on the trial of an action.
- (6) The Disciplinary Committee, with the concurrence of the Chief Justice, may from time to time make rules, by statutory instrument, for regulating the making, hearing and determining of applications under this section, including rules as to who shall be parties to any such application, as to the service of any notice or order upon any party, and as to whether any such application shall be heard prior to, in the course of, concurrently with or subsequent to the hearing of any application against a practitioner under section twenty-two.
- (7) Any person with respect to whom an order has been made by the Disciplinary Committee under this section may, within two months of such order, appeal therefrom to the Court, whose decision shall be final.
- (8) Any person who, whilst there is in force in respect of him an order under this section, seeks or accepts employment by or remuneration from a practitioner in connection with his practice as such without previously informing him of such order, shall be guilty of an offence and shall be liable to a fine not exceeding two thousand penalty units.
- (9) Proceedings under subsection (8) may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced by any person, other than the Association or a person acting on behalf of the Association, except with the consent of the Attorney-General.
- (10) If any practitioner knowingly acts in contravention of the provisions of an order of the Disciplinary Committee under this section as made and not appealed against or as confirmed upon appeal, as the case may be, or in contravention of any condition subject to which any such permission as aforesaid has been given by the Association, a complaint in respect of that contravention may be made by or on behalf of the Association to the Disciplinary Committee, and any such complaint shall be dealt with in the same manner as an application under paragraph (b) of subsection (1) of section twenty-two.

*[As amended by [Act No. 13 of 1994](#)]*

## Part V – Practising certificates

### 35. Association to issue practising certificates

It shall be the duty of the Association to issue, in accordance with the provisions of this Part, certificates in the prescribed form authorising the practitioners named therein to practise as advocates.

### 36. Application for practising certificates

- (1) (a) Every practitioner applying for a practising certificate shall—
  - (i) obtain from the Association a certificate showing that he is a member in good standing of the Association;
  - (ii) deliver to the Association a written declaration in the prescribed form stating the name and place of business of the applicant and the date of his admission and signed by the applicant; and
  - (iii) at the same time produce to the Association a duly signed duplicate of the declaration:

Provided that the Association may, at its discretion in any particular case, on the ground of illness or absence abroad of the applicant or on any other ground deemed by the Association sufficient, either unconditionally or subject to such conditions as it may think fit, dispense with the necessity for signature of the declaration by the applicant personally and accept a declaration in a form to the like effect which has been duly completed and has been signed by a partner of the applicant or by some other competent person approved by the Association.

- (b) If in a declaration under this subsection any person makes any false statement, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding two years, or to both.
- (2) The Association shall cause all the particulars contained in the declaration to be entered in a register kept for that purpose, and any person may inspect such register during office hours without payment.
- (3) Application for a practising certificate shall be made in person to the Association either by the applicant or his agent and, subject to the provisions of section thirty-seven and to the payment of the contribution to the Compensation Fund required by the provisions of section forty and the fee required by this section, if the Association is satisfied that the name of the applicant is on the Roll and that he is not for the time being suspended from practice and that the provisions of subsection (1) have been complied with, it shall thereupon deliver a practising certificate in such form as may be prescribed.
- (4) If in any case, not being a case to which the next succeeding section applies, the Association, on application duly made to it, refuses or neglects to issue a practising certificate, the applicant may apply to the Court or any Judge thereof who may make such order in the matter, including an order for payment of costs by or to either the Association or the applicant, as shall be just.
- (5) There shall be paid to the Association in respect of each practising certificate issued by it the prescribed fee or, where no fee has been prescribed for the purpose of this subsection, a fee not less than seventy five fee units:

Provided that the fee payable by a practitioner whose main office is more than thirty-two kilometres from the line of rail shall be one-half of the above fee.

*[As amended by Acts No. 21 of 1981 and No. 13 of 1994]*

### 37. Discretion of Association to refuse certificate in special cases

- (1) In any of the following cases, that is to say, where a practitioner applies for a practising certificate:
- (a) when for twelve months or more he has ceased to hold a current practising certificate; or
  - (b) whilst he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or
  - (c) when, having been suspended from practice or having had his name struck off the Roll, the period of his suspension has expired, or his name has been restored to the Roll, as the case may be; or
  - (d) not having held a practising certificate within the twelve months next following the date of his admission to the Roll; or
  - (e) whilst he is a person in respect of whom an adjudication order under the Mental Disorders Act is in force; or
- [Cap. 305]*
- (f) without having paid a penalty or costs ordered by the Disciplinary Committee under this Act to be paid by him; or
  - (g) after he has been invited by the Council to give an explanation in respect of any matter affecting his conduct and has failed to give to the Council an explanation in respect of that matter which the Council regard as sufficient and satisfactory, and has been notified in writing by the Council that he has so failed; or
  - (h) after having had an order made against him for the issue of a writ of attachment; or
  - (i) after having been adjudicated a bankrupt and obtained his discharge or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
  - (j) after having had given against him any judgment which involves the payment of moneys, other than costs, and is not a judgment as to the whole effect of which upon him he is entitled to indemnity or relief from any other person and without having produced to the Association evidence of the satisfaction of such judgment;

he must, unless the Association or the Chief Justice otherwise orders, give to the Association, at least six weeks before the application is made, notice of his intention to make the application, and the Association may in its discretion grant or refuse the application, or decide to issue a certificate to the applicant, subject to such terms and conditions as the Association may in its discretion think fit and in the last-mentioned case may, if it thinks fit, postpone the issue of the certificate pending the hearing and determination of an appeal under this section:

Provided that—

- (i) in the event of an appeal having been made to the appropriate court in case (b) against the receiving order or in case (h) against the order for the issue of a writ of attachment or in case (j) against the judgment, the Association shall not refuse the application during the pendency of such appeal unless in its opinion the proceedings on such appeal have been unduly protracted by the appellant or are unlikely to be successful; and
- (ii) where, having regard to certain facts, a discretion becomes exercisable by the Association in any of the cases (a), (c), (d), (g), (h), (i) and (j), as soon thereafter as a practising certificate has been issued in the exercise of such discretion to the applicant free of conditions, those facts shall cease to operate so as to require such applicant to give the notice mentioned in this section or to vest any discretion in the Association.

- (2) Within one month after being notified of the decision of the Association, the applicant may appeal against such decision to the Chief Justice who may affirm the decision of the Association or may direct it to issue a certificate to the applicant on such terms and conditions as the Chief Justice may think fit or free from terms and conditions or not to issue a certificate or, if a certificate has been issued, may by order suspend such certificate until such certificate expires or the suspension is terminated by order of the Association or the Chief Justice or may make such other order as he may think fit.

### **38. Date and period of validity of practicing certificate**

- (1) Every practising certificate shall, subject as hereinafter provided, take effect on the day on which it is issued by the Association:

Provided that every practising certificate issued between the 1st January and the 1st February in any year shall have effect for all purposes from the 1st January in that year.

- (2) Every certificate shall continue in force from the day from or on which it has taken or takes effect in accordance with this section until the 31st December next following (both days inclusive) and shall then expire.
- (3) It shall be the duty of the Association to enter upon the register kept under the provisions of subsection (2) of section thirty-six a note of the date of issue to any practitioner of a practising certificate.

### **39. List published by Association to be *prima facie* evidence of practitioner holding certificate**

- (1) Any list purporting to be published by authority of the Association and to contain the names of practitioners who have obtained practising certificates for the current year before the 1st February in that year shall, until the contrary is proved, be evidence that the persons named therein as practitioners holding such certificates as aforesaid for the current year are practitioners holding such certificates.
- (2) The absence from such list of the name of any person shall, until the contrary is proved, be evidence that the person is not qualified to practise as a practitioner under a certificate for the current year, but in the case of any such person an extract from the register kept under the provisions of subsection (2) of section thirty-six certified as correct by the Association shall be evidence of the facts appearing in the extract.

## **Part VI – Compensation Fund**

### **40. Compensation Fund**

- (1) A fund to be called "the Compensation Fund" shall be established, maintained and administered by the Association for enabling the Association to make grants thereout in any cases which the Council think suitable for such treatment and in their absolute discretion decide so to treat, for the purpose of relieving or mitigating losses sustained by any person in consequence of dishonesty on the part of any practitioner or any clerk or servant of any practitioner in connection with any such practitioner's practice as a practitioner, or any trust of which such practitioner was a trustee, and whether or not he had a practising certificate in force when the act of dishonesty was committed and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the Roll or may have ceased to practise or been suspended from practice:

Provided that—

- (i) no grant shall be made under this section in respect of loss due to any act of dishonesty where such loss first came to the knowledge of the loser before the \*\*\*coming into operation

of section thirty-seven of the Legal Practitioners Act, Chapter 144 of the 1965 Edition of the Laws; and

\*18th April 1957.

- (ii) no grant shall be made under this section in respect of any loss, unless notice of such loss is received by the Association in such manner and within such time after the same first came to the knowledge of the loser as is prescribed by rules made under this section, and it is proved to the satisfaction of the Council that such loss is one in respect of which a grant may properly be made under this section.
- (2) The Compensation Fund shall be held by the Association in trust for the purposes provided for in this section and the Second Schedule and any rules made under this section.
- (3) Subject as hereinafter provided, on the issue of a practising certificate to a practitioner, there shall be paid by such practitioner to the Association and paid by the Association into the Compensation Fund a contribution of such sum as may be prescribed or if no sum is prescribed, of not less than one hundred and twenty-five fee units (which contribution is in this section referred to as "the annual contribution"). The Association may withhold the issue of such certificate until the annual contribution is paid.
- (4) The Association may invest in securities in which trustees are authorised by law to invest trust funds in their hands any moneys which form part of the Compensation Fund and are not immediately required for any other purpose provided for in this section and the Second Schedule and any rules made under this section.
- (5) The Association may insure with any person, body of persons or corporation authorised by law to carry on insurance business within Zambia for such purposes and on such terms as the Council may deem expedient in relation to the Compensation Fund.
- (6) The provisions set out in the Second Schedule shall have effect with regard to the formation, administration and application of the Compensation Fund and matters connected therewith.
- (7) On the making by the Association of any grant out of the Compensation Fund under the provisions of this section and the Second Schedule and any rules made under this section to any person in respect of loss sustained in consequence of any such dishonesty as is mentioned in subsection (1)—
  - (a) the Association shall, to the amount of such grant, be subrogated—
    - (i) to any rights or remedies to which such person was entitled on account of such loss against the practitioner or any other person, or, in the event of the death or insolvency or other disability of such practitioner or other person, against his personal representatives or any other persons having authority to administer his estate;
    - (ii) to any rights or remedies to which such practitioner, his clerk or servant, was entitled on account of such loss against any other person, or, in the event of the death or insolvency or other disability of such other person, against his personal representatives or any other persons having authority to administer his estate; and
    - (iii) to all other rights and remedies (if any) of the person to whom the payment is made or such practitioner, his clerk or servant, in respect of such loss; and
  - (b) the person to whom the grant is made, or, in the event of his death or insolvency or other disability, his personal representatives or any other persons having authority to administer his estate shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of such practitioner or other person in respect of the loss until the Association has been reimbursed the full amount of its grant.
- (8) The Council may, by statutory instrument, make rules with respect to the procedure to be followed in giving effect to the provisions of this section and the provisions of the Second Schedule, other than paragraph 5 and sub-paragraphs (2) and (5) of paragraph 4 thereof, and with respect to any

matters incidental, ancillary or supplemental to those provisions or concerning the administration or protection of the Compensation Fund.

*[As amended by [Act No. 21 of 1981](#) and [Act No. 13 of 1994](#)]*

## **Part VII – Privileges, restrictions and offences in connection with practice**

### **41. Qualifications for practising**

- (1) Subject as hereinafter provided, no person shall be qualified to act as an advocate within Zambia unless his name is on the Roll and he has in force a practising certificate.
- (2) Every person whose name is on the Roll and who has in force a practising certificate or who is admitted to practice under subsection (1) shall be entitled to practise as an advocate in any court in Zambia other than a local court and shall be deemed to be an officer of the Court.

### **42. Unqualified person not to act as an advocate**

- (1) No unqualified person shall act or practise, directly or indirectly, as an advocate or as such sue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person in any court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal, or act as a Notary Public.
- (2) If any person contravenes the provisions of this section, he shall be guilty of an offence against this Act and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any disability to which he may be subject, be liable to a fine not exceeding two thousand penalty units or a period of imprisonment not exceeding six months.

*[As amended by [Act No. 13 of 1994](#)]*

### **43. Penalty for pretending to be an advocate**

Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognised by law as qualified to act as an advocate, or a Notary Public, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

*[As amended by [Act No. 13 of 1994](#)]*

### **44. Offences by unqualified persons**

Every unqualified person who, unless he proves that the act was not done for or in expectation of any fee, gain or reward—

- (a) directly or indirectly draws or prepares any written document relating to real or personal estate, or to any proceeding in law or equity; or
- (b) writes any letter, on behalf of any other person, demanding payment of money, or the performance of or abstention from performance of any act, and threatening legal proceedings in default of compliance; or
- (c) delivers or causes to be delivered to any person any document which, not having been issued under the authority of one of the courts of Zambia, has, by reason of its form or contents, or both, the appearance of having been issued under such authority;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand penalty units:



Provided that—

- (i) the term "written document" used in this section shall not include—
  - (A) an agreement under hand only, other than an agreement relating to the sale of land; or
  - (B) a memorandum or articles of association of a limited company; or
  - (C) a letter of attorney or power of attorney; or
  - (D) a transfer of stock containing no trust or limitation thereof;
- (ii) this section shall not extend to any public officer drawing or preparing any document in the course of his public duty.

*[As amended by [Act No. 13 of 1994](#)]*

#### **45. Instrument to be endorsed with name and address of drawer**

Every person who draws or prepares any written document referred to in the last preceding section shall endorse or cause to be endorsed thereon his name and address; and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable to a fine not exceeding two hundred penalty units; and it shall not be lawful for the Registrar, the Registrar of Lands and Deeds or any other registering authority to accept or recognise any such instrument unless it purports to bear the name of the person who prepared it endorsed thereon:

Provided that this section shall not apply to any public officer drawing or preparing any written document in the course of his public duty.

*[As amended by [Act No. 13 of 1994](#)]*

#### **46. Penalty on unqualified person acting in preparation of papers for probate, etc.**

Any unqualified person who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly, or as an agent of any person other than a practitioner, takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or of letters of administration shall, without prejudice to any liability or disability to which he may be subject under any other section of this Act, or any other Act, be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

*[As amended by [Act No. 13 of 1994](#)]*

#### **47. No costs recoverable where unqualified person acts as advocate**

No costs in respect of anything done by any unqualified person who acts as an advocate shall be recoverable in any action, suit or matter by any person whomsoever.

#### **48. Practitioner not to act as agent for unqualified person**

- (1) No practitioner shall wilfully and knowingly act as agent in any action or in any matter in bankruptcy for any unqualified person resident in Zambia, or permit his name to be made use of in any such action, or matter upon the account, or for the profit of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practise in any respect as an advocate in any such action or matter.
- (2) Where it appears to the Court that a practitioner has acted in contravention of this section, the Court may, in the absence of a satisfactory explanation from such practitioner, impose any such punishment or make any such order as is mentioned in section twenty-eight.



- (3) Where the Court imposes any punishment on a practitioner in respect of an offence under this section, it may further order that the unqualified person who was enabled by the conduct of the offender to act or practise as an advocate shall pay a fine or in default of payment undergo imprisonment for a term not exceeding one year.

#### **49. Employment by practitioner of persons struck off Roll or suspended**

- (1) No practitioner shall, in connection with his practice as such a practitioner, without the written permission of the Disciplinary Committee, which may be given for such period and subject to such conditions as the Disciplinary Committee thinks fit, employ or remunerate any person who to his knowledge is disqualified from practising by reason of the fact that his name has been struck off the Roll, otherwise than at his own request, or is suspended from so practising.
- (2) A practitioner aggrieved by the refusal of the Disciplinary Committee to grant any such permission as aforesaid, or by any conditions attached by the Disciplinary Committee to the grant thereof, may appeal to the Chief Justice who may confirm the refusal or the conditions, as the case may be, or may, in lieu of the Disciplinary Committee, grant such permission for such period and subject to such conditions as he thinks fit.
- (3) If any practitioner acts in contravention of the provisions of this section or of the conditions subject to which any permission has been given thereunder, his name shall be struck off the Roll or he shall be suspended from practice for such period as the Court thinks fit.

#### **50. Penalty on failure to disclose fact of having been struck off, etc.**

- (1) Any person who, whilst he is disqualified from practising by reason of the fact that he has been struck off the Roll, otherwise than at his own request, or is suspended from practising, seeks or accepts employment by a practitioner in connection with the latter's practice without previously informing him that he is so disqualified as aforesaid, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to term of imprisonment not exceeding two years, or to both.
- (2) Proceedings under this section may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by, or with the consent of, the Attorney-General.

*[As amended by [Act No. 13 of 1994](#)]*

#### **51. Offences by bodies corporate**

- (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognised by law as qualified, to act as an advocate, the body corporate shall be liable to a fine not exceeding one thousand penalty units and, in the case of an act done by any director, officer or servant of the corporation, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding two years, or to both.
- (2) In this Part, wherever the context so admits, reference to unqualified persons and reference to persons include references to bodies corporate.

*[As amended by [Act No. 13 of 1994](#)]*

#### **52. Offences by practitioners**

No practitioner shall—

- (a) take instructions in any case except from the party on whose behalf he is retained or some person who is the recognised agent of such party, or some servant, relation or friend authorised by the party to give such instructions; or

- (b) mislead or allow any court to be misled, so that such court makes an order which such practitioner knows to be wrong or improper; or
- (c) tender, or give or consent to the retention out of any fee paid or payable to him for his services of any gratuity for procuring or having procured the employment in any legal business of himself or any other practitioner; or
- (d) directly or indirectly procure or attempt to procure the employment of himself or his partner or assistant as a practitioner, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him, or agreed or promised to be so given; or
- (e) advertise himself in any wise in relation to his profession or business as a practitioner, except so far as may be necessary to mark his office or to give his address to persons having business communications or dealings with him; or
- (f) directly or indirectly hold himself out or permit himself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or
- (g) agree with his client either before, during or after the conduct of any non-contentious professional business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or
- (h) commit any breach of any of the provisions of Part VIII; or
- (i) deceive or mislead any client or allow him to be deceived or misled in any respect material to such client; or
- (j) commit any contempt of court; or
- (k) contravene the provisions of section fifty-five

### 53. Offences deemed professional misconduct

Any practitioner who contravenes any of the provisions of section fifty-two shall be deemed to be guilty of professional misconduct, and the Court may, in its discretion, either admonish such practitioner, or suspend him from practice, or cause his name to be struck off the Roll pursuant to section twenty-eight:

Provided that—

- (i) nothing in this section or in section fifty-two contained shall supersede, lessen or interfere with the powers vested in the Court, under or by virtue of section twenty-eight or otherwise, to deal with misconduct or offences by practitioners of whatsoever nature or kind, whether mentioned in section fifty-two or otherwise;
- (ii) nothing in section fifty-two shall restrict the powers of the Disciplinary Committee under section twenty-two to inquire into or deal with misconduct by practitioners of whatsoever nature or kind, whether mentioned in section fifty-two or otherwise.

### 54. Saving as to employment of unqualified persons by qualified persons

Subject to the provisions of section forty-nine, nothing in this Act shall be deemed to prevent any practitioner from employing an unqualified person to do any work on his behalf, such as is ordinarily done by clerks or employees, subject to the following conditions:

- (a) such work shall be done in the name of the practitioner, and all fees or other reward to be paid or received in respect of such work shall be paid to and received directly by the practitioner;

- (b) on all occasions when the unqualified person signs any written document or letter in the name of any practitioner by whom he is employed, he shall, in addition, sign his own name after the name of the practitioner;
- (c) the practitioner shall send to the Court and to the magistrate of the District wherein he practises the names of all unqualified persons who are authorised to do any such work on his behalf as is mentioned in this section.

#### **55. Restriction upon right to employ qualified persons who are not practitioners**

No practitioner shall at any one time employ in his office in the capacity of an advocate more than two qualified persons who are not practitioners:

Provided that a firm of practitioners, of which not less than two of the principals are practitioners of not less than five years' standing, may so employ not more than four qualified persons who are not practitioners.

### **Part VIII – Keeping of accounts by practitioners**

#### **56. Interpretation**

In this Part, unless the context otherwise requires—

"**client**" means any person or body of persons, corporate or unincorporate, on whose behalf a practitioner in connection with his practice receives money;

"**practitioner**" includes a practitioner acting as an agent, bailee, stakeholder, or in any capacity in connection with his practice.

#### **57. Practitioner's accounts**

Every practitioner shall keep such books and accounts as may be necessary to show and distinguish in connection with his practice—

- (a) the moneys received from or on account of and the moneys paid to or on account of each of his clients; and
- (b) the moneys received and the moneys paid on his own account.

#### **58. Client's money to be paid into bank or building society**

Every practitioner who holds or receives money on account of a client (save money hereinafter expressly exempted from the application of this section), shall without undue delay pay such money into a current or deposit account at a bank or into a deposit account at a building society, to be kept in the name of the practitioner in the title of which the word "client" shall appear (hereinafter referred to as "a client account"). Any practitioner may keep one client account or as many such accounts as he thinks fit:

Provided that, when a practitioner receives a cheque or draft representing in part money belonging to the client and in part money due to the practitioner, he may, where practicable, divide the amount of the cheque or draft and pay to the client account that part only which represents money belonging to the client. In any other case he shall pay the whole of such cheque or draft into the client account.

#### **59. What money to be paid into client account**

No money shall be paid into a client account other than—

- (a) money held or received on account of a client;

- (b) such money belonging to the practitioner as may be necessary for the purpose of opening or maintaining the account;
- (c) money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of section sixty;
- (d) a cheque or draft received by the practitioner representing in part money belonging to the client and in part money due to the practitioner where such cheque or draft has not been divided as provided for in section fifty-eight.

#### **60. Withdrawing of money from client account**

No money shall be drawn from a client account other than—

- (a) money properly required for payment to or on behalf of a client or for or towards payment of a debt due to the practitioner from a client or money drawn on the client's authority, or money in respect of which there is a liability of the client to the practitioner provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such client;
- (b) such money belonging to the practitioner as may have been paid into the account under paragraph (b) or (d) of section fifty-nine;
- (c) money which may by mistake or accident have been paid into such account in contravention of section fifty-nine.

#### **61. What money need not be paid into client account**

Sections fifty-eight, fifty-nine and sixty shall not apply to money which—

- (a) the client, for his own convenience, requests a practitioner to withhold from a client account;
- (b) a practitioner pays into a separate account or an account to be opened in the name of a client or some person named by that client or the duly authorised agent of that client;
- (c) in the ordinary course of business upon receipt is paid on behalf of the client to a third party;
- (d) is upon receipt paid to the client;
- (e) is paid to a practitioner expressly on account of costs;
- (f) the Disciplinary Committee upon an application made to it in writing by a practitioner specifically authorises to be withheld or withdrawn from a client account.

#### **62. Complaint in respect of practitioner's failure to comply with provisions**

- (1) If a practitioner fails to comply with any of the provisions of the preceding sections of this Part, any person aggrieved thereby may make a complaint in writing in respect of that failure to the Disciplinary Committee.
- (2) In order to consider, pursuant to section twenty-two, whether the provisions of this Part have been complied with, the Disciplinary Committee, acting either on its own motion or on the written complaint lodged with it as provided for in subsection (1), may require any practitioner to produce, at some convenient time and place, his books of account, bank pass books, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Disciplinary Committee, and any such person shall prepare for the information of the Disciplinary Committee a report on the result of such inspection. Such report may be used as a basis for any report by the Disciplinary Committee pursuant to subsection (3) of section twenty-two.
- (3) Before making any such appointment, the Disciplinary Committee shall consider any objection made by any such practitioner to the appointment of a particular person on personal or other proper grounds.

### 63. Evidence and deposit of costs before instituting inspection of accounts

Before instituting an inspection on a complaint made by a third person, the Disciplinary Committee shall require *prima facie* evidence that a ground of complaint exists, and may require the payment by such person to the Disciplinary Committee of a reasonable sum to be fixed by it to cover the costs of inspection and the costs of the practitioner against whom the complaint is made. The Disciplinary Committee may deal with any sum so paid in such manner as it thinks fit.

### 64. Notice to practitioner: how made

Every requirement, authorisation and notification to be made or given by the Disciplinary Committee to a practitioner under this Part shall be made in writing under the hand of such person as may be appointed by the Disciplinary Committee for the purpose and left at or sent by registered post to the last address of the practitioner appearing in the Roll and, when so made and sent, shall be deemed to have been received by the practitioner within forty-eight hours of the time of posting.

### 65. Penalty for breach of Part VIII

In addition to the powers conferred by section twenty-eight, the Court shall have the power to impose on a practitioner a fine not exceeding ten thousand penalty units in respect of any breach of the provisions of this Part.

*[As amended by Act No. 13 of 1994]*

### 66. Saving

Nothing in this Part shall deprive a practitioner of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against moneys standing to the credit of a client account.

### 67. Relief to banks

- (1) Subject to the provisions of this section, no bank shall, in connection with any transaction on any account of any practitioner kept with it or with any other bank (other than an account kept by a practitioner as trustee for a specified beneficiary), incur any liability or be under any obligation to make an inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

Provided that nothing in this subsection contained shall relieve a bank from any liability or obligation to which it would be subject apart from this Act.

- (2) Notwithstanding anything in subsection (1) contained, a bank at which a practitioner keeps an account for clients' moneys shall not, in respect of any liability of the practitioner to the bank, not being a liability in connection with the account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account:

Provided that nothing in this subsection contained shall deprive a bank of any right existing at the commencement of this Act.

### 68. Association may require production of practitioner's books

- (1) In order to ascertain whether the provisions of this Part have been complied with, the Association, acting either on its own motion or on written complaint lodged with it, may require any practitioner to produce at a time and place fixed by the Association and place his books of account, bank pass books, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Association.

- (2) Before making any such appointment, the Association shall consider any objection made by any such practitioner to the appointment of a particular person on personal or other proper grounds.
- (3) Where a complaint is received by the Association that a practitioner has not complied with the provisions of this Part or that a practitioner or a clerk or servant of a practitioner has been guilty of dishonesty in connection with that practitioner's practice as a practitioner or in connection with any trust of which that practitioner is a trustee, then, without prejudice to the other provisions of this Act, the Association shall appoint a person publicly carrying on the profession of accountant in Zambia to be the accountant, to inquire into and report on the allegations made in such complaint, and the accountant shall have the power—
  - (a) to require the practitioner to produce, at a time and place fixed by the accountant, books of account, bank pass-books, statements of account, vouchers and any other necessary documents for inspection;
  - (b) to require the practitioner or any clerk or servant of the practitioner to explain in writing any matter arising out of the books and documents produced or not produced before the accountant, including any entries or absence of entries in the books and documents produced.
- (4) On completion of the inquiry the accountant shall submit to the Association a report together with the explanations, if any, received by him, and the Association, unless it is satisfied that no *prima facie* case has been disclosed against the practitioner, shall make an application to the Disciplinary Committee under section twenty-two, to strike the name of the practitioner off the Roll or to require the practitioner to answer allegations made in an affidavit, and shall submit the report and the explanations, if any, along with the application.
- (5) The report of the accountant shall be admissible in and treated as evidence in the proceedings before the Disciplinary Committee against the legal practitioner.
- (6) If at any stage of the inquiry the accountant has reasonable cause to believe that a practitioner or a clerk or servant of a practitioner has been guilty of dishonesty in connection with the practitioner's practice as practitioner or in connection with any trust of which that practitioner is a trustee, the accountant shall forthwith inform the Association in writing and on the receipt of such information by the Association the provisions of the Third Schedule shall apply in relation to the practitioner, as they apply where the Association has reasonable cause to believe that a practitioner has been guilty of such dishonesty as aforesaid.

## 69. Power of Association to deal with property of certain practitioners

- (1) If the Association has reasonable cause to believe that a practitioner, or a clerk or servant of a practitioner, has been guilty of dishonesty in connection with that practitioner's practice as a practitioner or in connection with any trust of which that practitioner is a trustee, the provisions of the Third Schedule, except paragraph 7 thereof, and, if the Association is satisfied that the practitioner, clerk or servant has been guilty as aforesaid, the said paragraph 7, shall apply in relation to that practitioner.
- (2) Where the name of a practitioner is removed from or struck off the Roll or a practitioner is suspended from practice, that practitioner shall, within twenty-one days from the material date, satisfy the Association that he has made suitable arrangements for making available to his clients or to some other practitioner or practitioners instructed by his clients or by himself—
  - (a) all deeds, wills, documents constituting or evidencing title to any property, papers, books of account, records, vouchers and other documents in his or his firm's possession or control, or relating to any trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; and

- (b) all sums of money due from him or his firm to, or held by him or his firm on behalf of, his clients or subject to any such trust as aforesaid;

and if he fails so to satisfy the Association the Third Schedule shall apply in relation to him.

- (3) The provisions of subsections (4) and (5) and of the Third Schedule shall apply in relation to any practitioner who—

- (a) dies;
- (b) abandons his practice;
- (c) is adjudged bankrupt or makes a composition or arrangement with his creditors; or
- (d) is prevented, for any other reason, from performing his functions as a practitioner;

and in relation to whom the Association is satisfied that his clients are likely to suffer due to his failure to make such suitable arrangements as are referred to in subsection (2).

- (4) On an application of the Association in relation to a practitioner to whom subsection (3) applies, the High Court or a Judge thereof may in addition to any other order made under the provisions of the Third Schedule, order that all sums of money held by or on behalf of such practitioner or his firm which are or are deemed to be client money in accordance with the provisions of Part VIII, or which are so held in connection with any trust of which he is or formerly was a sole trustee, and the right to recover or receive such sums, shall vest in the Association.

- (5) Where any sums of money vest in the Association by virtue of the provisions of subsection (4), the Association shall—

- (a) maintain a separate account for such sums;
- (b) hold such sums on trust for the persons beneficially entitled thereto; and
- (c) deal with such sums in accordance with any rules which may be prescribed.

- (6) Where the Association refuses to issue a practising certificate to a practitioner on the ground that the practitioner has not delivered to the Association an accountant's certificate in accordance with the regulations made or continued in force under this Act, and such certificate is not delivered to the Association within three months of the date of such refusal, the Association shall proceed as if a complaint such as is referred to in subsection (3) of section sixty-eight has been received by the Association.

- (7) In subsection (2) "the material date" means whichever is the latest of the following dates, that is to say:

- (a) the date when the order of the Disciplinary Committee or of the Court by or in pursuance of which the practitioner's name is removed from or struck off the Roll, or the practitioner is suspended from practice, is to take effect;
- (b) the last date on which an appeal against that order may be lodged;
- (c) the date on which any such appeal is dismissed or abandoned.

- (8) In this section and in the Third Schedule "trust" and "trustee" extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative, and "trustee", where the context admits, includes a personal representative.

*[As amended by Act No. 21 of 1981]*



## Part IX – Remuneration of practitioners

### 70. Power to make general orders as to remuneration of practitioners

- (1) For the purposes of this Part there shall be a committee to be known as the Remuneration Committee which shall consist of five practitioners to be nominated by the Association, of whom three shall form a quorum.
- (2) On the recommendation of the Remuneration Committee—
  - (a) the Chief Justice in regard to non-contentious business; and
  - (b) the High Court Rules Committee established under the High Court Act in regard to contentious business;

may, by statutory instrument, make general orders prescribing and regulating in such manner as they think fit the remuneration of practitioners, and may revoke or alter any such order, or any order made before the commencement of this Act, which provides for the remuneration of practitioners.

*[Cap. 27]*

### 71. Scale of rates of commission and percentage

Any order made under section seventy in respect of non-contentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other considerations, that is to say:

- (a) the position of the party for whom the practitioner is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, chargor or chargee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the skill, labour and responsibility involved therein on the part of the practitioner;
- (d) the number and importance of the documents prepared or perused, without regard to length.

### 72. Security for payment of remuneration, and regulating interest

An order made in respect of non-contentious business may authorise and regulate—

- (a) the taking by a practitioner from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and
- (b) the allowance of interest.

### 73. Taxation of bills of costs

As long as any order made as aforesaid is in operation, the taxation of bills of costs of practitioners shall, subject to the provisions of the next succeeding section with respect to agreements as to remuneration, be regulated by that order.



**74. Agreements with respect to remuneration for non-contentious business**

- (1) Whether or not any order is in force under the last preceding section, a practitioner and his client may, either before or after or in the course of the transaction of any non-contentious business by the practitioner, make an agreement as to the remuneration of the practitioner in respect thereof.
- (2) The agreement may provide for the remuneration of the practitioner by a gross sum, or by commission or percentage, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursement made by the practitioner in respect of searches, plans, travelling, stamps, fees or other matters.
- (3) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.
- (4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a practitioner:

Provided that if on any taxation of costs the agreement is relied on by the practitioner and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the Court and if on that certificate it appears just to the Court that the agreement should be cancelled, or the amount payable thereunder reduced, the Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit.

- (5) This section shall be read subject to the provisions of section fifty-two.

**75. Remuneration of practitioner who is a mortgagee**

- (1) If a mortgage is made to a practitioner, either alone or jointly with any other person, he, or the firm of which he is a member, shall be entitled to recover from the mortgagor in respect of all business transacted and acts done by him or them in negotiating the loan, deducing and investigating the title to the property, and preparing and completing the mortgage, such usual costs as he or they would have been entitled to receive if the mortgage had been made to a person who was not a practitioner and that person had retained and employed him or them to transact the said business and do the said acts.
- (2) If, whether before or after the commencement of this Act, a mortgage has been made to, or has become vested by transfer or transmission in a practitioner, either alone or jointly with any other person, and if after the commencement of this Act any business is transacted or acts are done by that practitioner, or by the firm of which he is a member, in relation to that mortgage, or the security thereby created or the property comprised thereunder, then he or they shall be entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or they would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a practitioner and that person had retained and employed him or them to transact the said business and do the said acts.
- (3) In this section "mortgage" includes any charge on any property for securing money or money's worth.

**76. Power to make agreements as to remuneration for contentious business**

Notwithstanding anything to the contrary in section seventy, a practitioner may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum, or by salary, or otherwise.

## **77. Miscellaneous provisions as to agreements with respect to costs of contentious business**

- (1) Any agreement mentioned in section seventy-six—
  - (a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the practitioner and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Provided that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his practitioner in respect thereof under the agreement;
  - (b) shall be deemed to exclude any claim by the practitioner in respect of the business to which it relates other than—
    - (i) a claim for the agreed costs; or
    - (ii) a claim for such costs as are expressly excepted therefrom.
- (2) A provision in such an agreement that the practitioner shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a practitioner, shall be void.
- (3) No action shall be brought upon any such agreement, but the Court, after hearing the Remuneration Committee if it wishes to be heard, may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.
- (4) On any such application, the Court—
  - (a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;
  - (b) if it is of opinion that the agreement is in any respect unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;
  - (c) in any case, may make such orders as to the costs of the application as it thinks fit.

## **78. In certain circumstances taxing officer may reduce amount payable under agreement**

- (1) If the business covered by any such agreement is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the practitioner until the agreement has been examined and allowed by a taxing officer of the Court, and if the taxing officer is of opinion that the agreement is unfair or unreasonable, he may require the opinion of the Remuneration Committee to be taken thereon and may, on receipt of such opinion, reduce the amount payable thereunder, or order the agreement to be cancelled and the costs recovered thereby to be taxed as if the agreement had never been made.
- (2) When the amount agreed for under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may, at any time within twelve months after payment, apply to the Court and the Court, if it appears to it that the special circumstances of the case require the agreement to be reopened, may, on such terms as may be just, reopen the agreement and may order the costs covered thereby to be taxed and the whole or any part of the amount received by the practitioner to be repaid by him.
- (3) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of

the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the Court, and that officer shall examine the agreement and may disallow any part thereof, or may require the opinion of the Court to be taken thereon.

- (4) Any such client as is mentioned in subsection (3) who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the officer or by the Court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the practitioner who accepts the payment may be ordered by the Court to refund the amount received by him.

#### **79. Death, incapability or change of practitioner, etc.**

- (1) If, after some business has been done under an agreement made in pursuance of the provisions of section seventy-six but before the practitioner has wholly performed it, the practitioner dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the Court and the Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the practitioner had not died or become incapable of acting:

Provided that the Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done there-under to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
  - (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.
- (2) The provisions of subsection (1) shall apply in the event of the client changing his practitioner (as, notwithstanding the agreement, he shall be entitled to do) before the conclusion of the business to which the agreement relates in the same manner as they apply when the practitioner dies or is incapacitated, with this modification, that if an order is made for the taxation of the amount due to the practitioner in respect of the business done under the agreement, the Court shall direct the taxing officer to have regard to the circumstances under which the change of practitioner has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the practitioner affording to the client reasonable ground for changing his practitioner, shall not allow to the practitioner the full amount of the remuneration agreed to be paid to him.

#### **80. Agreement excludes taxation**

Subject to the provisions of sections seventy-eight and seventy-nine, the costs of a practitioner in any case where an agreement has been made in pursuance of the provisions of section seventy-six shall not be subject to taxation, nor to the subsequent provisions of this Part with respect to the signing and delivery of a practitioner's bill.

#### **81. Miscellaneous provisions as to remuneration for contentious business**

- (1) Nothing in section seventy-six, seventy-seven, seventy-eight, seventy-nine or eighty shall give validity to—
  - (a) any purchase by a practitioner of the interest, or any part of the interest, of his client in any action, suit or other contentious proceedings; or
  - (b) any agreement by which a practitioner retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success of that action, suit or proceeding; or

- (c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.
- (2) A practitioner may, with respect to a contentious business to be done by him, take security from his client for his costs to be ascertained by taxation or otherwise.
- (3) Subject to the provisions of any rules of court, upon every taxation of costs with respect to any contentious business, the taxing officer may—
  - (a) allow interest at such rate and from such time as he thinks just on moneys disbursed by the practitioner for the client, and on moneys of the client in the hands of, and improperly retained by, the practitioner;
  - (b) in determining the remuneration of the practitioner, have regard to the skill, labour and responsibility involved in the business done by him.

## **82. Power of Court to order practitioner to deliver his bill and to deliver up deeds**

The jurisdiction of the Court to make orders for the delivery by a practitioner of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the Court.

## **83. Action to recover practitioner's costs**

- (1) Every advocate may, subject to the provisions of this Act and to any rules of court, sue for and recover his fees in respect of services rendered, but shall be subject to all such liabilities as attach by this Act or any other law, to an advocate, in whatever capacity his services may have been rendered.
- (2) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a practitioner until one month after a bill thereof has been delivered in accordance with the requirements of any rules of court:

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to quit Zambia, or to become a bankrupt, or to compound with his creditors, or to do any other act which would tend to prevent or delay the practitioner obtaining payment, the Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the practitioner be at liberty to commence an action to recover his costs and may order those costs to be taxed.

## **84. Charging orders**

Any court in which a practitioner has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the practitioner entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay, or for paying, the said costs out of the said property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a *bona fide* purchaser for value without notice, be void as against the practitioner:

Provided that no order shall be made if the right to recover the costs is barred by limitation.

## **Part X – Miscellaneous**

### **85. Practitioners to be officers of the Court**

Any person duly admitted as a practitioner shall be an officer of the Court and shall be subject to the jurisdiction thereof.

## 86. Onus of proof

In any proceedings under the provisions of this Act, the onus of proving that an accused person is a practitioner or has been admitted to practice as a Notary Public shall lie with the defence.

## 87. Payment of expenses of Disciplinary Committee

- (1) The Court may, on the application of the Disciplinary Committee, order that any expenses incurred by that committee in carrying out any provisions of this Act, or in supporting any report before the Court, shall be paid by the practitioner concerned or by any party on whose application such expenses have been incurred.
- (2) When any such expenses have been ordered to be paid and are not paid within twelve months from the date of the order, they shall, provided the Attorney-General certifies that such expenses are not likely to be recovered, be paid out of the general revenues of the Republic on the warrant of the President.

## 88. Authentication of regulations and other documents

All regulations, certificates, notices and other documents made or issued by any committee established under the provisions of this Act for any purpose whatsoever may be signed on behalf of such committee by such member or other person as the committee may for that purpose appoint.

## 89. Rules of court

The Chief Justice may, by statutory instrument, make rules of court for the better carrying into effect of the provisions of this Act and in particular prescribing anything which by any of the said provisions is to be prescribed.

## 90. General regulations

The Disciplinary Committee, with the concurrence of the Chief Justice, may for the purposes of this Act, by statutory instrument, make general regulations with respect to the following matters or any of them:

- (a) the keeping of accounts by practitioners;
- (b) practice and etiquette;

and all such further or other general regulations as may be deemed necessary or proper for giving full force and effect to the provisions of this Act.

## 91. Saving of other written laws

Nothing in this Act shall prejudice or affect the provisions of any Act or rules made thereunder, empowering any person, not being a practitioner, to conduct, defend or otherwise act in relation to any proceedings.

## 92. Repeal and savings

- (1) The Legal Practitioners Act, Chapter 48 of the Revised Edition (hereinafter referred to as the former Act) is hereby repealed.
- (2) Notwithstanding the repeal of the former Act—
  - (a) all rules, regulations, orders and statutory instruments made under or continued by the provisions of the former Act and operative immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force, until altered or revoked by the competent authority;

- (b) the Disciplinary Committee, the Remuneration Committee, the Council of Legal Education, the Zambia Institute for Advanced Legal Education and any other committee or body established or formed under the former Act and existing immediately before the commencement of this Act shall continue to operate under the provisions of this Act, and shall be deemed to have been established and formed under this Act, as if this Act were in force when any such Committee, Council, Institute or body was established or formed;
- (c) all nominations and appointments made, certificates issued, notices given, oaths taken and other things done under the former Act which were effective immediately before the commencement of this Act shall continue to be effective, as if they were made, issued, given, taken or done under this Act;
- (d) all applications made, appeals lodged, proceedings instituted or other action or matter commenced under the provisions of the former Act and pending before any court or authority immediately before the commencement of this Act, shall be proceeded with and determined in accordance with the provisions of this Act, as if they had been made, lodged, instituted or commenced under this Act;
- (e) the Roll of practitioners kept in accordance with the provisions of the former Act, as it subsisted immediately before the commencement of this Act, shall be deemed to be the Roll kept in accordance with the provisions of this Act;
- (f) the Compensation Fund established under the former Act shall be deemed to be the Compensation Fund established under this Act and shall be maintained and administered in accordance with the provisions of this Act.

**First Schedule (Section 13)**

**Oath of allegiance**

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to the President of the Republic of Zambia, and that I will preserve, protect and defend the Constitution of Zambia as by law established.

SO HELP ME GOD

\_\_\_\_\_

Sworn in open court this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Before me

\_\_\_\_\_

Chief Justice

**Oath of office**

I, \_\_\_\_\_, do swear that I will truly and honestly demean myself in the practice of an advocate according to the best of my knowledge and ability.

SO HELP ME GOD

\_\_\_\_\_

Sworn in open court this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Before me

\_\_\_\_\_

Chief Justice

### ***Oath of State Counsel***

I, \_\_\_\_\_, having been granted by the President of the Republic of Zambia, by letters patent, the dignity of State Counsel, do hereby declare that I will, when called upon to do so, as one of counsel learned in the law, truly serve the State in its matters; that I will preserve, protect and defend the Constitution of Zambia as by law established and will faithfully represent, to the best of my ability, without fear or favour of any person, all those who shall entrust me to represent them before any Court of law.

SO HELP ME GOD

Sworn this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Before me:

\_\_\_\_\_  
President

*[First Schedule amended by section 10 of [Act 14 of 2006](#)]*

### **Second Schedule (Section 40)**

#### **Provisions with regard to the formation, administration and application of the Compensation Fund and matters connected therewith**

1. There shall be carried to the credit of the Compensation Fund—
  - (a) all contributions paid to the Association in pursuance of the provisions of section [40](#);
  - (b) all interest, dividends and other income and accretions of capital arising from investments of the Compensation Fund or any part thereof;
  - (c) the proceeds of the realisation of any investments of the Compensation Fund;
  - (d) all sums received by the Association under any insurance effected by the Association under section [40](#);
  - (e) all sums received by the Association under the provisions of section [40\(7\)](#); and
  - (f) any other moneys which may belong or accrue to the Compensation Fund or be received by the Association in respect thereof.
2. All moneys from time to time forming part of the Compensation Fund and all investments of the Compensation Fund shall be applicable as follows:
  - (a) for payment of all costs, charges and expenses of establishing, maintaining, administering and applying the Compensation Fund;
  - (b) for payment of any premiums on insurances effected by the Association under section [40](#);
  - (c) for payment of any grants which the Association may make in pursuance of the provisions of section [40](#) for any of the purposes mentioned in that section;
  - (d) for payment of all costs, charges and expenses incurred by the Association under or in the exercise of the powers conferred by this Schedule; and
  - (e) for payment of any other sums properly payable out of the Compensation Fund in pursuance of the provisions of section [40](#), this Schedule or any rules made under section [40](#).
3. The Council or any committee appointed by the Council and authorised by them to exercise any of their functions under section [40](#) or to assist them in the exercise of such functions may, for the purposes of



inquiry into any matters which may affect the making or refusal of a grant under section 40, administer oaths.

4. (1) If the Council have reasonable cause to believe that a practitioner or his clerk or servant has been guilty of any dishonesty as is mentioned in section 40, they may require the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council, and may take possession of all deeds, wills, securities, papers, books of account, records, vouchers and other documents in the possession or control of such practitioner or his firm, or relating to any trust of which he is a sole trustee or is co-trustee only with a partner, clerk or servant of his or with more than one of such persons.
  - (2) If any person having possession or control of any such deeds, wills, securities, papers, books of account, records, vouchers or documents, refuses or fails forthwith after being required by the Council so to do to produce or deliver the same, or cause the same to be produced or delivered in manner aforesaid, such person shall be liable to a fine not exceeding one thousand penalty units, and the Council may apply to the Court or a Judge therefore for an order and the Court or a Judge thereof may on such application make an order upon such person to produce or deliver the same or cause the same to be produced or delivered in manner aforesaid within such time as the Court or a Judge thereof may order.
  - (3) Upon taking possession of any such deeds, wills, securities, papers, books of account, records, vouchers or documents which shall have been delivered to the Council, the Council shall serve upon such practitioner and every person from whom they shall have been received, a notice giving particulars and the date of taking possession thereof.
  - (4) Every requirement and notice to be made or given under this paragraph shall be made in writing under the hand of such person as may be appointed by the Council for the purpose. The Council may serve any such requirement or notice on any practitioner or other person as aforesaid personally or by forwarding it by registered letter addressed to his last known place of business or residence.
  - (5) Within fourteen days after a notice under sub-paragraph (3) has been served in accordance with sub-paragraph (4), the practitioner or other person upon whom such notice has been served as aforesaid may apply to a Judge of the Court in Chambers for an order directing the Council to return such deeds, wills, securities, papers, books of account, records, vouchers or documents to the person or persons from whom the same were received by the Council or to such other person or persons as the applicant may require. On the hearing of such application of the Judge may make the order applied for or such other order with respect to the matter as he may think fit.
  - (6) If no application shall be made to a Judge of the Court in accordance with sub-paragraph (5), or if the Judge to whom such an application is made shall direct that the deeds, wills, securities, papers, books of account, records, vouchers or documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person or persons to whom the same belong and may deal with the same in accordance with the directions of such person or persons.
  - (7) In this paragraph "securities" means documents constituting or evidencing the title to any property.
5. If the Council are satisfied that a practitioner or his clerk or servant has been guilty of any such dishonesty as is mentioned in section 40, they may apply to the Court or a Judge thereof for an order, and the Court or a Judge thereof may on such application make an order that no payment shall be made without the leave of the Court or a Judge thereof by any banker named in the order out of any banking account in the name of such practitioner or his firm.

### **Third Schedule (Section 69)**

#### **Control of property of a practitioner in certain cases**

1. The Association may require the production or delivery to any person appointed by the Association at a time and place to be fixed by the Association and may take possession of all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other



documents in the possession or control of the practitioner or his firm, or relating to any trust of which he is sole trustee or is co-trustee only with one or more of his partners, clerks or servants.

2. If any person having possession or control of any such document fails to comply forthwith with any such requirement—
  - (a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding one thousand penalty units; and
  - (b) the High Court or a Judge thereof may on the application of the Association order that person to comply with the requirement within such time as may be specified in the order.
3. Upon taking possession of any such documents, the Association shall serve upon the practitioner and every person from whom those documents were received a notice giving particulars and the date of taking possession thereof.
4. Any requirement or notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Association for the purpose and may be served on any person either personally or by forwarding it by registered letter addressed to his last known place of business or residence.
5. Within fourteen days after the service of a notice under paragraph 3, the practitioner or other person upon whom the notice was served may apply to a Judge of the High Court in Chambers for an order directing the Association to return those documents to the person from whom they were received by the Association or to such other person as the applicant may require and on the hearing of any such application the Judge may make such order with respect to the matter as he may think fit.
6. If no application is made under paragraph 5, or if the Judge to whom any such application is made directs that the documents shall remain in the custody or control of the Association, the Association may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person.
7. The High Court or a Judge thereof may, on the application of the Association, order that no payment shall be made without the leave of the High Court or a Judge thereof by any banker named in the order out of any banking account in the name of the practitioner or his firm.
8. Any application to a Judge of the High Court in Chambers under paragraph 5 or to the High Court or a Judge thereof under paragraph 2 or 7 shall be made in such form and heard in such manner as may be prescribed by rules of court.
9. The Association may make rules with respect to the procedure to be followed in giving effect to the provisions of paragraphs 1, 3, 4 and 6 and with respect to any matters incidental, ancillary or supplemental to those provisions.

*[As amended by [Act No. 13 of 1994](#)]*