

## CONSTITUTION

### MPUMALANGA SOCIETY OF ADVOCATES

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Name and objects

1. The name of the Society shall be "The Mpumalanga Society of Advocates" hereinafter referred to as "The Society".
2. In this Constitution, unless the context indicates to the contrary, "Society" means the Mpumalanga Society of Advocates.
3. "Bar Council" means the Bar Council of the Society for the time being in office.
4. "Advocates who normally practice in the Division" means those advocates who are recognized for the time being by the Bar Council as normally practicing in the Division provided that no person shall be recognized who:
  - 4.1 does not occupy chambers within the Division;
  - 4.2 does not hold himself or herself available to undertake work pertaining to an advocate on behalf of the public; and
  - 4.3 is not willing and available to accept the normal duties of the profession including, but not limited to, pro bono work at the request of the Bar Council.
5. For the purpose of this definition "chambers" means office accommodation approved by the Bar Council and includes accommodation occupied with the permission of the Bar Council in the Law Centre operating with the approval of the Bar Council.
6. An advocate who holds door chambers with the permission of the Bar Council, is deemed to occupy chambers within the Division and work pertaining to an advocate on behalf of the public includes work with the permission of the Bar Council at the Law Centre operating with the approval of the Bar Council.

7. "Bar of the Division" means those advocates who normally practice in the Division.
8. "Division" means the area for the time being under the jurisdiction of the Mpumalanga Provincial Division of the High Court of South Africa, or of any other Court which may replace such Provincial Division for such area.
9. "General Council" means the General Council of the Bar of South Africa as constituted at Johannesburg on the 21<sup>st</sup> September 1946, a copy of whose Constitution is attached hereto.
10. "Members" or "members" means a member or the members, as the case may be, for the time being of the Society.
11. The objects of the Society are:
  - 11.1 The protection of the interests of the Bar of the Division and members and pupil members in their professional capacity;
  - 11.2 The supervision of the conduct of members and of pupil members;
  - 11.3 The consideration and promotion of improvements in the teaching and practice of the law and in the administration of justice;
  - 11.4 To be a constituent Bar of the General Council, and to collaborate with and to assist in the furtherance and promotion of such Council's objects;
  - 11.5 The maintenance of the rule of law and the upholding of the Constitution of the Republic of South Africa;
  - 11.6 To make donations to such persons or bodies as the Bar in general meetings may approve;

12. The Society and its members shall abide by and conform to the lawful decisions of the General Council.
13. The Bar Council shall, from time to time, appoint representatives to represent the Society on the General Council. Such representatives need not be members of the Society but must be members of a constituent Bar of the General Council. The reasonable travelling and out of pocket expenses of representatives attending meetings of the General Council shall be paid out of the funds of the Society.

### Members

14. Any person who is duly enrolled as an advocate of High Court of South Africa and who normally practises or intends to practice as an advocate in the Division and who does not practice otherwise than as an advocate, shall be eligible for membership of the Society.
15. Any person not being a member of the Society shall be eligible for pupil membership of the Society as from the date on which his or her application was filed with the Registrar, provided he or she:
- 15.1 has filed an application to be enrolled as an advocate of the High Court of South Africa;
  - 15.2 intends to practice as an advocate in any division of the High Court; and
  - 15.3 will not practice otherwise than as an advocate
16. Any person wishing to be admitted as a pupil member of the Society shall apply in writing to the Bar Council, which, on being satisfied that the applicant complies with the requirements of paragraph 15 above and that he or she is a fit and proper person to become a pupil member of the Society, may be admitted for pupil membership.

17. During his or her pupil membership, a pupil member shall:

- 17.1 have access to the library and common room;
- 17.2 not be entitled to accept briefs from attorneys or to act as an advocate, save to the extent and in the circumstances which may be provided for from time to time by the General Council and approved by the Bar Council;
- 17.3 not be entitled to attend or vote at any general meeting of the Society;
- 17.4 comply with all the requirements relating to training as an advocate which may from time to time be laid down by the General Council and approved by the Bar Council.

18. Every advocate who:

- 18.1 has satisfied the Bar Council that he or she has complied with the requirements of the Society relating to the practical training of advocates or those of any Society which is a member of the General Council and which has been approved by the Society or that he or she has been exempted wholly or in part therefrom; and
- 18.2 is prepared to accept this Constitution and the obligations imposed therein as binding on him or her;

may make application for membership of the Society in writing to the Secretary of the Society who shall submit the application to the next meeting of the Bar Council. In the event of the Bar Council being of the opinion that the applicant possesses the necessary qualifications and is of good character, the Bar Council shall authorize his or her admission to membership of the Society and the Secretary

shall forthwith notify the applicant that he or she may become a member subject to his or her signing the roll and paying the subscription for the current year prescribed in clause 29.

On complying with such notification (including the signing of the roll of members), the applicant shall become a member. No person shall become a member until he or she has duly signed the roll of members, provided, however that, where the applicant has, at any time, been admitted as an attorney, the Bar Council shall not authorize his admission to membership unless satisfied that he or she has ceased to have any capital invested in the business with which he was previously connected, or to be in any way interested therein, and provided that he or she has made a declaration to that effect in his or her application for admission to membership.

19. If the Bar Council decides not to authorize any applicant's admission as a pupil member or as a member, the Secretary shall forthwith notify the applicant, who shall be entitled to appeal against such decision to the General Council. The provisions of clause 23 shall apply mutatis mutandis to such appeal. If the General Council on such appeal so decides the applicant shall be entitled to become a pupil member or a member as the case may be on the same conditions and as though his or her admission were authorized by the Bar Council.
20. The Secretary shall open and maintain in Mpumalanga a roll of members. The roll shall be kept up to date by the Secretary by deleting the names of those who have ceased to be members and by permitting other persons to become members in terms of this Constitution. Upon signing the roll of members, the signatories shall become bound by the

provisions of this Constitution and be deemed to consent to the obligations imposed thereunder.

21. Save with the special consent of the Bar Council, no member shall hold a brief with or act professionally in any in the Republic with any advocate who is not a practicing member of a constituent Bar of the General Council.

22. Save with the special consent of the Bar Council, no member shall occupy chambers in any building not approved for such purpose by the Bar Council.

23. Membership of the Society shall cease:

23.1 upon resignation duly accepted by the Bar Council;

23.2 upon expulsion in the manner prescribed by this Constitution;

23.3 if the Bar Council decides that the member has lost the necessary qualification for membership prescribed in this Constitution.

24. Pupil membership of the Society shall cease:

24.1 upon resignation duly accepted by the Bar Council;

24.2 upon expulsion in the manner prescribed by this Constitution;

24.3 if the Bar Council decides that the pupil member has lost the necessary qualification for membership prescribed in this Constitution

#### The Bar Council



25. The property and management of the affairs of the Society shall vest in the Bar Council.
26. The Bar Council shall serve for one calendar year.
27. The Bar Council shall consist of four senior members and four junior members subject to 50% of the entire structure being women.
28. The election of members of the Bar Council shall take place in the following manner:
  - 28.1 not less than three weeks before the date of the annual general meeting, the Secretary shall by notice to the members call for nominations which shall be handed in to the Secretary not less than two weeks before the said meeting.
  - 28.2 Nominations shall be in writing and shall be signed by one proposer and one seconder and the Secretary shall accept no nomination unless consent to his or her nomination is signified in writing and signed by the nominee.
  - 28.3 Not less than one week before the annual general meeting, the secretary shall publish on the notice boards in the library the list of members whose nominations have been accepted.
  - 28.4 Notwithstanding any such nomination and consent, any person nominated shall be entitled to withdraw his or her candidature at any time not less than 4 days before the AGM.
  - 28.5 If there are more nominations than the number required to be elected, the secretary shall, not less than four days before the AGM, deliver to each member or his or her clerk, a ballot paper containing a list of members nominated.

- 28.6 Members shall record their votes on the ballot paper, which may be handed to the secretary not later than three days after the AGM. Members shall be entitled to record a maximum of four votes in each category of seniors and juniors. The four seniors obtaining the highest number of votes amongst the seniors and the four juniors obtaining the highest number of votes amongst the juniors, shall be declared elected subject to paragraph 27 above.
- 28.7 If at the close of nominations, there are fewer nominations than the number to be elected, balloting shall be deferred until the AGM at which meeting the Chairperson shall call for and accept further nominations. If as a result of such further nominations there are no more nominations than the number to be elected, the chairperson shall forthwith declare the nominees to be duly elected.
29. The members of the Bar Council shall retire annually on the completion of the election of the incoming Bar Council. All retiring members shall be eligible for re-election.
30. The Bar Council at its first meeting after election shall elect one of its members as Chairperson and Vice-Chairperson of the Bar Council for the ensuing year and may from time to time fill any casual vacancy in such offices.
31. In the event of the death or resignation of any member of the Bar Council, the Bar Council may appoint someone to serve as a member until the next AGM. In the event of incapacity or absence of any member of the Bar Council, the Bar Council may appoint someone to serve as a member during such incapacity or absence.
32. There shall be elected annually at the AGM a secretary and, if necessary, assistant secretaries, to attend to the affairs of the Society and to act as a secretary to the Bar

Council. Any vacancies occurring during the year shall be filled by the Bar Council. The Bar Council may appoint such officials as it may from time to time consider necessary on such terms as it may decide.

33. The Bar Council shall, subject to any directions that may be given to it by the Society in general meetings, have the following powers and duties:

33.1 To frame such regulations and give such rulings as are necessary in its opinion for giving effect to the provisions of this Constitution.

33.2 To frame such rules and to give such rulings relating to the members and pupil members in their professional capacity as it from time to time may deem advisable and in particular, to specify the books or records which shall be kept by members in respect of their professional activities.

33.3 To represent the members of the Society in any matter of general concern to the Society, to exercise control over all members in matters affecting their professional status, rights, privileges and conduct and, subject to the provisions of this Constitution, to take such action as it deems fit.

33.4 To draw up minimum scales of fees for members.

33.5 To hear and settle disputes between members and other persons as to fees due to any member or as to any other matter affecting their professional relations.

33.6 To maintain a list of defaulting attorneys and to prescribe sanctions with regard to such attorneys in their relationship with members of the Society.

33.7 To regulate and control the finances of the society.

- 33.8 To submit any matter for decision or opinion to the General Council.
- 33.9 To enter into contracts on behalf of the Society with regard to the Society's affairs and property.
- 33.10 To appoint sub-committees from members to assist the Bar Council in carrying out the objects of the Society.
- 33.11 Subject to the provisions of this Constitution, to maintain discipline among members and to prescribe and enforce sanctions for breaches of discipline.
- 33.12 To decide whether a person has the necessary qualifications prescribed by this Constitution for admission as a member.
- 33.13 To represent the Society in court and in legal proceedings in so far as may be permitted in law with regard to any matter affecting the Society, the Bar of the Division and any member or other advocates of the Division.
- 33.14 To regulate and control the chambers occupied by members.
- 33.15 The Bar Council shall not be entitled to exercise any power which it may have in relation to any particular matter other than contained in the approved budget which would have the effect of incurring any liability for the Society, the cumulative or aggregate value or amount of which would exceed R 100 000-00, without the prior approval of a resolution of members taken at a general meeting of the Society or taken in writing and signed by a majority of the members.

- 33.16 The Bar Council shall, by no later than 30 October each year, prepare a draft budget for the financial year ending 31 July of the following year and for the five months until 31 December the following year. Members will be entitled to comment and make representations on the proposed budget until 30 November. The Bar Council will thereafter adopt a budget for the financial year ending 31 July the following year and for the five months until 31 December of the following year.
- 33.17 All regulations, rulings and decisions made and actions taken in pursuance of the above powers shall be of force and effect unless and until set aside by a general meeting of the Society duly convened in terms of this Constitution.
- 33.18 Nothing in this clause shall be deemed to override the power of the Society in general meetings to exercise any of the functions of the Bar Council or to take any action it may think fit within the scope of the Constitution.
- 33.19 No member, secretary, assistant secretary of the Bar Council or any member of the Society to whom the Bar Council has delegated any of its functions, shall be liable in damages or otherwise for any loss, damage or misfortune whatsoever which shall happen in the execution of such functions, or in relation thereto or arising therefrom, and every such member of the Bar Council, secretary, assistant secretary and any member of the Society shall be indemnified out of the funds of the Society against all liability, loss or expense incurred by him or her as such.
34. The Bar Council may delegate any of its functions to a Committee of not less than two of the members of such Council but the Bar Council may at any time terminate or modify such delegation.

35. The Bar Council shall meet from time to time as it may decide. The Chairperson or in his or her absence, the Vice-Chairperson or in his or her absence, a senior member present shall preside. The quorum for all meetings shall be five and the Chairperson shall have a casting vote.

36. Except in respect of items on an agenda for a Bar Council meeting which the Chairperson, Vice-Chairperson or senior member due to preside at the meeting has deemed to be of a nature which should be kept confidential from the general membership, members may attend Bar Council Meetings strictly in the capacity of observers.

37. An agenda for each meeting of the Bar Council, excluding confidential items as contemplated in paragraph 36 above, shall be placed on a notice board outside the Bar Council offices.

38. Minutes for all meetings shall be kept and such minutes, excluding the minutes on confidential items as contemplated in paragraph 36, shall be available for inspection by members.

#### Discipline

39. The Bar Council shall enquire into the professional conduct of any member or pupil member whenever it is in the opinion of the Bar Council desirable to do so. The Bar Council may delegate the aforesaid functions to any one or more members of the Society whether or not such members are members of the Bar Council. The member or members to whom the functions have been delegated shall be obliged to report the results of such enquiry and any recommendations which may be made to the Bar Council.

40. The procedure to be followed in such investigation shall, in each case, be determined by the Bar Council or the member or members conducting the enquiry in accordance with the nature of the matter to be investigated.
41. If the Bar Council, having conducted an enquiry into the professional conduct of a member or pupil member, or having received a report from the member or members to whom its functions in that regard were delegated, decides that the member or pupil member has been guilty of conduct which, in its opinion, is professional misconduct, it may admonish, suspend, or expel such member or pupil member provided that no member or pupil member shall be suspended or expelled unless not less than five members of the Bar Council have voted in favour thereof.
42. No member shall be disqualified from taking part in any such investigation or decision referred in paragraph 41 by reason merely of the fact that he or she has received information other than in the course of the investigation about any matter forming the subject matter of the investigation.
43. It shall be the duty of every member and pupil member to furnish to the Bar Council or a member or members to whom functions have been delegated under paragraph 39, all such information as he may be called upon to furnish and to produce to the Bar Council or such member or members all such books, documents or other records as he or she may be called upon to produce.
44. No member or pupil member shall be relieved of his obligations under paragraph 43, by reason of the fact that the information, books, documents or records called for will or may relate to his or her own conduct in respect of which no charge has yet been formulated.

45. Any member or pupil member against whom any decision has been made by the Bar Council in terms of the preceding clause, and, with the leave of the Bar Council, any other person interested in such decision may, by notice in writing to the Secretary within seven days after notification of such decision, appeal against such decision to the General Council. Upon receipt of such notice, the Secretary shall forward it to the Secretary of the General Council, together with all documents and record relating to the matter. Thereafter the General Council shall proceed to determine the appeal in accordance with the rules and procedures of the General Council whose decision on the appeal shall be final and binding on the Society and all persons affected.

#### Meetings of members

46. The meetings of members of the Society shall be held:

- 46.1 Once a year during the month of September on such date as the Bar Council may decide, such meetings being the AGM;
- 46.2 When so ordered by the Bar Council;
- 46.3 On a requisition signed by not less than twenty members and handed in to the Secretary stating the purpose for which the meeting is required, on a date to be fixed by the Bar Council;

47. At all meetings every member shall be entitled to vote, and the Chairperson or in his or her absence, the Vice-Chairperson or in his or her absence, the senior member present shall preside and have a deliberative and casting vote. The quorum at such meetings shall be 15 members on the roll.



48. If, within half an hour after the time appointed for the meeting, the quorum is not formed, the meeting, if convened upon the requisition of members, shall be dissolved and in any other case, it shall stand adjourned to a day not earlier than seven days and not later than 21 days after the date of the meeting and if at such adjourned meeting the quorum is not present within half an hour of the time appointed for the meeting, the members present shall be deemed to have formed a quorum.
49. The business of any meeting shall be such business as is specially mentioned in the notice convening the meeting and such other business as the Chairperson may allow having regard to the notice convening the meeting.
50. At least seven days clear notice shall be given of every meeting of members, provided that in cases of urgency and if the matter to be considered is not a proposed amendment to the Constitution, shorter notice may be given subject to the approval of two members of the Bar Council. All such notices shall be in writing and in print and shall be sent to every member, provided that, no action of the meeting shall be invalidated by the mere fact that such notice has not been received by any member.

### Finances

51. The property and funds of the Society shall be vested in the Bar Council which shall be capable of suing and being sued on behalf of the Society by the name of the Mpumalanga Society of Advocates.
52. The Secretary for the time being shall accept services of process, and when authorized thereto by the Bar Council, sign all necessary powers for that purpose.
53. Each member shall be liable to pay an annual subscription by way of 12 equal monthly installments commencing on the 7<sup>th</sup> of January and thereafter on the 7<sup>th</sup> of each

successive month in each year, provided that any member shall at any time be entitled to pay any number of installments in advance. The Bar Council may determine different amounts for different members or categories of members and may grant any member or category of members remission of payment of those amounts in whole or in part.

54. The Society shall open and maintain a banking account in the name of the Mpumalanga Society of Advocates in such bank as the Bar Council shall determine which shall also decide how the banking account shall be operated upon.

#### General

55. Any matter affecting the Bar or any member or pupil member or other advocate in the Division may be brought before the Bar Council in writing by any person, and the Bar Council may, subject to the provisions of this Constitution, take such action thereon as it shall deem fit.
56. Not less than seven days before the AGM, the Bar Council shall present to the members a report dealing with matters affecting the Bar, the financial position of the Society and generally, the activities of the Bar Council during the year. A copy of such report shall be sent by the Secretary to each member.
57. All notices of the Society sent member's or pupil member's chambers shall be deemed to have been duly sent for the purposes of this Constitution.
58. This Constitution may be amended by a decision of the Society at a general meeting duly convened in terms of this Constitution.

59. Any profits or gains made by the Society shall be used by the Society solely for investment or for the attainment of its objects hereinbefore set out and no part of such profits or gains shall be distributed to members or any other person.

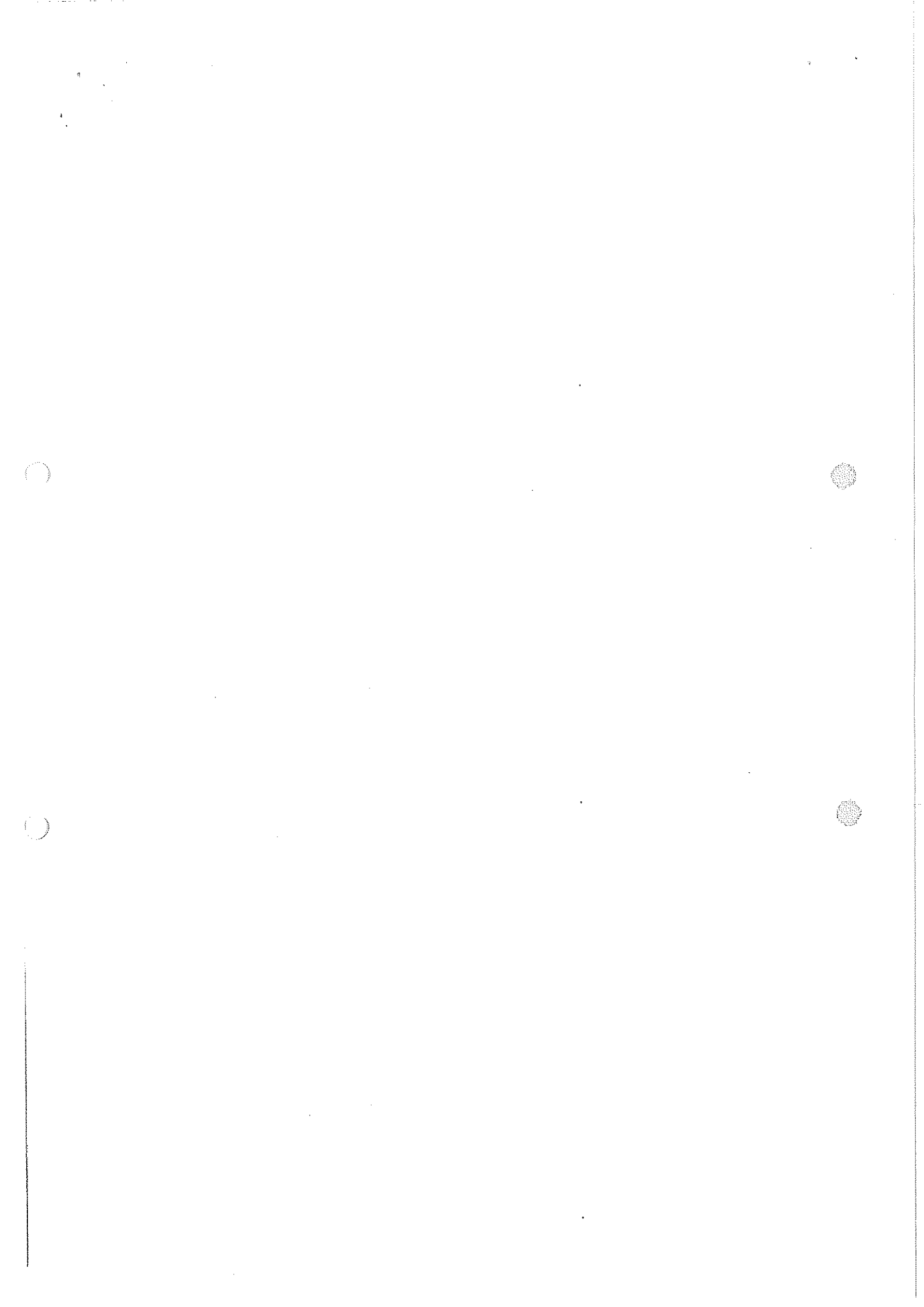
60. In the event of the Society being dissolved, all assets of the Society remaining after satisfaction of its liabilities shall be transferred to some other association or associations having objects similar to those of the Society.

61. The Society hereby adopts the Uniform Rules of Professional Ethics of the General Council of the Bar, attached hereto, as rules which shall govern the conduct of all its members without exception. All members of the Society shall be bound by such rules as if specifically incorporated in this Constitution.

DATED AT JOHANNESBURG ON THIS THE 18<sup>th</sup> DAY OF JUNE 2014



Adv W R Mokhari SC




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