

ETHICS 2020 NATIONAL CURRICULUM

1. Professional rules and codes of conduct

- 1.1 Legal Practice Act 28 of 2014: ss 33 - 35 ("LPA")
- 1.2 The South African Legal Practice Council Code of Conduct made in terms of s 36(1) of the LPA ("the Code of Conduct"). Parts I, II, IV and VI
- 1.3 Uniform Rules of Professional Conduct of the General Council of the Bar of South Africa ("URPC")

(The URPC will be amended in the near future in order to bring them in line with the Code of Conduct. **At this stage pupils must know all URPC and not only those specifically mentioned below**)

- 1.4 The Rules of Professional Conduct at the Bar at which the pupil is a pupil member

2. Counsel's duty to the Court

2.1 Duty to act honestly and not to mislead the court

- URPC 3.2
- Code of Conduct para 9.5; 5.7.1; 57.6; 57.9
- *Kekana v Society of Advocates of South Africa* 1998 (4) SA 649 (SCA) at 655l
- *General Council of the Bar v Matthys* 2002 (5) SA 1 (E)
- *Van der Berg v General Council of the Bar* [2007] 2 All SA 499 (SCA)
- *The Society of Advocates of Natal and the Natal Law Society v Merret* 1997 2 All SA 273 (N)

- *Ex Parte Swain* 1973 (2) SA 427 (N) at 434H
- *Schneider NO & Others v AA & Another* 2010 (5) SA 203 (WCC) at 211F-D; 218J-219A; 220D-H

2.2 Duty in ex parte applications to act with utmost good faith and to disclose material facts which might influence the court

- Code of Conduct 57.4
- *Estate Logie v Priest* 1926 AD 312 at 323
- *Hassan & Another v Berrange* NO 2012 (6) SA 329 (SCA) at para [14]
- *Schlesinger v Schlesinger* 1979 (4) SCA 342 (W) at 349A

2.3 Duty to direct the court's attention to relevant and adverse authorities

- Code of Conduct 57.5
- *Ex Parte Hay Management Consultants (Pty) Ltd* 2000 (3) SA 500 (W) at 506
- *Toto v Special Investigating Unit & Others* 2001 (1) SA 673 (E) at 683A-I
- *Ulde v Minister of Home Affairs & Another* 2008 (6) SA 483 (W) para [37]

2.4 Duty to draw the court's attention to deviation from standard forms and orders

- Code of Conduct 57.8
- *Ex Parte Satbel* 1984 (4) SA 347 (W) at 362F-H

2.5 Duty to present the best argument available to the litigant

- *Feni v Gxothiwe & Another* 2014 (1) SA 594 (ECG) para [6] and

[7]

2.6 Duty to preserve and uphold the dignity of the courts and officers of the court

- *R v Silber* 1952 (2) SA 475 (AD) at 480H-484
- *S v Tromp* 1966 (1) SA 646 (N) at 653G-H, 655C and 655H-656A

2.7 Duty not to abuse the process of court

- Code of Conduct 60

2.8 Applications for recusal of presiding officers

- *President of the Republic of South Africa & Others v South African Rugby Football Union & Others* 1999 (4) SA 147 (CC) at para [48]

2.9 Principles governing the hopeless case

- "*The ethics of the hopeless case*", Owen Rogers, Advocate December 2017
- *De Lacy v SA Post Office* 2011 (9) BCLR 905 (CC) at paras 118-121
- *Motswai v Road Accident Fund* 2013 (3) SA 8 (GSJ) at paras [26]-[37]

3. **Counsel's duty to clients**

3.1 The cab-rank rule

- URPC 2.1
- Code of Conduct para 26

3.2 Duty to further clients' cases fearlessly to the best of counsel's ability

- URPC 3.1
- Code of Conduct paras 3.3; 9.10

3.3 Maintaining confidentiality and legal professional privilege (legal advice privilege and litigation privilege)

- Code of Conduct 3.6; 57.2; 57.3; 57.6; 57.7; 57.10
- *Competition Commission of South Africa v Arcelormittal SA Ltd & Others* 2013 (5) SA 538 (SCA) para [20] and [21]
- *Heiman Maasdorp & Barker v S I R* 1968 (4) SA 160 (W) at 160, 162-164
- *R v Davies* 1956 (3) SA 52 (AD) at 57-59
- *S v Kearney* 1964 (2) SA 495 (AD) at 499-500
- *R v Fouche* 1953 (1) SA 440 (W) at 445-449
- *R v Cox and Railton* 1884 (14) QBD 153 deals with the exception to the general rule attaching to communications governed by legal professional privilege

3.4 Conflict of interest between clients

- URPC 5.5
- Code of Conduct 3.5; 58.4; 58.5; 58.6
- *S v Hollenbach* 1971 (4) SA 636 (NC) at 638
- *Ex Parte Swain* 1973 (2) SA 427 (N) at 433E-G

3.5 Conflict of interest between counsel and clients and presiding officer/opponents

- URPC 3.5; 4.31

- Code of Conduct 9.6; 26.6-26.9; 58.1-58.3; 58.7-58.12

3.6 Counsel's independence in conducting matters

- Code of Conduct 3.9; 9.9; 22.3.1; 25.3
- *R v Matonsi* 1958 (2) SA 450 (AD) at 456A-457F

3.7 Admissions and undertakings made and settlement concluded by counsel on behalf of clients

- Code of Conduct 25.6
- *S v Maweke & Others* 1971 (2) SA 327 (A) at 329D-G
- *De Wet v Western Bank Ltd* 1977 (4) SA 717 (T) at 779C-G
- *Hawks v Hawks & Another* 2007 (2) SA 100 (SE)

4. The referral rule

4.1 Prohibition against receiving instructions directly from the public

- S 34(2)(a)(i) of the LPA
- URPC 5.1.1
- Code of Conduct 27 and 28.1
- *De Freitas v Society of Advocates of Natal* 2001 (3) SA 750 (SCA)
- *General Council of the Bar of SA v van der Spuy* 1999 (1) SA 577 (T) at 610-611

4.2 Counsel should not perform work within the exclusive ambit of the functions of attorneys

- Code of Conduct 23.2.1 - 23.2.19

- *General Council of the Bar of SA v Rösemann* 2002 (1) SA 235 (C)

5. **Rules governing consultations, witnesses and cross-examination**

5.1 Consultation to take place in counsel's chambers and in the presence of instructing attorney (and exceptions to the general rule)

- URPC 4.1
- Code of Conduct 25.7; 25.8; 55.1-55.5

5.2 Interviewing witnesses of opponent

- Civil cases - URPC 4.3.1
- Code of Conduct 55.6-55.8
- Criminal cases - URPC 4.3.2
- Code of Conduct 55.9-55.11
- *Shabalala & Others v Attorney-General, Transvaal & Another* 1996 (1) SA 725 (CC) at 753-756

5.3 Undesirability of counsel deposing to affidavits and becoming witnesses in cases

- URPC 4.5
- *Carolus v Saambou Bank Limited* 2002 (6) SA 346 (SECLD) at 348I-J

5.4 Interviewing witnesses during trial

5.4.1 General prohibition against interviewing witnesses who are under cross-examination as well as between cross-examination and re-examination

- URPC 4.2.2

- Code of Conduct 55.5

5.4.2 Interviewing witnesses after they have been sworn in (that is in chief)

- URPC 4.2.1 (generally undesirable)
- Code of Conduct 55.5 (generally prohibited)

5.5 Cross-examination

- URPC 3.3; 3.4
- Code of Conduct 56.1-56.6
- *President of the Republic of South Africa & Others v SA Rugby Football Union & Others* 2000 (1) SA 1 (CC) at paras 61-63 (duty to challenge evidence in cross-examination)
- *S v Gidi & Another* 1984 (4) SA 537 (CCD) at 539
- *S v Azov* 1974 (1) SA 808 (T) at 810F-811B
- *S v W* 1963 (3) SA 516 (AD) at 523C-F

5.6 Duty of prosecutor to disclose prior inconsistent statements

- *S v Radebe* 1973 (1) SA 796 (AD) at 814

6. **Rules governing counsel's fees**

6.1 Contingency fee agreements

- URPC 7.10
- Code of Conduct 32
- *South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development (Road Accident Fund, Intervening Party)* 2013 (2) SA 583 (GSJ) (Full Bench) paras [23-26], [68]

6.2 Pro bono and pro amico briefs

- URPC 7.3
- Code of Conduct 31

6.3 Champertous agreements

- *Price Waterhouse Coopers Inc & Others v National Potato Co-operative Ltd* 2004 (6) SA 66 (SCA) paras [26] - [44]

6.4 Costs de bonis propriis and orders disentitling counsel to charge fees

- *Pelser v Director of Public Prosecutions, Transvaal & Others* 2009 (4) SA 52 (T)
- *January v Standard Bank of SA* [2010] ZAECGHC 6 at paras [65] - [77]

6.5 Fee agreements, reasonableness of counsel's fees, marking briefs and furnishing fee accounts

- URPC 7.1, 7.2, 7.4, 7.7 and 7.8
- Code of Conduct paras 29-35
- *Hennie de Beer Game Lodge CC v Waterbok Bosveld Plaas CC & Another* 2010 (5) SA 124 (CC) at para [9]
- *City of Cape Town v Arun Property Development (Pty) Ltd & Another* 2009 (5) SA 227 (C) at 234-236

7. **Counsel's qualified privilege and freedom of speech in court**

- URPC 3.3, 3.4 and 4.12
- Code of Conduct 3.14; 9.7.1; 56.2; 56.4; 56.6
- *Joubert & Others v Venter* 1985 (1) SA 654 (A) at 697I-698A

- *Findlay v Knight* 1935 AD 58 at 71-73
- *Basner v Trigger* 1946 AD 83 at 106-7
- *Gluckman v Schneider* 1936 AD 151 at 161-162

8. **Court and professional etiquette**

- URPC 4.14; 4.27
- Code of Conduct 36, 61.3-61.12

9. **Duty to obey rules of the profession**

- URPC 1.3
- Code of Conduct 2; 21.1; 54.1
- *Society of Advocates of SA v Cigler* 1976 (4) SA 350 (T) at 354

10. **Applications for admission and enrolment as an advocate**

- Sections 24(1) and (2); 26(1) of the LPA
- Rule 17 of the Legal Practice Council
- *Ex Parte Goosen* 2019 (3) SA 489 (GJ)
- *Ex Parte Swain* 1973 (2) SA 427 (N) at 434H
- *Northern Cape Society v Mziako* [2018] ZANHC 28 paras 30-34
- *Hayes v The Bar Council* 1981 (3) SA 1071 (ZAD)

11. **Applications to strike off and concept of "fit and proper" person to practise**

- S 31(1), s 43 and s 44 of the LPA
- *General Council of the Bar of SA v Geach & Others* 2013 (2) SA 52

(SCA)

- *Fine v Society of Advocates of SA* (WLD) 1983 (4) SA 488 (A)
- *Johannesburg Society of Advocates v Edeling* 2019 (5) SA 79 (SCA)

References

Note: These were all published before the LPA and the Code of Conduct came into effect

- LAWSA volume 14 part 2, second edition, paras 111-147
- Technique in Litigation, E Morris, sixth edition edited by John Mullins SC et al, paras 2.1.2; 2.3.2; 2.5; 2.7; 2.8; 2.11; 2.12; 12.3; 12.5.6; 12.5.32; 12.5.37; 19.3