# SOCIETY OF ADVOCATES OF SOUTH AFRICA (WITWATERSRAND DIVISION) v CIGLER 1976 (4) SA 350 (T)

**1976 (4) SA p350**

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| **Citation** | 1976 (4) SA 350 (T) |
| **Court** | Transvaal Provincial Division |
| **Judge** | Cillié JP, Trengove J and Eloff J |
| **Heard** | April 7, 1976; April 8, 1976 |
| **Judgment** | April 9, 1976 |
| **Annotations** | Link to Case Annotations |


## Flynote : Sleutelwoorde

Advocate - Misconduct - Disciplinary proceedings - D Nature of - Whether advocate a fit and proper person to continue practising - Approach by Court - Advocate guilty of charging grossly excessive fees - Advocate repaying such - Effect.

## Headnote : Kopnota

In disciplinary proceedings instituted against an advocate in E the Supreme Court the question is not one of punishing a transgressor. It is one of upholding the Rules of the Society of Advocates. The fact that an advocate has breached the Rules of the Society, even in isolated instances, may very well be relevant to the Court's decision as to whether he is a fit and proper person to practise as an advocate, and so is a finding whether he treats the Rules of the Society with respect or with contempt. Breaches of the Rules may cause an injustice and even an unfair trial. It is for these reasons that Courts have in the past always assisted Societies of Advocates in upholding and enforcing their Rules.

F The Court, in coming to a decision as to an advocate's fitness to practise, should not consider him in his present situation only. It is necessary for the Court to take all the facts into consideration and then to decide whether he is a fit and proper person to continue practising as an advocate. If he is not such a person then the Court must remove him and so guard against the abuse of its officers and ensure the integrity of the administration of justice.

G In an application for the striking of the respondent's name off the roll of advocates the Court found, *inter alia*, that the respondent had been guilty of charging excessive fees in a number of instances in contravention of the Rules of the applicant Society. In mitigation respondent's counsel pointed out that respondent had repaid to the Law Society the amount of the fees he had taken in three such instances.

H *Held*, as the Court was concerned with disciplinary proceedings, that the repayment of the amounts concerned had to be given its correct place and not overemphasised.

*Incorporated Law Society, Transvaal v K. and Another*, 1963 (4) S.A., 631 (T), applied.

## Case Information

Application to strike respondent's name from the roll of advocates. The facts appear from the reasons for judgment.

*J. C. Kriegler*, S.C. (with him *R. J. Goldstone* ), for the applicant.

*S. A. Cilliers*, for the respondent.

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CILLIÉ JP

**Judgment**

CILLIÉ, J.P.: The applicant, the Witwatersrand Division of the Society of Advocates of South Africa, has applied for an order striking the name of the respondent, one of its members, from the roll of advocates. This application for disbarment is based on the allegation that he is not a fit and proper person to practise as an advocate as envisaged in the Admission of A Advocates Act, 74 of 1964.

Sec. 7 (1) *(d)* of the Act reads as follows:

> 'Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate.'

But the Court also has an inherent jurisdiction in these B matters. In the case of *De Villiers and Another v McIntyre, N.O.*, 1921 AD 425, SOLOMON, J.A., says at p. 428:

> 'The appellants who are attorneys on the roll of the Orange Free State Provincial Division of the Supreme Court of South Africa appeal against an order made by that Court in the exercise of its disciplinary powers over legal practitioners. These powers are usually exercised in cases where charges of C misconduct are brought against practitioners and where the Court is called upon to decide whether the attorney in question is a fit and proper person to remain a member of the honourable profession to which he belongs. But the jurisdiction of the Court is not limited to such cases and its interference has been successfully invoked on many occasions where there has been no suggestion of disgraceful or dishonourable conduct.'

What has been said about attorneys in that case applies equally D to advocates.

This matter first came before the Court in June of last year after the applicant Society had held a formal enquiry into the respondent's professional conduct and had decided that the respondent's misconduct was of so serious a nature that the matter should be placed before the Court. At the request of the applicant the Court made an order which enabled the applicant Society to obtain further information to place before this E Court if it was considered relevant. At the beginning of the present hearing Mr. *Kriegler*, who appeared on behalf of the applicant, informed the Court that it had been decided not to advance any further evidence. Thereupon Mr. *Cilliers*, for the respondent, called two witnesses, the respondent to amplify his affidavit and explain his conduct, and an attorney Mr. P. B. de Wet who gave evidence about the character and personality of F the respondent.

It is contended for the applicant Society that the respondent is guilty of a number of acts each of which could be sufficient to show that he is unfit to be an advocate. However, the Court is asked to look at the totality of the evidence about the respondent's professional conduct over the years 1973 and 1974 G and to come to a conclusion that he should be disbarred.

The facts are substantially common cause and they may be summarised as follows. The respondent was an articled clerk with the firm of Bowens from 1965 to 1968 and his work was supervised mainly by Mr. De Wet who gave evidence. When the respondent left the firm of Bowens he worked in a family undertaking for some three years. In February 1971 he was admitted as an advocate of this Court and in June commenced H practice at the Johannesburg Bar. In the beginning of 1973 he was approached on behalf of a firm of attorneys, G. M. Pitje and Collins Ramusi, and he was asked whether he would accept briefs to settle matters relating to so-called third party claims in accident cases. He approached the secretary of the applicant Society and asked whether that would be proper. He was informed, correctly in our view, that he could do so. However, the respondent and the secretary did not understand the word 'settle' to embrace the same activities.

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Whereas it meant for the secretary to terminate the disputes between parties by mutual agreement without a decision of a court of law within the normal limits of an advocate's function and activities, it meant for the respondent arriving at a mutual agreement between the parties doing everything which was A legally necessary whether it fell within the normal scope of an advocate's duties or not. The respondent informed the attorneys that he could accept the brief as suggested by them.

In this firm of attorneys the partner who was responsible for third party work had numerous outside interests and his office work, according to the evidence before the Court, was B neglected. Very soon after the respondent had informed the attorneys that he would accept briefs on the particular basis mentioned he was inundated with files and briefs for settlement. It would appear as if within the first three weeks he had no fewer than 100 files in his chambers. In some cases the claims had already prescribed or were about to become prescribed. Only in three matters, as far as would appear to C the Court, had summonses been issued. The necessary evidence, that is the ordinary evidence of how the injury was sustained, the medical evidence and other expert evidence, had not been obtained and it would appear as if there had been no communication at all with the necessary witnesses. Some of these matters had not been properly investigated at all. The result was that the respondent took charge of all the matters. D He did not inform the attorneys what had to be done but he did it himself. Without the intervention of his attorney or any other attorney it would appear that he interviewed witnesses, that he asked for medical reports, and that he telephoned and consulted with the officials of insurance companies who were involved and against whom claims had been made. Apparently they E discussed also liability. Eventually he arrived at agreement in all cases which had not become prescribed. This, I think, was a remarkable achievement.

The officials to whom I have referred communicated directly with him by telephone, by letter, and by visits. Meanwhile he conducted a number of matters for settlement at the same time F and he kept no notes of his activities at all. The files remained in his chambers, he handled them, he put them in order and he dealt with the matters therein on a continuing basis. His chambers became in effect an extension of the attorneys' department for third party claims. Because of the fact that his conduct had been brought to the notice of the applicant Society of Advocates there had to be an investigation into certain G aspects of his practice. It appears that he admitted that over the period March 1973 to December 1974 he had in fact been performing the functions of both attorney and advocate with regard to a large number of matters. It appears - and this was common cause - that he breached the applicant Society's Rules in a number of instances, and, finally, that he charged grossly excessive fees.

H At the enquiry he was informed that the Society was investigating 24 charges against him. Two of these were subsequently withdrawn and I shall deal with the remaining 22 in groups and firstly with those relating to the Rules of the Society.

The first matter is count No. 3. He was charged with professional misconduct in that during January 1974 he had accepted a brief and conducted negotiations on behalf of the plaintiff in the matter of Magdaline Mogatusi v Union South West Africa Insurance Co. Ltd. at a time when he knew that in the same matter other counsel had drafted pleadings and was

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entitled to the brief in terms of the Rules of the Society. He performed the work without communicating with the other member to ascertain whether that member had given up all claims to the brief, and he therefore acted in breach of the applicant's Rule E (5) *(b)*. Of the particular Rule I quote only sub-rule E (5) *(b)* (1):

> 'If a member offered or receiving a brief becomes aware, either A from his brief or in any other manner, that another member has been originally briefed or that another member is entitled to the brief in terms of para. *(a)* of Rule E (5) the member receiving such brief must communicate at once with the member so entitled to the brief and enquire whether such member had given up all claims thereto.'

The applicant admitted that he became aware of the fact that another member, another advocate, was entitled to the brief B unless he had given it up. He communicated with a member

of the staff of the attorneys who had briefed him, a Miss Finca, and she supports his evidence in this regard. It is to the effect that she knew that the other member of the Society was entitled to the brief but that he had informed her that he was not available on the date on which the matter was to come C before the Court and that he would have to give up the brief. It appears that when she informed the respondent of this fact he was satisfied and he never approached the other member of the Society to find out whether he was really not available. It does not matter for the purpose of this particular charge whether he was available or not, because the principle is that it is necessary in such cases that the advocate to whom the brief is offered, should make quite certain by communicating D with the advocate who was entitled to the brief that he is no longer available and has given up the brief. I do not wish to enter into a discussion of all the reasons why that is so but there is no doubt that it is a Rule which has an effect on such matters as disputes arising between attorneys and advocates, and that its disregard may result in a trial which is not a E fair one. The respondent breached this Rule.

The next count I wish to deal with is No. 5. It is to the effect that in the matter of Elias Tshabalala v A.A. Mutual Insurance Society the respondent acted but failed to render a fee list at the end of January, the month in which he had performed the services. The respondent could afford no reason or explanation for this failure. This constituted a breach of F the Rules. Upon this follows count 6. He is charged that in breach of the Rules he did not inform the Society that the firm of attorneys, which was the particular firm concerned in this matter, had not paid their indebtedness in full at the time when the last day for such payment had been reached.

There are three more instances of breaches of Rules. They are G dealt with in counts 8, 9 and 10. These matters all fall under Rule D (1) *(a)*, that counsel may render professional services for reward only if briefed to do so. In these three matters no brief cover could be found, that is no instructions in writing were available, although a search was made for them. The explanation which the respondent gave in regard to the brief covers was that he had received his instructions by the files H being delivered to him. They were normally delivered with brief covers. In this particular case he does not know how it came about that there is no brief cover. With regard to the fact that he did not inform the Society of the non-payment of certain fees, his explanation is not so easy to accept, particularly as an excuse. He said that on investigating his account it appeared to him some months afterwards that a particular amount, and he puts it at R95, had not been paid. He thought that this was a very small matter since he had received large amounts from

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the attorneys before and he said that he decided not to report this non-payment because they had paid him regularly in the past.

The fact that an advocate has breached the Rules of the Society, even in isolated instances, may very well be relevant to the Court's decision as to whether he is a fit and proper A person to practise as an advocate, and so is a finding whether he treats the Rules of the Society with respect or with contempt. Breaches of the Rules, as I have indicated, may cause an injustice and even an unfair trial. It is for these reasons that Courts have in the past always assisted Societies of Advocates in upholding and enforcing their Rules.

B In *Pretoria Balieraad v Beyers*, 1966 (1) SA 112 (T), the Court dealt with the case of an advocate who performed work for profit without the intervention of an attorney and the learned JUDGE-PRESIDENT said the following in his judgment at p. 115:

> 'Die algemene gedragsreëls wat neergelê word deur die Verenigings in die Transvaal is aan die Resters bekend wat C almal voorheen lede was van een of ander Vereniging. Onder andere is dit vasgestel dat 'n advokaat nie enige geding moet onderneem sonder die tussenkoms van 'n prokureur nie en nie onderhoude met lede van die publiek moet hou sonder die tussenkoms van 'n prokureur nie behalwe in uitgesonderde gevalle wat hier nie van toepassing is nie. Die gedragreëls in verband met advokate behoort so ver moontlik en dienlik deur die Hof gehandhaaf te word. Die skeiding van die twee takke van die regsprofessie behels wederkerige pligte en as 'n lid van die een tak inmeng met die funksie wat aan die ander tak D behoort sal samewerking tussen die twee takke onmoontlik word. Na my mening is die hele gedrag van die respondent soos hierbo uiteengesit 'n inmenging met die werk wat deur 'n prokureur behoort gedoen te word.'

With regard to any order which the Court may have to make, it is necessary, I think, to refer to a short passage in the case of *Olivier v Die Kaapse Balieraad*, 1972 (3) SA 485 (AD). At p. 498, RABIE, J.A., says:

> E 'Die Hof *a quo* het soos blyk uit grond 3 hierbo die saak anders benader en appellant se houding betreffende die Balie-reëls as 'n selfstandige grond vir appellant se skrapping beskou. Dit is betoog dat dit 'n foutiewe benadering is en ek sal aanvaar sonder om daaroor te beslis dat dit so is, aangesien dit na my mening geen verskil kan maak wat appellant tot voordeel sou kon strek nie. Sy volgehoue verbreking van en sy minagtende houding teenoor die Balie-reëls moet noodwendig as 'n beswaarende omstandigheid teen hom tel en dear is geen F rede om te vermoed dat die Hof *a quo* anders oor die saak sou beslis het as dit appellant se gesindheid teenoor die reëls op hierdie wyse benader het eerder as om dit is 'n selfstandige rede vir sy skrapping te beskou.'

That brings me to the charges dealing with excessive fees. In this regard it must be remembered that the charging of excessive fees is not only a breach of the Rules but is also a G matter of serious concern particularly where it is done in a large number of cases and over a long period. In this particular case there are no fewer than 12 counts relating to overcharging and the Court's attention is referred to further 16 instances in another count.

In count 1 the respondent is alleged to have charged a grossly excessive fee in the case of Gideon Nsibande v Santam H Insurance Co. Ltd. He settled that matter for R17 350 and he charged a fee of R2 000. He described in an affidavit exactly what he had done in that connection, who he visited and with whom he had interviews, and eventually agreed that the fee he charged was grossly excessive. In fact he said at the enquiry that a fee of R450 would have been commensurate with the services rendered by him. Two further matters have been raised in this regard. The one is that in this instance as well as in two which follow, it has been said that the fee which he charged was a so-called 'invited fee'. The firm of attorneys had a clerk, a certain Mr. Chosane, who was unqualified and it does not seem as if he

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was aware of the ordinary procedures in these matters. After the settlement, so the evidence goes, he approached the respondent and informed him that the client was delighted because very much more than he was prepared to settle for had in fact been obtained by the respondent. He invited the respondent to charge a fee of R2 000. The respondent did not make any investigation as to whether such a fee had been A discussed with the client himself nor, apparently, as to what the attorney's fee would be. He admitted that such invitation, coming from Mr. Chosane, was in fact worthless and certainly did not entitle him to charge such an extra fee. I want to add that it must have been clear to him that that fee which was more than four times what he now thinks would have been a B proper fee, would have to come out of compensation which was paid to a man who was very seriously injured in a collision.

The second explanation that has been given to the Society and to the Court was that when the invitation to charge this fee was made to him he consulted an advocate senior to himself about the propriety of accepting such an offer. This advocate C was not the senior of the group in which he was, but had been the senior on a particular floor where he had been before. He, was, however, available and he was approached about the matter. He was told that the fee would be a very high fee, I forget the exact wording, but there was no statement of the particular amount of the fee. This member of the Society has not given an D affidavit about the interview.

The actual words of the respondent in his affidavit about this aspect are the following:

> 'I wish to point out that when the question of the first invited fee arose I consulted with a more senior colleague as to the propriety thereof and together we consulted the red book. I was interested to ascertain whether counsel could accept an invited fee notwithstanding that it was in excess of what he would normally charge. When I perused the provisions of E the red book and found no provision dealing with invited fees my mind was not directed to the overall requirement of charging a reasonable fee.'

The Rules in this matter are quite clear. Rule F (1) *(a)* which must be the Rule that the respondent had consulted with the other member of the association, is headed 'Reasonable fee to be charged'. It then reads:

> 'Counsel is entitled to a reasonable fee for all services. In F fixing fees counsel should avoid charges which

> overestimate the value of their advice and services as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service though his poverty may require a lesser charge or even none at all. In determining the amount of the fee it is proper to consider (1) the time and labour required, novelty and difficulty of the questions involved and skill requisite properly to conduct the call, (2) the customary charges for similar services, and (3) the amount G involved in the controversy and the benefits resulting to the client from the services. Not one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the services.'

In the circumstances the Court finds that an excessive, a grossly excessive, fee was charged in this particular instance and that the explanations given do not afford an excuse.

The second count is that the case of Magdalina Mogatuse v. H Union South West Africa Insurance Co. Ltd., the matter to which I have referred before, resulted in a settlement for R8 000 and the fee charged was R800. The same comments apply to this case.

Count 4 was in connection with the matter of Elias Tshabalala v A.A. Mutual Insurance Association where the settlement was for R26 500 and the fee marked was R2 600. The same admissions and explanations were offered in this regard and the Court makes the same finding as it did before.

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**1976 (4) SA p356**

CILLIÉ JP

There are a further nine similar matters in which I shall merely give the number of the count, the name of the case, the settlement figure and the fee charged.

Count No. 11, the case of Phillip Plati Maedi v Sentrakas, settlement figure R2 337, fee R250. Count 12, the case of A Lilian Maubane v Commercial Union Insurance Co. Ltd., settlement figure R2 100, fee R200. Count 13, the matter of Titus Mmutlane v Santam Insurance Co. Ltd., settlement figure R2 200, fee R250. Count 14, Alfred Tanga v President Insurance Co. Ltd., settlement figure R2 400, fee R250. Count 15, Lucy Monyepao v Southern Insurance Co. Ltd., settlement figure R2 B 500, fee R250. Count 16, Jacobus Leso v SA Mutual Fire and General Insurance Co. Ltd., settlement figure R3 800, fee R375. Count 17, Ernest Siwela v A.A. Mutual Insurance Association, settlement figure R2 200, fee R225. Count 18, George Phandelane v A.A. Mutual Insurance Association, settlement figure R3 400 and the fee R300. Count 19, Willie Mntambo v A.A. Mutual Insurance, settlement figure R2 153 and C the fee was R300. In all these cases, that is on counts 1, 2, 4 and 11 to 19, inclusive, the fees charged were excessive and in certain cases exorbitant. It appears that they could not be justified by the amount of work which had been done in connection with the settlement.

Count 7 is the next one that I wish to deal with, referring to D the main count only and not to the alternative. The respondent was charged with professional misconduct in that there existed a relationship or understanding between him and Pitje and Collins Ramusi whereby he was permitted to charge and charged fees which were not related to or commensurate with the services rendered by him but which were based on or directly related to the results. While admitting that the fees in the E matters I have mentioned were not commensurate with the services rendered, the respondent denied that there was any agreement or understanding, but he conceded that the amount of the settlement was a predominant factor in determining the fee. Mr. *Kriegler* argued that there was not necessarily a prior arrangement but that there was some understanding which came F about in the course of time, to the effect that there would be these very high charges. In this regard he referred to such facts as that there was no memorandum at all of the work done, that there were no separate charges for the work performed, that the fees were debited only on settlement, that all the matters except those which had been prescribed were settled, that the prescribed matters were returned and that no charge G was made for them. I shall deal with this particular aspect of the case later, and at this stage I merely wish to say that Mr. *Kriegler* in his argument submitted that our law disapproves of the advocate basing his fee on the result of his labour. He referred to a number of authorities, and the Court agrees with his submission. I do not intend repeating the authorities H quoted except mentioning Huber, *Heedendaegse Rechtsgeleertheyt*, 8, 11, and *Voet*, 2, 14, 18 and 3, 1, 12. The Society's Rule F (4) *(b)* reads:

> 'Full fees or no fees at all, irrespective of the results, must be charged.'

I proceed now to count 21. The charge is that in a number of cases which are set out the fees were not related to or commensurate with the services rendered but were based or directly related to the results obtained in each case. Some 25 matters are set out. Those in counts 1, 2 and 4 are not repeated but those in counts 11 to 19 find their way into this list. There are a further 16 cases to which I have not yet referred. The date of the first one is

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13 June 1973 and the last 19 December 1974. Of the 28 cases in 21 of them the fees charged range between 9 to 12 per cent of the amount which had been obtained on the settlement. To this matter I shall again refer later.

Count 22 is to the effect that the respondent was personally, as opposed to professionally, associated with his client's interests in the matters to which I have referred. The argument A in this regard is that since his fees depended on the size of the settlement, he was personally as well as professionally interested in the outcome of the settlement.

This brings me to the final count. It is that the respondent was guilty of professional misconduct in that, during the period which I have already given, he was a party to a B relationship or an understanding between himself and the firm of attorneys in terms whereof he would charge unreasonable fees, his fees were based on results, in some cases he had not been briefed, he conducted the negotiations for the settlements with lay clients on the other side without the intervention of an attorney, he failed to render fee lists timeously, he failed to notify non-payment of his fees and in one case superseded a colleague. It is virtually a summary of all the charges. After C a consideration of all the facts the Court finds that it is impossible to avoid the conclusion that as a result of discussions and conduct there existed between the respondent and the attorneys concerned an understanding that they would deliver to him under cover of briefs marked 'on settlement' files in connection with third party claims, that he would take D complete charge of those files, that he would perform all acts so as to obtain a settlement of the claims whether those acts were acts ordinarily performed by advocates or not, that he would not debit the attorneys for his work as and when the work was performed, that he would charge in each case a composite fee on obtaining a settlement and, lastly, that his fees would be in direct relation to the amount of the settlement E irrespective of the actual services rendered. This is the conduct of a practitioner who is not a fit and proper person to continue to practise as an advocate.

That brings me to what the Court should do in this regard. I think it is necessary to say what the counsel have asked in this regard. Mr. *Kriegler*, on behalf of the Society, has asked F for the removal of the respondent's name from the roll of advocates. Mr. *Cilliers*, on behalf of the respondent, asked, not only that he be merely suspended for a time but also that that suspension should be further suspended, which would mean that he would be entitled to continue to perform the duties of an advocate.

I have indicated the seriousness of the transgressions. Before G I deal with the mitigating circumstances, it is necessary to state what the position of the Court is in this regard. This is not the question of punishing a transgressor. It is one of upholding the Rules of the Society of Advocates. I have already indicated how important it is that these Rules should be upheld. I want to refer to two cases where Courts dealt with matters relating to attorneys, who were considered unfit to H practise or had breached the Rules of their Society. Exactly the same remarks and principles apply in the case of advocates. The first case is that of *Law Society v Du Toit*, 1938 OPD 103. In that case where the Court dealt with an attorney who had been found guilty of dealing in uncut diamonds and had been sentenced to six months' imprisonment, the Court said in regard to an application for his removal:

> 'The proceedings are instituted by the Law Society for the definite purpose of maintaining the integrity, dignity and respect the public must have for officers of this Court. The proceedings are of a purely disciplinary nature, they are not intended to

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CILLIÉ JP

> act as punishment of the respondent. He has received his sentence for the offence he committed and it is no longer a matter that will influence us in dealing with this case. It is for the Courts in cases of this nature to be careful to distinguish between justice and mercy. An attorney fulfils a very important function in the work of the Court. The public are entitled to demand that a Court should see to it that A officers of the Court do their work in a manner above suspicion. If we were to overlook misconduct on the part of officers of the Court, if we were to allow our desire to be merciful to overrule our sense of duty to the public and our sense of importance attaching to the integrity of the profession we should soon get into a position where the profession would be prejudiced and brought into discredit.'

This statement has been quoted and followed in a number of B other cases and, as I have said, it deals with an attorney but is equally applicable to the case of an advocate. It was repeated in *Raubenheimer and Another v Cape Law Society*, 1952 (4) SA 645 (C) at p. 649. The learned JUDGE-PRESIDENT Of the Cape quoted this statement and agreed with it with the exception that in the passage which runs 'that the public are entitled to demand' he states that he would have preferred to use the word 'expect'. He goes on to say:

> C 'I would cite too the remarks of JONES, A.J.P., himself in *Royeppens* case, *supra*, quoted with unqualified approval by FAGAN, J., in *Gamiet v Law Society* 1950 (2) SA 706 (C) at p. 708, who said:
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> 'The trust and confidence reposed by the public and by the Courts in practitioners who carry on their profession under the aegis of the Courts must make the Courts astute to see D that persons who are enrolled as attorneys are persons of dignity, honour and integrity'.'

It was argued in the instant case that the Court must look at the respondent's present state. He has had his shock and he can now no longer be said to be a person who must be disbarred. I do not think that the Court should, in coming to a decision as E to his fitness, consider him in his present situation only. I think it is necessary for the Court to take all the facts into consideration and then to decide whether he is a fit and proper person to continue practising as an advocate. If he is not such a person then the Court must remove him and so guard against the abuse of its officers and ensure the integrity of the F administration of justice. In this case the Court has considered the seriousness of the transgressions as well as the mitigation. The mitigating factors are that there was an attorney, who would normally be a person who would guard against the charging of excessive fees by an advocate, but who in this case assisted in, in fact invited, the charging of exorbitant fees. Furthermore, the acts were not clandestine, they were open. The Court was told that there is no evidence of G any neglect or that he had flaunted the Rules. That is also true. The other facts are the remorse that he has shown, that his private life has been affected and his practice is virtually non-existent and that he has repaid to the Law Society the amount of the fees that he took in the first three matters that I have referred to. It is in this regard I think H that I should refer to the case of *Incorporated Law Society, Transvaal v K. and Another*, 1963 (4) SA 631 (T). At p. 634 HIEMSTRA, J., says:

> 'The fact that a deficiency has been made good is naturally a mitigating factor and in the criminal court it is in cases of theft always regarded as a factor which justifies a lighter sentence than would otherwise have been imposed. Nevertheless this fact has in itself seldom been regarded by this Court and certainly not after the case of *Visse, supra*, as sufficient reason for not striking an attorney from the roll. In many respects the case of *Visse* has ushered in a new era of strictness on the part of the Court.'

I quoted the particular passage to indicate that as the Court is here concerned

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**1976 (4) SA p359**

CILLIÉ JP

with a disciplinary measure the repayment of the amounts must be given its correct place and not be over-emphasised.

The serious aspects of this offence are that the clients in all these cases were Black people who were not conversant, it would appear, with the aspects of the law and of economics which A would apply to their cases. Part of the compensation paid to them for their injuries was in fact taken for the excessive fees. The overcharging was very serious and I have already said so. It has gone so far as to amount almost to overreaching. The Court must keep in mind that this conduct of the respondent lasted for almost two years.

It has been said that in substance any one of these particular transgressions would have been

sufficient to justify the B removal of the respondent's name from the roll of advocates. It is necessary for the Court to look at all the circumstances and the conduct which lasted over this whole period.

On consideration of all those facts the Court finds that it need not decide whether it is entitled, as has been argued, to C suspend a suspension because it does not consider that this matter merits only a suspension of the respondent. In other words the Court has decided to make an order striking the name of the respondent from the roll of advocates. Subject to later argument, if one of the parties so desire, the Court also orders that the respondent pay the costs of these proceedings, excluding counsel's fees. D

TRENGOVE and ELOFF, JJ. concurred.

Applicant's Attorneys: *Nathan, Friedland, Mansell & Lewis*. E Respondent's Attorneys: *Savage, Jooste & Adams*.