



**SUBMISSIONS BY THE LAW SOCIETY OF SOUTH AFRICA
ON THE PROPOSED AMENDMENT OF RULE 22 OF THE RULES OF THE COUNCIL**

The Law Society of South Africa (LSSA) considered the notice by the Legal Practice Council (LPC) that appeared in Government Gazette 43514 dated 10 July 2020, regarding its intention to amend Rule 22 of the Rules of the Council to declare it misconduct on the part of an attorney or advocate to require prospective candidate attorneys or pupils to have a driver's licence or own and /or have access to the use of a vehicle in the course of their employment.

The LSSA invited comment from legal practitioners and a schedule of comments received is attached.

The LSSA's views are presented in two parts, namely:

- The recruitment policy and the requirement for candidate legal practitioners to have drivers' licences and / or their own motor vehicles (or have access to a vehicle) for use in the course of their employment;
- The proposed levying of misconduct charges against legal practitioners.

1. RECRUITMENT POLICY

The LSSA is of the view that, since a practical vocational training (PVT) contract is an *employment contract* between the principal and the candidate legal practitioner, the provisions of the labour legislation, including those of the Employment Equity Act (EEA), should apply.

The EEA deals, amongst other, with recruitment procedures, advertising and selection criteria. It is aimed at achieving equity in the workplace by essentially placing an obligation on all employers to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment practice or policy.

The LSSA believes that the principal, as the employer, should ensure that persons from disadvantaged backgrounds who have historically been under-represented should be considered and given the opportunity of employment. In instances where there is a requirement of a driver's licence and / or own vehicle, measures should be put in place to give the candidate an opportunity to meet these requirement/s, once employed. The LSSA notes that, whilst encouraging legal practitioners to afford candidate legal practitioners such an opportunity, the principal (as employer) has the final decision.

In terms of the EEA, some of the factors that *all* employers have to consider are:

- There should be no absolute barriers when selecting and recruiting employees;
- As regards recruitment, job advertisements should place emphasis on suitability for the job, and should accurately reflect the inherent or essential requirements (i.e. the core functions) of the job and competency specifications;
- An essential job requirement is the skills, knowledge or experience that is necessary to perform the job. When determining whether a person is qualified for a job, consideration should be given to any one, or a combination, of that person's formal qualifications, prior learning, relevant experience, or his / her capacity to acquire, within a reasonable time, the ability to do the job. (Section 20(4) of the EAA).

In addition to the EEA, other legislation govern the employee and employer relationship, including the relationship between principal and candidate legal practitioner under a PVT contract. These include:

- The Labour Relations Act, 66 of 1995 as amended, including the various codes of good practice;
- The Basic Conditions of Employment Act, 75 of 1997 as amended;
- The Skills Development Act, 97 of 1998;

- The Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.

The existing labour related legislation sufficiently address the issue of unfair discrimination within employment practices and policies and the LSSA believes that there is no need for the LPC to introduce additional regulatory measures.

2. THE PROPOSED MISCONDUCT CHARGE AGAINST PRINCIPALS WHO ADVERTISE SPECIFIC REQUIREMENT

As indicated above, there is adequate legislation regulating the relationship between employers and employees and the LSSA is opposed to any rule that will trigger a misconduct charge against the principal.

The LPC should be cautious not to over-regulate the legal profession and should rather consider alternative ways to encourage transformation within the profession, also as far as employment practices are concerned.