

CONSTITUTION OF THE CAPE BAR

[Approved and adopted at the Annual General Meeting
held on 26 April 1993]

as amended at

The General Meeting held on 16 March 1994

[by the amendment of clause 20 (b) and
the insertion of new clauses 20 (c), (d) and (e)]

The General Meeting held on 16 April 1996

[by the amendment of clauses 3 (a) and 6 (d)]

The General Meeting held on 10 May 2000

[by the deletion of clause 30 (c) and the
insertion of new clauses 30 (f) and 30 bis]

The General meeting held on 26 April 2001

[by the addition of clause 8A]

The General Meeting held on 25 October 2001

[by the amendment of clauses 18 and 21(a) and (b) and
the insertion of clauses 19A, 19B, 19C and 19D and 21(c)]

The General Meeting held on 29 April 2003

[by the amendment of clause 8A(a)]

The General Meeting held on 29 April 2004

[by the amendment of clause 19D]

The General Meeting held on 25 April 2006

[by the amendment of clause 19D]

The General Meeting held on 24 April 2007

[by the amendment of clause 31(a)]

The General Meeting held on 22 April 2008

[by the amendment of clauses 19D and 30
and by the insertion of clause 31.bis]

The General Meeting held on 22 April 2010

[by amendment of Clauses 19 D and 33(a)
and by the insertion of rule 7 of Annexure A to the Constitution]

The General Meeting held on 20 April 2011

[by the insertion of rule 8 of Annexure A to the Constitution]

The General Meeting held on 25 April 2012

[by the amendment of clause 19D]

CONSTITUTION OF THE CAPE BAR

I. NAME AND OBJECTS

1. The name of the Society is "The Cape Bar".
2. The objects of the Cape Bar are:
 - (a) The protection and promotion of the interests of the Cape Bar and the interests of the members and pupil members of the Cape Bar in their professional capacity;
 - (b) the supervision, control and discipline of the professional conduct of members and pupil members of the Cape Bar;
 - (c) the consideration and promotion of improvements in the teaching and practice of the law and in the administration of justice;
 - (d) the maintenance of the rule of law;
 - (e) the promotion of the accessibility of the legal system to the public.

II. MEMBERSHIP

3.
 - (a) Every advocate duly admitted and enrolled as an advocate of the Supreme Court of South Africa and who has satisfied or has been exempted from the pupillage requirements of the Cape Bar and who intends to practise as an advocate in the Cape of Good Hope Provincial Division, shall be eligible for membership of the Cape Bar.
 - (b) Every member shall be obliged to keep chambers approved by the Bar Council unless exempted from this obligation on good cause shown.
4.
 - (a) Applications for membership shall be in writing addressed to the Secretary of the Bar Council who shall cause it to be posted on the Bar Notice Board for a period of not fewer than seven (7) days.

Replacement: Clause 3 (a) amended at General Meeting held on 16 April 1996

- (b) During the said period any members having any objection to the admission of an applicant to membership may lodge such objection in writing with the Secretary.
- (c) The Secretary shall submit the application, together with any objections received to the first meeting of the Bar Council held thereafter.
- (d) If satisfied that the applicant complies with the abovementioned requirements for membership, the Bar Council shall authorise the admission of the applicant to membership, unless the Bar Council finds such applicant is not a fit and proper person for membership. The Bar Council shall have the power to authorise such admission with retroactive effect.
- (e) Upon admission to membership the applicant shall become bound by the provisions of this Constitution and shall be deemed to have consented to the obligations imposed hereunder. The applicant shall thereupon sign the roll of members maintained by the Secretary. The roll shall be headed:

“We, the undersigned having read the Constitution, undertake to abide by the said Constitution and the Rules made thereunder (and any amendments thereof as and when duly made) and by all decisions and actions lawfully taken thereunder.”

- 5. (a) If the Bar Council refuses any applicant’s admission as a member, the Secretary shall forthwith notify such applicant, who shall be entitled to appeal against such decision to the General Council of the Bar of South Africa. If the General Council upholds such appeal, the applicant shall be entitled to become a member as if such admission to membership were authorised by the Bar Council.
- (b) An appeal in terms of this clause shall be subject to the relevant provisions of the Constitution of the General Council relating to appeals.

Insertion: Clause 5 (b) added at General Meeting held on 18 April 2013
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- 6. Membership of the Cape Bar shall cease:
 - (a) If the member’s name is removed from the roll of advocates of the Supreme Court of South Africa;
 - (b) upon resignation duly accepted by the Bar Council;

- (c) upon expulsion in the manner prescribed by this Constitution;
- (d) if the Bar Council so decides on the ground that the member is no longer an advocate who practices in the Cape of Good Hope Provincial Division.

Replacement: Clause 6 (d) amended at General Meeting held on 16 April 1996

7. Associate Academic Membership

- (a) Any full-time law teacher at the University of Cape Town, Stellenbosch or Western Cape who is admitted as an Advocate, is entitled to apply for associate academic membership of the Cape Bar.
- (b) The ordinary rules regarding pupillage and the National Bar Examination will apply to associate academic members; provided that an associate academic member will be allowed to complete pupillage over a period of not more than 18 months but no separate period of pupillage may be shorter than one month.
- (c) Associate academic members will not be required to hold chambers.
- (d) Associate academic members will pay such Bar dues, levies and other charges as the Bar Council may from time to time determine as being applicable to such members.
- (e) Associate academic members are entitled to use the Common room, library and photocopy machine.
- (f) Associate academic members may attend meetings of the Cape Bar but shall have only observer status and no voting rights.
- (g) Associate academic members may use the title, "associate academic member of the Cape Bar" in all instances in which ordinary members are permitted to use the title, "member of the Cape Bar".
- (h) Save as set out in the foregoing clauses, associate academic members will in all respects be subject to the Uniform Rules of Professional Ethics and the Constitution and Rules of the Cape Bar.

8. **Associate Membership**

- (a) Any person who is admitted as an advocate and who wishes to practise as such in a town outside of Cape Town, may apply for associate membership of the Cape Bar to the Bar Council, which may, in its discretion, grant or refuse such membership to such person.
- (b) An associate member will be required to hold chambers as may be approved by the Bar Council in the town where such member proposes to practise.
- (c) The provisions of sub-clauses 7 (d) – (h) above shall apply *mutatis mutandis* to associate members.

8A. **Honorary Membership**

- (a) The Cape Bar may in General Meeting resolve to grant honorary membership to any member who has been a longstanding member of the Cape Bar and who indicates to the Bar Council an intention to resign from the Bar and from practice as an advocate, or to any former member who was a longstanding member of the Cape Bar and who has ceased practice as an advocate, if such member or former member –
 - (i) is, in the opinion of the Bar Council, a person deserving of special recognition by virtue of his or her outstanding contribution to the legal profession; and
 - (ii) has been nominated by the Bar Council for such honorary membership.
- (b) Honorary membership will commence on a date determined by the Bar Council, which date shall not precede the date on which a member's resignation of his or her ordinary membership of the Cape Bar takes effect.
- (c) Honorary members –
 - (i) will not be required or entitled to hold chambers;
 - (ii) will be exempt from payment of Bar dues, levies and such other charges as the Bar Council may from time to time determine;
 - (iii) will be entitled to use all facilities of the Cape Bar;
 - (iv) may attend meetings of the Cape Bar but shall have only observer status and no voting rights;

- (v) may use the title "honorary member of the Cape Bar" in all instances in which ordinary members are permitted to use the title "member of the Cape Bar".

Insertion:	New Clause 8A added at General Meeting held on 25 April 2001
Amendment:	Clause 8A(a) amended at General Meeting held on 29 April 2003

III. THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

9. The Cape Bar shall be a Constituent Bar of the General Council of the Bar of South Africa ("General Council").
10. The Cape Bar shall adhere to and subscribe to the Constitution of the General Council.
11. All members shall abide by and conform to the lawful decisions of the General Council on matters which are referred to the General Council in terms of this Constitution.
12. The Bar Council shall from time to time appoint representatives to represent the Cape Bar on the General Council. The reasonable travelling and out of pocket expenses of representatives attending meetings or business of the General Council shall be paid out of the funds of the Cape Bar.

IV. GENERAL MEETINGS

13. The Annual General Meeting of the Cape Bar shall be held during April of each year, or as soon thereafter as possible, on a date to be determined by the Bar Council.
14. The business at the Annual General Meeting shall be to elect office bearers, to receive and consider the annual accounts and the annual report of the Bar Council and any general business.
15. A Special General Meeting of the Cape Bar:
 - (a) may be called by the Bar Council whenever it deems it expedient to do so;
 - (b) shall be called by the Bar Council as soon as practicable after receipt of a written request stating the purpose of the meeting, signed by not less than twenty (20) members.
16. At least seven (7) days' notice shall be given by the Bar Council of every General Meeting, provided that in cases of urgency and if the matter to be considered is a matter other than a proposed amendment to this

constitution, shorter notice may be given. Each such notice shall be in writing, and shall be sent to every member, provided that no business conducted at a meeting shall be invalidated by the mere fact that a notice had not been received by any particular member.

17. Forty (40) members shall form a quorum at any General Meeting.
18. The President of the Bar Council, or, if absent, the Vice-President, shall be chairperson at any General Meeting. In the event of the absence of both the President and the Vice-President, the senior member of the Bar Council present, shall be chairperson. Minutes of the proceedings shall be kept and entered in a book kept for that purpose.

V. CONSTITUTION OF THE BAR COUNCIL

19. The Bar Council shall consist of fourteen (14) members of the Cape Bar elected by the members of the Cape Bar as follows:
 - (a) four (4) silks;
 - (b) eight (8) ordinary members who may be silks or juniors, four (4) members to be elected each year for a period of two (2) years;
 - (c) the Secretary;
 - (d) the Assistant Secretary and Treasurer.
- 19A One half of the members of the Bar Council elected shall be black members of the Cape Bar, provided that a sufficient number of black members are nominated for election to the Bar Council.
- 19B The election of members of the Bar Council shall be conducted in such a manner as shall enable the relevant number of persons referred to in Clause 19A to be elected, subject to Clause 19C below.
- 19C If there are insufficient nominations of black members to meet the requirements of Clause 19A, the Bar Council shall be elected from the remaining members nominated to the extent required.
- 19D The provisions of Clause 19A, B and C shall remain in force until such time as the members of the Cape Bar decide otherwise.

Amendment:	Clause 18 amended at General Meeting held on 25 October 2001.
Insertions:	Clause 19 amended at General Meeting held on 25 October 2001 by the insertion of clauses 19A, 19B, 19C and 19D and by the further amendment of clause 19D at the General Meeting held on 29 April 2004
Amendment:	Clause 19D amended at the General Meeting held on 25 April 2006
Amendment:	Clause 19D amended at the General Meeting held on 22 April 2008
Amendment:	Clause 19D amended at the General Meeting held on 22 April 2010
Amendment:	Clause 19D amended at the General Meeting held on 25 April 2012

20. (a) The members of the Bar Council shall be elected at the Annual General Meeting. In the event of any invalidity of any election of a member or members of the Bar Council at the Annual General Meeting, the election which did not take place validly at the Annual General Meeting, shall take place at a Special General Meeting to be held as soon as practicable.
- (b) The election of members shall be by ballot, by members present in person or by special ballot paper. In the event of a tie, the election shall be determined by lot.
- (c) Voting by special ballot paper shall only be allowed if approved by the Chairman of the Bar Council, acting in his sole discretion on good cause shown.
- (d) A special ballot paper, duly signed, shall be submitted to the Secretary not later than 24 hours before the Annual General Meeting and shall indicate the candidates voted for in each of the categories of members to be elected.
- (e) In order to be eligible for election a member shall be nominated not later than seven (7) days prior to the Annual General Meeting, which nomination shall be supported by two (2) members and which nomination shall be exhibited upon the notice board for a period of five (5) days prior to the Annual General Meeting and which nomination shall indicate whether the member so nominated is nominated as a silk or an ordinary member or both, or as a Secretary or an Assistant Secretary and Treasurer.
- (f) Four silks shall be elected in the first instance for a period of office of one year. Thereafter four ordinary members who may be either silks or juniors shall be elected for a period of office of two years.
- (g) At each Annual General Meeting the four members who were elected as silks and whose period of office expires, shall be eligible for re-election as silks or as ordinary members. The ordinary members whose two year period of offices expires, shall not be eligible for re-election as ordinary members of the Bar Council for the ensuing year, but shall be eligible as silks for the ensuing year.
- (h) There shall be elected at the Annual General Meeting the Secretary and the Assistant Secretary and Treasurer.

Replacement: Clause 20 amended at General Meeting held on 16 March 1994 by the amendment of Clause 20 (b) and the insertion of new clauses 20 (c), (d) and (e).

- (i) In the event of absence or incapacity (other than temporary), death or resignation of any elected member of the Bar Council, the Bar Council shall, as soon as possible, appoint any member of the Cape Bar to hold such vacant office until the next Annual General Meeting and, if applicable, such meeting shall elect a member to hold such vacant office until the next Annual General Meeting.
21. (a) The Bar Council shall elect a President and a Vice-President from among its members. No member is eligible for the position of President or Vice-President for more than two consecutive years, but a member may be re-elected in either position after a break in office.
- (b) In the event of the temporary absence, incapacity, death or resignation of the President, the Vice-President shall act as the President and shall hold office for the remainder of the President's term of office, or for the duration of the President's absence or incapacity as the case may be, whichever shall be the shorter period.
- (c) In the event of the temporary absence, incapacity, death or resignation of both the President and the Vice-President, the Bar Council may elect from its members an Acting President who shall hold office for the remainder of the President's term of office, or for the duration of the President's or Vice-President's absence or incapacity as the case may be, whichever shall be the shorter period."
22. The Bar Council shall determine the procedure to be followed at its meetings provided:
- (a) that all decisions shall be taken by majority vote with the President having a deliberative and casting vote;
 - (b) that the quorum at all meetings shall be five (5) members.

Amendment: Clause 21(a) and (b) amended at General Meeting held on 25 October 2001 by the replacement of Clauses 21(a) and (b) and the insertion of new clause 21(c).

IV. POWERS AND DUTIES OF THE BAR COUNCIL

23. The Bar Council shall, in addition to the powers conferred upon it elsewhere in this Constitution, but subject to any directions that may be given to it by the Cape Bar in General Meeting, have the following powers and duties:
- (a) to represent the Cape Bar in any matter of general concern to the Cape Bar or to its members;
 - (b) to manage the affairs of the Cape Bar;
 - (c) to supervise, control and discipline the professional conduct of members of the Cape Bar;
 - (d) to draw up fee guidelines for members;
 - (e) to maintain a list of defaulting attorneys and to enforce sanctions in regard to such attorneys;
 - (f) to regulate and control the finances of the Cape Bar;
 - (g) to decide upon and impose any dues, levies and other charges to be paid by members, as it considers necessary from time to time for the proper and efficient functioning of the Cape Bar;
 - (h) to determine the dates upon which and the periods for which such dues, levies or other charges shall become due and payable;
 - (i) to prescribe and collect such penalties and/or interest for late payment of any such dues, levies, or other charges, as the Bar Council may from time to time deem fit;
 - (j) to make contracts on behalf of the Cape Bar in regard to the Cape Bar's affairs and property;
 - (k) to appoint such expert advisors or consultants as may be necessary for the proper carrying out of its powers and duties;
 - (l) to appoint committees from members of the Cape Bar to assist the Bar Council in carrying out its powers and duties and to delegate such powers and duties as it may deem fit to such committees;
 - (m) subject to the provisions of this Constitution, to maintain standards of professional ethics and conduct among members and to enforce sanctions for breaches of such standards;

- (n) to give rulings on questions relating to the interpretation of this Constitution, the Uniform Rules and the Cape Bar Rules on all matters relating to unprofessional conduct of members;
- (o) to consider and, if necessary, to enquire into any complaints relating to the fees charged by a member and to delegate its functions in this regard to a committee which may include a practising attorney;
- (p) to decide whether a person has the necessary qualifications and has complied with the requirements prescribed by this Constitution for admission as a member;
- (q) to manage and control the system of the *pro deo* appointments and the carrying out of *pro deo* work by members;
- (r) to control the carrying out of legal aid work by members;
- (s) to manage and control the carrying out of *in forma pauperis*, *amicus curiae* and *pro bono* work by members;
- (t) to exempt any applicant for membership, on good cause shown, from the pupillage requirements of the Cape Bar;
- (u) to represent the Cape Bar in legal or other proceedings in so far as may be permitted by law in regard to any matter affecting the Cape Bar or any member of the Cape Bar;
- (v) to institute proceedings for the removal of the name of any member or other advocate from the roll of advocates;
- (w) to regulate and control access to and the use of the library and the Common room and other facilities of the Cape Bar;
- (x) to allocate, regulate and control the chambers occupied by members;
- (y) to require members to occupy chambers only in a building or buildings approved by the Bar Council;
- (z) to lease and sub-lease premises for the purposes of providing suitable chambers for members;
- (aa) to make loans or grants from the funds of the Cape Bar to such persons and upon such terms and conditions as the Bar Council sees fit and to administer the Bar bursary fund;
- (bb) to monitor all legislation or proposed legislation or other matters of any nature which may affect the advocates' profession, or the due

and proper administration of justice, and to take such action in regard thereto as may be desirable or necessary;

- (cc) to do all such other things as may, in its opinion, further the objects of the Cape Bar or are necessary for or incidental to the carrying out of those objects or the exercise of the abovementioned powers and duties.
24. The Bar Council may delegate any of its powers and duties to a committee of one or more members of the Cape Bar and the Bar Council may at any time terminate or modify such delegation.
25. Any decision of the Bar Council shall be binding on all members and pupil members of the Cape Bar. Save for decisions which are subject to appeal to the General Council provided for in clauses 5 and 33 of this Constitution, any such decision shall be subject to a right of appeal by a member prejudicially affected thereby to a General Meeting of the Cape Bar, provided that written notice of intention to appeal be lodged with the Secretary not later than fourteen days after the decision shall have come to the notice of such member.

<p>Amendment: Clause 25 amended at General Meeting held on 18 April 2013</p>

VI. RULES AND DISCIPLINE

26. The Uniform Rules of Professional Ethics (“the Uniform Rules”), together with such amendments to such rules as may be made by the General Council from time to time, shall apply to and be binding on all members of the Cape Bar, save to the extent that the Cape Bar in general meeting may revoke or amend any of the Uniform Rules insofar as it applies to the members of the Cape Bar.
27. The Rules of the Cape Bar relating to Practice and Professional Conduct (“the Cape Bar rules”) which are set out in annexure ‘A’ hereto, shall also apply to and be binding on all members of the Cape Bar.
28. The Bar Council shall be empowered to suspend or relax the operation of any rule with respect to any member in such circumstances as it may deem it appropriate to do so.
29. (a) The Bar Council shall enquire into the professional conduct of any member whenever it is in the opinion of the Bar Council desirable to do so. The Bar Council may delegate all or any of its functions in respect of such an enquiry to any committee consisting of two or more members of the Cape Bar whether or not such members are members of the Bar Council. The committee to whom any such

functions have been delegated shall be obliged to report the results of such enquiry to the Bar Council.

- (b) The procedure to be followed in such an enquiry shall, in each case, be determined by the Bar Council or the committee conducting the inquiry, in accordance with the matter to be investigated.
30. If the Bar Council, or a committee with delegated powers as aforesaid, having conducted an enquiry into the professional conduct of a member, decides that the member has been guilty of unprofessional conduct or a breach of the Uniform Rules or the Cape Rules or the provisions of this Constitution or conduct unbecoming an advocate, it may
- (a) caution, or reprimand or censure such member; and/or
 - (b) impose a fine not exceeding R5 000,00 (or such other maximum amount as the Bar Council may in future determine in the light of any future change in the value of money); and/or
 - (c) **[deleted at General Meeting held on 10 May 2000]**
 - (d)
 - (i) suspend such member's membership for a period not exceeding six months or suspend such suspension subject to such conditions as it may deem fit; or
 - (ii) expel the member from membership of the Cape Bar or suspend such expulsion subject to such conditions as it may deem fit; and/or
 - (e) order the member concerned to pay the costs incurred by the Bar Council for purposes of such enquiry;
 - (f) order the member concerned to pay the reasonable accommodation and travelling costs of complainants and their witnesses incurred in respect of:
 - (i) pre-enquiry consultations and preparation with the Bar Council's nominated prosecutor(s); and/or
 - (ii) attending the enquiry; and/or
 - (iii) testifying at the enquiry

provided that no actual suspension or expulsion from membership shall take effect unless ratified by the Bar Council itself.

The effect of a suspension of membership in terms of this Constitution shall, save as may otherwise be determined by the Bar Council in any case, be that during the period of the suspension the member concerned-

- (i) shall not hold him- or herself out as a practising member of the Cape Bar;
- (ii) loses all the privileges of membership of the Cape Bar, including the use of all facilities provided by the Bar Council;
- (iii) shall not practise from or occupy the chambers allocated to him/her;
- (iv) shall not hold a brief or act professionally in any way with another member of the Cape Bar or any advocate who is a practising member of a constituent or associate Bar of the General Council in any matter.

A suspension of membership in terms of this Constitution shall not relieve the member concerned of any obligations attached to membership, including payment of bar dues, levies and other charges to be paid by members, rental of chambers, payment of floor and/or group dues and compliance generally with the provisions of this Constitution.

30. bis Publication to members of findings in disciplinary matters shall take place as a matter of course, except in exceptional circumstances and will no longer be a sanction as contained under Clause 30. No results of any disciplinary proceedings will be circularised to members until such time as the *dies induciae* within which to lodge an application for leave to appeal have expired or the appeal proceedings have been determined, save in exceptional circumstances.

Replacement:	Clause 30 (c) deleted and new clauses 30 (f) and 30 bis added at General Meeting held on 10 May 2000
Amendment:	Clause 30 amended at General Meeting held on 22 April 2008
Amendment:	Clause 30.bis at General Meeting held on 18 April 2013

31. (a) Whenever a member fails to pay any dues, levies, or other charges, referred to in clause 23(g), within five days of due date, the Bar Council shall send such member a letter notifying such member that:
- (i) unless the amount in question is paid in full within seven days of such notice being delivered to the member's chambers, the member's name shall be posted on the notice board as a defaulter;

- (ii) should the member still fail to pay the amount or any part thereof within seven days of such posting, such member's membership of the Bar shall be automatically suspended, unless the Bar Council for good cause shown decides otherwise, and that the member shall be required to appear before the Bar Council to show cause why further disciplinary steps should not be taken.

Replacement: Clause 31 (a) amended at the General Meeting held on 24 April 2007

- (b) Should the member fail to pay the amount in question in full, as envisaged in sub-clause (a) (i) above, the Bar Council shall cause the member's name to be posted as aforesaid.
- (c) Should the member thereafter fail to pay such amount in full, as envisaged in sub-clause (a) (ii) above, such member's membership shall be automatically suspended unless the Bar Council for good cause shown decides otherwise, and the Bar Council shall require such member to appear for the purpose aforesaid.

31. bis A member shall be obliged to make payment of all rental, dues and levies attendant on the member's occupation of chambers allocated by the Bar Council, including floor dues and group dues. A failure by a member to comply with this obligation shall constitute conduct unbecoming an advocate within the meaning of clause 30, unless the Bar Council determines otherwise on good cause shown.

Amendment: Clause 31.bis added at General Meeting held on 22 April 2008

- 32. (a) No member shall be disqualified from taking part in any disciplinary enquiry by reason merely of the fact that such member has received information, otherwise than in the course of the investigation, about any matter forming the subject matter of the investigation.
 - (b) It shall be the duty of every member and pupil member to furnish to the Bar Council or a committee to whom the disciplinary functions have been delegated, all such information as such member may be called upon to furnish and to produce to the Bar Council or such committee all such books, documents or other records as such member may be called upon to produce.
33. (a) In any disciplinary proceedings the decision, finding or sentence (hereinafter "the decision") of the Bar Council or of a committee with delegated powers and the reasons for the decision shall be

furnished to the member or complainant in writing within seven (7) days of the date of the decision.

- (b) There shall be no automatic right of appeal by a member or complainant to the General Council against a decision of the Bar Council in any disciplinary proceedings.
- (c) Application for leave to appeal shall be made in writing within two (2) weeks after the date upon which the written decision with reasons was furnished to the member or complainant by the Bar Council or committee with delegated powers.
- (d) The application for leave to appeal shall be lodged with the Secretary of the Bar Council. The application shall state and motivate the grounds upon which leave to appeal is sought and shall, if lodged outside the period specified in (c), be accompanied by a written application for condonation, setting forth the reasons for the non-compliance.
- (e) The application for leave to appeal shall be heard by the Bar Council or the committee with delegated powers (alternatively a committee consisting of at least three senior Counsel) within three (3) weeks after the application for leave to appeal was lodged, on a date, time and place to be decided by the Bar Council or the committee. The period of three (3) weeks may in exceptional circumstances be extended by the Bar Council.
- (f) The Bar Council or the committee shall deliver a written decision with reasons for its decision to grant or refuse the application for leave to appeal within two (2) weeks of the hearing of the appeal.
- (g) If leave to appeal be granted by the Bar Council or the committee then the member or the complainant shall appeal to the General Council in terms of and subject to the relevant provisions of the Constitution of the General Council relating to appeals.
- (h) If leave to appeal be refused by the Bar Council or the committee, the member or the complainant shall apply for leave to appeal to the General Council in terms of and subject to the relevant provisions of the Constitution of the General Council relating to applications for leave to appeal.
- (i) This clause shall not affect the right of appeal of any person whose application for membership has been refused by the Bar Council as provided for in paragraph 5.

Amendment: Clause 33 at the General Meeting held on 18 April 2013
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VIII. PROPERTY AND FINANCE

34. The property and funds of the Cape Bar shall be vested in the Bar Council which shall be capable of suing and being sued on behalf of the Cape Bar.
35. Each member shall be liable to pay to the Bar Council such dues, levies and charges as the Bar Council may determine from time to time.

IX. PUPILLAGE

36. The Bar Council shall administer a system of pupillage at the Cape Bar in order to enable prospective members to obtain experience and training in the practice of advocacy.
37. The admission of pupil members shall be subject to the provisions of the Uniform Rules relating to pupils.
38. The system of pupillage shall be administered in accordance with and subject to the provisions of the Uniform Rules relating to pupils.
39. The Bar Council may terminate or suspend the membership of any pupil member or caution, reprimand or censure such member if, after due enquiry, such member's conduct has been found to be unprofessional or unbecoming a pupil member of the Cape Bar or in breach of the rules applying to pupils.
40. A pupil member shall cease to be such:
 - (a) if such member's name is removed from the roll of Advocates of the Supreme Court of South Africa;
 - (b) upon resignation duly accepted by the Bar Council;
 - (c) upon expulsion or suspension of the membership of such pupil member;
 - (d) upon completion of the prescribed period of pupillage.

X. GENERAL

41. This Constitution may be amended by a majority of members present and voting at a General Meeting provided that at least fourteen (14) days' notice in writing of the proposed amendment shall have been given by the Secretary to all members of the Cape Bar by causing a copy of such notice to be delivered at or posted to such members' chambers.
42. All existing members of the Cape Bar as at the date of the approval of this Constitution shall upon such adoption be bound by the provisions of this

Constitution and shall be deemed to have consented to the obligations imposed hereunder.

43. The Constitution of the Cape Bar, as amended from time to time, which was in force immediately prior to the adoption of this Constitution, shall be revoked in its entirety together with the Rules of the Cape Bar relating to Practice and Professional Conduct which were binding in terms of such constitution, provided that the Cape Bar Rules set out in Annexure A hereto shall remain in force in terms of clause 27 hereof.
44. All decisions taken and rulings made, and the election of members of the Cape Bar Council, to the extent of the unexpired portion of their terms of office, in terms of the provisions of the Constitution revoked in terms of clause 43 hereof, shall be deemed to be decisions, rulings and elections in terms of this Constitution.
45. This Constitution was approved and adopted at the Annual General Meeting of the Cape Bar held on 26 April 1993.

NOTE

The Constitution was amended at the Annual General Meeting held on 9 April 1999 by the insertion of new clauses 19, 20 (e), (f), (i) and 21 (a) and the deletion of clauses 20 (g) and (h). These provisions were not extended and they lapsed, with effect from the Annual General Meeting on 10 May 2000, with the consequence that the prior clauses 19, 20 (e) (f), (g), (h) and (i) and 21(a) revived.

ANNEXURE A

RULES OF THE CAPE BAR RELATING TO PRACTICE AND PROFESSIONAL CONDUCT

1. Old Cape Rule No 7

7. Counsel shall not take instructions or fees otherwise than through the medium of an attorney, or duly qualified law agent, except
- (a) at the request of the Court or the Attorney General;
 - (b) in criminal cases in Superior Courts (other than criminal appeals) at the request of the accused, provided:
 - (i) the prior written permission of the Bar Council has been obtained. In cases of urgency where such prior permission cannot be obtained, Counsel shall as soon as possible submit to the Secretary of the Bar Council for consideration by the Council a written report setting out the circumstances under which instructions were taken;
 - (ii) the fee charged shall be the minimum fee prescribed in these Rules for criminal cases.

This Rule does not affect the existing practice with regard to:

- (a) Opinions;
- (b) Conferences;
- (c) Legal advisers to the Medical Council, Pharmacy Board or such other body as the Bar Council shall approve;
- (d) *Pro amico* appearances in terms of Rule 25.

2. Old Cape Rule No 12

12. Save under special circumstances, Counsel shall not hold a brief to appear, other than a brief to note judgment in a matter in which he has already been engaged in any other matter in a different court. Provided that this Rule shall not apply:
- (a) where a brief is delivered after another matter for which Counsel has been briefed for that day has been disposed of;
or

(b) to matters fixed for hearing outside the ordinary Court hours.

Wherever a brief is so held under special circumstances, the fact that it was so held and the special circumstances in question shall immediately be reported in writing to the Bar Council.

3. Replacement of Uniform Rule 4.29.1

4.29.1 It is not improper for Counsel to recommend other Counsel to attorneys or lay clients when asked to do so for the purpose of assisting such attorneys or clients in obtaining the services of Counsel with the expertise or experience appropriate to the matter in question, provided that such recommendation is not made for any other purpose.

4. Old Cape Rule No 31

31. Fee lists shall be sent out within seven days of the last day of each month.

5. Old Cape Rule No 32

32. The Fee lists shall include all fees accrued up to and including the last day of the period (whether the work has yet been done or not), but shall not include fees accruing after the last day of the period and before the sending out of such lists.

6. Old Cape Rule No 33 (as amended on 29/4/91)

33. An attorney shall be liable to pay Counsel's fees as follows:

33.1 (a) Where the fee or the basis of the calculation thereof has been agreed between the Counsel and attorney, to the full extent so agreed;

(b) Where the fee has not been agreed between Counsel and attorney, to the extent to which the fee is reasonable.

33.2 In all matters, fees shall be paid within two months calculated from the first of the month following the month in which the fees accrue, unless Counsel has for good cause agreed with his attorney prior to accepting the brief for that

appearance that his fees, including any fees incurred in the course of preparation for such appearance may, subject to the provisions of Rule 33.8, be paid over a longer period (whether or not in instalments), in which event the fees shall be paid in accordance with such agreement.

- 33.3 Notwithstanding Rule 33.2 above, if the attorney has been placed in funds, he shall be obliged to pay Counsel's fees on presentation of his month end account.
- 33.4 An agreement as referred to in Rule 33.2 above shall only be varied by Counsel with the approval of the Bar Council. Where no special agreement is reached or where the attorney finds himself unable to comply with the agreement, an agreement to afford the attorney further time for payment or for Counsel to continue the matter on a contingency basis may only be concluded with the approval of the Bar Council. ("Contingency basis" means a fee dependent on success of the matter.)
- 33.5 In an appropriate case, such as the unforeseen insolvency of the client, Counsel may, with the approval of the Bar Council, waive fees already incurred, or any portion thereof.
- 33.6 Where fees become overdue because:
- (a) no special agreement has been concluded and they have not been paid within the period prescribed in Rule 33.2 and 33.3 above;
 - (b) they have not been paid timeously in accordance with any special agreement in regard to which the failure to pay any agreed instalment on due date shall render that portion of the fee overdue;
 - (c) payment is not made in accordance with any amended agreement or extension of time approved by the Bar Council:
 - (i) Counsel shall affix to his fee note a sticker requiring the attorney to pay within seven days;
 - (ii) In the event of payment not being received, Counsel shall be obliged to report such non-payment to the Secretary of the Bar Council, who in turn shall report the matter to the Secretary of the Law Society, to take such

steps against the defaulting attorney as the Society deems fit;

- (iii) In the event of payment not being received within thirty days of the Secretary of the Law Society being so advised, or upon the Secretary of the Law Society sooner advising the Secretary of the Bar Council that the attorney concerned should be placed on the list of defaulters, the Secretary of the Bar Council shall place the attorney on the list of defaulters.

33.7 Once an attorney is placed on the defaulters list he shall be entitled to have his name removed therefrom on paying all fees which were overdue for payment by him at the time he was placed on the defaulters list.

33.8 Counsel shall not be entitled:

- (a) to conclude an agreement for the payment of his fees over a period longer than six months without first obtaining the approval of the Bar Council thereto;
- (b) to enter into any agreement with an attorney for the payment of his fees over a period longer than two months other than in accordance with these rules;
- (c) to enter into an agreement in accordance with Rule 33.2 hereof, unless there exists good cause for his doing so.

33.9 Where Counsel enters into an agreement with his attorney contrary to the provisions of this rule he shall be guilty of unprofessional conduct, and shall not be entitled to invoke the provisions of the defaulters rules to enforce payment of his fees by that attorney until fees become overdue in accordance with the agreement concluded by him with his attorney.

7. COLLAPSE FEES

- 7.1 For purposes of this rule, the term “*collapse fee*” means a fee in excess of one refresher, charged by counsel in respect of days reserved for the hearing of a matter which for any reason does not run on those days.
- 7.2 Notwithstanding the provisions of rule 7.1.2 of the Uniform Rules of Professional Ethics, the provisions set out hereunder apply to the charging of collapse fees.
- 7.3 Subject to 7.6 below, it is improper for counsel to charge a collapse fee:
- 7.3.1 unless the brief for the hearing was accepted on the basis that a collapse fee would be charged and such basis was recorded in writing at the time of acceptance of the brief; or
- 7.3.2 unless, after acceptance of the brief, counsel concludes that owing to circumstances not apparent when the brief was accepted it would be reasonable to charge a collapse fee, and the intention to charge a collapse fee is recorded in writing at the earliest opportunity after counsel so concludes;
- 7.3.3 and unless the collapse fee charged is in accordance with the said written recordal.
- 7.4 For purposes of the written recordal in 7.3, a letter (including an e-mail) by counsel to the attorney or *vice versa* suffices. Counsel shall retain a copy thereof until the collapse fee has been paid.
- 7.5 The written recordal in 7.3 shall set out fully the basis on which counsel will compute the collapse fee including any applicable daily rate.
- 7.6 Notwithstanding non-compliance with 7.3 to 7.5 above, counsel does not act improperly if he or she charges a collapse fee:
- 7.6.1 where, at the time the fee is charged, counsel’s instructing attorney agrees in writing that counsel may so charge, after such attorney has been informed by counsel that unless the attorney so agrees counsel will (subject to 7.6.2) not charge a collapse fee; or

Amendment: Rule 7 added at General Meeting held on 22 April 2010

7.6.2 if, despite the instructing attorney's refusal to agree as contemplated in 7.6.1, exceptional circumstances are present which warrant the charging of a collapse fee despite non-compliance with 7.3 to 7.5 above, in which event counsel shall, without delay and in writing, notify the Secretary of the Bar Council of the charging of the collapse fee and of the exceptional circumstances.

7.7 For purposes of 7.6.2, the fact that the proposed collapse fee would be a reasonable fee shall not in itself constitute exceptional circumstances.

7.8 Nothing herein shall derogate from counsel's duty to charge no more than a reasonable fee.

8. EMPLOYMENT AT LAW CENTRES

1. Members may accept full-time or part-time employment at a Law Centre or attend a Law Centre on a voluntary basis.

2. Such a member :

a. if in full-time employment of a Law Centre, shall be entitled to a remission of 50% of all Bar Dues;

b. if in part-time employment at a Law Centre, may be entitled to an appropriate remission of all Bar Dues as determined by the Bar Council on application by the member;

c. save as set out in this Rule, or with the consent of the Bar Council, shall be subject to all the rules and other responsibilities of membership of the Bar and be entitled to all benefits of membership of the Bar.

3. Subject to 6 below, a member in full-time employment of a Law Centre may appear as an advocate in a court or tribunal only upon the instruction of an attorney normally employed at that Law Centre.

4. A member in full-time employment of a Law Centre is not bound to accept a brief in any court in which he or she professes to practice other than a brief from an attorney normally employed at that Law Centre.

Amendment:	Rule 7 added at General Meeting held on 22 April 2010
Amendment:	Rule 8 added at the General Meeting held on 20 April 2011

5. Subject to 6 below, the remuneration of a member employed full-time at a Law Centre may, save with the approval of the Bar Council, only be by way of salary paid by the Law Centre.
6. A member in full-time employment of a Law Centre may, with the prior approval of the Law Centre and the Bar Council accept a brief from an attorney not employed at that Law Centre and be remunerated by such attorney for work done on that brief; or accept an appointment as an arbitrator and retain all or part of the fees earned by him or her from such appointment.
7. Notwithstanding a member being employed by a Law Centre and being paid a salary, such member shall at all times in the conduct of cases adhere to the principle of the independence of advocates.
8. A member employed at a Law Centre, whether part-time or full-time, may in no circumstances receive a fee directly from a client.
9. A member who accepts part-time employment at a Law Centre must notify the Council before accepting the part-time employment, of the terms relating to the nature and extent of the member's employment and subsequently of any proposed variation of those terms.
10. A member who is employed part-time at a Law Centre or who attends a Law Centre on a voluntary basis, may accept paid instructions in proceedings from an attorney employed by the Law Centre if he or she has not himself or herself advised the client, on whose behalf he or she is briefed at the Law Centre, in relation to those proceedings. Save as aforesaid, the remuneration by the Law Centre of a member who is employed part-time shall, save with the approval of the Bar Council, be by way only of salary, and a member who attends a Law Centre on a voluntary basis shall not be remunerated for doing so.
11. A member employed full-time or part-time at a Law Centre may appear as an advocate in courts or tribunals for clients of the Law Centre in accordance with the following rules:-

Amendment: Rule 8 added at the General Meeting held on 20 April 2011

- a. He or she shall not, save in special circumstances, appear without an attorney or other representative of the Law Centre, in attendance.
 - b. In respect of each appearance as an advocate, he or she must have a brief prepared in the name of the Law Centre and signed by an attorney employed by the Law Centre, indicating:
 - i. the name of the case;
 - ii. the court or tribunal;
 - iii. his or her name;
 - iv. the name of the Law Centre;
 - v. the nature of the brief.
 - c. The decision of the court or tribunal must be recorded on the brief which shall be returned to and kept by the Law Centre.
12. A member employed at a Law Centre or attending a Law Centre on a voluntary basis may do any of the following in connection with his or her work at the Law Centre without instructions of an attorney:
- a. Interview and take statements from clients or witnesses at his or her discretion;
 - b. Write and sign letters on behalf of the Law Centre, provided that he or she does not add after his or her name the description of advocate;
 - c. Carry on correspondence with third persons and negotiate settlements on behalf of clients at the Law Centre;
 - d. Permit him or herself to be described as an advocate on letter headings and other official publications used at or distributed by the Law Centre;
 - e. Draft letters on behalf of clients at the Law Centre for signature by them; and
 - f. Draft pleadings on behalf of clients at the Law Centre for signature for them.

Amendment: Rule 8 added at the General Meeting held on 20 April 2011
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13. Chambers:

- a. A member who accepts full-time employment at a Law Centre is entitled to sublet his or her chambers to, or conclude a “Chamber Sharing Agreement” with another member for the duration of his or her contract on financial terms to be agreed between the members, provided that the contract period is a reasonable one. Details of any subletting or “Chamber Sharing Agreement” must be provided to the Bar Council or its relevant committee, which may impose reasonable conditions.
- b. A member who accepts full-time employment at a Law Centre may elect not to hold chambers for the duration of his or her contract period. However, where such a member does not hold chambers for a period of more than three years, he or she will not progress in his or her domestic seniority ranking after the expiry of such three-year period.
- c. Save with the consent of the Bar Council, a member who accepts part-time employment at a Law Centre must keep chambers and may not for that reason sublet his or her to, or conclude a “Chamber Sharing Agreement” with another member, or elect not to hold chambers.

14. The following bodies shall be Law Centres for purposes of this rule:

- a. the Legal Resources Centre;
- b. the Women’s Legal Centre;
- c. the Community Law Clinic of the University of the Western Cape;
- d. the Legal Aid Clinics of the Universities of Cape Town, Stellenbosch and Western Cape; and
- e. any other body that may be recognised by the Bar Council.

Amendment: Rule 8 added at the General Meeting held on 20 April 2011
