

Kate Peniston

From: Kate Peniston <kznbar@law.co.za>
Sent: Tuesday, 20 August 2019 14:31
To: 'Engela Pienaar'
Cc: pearlm@lpc.org.za
Subject: RE: PENDING LITIGATION MATTERS
Attachments: Annex - July Report on Pending Litigation Matters.doc

Importance: High

Dear Engela

Please find attached herewith the Pending Litigation Matters spread sheet with the Society's matters included.

I trust you find the above in order.

Kind regards
Kate Peniston

From: Engela Pienaar <engelap@lpc.org.za>
Sent: Friday, 16 August 2019 12:03
To: Kate Peniston - Society of Advocates of KZN <kznbar@law.co.za>
Subject: PENDING LITIGATION MATTERS
Importance: High

Dear Ms Peniston

I enclose herewith our report regarding pending litigation matters. The Council **resolved** at the July meeting that the report of the Society of Advocates be incorporated into the existing template. It will be appreciated if you can add the litigation report of the Society of Advocates at the end of the Schedule and let me have same by not later than Tuesday, 20 August 2019 to enable me to upload the Agenda by not later than Wednesday morning.

Kind regards

ENGELA PIENAAR
Secretary to the Director

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LEGAL PRACTICE COUNCIL: KWAZULU-NATAL
REPORT ON PENDING LITIGATION MATTERS

ITEM	REF NO.	NATURE OF MATTER / RESPONDENT DETAILS	STATUS OF MATTER / PROGRESS OF MATTER / OUTCOME OF MATTER
1.	NH/C5/13792012	<p>Suspension Application: [REDACTED]</p> <p>The conduct which forms the basis of the Suspension Application against [REDACTED] is his failure to respond to the complaint lodged by [REDACTED]</p>	<p>The Provincial Council is to note that the Application was heard on 20 June 2019. The Respondent filed his Answering Affidavit and the matter was adjourned <i>sine die</i>. The Applicant was ordered to file its Replying Affidavit by 2 August 2019. The Respondent tendered the costs of the adjournment on an Attorney and client scale.</p>
2.	NH/11092018	<p>Suspension Application: [REDACTED] [REDACTED]) : Closing Requirements</p>	<p>The Provincial Council is to note that the Application papers have been finalized and are in the process of being signed.</p>
3.	NH/V0108/12	<p>Strike-Off Application: [REDACTED]</p> <p>The conduct which forms the basis of the Strike-Off Application is that [REDACTED]:</p> <ol style="list-style-type: none"> 1) Failed to properly attend to the administration of the deceased estate. 2) Wrongfully appropriated R182 670,20 in respect of fees which were due to the deceased estate. 3) Misrepresented to the Executor that she submitted four Liquidation and Distribution Accounts when in fact only one was submitted. 4) Unlawfully claimed a fee of 6% in respect of the deceased business from the period (October 2008 to May 2010). 	<p>The Provincial Council is to note that the Application for Strike off was pended as the Respondent had lodged an Appeal. The Panel Attorneys have filed their Heads of Argument and Practice Notes. We are awaiting the Notice of Set Down.</p>

		<p>Vahed J submitted a complaint to the Society to the effect that when ██████ appeared before Steyn J in an urgent application, she alleged that she had been instructed by a firm of attorneys, but those attorneys denied having instructed her. The Complaints Committee recommended that an application be brought for ██████'s striking-off.</p>	<p>Senior and junior counsel were appointed by the Society to draft the necessary application papers. This has not occurred as yet. Junior counsel has been replaced and the new Junior has been instructed to expedite the production of a draft set of papers for submission to senior counsel.</p>
20.	Advocate	<p>Application to Strike-off A Brink</p> <p>Brink made serious allegations regarding the conduct of Mr Justice Mlambo and Mr Justice Waglay, who are currently the Judge President of the North Gauteng High Court and the Labour Court respectively. The allegations arose from their refusal to recommend Brink for appointment to the staff of the Legal Aid Board in Pietermaritzburg. Brink alleged that the two Judges acted male fides in doing so with the intention of damaging his career.</p> <p>The complaint involved many volumes of documents. After considering the same, the Committee decided that Brink's allegations were unfounded and contemptuous of the two Judges. It accordingly recommended that striking-off proceedings be brought against him. When Brink learnt of this decision, he contacted the Society and requested to be allowed to make representations before any final decision was made in this regard. The Society agreed that he may do so. Brink then delivered written representations which, together with annexures, exceeded 250 pages. The Complaints Committee re-considered the matter in the light of these representations but still determined that an</p>	<p>The Society's Complaints Committee recommended that an application be instituted for Brink's striking-off. Brink lodged a complaint with the Judicial Service Committee and Litigation Committee recommended that the decision of the Judicial Misconduct Sub-Committee should be awaited before proceeding with the proposed strike-off application. If a decision is not received before the next report of the Litigation Committee falls due, the Litigation Committee will advise the Bar Council on resolving to institute a strike-off application against Brink.</p>

		<p>application should be brought for his striking-off.</p> <p>Simultaneously with lodging the written representations, Brink lodged a complaint with Page 4 the Secretariat of the Judicial Services Commission ("the JSC") regarding the conduct of Justices Miambo and Waglay. This complaint has apparently been referred to the Judicial Misconduct Sub-Committee of the JSC. Whilst the Society is of the view that there is no substance to Brink's complaint, it is of the view that it would be advisable to await the decision of the Judicial Misconduct Sub Committee on the complaints, before proceeding with the striking-off application.</p>	
21.	Advocate	<p>Application to Strike-off [REDACTED]</p> <p>Complaint by [REDACTED]</p> <p>[REDACTED]</p>	<p>During late 2018 the Council referred to the Committee a complaint against Advocate [REDACTED] in respect of which the Complaints Committee had recommended that a strike-off application be instituted. The complaint is to the effect that Phewa took an amount of R50 000.00 from a client with regard to the transfer of a property, but the property was never transferred and the monies never refunded. A further complaint was thereafter received against Phewa which was then referred to the Complaints committee and is pending. The Litigation Committee has appointed counsel to consider the merits of an application to strike-off Phewa based on the first complaint and, if considered to be of merit, to draft the necessary application whereafter the Litigation Committee will make appropriate recommendations to the Bar Council.</p>
22.	Advocate	<p>Litigation matter: Advocate [REDACTED]</p> <p>This is not a "complaint" in the true sense of the</p>	<p>A draft affidavit has been prepared for signature by the Chairman. In terms thereof, inter alia, it is pointed out</p>