

Letters to the editor

The application of rule 3A(1)(b)(A)

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There are people, probably many, who believe, as I do, that the road to the Bar that entails a sojourn in the attorneys' profession must be encouraged or recommended.

A common requirement for entry into both branches of the legal profession is that one must be a fit and proper person. There are, of course, other entrance requirements and they differ according to the branch that one enters. I have always assumed that membership of either branch of the profession endures on the basis that the member continues to be fit and proper. From that my further assumption was that the Law Societies and the Bars would always be ready to certify their members to be fit and proper persons except those members against whom there are pending or contemplated disciplinary or striking off proceedings. My recent experience has proved me to be assuming too much.

High Court Uniform Rule 3A(1)(bA) provides:

"...a person applying for admission to practise and for authority to be enrolled as an advocate shall, ...if he previously was admitted or practised as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practised to the effect that, *in the opinion of the law society concerned, he is a fit and proper person*" (my emphasis).

This paragraph was inserted in rule 3A just over twelve years ago. One would be forgiven to imagine that people who deal with the rule – practitioners, the courts and the law societies would by now know their way around this simple and straightforward provision. That is regrettably not the case, though, so it seems.

Inconsistency

The Law Society of the Cape of Good Hope has been inconsistent in its handling of the rule. The director of the Law Society indicated in January 1999 that she could not issue the certificate provided for in the said paragraph.

In a letter dated 8 January 1999 the reason was explained thus:

"The Society certifies that information which it holds, either by way of original or certified documentation. Only Council can form an opinion as to whether a person is fit and proper to practise as an attorney (sic). In order to issue a certificate declaring Mr Mnyatheli (and any other applicant in his position) to be fit and proper to practise as an attorney [advocate] he should be interviewed by Council."

Before an application for approval and registration of articles of clerkship can be considered by the Law Society at least two members of a circle committee, a sub-structure of the Law Society, must interview the applicant and certify him or her to be a fit and proper person. Upon application for admission as an attorney, via the conventional route of serving under articles of clerkship, the erstwhile principal of the applicant certifies similarly. I have always thought that the Law Society keeps a record of each one of their members. Could I be wrong? If I am indeed not wrong is this not part of information that the Law Society holds? This was, however, not the last word on the matter from the Society.

In subsequent communication the Law Society of the Cape of Good Hope has made it clear that a certificate that anyone of their members is, in its opinion, a fit and proper person will never come from them with or without an interview by its Council. Council apparently has a standing resolution to that effect.

Some courts settle for a certificate that only says that up to the time of removal of the applicant's name from the roll of attorneys on his or her own application no proceedings were pending or contemplated to suspend or remove him or her from practice. I was admitted in the Witwatersrand Local Division on that basis. This was, of course, after I had had to abandon my application for admission in the Eastern Cape Division because my application for removal from the roll of attorneys of that court was delayed because the Law Society insisted, *inter alia*, on certified copies of my identity document and the court order of admission.

In the meantime Mr Mandla Mnyatheli was initially refused admission as an advocate in the Transvaal Provincial Division because he was previously an attorney falling under the jurisdiction of the Cape Law Society and could not obtain and furnish that court with a certificate worded as rule 3A(1)(bA)

provides. He was only admitted on 13 January 2000 after several months' delay!

I wonder how many people migrating from the roll of attorneys to that of advocates have experienced this kind of difficulty or will in future experience it. I am bringing it up so that it be addressed before the uncertainty currently prevailing can delay, if not harm, more people.

Regshulpfooie

Gené Visage
Pretoriase Balie

Die nuwe regshulpfooie van toepassing op strafverhoor in die Hooggeregshof: artikel 35(f) en (g) van die Grondwet het 'n klinkende simbaal geword.

Op 1 November 1999 het die nuwe regshulpfooie in bogemelde sake in werking getree. Ter toeligtig, die fooie van toepassing voor 1 November 1999 (gerieflikheidshalwe word die woord "praktisyns") gebruik waar advokate en prokureurs met hooggeregshofverskyningsbevoegdheid bedoel word):

Praktisyns met 0 - 5 jaar ondervinding:

R1000/dag

Praktisyns met 5 - 10 jaar ondervinding:

R1 400/dag

Praktisyns met 10 jaar ondervinding:

R1 800/dag

Addisioneel tot bovermelde fooie was praktisyns geregtig op R150 per konsultasie wat voor die verhoordatum plaasgevind het, verblyfkoste en R1/km vervoerkoste ('n bedrag wat in elk geval algemeen 'n derde is van die AA-parameters) en 'n fooi van R1/p vir deurlees van dossiere.

Van groot belang was dat alle fooie van toepassing was hetsy:

- 1 Die saak op die betrokke dag 'n aanvang geneem het;
- 2 uitgestel was VIR WELKE REDE OOKAL; en
- 3 ongeag die tydsduur wat die verhoorhof in sitting was.

Ek meld ook dat die fooie in elk geval slegs ongeveer 'n kwart van die fooie is wat advokate ingevolge die nuutste parameters per verhoordag toegelaat word.

Die voordele wat onder hierdie "ou" fooie-struktuur gegeld het, was dat praktisyns beskikbaar was om:

- 1 die Regshulpraadinstruksie te aanvaar;