

## STEP BY STEP GUIDELINE: APPLICATION FOR ADMISSION AS AN ATTORNEY

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### MICHELLE BEATSON

This step-by-step practice note is only a guideline and is not intended to be a comprehensive treatment of the subject.

This series of step-by-step practice notes is published in co-operation with the Law Society's Practical Legal Training department.

The requirements for admission are summarised in s 15 of the Attorneys Act 53 of 1979 (the Act), but ss 2 to 19 and 24 of the Act, and reg 5 promulgated in terms thereof, deal with all the issues that should be addressed in the application. The application consists of an ex parte notice of motion, a founding affidavit by the applicant, supporting affidavit(s) by the applicant's principal(s) and annexures to prove the allegations made in the affidavits. The application should be issued at court (a date of hearing can be obtained from the Registrar) and is then formally served on the relevant law society. (The Free State does not insist on issuing by the high court prior to service on the law society. The applications can be enrolled in that province one-week prior to the date of hearing.)

The original application for admission together with a copy thereof and copies of all affidavits, certificates and documents in support of the application must be left with law society for a period of at least one-month before the date of admission application, as required in terms of ss 19(1) and 24 of the Act. The Law Society of the Cape of Good Hope is the only law society, which allows a candidate attorney to submit his application for admission as an attorney before the expiry date of the contract of articles. The candidate attorney and his principal submit supplementary affidavit which should be lodged at the law society at least ten days prior to the set down of the application for admission, in which they both confirm that the contract of articles has indeed expired.

The prescribed fee in terms of s 80 of the Act is R342,00 (VAT included). Should the applicant also apply for admission as a conveyancer and/or notary, another R342,00 should be added for each further admission. In the case of admission as a notary and/or conveyancer only, another R5,70 should be added for each good standing certificate in terms of s 18(1)(c) of the Act (R114.00 for a certificate of good standing from the Law Society of Cape of Good Hope).

If the attendance report relating to the approved practical legal courses does not reflect full attendance, the court may require an explanation.

If the applicant has to apply for condonation, this must be stated in the first prayer of the notice of motion. The second prayer will ask for admission as an

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attorney. The principal must state in his affidavit that he is aware of the fact that the applicant is seeking condonation and that he supports the granting thereof. The most common types of condonation are set out below:

- Section 2(1A): reducing the period to be served under articles of clerkship from two years to one year after the attendance at the full-time practical legal training school, where a two-year contract had been signed.
- Section 11(2): joining of two periods served under different contract.
- Section 11(3): recognising any period served prior to
  - cancellation/abandonment of the contract
- Section 13(3): reducing the period to be served under articles of clerkship from five or three years and recognising the period served prior to obtaining a BProc of LLB

The most frequent problems arise from the use of inappropriate precedents, which often still refer to requirements that are no longer valid such as the language requirements and reference to the Internal Security Act 74 of 1982. These problems can be avoided by following the guidelines contained in this note.

### **The founding affidavit should contain the following:**

- Confirmation of the jurisdiction of the court.
- Confirmation of the date of birth of the applicant.
- Confirmation of the applicant's citizenship/permanent residence.
- Confirmation of the applicant's academic qualifications (degree(s)). The applicant must make specific allegation in relation to the time period studied at the University for the degree(s). It must be alleged that in satisfying the requirements of the LLB degree, a period of study of not less than four years was pursued.
- Confirmation of the date of signing of the contract of articles of clerkship.
- Confirmation of that date of registration of the contract of articles of clerkship.
- Confirmation that the principal(s) was/were entitled to enter into a contract with the applicant (specifically ss 3(1) and 3(3)).
- Confirmation of service under the direct supervision of the principal (s 6).
- Confirmation of absence of not more than 30 working days (s 7).
- Confirmation that the applicant had no pecuniary interest in any law practice and that he had no position other than that of candidate attorney (s 9).

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- Confirmation of the exact period (dates) served under contract of articles of clerkship.
- Confirmation that the applicant has passed the attorneys admission examination in terms of s 14(1) (a), (b) and (c).
- Confirmation of the applicant's attendance at an approved practical legal training course (if full attendance is not reflected, explain).

### **NOTE:**

Confirm in the affidavit that the part-time courses that were attended comply with the provisions of s 15(1)(b)(ivA) and were approved by the law society or that the attendance of the full-time practical law school complies with the provisions of s 2(1A) was approved by the law society). If the night school was attended on a full-time basis, it should be confirmed that the school was attended after-hours and that it did not interfere with the daily duties of the applicant as a candidate attorney.

- Confirmation of the type of legal experience gained while serving under a contract (be specific). (This information is not insisted on by the Law Society of the Free State and the Law Society of the Cape of Good Hope).
- Confirmation that the applicant has not been admitted as an advocate or attorney of any court and has not made application for such admission previously and that the applicant has never been struck from the roll of attorneys;
- Proof that the applicant is a fit and proper person to be admitted which consists of
  - confirmation of no previous criminal convictions and no criminal investigations pending;
  - confirmation of no previous civil judgement and no civil proceedings pending;
  - confirmation of no previous disciplinary actions by the law society, university or previous employer (if applicable) and no disciplinary actions pending;

The facts should be fully disclosed to the court if there are any of the above allegations against the applicant (previously or pending).

- Confirmation that the applicant's estate has not been sequestrated and that there are no application for sequestration pending.
- Confirmation that the originals of all the annexures will be available to the court at the hearing of the application.

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- Confirmation that prescribed notice in terms of s 19(1) was given to the Law Society and that the prescribed fee in terms of s 19(2) has been paid.

### **The principal's supporting affidavit should contain the following:**

- confirmation of the exact period that applicant served with him;
- confirmation of absence of not more than 30 working days (s 7);
- confirmation that the applicant had no pecuniary interest in any law practice and that he had no position other than that of candidate attorney (s 9);
- confirmation that he is of the view that the applicant is a fit and proper person to be admitted as an attorney. If the applicant had more than one principal, please attach an affidavit by each principal.

Certified copies of the following should be attached as annexures to the application which annexures must be certified by an Independent Commissioner of Oaths who is not affiliated with the applicant's firm, and the annexures to be initialled by both the applicant and the Commissioner of Oaths:

- ID document;
- marriage certificate (if applicable);
- copy(ies) of degree certificate(s);
- copy of the contract of articles of clerkship (in the Cape of Good Hope this is attached only if the applicant has served articles of part thereof in another province);
- cession agreement (consisting of cession agreement and affidavits by cessionary and cedent in terms of s 10 of the Act) – where applicable (in the Cape of Good Hope this is attached only if this period was served in another province);
- attendance report at the part-time courses or full-time practical law school.

Applications should be accompanied by full contact details of the applicant to ensure that the applicant can be reached should further information be required, and also to enable the law society to address correspondence relating to the Attorneys Fidelity Fund and membership fees to the newly admitted attorney.