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Gaa
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21 November 2018

From: The Executive Committee of the GAA
Per: Co-chairpersons, Chantelle Gladwin-Wood and Tiaan Joubert
Email: gladwin@schindlers.co.za

To: Legal Practitioners' Fidelity Fund
Per: Motlatsi Molefe, CEO
Email: attorneys@fidfund.co.za

COPY TO:

To: Joburg Attorneys' Association (JAA)
Email: hilde@smithlaw.co.za

To: Pretoria Attorneys' Association (PAA)
Email: tiaan@joubertlaw.co.za;

To: Soweto Legal Fraternity (SLF)
Email: Mulalo.nemakanga@gmail.com

To: Westrand Attorneys' Association (WAA)
Email: hilde@smithlaw.co.za

Dear Mr Molefe

RE: QUERIES ARISING FROM IMPLEMENTATION OF LPA

1. The above refers.

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2. As the GAA we exist with the sole purpose of assisting our members and promoting the common interests of the attorneys' profession.

3. As the GAA we have been receiving an unprecedented number of queries regarding the operation of the LPA and its rules and regulations. We are dealing with these as best we can, but we don't have all the answers, and there are a lot of people who need a lot of information. We imagine that the role of the local attorneys' associations will expand in the next year, not only in terms of providing much needed assistance to single practitioners and small firms in relation to courts and other "operational" issues that we have always dealt with at a "grassroots" level, but also in relation to advising and guiding members on how the "new regime" will work with the coming into effect of the LPA. There are still many lacunae to be filled and in this regard too (if we are engaged for assistance) we hope to be able to assist with meaningful comment, or content.

4. In this regard we, as the GAA, can be of help to the Legal Practitioners' Fidelity Fund. We have a database of members that we can communicate with almost instantaneously via email and a social media following that has an enormous "reach". We are happy to assist you in whatever way necessary in sharing your communications as quickly and as widely as is possible.

5. We can also ask members questions in polls and electronically collate the responses. As we operate on the mandate of our members, it is critical for us to gauge member opinion when issues of concern are brought to our attention. Unless it is obvious that the issue concerned is one shared by all of our members, we are duty bound to investigate before taking action, lest we offend. We can assist the Fidelity Fund with polls too, should it require same.

6. We also hope that we can forge a stronger working relationship in order that queries from the public and the profession can be resolved and the resolution communicated quickly and efficiently. In this regard we foresee difficulties arising if each of the many queries that have already arises (and the numbers more that will

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arise) are addressed piece meal, and communicated only to those who addressed them, as it would undoubtedly save everyone time and effort if once a query is answered, that answer is communicated publicly as quickly and efficiently as possible. You must be dealing with countless queries from other organisations and practitioners, so we understand that the streamlining of the process (at the very least from our side) would assist you.

7. To this end we would ask that we could open a 'direct line' of communication with you, such that we can obtain answers to queries and distribute them for the Fidelity Fund as efficiently and with as little hassle as possible. Please would you address us in relation to any thoughts or ideas that you might have here.

8. At present, we are receiving many queries in relation to the following issues and would be grateful if you could give us an urgent answer (which we can then distribute).

8.1 Section 86(4) investments

These are investments made by attorneys on behalf of clients, in 'separate' investment accounts for each client. The Fidelity Fund takes 5% of the interest earned even though there is no protection to the client for the funds in the account. Please advise whether the Fidelity Fund would consider removing this charge, because clients are paying for it and receiving nothing at all in return. This leaves a "bad taste" in the mouths of the clients, who consider attorneys greedy and wanting money for not having provided any service.

Moreover, Rule 55 exempts any "temporary" transaction. However, the drafting is vague and it is not clear whether any conveyancing or litigation transaction would be considered temporary (as the plain wording suggests) or whether there is a minimum time limit that would make a transaction "permanent" or "semi-permanent" (ie not temporary). To us it seems that all

conveyancing investments (made by clients buying or selling in the ordinary course) would qualify as "temporary".

Moreover, it is not clear in what manner these temporary investments are excluded or exempted. Does this mean that they fall completely outside of section 86(4) and if so, are they influenced by any other provision in the LPA or are they simply investments made entirely outside the scope of the LPA in respect of which there is no regulation?

Also, what about "old" section 78(2)(A) investments. Do they carry on, unaffected, by the LPA, in terms of section 119(2) or must they be "re-done" in terms of a new authorisation in terms of section 86(4)?

8.2 Interest "sweep" exemption

The LPA envisages that the interest owed to the Fidelity Fund will be automatically deducted (or "swept") from the investment and bank accounts of attorneys holding funds for their clients. The Act itself does not delay in the implementation until 1 March 2019, but a resolution of the Fidelity Fund does. Is the Fidelity Fund empowered in law to make such a resolution? We are concerned that if we publicise this and it later turns out that the resolution was not valid in law, that practitioners will face serious problems.

8.3 Query regarding deceased estates and interest

This was asked of us recently by several persons:

My firm has opened up deceased estate accounts as section 78(2A) investments, which is also opened in the bank's books as a section 78(2A) investment. Our concern is that with a section 78(2A) investment and the comparable provision in section 86(4) of the LPA, the 5% interest to be paid over to the Legal Practitioners

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Fidelity Fund in terms of section 86(5) of the LPA will then be automatically deducted by the bank and paid over to the Fund and as you are aware, deceased estates are excluded from the 5% interest rule. I am not aware of this exclusion. It does not say so in the Legal Practice Act. If the estate account is opened ito the current s78(2A), or s86(4) after 1 November 2018, the 5% will be deducted from 1 March 2019. The name of the account you open, is crucial. Please see the attached article published in De Rebus April 2016. How should we differentiate between ordinary section 78(2A) investments and deceased estates which are opened up as section 78(2A) investments? Furthermore, if these deceased estate matters are opened up as section 78(2A) investments, will our Firm be covered by our PI insurance? We are also concerned to open deceased estate accounts as normal accounts, for fear that the monies will not be protected by our PI Insurance in the case of fraud

8.4 Portal for Fidelity Fund Certificates

As at last week the portal still was not working and the deadline is the 31st of December 2018. Can you confirm when it will be working so that we can advise attorneys? Many are going away for the holidays and need to plan in advance.

9. We look forward to your urgent reply in relation to the matters in paragraph 14 above and to further discussion with the LPC in relation to the other matters mentioned herein.

Yours faithfully

Chairpersons of the GAA
Tiaan Joubert and Chantelle Gladwin-Wood