Government Gazette 14981

STATE PRESIDENT'S OFFICE

No. 1282
20 July 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general

NO. 115 OF 1993: ATTORNEYS AMENDMENT ACT, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Attorneys Act, 1979, in order to amend, insert or delete certain definitions; to further regulate the duration of service under articles of clerkship; to provide for exemption from service under articles of clerkship; to provide for certain information to be submitted to a society before the performance of community service; to provide for the lodging, examination and registration of contracts of service; to further regulate the supervision of candidate attorneys; to further regulate absence from office of candidate attorneys; to further regulate the right of appearance of candidate attorneys; to restrict the pecuniary interests of candidate attorneys in the organization or institution where they perform community service; to regulate the termination of a contract of service; to further regulate removal from the roll of advocates; to further regulate the performance of irregular service; to further regulate practical examinations; to further regulate the admission of attorneys; to delete obsolete provisions; to further regulate the prescribing of fees; and to make further provision for the prescribing of regulations; to amend the Magistrates' Courts Act, 1944, so as to make provision for the appearance of candidate attorneys performing community service in magistrates' courts; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 9 July 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989 and section 1 of Act 102 of 1991

1. Section 1 of the Attorneys Act, 1979 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the insertion after the definition of "advocate" of the following definition:

"'*appropriate legal experience' means any service which is related to the application of the law and which is prescribed by the Minister;*";

(b) by the insertion after the definition of "building society" of the following definition:

"'*community service' means full-time service related to the application of the law and performed-* |

(a) at a law clinic in respect of which the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic; or

(b) on behalf of and under the control of the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), and which is approved for this purpose by the Minister;";

(c) by the substitution for the definition of "candidate attorney" of the following definition:

"'candidate attorney' means any person bound to serve under articles of clerkship *or to perform community service under a contract of service,*";

(d) by the insertion after the definition of "candidate attorney" of the following definition:

"'*contract of service' means any contract in writing under which a candidate attorney who wishes to perform community service, is bound to serve a principal for a specified period in accordance with this Act*;";

(e) by the substitution for the definition of "principal" of the following definition:

"'principal', in relation to-

(a) a candidate attorney, means the attorney who is being served by such candidate attorney under articles of clerkship **and, in relation to**;

(b) a former candidate attorney referred to in section 8(4), means the practitioner concerned so referred to;

(c) a candidate attorney performing community service, means an attorney who is employed full-time at a law clinic or an office of the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), and who has so practiced or been so employed for a period of three years or periods of three years in the aggregate during the preceding four years; and

(d) a former candidate attorney referred to in section 8(4) performing community service, means the practitioner concerned so referred to;"; and

(f) by the deletion of the definitions of "province", "Republic" and "Territory".

Amendment of section 2 of Act 53 of 1979, as amended by section 1 of Act 108 of 1984

2. Section 2 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"*(1A) Any person intending to be admitted as an attorney and who has not served articles of clerkship in terms of subsection (1), and has satisfied all the requirements for a degree referred to in paragraph (a) or (aA) of subsection (1) or has become entitled to be admitted as an advocate of the Supreme Court, shall serve under articles of clerkship for a period of one year and shall in addition thereto -*

(a) attend a training course approved by the society concerned for an uninterrupted period of at least four months and complete such course to the satisfaction of that society; or

(b) perform community service approved by the society concerned in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of that society.".

Insertion of section 2A in Act 53 of 1979

3. The following section is hereby inserted in the principal Act after section 2:

"Exemption from service under articles of clerkship

2A. Any person intending to be admitted as an attorney and who has satisfied all of the requirements for a degree referred to in paragraph (a) or (aA) of section 2(1) or who has become entitled to be admitted as an advocate of the Supreme Court and who-

(a) (i) has attended a training course approved by the society concerned for an uninterrupted period of at least four months and has completed such course to the satisfaction of that society; and

(ii) has performed community service in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of that society; or

(b) has performed community service in terms of a contract of service for an uninterrupted period of at least two years to the satisfaction of the society concerned; or

(c) has, to the satisfaction of the society concerned, gained at least five years' appropriate legal experience, is exempted from service under articles of clerkship in terms of section 2(1), and from the provisions of section 2(1A).".

Insertion of section 4A in Act 53 of 1979

4. The following section is hereby inserted in the principal Act after section 4:

"Information which shall be submitted to a society before performance of community service

4A. A candidate attorney intending to perform community service shall submit to the secretary of the society of the province in which the community service is to be performed, the following, namely-

(a) his birth certificate or other proof to the satisfaction of the society of his date of birth;

(b) proof to the satisfaction of the society that he-

(i) is a fit and proper person;

(ii) has satisfied all the requirements for a degree referred to

in paragraphs (a) or (aA) of section 2(1) or has become entitled to be admitted as an advocate of the Supreme Court; and

(c) the contract of service in which the date is mentioned upon which he will commence community service and at which law clinic or office of the Legal Aid Board, as the case may be, he intends performing community service.".

Substitution of section 5 of Act 53 of 1979, as amended by section 3 of Act 87 of 1989

5. The following section is hereby substituted for section 5 of the principal Act:

"Lodging, examination and registration of articles or contract of service

5. (1) The original of any articles of clerkship *or contract of service* shall within two months of the date thereof be lodged by the principal concerned with the secretary of the society of the province in which the service under such articles *or contract of service* is to be performed.

(2) The secretary of the society concerned shall, on payment of the fees prescribed under section 80, examine any articles *or contract of service* lodged with him and shall, if he is satisfied that the articles are *or contract of service is* in order and that the council has no objection to the registration thereof, on payment of the fees so prescribed register such articles *or contract of service* and shall advise the **attorney** principal and candidate attorney concerned of such registration in writing by certified post.

(3) If articles of clerkship are *or a contract of service is* not registered within two months of the date thereof, any service thereunder shall be deemed to commence on the date of registration thereof.".

Amendment of section 6 of Act 53 of 1979, as amended by section 4 of Act 87 of 1989 and section 3 of Act 102 of 1991

6. Section 6 of the principal Act is hereby amended by the addition of the following subsection:

"*(3) A candidate attorney performing community service shall during the whole term of service specified in the contract of service, serve-*

(a) in the office of the law clinic under the direct personal

supervision of his principal, or of an attorney or advocate, who is also employed full-time at the law clinic concerned; or

(b) in the office of the Legal Aid Board under the direct personal supervision of his principal, or of an attorney or advocate, who is also employed full-time at the relevant office of the Legal Aid Board.".

Amendment of section 7 of Act 53 of 1979, as substituted by section 5 of Act 87 of 1989

7. Section 7 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), a candidate attorney may, with the consent of his principal, absent himself from office for a period which does not, or for periods which in the aggregate do not, exceed thirty working days in any one year of the articles of clerkship *or contract of service*.";

(b) by the substitution for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph:

"(ii) where the period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of the articles of clerkship *or contract of service*,"; and

(c) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) If any period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of articles of clerkship *or contract of service*, the period in excess of thirty working days shall be added to the period for which the candidate attorney is bound to serve under articles *or contract of service*.

(4) Notwithstanding the provisions of section 6, one half of any period of absence from the office of his principal by a candidate attorney as a result of training undergone by him in the South African Defence Force in terms of section 3 of the Defence Act, 1957 (Act No. 44 of 1957), shall, subject to a maximum period of three months, be deemed to have been served under such articles of clerkship *or contract of service*.

(5) Notwithstanding the provisions of section 6, any period of absence not exceeding six months of a candidate attorney from the office of his

principal for the purpose of attending a training course approved by the society concerned, shall, if that candidate attorney has completed that course to the satisfaction of that society, be deemed to have been served under articles of clerkship *or contract of service: Provided that in the case of a candidate attorney referred to in sections 2(1A) and 2A the period of attending a training course shall not be deemed to be a period that that candidate attorney has served under articles of clerkship or contract of service*.".

Amendment of section 8 of Act 53 of 1979, as substituted by section 6 of Act 87 of 1989

8. Section 8 of the principal Act is hereby amended-

(a) by the substitution for paragraph (ii) of subsection (1) of the following paragraph:

"(ii) has served for at least one year under his articles *or contract of service*; or"; and

(b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) Any candidate attorney who is entitled to appear as contemplated in subsection (1), shall at the expiry of his articles or contract of service, and provided he remains in the employ of the attorney who was his principal immediately before such expiry, *or provided he remains in the service of the law clinic or the Legal Aid Board concerned, as the case may be*, remain so entitled until he is admitted as an attorney, but not for longer than six months.".

Substitution of section 9 of Act 53 of 1979, as substituted by section 7 of Act 87 of 1989

9. The following section is hereby substituted for section 9 of the principal Act:

"Restriction of pecuniary interests of candidate attorneys

9. (1) A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney, *or in the organization or institution where he performs community service*, and shall not, without the prior written consent of the council of the society of the province in which he performs service under the articles *or contract of service*, hold or occupy any office or engage in any other business other than that of candidate attorney.

(2) If any candidate attorney contravenes the provisions of subsection (1), the articles *or contract of service* shall be void ab initio and service rendered thereunder shall be ineffectual unless the court on good cause shown otherwise directs.".

Substitution of section 11 of Act 53 of 1979, as amended by section 5 of Act 108 of 1984 and section 9 of Act 87 of 1989

10. The following section is hereby substituted for section 11 of the principal Act:

"Termination of articles or contract of service

11. (1) If articles of clerkship are *or a contract of service is* for any reason cancelled, abandoned or ceded, the **attorney to** *principal with* whom the candidate attorney concerned is **articled** *serving* at that time shall forthwith in writing notify the secretary of the society of such cancellation, abandonment or cession.

(2) If articles of clerkship have *or a contract of service has* been cancelled or abandoned before completion thereof, the court may in its discretion on the application of the person who served under such articles *or contract of service* and subject to such conditions as the court may impose, order that for the purposes of this Act, the whole or such part of the period served under such articles *or contract of service* as the court deems fit, be added to any period served by that person under articles *or a contract of service* entered into after the first-mentioned articles were *or contract of service was* cancelled or abandoned, and any period so added shall for the purposes of this Act be deemed to have been served under the last-mentioned articles *or contract of service* and continuously with any period served thereunder.

(3) If a person who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), or a degree or degrees referred to in paragraph (aA) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done, or is entitled to be admitted as an advocate, the court may, on the application of such person and subject to such conditions as the court may impose, order-

(a) that, for the purposes of this Act, the whole of the period so served or such part thereof as the court deems fit be added to any period served by such person after he satisfied such requirements or became so entitled under articles of clerkship entered into after the first-mentioned articles were cancelled or abandoned, and thereafter any period so added shall be deemed to have been served-

(i) after he satisfied such requirements or became so entitled; and

(ii) under the articles entered into after the first-mentioned articles were cancelled or abandoned and continuously with any period served thereunder;

(b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he would, at the time of the making of the application, be required to serve under articles of clerkship in terms of this Act, that the period so served be considered as adequate service under articles for the purposes of this Act, and thereafter any period so served by such person shall be deemed to have been served after and under articles entered into after he satisfied such requirements or became so entitled.".

Substitution of section 12 of Act 53 of 1979, as substituted by section 1 of Act 13 of 1990

11. The following section is hereby substituted for section 12 of the principal Act:

"Registration of articles or contract of service entered into by advocate

12. Any person admitted to practice as an advocate shall not be allowed to register articles *or a contract of service* in terms of the provisions of this Act, unless his name has on his own application been removed from the roll of advocates.".

Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980, section 1 of Act 60 of 1982, section 2 of Act 56 of 1983, section 6 of Act 108 of 1984 and section 10 of Act 87 of 1989

12. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If any person has not served regularly as a candidate attorney, the court, if satisfied that such irregular service was occasioned by sufficient cause, that such service is substantially equivalent to regular service, and that the society concerned has had due notice of the application, may permit such person, on such conditions as it may deem fit, to apply for admission as an attorney as if he had served regularly under articles *or a contract of service*.".

Amendment of section 14 of Act 53 of 1979, as amended by section 1 of Act

13. Section 14 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) An examination referred to in subsection (1) shall not be conducted in respect of any person unless he satisfies the examiners concerned that he-

(a) has complied with the provisions of this Act in regard to service under articles *or a contract of service*; or **that he**

(b) is serving under articles *or contract of service* and has so served for a continuous period of not less than six months; or **that he**

(c) is, under the provisions of this Act, exempt from service under articles; *or*

(d) has attended a training course approved by the society concerned for an uninterrupted period of at least four months and has completed such course to the satisfaction of that society.".

Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984

14. Section 15 of the principal Act is hereby amended-

(a) by the substitution for subparagraph (vi) of paragraph (b) of subsection (1) of the following subparagraph:

"(vi) completed his service under articles *or contract of service, or has complied with the provisions of section 2(1A),* within the period of three years preceding his application to the court or within the further period allowed by the court in terms of subsection (2).";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The court may in its discretion, on the application of any person and on good cause shown, allow a further period in addition to the period of three years referred to in subsection (1)(b)(vi), within which the applicant may apply for admission as an attorney, subject to such conditions, if any, as it may deem fit, including a condition relating to further service under articles *or contract of service*.".

Amendment of section 56 of Act 53 of 1979

15. Section 56 of the principal Act is hereby amended by the deletion of paragraph (e).

Amendment of section 71 of Act 53 of 1979, as amended by section 24 of Act 87 of 1989

16. Section 71 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct on the part of any attorney, notary or conveyancer whose name has been placed on the roll of any court within the province of its society, whether or not he is a member of such society, or of any person serving articles of clerkship *or a contract of service* with a member of its society, or of any former candidate attorney referred to in section 8(4).".

Amendment of section 72 of Act 53 of 1979, as amended by section 5 of Act 80 of 1989 and section 25 of Act 87 of 1989

17. Section 72 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph: "(i) cancel or suspend his articles of clerkship *or contract of service*;".

Amendment of section 74 of Act 53 of 1979, as amended by section 26 of Act 87 of 1989

18. Section 74 of the principal Act is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) service under articles of clerkship *or a contract of service* and the circumstances under and the conditions on which articles of clerkship *or a contract of service* may be cancelled by the council;"

(b) by the deletion of subparagraph (iv) of paragraph (a) of subsection (3); and (c) by the substitution for subsection (6) of the following subsection:

"(6) In this section 'High Court' means any high court constituted in terms of **section 17I of the Development of Self-government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968),**

or section 34(1) of the **Black Homelands** *Self-governing Territories* Constitution Act, 1971 (Act No. 21 of 1971).".

Amendment of section 80 of Act 53 of 1979, as amended by section 10 of Act 108 of 1984

19. Section 80 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) examination of articles of clerkship *or a contract of service* in terms of section 5;

(b) registration of articles of clerkship *or a contract of service*;".

Amendment of section 81 of Act 53 of 1979, as amended by section 5 of Act 76 of 1980, section 4 of Act 60 of 1982, section 4 of Act 56 of 1983, section 7 of Act 80 of 1985 and section 29 of Act 87 of 1989

20. Section 81 of the principal Act is hereby amended by the insertion after paragraph (a) of subsection (1) of the following paragraph:

"*(b) the service which is recognized as appropriate legal experience for the purposes of section 2A(c) and the period which may expire between the date on which such service has been completed and the date on which exemption from articles of clerkship may be granted*;".

Substitution of section 11 of Act 87 of 1989

21. The following section is hereby substituted for section 11 of the Attorneys Amendment Act, 1989:

"Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984

11. Section 15 of the principal Act is hereby amended by the insertion after subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:

(ivA) *(aa)* during his term of service under articles *or contract of service,* or after the expiry of his articles *or contract of service; or*

(bb) after he has been exempted in terms of this Act from service under articles of clerkship, has attended a training course approved by the society of the province in which he completed his service under articles

or contract of service, or, in the case of section 2A(c), has attended a training courser approved by the society of the province in which the candidate attorney intends to practice, and has completed such training course to the satisfaction of that society: *Provided that this subparagraph shall not apply to a person who attended a training course referred to in section 2(1A)(a) or 2A(a)(i) and who has completed such course to the satisfaction of the society concerned*;".

Substitution of section 21 of Act 32 of 1944, as substituted by section 35 of Act 87 of 1989

22. The following section is hereby substituted for section 21 of the Magistrates' Courts Act, 1944:

"Candidate attorneys

21. A candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), may, subject to section 8 of that Act, appear instead and on behalf of the attorney to whom he has been articled, *or under whom he serves community service in terms of a contract of service*, in any proceedings in any court.".

Saving

23. The provisions of this Act shall, in so far as they can be applied, also be applicable to a candidate attorney who, at the commencement of this Act, is serving under articles of clerkship.

Short title and commencement

24. (1) This Act shall be called the Attorneys Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act.