FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case no: 5206/2014

In the matter between:

THE LAW SOCIETY OF THE FREE STATE Applicant

and

JACOBUS PETRUS ANDRIES DU TOIT Respondent

CORAM: RAMPAI, J *et* HINXA, AJ

HEARD ON: 5 FEBRUARY 2015

JUDGMENT BY: HINXA, AJ

DELIVERED ON: 12 MARCH 2015

INTRODUCTION

[1] The respondent was admitted as an attorney on 14 April 1994 and has been practising as such in Bloemfontein for approximately 20 years.

[2] The applicant instituted motion proceedings on 25 November 2014 praying that the respondent's name be removed from the roll of attorneys. The alternative relief sought by the applicant was that the respondent be suspended from practising as an attorney until

he satisfies this court that he is a fit and proper person to resume practise as an attorney and has acquired the necessary fidelity fund certificate. The applicant furthermore sought numerous reliefs ancillary to the aforementioned prayer.

[3] The respondent served a notice of intention to oppose this application on the applicant's attorneys of record on 2 December 2014. The aforementioned notice was later withdrawn and a notice of withdrawal was served on 24 December 2014. On 24 December 2014 the respondent delivered an explanatory affidavit wherein he was declaring that he was no longer opposing this application. He furthermore stated that he was abiding by the order that this Court might grant.

[4] The application was consequently heard unopposed on 5 February 2015.

[5] There were six professional transgressions levelled by the applicant against the respondent. I deem it apt to hereunder list them before analysing same. They are:

5.1 Practising without a fidelity fund certificate

5.2 Submission of an improper trust audit report

5.3 Failure to submit a trust audit report at all

5.4 Serious complaint by Mr. Sunel Van der Berg on behalf of the Diwald Trust

5.6 Serious complaint by Mr. Christo Fourie

ANALYSIS OF THE TRANSGRESSIONS

[6] The respondent has practised without a fidelity fund certificate for the calendar year 1 January 2013 to 31 December 2013, and has been practising likewise from 1 January 2014 to the date of filing of this application.

[7] The respondent submitted a trust audit report for the financial year ending 28 February 2013 in line with the rules of the applicant. The applicant's business development manager examined the afore mentioned report and his qualifications were of such a serious nature that he concluded as follows: "to my mind the enclosed document cannot be regarded as proper compliance by the practitioner. It will serve no purpose to write to the practitioner as he ignored all my correspondence …"

Until such time as the qualifications as per the findings on the trust audit report were attended to, the applicant was not in a position to issue a fidelity fund certificate to the respondent.

[8] The respondent failed to submit an audit report for the period between 1 March 2013 to 28 February 2014 contrary to the rules of the applicant.

[9] On 4 June 2014 the respondent appeared before a disciplinary committee of the applicant. Subsequently, he was given notice by the aforesaid committee to submit an unqualified audit report for the period alluded to in paragraph 8 above before 26 June 2014.

[10] Despite his undertaking, the respondent failed to comply and he had not applied for a fidelity fund certificate for the period 1 January 2014 to 31 December 2014. This failure was perceived as

not only serious, but as an intentional and wilful disregard of the statutory provisions and rules of the applicant.

As a direct consequence thereof, the disciplinary committee resolved to advise the respondent about the contemplated application to have his name struck off the roll.

[11] Three separate and serious complaints against the respondent also unfolded, soliciting the applicant's urgent attention and necessary action. I deem it apposite to hereunder deal with them in turns.

[12] First, on 17 May 2012, Dr. Roger Brittain attested to an affidavit in which the applicant was requested to investigate the respondent's failure to account to him (Dr. Brittain) over a period of five years in respect of instructions to collect monies.

[13] The respondent replied on 19 December 2012 and stated that the files were handed over to an attorney (Mr. Hutchinson), and that he had no records to enable him to account to Dr. Brittain. The respondent furthermore disputed that there had been various payments effected by creditors of Dr. Brittain.

[14] Dr. Brittain responded to the respondent's reply, providing details of payments made by the creditors to him (the respondent), and furthermore, annexing proof thereof.

[15] On 7 October 2013, the respondent replied to Dr. Brittain's last mentioned reply, merely, reiterating that he was unable to account to him (Dr. Brittain) as all the files had been handed over to an

attorney (Mr. Hutchinson) and all the information was therein contained. He added that Dr. Brittain was in possession of the documentation necessary for accounting to him.

[16] Thereafter, on 25 June 2014 the respondent filed a further supplementary affidavit in terms whereof he stated that he had located the particular files of Dr. Brittain as well as his ledger records. It is as well to bear in mind that the respondent had previously stated that he was not in possession of such records.

[17] The applicant contended that the documents attached to the respondent's further supplementary affidavit of 25 June 2014 were not a true and proper reconciliation of all amounts received, nor of the disbursements in respect of the monies received. The applicant pointed out per annexure "DT4" that an amount of R250.00 was received and an amount of R225.00 debited against the account immediately.

[18] The Respondent explained the aforementioned discrepancy by stating in his explanatory affidavit that the agreement between himself and Dr. Brittain was that he (respondent) would deduct his fees and disbursements from whatever amounts that might be recovered from debtors. He further stated that in the example given by the applicant, he (respondent) deducted the amount of R25.00 being the collection commission, and the amount of R225.00 was set-off against the instruction fee. The respondent maintained that the instruction fee and disbursements totalled R1 129.00.

[19] The respondent however conceded that he might not have given a full exposition to Dr. Brittain for each transaction.

[20] Second, on 18 June 2013, Sunel van der Berg ("Sunel") lodged a complaint against the respondent on behalf of the Dewald Trust ("*the Trust*"), in respect of R500 000.00 the respondent deducted for his fees. Sunel further averred that the client had not seen the judgment given in the matter; no receipt was issued for the aforesaid R500 000.00; and no accounting was done to the client. On the contrary, a request was forwarded by the respondent to the client to pay an additional amount of R60 000.00.

[21] The respondent filed his reply, and numerous statements were exchanged between the complainant and him.

[22] The applicant served summons on the respondent to appear before the disciplinary committee on 4 June 2014. He (respondent) was instructed to lodge a claim against the attorneys fidelity fund for the monies misappropriated by the trust's previous attorney. The respondent advised that it would be necessary for him to be appointed as a trustee of the trust to enable him to act on its behalf.

[23] After notification of the intention to institute a claim against the fidelity fund, the appointed committee held that the trust had not complied with the requirements of section 48(1) of the Act and that the requirements for condonation for such non-compliance were not satisfied. The aforementioned ruling was brought on review, and the High Court upheld it.

[24] I pause to stress that the respondent did not have fidelity fund certificate when he acted on behalf of the trust. It warrants no over-emphasis that this was yet another gross violation of the applicant's fast and hard rules. The applicant argued persuasively that the respondent had a clear conflict of interest after the review application was successful, and he was compelled to apprise the client of the findings of the court. Furthermore, he was duly bound to advise the client to seek a legal advice of an independent attorney regarding the continuation of the application against the fidelity fund. Once more, I can find no fault with this argument.

[25] Payment of a sum of R3 100 000.00 was received by the trust from the estate of Le Roux. The respondent withheld an amount of R500 000.00 for services allegedly rendered by him. On being called upon to account, he replied in a cryptic note in which he claimed that a contingency fee agreement had been entered into between him and Ms. Van der Berg.

The note reads as follows: "18% fooi betaalbaar aan Du Toit prokureurs by uitbetaling van die Getrouheidsfonds se eis…"

[26] Despite numerous requests, the respondent did not account for the fees withheld by him. The applicant convincingly argued that the respondent furthermore intended to mislead it (the applicant) in that, by agreement, his fees were recovered from the trust, whilst he also recovered same fees for the same services from the estate of the late attorney Le Roux.

[27] The respondent admitted that he did not obtain any proper contingency fee agreement prior to accepting mandate on behalf of Ms. Van der Berg for the Dewald trust.

At the risk of stating the obvious, the aforesaid admission is in harmony with Ms. Van der Berg denial that there was any such agreement.

[28] The respondent remained silent on his failure to account to the trust or Ms. Van der Berg with regard to the fee withheld.

[29] Third, on 27 June 2013, Christo Fourie lodged a complaint on behalf of Centuria 0194 (Pty) Ltd ("the company") against the respondent alleging, *inter alia*, that the respondent had acted dishonestly, fraudulently, and failed to account for monies paid to him by Mr. Fourie and failed to respond to the communication on behalf of his client.

[30] The company purchased 4 black impalas from the Mariaan Boerdery Trust ("the trust") for an amount of R798 000.00. The aforementioned amount was paid into the respondent's trust account on behalf of the company. The impalas were not delivered to the company by the trust.

Despite various requests from the attorneys acting on behalf of the company, the respondent failed to account for the purchase price.

[31] The company applied for the sequestration of the trust, and the final order for the afore stated sequestration was granted on 23 May 2013. Despite a confirmatory affidavit filed in opposing the

application for the sequestration, the respondent failed to account for the funds.

[32] The respondent appeared before the applicant's disciplinary committee on 4 June 2014 where he stated that the full purchase price was paid to the trust on the instruction of his client, i.e. the trust, which trust was liquidated shortly thereafter. From the account records he provided, cheque number T00003476 for R250 000.00 was cashed on 6 March 2012, and thus rendering his version that the full purchase price was paid to the client false.

[33] The respondent in his explanatory affidavit averred that the monies paid into his trust account were paid in the settlement of a debt owed to the trust, and that it was the aforementioned trust that was his trust creditor, not the company. He merely replied that the cheque for R250 000.00 was cashed and dealt with in accordance with the instructions of "Rhoode".

[34] It bears mentioning that the respondent drafted his explanatory affidavit after the insolvency enquiry held on 8 December 2014. From the record of the insolvency enquiry, the following unfolded:

34.1 When asked by Adv. Tsangarakis whether or not he complied with the instruction to pay an amount of R300 000.00 to Mr. Vester, he replied that he paid R2 000.00 less than what he was instructed.

34.2 Although he admitted that his client was the Mariaan Boerdery Trust, he further admitted that he transferred an amount of R298 000.00 from his business account at the request of Mr. Verster.

34.3 The respondent admitted that he took an amount of R48 000.00 from R298 000.00, being the Mariaan Boerdery Trust’s money, for professional fees owed to him by Mr. Verster from his trust account at the request of Mr. Verster.

34.4 The respondent conceded when it was put to him by Adv. Tsangarakis that he acted contrary to the mandate given to him by the Mariaan Boedery Trust in taking the R48 000.00 for Mr. Verster’s indebtedness to him.

[35] In concluding on the offending conduct of the respondent, it is worth highlighting that it is common cause that he did not account to Dr. Brittain. The same holds true of his failure to obtain a proper contingency fee agreement prior to accepting mandate on behalf of Ms. Van den Berg for the Dewald Trust.

[36] That is a synopsis of the facts presented to us. They were all undisputed. If anything, the respondent, as indicated at paragraph 35 supra, expressly admitted some of the adverse allegations on one hand whilst implicitly abiding on the other.

LEGAL POSITION

[37] **Section 58** of the Attorneys Act 53 of 1979(“the act”) deals with the main objectives of the law society, and, inter alia, provides as follows.

37.1 To maintain and enhance the prestige, status and dignity of the profession;

37.2 To regulate the exercise of the profession;

37.3 To encourage and promote efficiency and responsibility in relation to the profession;

37.4 To deal with all matters relating to the interests of the profession and to protect those interests;

37.5 To uphold the integrity of practitioners;

37.6 To uphold and improve the standards of professional conduct and qualifications of practitioners;

37.7 To promote uniform practice and discipline among practitioners;

[38] **Section 41(1)** and **(2)** of the Act stipulates that a practitioner shall not practise or act as a practitioner unless he is in possession of a fidelity fund certificate, and furthermore that any practitioner who practises or acts in contravention of subsection (1), shall not be entitled to any fee, reward or disbursement in respect of anything done by him while so practising or acting.

[39] **Section 83(10)** of the act provides that any person who directly or indirectly purports to act as a practitioner in his own account or in partnership without being in possession of a fidelity fund certificate shall be guilty of an offence. It is not only a serious criminal offence but also a serious breach of an attorney's duty. **(**See **Law Society of the Northern Provinces v Mmabatho** 2003 (6) SA 467 (SCA), and **Law Society of Cape of Good Hope v Adams** **(**2013) ZAWCHC 87).

[40] In terms of Section 78 of the act any practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic of South Africa and shall deposit therein

the money held or received by him on account of any person and he shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person.

[41] Rule 16B.4.1 of the Rules of the Law Society of the Free State provides:

> "Every accountant who has accepted an appointment in terms of Rule 16B.1 shall within six months after the annual closing of the accounting records of the firm concerned, or at such other times as the Council may require, furnish the Council with a report which shall be in the form of schedule C to these rules"

[42] Rule 16B.3 provides:

> "A firm shall ensure that the report to be furnished by an accountant in terms of Rule 16B.4 is so furnished within the required time or on the required date; provided that the Council may in its discretion and on such conditions as it may stipulate, on written application by a firm relating to a particular report, condone a failure by that firm to comply with requirements."

[43] Section 22(1)(b) of the act requires a three stage enquiry:

43.1 First, the Court must decide whether the alleged offending conduct has been established on a preponderance of probabilities;

43.2 Second, it must consider whether the person concerned "in the discretion of the court" is not a fit and proper person to continue to practise;

43.3 And third, the court must enquire whether in all the circumstances the person in question is to be removed from the roll of attorneys or whether an order of suspension from practise would suffice.

(See **Jasat v Natal Law Society** 2000 (3) SA 44 (SCA).

[44] In terms of Section 78(8) of the act the court may, on application lodged by the law society of the province concerned and on good cause shown, prohibit any practitioner from operating in any way on his trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.

[45] In deciding whichever course to follow the major consideration is the protection of the public. Logic also dictates that if a court finds that someone is not a fit and proper person to continue to practise as an attorney, then such a person has to be removed from the roll. (See **Malan & Another v Law Society, Northern Provinces** 2009 (1) SA 216 (SCA)).

[46] It is unlikely, if ever, that a mere suspension from practice for a given period in itself will transform one who is unfit to practise into one who is fit to practise. (See **Malan & Another v Law Society, Northern Provinces** *supra*.)

[47] These proceedings are of a disciplinary nature and *sui generis*. The Law Society brings the application as the guardian of morals of attorneys' profession. It merely places facts for consideration by the court in the exercise of its disciplinary function over attorneys as

officers of the court; to enable it to exercise its discretion as to the appropriateness of a sanction to be imposed in the event the allegation were found to be true. (See: H**<u>assim v Incorporated Law Society of Natal</u>** 1977 (2) SA 757 (A) at 767C-G 1989 and **<u>Prokureursorde van Transvaal v Kleynhans</u>** 1995 (1) SA 839 (T) at 851G-H).

[48] As regards transgressions 4.1-4.3, it may serve a useful purpose if I quote what was said by Rampai AJP (Lekale J concurring) in the matter of **<u>The Law Society of the Free State v Mahlomola Goodwin Molapo</u>** [Case No 1030/2013 Unreported]. In considering remarkably similar misdemeanours, he held,

> "a) It was the respondent's responsibility to see to it that the accounting records of his law practice were annually audited by his accountant. It was also incumbent upon him to ensure that his accountant furnished the annual audit report to the applicant's law council – rule 16B.3.
>
> b) When the applicant's law council receives a favourable or satisfactory annual audit report from an attorney's appointed accountant it forwards such report to the Attorney's Fidelity Fund ("AFF"). The AFF would then issue the requisite annual fidelity certificate to the attorney concerned. By virtue of the fidelity certificate the attorney is annually licenced to practise law. The accounting records of the attorney are thereby publicly confirmed or certified to be in order. By means of annual fidelity certificate the applicant holds therefor out to the applicant as its honourable and trustworthy member to whom the members of the public can entrust their affairs.
>
> c) From the comments I have made in the preceding paragraphs two things emerge. The first is the significance of the annual auditing

report of the accounting records of an attorney. The second is the danger posed to public interest by an attorney's neglect to cause the required annual audit report to be furnished to the applicant. The essence of rule 16B is the protection of the public from untrustworthy individuals who infiltrate the noble vocation and masquerade as honourable lawyers only to exploit humble, unsuspecting, unwary and trusting members of the public.

d) The respondent was accused of practising as an attorney without the annual fidelity certificate. An attorney cannot obtain an annual certificate unless, he, first and foremost obtains an unqualified annual audit report. I pause to stress that such an annual audit report has to be compiled by an accountant appointed and paid by an attorney and not the law society. This was the first charge. The particulars of the charge were contained in a letter – annexure "A7"."

[49] In my judgment, these remarks are directly in point on the facts of this case. Consequently, I need say no more pertaining to their pertinence hereto.

[50] In the context aforesaid, I am therefore driven to the finding that the applicant's case is cogent that:

50.1 The respondent practised without a fidelity fund certificate for the calendar period 1 January – 31 December 2013 and again from 1 January – November 2014, the latter being the date on which these proceedings were launched.

50.2 The respondent submitted an improper trust audit report for the financial year ending 28 February 2013.

50.3 The respondent failed to submit an audit report at all for the period 1 March 2013 to 20 February 2014.

[51] At this juncture I consider it apt to turn my attention to other serious complaints lodged by three (3) separate individuals. I proceed hereunder to deal with them one by one.

[52] I start with Dr. Roger Brittain. It is common cause that the respondent did not account to him for a protracted period of five years. His conduct flouted the provisions of section 78 of the Attorneys Act 53 of 1979 as amended and calls for censure. In the circumstances, I am of the persuasion that the applicant has proved that the respondent has failed to account to his client. I accordingly so find.

[53] I come next to Ms Sunel van den Bergh. The respondent's offending conduct was three-fold herein:

53.1 He did not heed the imperatives of accounting to his client for an enormous amount of R500 000.00 withheld by him.

53.2 He doubled his claim from both the trust and the estate of the late Le Roux for the same services

53.3 By his own admission, he did not obtain a proper contingency fee agreement before accepting a mandate on behalf of Ms. Van der Berg for the trust.

[54] It is thus my finding that the respondent did not only omitt to account to his client for a huge sum of money, but also contravened the provisions of the Contingency Fees Act 66 of 1997. Furthermore, his conduct of double claiming for single services rendered has to be viewed in a very serious light. I am, consequently, of the conviction that the applicant has also proved this transgression.

[55] I deal last with Mr. Christo Fourie. As regards this complaint the respondent conceded to no less than three grave misdemeanours, to wit:

55.1 Although he was instructed by his client to pay R300 000.00 to Mr. Vorster, he paid R298 000.00 i.e. R2000.00 less.

55.2 He improperly transferred the aforesaid R298 000.00 into his business account although his client was the trust.

55.3 He acted contrary to the trust's mandate by taking R48 000.00 from the trust's money for the professional fees owed not by the trust but by Mr. Vorster.

In the circumstances, I am persuaded to find that the applicant has made a formidable case on this transgression as well.

[56] I have considered whether each professional transgression has been proved on a preponderance of probabilities.

I have found that each alleged transgression has been duly proved. This concludes the first leg of the three stage enquiry envisaged by section 22(i) (b) of the act (See **Jasat v Natal Law Society** 2000 (3) SA 44 (SCA).)

[57] At this stage it is timely to proceed to the second leg. In terms of section 22 (1)(b), this leg dictates a consideration whether the respondent is no longer a fit and proper person to continue practice as an attorney as the applicant vehemently argues. Whilst on this point, it is apt to, once more, make reference to

Molapo case (*supra*), in which Rampai AJP had the following to say,

a) "None of the misconducts committed by the respondent can be reconciled with the noble objectives, norms and standards the applicant tries to cultivate and uphold. An attorney who practises without the annual fidelity certificate poses a very serious risk to members of the public. An appointed accountant can only prepare the required audit reports, an essential prelude to the issue of an annual fidelity certificate, provided an attorney places him or her in actual possession of the auditable accounting records. Implicit in this is the understanding that an accountant's failure to furnish the applicant with an attorney's annual audit report can almost invariably be attributed to an attorney's failure to keep proper accounting records.

b) In **Chetty v The Law Society, Transvaal** 1985 (2) 756 AD at 768E-H Miller AJA said the following:

> "The allegations and findings of misappropriation stemmed from inferences drawn from the state of the appellant's books account. It was clear that the appellant has failed to keep proper books of account as he was required to do and that there appeared to be deficiencies in his trust account which at times was overdrawn. The trust account, moreover, was not used solely for trust monies, which were often mixed with funds other than trust funds. **It now appears, however, that despite irregularities and impropriety in the keeping and administration of the accounts, there was in the final result no misappropriation of trust funds by the appellant. It may be that even if this had been shown on the return date of the rule *nisi*, the Court would have ordered the removal of the appellant's name from the roll, for it has**

> **frequently been held that failure by an attorney to keep proper books of account in compliance with the provisions of Act 23 of 1934 is a "serious contravention" which exposes the offender to the real risk of suspension or removal from the roll. (*Cirota and Another v Law Society, Transvaal* 1979 (1) SA 172 (A) at 193E-F) And, of course, the Court would have considered the other four complaints in conjunction with contraventions relating to the books of account."**

c) In my view an attorney whose conduct was so glaringly inimical to the prestige, status and dignity of the profession cannot be any more regarded as fit and proper person to continue practising as a trusted provider of legal services. As was stated in **Jasat** case *supra*, in deciding whether a person is still a fit and proper person to continue practice as an attorney involves a weighing up of the conduct complained of against the conduct one would ordinarily come to expect of a diligent, trustworthy and ethical attorney. When I comparatively weighed up the respondent's conduct as against that of an average attorney with those attributes, I found that the scales weighed heavily against the respondent. In my view his conduct was disturbingly far below the acceptable ethical benchmark. The gradient negatively widened every time he committed each of the three misconducts. The comparative balancing exercise resoundingly disqualified him.

d) The conduct complained of in general and misappropriation of funds in particular were ethically deplorable. Certainly it was not expected of an attorney worth his salt to behave in such an unethical fashion. The conduct is one which is highly deplorable and frowned upon by upright members of the profession.

[58] I find the aforegoing dicta not only apposite but also instructive in the situation obtaining in *casu*.

[59] I now turn my attention to the third and last leg of the enquiry contemplated by section 28(1)(b) of the act, to wit, a proper form of sanction or punishment. I should perhaps interpose to mention that the correct approach herein is whether, taking into account all the particular facts of the individual case, removal from the attorneys roll or suspension from the practise would be apt.

[60] Adv Le Roux for the applicant vigorously argued that the only appropriate sanction is removal from the roll of the attorney in view of the gravity of the respondent's offending conduct. It was persuasively contended that the respondent did not only completely fail to account to his clients for the monies received but also showed no remorse at all. I find merit in this contention. That the profession of attorney is a calling of absolute honesty admits of no exception. Put differently, the dishonesty which preceded this application went to the very root of his calling. The validity of the counsels' contention can hardly be discredited.

[61] It was held in **Malan** case above that if the court finds dishonestly in the complaint levelled, there must exist exceptional circumstances for the court to sanction a suspension in *lieu* of a

removal. In *casu* there was not even a slightest attempt to advance existence of such circumstances.

[62] Whilst on this point, it is as well to bear in mind the following *dictum* of Rampai AJP in **Molapo** case *supra*, at paragraph 56,

> "The protection of the public is always of paramount importance in matters such as this. In my view the public has to be protected against the respondent. The most effective and meaningful way of protecting the public against this danger posed by the respondent as an attorney is to have the respondent's name removed from the roll.
> Such a sanction would prevent him from endangering public interests…".

[63] Taking into account all the peculiar circumstances of this case, it is my view that nothing short of permanent striking off would be a proper punishment herein. A suspension of the respondent will not resonate well with the judicious exercise of discretion vesting in us (See **Melani v Sanlam insurance Ltd** 1962 (4) SA 531 (A).)

ORDER

[64] In the premises I make the following order:

64.1 THAT the respondent's name be removed from the roll of attorneys;

64.2 THAT the respondent surrenders and delivers to the Registrar of this Court his Certificate of Enrolment as an attorney of this court;

64.3 THAT should the respondent fail to comply with paragraph 64.2 within FOURTEEN (14) DAYS of this order, the sheriff of the High Court for the relevant district, be empowered and directed to take possession of such certificate and deliver it to the said Registrar;

64.4 THAT the Chief Executive Officer of the applicant for the time being be appointed as Curator Bonis to exercise the powers and to discharge the duties described in paragraph 64.7 hereof;

64.5 THAT the respondent is directed to surrender and deliver to the Curator Bonis all the respondent's records relating to his practice which, for the purposes of this order, but without limitation, shall include all accounting records, files, correspondence, documents and the like which are directly or indirectly relevant to or which contain particulars and information relating to:

a) Any monies received, held or paid by the respondent for or on account of any person;

b) Any monies invested by the respondent in terms of any provision of Section78 of the Attorneys Act, No 53 of 1979 (hereinafter referred to as "the Act");

c) Any interest on monies so invested in terms of Section 78 (2) or 78 (2A) of the Act;

d) Any estate of a deceased person administered by the respondent, whether as executor or on behalf of the executor, in terms of the provisions of the Administration of Estates Act, Act 66 of 1965;

e) Any estate in which the respondent acted as or on behalf of the Curator to administer the property of a minor child or any other person in terms of section 72 of the Administration of Estates Act, Act 1966 of 1965;

f) Any insolvent estate administered by the respondent as a trustee or on behalf of the trustee in terms of the Insolvency Act, Act 66 of 1936;

g) Any trust administered by the respondent as a trustee or on behalf of the trustee in terms of the Trust Properties Act, Act 57 of 1968;

h) Any company liquidated in terms of the Companies Act, Act 61 of 1973, administered by the respondent as a liquidator or on behalf of the liquidator;

i) Any close corporation liquidated in terms of the Close Corporation Act, Act 69 of 1964, administered by the respondent as a liquidator or on behalf of the liquidator;

j) The respondent's practice as an attorney of this court.

64.6 THAT should the respondent fail to immediately surrender or deliver the items referred to in paragraph 64.5 after service of this order upon the respondent by the Curator Bonis, or after a return by the person entrusted with such service that such person has been unable to effect service of this order on the respondent, as the case may be, the sheriff of the High Court for the district in which such records are, be empowered and directed to take possession and deliver them to the said Curator Bonis.

64.7 THAT the said Curator Bonis shall have the following rights and powers:

a) to hand over any of the said records to any person entitled thereto, as soon as he or she has satisfied himself or herself that the fees and disbursements in connection therewith have been paid or satisfactorily secured, or that same are no longer required;

b) to accept a written undertaking by a trust creditor to pay such amount as may be due to the respondent, either on taxation, assessment or by agreement, as satisfactory security for the purpose of paragraph 7(a), provided that such written undertaking incorporates a *domicilium executandi* of such creditor;

c) to require that any records, so handed over, be delivered back to him or her if, in his or her sole and absolute opinion, he or she considers them to be relevant to any, (including any possible anticipated or threatened) claim against him or her as Curator Bonis and/or the respondent's clients and/or the attorneys Attorneys Fidelity Fund (hereinafter referred to as "the Fund");

d) to administer and control all the respondent's trust accounts which for the purpose of this order shall include:

   i) the accounts relating to any estate, curatorship, trust or company, referred to in paragraph 64.5 thereof;

   ii) any and all banking accounts opened and/or kept by the respondent (or on the respondent's behalf) in terms of any provision contained in the Act or any of the Acts referred to in paragraph 64.5.

e) Subject to the approval of the Board of Control; of the Fund (hereinafter referred to as ("the Board"), to sign and endorse cheques and/or withdrawal forms and generally to operate upon the said trust accounts, but only to such an extent and for such purposes as may be necessary to bring to completion current transactions in which the respondent was acting as at the date if this order;

f) Subject to the approval of the Board, to recover and receive and, if necessary in the interest of persons having lawful claims upon the said trust accounts and/or against the respondent in respect of monies held, received and/or invested by the respondent in terms of Section 78 (1) and/or 78 (2) and/or 78 (2A) of the Act (hereinafter referred to as "the trust monies") to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete transactions in which the respondent may have been concerned and which may have been wrongfully and unlawfully paid from the said trust accounts and to receive such monies and to pay the same to the credit of the said trust accounts.

g) To ascertain from the respondent's records the names of all the persons on whose account the respondent appears to hold or to have received trust monies (hereinafter referred to as "trust creditors") and to call upon the respondents to furnish him or her within 30 (THIRTY) days of the date of this order, or within such further period as he may agree to in writing with the names and addresses of, and amounts due to, all trust creditors.

h) To call upon such trust creditors to furnish such proof, information and/or affidavits as he or she may require to enable him, acting in consultation with and subject to requirements of the Board, to determine whether any such trust creditors has a claim in respect of money in the said accounts and, if so, the amount of such claim;

i) Subject to the approval of the Board, to admit or reject in the whole or in part, the claims of any such trust creditor without prejudice to such trust creditor's right of access to the Civil Courts;

j) Subject to the approval of the Board, to pay such claims as he or she may consider lawfully due;

k) In the event of there being any surplus in the said trust accounts after payment of any such claims, to utilise such surplus to settle or reduce, as the case may be, firstly any claim of the Fund in terms of Section 78 (3) of the Act in respect of any interest therein referred to and, secondly without prejudice to the rights of the respondent's creditors, the costs, fees and expenses referred to in paragraph 64.11 hereof, or such portion thereof as has already been separately paid by the respondent to the applicant and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance to the fund;

l) In the event of there being insufficient trust monies in the said accounts to pay in full the claims of trust creditors as reflected in the records of the respondents:

   i) subject to the approval of the Board, to close the said accounts and to pay the credit balances therein to the Fund and require such credit balances therein to be placed to the credit of a special trust suspense account in the name of the respondents in the Fund's books;

ii) To refer the claims of all the trust creditors to the Board to be dealt with in terms of the provisions of the act;

iii) To authorise the Board to credit the credit balances referred to above to its "paid claims account" when the Fund has paid, in terms of Section 26 of the Act, admitted claims of the trust creditors of the respondents in excess of such credit balances, provided that, notwithstanding the aforegoing, the Board in its discretion shall be entitled to transfer to its "paid claims account" the amounts of any claim as and when admitted and paid by it.

m) Subject to the approval of the Chairman of the Fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any such other persons where considered necessary, to assist him in the carrying out of his duties as Curator Bonis.

n) To render from time to time returns to the Board showing how the said accounts have been dealt with until such time as the Board notifies him that he may regard his duties as Curator Bonis as terminated.

64.8 THAT the respondent be interdicted and prohibited from operating the accounts referred to in paragraph 64.7 (d)

64.9 The respondent is hereby removed from the office as:

a) Executor of any estate in respect of which he has been appointed in terms of Section 51(1)(a)(v) of the Administration of Estates Act, Act 66 of 1965 or the estate of any other person referred to in section 72 (1); and

b) Curator or guardian of any minor or other person's property in terms of Section 72 (1), read with Sections 54(1)(a)(v) and 85 of the Administration of Estates Act, Act 66 of 1965, or the estate of any person other referred to in Section 72 (1); and

c) Trustee of any insolvent estate in terms of Section 59 of the Insolvency Act, Act 24 of 1934; and

d) Liquidator of any company in terms of Section 379 (2), read with Section 379 (e) of the Companies Act, Act 61 of 1973; and

e) Trustee of any trust in terms of Section 20 (1) of the Trust Property Control Act, Act 57 of 1988; and

f) Liquidator of any Close Corporation appointed in terms of Section 74 of the Close Corporation Act, Act 69 of 1984.

64.10 THAT the applicant be and is hereby authorised, should it consider it necessary, to engage the services of accountants of its choice, who are registered in terms of the Auditing Profession Act 26 of 2005, to conduct an examination and audit of the respondent's accounting records and to report to the applicant in respect of such an examination and audit insofar as such accountants, and/or applicant, may consider it necessary.

64.11 THAT the respondent be and is hereby directed to pay:

a) Applicant's costs of the inspections which may have been carried out of the respondent's records in terms of Section 70 (1) and 78 (5) of the Act at the rate of R600.00 per hour;

b) The costs of the said accountants in respect of any examination audit or report made by them in terms of this order;

c) The costs of the sheriff employed in terms of paragraphs 64.3 and 64.6 above;

d) The fees and expenses of the Curator Bonis, such fees to be assessed at the rate of R600.00 per hour (including travelling time) and *prima facie* proof whereof shall be sufficiently constituted by way of a certificate purporting to be signed by the Curator Bonis and specifying the expenses and the length of time during which he was engaged in the performance of his duties as Curator Bonis;

e) The fees and expenses of any person consulted and/or engaged by the Curator Bonis in terms of paragraph 64.7 (m) above, at such person's prescribed tariff rate save where such person is an attorney, at the rate as between attorney and own client;

f) The costs of, and incidental to, this application on an attorney and own client scale.

64.12 THAT the respondent be and is hereby directed to satisfy the Curator Bonis, within one year of the respondent having been requested to do so by the Curator, or within such shorter period as the Curator Bonis may agree to in writing, by means of the submission of the taxed bills of costs or otherwise, of the amount of fees and disbursements due to the respondent in respect of the respondent's said practice and, should the respondent fail to do so, the respondent shall not be entitled to recover such fees and disbursements from the Curator Bonis, but without prejudice to any such rights, if any, as the respondent may have against the trust creditors concerned for the payment or recovery thereof.

64.13 THAT the applicant be and is hereby directed to cause a copy of this order to be served upon the Master of this court.

a) Notify applicant's attorney in writing within five (5) days of his intention to oppose;

b) And within fifteen (15) days after he has given notice of his intention to oppose this application, to file his answering affidavit, if any, and further that he is required to appoint in such notification an address referred to in rule 6 (5) (b) at which he will accept notice and service of all documents in these proceedings.

64.14 The proposed Curator Bonis, Attorney Vuyo Morobane, the Chief Executive Officer of the Free State Law Society, is in terms of Section 5, Act 19 of 1941 exempted from furnishing security to the Master of the Free State High Court.

64.15 The provisions of the Section 78 and 88 of Act 66 of 1965 shall not apply to the Curator Bonis but he or she shall be obliged to report to the Board of Control of the Attorneys' Fidelity Fund in terms of paragraph 64.7 (n) hereof

M.D. HINXA, AJ

I concur.

M.H. RAMPAI, J

On behalf of applicant:	Adv L. Le Roux Instructed by: HN Botha BLOEMFONTEIN
On behalf of the respondent:	No appearance