IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 2025/007531

HEARD ON:20 JANUARY 2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES/~~NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES/~~NO
(3) REVISED

[redacted]

28 January 2026...........
....
DATE SIGNATURE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL	Applicant
and	
JAYDE JODI FRYER (NÉE PELSER)	Respondent

This order is made an Order of Court by the Judges whose names are reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 28 JANUARY 2026.

JUDGMENT

DU PLESSIS, AJ (WITH MANAMELA J CONCURRING)

INTRODUCTION

1.

1.1. This is an application brought by the South African Legal Practice Council ("the LPC") in terms of sections 40, 43 and 44 of the Legal Practice Act 28 of 2014 ("the LPA") for disciplinary relief against the Respondent, an admitted attorney.

1.2. The LPC initially sought an order suspending the Respondent from practice or, alternatively, striking her name from the roll of legal practitioners. At the hearing, counsel for the LPC properly accepted that the Court was not bound by the formulation of relief in the notice of motion and proposed two alternative draft orders. The first contemplated effective removal from practice; the second contemplated suspension from practising for her own account for a defined period, subject to conditions.

1.3. Although the application was formally opposed, the Respondent did not deliver a substantive answering affidavit dealing under oath with the allegations made against her and did not appear in court when the matter was heard on 20 January 2026. The matter therefore falls to be determined primarily on the LPC's founding affidavit, the annexures thereto, the heads of argument, and the limited written explanations provided by the Respondent in correspondence.

THE APPLICABLE LEGAL PRINCIPLES

2.

2.1. The principles governing applications for suspension or striking off are settled. (Malan v Law Society of the Northern Provinces 2009 (1) SA 216 (SCA) at paras 4–5 and Jasat v Natal Law Society 2000(3) SA 44 (SCA) at para 10, referring to s 22(1)(d) of the Attorneys Act 53 of 1979, but equally applicable to sections 40, 43 and 44 of the Legal Practice Act 28 of 2014 ("the LPA") The enquiry is three-stage:

2.1.1. whether the alleged offending conduct has been established on a balance of probabilities, which is a factual inquiry;

2.1.2. whether such conduct shows that the practitioner is not a fit and proper person to practise; and

2.1.3. if so, what sanction is appropriate – suspension or striking off.

2.2. These stages are conceptually distinct and must be approached sequentially. Proof of misconduct does not inexorably lead to a finding of unfitness, nor does a finding of unfitness automatically justify striking a practitioner from the roll.

2.3. This structured approach was reaffirmed by the Supreme Court of Appeal in Malan v Law Society of the Northern Provinces 2009 (1) SA 216 (SCA) at paras 4–5, where Harms DP stressed that a court must consciously move through each stage of the enquiry. The same approach was confirmed in Law Society of the Northern Provinces v Mabando 2013 (6) SA 335 (SCA) at paras 20–21.

2.4. In Malan the Supreme Court of Appeal emphasised that disciplinary proceedings are not punitive in nature. Their primary purpose is the protection of the public, the maintenance of proper professional standards, and the preservation of the integrity of the courts (para 9). Striking off is reserved for cases where the practitioner's conduct demonstrates dishonesty, lack of integrity or a character defect so serious that the court cannot reasonably conceive of rehabilitation. Suspension, by contrast, is appropriate where unfitness is serious but potentially remediable (paras 10–12).

2.5. In Mabando the Supreme Court of Appeal reiterated that the regulatory body "*claims nothing for itself*". Its function is to place facts before the court, which alone exercises the ultimate disciplinary power over its officers (para 25, quoting Solomon v Law Society of the Cape of Good Hope 1934 AD 401). The breadth of the LPC's statutory mandate cannot substitute for proof of misconduct nor determine sanction in the absence of facts justifying the relief sought.

THE LPC'S CASE AND THE ALLEGATIONS

3.

<u>(A) Practising without Fidelity Fund Certificates</u>

3.1. The LPC alleges that the Respondent practised as an attorney without being in possession of fidelity fund certificates during various periods between 2019 and 2024, in particular from 1 January 2022 onwards.

3.2. The factual basis for this allegation is the Respondent's admitted failure to submit auditor's reports, which in turn prevented the issuing of fidelity fund certificates. No confirmatory affidavit from the LPC's certification division, nor any extract from an official certificate register, was placed before Court.

3.3. The inference that the Respondent did not hold valid fidelity fund certificates during the relevant periods is a plausible one. However, the proof is indirect. What is established on a balance of probabilities is that the Respondent failed to comply with the statutory and regulatory prerequisites for the issuing of such certificates. The allegation is therefore proved to that extent, but not as direct proof of deliberate unlawful practice.

(B) Failure to Submit Auditor's Reports

3.4. It is alleged that the Respondent failed to submit auditor's reports for the financial years ending February 2021, 2022, 2023 and 2024, in contravention of Rules 54.20, 54.22, 54.23 and 54.28 of the LPC Rules.

3.5. This allegation is clearly established. No auditor's reports were produced, and there is no evidence that they were ever submitted despite repeated written demands by the LPC. The failure persisted over a period of four consecutive years.

3.6. The submission of auditor's reports lies at the heart of the system designed to safeguard trust monies and protect members of the public. As the Supreme Court of Appeal observed in Malan at para 12, prolonged failure to submit such reports constitutes serious professional misconduct.

(C) Failure to Report on Trust Accounts and Records

3.7. Flowing from the absence of auditor's reports, the Respondent failed to report on the status of her trust banking account, trust accounting records, and the handling of trust funds for a prolonged period.

3.8. This constitutes misconduct under Rule 57.1 and is established on the papers. The Respondent placed no evidence before Court to show that proper reporting occurred during the relevant period.

(D) Speculation Regarding Absence of Accounting Records

3.9. The LPC submits that the Respondent "*may not have, and likely has not*" kept proper accounting records.

3.10. This allegation is speculative. The LPC expressly does not know whether such records were kept. A court cannot make adverse findings on conjecture. As cautioned in Malan, [4] supra , with reference to Jasat v Natal Law Society 2000 (3) SA 44 (SCA) at para 10, s 22(1)(d) the first stage of the enquiry requires proof of facts, at least on a preponderance of probabilities, not suspicion or inference. This allegation therefore cannot sustain a finding of dishonesty or justify striking off.

(E) Failure to Pay Annual LPC Fees

3.11. It is alleged that the Respondent failed to pay annual fees to the LPC for the years 2020 to 2024, despite the amounts (totalling R21 335) and due dates being clearly stipulated.

3.12. This allegation is established. The Respondent produced no proof of payment and did not deny the indebtedness under oath.

3.13. Persistent non-payment of statutory fees constitutes serious misconduct. It is, however, administrative and financial in nature and does not without more demonstrate dishonesty.

(F) Failure to Cooperate with the LPC

3.14. The LPC relies on correspondence addressed to the Respondent, including letters dated 4 August 2022 and 13 June 2024, requesting compliance and cooperation.

3.15. The evidence demonstrates delayed, incomplete or absent responses. The addresses used correspond with the Respondent's recorded contact details. While proof of service is not perfect, it is adequate on a balance of probabilities.

3.16. This misconduct is established and reflects a failure to cooperate with the regulatory authority.

<u>(G) Complaints by Counsel and Correspondent Attorneys</u>

3.17. The Respondent briefed Advocate S P M Vorster, who rendered professional services and invoiced an amount of R2 700. The Respondent admitted non-payment, citing lack of funds and personal hardship.

3.18. The Respondent also failed to pay Swanepoel van Zyl Attorneys, a correspondent firm, an amount of approximately R1 768.68 for services rendered. She failed to respond meaningfully to the LPC's referral of this complaint.

3.19. Both complaints are established. Failure to pay counsel and or Respondents is unprofessional and unacceptable. It does not, however, constitute dishonesty or misappropriation.

THE RESPONDENT'S EXPLANATION

4.

4.1. The Respondent's explanation appears primarily from an email dated 14 September 2021, in which she refers to severe personal, financial and domestic difficulties, including abuse, housing instability and financial destitution.

4.2. These circumstances do not excuse professional misconduct. They do, however, provide context and are relevant to the assessment of sanction, particularly where the Court is required to consider proportionality and the possibility of rehabilitation, as emphasised in Malan.

4.3. There is no evidence that the Respondent's position materially improved thereafter or that regulatory compliance was achieved subsequent to those explanations.

FIT AND PROPER ENQUIRY

5.

5.1. The cumulative misconduct demonstrates prolonged non-compliance with statutory and regulatory obligations, financial incapacity, and an inability to conduct a legal practice in accordance with the standards required of an attorney.

5.2. Importantly, however, there is no evidence of theft, fraud, misappropriation of trust monies, or dishonesty in the strict sense contemplated in Malan. Nor is there evidence of deliberate concealment or moral turpitude.

5.3. Applying Malan at paras 9–12 and Mabando at paras 20–26, the Respondent is presently not a fit and proper person to practise. That conclusion flows from sustained regulatory failure and an inability to meet professional obligations. It does not follow that the Respondent is beyond rehabilitation.

5.4. This court is mindful of the “warning “ in Malan (par 11) where Harms DP submits :” As mentioned in *Summerley* (at para 15), the fact that a court finds that an attorney is unable to administer and conduct a trust account does not mean that striking-off should follow as a matter of course. The converse is, however, also correct: it does not follow that striking-off is not an appropriate order (compare *Prokureursorde van Transvaal v Landsaat 1993(4) SA 807(T)*; *Law Society of the Transvaal v Tloubatla* [19 99] 4 All SA 59 (T)). To the extent that the judgment in *Law Society of the Cape of Good Hope v King 1995 (2) SA 887* (C) at 892G-894C propagates an ‘enlightened approach’, requiring courts to deal with misconduct which does not involve dishonesty with (in my words) kid gloves, I disagree. In order to stem an erosion of professional ethical values a ‘conservative approach’ is more appropriate (*Incorporated Law Society, Transvaal v Goldberg 1964 (4) SA 301(T)* at 304A-F).

5.5. This court considered the seriousness of the proven failures by the attorney.

SANCTION

6.

6.1. Four years of failure to submit auditor’s reports and to comply with core regulatory requirements cannot be tolerated. The public and the integrity of the profession require decisive intervention.

6.2. The purpose of sanction is not to punish the Respondent, but to protect the public and maintain confidence in the profession (Malan para 9).

6.3. In circumstances where dishonesty has not been proved, and where the misconduct consists primarily of regulatory non-compliance and financial incapacity, permanent removal from the roll can be disproportionate, although we remain mindful to not deal with this misconduct with “kid gloves” because it does not involve dishonesty (Malan par 11).

6.4. The Court is satisfied that the objectives of discipline and public protection can be achieved by suspending the Respondent from practising for her own account for a defined period, coupled with strict conditions. This approach is consistent with the remedial character of suspension recognised in Malan and Mabando.

COSTS

7.

7.1. The Respondent's misconduct necessitated this application. The LPC was obliged to approach the Court to discharge its statutory duty to protect the public.

7.2. Although dishonesty has not been proved, the seriousness and duration of the regulatory breaches justify an order that the Respondent pay the costs of the application on the attorney-and-client scale.

ORDER

8.

The following order is made:

8.1. The Respondent, Jayde Jodi Fryer (née Pelser), is suspended from practising as a legal practitioner (attorney) for her own account for a period of two (2) years, calculated from the date of this order.

8.2. The Respondent may be employed as an attorney under the direct supervision of a practising legal practitioner approved in writing by the LPC, subject to such conditions as the LPC may impose.

8.3. That the Respondent be prohibited from handling or operating on her trust account(s) as detailed in paragraph 4 hereof, pending the final determination of this application.

8.4. That the Director or Acting Director of the Gauteng Provincial Council or any person nominated by him/her, in his/her capacity as such, is a suitable person to act as curator bonis (curator) to administer and control the trust account(s) of the Respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with the Respondent's practice and including, also, the separate banking accounts opened and kept by the Respondent at a bank in the Republic of South Africa in terms of sections 86(1) and 86(2) of the Legal Practice Act ("LPA") and/or any separate interest-bearing accounts as contemplated by sections 86(3) and 86(4) of the LPA, in which monies from such trust banking accounts have been invested by virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:

8.4.1. immediately to take possession of the Respondent's accounting records, records, client files and documents as referred to in paragraph 5 and subject to the approval of the board of control of the Legal Practitioners' Fidelity Fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the Respondent's trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the Respondent was acting at the date of this order;

8.4.2. subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust Respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s); accounts, to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the Respondent in respect of monies held, received and/or invested by the Respondent in terms of sections 86(3) and 86(4) of the LPA (hereinafter referred to as 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, if any, in which the Respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

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

8.4.4. to call upon such trust creditors to furnish such proof, information and/or affidavits as he/she may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the Respondent and, if so, the amount of such claim;

8.4.5. to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;

8.4.6. having determined the amounts which he/she considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;

8.4.7. in the event of there being any surplus in the account(s) of the Respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 86(5) of the LPA in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the Respondent, the costs, fees and expenses referred to in paragraph 12 below, or such portion thereof as has not 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, subject to the approval of the board of control of the fund, to the Respondent, if she is solvent, or, if the Respondent is insolvent, to the trustee(s) of the Respondent's insolvent estate;

8.4.8. in the event of there being insufficient monies in the trust banking account(s) of the Respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the Attorneys Fidelity Fund;

8.4.9. subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

8.4.10. to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of the Respondent has/have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

8.5. That the Respondent immediately deliver her accounting records, records, client files and documents containing particulars and information relating to:

8.5.1. any monies received, held or paid by the Respondent for or on account of any person while practising as a legal practitioner;

8.5.2. any monies invested by the Respondent on behalf of a client or creditor in terms of sections 86(3) and 86(4) of the LPA;

8.5.3. any interest on monies so invested which was paid over or credited to the Respondent;

8.5.4. any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the Respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

8.5.5. any insolvent estate administered by the Respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

8.5.6. any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Property Control Act, No 57 of 1988;

8.5.7. any company liquidated in terms of the Companies Act, No 71 of 2008, administered by the Respondent as or on behalf of the liquidator;

8.5.8. any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

8.5.9. the Respondent's practice as an attorney, of this Honourable Court,

8.5.10. to the curator appointed in terms of paragraph 4 hereof, provided that, as far as such accounting records, records, client files and documents are concerned, the Respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

8.6. That should the Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon her or after a return by the person entrusted with the service thereof that she has been unable to effect service thereof on the Respondent (as the case may be), the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.

8.7. That the curator shall be entitled to:

8.7.1. hand over to the persons entitled thereto all such records, client files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either determined on taxation or by agreement, in respect of fees and disbursements due to the Respondent;

8.7.2. require from the persons referred to in paragraph 7.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him/her and/or the

Respondents and/or the Respondents' clients and/or the Fund in respect of money and/or other property entrusted to the Respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

8.7.3. publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.7.4. wind-up of the Respondent's practice.

8.8. That the Respondent be and is hereby directed:

8.8.1. to pay, in terms of Section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the Respondent;

8.8.2. to pay the reasonable fees and expenses of the curator;

8.8.3. to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

8.8.4. to pay the expenses relating to the publication of this order or an abbreviated version thereof.

8.9. That, if there are any funds available the Respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, shall satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to her (Respondent) in respect of her former practice, and should he fail to do so, she shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as she may have against the creditor(s) concerned for payment or recovery thereof.

8.10. That a certificate issued by a director of the Attorneys Fidelity Fund shall constitute *prima facie* proof of the curator's costs and that the Registrar be authorised to issue a writ of execution on the strength of such certificate in order to collect the curator's costs.

8.11. The Respondent may apply for the upliftment of the suspension after expiry of the two-year period, upon strict proof of:

8.11.1. full compliance with the Legal Practice Act and LPC Rules;

8.11.2. submission of all outstanding auditor's reports, if applicable ;

8.11.3. payment of all outstanding LPC fees; and

8.11.4. proof that she is a fit and proper person to practise.

8.12. The Respondent is ordered to pay the Applicant's costs on an Attorney and client scale.

[redacted]

J. DU PLESSIS AJ

[redacted]

KLM MANAMELA J

I AGREE

APPLICANT'S COUNSEL
MR M STEENKAMP (ATTORNEY)

Instructed by
ROOTH AND WESSELS Attorneys
PRETORIA

RESPONDENTS' COUNSEL
NO APPEARANCE

Judgment delivered on
28 January 2026