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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 54307/21

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 2026-03-03

SIGNATURE:

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

GEORGE SMITH

Respondent

(Identity number: 4[...])

JUDGMENT

POTTERILL J

Introduction

[1] The applicant, the South African Legal Practice Council [LPC] is seeking the suspension of the respondent, Mr George Smith [Smith]. In the judgment where I refer to "Smith", it is with no disrespect intended.

[2] In terms of a statutory succession the LPC is the regulatory body for attorneys and the legal profession. Section 116(2) of the Legal Practice Act [the LPA] provides that any proceedings in respect of the suspension of any person from practice as an advocate, attorney, conveyancer or notary or in respect of the removal of the name of any person from the roll of advocates, attorneys, conveyancers or notaries which have been instituted in terms of any law repealed by the LPA and which have not been concluded at the date of the commencement of the LPA, must be continued and concluded as if that law had not been repealed. For this purpose, a reference in the provisions relating to such suspension or removal to the Law Society must be construed as a reference to the Council.

[3] Smith was admitted as an attorney on 28 April 2017. He is practising as a legal practitioner for his own account as Smith (George) Attorneys.

[4] The LPC set out that Smith had deviated from the standards of professional conduct to such an extent that he is not fit and proper to continue to practise as an attorney.

[5] The reason for this is that Smith contravened Rule 54.21 read with Rules 54.23 and 54.24 of the Rules of the LPC read with Rule 16.3 of the Code Conduct by not timeously submitting his firm's opening audit report, since the inception of the firm on 5 May 2017, to the end of the fourth full calendar month following the commencement of his practice. There is thus no record that Smith kept and maintained his accounting records as required by the LPA's rules and Code of Conduct. There is no record that at all relevant times he had sufficient monies in his trust bank account to meet his obligations to trust creditors.

[6] Furthermore, Smith contravened Rule 54.24.1 read with Rules 54.20, 54.22 and 54.23 of the Rules of the LPC in that he did not submit his audit report within six months of the annual closing of the accounting records of the firm for the years ending February 2019 and February 2020.

[7] Smith also did not pay his annual subscription fees to the LPC as and when it became due. Also, he breached section 85(1)(b) of the LPA, read with Rule 27.1 of

LPC rules that he failed to successfully complete the required Legal Practice Management Course and to submit a Practice Management Certificate to the LPC by 31 December 2018.

[8] Section 84(1) of the LPA provides that every attorney practising for his own account must be in possession of a Fidelity Fund Certificate. This is peremptory and a contravention thereof is an offence.¹ Rule 54.29 provides that before a Fidelity Fund Certificate can be issued to a practitioner the practitioner must ensure that there is an unqualified audit or inspector's report issued to the practitioner. Smith submitted no auditor's reports and was accordingly not issued with Fidelity Fund Certificates.

[9] I interpose to set out that the matter has a protracted history. Smith first received notice of the intended suspension on 11 November 2020. In October 2021 the application was issued. On 9 November 2021 a return of non-service was issued by the Sheriff. An application for substituted service was issued, but before it was heard Smith filed a "deposition" in answer. This deposition was uploaded on to Caselines only on 28 November 2024 despite the hearing date being 12 November 2024. The LPC removed the matter from the roll, but it proceeded to a virtual hearing where the matter was removed from the roll. In August 2025 Smith brought a review application in respect of a PAJA request made to the LPC.

[10] The LPC applied that, with the leave of the Court, the supplementary affidavit of the LPC be entertained. Smith had no objection thereto. The LPC had received three complaints after the first hearing. This Court accepted the supplementary affidavit. Smith was afforded an opportunity to answer thereto.

[11] One complaint emanates from a Mr Naidoo. He sought the services of Smith to prevent his motor vehicle being attached by MFC. To that end he paid R30 000 into Smith's account but the vehicle was handed back and Smith refused to refund the money. Smith answered the complaint that he charged 20 hours of work and that the money paid by Naidoo covers the amount due to him for services rendered.

¹ Section 93(8) of the LPA

[12] Mr Fourie lodged a complaint that he had paid in R30 000 to Smith to help with an illegal eviction, but he never helped him. When attempting to meet, Fourie was not allowed to see Smith at his offices, the only manner of communication allowed was by means of whatsapp.

[13] Ms Pienaar lodged a complaint that they paid in R25 000, but Smith never assisted them. He did not go to court with either excuses that he was too sick to go to Court, or that he would arrange a "specialist attorney." They had to be in court on 15 September 2023, but on the day of the hearing Smith called Ms Pienaar and told her she should go to court alone as all his "specialist lawyers" were fully booked. They had paid R135 000.00, but received no receipt or statement.

Smith's opposition

[14] In his answering affidavit he acknowledged that he has not complied with the contraventions complained of excepting for the Practice Management Training Course because this requirement was only implemented in September 2019 and he was admitted in 2017.

[15] However, he has exceptional circumstances as to why he could not comply with the LPA and Rules. The accountant and auditor, both of whom he knows well, have refused to complete the audit reports as he owes them money. This was during the Covid period. He is however awaiting their quotation because they have agreed to complete the work.

[16] In 1993 the Department of Home Affairs issued a second identity to an unknown person that resulted in credit issues and financial liability for debts that were not his. He was in fact declared dead on an unknown date. The Covid-19 pandemic affected his ability to access necessary resources. He had applied for financial assistance from the LPC/AFF but he did not qualify. Furthermore, he contends that in terms of the Older Persons Act 13 of 2006 the LPC must take cognisance of the predicaments of older persons.

[17] In a supplementary affidavit filed Smith avers this application should have been preceded by a disciplinary hearing. He further sets out that the LPC has damaged his professional reputation and has breached their duty of confidentiality. He was denied the right to appear in the High Court by the LPC. He seeks a "setting aside of summons", "Reconsideration of the Exemption Application" and costs.

[18] In two applications, classified as urgent, Smith again raises the issue that this application is premature because no disciplinary hearing was held. In the other urgent application an interdict is sought to prevent suspension because he does not have a Fidelity Fund Certificate and his constitutional right to freely choose and practise a profession is violated. Furthermore, he seeks to interdict the disciplinary complaint raised by Naidoo. He also seeks relief that this Court must grant him a right of appearance.

Must the PAJA application be granted?

[19] This Court entertained the interlocutory applications. This application cannot be granted simply because the information sought was sent to Smith on 30 July 2025. Despite this Smith has refused to withdraw the application. This application is dismissed with costs.

Must the urgent application succeed?

[20] The urgent application revolves around his disciplinary hearing based on Naidoo's complaint. There is no basis in fact or law set out for this interdict to be granted. None of the requirements for an interdict is addressed in the founding affidavit and there is no basis in law to interdict the disciplinary hearing against Smith.

[21] Smith avers that the LPC is breaching the Constitution by refusing to provide him with a Fidelity Fund Certificate in that it violates his right to freely choose and practise a profession. This Court cannot find that such a breach exists. As a legal practitioner he must comply with sections 84 and 85 of the LPA in that he cannot practise if he is not provided with a Fidelity Fund certificate. Smith is disqualified from practising for his failure to comply with legislative prescripts. He can practise his

chosen profession, but must comply with the Rules. The right to practise is limited by compliance with the Rules.

[22] This Court has no jurisdiction to circumvent the Act and Rules and grant Smith right of appearance. Smith must comply with section 25(3) of the LPA read with Rule 20 to obtain a right of appearance. This Court cannot ignore those requirements and grant Smith a right of appearance. Seeking this right in violation of the LPC shows a lack of insight from Smith.

[23] He also seeks that the LPC is to pay him an interim monthly stipend of R50 000.00, or such amount as the Court finds just pending a final determination of his claim for compensation against the LPC. There is no basis in law for this Court to grant such order and it is dismissed.

[24] All the prayers sought in the urgent motion are dismissed.

Were the contraventions committed?

[25] Smith conceded that excepting for his opening audit he has not provided the LPC with any audited financial statements and has been practising without a Fidelity Fund Certificate since 2018. In his oral submission to this Court he admitted that he is still practising in 2026 without a Fidelity Fund Certificate, despite this application being pending since November 2020.

[26] Even, if at best for Smith, the Court accepts that he did file his first audit report and he did not need to attend the Legal Practice Management Course, it is common cause he has since 2019, up to date, not filed audited financial statements and has practised without a Fidelity Fund Certificate. There are complaints from members of the public from whom he has taken monies and despite demand, he has not repaid the amounts sought by the complainants². Smith cannot provide a single financial statement to provide reckoning of the monies. In terms of section 41 an attorney may not practise for his own account for reward without being in possession of a Fidelity

² See paragraphs 11, 12 and 13 of this Judgement

Fund Certificate and in fact it is a criminal offence in terms of section 83(1) to practise without a Fidelity Fund Certificate. In considering such an application this Court must first decide whether the offending conduct was established on a preponderance of probabilities and secondly whether Smith is a fit and proper person to continue to practise.

[27] As stated above, excluding the Practice Management Course as a transgression, Smith has made himself guilty of dishonourable, unworthy and/or unprofessional conduct. The nature of the proceedings was reiterated in *Van den Berg v General Council of the Bar of South Africa* (270/06) [2007] ZASCA16; [2007] SCA 16 (RSA) (22 March 2007) par [2] as: "The applicant's role in bringing such proceedings is not that of an ordinary adversarial litigant but is rather to bring evidence of a practitioner's misconduct to the attention of the Court, the profession and the public at large, to enable a court to exercise its disciplinary powers."

[28] The complaint that the LPC is preventing him from earning money is devoid from substance. As an attorney, Smith simply cannot be oblivious to the fact that to qualify for a Fidelity Fund Certificate his auditors needed to attest that the financial affairs of the practice were compliant with the relevant LPC's Rules and Statutory prescripts. Smith is thus the author of his own misfortune. Seeking from this Court then appearance to defend shows a clear lack of understanding and is in fact preposterous.³ It is indeed worrisome that he persists with practising despite the pending suspension application.

[29] Having regard to the conduct of Smith it is clear that he indeed made himself guilty of unprofessional, dishonourable or unworthy conduct. Lodging auditor reports as required serves as a safety mechanism for the public's and clients' money and is a prerequisite for an attorney to be issued with a Fidelity Fund certificate. In failing to do so Smith has not aspired to meet the standard of behaviour which is required of an attorney.

³ *Matsi and Another v South African Legal Practice Council (Gauteng)* 184/2024 [2026] ZASCA. 12 (06 February 2026)

[30] I am satisfied that Smith is not a fit and proper person to continue to practise, his conduct cannot be excused and he is suspended from the roll.

[31] I am satisfied that the applicant has made out a proper case for the related prayers as set out in the notice of motion and in the circumstances the prayers for costs on an attorney and client scale is granted.

[32] The draft order marked "X" is made an order of Court.

S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree

M. QOFA-LEBAKENG
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Case No: 54307/2021

Heard on: 5 February 2026

For the Applicant: ADV. D.P.J. SMITH

Instructed by: Mathie Jooma Sabdia Inc.

For the Respondent: In person

Date of judgment: 3 March 2026

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 54307/21

PRETORIA THIS 3RD DAY OF MARCH 2026
BEFORE THE HONOURABLE MADAM JUSTICE POTTERILL J
AND BEFORE THE HONOURABLE MADAM JUSTICE QOFA-LEBAKENG AJ

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Applicant

and

GEORGE SMITH
(Identity number: 4[...])

Respondent

DRAFT ORDER

After having heard counsel and having read the papers filed on record:-

IT IS ORDERED THAT:-

1. The Respondent, **GEORGE SMITH**, is hereby suspended from practising as a legal practitioner of this Honourable Court until such time he satisfies the court that he is a fit and proper person to resume practise as a legal practitioner.
2. The Respondent surrender and delivers his certificate of enrolment as a legal practitioner to the Registrar of this Honourable Court.

3. In the event of the Respondent failing to comply with the terms of this order detailed in paragraph 2 (two) *supra* within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificate and to hand it to the Registrar of this Honourable Court.

4. The Respondent is prohibited from handling or operating on his banking accounts, used in receiving monies for clients (referred to herein as creditors) as detailed in paragraph 5 (five) *infra*.

5. The current Director of the Gauteng Provincial Office of the Applicant (*or his/her successor as such*), in his/her capacity as such, be appointed as *curator bonis* (curator) to administer and control the banking accounts of the Respondent, including accounts relating to insolvent and deceased estates and any estate under curatorship connected with the Respondent's practice as a legal practitioner and including (if applicable), also, the separate banking accounts opened and kept by Respondent at a bank in the Republic of South Africa in terms of section 86(1)&(2) of Act No 28 of 2014 and/or any separate savings or interest bearing accounts as contemplated by Section 86(3):

5.1 Immediately to take possession of Respondent's accounting records, files and documents as referred to in paragraph 6 and subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control (hereinafter referred to as "the fund") to sign all forms and generally to operate upon the account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which Respondent was acting at the date of this order.

5.2 Subject to the approval and control of the Legal Practitioners' Fidelity Fund Board of Control and where monies had been paid incorrectly and unlawfully from the undermentioned accounts, to recover and receive it, if necessary in the interest of persons having lawful claims upon the account(s) and/or against Respondent in respect of monies held, received by Respondent in terms of Section 86(1)&(2) and/or Section 86(3), 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 Respondent was and may still have been concerned and to received such monies and to pay the same credit of the account(s);

5.3 To ascertain from the Respondent's records the names of all persons on whose account the Respondent appears to hold or to have received monies (hereinafter referred to as "creditors") and to call upon the Respondent to furnish the Curator within 30 days of the date of this Order or within such further period as the Curator may agree to in writing with the names and addresses of, and amounts due to, all creditors;

5.4 To call upon such creditors to furnish such proof, information and/or affidavits as the Curator may require to enable him/her, acting in consultation with, and subject to the requirements of the Legal Practitioners' Fidelity Fund Board of Control, to determine whether any such creditor has a claim in respect of money in the said accounts and, if so, the amount of such claim;

5.5 To admit or reject, in whole or in part, subject to the approval of the Legal Practitioners' Fidelity Fund Board of Control, the claims of any such creditor or creditors, without prejudice to such creditors' right of access to the civil courts;

5.6 Having determined the amounts which, he/she considers are lawfully due to creditors, to pay such claims in full but subject always to the approval of the Legal Practitioners' Fidelity Fund Board of Control;

5.7 In the event of there being any surplus in the account(s) of the Respondent after payment of the admitted claims of all 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 Act No 28 of 2014 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 10 of this order, or such portion thereof, as has not already been

separately paid by Respondent to 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 Legal Practitioners' Fidelity Fund Board of Control, to the Respondent, if he is solvent, or, if the Respondent is insolvent, to the trustee(s) of the Respondent's insolvent estate.

5.8 In the event of there being insufficient monies in the banking account(s) of the Respondent, in accordance with the available documentation and information, to pay in full the claims of 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 banking account(s) amongst the creditors alternatively to pay the balance to the Legal Practitioners' Fidelity Fund Board of Control.

5.9 Subject to the approval of the Chairman of the Legal Practitioners' Fidelity Fund Board of Control, to appoint nominees or representatives and/or consult with and/or engage the service of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him/her in carrying out his/her duties as curator; and

5.10 To render from time to time, as Curator, returns to the Legal Practitioners' Fidelity Fund Board of Control showing how the account (s) of Respondent has or have been dealt with, until such time as the Board notifies him/her that he/she may regard his/her duties as Curator as terminated.

6. The Respondent immediately delivers his accounting records, banking accounts, fee book, record, files and documents containing particulars and information relating to:

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

6.2 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;

6.3 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;

6.4 Any trust administered by the Respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

6.5 Any close corporation liquidated in terms of the Close Corporation Act, 69 of 1984, administered by the Respondent as or on behalf of the liquidator; and

6.6 The Respondent's practice as a legal practitioner of this Honourable Court, to the curator appointed in terms of paragraph 5 hereof, provided that, as far as such accounting records, records, 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.

7. Should the Respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he 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. The Curator shall be entitled to :

8.1 Hand over to the persons entitled thereto all such records, 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 firm;

8.2 Require from the persons referred to in paragraph 8.1 to provide any such documentation or information which he/she may consider relevant in respect of a claim or possible or anticipated claim, against him/her and/or the Respondent and/or the Respondent's clients and/or 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 thereto;

8.3 Publish this order or an abridged version thereof in any newspaper he/she considers appropriate; and

8.4 Wind-up of the Respondent's practice;

9. The Respondent be and is hereby removed from office as:

9.1 Executor of any estate of which the Respondent has been appointed in terms of section 54(1)(a)(v) of the Administration of Estate Act, No. 66 of 1965 or the estate of any other person referred to in section 72(1);

9.2 Curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estate Act, No 66 of 1965;

9.3 Trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

9.4 Liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973 and read together with the provisions of the Companies Act No 71 of 2008;

9.5 Trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

9.6 Liquidator or any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984; and

9.7 Administrator appointed in terms of Section 74 of the Magistrates Court Act, No 32 of 1944.

10. 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, 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 him (Respondent) in respect of his former practice, and should he fail to do so, he shall not be entitled to recover such fees and disbursements from the curator without prejudice, however, to such rights (if any) as he may have against the creditor(s) concerned for payment or recovery thereof.

11. A certificate issued by a director of the Attorney's 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 strengths of such certificate in order to collect the curator's costs.

12 The Respondent be and is hereby directed:

12.1 To pay, in terms of section 87(2) of Act No 28 of 2014, the reasonable costs of the inspection of the accounting records of Respondent;

12.2 To pay the reasonable fees of the auditor engaged by the Applicant;

12.3 To pay the reasonable fees and expenses of the Curator, including travelling time;

12.4 To pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the Curator as aforesaid;

12.5 To pay the expenses relating to the publication of this order or an abbreviated version thereof;

12.6 To pay the costs of this application on an attorney-and-client scale.

13. In the event of the Respondent failing to comply with any of the provisions referred to in this Order, the Applicant shall be entitled to apply through due and proper civil process commensurate with the principles of the Constitution of the Republic of South Africa, Act No. 106 of 1996, for the appropriate relief against the Respondent including but not limited to an Order for the committal of the Respondent to prison for the Respondent's contempt of the provisions of the abovementioned paragraphs.

BY ORDER
REGISTRAR, PRETORIA

Appearance for the Applicant: Adv Dawid Smith

Appearance for the Respondent: No appearance