

(Legislative Supplement No. 18)

LEGAL NOTICE NO. 42

THE ADVOCATES ACT

(Cap. 16)

IN EXERCISE of the powers conferred by section 81 (1) (a) of the Advocates Act, the Council of the Law Society of Kenya makes the following Rules:—

THE ADVOCATES (MARKETING AND ADVERTISING) RULES,
2014

1. These Rules may be cited as the Advocates (Marketing and Advertising) Rules, 2014. Short title.
2. An advocate shall not— General conduct.
 - (a) unfairly apply for or unfairly seek instructions for professional business; or
 - (b) do or permit to be done in the advocate's name anything that may reasonably be considered as calculated to unfairly attract professional business.
3. An advocate shall not advertise the advocate's practice other than in accordance with these Rules. Advertising.
4. An advertisement made under these Rules shall— Manner of advertising.
 - (a) be objective, true and dignified;
 - (b) be respectful of the professional ethics of the profession; and
 - (c) not attempt to denigrate another advocate or the profession.
5. (1) An advocate may only provide the following information in an advertisement under these Rules— What may be contained in an advertisement.
 - (a) the identity of the advocate;
 - (b) the identity of the advocate's firm;
 - (c) the date on which the advocate was admitted to the Roll of Advocates;
 - (d) the address and other contact information of the advocate or the advocate's firm;
 - (e) the hours of business of the advocate or the advocate's firm;
 - (f) the language of business used by the advocate or the advocate's firm;

- (g) the academic or professional qualifications of the advocate; or
- (h) any contribution that the advocate or the advocate's firm may have made to the preparation of a published legal article or a legislative Bill, or any contribution made by the advocate or the advocate's firm to legal education.

(2) An advocate shall not provide the following information in an advertisement under these Rules —

- (a) the name or the identity of a client of the advocate or the advocate's firm;
- (b) a picture of the advocate, the advocate's partner or partners, or another advocate employed in the advocate's firm;
- (c) academic or professional positions held by the advocate before that advocate's admission to the Roll of Advocates; or
- (d) a promise by the advocate or the advocate's firm to achieve a particular outcome for clients or prospective clients of the advocate or the advocate's firm or that failure to obtain that outcome shall constitute a waiver of the advocate's or the advocate's firm's legal fees.

6. (1) The Council may maintain a register of advocates who are specialists in any branch of law and such a register may classify advocates into each branch or specialty.

Register of specialists.

(2) If an advocate is recorded in the register under sub-paragraph (1), that advocate may state that fact in an advertisement made under these Rules.

7. (1) An advocate may advertise under these Rules in the following forms —

Forms of Advertisement.

- (a) in a non-legal or non-professional directory;
- (b) in a legal or professional directory;
- (c) in a website or other digital platform on the internet;
- (d) in the print media including in a newspaper, magazine, booklet, periodical or journal:

Provided that the advocate shall only advertise in a print medium up to four times in any given year and the advertisement shall measure not more than 0.210m x 0.297m; or

- (e) in the form of a plate or a plaque at the entrance to the advocate's or advocate's firm's ordinary place of business and the plate or plaque shall measure not more than 0.5m x 0.35m.

(2) An advocate shall not advertise under these Rules on radio, television or in the form of an illuminated billboard or placard.

8. An advocate who attends a conference, seminar or similar public activity may publish a paper, a circular, an article or a similar

Conferences, seminars, public activities, etc.

document but only by identifying that advocate by name and profession.

9. Where a person accuses an advocate or an advocate's law firm of professional misconduct under these Rules, the Council shall hear both the complainant and the advocate or the advocate's firm expeditiously and determine whether that advocate or advocate's firm has committed an act of professional misconduct under these Rules.

Council to rule on
conduct of advocate.

10. An advocate commits an act of professional misconduct under these Rules if—

Professional
misconduct.

- (a) that advocate or that advocate's firm fails to comply with these Rules;
- (b) that advocate uses an appearance at a conference, seminar or similar public activity for advertisement;
- (c) that advocate or that advocate's firm uses an intermediary to solicit professional business; or
- (d) that advocate or that advocate's firm makes false or misleading statements regarding information that should be provided under these Rules to solicit professional business.

Dated the 11th April, 2014.

ERIC MUTUA,
Chairman,
Law Society of Kenya.

APOLLO MBOYA,
Secretary,
Law Society of Kenya.

LEGAL NOTICE NO. 43

THE ADVOCATES ACT
(*Cap. 16*)

IN EXERCISE of the powers conferred by section 81(1)(h) of the Advocates Act, the Council of the Law Society of Kenya makes the following Rules:—

THE ADVOCATES (CONTINUING PROFESSIONAL
DEVELOPMENT) RULES, 2014

1. These Rules may be cited as the Advocates (Continuing Professional Development) Rules, 2014.

Short title.

2. Unless the context otherwise requires—

Interpretation.

“accredited provider” means an institution or individual approved by the Council;

“approved activity” means an activity which meets the requirements of Rule 6;

“attendance” means attendance in person by an advocate at an approved activity;

“Committee” means the Continuing Professional Development Committee established under Rule 5;

“CPD year” means a calendar year beginning on the 1st January and ending on the 31st December;

“participation” includes the delivery of a paper or the giving of a lecture at an approved activity by an advocate as an accredited provider or the attendance of an advocate at the delivery of a paper or the giving of a lecture by an accredited provider;

“Society” means the Law Society of Kenya; and

“unit” means a numerical unit of measurement that an advocate accrues by participation at an approved event.

3. The purpose of Continuing Professional Development is to—

- (a) maintain, improve and broaden the professional knowledge and skills of advocates;
- (b) further develop the personal qualities of advocates required for the execution of the advocates’ professional and technical duties;
- (c) encourage constant reflection, learning and the maintenance of a broad outlook by advocates to maintain high professional standards;
- (d) reassure recipients of legal services and the public of the high standards of training, knowledge, skills and expertise of advocates; and
- (e) keep advocates relevant and informed of the developments in the practice of law.

Purpose of continuing professional development.

4. In each CPD year—

- (a) an advocate shall participate in or attend approved events at which that advocate shall accrue a minimum of five units except where that advocate has been exempted in part or in whole;
- (b) if an advocate accrues more than five units, the excess number of units shall not be carried over to the next CPD year by that advocate;
- (c) if an approved event lasts longer than one day, the Committee shall include a session on the subject of ethics; and
- (d) if an advocate fails to accrue five units, that advocate may make up the difference in the period between the 1st January and the 31st January of the next CPD year.

General requirements.

5. (1) There is established a committee to be known as the Continuing Professional Development Committee.

The Continuing
Professional
Development
Committee.

(2) The principle function of the Committee is to implement the Continuing Professional Development programme in Kenya.

(3) The Committee shall comprise of such number of members as the Council shall appoint from time to time.

(4) A person is qualified to be appointed as a member of the Committee if that person holds a valid practicing certificate and has complied with the requirements of Continuing Professional Development for at least two years before the appointment.

(5) The members of the Committee shall elect from among their number a chairperson and a vice-chairperson.

(6) The members of the Committee shall serve for a period of two years and shall be eligible for re-appointment for one further period of two years.

(7) The Council shall approve the budget and expenditures of the Committee.

(8) The Committee shall regulate its own procedure.

(9) The Committee shall from time to time revise these Rules and submit them to the Council for approval.

6. (1) An approved activity may be—

Approved activities.

(a) a seminar;

(b) a workshop;

(c) a lecture;

(d) a conference;

(e) a discussion group;

(f) a symposium;

(g) a colloquium;

(h) a multi-media-based or website-based programme;

(i) the research and preparation for an article published in a law journal; or

(j) a combination of the activities contemplated in paragraphs (a) to (i).

(2) An activity may only be an approved activity by the Council if it contains significant intellectual or practical content related to the law or the practice of law.

(3) An approved activity shall only be conducted or offered by a provider as may be accredited by the Council from time to time except where the approved activity involves research or preparation for an article in which case the Committee shall determine whether such research or preparation is an approved activity.

(4) Where an advocate is an accredited provider and the advocate prepares and presents material at an approved event that advocate shall be accredited two units but that advocate may not be accredited more than two units in a CPD year for the preparation or presentation of material at an approved activity.

(5) Where an advocate prepares an article and that article is published in a law publication, law journal or a similar publication, that advocate shall be accredited one unit for every one thousand words published but in any case not more than two units in any CPD year for preparation and publication of articles.

(6) An advocate may, on that advocate's application to the Committee, be awarded not more than two units in a CPD year for—

- (a) serving as a member of a committee, commission, task force or similar body engaged in law reform; or
- (b) being engaged in significant consultancy work involving law reform or law review.

(7) An advocate may, on that advocate's application to the Committee, be awarded not more than three units in a CPD year for—

- (a) being engaged in post-graduate studies leading to a certificate, diploma or degree but only if the Committee determines that the studies are relevant to the practice of law; or
- (b) teaching a course leading to the award of a certificate, diploma or degree in any area of law relevant to the practice of law.

(8) An advocate, on that advocate's application to the Committee, may be awarded not more than one unit in a CPD year for acting as an external examiner of a university in a course leading to the award of a post-graduate degree in an area of law related to the practice of law.

(9) Where the Committee thinks it fit to do so, it may specify—

- (a) the nature, content and format of approved activities to be undertaken by an advocate or class of advocates in order for that advocate or class of advocates to satisfy the requirements of these Rules; and
- (b) the minimum number of units an advocate or a class of advocates must accrue in any CPD year in any area of study.

(10) For the purposes of these Rules, private study is not an approved activity except where it involves the private study of audio, video or electronic material and such study is considered an approved activity by the Committee and for which an advocate may accrue only one unit.

(11) Regular or *pro bono* legal work is not an approved activity except for legal work that is for the purposes of the Legal Aid Programme and for which the Committee shall determine how many units an advocate may accrue in a CPD year for that work.

(12) A member of the Council or an *ad hoc* committee of the Society who regularly attends the meetings of the Council or the *ad hoc* committee, as the case may be, may, on application to the Committee, accrue one unit in a CPD year for attending the meetings of the Council or of the *ad hoc* committee, as the case may be:

Provided that the advocate may only apply to the Committee to accrue one unit only in a CPD year.

(13) The Committee may, on application in writing by an advocate, exempt that advocate wholly or in part from complying with these Rules in a CPD year and on such conditions as the Committee may determine.

(14) The Council shall issue an advocate with a certificate of compliance if that advocate fully complies with these Rules in a CPD year.

7. Every advocate shall keep a record of all CPD activities that the advocate has participated in and shall produce them before the Committee or the Council when required to do so.

CPD records.

8. (1) The Council shall prescribe the form in which information regarding an advocate's compliance with these Rules shall be provided when an advocate is applying for a practicing certificate.

(2) When an advocate is applying for a practicing certificate, that advocate shall provide information in the form prescribed by the Council regarding that advocate's compliance with these Rules.

9. If an advocate fails to comply with these Rules—

(a) the Council shall notify the advocate in writing of the failure; and

(b) the Council may require the advocate to inform the Council in writing within fourteen days of the Council's notice of that advocate's proposal to comply with these Rules.

Effect of failure to comply with these Rules.

10. The Council may decline to recommend that an advocate be issued with a practicing certificate if that advocate—

(1) fails to inform the Council within fourteen days of that advocate's proposal to comply with these Rules; or

(2) informs the Council of that advocate's proposal to comply with these rules but fails to comply with these Rules within ninety days of having informed the Council of that advocate's proposal.

11. An advocate who fails to comply with these Rules commits an act of professional misconduct.

12. An advocate aggrieved by the decision of the Committee may appeal to the Council and the decision of the Council shall be final.

Appeals.

13. The Council may delegate any of its powers under these Rules to the Committee except the power to hear appeals arising out of decision of the Committee.

Delegation of powers by Council.

14.(1) A person or institution wishing to provide an approved activity in a CPD year shall apply to the Committee in writing to become an accredited provider.

Accreditation.

(2) The Committee shall determine an application under sub-Rule (1) by considering all relevant matters including—

- (a) whether the activity is an educational programme;
- (b) whether the objective of the activity is for the improvement of the competence of advocates;
- (c) whether the activity is related to the practice of law;
- (d) whether the applicant has the capacity to meet the needs of advocates under these Rules; and
- (e) whether the proposed method of delivery of content during the activity is appropriate.

15. If an advocate wishes to claim units for participating in an activity that is not provided by the Society or an accredited provider, that advocate shall apply in writing to the Committee.

16.(1) A member of the Committee on Continuing Legal Education immediately before the commencement of these Rules shall continue to serve as a member of the Committee until such a time as members of the Committee shall be appointed by the Council in accordance with these Rules.

Transitional provisions.

(2) Any activity which complied with the provisions of the Advocates (Continuing Legal Education) Rules, 2004, before the commencement of these Rules is deemed to comply with the provisions of these Rules.

L.N. 58 of 2004.

(3) An exemption that was granted under the Advocates (Continuing Legal Education) Rules, 2004, before the commencement of these rules, is deemed to be an exemption granted under these Rules:

Provided that the exemption complies with these Rules.

17. The Advocates (Continuing Legal Education) Rules, 2004, are revoked.

L.N. 58 of 2004.

Dated the 11th April, 2014.

ERIC MUTUA,
Chairman,
Law Society of Kenya.

APOLLO MBOYA,
Secretary,
Law Society of Kenya.