NOTES / AANTEKENINGE

What Is a Fit and Proper Person in a Legal Context? An Analysis of Judicial Precedent

1 Introduction and purpose

Before this note commences with an introduction and discourse on the purpose of the main topic in the light of case law, it is useful to start with two profound quotations:

> *"*A practitioner must avoid all conduct which, if known, could damage his reputation as an honourable lawyer and honourable citizen." (Lewis *Legal Ethics: A Guide to Professional Conduct for South African Attorneys* 1ed (1982) 12)
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> "Reputation is the greatest asset a [legal practitioner] can have, and when you damage your reputation, you damage the reputation of the whole body of this very ancient and honourable profession of ours." (The Natal Law Society Rulings of the Council June 2002 D-5)

These sentiments underscore the reality that ethical failures by individual practitioners reverberate across the profession as a whole. There can be no denial that legal practitioners serve as the backbone of the legal system and are entrusted with upholding both the law and the integrity of the administration of justice. Their role is one involving profound public trust, as their conduct directly influences public confidence in the legal system. Breaches of professional ethics, therefore, raise two fundamental questions: what conduct constitutes a failure to meet the "fit and proper" standard; and, how ought such failures to be addressed in a manner that balances accountability with fairness? (Slabbert "The Requirement of Being a 'Fit and Proper' Person for the Legal Profession" 2011 14(4) *PELJ* 224).

Beyond technical competence and legal knowledge, South African courts have consistently emphasised that being a "fit and proper person" entails ethical conduct and character. Judicial precedent makes clear that the standard is rooted in ethical conduct and character, encompassing honesty, integrity, accountability, candour, professionalism, and respect for the rule of law. In disciplinary contexts, courts have further stressed the importance of genuine remorse and contrition, with failures in this regard frequently resulting in suspension or removal from the roll.

Within South Africa's constitutional democracy, the "fit and proper" requirement assumes particular significance. As officers of the court, legal practitioners share in the judiciary's constitutional mandate to uphold the supremacy of the Constitution of the Republic of South Africa, 1996 (Constitution) and the rule of law. Ethical compliance is therefore not merely

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a matter of professional regulation, but is a moral and constitutional obligation intrinsic in the role of legal practitioners as custodians of justice. Section 1 of the Constitution, which enshrines accountability, openness and the rule of law, provides the normative framework that informs and gives substance to the "fit and proper" inquiry.

Recent jurisprudence demonstrates that application of this standard arises not only in disciplinary proceedings but also at the threshold of admission to the profession. Decisions such as *Ex Parte Ngwenya* (*In Re Ngwenya v Society of Advocates, Pretoria* 2006 (2) SA 87 (W)) and *Ex Parte Montshiwa (Gaone Jack Siamisang Montshiwa (Ex Parte Application)* [2023] ZASCA 19) illustrate that courts adopt a holistic assessment of fitness, paying close attention to integrity, reformation, respect for the judiciary and acceptance of responsibility for past misconduct.

This note examines how South African courts have interpreted and enforced the "fit and proper" requirement in terms of section 24(2)(*c*) of the Legal Practice Act (28 of 2014) (LPA). Through an analysis of key decisions, including *General Council of the Bar v Jiba* (2019 (8) BCLR 919 (CC)), *Cape Law Society v Gihwala*, *Ex Parte Gunguluza* (1971 (4) SA 212 (N)) and more recent case law such as *South African Legal Practice Council v Teffo* ((GP) unreported case no 10991/21 of 13 October 2023) and *Manamela* ((ZAGPPHC) unreported case no 2349/2022 of 22 October 2024), the note illustrates how judicial precedent has shaped the ethical standards expected of legal practitioners, and underscores the courts' central role in protecting the public and preserving confidence in the administration of justice.

The purpose of this note is to demonstrate that the "fit and proper" standard operates as both a legal test and a constitutional imperative. By analysing judicial reasoning across admission and disciplinary cases, the note highlights the central role of integrity, accountability and respect for the rule of law in sustaining public confidence and preserving the honour of the legal profession. It is imperative that candidate legal practitioners and/or admitted legal practitioners consistently strive to balance competing demands on what ethical behaviour entails (Van Zyl and Visser "Legal Ethics, Rules of Conduct and the Moral Compass – Considerations From a Law Student's Perspective' 2016 19 *PELJ* 1).

2 Case law and judicial precedent

In terms of sections 40 to 43 of the LPA, the Legal Practice Council (LPC) is empowered to investigate allegations of misconduct by legal practitioners and candidate legal practitioners. When a disciplinary body makes a misconduct finding, it may impose sanctions such as fines or temporary suspensions. However, where the conduct is of a serious nature, the LPC is obliged to refer the matter to the High Court, which alone has the authority to determine whether a practitioner remains a "fit and proper person" and to impose sanctions such as suspension from practice or striking from the roll. In exercising this *sui generis* disciplinary jurisdiction, the High Court acts to protect the public, maintain professional standards, and safeguard the integrity of the legal profession.

The severity of any sanction ultimately depends on the circumstances and merits of each case. In this regard, judicial discretion (as reflected in the case law) provides essential guidance, offering clarification and legal certainty on what constitutes "fit and proper" behaviour, qualities and characteristics. In *Jasat v Natal Law Society* (2000 (3) SA 44 (SCA) par 10), the Supreme Court of Appeal (SCA) emphasised that the High Court's disciplinary discretion must balance protection of the public with preservation of the integrity of the profession, thereby shaping the content of the "fit and proper" standard (*Jasat v Natal Law Society supra* par 10).

2 1 Heppell v Law Society of the Northern Provinces

In *Heppell v Law Society of the Northern Provinces* ((SCA) unreported case no 1096/16 of 22 September 2017), Shongwe AP held that the law and the legal profession require a legal practitioner to act with *uberrima fides*. This means that practitioners must act with the highest possible degree of good faith in dealings with their clients (*Heppell v Law Society of the Northern Provinces supra* par 12). Shongwe AP held further that the appellant was at least grossly negligent in his failure to make full and proper disclosure to the court in his application for the surrender of his estate (*Heppell v Law Society of the Northern Provinces supra* par 8). The court held further that, as an officer of the court, when moving his application for voluntary surrender, the appellant should have informed the court that he was an admitted attorney (*Heppell v Law Society of the Northern Provinces supra* par 12). The court held that the primary consideration when determining an appropriate sanction is the protection of the public (*Heppell v Law Society of the Northern Provinces supra* par 16). Shongwe AP crucially held:

> "I am of the view that not only is the protection of the public at stake, but also the errant attorney needs to be disciplined for his/her acts of misconduct … I am unable to fault the court a quo on the sanction of suspension. The court motivated the suspension on the basis that the appellant should be given the opportunity to rehabilitate himself … it held that he needs time to reconsider his unprofessional conduct while on suspension." (*Heppell v Law Society of the Northern Provinces supra* par 16)

2 2 Incorporated Law Society v Bevan

Significantly, more than a century ago, Innes CJ in *Incorporated Law Society v Bevan* (1908 TS 724) emphasised that the conduct of legal practitioners is integral to the administration of justice. The case arose from disciplinary proceedings in which the Law Society sought to have an attorney struck from the roll for allegedly encouraging or relying upon perjured evidence. While the court ultimately declined to remove him, Innes CJ made it clear that a practitioner who knowingly misleads the court, or relies on evidence he knows to be false, is not fit to remain in the profession. At the very least, counsel must avoid being a party to any deception of the court and must refrain from making use of evidence known to be untrue (*Incorporated Law Society v Bevan supra 731*–732). Earlier case law remains instructive in showing that the obligation of candour and integrity is foundational to the "fit and proper" standard, without which the legal system would be discredited.

Innes CJ's remarks go to the heart of the "fit and proper" standard. Quoting from the case law, Innes CJ held:

> "An attorney who knowingly makes use of perjured evidence, or who lends himself to the deception of the court, is not a fit and proper person to remain in the ranks of an honourable profession." (*Incorporated Law Society v Bevan supra* 731–732)

More than a century later, this *dictum* endures as a cornerstone reminder that honesty and candour are not optional virtues but the very lifeblood of those entrusted with the administration of justice.

2 3 Van der Berg v General Council of the Bar of SA

Innes CJ's judgment in *Incorporated Law Society v Bevan* was aptly mentioned at paragraph 16 in the judgment of *Van der Berg v General Council of the Bar of SA* ([2007] 2 All SA 499 (SCA)), where Nugent JA held that advocacy plays an important role in the proper administration of justice (*Van der Berg v General Council of the Bar of SA supra* par 14). Nugent JA held further that it is through the availability of knowledge and skill of an advocate that a litigant is able to realise the right to have a dispute resolved by a court of law (*Van der Berg v General Council of the Bar of SA supra* par 14). Within the context of this note, one's constitutional rights can only be said to be truly given effect to by members of the profession who conduct themselves in a manner that is honourable and worthy.

2 4 General Council of the Bar of South Africa v Jiba

The Constitutional Court (CC) in *General Council of the Bar of South Africa v Jiba* (2019 (8) BCLR 919 (CC)), in a unanimous judgment by Jafta J, held that legal practitioners need to have absolute personal integrity and scrupulous honesty (*General Council of the Bar of South Africa v Jiba supra* par 1). Jafta J reasoned thus, holding that the proper administration of justice may only be achieved, and justice itself be served, where truthful facts are placed before the courts (*General Council of the Bar of South Africa v Jiba supra* par 1). Candidate legal practitioners and/or admitted legal practitioners play a vital part in our system of administration of justice. Their role, as per Jafta J, includes preventing false evidence from being presented at court hearings; by so doing, they protect judicial adjudication of disputes from contamination by fabricated facts (*General Council of the Bar of South Africa v Jiba supra* par 1). The matter before Jafta J concerned the fitness of the respondents (who were senior officials in the National Prosecuting Authority) to practise as advocates. The misconduct charge was that they were no longer fit and proper persons to continue practising as advocates, as they were shown to be dishonest in making false statements under oath, suppressing information in order to mislead a court and abusing the powers of the office they held (*General Council of the Bar of South Africa v Jiba supra* par 5, 24 and 43; see *Johannesburg Society of Advocates v Nthai* 2021 (2) SA 343 (SCA) par 1; *Legal Practice Council v Mkhize* 2024 (1) SA 189 (GP) par 78–81).

2 5 Ex Parte Gunguluza

In *Ex Parte Gunguluza* (1971 (4) SA 212 (N)), Harcourt J held that the fact that the applicant for admission cheated during a practical examination showed *prima facie* that he was not a "fit and proper" person to be an attorney (*Ex Parte Gunguluza supra* 213). In applying its discretion, the court held that the applicant may have repented for his lack of integrity and suggested that the proper course was to encourage him to continue on a path of honesty and take the requisite oath (*Ex Parte Gunguluza supra* 213–214). The application for admission was therefore granted, with the court effectively giving the applicant a second chance to prove his professional worth and allowing him to practise as an attorney.

This more lenient approach stands in marked contrast to later jurisprudence, where courts have adopted a stricter view of dishonesty and integrity. For example, in *Jasat v Natal Law Society* (*supra* par 10), the SCA emphasised that repeated or serious misconduct, even if not criminal, may justify striking off to protect the public and the integrity of the profession. Similarly, and dealt with further below, in *Cape Law Society v Gihwala* (*supra*), the WCC held that dishonesty and lack of candour are fundamentally incompatible with the standards of a fit and proper legal practitioner.

These later cases illustrate the current expectation that integrity is non-negotiable, and that leniency of the kind shown in *Gunguluza* is unlikely to be repeated. It can be respectfully argued that the shift away from such tolerance reflects the influence of the constitutional order. Section 1 of the Constitution enshrines accountability, the rule of law and openness as founding values. Section 2 establishes the Constitution as the supreme law. Within this framework, the "fit and proper" standard is now interpreted as requiring unwavering honesty and integrity, as these qualities are indispensable for maintaining public confidence in both the legal profession and the administration of justice.

Read cumulatively, the jurisprudence reveals more than isolated instances of individual misconduct. The frequency with which courts are required to intervene suggests persistent structural and ethical weaknesses within the profession, particularly in relation to oversight, compliance and ethical culture. The courts' increasingly firm approach may thus be understood to be not only corrective but compensatory, responding to regulatory shortcomings by reinforcing ethical accountability through judicial sanction.

2 6 Prince v President of the Law Society of the Cape of Good Hope

In *Prince v President of the Law Society of the Cape of Good Hope* (2002 (2) SA 794 (CC)), Ngcobo J held that a person who declares their intention to continue breaking the law is not a fit and proper person to be admitted as an attorney (*Prince v President of the Law Society of the Cape of Good Hope supra* par 2). Ngcobo J held further that as long as the prohibition on the use or possession of cannabis remains on the statute books, the appellant would

consistently break the law, and this would bring the attorneys profession into disrepute (*Prince v President of the Law Society of the Cape of Good Hope supra* par 2). Although Ngcobo J's judgment was handed down at a time when the legalisation of cannabis for personal use was still years away, the Constitutional Court in *Minister of Justice and Constitutional Development v Prince* (2018 (6) SA 393 (CC)) paved the way for the legalisation of cannabis under certain circumstances. However, the essence of Ngcobo J's reasoning remains applicable at present: an individual who openly intends to disregard the law cannot meet the standard of honesty, integrity and respect for legality demanded of a fit and proper legal practitioner.

2 7 Cape Law Society v Gihwala

In *Cape Law Society v Gihwala* (*supra*), a complaint was brought against the respondent for alleged professional misconduct. The respondent was a director of several companies that were found to have committed financial irregularities, and consequently, the respondent was declared a delinquent director. The respondent was charged with 10 counts of alleged unprofessional and dishonourable or unworthy conduct. Sher J held that the respondent made himself guilty of numerous acts of serious misconduct and breach of integrity, fiduciary duties and the professional rules of the Law Society (*Cape Law Society v Gihwala supra* par 91). Sher J held further that if a court finds dishonesty to have been present in any misconduct enquiry by a candidate legal practitioner and/or an admitted legal practitioner, the circumstances must be exceptional before the court will impose a suspension instead of striking off (*Cape Law Society v Gihwala supra* par 101). Accordingly, Sher J held:

> "In my view, rather than leaning towards the drawing of an inference that a recurrence of dishonesty and a lack of integrity on the part of the respondent in the future is unlikely or improbable, the facts of this matter show that it is most likely that it will recur, because it appears to be an ingrained and inherent part of the respondent's character … In my view, an Order suspending the respondent from practice, even for an indefinite period, would be wholly inappropriate." (*Cape Law Society v Gihwala supra* par 102)

The court concluded that there was no indication that Gihwala's conduct over many years and through multiple proceedings was influenced by any medical or psychological conditions (*Cape Law Society v Gihwala supra* par 104), and nor was it alleged that his misconduct stemmed from financial necessity. The court made it clear that it could not be argued that Gihwala's conduct and shortcomings were remediable or that there was a realistic prospect of rehabilitation (*Cape Law Society v Gihwala supra* par 104). On the contrary, the misconduct was protracted, committed after more than two decades of practice as a senior attorney, and could not be excused as the lapse of a young or inexperienced practitioner at the outset of his career (*Cape Law Society v Gihwala supra* par 104).

2 8 General Council of the Bar of SA v Geach

In the SCA matter of *General Council of the Bar of SA v Geach* (2013 (2) SA 52 (SCA)), Ponnan JA held that as members of a "distinguished and

venerable" profession, legal practitioners occupied a very important place in our society. Accordingly, as officers of the court, they were held to play a vital role in upholding the Constitution and ensuring that our justice system was efficient and effective, and as a result, "absolute personal integrity and scrupulous honesty" were required of them (*General Council of the Bar of SA v Geach supra* par 87 and 106).

Ponnan JA made it clear that the profession depended on absolute personal integrity and scrupulous honesty, without which the legal system itself could not function (*General Council of the Bar of SA v Geach supra* par 81). Building on this reasoning, Sher J reiterated that the absence of these qualities threatened the very edifice upon which the legal system rested (*Gihwala supra* par 74 and 75). There is consistent judicial insistence that integrity is not simply desirable, but indispensable to the "fit and proper" standard. This is what anchors public trust in the profession, sustains the legitimacy of the justice system, and reflects the constitutional values of accountability, the rule of law and openness.

2 9 Ex Parte Ngwenya

In *Ex Parte Ngwenya* (*supra*), the applicant applied to be admitted as an advocate, pleading on the one hand that he had been wrongly convicted of a crime and on the other hand that he had since been reformed. Schwartzman J correctly held that reformation could only begin when a person acknowledged that he had committed a wrongful act (*Ngwenya supra* par 7). Character references supporting the statement were furnished by the applicant, stating that he had been reformed. However, the court found such references to be irreconcilable with his allegation that he had been wrongfully convicted (*Ngwenya supra* par 15). Schwartzman J, to this end, concluded that should those references be true, his statement that he had been wrongfully convicted was untrue, which, in turn, meant the applicant could not claim to have reformed because he had not come to terms with the character defect that led to his convictions (*Ngwenya supra* par 15). Consequently, the court held that his statement that he was wrongfully convicted was untrue, which meant that the applicant was not a fit and proper person to be admitted as an advocate. Consequently, the application for admission was dismissed (*Ngwenya supra* par 16 and 18).

2 10 Vassen v Law Society of the Cape

In the SCA, in *Vassen v Law Society of the Cape* (1998 (4) SA 532 (SCA)), Eksteen JA held that the appellant's name was struck from the roll of attorneys, and that the appellant was not a fit and proper person to practise since honesty, reliability and integrity are expected of an attorney (*Vassen v Law Society of the Cape supra* par 15). Eksteen JA further held that theft of money held in trust by the appellant, and his persistence in trying to rationalise his conduct and deny that he acted dishonestly or that he brought the profession into disrepute by his actions, reflected adversely on his character and, in the court's view, was a weighty consideration militating against any lesser stricture than his removal from the roll (*Vassen v Law Society of the Cape supra* par 16).

2 11 Law Society of the Northern Provinces v Soller

In *Law Society of the Northern Provinces v Soller* ((GP) unreported case no 992/01 of 26 November 2002), Bertelsmann J held:

> "A practitioner who knowingly lies under oath to the court … is unfit to practice, and there can be but one way of dealing with him he must be struck off." (*Law Society of the Northern Provinces v Soller supra pg 13)*

2 12 Legal Practice Council v Van Wyk

In *Legal Practice Council v Van Wyk* ((WCC) unreported case no 3920/13 of 4 November 2021), Sher J (Bozalek J concurring) held that given the magnitude and seriousness of the respondent's misconduct over a period of 21 years, a suspension would not be appropriate or sufficient and would send out the wrong message to the profession – namely, that an errant practitioner can avoid being held accountable by simply paying fines to his regulatory body as the years go by (*Legal Practice Council v Van Wyk supra* par 50). When deciding on the appropriate sanction, Sher J held that the chances of the respondent re-offending were highly likely, if not a certainty (*Legal Practice Council v Van Wyk supra* par 50). Considering the lengthy period of various offences, the repetitive nature showed that the respondent had not been deterred and was unable to adjust his behaviour (*Legal Practice Council v Van Wyk supra* par 51). Sher J concluded that given the respondent's failure to take responsibility, lack of remorse or contrition and a non-existent certainty of rehabilitation, the only appropriate sanction was an order striking the respondent from the roll of attorneys (*Legal Practice Council v Van Wyk supra* par 51). Notably, the respondent had long since retired from practice, and it was unlikely that a return to practice would materialise; however, in determining the appropriate sanction, owing to the conduct and behaviour of the respondent, Sher J strongly felt that the respondent at the very least, should lose the privilege of being listed as a member of the honourable profession (*Legal Practice Council v Van Wyk supra* par 78–79).

2 13 Legal Practice Council of South Africa v Mamabolo

In *Legal Practice Council of South Africa v Mamabolo* ((GP) unreported case no 59026/19 of 13 July 2022), Bokako AJ (Tlhapi J concurring) provided some background on the respondent's unacceptable behaviour. Such behaviour included a failure to furnish personal details, addresses and telephone numbers to the Council within 30 days of a change of details; failure to submit to the Council an auditor's report for the year ended February 2018; failure to hold a valid Fidelity Fund Certificate since 2017 and accordingly practising with a trust account without same; and a failure to attend to his clients' matters with due diligence resulting in a direct contravention of Rule 3 of the Code of Conduct (*Legal Practice Council of South Africa v Mamabolo supra* par 5–12). Bokako AJ held that the seriousness of practising without a Fidelity Fund Certificate could not be overemphasised as such conduct is contrary to peremptory legal requirements, of which he was guilty, as well as placing various trust

creditors at risk of pecuniary loss and misappropriation of trust funds (*Legal Practice Council of South Africa v Mamabolo supra* par 13). Bokako AJ further showed his displeasure by specifically stating: "In its entirety, this state of affairs is unacceptable" (*Legal Practice Council of South Africa v Mamabolo supra* par 14).

In determining whether the respondent was "fit and proper", Bokako AJ held that the court was not dependent on factual findings alone; however, once the applicant had placed facts before the court, it remained in the discretion of the court, as *custos morum* of the profession, to function in a *sui generis* disciplinary nature (*Legal Practice Council of South Africa v Mamabolo supra* par 16–17). Bokako AJ further held that an attorney must comply scrupulously with the provisions and rules of the profession and exercise the highest degree of good faith in their dealings with clients (*Legal Practice Council of South Africa v Mamabolo supra* par 24). The court concluded that the respondent's conduct was tantamount to serious misconduct and amounted to serious manifestations of lack of integrity and honesty, rendering the respondent unfit to practise (*Legal Practice Council of South Africa v Mamabolo supra* par 39 and 42).

2 14 South African Legal Practice Council v Teffo

In *South African Legal Practice Council v Teffo* (*supra*), Neukircher J stressed that qualities such as diligence, honesty and integrity are central to the meaning of a "fit and proper" person, both in admission and disciplinary proceedings (*South African Legal Practice Council v Teffo supra* par 2). In considering the striking-off application, the court found that Mr Teffo's conduct reflected a serious lack of these qualities and demonstrated his unfitness to remain in practice. Even after his name was struck from the roll, he continued to hold himself out as an advocate and appeared in court in defiance of the order (*South African Legal Practice Council v Teffo supra* par 3).

The court held that such wilful disobedience not only amounted to contempt (*South African Legal Practice Council v Teffo supra* par 103) but also underscored his disregard for the constitutional duty that officers of the court owe to uphold their authority (*South African Legal Practice Council v Teffo supra* par 94). Considering this, the LPC had proved beyond a reasonable doubt that Mr Teffo was in contempt (*South African Legal Practice Council v Teffo supra* par 72), and the court imposed a suspended sentence (*South African Legal Practice Council v Teffo supra* par 103), emphasising that the coercive sanction was intended to secure compliance with the strike-off order (*South African Legal Practice Council v Teffo supra* par 100). The case highlights that the "fit and proper" standard encompasses not only qualities of honesty and integrity but also respect for the authority of the court, without which the legal profession cannot maintain legitimacy.

2 15 Ex Parte Gaone Jack Siamisang Montshiwa

In *Ex Parte Gaone Jack Siamisang Montshiwa* ((SCA) unreported case no 672/2021 of 3 March 2023), the SCA considered an application for

admission as a legal practitioner under section 24 of the LPA. The High Court had dismissed the application on the basis of irregularities in the applicant's articles and his failure to complete the required vocational training (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 7 and 8).

On appeal, the SCA proceeded to consider the matter in terms of its inherent powers under section 173 of the Constitution (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 21 and 23). The court held that the qualities of a "fit and proper" practitioner include integrity, hard work, dignity, honesty, fairness and respect for legal order (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 33). The court stressed that insulting, vulgar and disparaging language directed at fellow practitioners and the judiciary is fundamentally incompatible with the ethos of the profession and cannot be tolerated (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 36–41).

The court emphasised that Mr Montshiwa not only engaged in such conduct but also refused to take responsibility for it, demonstrating a predisposition to anger and disrespect (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 42). Consequently, the appeal was dismissed with costs, confirming that the applicant was not a "fit and proper" person to be admitted (*Ex Parte Gaone Jack Siamisang Montshiwa supra* par 43).

Read alongside the *Teffo* judgment, the judgment in *Montshiwa* demonstrates that, whether at the threshold of admission or during disciplinary proceedings after admission, contempt of court and disregard for the fundamental values of integrity and respect are irreconcilable with the standard of a "fit and proper" person.

2 16 S v Khathutshelo

In *S v Khathutshelo* (2019 (1) SACR 480 (LT)), the court made a foundational observation that captures well the balance of duties faced by legal practitioners. Mangena AJ held that inasmuch as counsel had a duty to advance their client's case with zeal, vigour and determination (*S v Khathutshelo supra* par 21), their primary duty was to the court (*S v Khathutshelo supra* par 21). Magena AJ held further that this overriding duty extended to maintaining court decorum and preserving the public's trust in the profession (*S v Khathutshelo supra* par 23).

2 17 Maartens v South African Legal Practice Council

The matter of *Maartens v South African Legal Practice Council* ((ZAGPPHC) unreported case no 19239/2022 of 4 June 2024) dealt with an opposed application for re-admission and enrolment as an attorney. Matthys AJ (Mooki J concurring) held that it had been some 19 years since the applicant's name had been struck from the roll. This period alone did not merit the applicant's re-enrolment as a legal practitioner (*Maartens v South African Legal Practice Council supra* par 10). The court held that the applicant lacked candour and truthfulness, and did not fully comprehend why she had been suspended and struck off the roll in the first place (*Maartens v South African Legal Practice Council supra* par 16 and 21). The court emphasised that the applicant's conduct was grossly unprofessional,

dishonourable and unworthy of an attorney (*Maartens v South African Legal Practice Council supra* par 20). Accordingly, the applicant had not shown that she was a "fit and proper" person for re-admission, which led to dismissal of the case (*Maartens v South African Legal Practice Council supra* par 24 and 25).

2 18 South African Legal Practice Council v Manamela

In the recent case of *South African Legal Practice Council v Manamela (Manamela supra)*, Kumalo J found it troubling that the respondent could not recover monies missing from the trust account in an amount of R21 000 100 but had been able to transfer a "tidy" sum of R825 000 to his business account (*South African Legal Practice Council v Manamela supra* par 49) as fees; and that he had practised without a Fidelity Fund Certificate (*South African Legal Practice Council v Manamela supra* par 5 and 72–73).

Kumalo J held that the respondent's conduct (allowing his trust account to be used as a conduit to receive funds from unsuspecting, *bona fide* purchasers) undermined his honesty and integrity. The respondent was therefore found not to be a fit and proper person to practise law (*South African Legal Practice Council v Manamela supra* par 58).

Kumalo J proceeded to hold firmly:

> "It is this court's duty to protect the public and discipline errant attorneys or legal practitioners. It is the court's view that a mere suspension from practice in this matter would transform the Respondent to become a fit and a proper person to practise. He clearly demonstrated such character defects and lack of integrity that it is hard to visualise practising without endangering the public." (*South African Legal Practice Council v Manamela supra* par 81)

Beyond constituting professional misconduct, trust account violations of this magnitude directly prejudice members of the public who are least equipped to absorb financial loss. Such conduct strikes at the heart of access to justice, as it undermines confidence in legal practitioners as custodians of clients' interests and erodes the public's willingness to engage the legal system.

3 Conclusion

It is appropriate to acknowledge that the concept of "fit and proper" qualities, virtues and characteristics does not involve abstract ideals but is shaped by concrete conduct, assessed on its own merits and unique facts. Ultimately, it is for the court, in exercising its discretion, to make the necessary value judgments as to what constitutes appropriate conduct and the acceptable standards of the legal profession.

The ethical foundation of the legal profession is not a mere guideline; it is the cornerstone of justice, and of public trust in, and the integrity of, the legal profession. This note has explored professional ethics within South African law, drawing on pivotal cases to illuminate the principles underpinning the "fit and proper" standard. These cases illustrate the importance of judicial precedent and the judiciary's critical role in balancing accountability with

fairness, ensuring that legal practitioners display the virtues of integrity, honesty and diligence.

Case law reveals that ethical lapses not only harm practitioners but also tarnish the reputation of the legal profession and erode public confidence. They further demonstrate that the "fit and proper" enquiry is not limited to misconduct proceedings but also plays a decisive role in admission applications, as illustrated in cases such as *Ngwenya* and *Montshiwa*, where questions of reformation, integrity and respect for the judiciary were central. Judicial precedent serves at the forefront of continuous professional development, robust oversight mechanisms and an unwavering commitment to ethical excellence.

Legal practitioners should demonstrate respect for law, order and decorum, and must uphold the law rather than break it. They owe a duty to the courts and to the administration of justice and, as officers of the court, are expected to act with candour, competence and integrity so as not to bring the profession into disrepute. Practitioners must place their clients' interests first and act with zeal, vigour and determination, while also recognising and managing conflicts of interest. Furthermore, they owe a duty of *uberrima fides* towards their fellow practitioners and should demonstrate qualities that reinforce the cooperative functioning of the profession and the confidence of the public in its integrity. Any form of misconduct, regardless of whether it is expressly proscribed in legislation or not, remains misconduct and is incompatible with the standards of the legal profession.

The credibility of the legal profession depends on each practitioner's commitment to honour the trust reposed in them by the public. As officers of the court and custodians of justice, legal practitioners must uphold both the values enshrined in the Constitution and the standards set by the LPA. Section 1 of the Constitution, which enshrines accountability, the rule of law and openness, provides the normative framework that gives meaning to the "fit and proper" requirement. In doing so, it safeguards not only the promise of justice but its lived reality.

Combined with professionalism, adherence to professional rules, ethical standards and codes of conduct (both at entry and after admission) fosters the growth of an honourable profession.

Practitioners facing disciplinary proceedings, particularly applications for suspension or striking-off, must demonstrate genuine remorse and contrition. Courts consistently regard an acknowledgement of wrongdoing and adherence to the ethical standards of the profession (as informed by the *boni mores*) as critical factors in determining whether a practitioner may be rehabilitated or whether removal from the roll is the only appropriate sanction.

This note calls for collective introspection within the legal profession. In practice, this requires both individual practitioners and regulatory bodies to reflect critically on whether their conduct and structures align with constitutional values. Reform must therefore take tangible forms – for example, more robust enforcement of the Code of Conduct (Legal Practice Council Notice 168, 2019) by the LPC, incorporation of ethical training throughout legal education and vocational programmes, and a willingness by

the courts to continue developing jurisprudence that gives clarity to the "fit and proper" standard. In this way, a culture of accountability, transparency and integrity can be fostered, safeguarding the profession's legitimacy and legacy for generations to come.

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