

LEGAL PRACTITIONERS

Legal Aid Act 29 of 1990.

Summary: This Act provides for the granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage legal practitioners to assist and represent them. It came into force on 7 October 1991 (Proc. 23/1991, GG 272).

Amendments: Act 17/2000 amends sections 1, 3, 6, 8, 10, 13, 15, and 20 and inserts section 24A.

Regulations: Specified offences in terms of the Act are listed in GN 106/1991 (GG 273). Regulations are contained in GN 107/1991 (GG 273).

Cases:

Mwilima & Others v Government of the Republic of Namibia & Others 2001 NR 307 (HC), *Government of the Republic of Namibia & Others v Mwilima & all other accused in the Caprivi treason trial* 2002 NR 235 (SC)

S v Monday 2002 NR 167 (HC)

S v Tembwe 2005 NR 409 (HC)

S v Kasanga 2006 (1) NR 348 (HC)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC)

S v Luboya & Another 2007 (1) NR 96 (HC) (application of Article 18 of Constitution to application for legal aid)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (applicability to artificial persons discussed in *dicta* at 300-301)

Legal Practitioners Act 15 of 1995.

Summary: This Act governs the legal profession and legal practitioners, who were formerly known as attorneys and advocates. It establishes a Board for Legal Education, a Law Society of Namibia and a Legal Practitioners' Fidelity Fund. The Act came into operation on 7 September 1995 (GN 150/1995, GG 1148). It replaces the RSA *Admission of Advocates Act 74 of 1964*, the Legal Practitioners' Fidelity Fund Ordinance 28 of 1967, the RSA *Attorneys' Act 53 of 1979*, the Legal Practitioners' Fidelity Fund Act 22 of 1990 and the Admission of Advocates Act 19 of 1991.

Amendments: Act 4/1997 amends sections 11, 21, 54, 67, 72, and 87 and substitutes section 22.

Act 6/1999 temporarily suspends sections 79(1), (2) and (3) relating to the conferment of Senior Counsel status, until such time as the Minister of Justice reinstates them by notice in the *Gazette*. However, Act 6/1999 is repealed by Act 22/2002 (which was not yet in force as of 30 June 2003).

Act 10/2002 amends sections 5 and 18. Act 22/2002, which came into force on 1 November 2005 (GN 139/2005, GG 3529), amends sections 1, 21, 32, 52 and 72,

substitutes section 45 and repeals section 79.

Regulations: Regulations relating to the fee for a certificate of enrolment as a legal practitioner are contained in GN 201/1995 (GG 1183).

Regulations relating to candidate legal practitioners are contained in GN 228/1995 (GG 1207), as amended by GN 58/1997 (GG 1528), GN 67/1997 (GG 1537) and GN 8/1999 (GG 2025).

Rules governing the Disciplinary Committee are set forth in GN 54/1996 (GG 1270).

Regulations relating to the fidelity fund are contained in GN 136/1993 (GG 741). These regulations were issued in terms of the Legal Practitioners' Fidelity Fund Act 22 of 1990 but survive under the new Act on terms of section 94(4).

Rules of the Law Society of Namibia are set forth in General Notice 340/2002 (GG 2848). General Notice 251/2004 (GG 3313) amends Rule 24. General Notice 385/2007 (GG 3948) amends Rules 1, 6, 9, 13, 19, 20, 21, 22 and 24 and inserts Rule 20A. General Notice 308/2008 (GG 4120) amends Rule 21.

Various Government Gazettes have listed degrees which are recognised in Namibia for the purpose of the practice of law. These have not been recorded here.

Appointments: The Board for Legal Education is announced in GN 184/1995 (GG 1165) and GN 15/1996 (GG 1241).

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on legal practitioners and on the Law Society.

Cases:

Vaatz v Law Society of Namibia 1990 NR 332 (HC) (dealing with *Attorneys Act 53 of 1979*)

Vaatz v Law Society of Namibia 1991 (4) SA 382 (Nm) (dealing with Law Society Rule 95.1.3 promulgated in terms of *Attorneys Act 53 of 1979*).

Hailemo v Security Force Services (LC 5/95), reported as 1996 NR 99 (LC) (section 21)

Vaatz v Law Society of Namibia & Others 1996 NR 272 (HC) (dealing with Law Society Rule 114 promulgated in terms of *Attorneys Act 53 of 1979*).

Compania Romana De Pescuit (SA) v Rosteve Fishing 2002 NR 297 (HC) (section 21)

Miller & Paschke v The Law Society of Namibia NLLP 2002 (2) 328 NHC (application of section 4 to non-Namibians married to Namibian citizens and domiciled in Namibia)

Ekanjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC) (amending Act 10/2002; sections 5(1)(cA) (ii) and 18(1)(b))

Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC) (sections 4(1), 5, 41, 42(1)), 2009 (2) NR 569 (SC) (sections 21 and 22(1)); see also *Kamwi v Law Society of Namibia* 2007 (2) NR 400 (HC)

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (approach to costs since law no longer distinguishes between attorneys and advocates)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (section 21(1)(c)).

Articles: Clive L Kavendjii and Nico Horn, “The independence of the legal profession in Namibia” in Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html; Fritz Nghiihililwa, “*Adda K Angula & Others v The Board for Legal Education & Others*, Case No. A 348/2009”, *Namibia Law Journal*, Volume 2, Issue 1, 2010, available at www.namibialawjournal.org.

NOTE:

The case of *Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC) refers to the **Government Attorney Proclamation R.161 of 3 September 1982**. This Proclamation was issued in terms of section 38 of the *South West Africa Constitution Act 39 of 1968*, which was repealed by Article 147 of the Namibian Constitution. The Proclamation converts the Windhoek branch of the Office of the State Attorney in Pretoria into the Government Attorney’s Office for the Territory of South West Africa. The cited case states that this Proclamation is “still in force”, but it does not appear to have any ongoing effect in independent Namibia. Regulations were issued in terms of this proclamation in AG GN 61/1984. These regulations, which concern amounts payable upon failure to complete articles in the Office of the Government Attorney, may continue to be relevant.

See also **COURTS**.

See also Namibia Qualifications Authority Act 29 of 1996 (re: occupational and curriculum standards) (**LABOUR**).

See also **LAW**.