

# LEGAL PRACTITIONERS

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## *Government Attorney Proclamation R.161 of 1982*

**Summary:** This Proclamation ([RSA GG 8367](#)), which appears to have replaced the *State Attorney Act 56 of 1957* in SWA, concerns the functions of the Government Attorney. It 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. It was brought into force on 1 April 1984 by RSA Proc. 52 /1984 ([RSA GG 9162](#)).

**Applicability to SWA:** The Proclamation applies to SWA because it was issued in terms of section 38 of the *South-West Africa Constitution Act 39 of 1968*, which gave the State President of South Africa certain powers to make laws for SWA. It appears to replace the *State Attorney Act 56 of 1957* in SWA.

The *State Attorney Act 56 of 1957* ([SA GG 5894](#)) – as amended by the *General Law Further Amendment Act 93 of 1962* ([RSA GG 284](#)) and the *State Attorney Amendment Act 7 of 1966* ([RSA GG 1380](#)) – was made applicable to SWA by section 6 of *Act 7 of 1966* which states: “The principal Act and any amendment thereof shall apply also in the territory of South-West Africa, (including the Eastern Caprivi Zipfel referred to in section 3 of the South-Africa West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)), and in relation to all persons in that portion of the said territory known as the “Rehoboth Gebiet” and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of the said territory.” Section 7 of *Act 7 of 1966* provided: “In the principal Act, unless the context otherwise indicates, “Republic” also includes the territory of South-West Africa.” These two sections were independent provisions of *Act 7 of 1966* rather than amendments to *Act 56 of 1957*. (Section 9 of *Act 7 of 1966* also repealed the State Attorney Proclamation, 1921 (Proclamation 46 of 1921), and the State Attorney Proclamation, 1921 Amendment Ordinance, 1963 (Ordinance 17 of 1963) in respect of SWA.) *Act 7 of 1966* was brought into force on 3 January 1967 by RSA Proc. R.376/1966 ([RSA GG 1626](#)). After the *State Attorney Act 56 of 1957* and its amendments became applicable to SWA, *Act 56 of 1957* was further amended by the *State Attorney Amendment Act 45 of 1980* ([RSA GG 6992](#)), which was deemed to have come into force on 13 September 1979 (section 2 of the amending Act).

Sections 6 and 7 of *Act 7 of 1966* were both repealed by the *Government Attorney Proclamation, R.161 of 1982*, which converted 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. (This Proclamation states in section 13 that sections 11-14, which amend some provisions of the *State Attorney Act 56 of 1957*, repeal sections 6 and 7 of the *State Attorney Amendment Act 7 of 1966*, and provide transitional provisions, “shall apply also in the Republic of South Africa”.)

Some of these amendments refer to South West Africa, but without making *Act 56 of 1957* applicable to SWA; they seem rather to have given the South African State Attorney's Office authority to act on behalf of the SWA administration or the government of Rehoboth, if arrangements were made with that administration or government. Section 3(2) of the *State Attorney Act 56 of 1957*, as substituted by *Act 7 of 1966* and amended by *Proclamation R.161 of 1982*, states:

There may also be performed at the State Attorney's office or at any of its branches like functions for or on behalf of the administration of any province, any department established under the laws relating to the government service of the Territory of South-West Africa, the government of Rehoboth and the South African Railways and Harbours Administration, subject to such terms and conditions as may be arranged between the Minister of Justice and the administration, department or government concerned.

Section 3(3) of the *State Attorney Act 56 of 1957*, as substituted by *Act 93 of 1962* and amended by *Proclamation R.161 of 1982*, states:

Unless the Minister of Justice otherwise directs, there may also be performed at the State Attorney's office or at any of its branches like functions in or in connection with any matter in which the Government or such an administration, department or government as aforesaid, though not a party, is interested or concerned in, or in connection with any matter where, in the opinion of the State Attorney or of any person acting under his authority, it is in the public interest that such functions be performed at the said office or at one of its branches.

Section 8 of *Act 7 of 1966*, provided that any references in any law to the State Attorney for the territory of South-West Africa should be construed as references to the State Attorney in *Act 56 of 1957*. Section 12 of *Proclamation R.161 of 1982* appears to follow on section 8 of *Act 7 of 1966* (which was not repealed), by providing that references in any law to the Windhoek branch of the State Attorney shall be construed as references to the Government Attorney's office. Thus, *Proclamation R.161 of 1982* appears to have replaced the *State Attorney Act 56 of 1957* in SWA – an understanding which is supported by the fact that *Proclamation R.161 of 1982* duplicates much of *Act 56 of 1957*.

**Transfer of administration to SWA:** This Proclamation post-dated the SWA transfer proclamations.

The relevant transfer proclamation for the *State Attorney Act 56 of 1957* which preceded it was the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979, as amended. However, section 3(1)(g) of this transfer proclamation excluded the *State Attorney Act 56 of 1957* from the provisions of section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA. Therefore, the amendments made to that Act in South Africa after the date of the transfer proclamation continued to be automatically applicable to SWA – until the legal provision which made that Act applicable to SWA was repealed by the *Government Attorney Proclamation, R.161 of 1982* with effect from 1 April 1984.

**Regulations:** Regulations are authorised by section 10 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

**Cases:** The case of *Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC) refers at page 18 to the *Government Attorney Proclamation R.161 of 1982*:

The Government Attorney acted in terms of his functions in pursuance of s 4 of the Government Attorney Proclamation No R161 of 1982, which came into force on 1 April 1984 and which is still in force.

The *State Attorney Act 56 of 1957* and the *Government Attorney Proclamation R.161 of 1982* are discussed in para 28 of *Minister of Health and Social Services v Medical Association of Namibia* 2012 (2) NR 566 (SC):

Prior to independence, the State Attorney at Windhoek was a branch office of the office of the State Attorney, Pretoria, in terms of the *State Attorney Act 56 of 1957*. (Section 3(2) of *Act 56 of 1957*.) However, by State President's proclamation R161 of 1982, the Windhoek branch office was converted into the Government Attorney's office for the Territory of South West Africa. It did not repeal *Act 56 of 1957* but amended certain words to bring it in line with the proclamation. Section 4 of the proclamation sets out the functions of the Government Attorney which, in general, are the same as set out in s 3 of *Act 56 of 1957*.

This case also discusses the role of the Government Attorney.

See also *Maletzky v The President of the Republic of Namibia & Others* 2016 (2) NR 420 (HC) (holding that it is not improper for the Government Attorney to represent a judicial officer in the employ of the State; section 4(b)(ii) of the Proclamation).

## Legal Aid Act 29 of 1990

**Summary:** This Act ([GG 131](#)) 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 repeals the *Legal Aid Act 22 of 1969*. It was brought into force on 7 October 1991 by Proc. 23/1991 ([GG 272](#)).

**Amendments:** Act 17/2000 ([GG 2421](#)) amends sections 1, 3, 6, 8, 10, 13, 15, and 20 and inserts section 24A.

**Regulations:** There is no savings clause for regulations issued under the repealed Act.

Legal Aid Regulations issued under this Act were contained in GN 303/2018 ([GG 6774](#)), which repeals the regulations in GN 107/1991 ([GG 273](#)). However, GN 303/2018 was withdrawn and replaced by GN 374/2018 ([GG 6818](#)), which repeals the regulations in GN 107/1991 ([GG 273](#)) and substitutes new regulations with effect from 1 April 2019.

GN 303/2018 was withdrawn because it accidentally repealed the regulations in GN 107/1991 with immediate effect but brought the replacement regulations into force only on 1 April 2019.

The Legal Aid Regulations contained in GN 374/2018 ([GG 6818](#)) are amended by GN 85/2019 ([GG 6892](#)).

**Notices:** Specified offences in terms of the Act are listed in GN 106/1991 ([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).

### Commentary:

Brigit Rudd, Dianne Hubbard and Yolande Engelbrecht, "Trapped In Marriage? Divorce Law and Legal Aid", *The Namibian*, 8 November 2013

Ministry of Justice, "Requirements for Legal Aid Applications" (brochure), undated.

## Legal Practitioners Act 15 of 1995

**Summary:** This Act ([GG 1141](#)) 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 was brought into force

on 7 September 1995 by GN 150/1995 ([GG 1148](#)). It repeals 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* and the Legal Practitioners' Fidelity Fund Act 22 of 1990 ([GG 117](#)).

**Amendments:** Act 4/1997 ([GG 1586](#)) amends sections 11, 21, 54, 67, 72, and 87 and substitutes section 22.

Act 6/1999 ([GG 2126](#)) 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 was repealed by Act 22/2002 ([GG 2892](#)), which was brought into force on 1 November 2005 by GN 139/2005 ([GG 3529](#)).

Act 10/2002 ([GG 2849](#)) amends sections 5 and 18.

Act 22/2002 ([GG 2892](#)), which was brought into force on 1 November 2005 by GN 139/2005 ([GG 3529](#)), amends sections 1, 21, 32, 52 and 72, substitutes section 45 and repeals section 79.

**Application of law:** The application of this law is affected by the Financial Intelligence Act 13 of 2012, which places certain duties on legal practitioners and on the Law Society.

A decision of the Namibian Competition Commission on an application by the Law Society for exemption in respect of professional rules is contained in General Notice 564/2015 ([GG 5906](#)).

**Savings:** Section 94(4) states: "Anything made or prescribed, including regulations or rules, or done under the provisions of any law repealed by subsection (1), and having the force of law immediately before the commencement of this Act shall, insofar as they are not inconsistent with any of the provisions of this Act, continue to be in force, until altered or revoked by the competent authority under the provisions of this Act."

**Regulations:** Pre-independence regulations which might survive pursuant to the savings clause have not been comprehensively researched.

Regulations relating to the **fidelity fund** are contained in GN 136/1993 ([GG 741](#)). These regulations were issued in terms of the previous Legal Practitioners' Fidelity Fund Act 22 of 1990, but survive under the new Act in terms of section 94(4). (This position is confirmed in *Van der Merwe v Director of the Law Society of Namibia & Others* 2013 (1) NR 98 at para 26, but the case erroneously refers to GN 135/1993 instead of GN 136/1993.)

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](#)). GN 8/2011 ([GG 4649](#)) substitutes Annexure 6 to these regulations.

**Rules:** Rules governing the Disciplinary Committee are set forth in GN 54/1996 ([GG 1270](#)).

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. General Notice 376/2017 ([GG 6410](#)) amends Rules 21 and 23 and Annexure A.

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

**Notices:** Various *Government Gazettes* have prescribed 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](#)).

**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)
- Ekanjjo-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) and *Kamwi v Law Society of Namibia* 2011 (1) NR 196 (SC)
- 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))
- Worku v Equity Aviation (Pty) Ltd* 2010 (2) NR 621 (SC) (although not dealing with Act specifically, includes general discussion of attorney-client relationship with reference to authority to settle at 6630E-ff)
- Disciplinary Committee for Legal Practitioners v Murorua & Another* 2012 (2) NR 481 (HC) (construction and application of sections 32-33; 12-month suspension from practice – wholly suspended for 3 years – imposed for unprofessional, dishonourable or unworthy conduct; dissenting judge would have found wilful misleading of court and struck respondent from roll of legal practitioners); appeal dismissed on basis of late filing in *Disciplinary Committee for Legal Practitioners v Murorua & Another* 2016 (2) NR 374 (SC) (discussion of mandate of Disciplinary Committee in course of discussion of the Committee’s non-compliance with Rules of the High Court)
- Van der Merwe v Director of the Law Society of Namibia & Others* 2013 (1) NR 98 (HC) (requirements for issue of Fidelity Fund Certificate under section 68)
- S v Hoabeb* 2013 (1) NR 222 (HC) (example of contravention of section 21(1)(c)) (discussed in Nico Horn, *S v Hoabeb: A Dummy’s Guide on How to Avoid Justice in Namibia for Ten Years*”, *Namibia Law Journal*, Volume 5, Issue 1, 2013)
- Witvlei Meat (Pty) Ltd v Disciplinary Committee for Legal Practitioners & Others* 2013 (1) NR 245 (HC) (section 35), confirmed on appeal in *Witvlei Meat (Pty) Ltd & Others v Disciplinary Committee for Legal Practitioners & Others* 2014 (1) NR 217 (SC) (meaning of appeal in section 35(3); principles relating to legal practitioner’s duties of loyalty and confidentiality)
- Maletzky v Zaaluka* 2013 (3) NR 649 (HC) (cessation of claim as a ruse to circumvent prohibition in section 3 on practising law without being admitted as a legal practitioner, in violation of section 21); see also *Maletzky v Zaaruka*, *Maletzky v Hope Village* [2013] NAHCMD 343 (19 November 2013))
- De Beers Marine Namibia (Pty) Ltd v Lange NO & Others* 2014 (2) NR 437 (HC) (section 85(2))
- Maletsky v Gaseb & Another* 2014 (3) NR 645 (HC) (section 21)
- S v Conradie* 2015 (3) NR 863 (HC) (although not dealing with the Act specifically, grant of postponement in criminal case based on constitutional right to legal representative of

choice)

*Makando v Disciplinary Committee for Legal Practitioners* 2016 (4) NR 1127 (SC) (section 35: Disciplinary Committee is an administrative body in terms of Art 18 of Namibian Constitution, but section 35 procedure does not violate that Article; issue considered in context of prospects of success in condonation application).

This case includes criticism of the Disciplinary Committee at para 23: “Once again this court must chide the Disciplinary Committee for its failure to comply with the time limits stipulated in the rules of this court. It is not acceptable for an institution charged with the responsibility of regulating the conduct of legal practitioners itself to fail to observe the rules.” It also includes similar criticism of the Law Society of Namibia at para 27)

*De Beers Marine Namibia (Pty) Ltd v Loubser* 2017 (1) NR 20 (SC) (certificates of authorisation under section 85(2) of the Act had been refused to South African legal practitioners who were acting for the respondent on a contingency basis, which is not allowed in Namibia; the same legal practitioners then agreed to act gratuitously for the respondent, who was allowed to proceed on an *in forma pauperis* basis)

**Commentary:**

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](http://www.kas.de)

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.kas.de](http://www.kas.de).

**COMMENTARY**

New Perimeter, *Namibia-Access to Justice: Paralegal Manual*, 2012, available at [www.lac.org.na](http://www.lac.org.na).

See also **COURTS**.

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

See also **LAW**.