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PC Secretary



**FREE STATE - VRYSTAAT - FORESTATA**

**FREE STATE LEGISLATURE**

**PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL DEVELOPMENT**

**Negotiating Mandate**

**TO: Chairperson of the Select Committee on Social Services**

**NAME OF BILL: JUDICIAL MATTERS THIRD AMENDMENT**

**BILL**

**NUMBER OF BILL: B53-2013**

**DATE OF DELIBERATION: 20 FEBRUARY 2014**

**VOTE OF THE LEGISLATURE:**

The Portfolio Committee on Health & Social Development as designated by the Free State Legislature:

Proposes the following amendments to the Bill:

1. The Bill should stipulate the powers of the Board of Control of Attorneys Fidelity Fund preceding the proposed amendment empowering the Board of control to

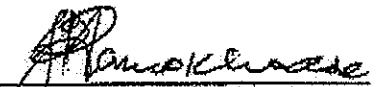
bring an application to court to prohibit any practitioner from operating in any way on his or her trust account and for the appointment of a *curator bonis*.

2. It is important to note that the Attorneys Act does not have a provision stipulating the powers of the Board of control of the attorneys Fidelity Fund.
3. The only relevant provisions in the Act are Section 26 and Section 27.
4. Section 26 clearly indicates that the purpose of the Fund shall be to reimburse persons who may suffer pecuniary loss as a result of certain circumstances which is formulated in the Act. These circumstances are not relevant for purposes hereof.
5. Section 27 provides that the fund shall vest in and be administered by a Board of Control and furthermore that the Fund shall be held in trust by the Board of Control for the purposes mentioned in the Act.
6. The only "powers" bestowed on the Board of Control is to administer the Fund for the purposes mentioned in the Act.
7. The proposed amendment is *ultra vires* since Section 78 of the Attorneys Act empowers Law Societies to regulate trust accounts held by attorneys.
8. The amendment seeks to authorize the Board of Control also to approach Court. Such an attempt is fatal if the powers of the Board of Control are not also amended.
9. It should be mentioned that in terms of Legal Practice Bill the only power and functions of the Board with reference to the regulation of trust accounts of Attorneys is clause 63(1)(e) which enables the Board to "inspect or cause to be inspected the accounts of any attorney or an advocate referred to in clause 34(2)(b)".

10. No powers will vest in the Board to approach Court for any relief. It follows that any negative finding will have to be referred to the Legal Practice Council to act against the practitioner.

11. Interim legislation authorizing the Board to bring an application to court to prohibit any practitioner from operating in any way on his or her trust account and for the appointment of a *curator bonis* will have limited, if any effect.

Votes in favour of the Bill



**MR T. R. J. E. RAMOKHOASE**  
CHAIRPERSON OF PORTFOLIO COMMITTEE ON HEALTH & SOCIAL  
DEVELOPMENT  
FREE STATE LEGISLATURE

20 FEBRUARY 2014