

The Portfolio Committee on  
Justice and Constitutional Development

By e-mail: [vramaano@parliament.gov.za](mailto:vramaano@parliament.gov.za)

Attention: Mr V Ramaano

Date:  
27 July 2012

Enquiries: Gideon Tshivhase  
Tel +27 11 800 2419

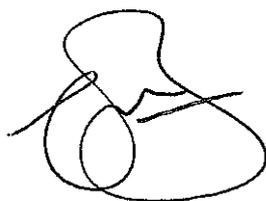
Dear Sir/Madam

**LEGAL PRACTICE BILL, 2012**

We thank the Portfolio Committee on Justice and Constitutional Development for granting us an opportunity to comment on the Legal Practice Bill ("Bill").

Our comprehensive comments dealing with specific sections are attached separately to this letter.

Yours sincerely



P.P. Willie du Plessis  
**General Manager: Regulation & Legal**

## **Eskom Comments on the Legal Practice Bill (“the Bill”), May 2012**

1. The main comment we wish to emphasise is that the independence of the judiciary needs to be protected. The question is asked whether, with the Minister appointing members to the main governing professional body that is possible.
2. It is Eskom’s reading of the Bill that it applies only to what is traditionally referred to as practising members of the profession, and hence excluding those persons who have qualified, but are now, for example legal advisers in private or public companies. We request that it be made clear what the intention is and that if “non-practising” persons are to be excluded, then provision should be made for an independent body to regulate the professional affairs of such persons.
3. In this vein, we note that the South African Legal Practical Council (“the Council”) replaces the Law Society. Section 7 refers to the composition of the Council and concern must be noted that non-practising practitioners are not eligible for membership in the Council. Non-practising practitioners make up a significant percentage of the legal fraternity and have direct influence on South African business as legal advisors and legal counsel in that they provide in-house legal advice to these corporates and commercial businesses thereby ensuring that these businesses and corporates (including SOCs) operate in terms of the law. The section does state that one legal academic will be appointed as well as person nominated by the Legal Aid Board but this does not address the representation of non-practising attorneys in the Council. It is essential that non-practising attorneys have appropriate representation in the Council in light of the functions and powers assigned to the Council by the Bill which affects both practicing and non-practising legal practitioners.
4. Section 6 (5) e and f: We request clarity on whether the prescription of training for legal practitioners extends to non -practising legal practitioners.
5. Section 7: At least 1 nominee from the corporate sector representing Legal Advisors / Corporate Counsel should also be appointed as a Council member.
6. Section 7(1) (a) and 7 (2) (d): We recommend that members representing the legal practitioners on the Council should at least have five years of post-articles experience.
7. Sections 25 and 33: We suggest that consideration be given to a qualified, admitted attorney, but non-practising full-time Legal Advisor/Corporate Counsel be entitled to right of appearance on behalf of employer. Conditions and/or limitations may be included if considered. This may also enable corporate organisations to take on articulated clerks in the future as is the case in some other professions.
8. Section 25 refers to Rights of Appearance and may remove the traditional distinction between attorneys and advocates in respect of appearing in the High Court. The Bill invokes that any legal practitioner has the right to appear in any court in South Africa. This may affect advocates in respect of instructions received and fees charged. Section 34(2) further states that Advocates may only provide legal services after receiving instructions from an attorney. Provision is, however, made for an Advocate to provide legal services upon instruction directly from the public provided that such request complies with any regulation that the Minister may make after consulting with the Council. Clarity is requested on the intention of the insertion.

9. Section 26 (1) (b): The vocational training should be prescribed by the Minister alone and we recommend it should be prescribed by the Minister in consultation with the Council. The Minister is not aware of the legal practise as to what is considered adequate training for candidate attorneys to qualify as legal practitioners.
10. Section 29 (1) b: We suggest that consideration be given to the possibility that the rendering of community service should only be applicable to candidate attorneys and not to legal practitioners as applied in the medical profession or to practising legal practitioners.
11. Section 35: If this bill is indeed applicable to non-practitioners, or made so, and the salaries earned by such persons are higher or lower than prescribed, would that need to be adjusted up or down?
12. Section 36: It is possible that a code of conduct may conflict with the code of conduct to which the non-practising legal practitioner is subject (that of the employer of the non-practising legal practitioner. If it is intended for all the legal practitioners then which code will take prevail?)
13. Section 46: We suggest that there should be branch offices for the Ombudsman to enable the public to have convenient access.
14. Section 51 (2): The period for the replacement of the Ombud should be stipulated in the act. We recommend the appointment of another Ombud should be filled within two months of vacation of office.
15. Section 74 (1) (a): It is stated that the attorney pays the contribution to the fund. However, in last subsection 74 (5) states that the contribution in terms of this section must be payable to the Council who in turn will remit it to the fund. This is clearly contrary to section 74 (1) a. We suggest that this last section should be deleted as payment should be made directly to the fund and not to the Council to avoid unnecessary delays to commence service. Copy of the certificate should be provided to the Council as proof.
16. Section 84 (1): The carve out is not clear and the word “and” should be deleted and replaced with a “,”.
17. Section 85: A requirement that the Fidelity Fund Certificate should be clearly displayed at the offices of the attorneys could also be included.