

PROCEDURES FOR PRESENTATION OF CLAIMS AGAINST THE FIDELITY FUND

In terms of Section 54 of the Legal Practitioners Act, No. 15 of 1995, the primary purpose of the Legal Practitioners' Fidelity Fund (*'the Fidelity Fund'*), is to reimburse members of the public who have suffered pecuniary loss due to the theft of money or property entrusted to a legal practitioner in the course of his/her practice as such. The same would apply where a legal practitioner acts as executor or administrator in a deceased estate, or as a trustee in an insolvent estate.

Any person who believes that he/she has a claim against the Fidelity Fund as a result of theft by a legal practitioner and who wishes to submit a claim against the Fidelity Fund, should note the following:

1. Notice of the claim should be given to the Law Society of Namibia who receives the notice on behalf of its Council and the Board of Control of the Fidelity Fund. Notice must be given within a period of 3 (three) months after the claimant became aware of the theft, or by the exercise of reasonable care should have become aware of the theft. (Section 73(1)(a) of the Act).
2. Such proof as the Board of Control might reasonably require, should be furnished within 6 (six) months after receipt of a written demand requesting the submission of such proof. (Section 73(1)(b))
3. In terms of Section 74(1) of the Act, the Board of Control may require a claimant to exhaust all available legal remedies against the legal practitioner concerned, and against any other persons liable in respect of the loss suffered, before having recourse to the Fidelity Fund. The Fund is therefore a Fund of last resort only.
4. The Board of Control is empowered to waive compliance with this requirement and claimants are therefore requested to consult with the Board before taking legal action on their own

and risk not being reimbursed for costs. Claimants must guard against their claims becoming prescribed.

5. The claim should be made by way of an affidavit in which the facts giving rise to the claim are fully set out. Such affidavit will serve a dual purpose in that it will be used, firstly, for the purpose of proving a claim against the Fidelity Fund, and secondly, to assist the Namibian Police in instituting a speedy and effective criminal investigation and prosecution.

In this regard kindly **refer to and follow** the guidelines set out in the section entitled "*Framework for a sworn affidavit*" in this pamphlet.

6. Except where the Board of Control has directed that a formal enquiry in terms of the Regulations framed under the Act should be held, consideration of the claim will be confined to the affidavit submitted. For this reason, any allegations in the affidavit in connection with amounts entrusted to the legal practitioner should, where possible, be corroborated by other means. In this regard it is usual for the affidavit to be accompanied by a photostat copy of the claimant's ledger account, or other relevant ledger accounts in the legal practitioner's accounting records which may substantiate the allegations in the affidavit. In addition, other evidence such as paid cheques, receipts or correspondence should be submitted and although photostat copies will be accepted, the Fidelity Fund will require the original documents, where available, particularly paid cheques.
7. The Board of Control has a discretion to make a contribution towards the costs incurred by a claimant in establishing a claim against the Fund. As it has been found that delays and a great deal of unnecessary correspondence invariably results where a claimant, who is not a legal practitioner,

elects to attend to the submission of the claim, it is strongly recommended that claimants should instruct a legal practitioner to attend to the submission of their claims.

8. **Interest:** In terms of Section 72(2)(a)(b) of the Legal Practitioners Act, any claim for reimbursement will be without interest.
9. Correspondence with respect to every claim should be addressed to:

The Director

Law Society of Namibia

P O Box 714

WINDHOEK

Tel number: 061- 230 263/230 088

Fax number: 061-230 223

The Director of the Law Society will in turn forward the claim to the Fidelity Fund.

FRAMEWORK FOR A SWORN AFFIDAVIT IN SUPPORT OF A CLAIM AGAINST THE LEGAL PRACTITIONERS FIDELITY FUND

All affidavits should contain the following:

1. Full names (first name(s) and surname) of the deponent(s).
2. Identity number, full residential address and, where applicable, telephone number, work address and telephone number, cellular phone number, e-mail address, fax number, occupation and particulars of post occupied. (Please attach a copy of the claimant's identity document to the claim affidavit).
3. A declaration that the affidavit is intended:
 - to serve as a statement for the submission of a claim against the Fidelity Fund; and
 - for the purpose of registering a case dossier to enable the Namibian Police to investigate a criminal case. The deponent should explicitly request the Namibian Police to investigate a criminal complaint.
4. A statement by the deponent that he/she is aware that the affidavit may be made available to the accused's legal representative(s), at their request, during the course of a criminal prosecution and that he/she acknowledges that the accused's legal representative(s) may consult him/her prior to the Court proceedings, and that he/she has the right to decline such request.

5. Full particulars of the facts giving rise to the claim and/or criminal charge, including:
 - An allegation that there was an entrustment of money or property to the legal practitioner, with a detailed description as to how such entrustment occurred.
 - Precise details as to how the amount claimed is arrived at, by deducting from the amount entrusted to the legal practitioner any payments made by the legal practitioner to or on behalf of the deponent, as also any fees due to the legal practitioner by the deponent.
 - An allegation that the amount claimed was stolen by the legal practitioner and that the deponent will suffer pecuniary loss if such amount is not reimbursed to him/her.

In every case in which reference is made to supporting evidence, such evidence (for example photostat copies of the deponent's ledger account in the legal practitioner's accounting records, receipts, paid cheques, deposit slips and relevant correspondence) must be appended to the affidavit. The deponent should as far as possible append original documentation, especially paid cheques.

Kindly note that the affidavit should in all respects comply with the provisions of the Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963, and any regulations made thereafter.



LEGAL PRACTITIONERS' FIDELITY FUND

GUIDE TO CLAIMS PROCEDURES

THEFT OF MONEY OR PROPERTY ENTRUSTED TO A LEGAL PRACTITIONER IN THE COURSE OF HIS/HER PRACTICE AS A LEGAL PRACTITIONER