



OPINION

for

**P. SELEKA SC
CHAIRPERSON
LEGAL PRACTICE COUNCIL**

on

**THE LEGAL PRACTICE COUNCIL'S JURISDICTION IN DEALING WITH
MISCONDUCT RELATING TO LEGAL PRACTITIONERS WHO SERVE AS
ACTING JUDGES**

20 November 2025



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

DEMOCRATIC GOVERNANCE AND RIGHTS UNIT

LEGAL OPINION:

**THE LEGAL PRACTICE COUNCIL'S JURISDICTION IN DEALING WITH
MISCONDUCT RELATING TO LEGAL PRACTITIONERS WHO SERVE AS
ACTING JUDGES**

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A. INTRODUCTION

- 1 The Democratic Governance and Rights Unit of the Faculty of Law, University of Cape Town (“**the DGRU**”). is requested to provide an opinion on the disciplinary jurisdiction of the Legal Practice Council (“**the LPC**”) over legal practitioners who serve as acting judges and, upon the expiry of the acting period, subsequently return to legal practice with reserved judgments outstanding.

- 2 We are instructed that, in October 2024 the LPC received a request from the Judge President of the KwaZulu-Natal division of the High Court requesting “a way forward” regarding acting judges who have long-reserved judgments. The Judge President’s request followed a ruling by the Judicial Conduct Committee (“**the JCC**”) in the matter of *Judge President Poyo-Dlwati v Former Acting Judge Mlungisi Sabela* (Case No: JSC/1112/23, 10 July 2024) (the “**AJ Sabela matter**”). In that matter, the JCC ruled that, since the acting judge had already vacated office (in that their acting period had expired), the provisions of section 177 of the Constitution regarding the removal of judges from office on the grounds of gross misconduct, were not applicable. The JCC therefore dismissed the judge president’s complaint.

- 3 Considering the JCC’s ruling in the *AJ Sabela* matter, we understand the Judge President’s request to be a plea to the LPC for intervention regarding:
 - 3.1 the delivery of the reserved judgments by the acting judges; or, failing which,

- 3.2 the institution of disciplinary action against the implicated legal practitioners.
- 4 The crisp legal question is therefore whether the LPC has disciplinary jurisdiction over legal practitioners (attorneys and advocates) who, during their period serving as acting judges, have failed to deliver judgments within a reasonable period and subsequently return to legal practice?
 - 5 The answer to the question is simply:
 - 5.1 The Legal Practice Council currently does not have general jurisdiction over all legal practitioners who fall foul of their duty to deliver judgments within a reasonable period.
 - 5.2 There is some provision in the Code for Legal Practitioners for attorneys to be ethically bound to the Judicial Code of Conduct during their period of acting as judges but there is no clarity whether breaches of the Judicial Code necessarily constitute breaches of the legal practitioners' code.
 - 5.3 In respect of advocates who are members of the constituent bars of the General Council of the Bar, and therefore subject to the Uniform Code of Practice, there is a clear provision for the failure to deliver judgments constituting professional misconduct which triggers the disciplinary functions of the Bar.
 - 5.4 Therefore, in our view, the Legal Practice Council needs to amend its Code for Legal Practitioners to establish the failure to deliver judgments as an

ethical breach of the Code, subject to the disciplinary powers of the LPC and the attendant sanctions.

6 We answer this question in the following manner:

6.1 Firstly, we set out the relevant legal provisions which categorise the failure to deliver judgments timeously as a form of judicial misconduct.

6.2 Secondly, we analyse the legal provisions under which the conduct of not delivering reserved judgments may be categorised as professional misconduct on the part of a legal practitioners in the Legal Practice Code, and identify an accountability gap in the law.

6.3 Thirdly, we consider comparable professional codes (including from the General Council of the Bar, and previous versions of the Legal Practice Code). We consider these alongside the rulings of the courts and of the JCC.

6.4 Lastly, we propose an amendment to the Code for Legal Practitioners to close the lacuna we have identified in this analysis.

7 In what follows, we deal with each of these issues in turn.

B. FACTUAL BACKGROUND

The problems of acting judges not performing

8 Since 2018, the Office of the Chief Justice (OCJ)¹ regularly publishes a Reserved Judgments Report, which lists all the judgments reserved in all superior courts for three months or more. In every single report since 2018, acting judges feature prominently for their tardy delivery of judgments. In the latest report,² dated 3 October 2025, covering Term 2 of 2025, acting judges make up over 50% (84 acting judges versus 42 permanent judges) of all names listed, and several are repeat offenders, including Acting Judge Sabela (“**Sabela AJ**”). The worst affected court is the Labour Court (Cape Town, Johannesburg, Durban, and Gqeberha), where there are 102 outstanding judgments, 85 of which are by acting judges, and one of which, by Kuboni AJ, has been outstanding for 45 months. Under the current circumstances, there are no mechanisms to ensure that these judgments are delivered as most of these acting judges are no longer serving in judicial office.

The Sabela AJ complaint

9 In her complaint affidavit filed with the Judicial Conduct Committee, KwaZulu-Natal High Court Judge President Thoba Poyo-Dlwati alleges that between 15 August and 16 September 2022, Sabela AJ served as an acting judge in the division, where he presided over various matters. During that time, he reserved at least five matters for periods exceeding six months, in breach of the Norms

¹ The Office of the Chief Justice is the national government department responsible for assisting the Chief Justice as head of the judiciary, and the administration of the superior courts, established in term of Presidential Proclamation 234 of August 2014.

² See Reserved Judgments Report T2/2025 – <https://www.judiciary.org.za/index.php/judiciary/reserved-judgment-reports?download=23369:reserved-judgment-report-for-the-chief-justice-term-2-2025>

and Standards for Judicial Performance.³ This, the Judge President alleged, constituted judicial misconduct for which there should be a sanction.

- 10 The complaint was received by the Deputy Chief Justice as Acting Chairperson of the Judicial Conduct Committee who, in terms of section 16(1) of the Judicial Service Commission Act,⁴ referred it to the Judicial Conduct Committee for consideration of the appointment of a Judicial Conduct Tribunal to investigate the complaint.⁵ The JCC declined to recommend that a tribunal be appointed to investigate the complaint against Sabela AJ. The JCC reasoned that, since the purpose of section 16(1) was the establishment of a tribunal to investigate allegations which, if substantiated, will likely lead to a finding of gross misconduct/incompetence and the ultimate sanction of removal from judicial office in terms of section 177 of the Constitution, such a purpose could never be achieved in respect of acting judges. Over and above its finding that the conduct of Sabela AJ did not meet the bar of gross misconduct, the JCC held that, since Sabela AJ was not at that time holding judicial office, the establishment of a tribunal could not be competently made. “It would be procedurally irrational to

³ The Norms and Standards for Court Performance are promulgated in Government Gazette No 37390 (28 February 2014) (“**the Norms and Standards**”).

⁴ Section 16(1) of the Judicial Service Commission Act 10 of 1994 provides:

16. Committee may recommend appointment of Tribunal in respect of impeachable complaints

(1) *If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14(4)(a), the Chairperson must—*

(a) *refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal.*

⁵ See *Judge President Poyo-Dlwati v Former Acting Judge Mlungisi Sabela* (Case No: JSC/1112/23, 10 July 2024) paragraph 2.

recommend a tribunal where it is apparent that there is no office from which the respondent [acting] judge is to be removed,” the JCC held. This finding meant the end of the complaint against Sabela AJ.

- 11 Aggrieved by this decision, Poyo-Dlwati JP therefore wrote to the Legal Practice Council requesting its intervention in resolving the problem of acting judges who fail to deliver judgments timeously and who subsequently return to legal practice.
- 12 We now turn to analysing the legal provisions under which the conduct of not delivering reserved judgments may be categorised as professional misconduct on the part of a legal practitioner.

C. LEGAL FRAMEWORK

Failure to deliver judgments as misconduct in the Judicial Code of Conduct

- 13 In this section we discuss the legal framework obliging judges (including acting judges) to timeously deliver judgment. We also discuss the legal standard by which failure to deliver judgment would serve as a ground for judicial misconduct. We discuss this in the context where such judicial misconduct would also constitute professional misconduct on the part of legal practitioners, with a view to establishing whether the Legal Practice Council has jurisdiction to investigate this form of professional misconduct.

- 14 The Code of Judicial Conduct (“**the Judicial Code**”) is a codification of the ethical standards all judges in South Africa are required to abide by.⁶ While the Judicial Code seeks to regulate the duties and functions of judges, it readily admits that it is not meant to be “absolute, practice, or exhaustive”, and certain conduct may be unethical even though it is not proscribed in the terms of the Judicial Code.⁷
- 15 The Judicial Code applies to every judge referred to in section 7(1)(g) of the Judicial Service Commission Act, which includes a “judge performing judicial duties in an acting capacity” and acting judges.⁸
- 16 A judges’ primary duty is the resolution of legal disputes promptly and effectively. Article 10(1)(d) the Judicial Code requires judges to deliver judgments timeously, and states:

ARTICLE 10: DILIGENCE

1. A judge must-

- (a) perform all assigned judicial duties diligently;
- (b)
- (c) *dispose of the business of the court promptly and in an efficient and businesslike manner;*
- (d) *give judgment or any ruling in a case promptly and without undue delay;*
- (e)

⁶ Code of Judicial Conduct (Government Gazette No. R865 No. 35802, 18 October 2012) adopted in terms of section 12 of the Judicial Service Commission Act 9 of 1994.

⁷ See Article 3(2) of the Judicial Code, and see R. Sutherland “*The Ethical Judge: An introduction to the Ethics of the South African Judiciary*” in N. Dambuza (ed) *Essays in Celebration of the 10 Anniversary of the South African Judicial Education Institute*, Juta Law (2025) page 130.

⁸ Article 2(b) of the Judicial Code.

- (f)
- (g) *perform all official duties properly, timeously, and in an orderly manner;*
- (h) *respect and comply with, the administrative requests of the head of court or the relevant senior judge;*
- (i)
- (j) *upon resignation, discharge from active service, or the expiry of an acting appointment, complete all part-heard cases and deliver all reserved judgments as soon as possible.*

17 The Judicial Code's requirement that judges promptly deliver judgments if fortified by the Norms and Standards, which read, in relevant part:

5.2.6 Delivery of Judgments

Judgments, in both civil and criminal matters, should generally not be reserved without a fixed date for handing down. Judicial Officers have a choice to reserve judgments sine die where the circumstances are such that the delivery of a judgment on a fixed date is not possible. Save in exceptional cases where it is not possible to do so, every effort shall be made to hand down judgments no later than three months after the last hearing.⁹

18 While the Norms and Standards stipulate a period of three months for the handing down of judgments, in practice, a further grace period of three months is permitted for complex cases. This is in terms of Article 10(2) of the Judicial Code, read with a resolution of the Heads of Court dated 28 September 2018, which mandates the Office of the Chief Justice to compile a report listing all

⁹ Norms and Standards for Judicial Performance, para 5.2.6.

reserved judgments outstanding for 6 months or longer (“the Reserved Judgments Report”), which report must be published on the Judiciary’s website.¹⁰

19 However, what clearly emerges from the Code and the Norms and Standards is that judge is ethically bound to deliver judgments promptly, and to do so within a reasonable period as articulated in the Norms and Standards, which are described as an articulation of ethical values.¹¹ A judge’s failure to deliver judgments within the reasonable period is therefore a breach of a judge’s ethical duties, as articulated in Article 10(2) of the Code read with the Norms and Standards.¹²

20 Another ethical duty arises from Note 10(iv) of the Judicial Code, which requires judges to keep a record of all outstanding judgments, and report them to the head of the particular court if and when requested to do so. There are practical reasons for this: the Reserved Judgments report is compiled through data gathered from judges self-reporting on their reserved judgment. While there have been incidents where judges have not reported these judgments,¹³ the practice seems

¹⁰ See Reserved Judgments Report T2/2025 – <https://www.judiciary.org.za/index.php/judiciary/reserved-judgment-reports?download=23369:reserved-judgment-report-for-the-chief-justice-term-2-2025>

¹¹ See R. Sutherland “*The Ethical Judge: An introduction to the Ethics of the South African Judiciary*” in N. Dambuza (ed) *Essays in Celebration of the 10 Anniversary of the South African Judicial Education Institute*, Juta Law (2025) page 128.

¹² See Judicial Service Commission ruling in re: Report of the Judicial Conduct Tribunal in the Enquiry against Judge Mnqibisa-Thusi (27 August 2024) <https://www.judiciary.org.za/index.php/news/press-statements/press-statement-2024%3Fdownload%3D18420:jsc-in-re-report-of-the-judicial-conduct-tribunal-in-the-enquiry-against-judge-mnqibisa-thusi&ved=2ahUKEwjDxt2E0fiQAxWYQ0EAHeB0EsEQFnoECB8QAQ&usq=AOvVaw0-KYmoC52N2OcR6Cxx7pmz>

¹³ See, for example, M. Damons, “Judge hands down ruling three years late” (14 October 2025) GroundUp News: <https://groundup.org.za/article/judge-hands-down-ruling-three-years-later/>

to be observed more often than it is not. Nevertheless, a failure to promptly report on the reserved judgment is considered an independent ground of misconduct.¹⁴

- 21 In the context of long-reserved judgments, the practice in most divisions of the High Court is that litigants write to the judge president to inquire into the causes of the late delivery of the judgment. The judge president will then write to the judge, requesting an explanation for the judgment being late, and an undertaking of when the judgment will be delivered. The judge is then duty-bound to deliver the judgment on the stipulated date, failing which, the act of not delivering the judgment is considered a breach of the Judicial Code and an act of misconduct.¹⁵
- 22 The upshot of these provisions is that all judges (permanent and acting) are ethically bound to deliver judgments promptly (within three months) and/or within a reasonable time. Additionally, judges are required to report reserved judgments to the head of the court that they serve in. A failure to deliver judgments within a reasonable time constitutes a wilful act of judicial misconduct, in terms of section 14(4)(b) of the JSC Act. In addition, a failure to report on the reserved judgments also constitutes a ground of judicial misconduct in terms of section 14(4)(b) of the JSC Act.
- 23 An allegation of judicial misconduct in terms of section 14(4) of the JSC Act grants the Judicial Conduct Committee jurisdiction to investigate the allegations. Depending on the nature of the misconduct alleged, further action might be taken

¹⁴ See Judicial Service Commission ruling in re: Report of the Judicial Conduct Tribunal in the Enquiry against Judge Mngibisa-Thusi (27 August 2024) (the “*Mngibisa-Thusi JSC ruling*”) para 8.2.

¹⁵ See Article 10(2) of the Judicial Code, read with the *Mngibisa-Thusi JSC ruling*.

in reference to the Head of Court, a Judicial Conduct Inquiry, or a Judicial Conduct Tribunal.¹⁶

- 24 Despite the provisions of the Judicial Code making it clear that a failure to deliver reserved judgments constitutes judicial misconduct, a problem arises when an acting judge's period of acting expires while they still have reserved judgments outstanding. They no longer fit within the definition of a 'judge' in terms of section 7(1) of the JSC Act.¹⁷ This means that the JSC no longer has jurisdiction over them. This is the upshot of the finding in the JCC's ruling in *Makatu v Acting Judge Herman Niewoudt*, which found that a complaint against an acting judge ought not be entertained by the Judicial Conduct Committee, and such complaints must be referred to the relevant professional body. This is especially if they are filed after the period in which that judge is acting.¹⁸
- 25 Does this mean that they are subject to the disciplinary jurisdiction of the Legal Practice Council? It is to this topic that we now turn.

The Legal Practice Code

- 26 The Legal Practice Council is a statutory body established by the Legal Practice Act 28 of 2018 to regulate the legal profession. Among other responsibilities, the

¹⁶ See Article 2(4) of the Judicial Code read with JSC Act sections 15, 16 and 17.

¹⁷ This is in terms of the JCC ruling in *Makatu v Acting Judge Herman Niewoudt* (JSC/696/21), paragraph 19 – 20.

¹⁸ *Makatu v Acting Judge Herman Niewoudt*, para 20.

LPC has a primary mandate to act as the *custos morum* (the custodian or guardians of morals) of the legal profession.¹⁹

27 Specifically, the LPC has the responsibility to:

27.1 promote and protect the public interest,²⁰

27.2 regulate all legal practitioners...,²¹

27.3 preserve and uphold the independence of the legal profession,²²

27.4 enhance and maintain the integrity and status of the legal profession;²³
and

27.5 uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic.²⁴

28 In light of all these responsibilities, section 6(1)(b)(i) of the LPA requires that the LPC develop norms and standards to guide the conduct of legal practitioners,...and the legal profession. In this regard, in terms of section 36 of the LPA, the LPC has developed a Code of Conduct for all legal practitioners (**“the Legal Practice Code”**) as the prevailing standard of conduct of all legal

¹⁹ Section 4, 5 and 5 of the Legal Practice 28 of 2018 and *Johannesburg Society of Advocates v Nthai* 2021(2) SA 343 (SCA) para 24.

²⁰ LPA section 5(c).

²¹ LPA section 5(d).

²² LPA section 5(e).

²³ LPA section 5(f).

²⁴ LPA section 5(k).

practitioners, candidate legal practitioners, and juristic entities engaged in legal practice, to be enforced by the LPC.²⁵

- 29 The Legal Practice Code confers upon LPC the powers to establish investigating and disciplinary committees to investigate and adjudicate any acts of alleged misconduct in terms of the Legal Practice Code.²⁶
- 30 The Legal Practice Code sets out extensive provisions to guide the conduct of all legal practitioners generally.²⁷ It also includes specific provisions to regulate different categories of legal practitioners such as attorneys,²⁸ and advocates,²⁹ in different contexts, including before courts and tribunals,³⁰ and even for practitioners not in private practice.³¹
- 31 As discussed above, the Legal Practice Code contains extensive provisions relating to the conduct of legal practitioners in almost all contexts of legal practice, both in private practice and elsewhere. However, the Code is silent on the conduct of legal practitioners who accept judicial appointment as acting judges. The only exception is clause 18.21, which applies specifically to attorneys.

²⁵ The first draft Legal Practice Code was developed under the National Forum on the Legal Profession and published on 10 February 2017 (Government Gazette No. 40610), with a call for public comments by 7 February 2019. A final version of the Legal Practice Code is published in Government Gazette No. 42337 on 29 March 2019.

²⁶ LPA section 37

²⁷ See Part II of the Legal Practice Code (clauses 2 – 10).

²⁸ See Part III of the Legal Practice Code (clauses 11– 21).

²⁹ In respect of ‘counsel’ or ‘referral advocates’ see Part IV of the Legal Practice Code (clauses 22 – 37); and in respect of ‘trust account advocates’ see Part V (clauses 38 – 53).

³⁰ See Part VI of the Legal Practice Code (clauses 54 – 62).

³¹ See Part VII of the Legal Practice Code (clauses 63).

That clause provides:

18. Specific provisions relating to conduct of attorneys

An attorney shall –

18.21 If he or she accepts appointment as an acting judge, adhere to the code of conduct applicable to judges...

- 32 There is no other equivalent clause in the Legal Practice Code in respect of other legal practitioners (i.e. counsel, trust account advocates). This must be taken to mean that, in respect of other legal practitioners who take up judicial appointment as acting judges, the Legal Practice Code would not be applicable to them. More on this below.
- 33 In relation specifically to clause 18.21 of the Legal Practice Code, the high watermark of the clause is a reference to the Judicial Code. That means that the clause does not impose standalone ethical norms and standards on attorneys who serve as acting judges, but simply cross reference to those already contained in the Judicial Code.
- 34 Significantly, clause 18.21 is not timebound nor bound to the period in which that attorney assumed judicial appointment as an acting judge. It can reasonably be read as only applying during the period in which the attorney holds office as an acting judge and would not apply beyond the expiration of the period of judicial service (even despite there still being reserved judgments that that attorney has outstanding).
- 35 The upshot of the clear provisions of the Legal Practice Code is that they:

- 35.1 only apply to attorneys who serve as acting judges, and no other practitioners;
 - 35.2 do not give rise to independent ethical duties, and only refers to the Judicial Code; and
 - 35.3 Only apply for the duration of the period in which the attorney serves as an acting judge and not beyond that period.
- 36 However, there are general provisions of the Legal Practice Code that may be read to impose ethical duties on other legal practitioners who serve as acting judges to deliver outstanding reserved judgments.

These provisions include:

- 36.1 Clause 3.11 which imposes a duty on legal practitioners to use their best efforts to carry out work in a competent and timely manner and not take on work which they do not reasonable believe they will be able to carry out in a timely manner. This would arguably include a duty to deliver, within a reasonable time, all reserved judgments outstanding, even beyond the period of acting.
- 36.2 Clause 3.15 which requires legal practitioners to refrain from doing anything which could or might bring the legal profession into disrepute. This duty would arguably extend to a duty not to bring the legal profession into disrepute through failing to deliver judgments still owed to the court and the litigants concerned, and a related failure to fairly account for such judgments outstanding.

- 36.3 Clause 3.1. which requires legal practitioners to maintain the highest standards of honesty and integrity, which arguably includes a duty to honestly deliver on the undertaking to adjudicate legal disputes as an acting judge, even beyond the period in which the legal practitioner is formally engaged as an acting judge.
- 37 While these additional duties as an acting judge can be inferred from the general scheme of the Legal Practice Code, it might prove difficult for the LPC to directly enforce them against legal practitioners.
- 38 The fact that there are no express provisions in the Legal Practice Code regulating the conduct of legal practitioners (other than clause 18.2 which only regulates attorneys), means that there is a glaring loophole in the Legal Practice Code. It means that legal practitioners who voluntarily assume duties as acting judges but fail to undertake these duties and deliver on their undertakings regarding reserved judgments, fall into an accountability gap. This accountability gap is manifested through, on the one hand, the Judicial Service Commission not having jurisdiction to hold acting judges who leave judicial service; while, on the other hand, the LPC also does not have jurisdiction to hold these legal practitioners on their resumption of legal practice. This accountability gap is clearly exhibited by the *Sabela* matter.
- 39 The loophole in the Legal Practice Code resulting in the accountability gap flies directly in the face of the LPC's mandate to protect the public interest, maintain integrity of the legal profession, and uphold and advance the rule of law,

administration of justice, and the Constitution of the Republic, in terms of section 5 of the Legal Practice Act.

The 2016 Legal Practice Code

40 It is notable that a previous version of the Legal Practice Code, which was developed by the National Forum on the Legal Profession in terms of the repealed 97(1)(b) of the Legal Practice Act, provided more extensive regulation of counsel who accept judicial appointments.³² Indeed, rule 18.2 of the current Legal Practice Code seems to have been modelled (with some curtailment) on the 2016 version of the Legal Practice Code.

41 The relevant provision of the 2016 Legal Practice Code provides as follows:

Acting Judicial Appointments

15.4 Counsel who accept appointments as acting judges shall adhere to the code of conduct applicable to judges.

15.5 Counsel shall, upon the acceptance of an acting judicial appointment, arrange their other professional commitments in such a manner that:

15.5.1 priority is given to the performance and timeous completion of all judicial work;

15.5.2 all reserved judgments are delivered, if not by the end of the period of appointment, within 90 days after judgment was reserved, unless exceptional circumstances exist that make such a period unreasonable.

³² National Legal Forum on the Legal Profession, *Code of Conduct made under the authority of section 97(1)(b) of the Legal Practice Act 28 of 2014* (10 November 2016) available here: <https://www.lssa.org.za/wp-content/uploads/2020/01/NF-Code-of-Conduct-10-11-2016.pdf>

- 42 The application of this provision is extended in the 2016 Legal Practice Code from just counsel to also include trust account advocates:

Acting judicial appointments

37.4 The provisions of paragraph 15.4 and 15.5 of this code apply, with the necessary changes requires [by] the context, to trust account advocates.

- 43 It is not clear from our research the reasons why these provisions were excluded from the final version of the Legal Practice Code as adopted in March 2019. It is also not clear why the provisions were significantly curtailed in the final version to only be limited to attorneys, as per rule 18.2 of the current Legal Practice Code. We believe that this exclusion of the 2016 Legal Practice provisions opened the accountability gap that currently exists.
- 44 Significantly, the 2016 Legal Practice Code encapsulated some of the existing provision that only applied to counsel who are members of the advocates societies or affiliate bars of the General Council of the Bar. We turn to this provision now.

Other legal profession Codes: The GCB Red Book

- 45 The General Council of the Bar (GCB) is a federation of voluntary advocates' societies (so-called constituent bars) based at major towns and cities across South Africa. Each constituent bar is established as a voluntary association with its own legal personality as prescribed in its constitution. Each bar affiliates with the GCB through each bar's constitution.

- 46 In terms of the Supreme Court of Appeal's decision in the *Nthai* matter the GCB and its constituent bars exercise joint responsibility as the *custos morum* (the custodian or guardians of morals) of referral advocates or counsel who are members of the constituent bars.³³ In line with this general responsibility, and in terms of its constitution, the GCB has authority to develop bylaws, including Uniform Rules of Professional Conduct (the so-called '**Red Book**').³⁴ The Red Book regulates the conduct of all members of the constituent bars of the GCB, and are enforced against these members.
- 47 The Red Book at 4.25 imposes ethical obligations on counsel in relation to their appointment as acting judges, including a duty to deliver judgments. The rule reads as follows:

4.25 Judicial Appointments - Acting Appointments: Duty to deliver judgments

It shall constitute unprofessional conduct for a member who has acted as a judge to delay the delivery of judgment unreasonably in a matter heard by the member, which shall be determined from the time of completion of the relevant court proceedings.

- 48 The rule is therefore clear that an advocate who is a member of a constituent bar of the GCB has an ethical and professional duty to deliver a reserved judgment within a reasonable period after they complete the court proceedings. This rule aligns with Article 10 of the Judicial Code, which places a similar obligation on judicial officers to deliver judgments timeously.

³³ Section 4, 5 and 5 of the Legal Practice 28 of 2018 and *Johannesburg Society of Advocates v Nthai* 2021(2) SA 343 (SCA) para 24.

³⁴ General Council of the Bar of South Africa, Uniform Rules of Professional Conduct, updated to July 2024.

- 49 However, the Red Book's rule 4.25 is unique in that it is a residual, independent ethical provision giving rise to a freestanding ground of professional misconduct for advocates who fail to deliver judgment, even beyond their period of judicial service as acting judges. The rule gives constituent bars authority to institute disciplinary action against an advocate even outside action taken by the judge president or the Judicial Conduct Committee for breaches of Article 10 of the Judicial Code.
- 50 The Red Book's rule 4.25 adequately addresses the problem of an accountability gap evidenced by the Sabela matter. It means that, during the period of judicial service, an acting judge has the obligation to timeously deliver reserved judgments in terms of Article 10 of the Judicial Code and the Norms and Standards. However, if the period of acting expires, and the advocate returns to practice without delivering said reserved judgments, rule 4.25 clothes the bar council with the authority and jurisdiction to institute disciplinary proceedings against said advocate, as the conduct now constitutes professional misconduct.
- 51 We would recommend this rule to the LPC in its work in amending the Legal Practice Code. We now turn to the amendment now.

RECOMMENDATION: AMENDMENT TO THE LEGAL PRACTICE CODE

- 52 In light of the discussion above, we believe that the LPC has an urgent duty to remedy the loophole in the current Legal Practice Code and close the accountability gap that currently exists. As things currently stand, the JSC does not have jurisdiction to investigate a legal practitioner who returns to practice

without delivering reserved judgments. Similarly, the LPC has no jurisdiction to investigate a failure by a legal practitioner to deliver reserved judgments. This accountability gap is untenable for the administration of justice and the rule of law. We therefore recommend an amendment of the Legal Practice Code to expressly provide for a failure to deliver judgments by acting judges to be regarded as professional misconduct in terms of the Legal Practice Code, and specifically:

- 52.1 A general duty on all legal practitioners to adhere to the Judicial Code upon acceptance of appointment as acting judges;
 - 52.2 A duty on all legal practitioners who accept appointment as acting judges to deliver all outstanding reserved judgments within a reasonable period of time, even beyond the expiry of the period of judicial service, and/or upon resumption of private legal practice;
 - 52.3 An ethical obligation on legal practitioners to observe all ethical duties in the Judicial Code, including that a failure to observe such ethical duties even beyond the expiration of the period of judicial service or appointment would constitute professional misconduct in terms of the Legal Practice Code.
- 53 Such an amendment would most effectively and efficiently be done through an addition to Part II of the Legal Practice Code to add a clause that would model the 2016 Legal Practice Code but apply to all legal practitioners (attorneys, counsel and trust account advocates) alike.

54 These amendments would go a long way in addressing the loophole in the Legal Practice Code and would close the yawning accountability gap. It would also affirm the LPC's statutory duties in terms of section 5 of the LPA.

D. CONCLUSION

55 In this legal opinion the DGRU has set out the nature of the problem of legal practitioners who fail to deliver reserved judgments upon expiry of their tenure as acting judges. We have discussed why this constitutes judicial misconduct and may also constitute professional misconduct for legal practitioners. We have identified rules from the Legal Practice Code (both current and previous versions), and the General Council of the Bar, which classify this conduct as professional misconduct. We have identified loopholes in the Legal Practice Code and call for urgent reforms to address this loophole.

56 We therefore submit this opinion for consideration by the Legal Practice Council, and make ourselves available for further discussion on any aspect of this opinion, including any questions that may arise.

Democratic Governance and Rights Unit

University of Cape Town

20 November 2025