

Paragraph 8

ATTORNEY VAN NIEKERK'S CONDUCT AND INVOLVEMENT

Paragraph 8.1

“Attorney van Niekerk's conduct is relevant to the merits of the counter- application on the strength of the facts provided above and for further reasons which will be dealt with below”.

Paragraph 8.2

“Attorney van Niekerk's conduct in the first application was appalling to say the least. He agreed with scathing remarks made by the Grahams concerning the Law Society. He made similar allegations In correspondence addressed to the Law Society. The Law Society has been criticized and attacked from the outset,”

Paragraph 8.3

“The Law Society was in very strong terms accused of, *inter alia*, the following:

Paragraph 8.3.1

“it has failed to take the requisite action expeditiously and in proper fulfilment of its obligations;”

Paragraph 8.3.2

“it is unwilling and unable to do its duty;”

Paragraph 8.3.3

“it is unwilling to expeditiously and diligently comply with its duty to investigate;”

Paragraph 8.3.4

it has failed to independently and vigorously pursue the case against the Bobroffs;

Paragraph 8.3.5

its failure is a culmination of other abdications and evasions;

Paragraph 8.3.6

it has a supine approach in the matter;

Paragraph 8.3.7

its conduct is manifestly in violation of its duties under the Rule of Law as the statutory custodian of the attorneys' profession and in violation of the Bobroffs' duty as attorneys;

Paragraph 8.3.8

it is guilty of recalcitrant conduct;

Paragraph 8.3.9

the Bobroffs enjoy inexplicable latitude at the hands of the Council of the Law Society; and

Paragraph 8.3.10

it has abdicated its responsibility.

Paragraph 8.4

The abovementioned references are mere examples and represent the proverbial tip of the iceberg.

Paragraph 8.5

Attorney van Niekerk's criticism was entirely unfounded and his allegations concerning the Law Society were scandalous, reckless and unbecoming an officer of the Court. Attorney van Niekerk was clearly biased in his dealings with the Law Society and he was not acting in good faith, In its judgment the Honourable Court found:

It seems to me that the Grahams were rather impatient with the procedures followed by the Council,

Paragraph 47 of the judgment

Paragraph 8.6

it bears repeating that attorney van Niekerk agreed with the Grahams' views concerning the Law Society.

Paragraph 8.7

The Honourable Court also found:

Van Niekerk was exerting a lot of pressure on the Law Society to a point of elevating the Grahams' complaint for consideration above others.

Van Niekerk, as ens attorney, should have been .aware of the provisos of the Act in this regard.

Paragraph 73 of the judgment

This view is supported by Van Niekerk's sustained attack on the Law Society, starting within six weeks after the complaint was lodged, and repeatedly threatening the Law Society that the Grahams will approach this Court, should their demands not be met.

Paragraph 76 of the judgment

Paragraph 8.8

In the counter-application attorney Van Niekork tirelessly persists in his unacceptable conduct. He in fact goes as far as suggesting *male fides* on the part of the Law Society. His allegations concerning the Law Society are entirely, unfounded, not appreciated and in bad taste.

Paragraph 8.9

The gist of attorney van Niekerk's views concerning the Law Society is that the Law Society has failed to fulfil its statutory duties and to handle the matters concerning the Bobroffs correctly and that it is protecting the Bobroffs. His views are unfounded and I strongly deny each and every allegation in this regard.

Paragraph 8.10

The scandalous and contemptuous allegations made by attorney van Niekerk in the counter-application concerning the Law Society need to be emphasised. They include:

Paragraph 8.10.1

the Law Society has failed to discharge its statutory duties, to vindicate the administration of justice and to protect the reputation of the legal profession.

Paragraph 11 of attorney van Niekerk's affidavit

Paragraph 8.10.2

the Law Society is unable or unwilling to take decisive action.

Paragraph 14 of attorney van Niekerk's affidavit

Paragraph 8.10.3

the Law Society's *stance* is inappropriate and ineffectual.

Paragraph 17 of attorney van Niekerk's affidavit

Paragraph 8.10.4

The Law Society should *make amends for past wrongs*.

Paragraph 23 of attorney van Niekerk's affidavit

Paragraph 8.10.5

The Law Society has a protective attitude towards the Bobroffs.

Paragraph 32 of attorney van Niekerk's affidavit

Paragraph 8.10.6

The Law Society is not impartial and Independent.

Paragraph 32 of attorney van Niekerk's affidavit

Paragraph 8.10.7

The Law Society acted irresponsibly,

Paragraph 32 of attorney van Niekerk's affidavit

Paragraph 8.10.8

The Law Society is in dereliction of its duties.

Paragraph 32 of attorney van Niekerk's affidavit

Paragraph 8.10.9

The Law Society did nothing to protect the reputation of the attorneys' profession,

Paragraph 192 of attorney van Niekerk's affidavit

Paragraph 8.10.10

The Law Society has abdicated its responsibility as custodian of the legal profession.

Paragraph 221 of attorney van Niekerk's affidavit

Paragraph 8.10.11

The Law Society disregards the judgments of this Honourable Court.

Paragraph 250.8 of attorney van Niekerk's affidavit

Paragraph 8.10.12

The Law Society condones the Bobroffs' conduct.

Paragraph 252 of attorney van Niekerk's affidavit

Paragraph 8.10.13

The Law Society is inactive and unassertive.

Paragraph 321 of attorney van Niekerk's affidavit

Paragraph 8.11

Attorney van Niekerk's abovementioned allegations are unfounded and rejected out of hand.

Paragraph 8.12

It appears that attorney van Niekerk has lost his objectivity. His involvement in the matter has acquired a personal dimension, most probably as a result of his intimate relationship with Discovery. He is arrogant with respect and his conduct is unprofessional and unbecoming an officer of the Honourable Court.

Paragraph 8.13

Another concern is that attorney van Niekerk does not hesitate to deal with his unmeritorious views and perceptions concerning the Law Society under oath and accuses the Law Society of *mala fides* without providing a shred of evidence. Attorney van Niekerk seems to elevate his views, as ludicrous as they are, to the status of fact.

Paragraph 8.14

A further concern is that attorney van Niekerk sees nothing untoward in his conduct. In his affidavit he refers to the Law Society's concerns about his conduct as an:

...ongoing carping from the Law Society about my conduct and point of view.

Paragraph 296 of his affidavit

Paragraph 8.15

Attorney van Niekerk also considers his scandalous conduct to be a so-called *side-show* and states that it:

....should not detract or distract from the important issues in the application.

Paragraph 302 of his affidavit

Paragraph 8.16

Attorney van Niekerk's conduct has fuelled extensive, acrimonious and costly litigation during a period of many years,

Paragraph 8.17

Attorney van Niekerk's views concerning the Law Society were found by the Honourable Court to be unfounded. The Grahams' first application for relief against the Law Society was refused.

Paragraph 8.18

As a result of the unmeritorious first application, the disciplinary proceedings against the Bobroffs were substantially delayed. Had it not been for the first application, the disciplinary proceedings concerning the Bobroffs would no doubt have been finalised.

Paragraph 8.19

Attorney van Niekerk was also responsible for other delays concerning the disciplinary enquiry. He nevertheless held the view that the delays could be attributed to the Bobroffs and the Law Society. The fact that attorney van Niekerk was the proverbial pot calling the kettle black is also evident from the Court's findings in the first application. The Court found;

... the Grahams Themselves twice requested that the Disciplinary Enquiry be postponed.

Paragraph 70 of the judgment

Thereafter the re-constituted panel had to face requests for postponement, on two occasions, by the Grahams. The Disciplinary Enquiry must be allowed to complete its duties.

Paragraph 96 of the judgment

Paragraph 8.20

Attorney van Niekerk's counter-application will no doubt once again contribute to delay the completion of the further inspection and the pending disciplinary enquiry even further.

Paragraph 8.21

Attorney van Niekerk's approach in the counter-application, as it was in the first application, can be summarised as follows:

8.21.1 he knows best;

8.21.2 the Law Society should do as he demands;

8.21.3 he will set deadlines for the Law Society;

8.21.4 he will determine the correct course of action to be taken by the Law Society;

8.21.5 he will be actively involved in the Society's disciplinary enquiry whether it is allowed or not;

8.21.6 he will dictate to the Law Society;

8.21.7 everything Involving the Bobroffs is urgent;

8.21.8 he will continue to meddle in the Law Society's affairs;

8.21.9 he will continue to interfere in the fulfilment by the Law Society of its duties;

8.21.10the Bobroff enquiry and the complaints received against the Bobroffs should receive preferential treatment;

8.21.11no steps taken by the Law Society will be to his satisfaction;

8.21.12only he and his clients should be allowed leniency and extensions to reply to correspondence and reports;

8.21.13his correspondence requires an immediate response;

8.21.14the Law Society is required to report to him;

8.21.15the Law Society should explain itself to him;

8.21.16the Law Society requires his consent before taking any decisions and implementing such decisions; and

8.21.17extensions of time periods should only be granted to him and his clients and to no-one else, especially not to the Bobroffs.

Paragraph 8.22

Attorney van Niekerk's approach is not in the best interests of the Grahams, the Bobroffs and the administration of justice.

Paragraph 8.23

Attorney van Niekerk's allegations concerning the Law Society are not only unfounded, but vexatious.

Paragraph 8.24

A further concern is the manner in which attorney van Niekerk, in his capacity as an officer of the Court, deals with purported facts under oath. I respectfully refer

the Honourable Court to a few of attorney van Niekerk's allegations in order to demonstrate the reasons for my concern.

Paragraph 8.25

In paragraph 89 of his affidavit he alleges that the Grahams were *forced* to bring the first application as a result of the Law Society's *inactivity*. He makes this allegation whilst being fully aware of the fact that the Honourable Court in its judgment found that the Law Society has not failed to comply with any of its duties. Attorney van Niekerk clearly does not accept and respect the Court's findings. I deduce that his abovementioned allegation is vexatious.

Accordingly, Judge Mothle rightly recognized that there is an inextricable link between any disciplinary proceedings against the Babroffs and the inspection of their books of account.

Unless Judge Mothle's order is complied with in full prior to disciplinary proceedings taking place, a proper ventilation of issues cannot take place.

Paragraph 8.27

In paragraph 168 attorney van Niekerk states that the Law Society only replied to his letter dated 10 December 2014 on 17 December 2014. He makes several similar allegations, for example in paragraphs 194 and 196 of his affidavit, Attorney van Niekerk presents to this Honourable Court so-called "delays" on the part of the Law Society whilst no delays, alternatively no unreasonable delays

Paragraph 8.28

I submit that attorney van Niekerk's abovementioned conduct is unacceptable.

Paragraph 8.29

Attorney van Niekerk's affidavit and indeed the entire application is tainted by his conduct,

Paragraph 8.30

Attorney van Niekerk's affidavit is replete with speculation and opinion which is presented to the Court as fact. Such approach is of no assistance to the Court.

Paragraph 8.31

Whilst attorney van Niekerk accuses the Law Society of delaying the matter, the facts indicate that attorney van Niekerk should take responsibility for the majority of the delays. He instituted acrimonious and protracted litigation, requested postponements of disciplinary enquiries, inundated the Law Society with lengthy correspondence and continuously interfered in the Law Society's processes and investigations.

Paragraph 8.32

Attorney van Niekerk, throughout his affidavit, repeatedly alleges that complaints received against the Bobroffs are treated as *isolated instances*. His allegations in this regard demonstrate a lack of insight on the part of a senior attorney as to the correct handling of complaints and the provisions of the Law Society's Rules.