

SO YOU WANT TO BE A LAWYER

The word lawyer in its most common form is used to refer to one who practices or studies the law i.e. a legal practitioner. Somehow the use of the word in South Africa has rather become synonymous with an attorney as opposed to any other legal practitioner like an advocate for instance. In pursuit of unifying the legal profession, the legislator has opted for the use of “legal practitioner” as descriptive of all those who practise the law presumably in hopes of eventually doing away with the entrenched and systematic differentiation of attorneys and advocates in particular.

So, if you want to be a lawyer, you will need to give considerable thought to the transformation caused by legislation to the profession in the past two decades or so - more specifically the Legal Practice Act 28 of 2014 (the Act). Consideration to be made post the Act and other legislations are not exactly the same as those one would have made prior to their enactment. For example if one possessed the gift of persuasive oratory and wanted to turn that gift into it a profession, they would in all likelihood opt for advocacy as opposed to being an attorney (prior to 1994). This is because until 1994, one of the most notable differences between an attorney and an advocate was that only the latter could appear in what was then referred to as provincial supreme courts and the supreme court of appeal, a practice which was abolished by the introduction of the granting of a right of appearance in these courts to attorneys through the now repealed Right of Appearance in Courts Act 62 of 1995. Nowadays both can, upon application appear in what is now termed as higher courts.

A further consideration, which has recently been done away with, one had to make was the academic route which one would take in becoming an attorney as opposed to an advocate or vice versa. Attorneys for instance could qualify as such with an undergraduate qualification in the form of a BProc whilst a postgraduate qualification in the form of an LLB was required for admission as an advocate. This is no longer the case as much to some people’s dislike an LLB become an undergraduate minimum requirement for both. The route taken post obtaining an LLB however, remained unchanged and divided (that is until the introduction for the Act). The Attorneys Act of 1979 required that candidate attorneys undergo a two year period of vocational training (which could be reduced to 12months depending on whether the candidate had successfully completed 6 months of practical training school), whilst no such statutory provisions were in place for advocates, Vocational training was only compulsory to

those advocates who wished to be part of a constituent bar of the General Council of the Bar. Section 26 of the Act has addressed this by introducing a standard training programme for all candidate legal practitioners. Section 26(c)(ii) states that a candidate will qualify to be enrolled as an admitted legal practitioner after completing vocational legal training including “a legal practice management course for candidate legal practitioners who intend to practise as attorneys or as advocates referred to in section 34(2)(b)...”

What is surprising however is that despite the legislature’s declaration that the Act seeks to unify the legal profession as well as strides made through section 26, a distinction is still made in that reference is still made to attorneys and advocates with a new breed known as advocates with fidelity fund certificates being thrown in the mix. A legal practitioner will therefore need to specify when applying for admission which of these categories it wishes to be classified as. Section 30 of the Act prescribes under subsection 1(b) (ii) that a legal practitioner who wishes to be enrolled with the governing council (the South African Legal Practice Council – which will have jurisdiction over all legal practitioners) must in their application indicate “whether such applicant intends to practice as an attorney or an advocate and in the case of an advocate, whether he or she intends on practicing with or without a fidelity fund certificate...”. An advocate with a fidelity fund certificate must conduct his practice in accordance with chapter 7 of the Act and by virtue will be entitled to receive instructions directly from members of the public.

So if attorneys can be advocates and advocates can be attorneys as illustrated above, where lies the significance of maintaining referencing of each as before instead of reference being made to legal practitioners. One of the answers it would seem lies in section 34(6)(a) which limits the practice of an advocate even an advocate with a fidelity fund certificate “for their own account and as such they may not make over to share, or divide any portion of their professional fee whether by way of partnership, commission, allowance or otherwise”. This is in contrast to section 34(5) (b) which allows practice by an attorney as part of a commercial juristic entity such as a partnership.

Wayne Dyer once said “Transformation literally means going beyond your form.” The legal profession like the law itself is constantly changing its form to suit the generation it finds itself in, considerations that a potential candidate will make when deciding to join this profession post the enactment of the Act will therefore not be the same as considerations made by

someone pre 1994 for example. One thing certain about choosing this career is that you have to be dynamic and adapt to whichever category of lawyer the legislature might place you in. Whilst transformation specifically of the legal profession has been and will continue to be slow, it is a certainty.