

## CONTINUING LEGAL PROFESSIONAL DEVELOPMENT RULES 2011

### **Introduction and Commencement**

1. These Rules are made by the Council of the Law Society of Kenya pursuant to paragraph (h) of subsection (1) of section 81 of the Act and may be cited as the Advocates (Continuing Legal Professional Development) Rules.
2. These Rules shall come into operation on the .... day of ....., 2011 and shall apply to all Advocates of the High Court of Kenya duly licensed to practise as such.

### **Purposes of CLPD**

3. The purposes of CLPD include:
  - a. the enhancement of professional standards in the practice of law as well as in the performance and conduct of Advocates in Kenya;
  - b. the encouragement of reflective life-long learning and a broad outlook among Advocates which are essential for the maintenance of high professional standards;
  - c. the assurance to users of legal services and, more generally, the wider public that both individual Advocates and their professional bodies attach the highest importance to the constant upgrading of knowledge, skills and standards of professional competence and ethics
  - d. the need for Advocates to remain relevant and keep abreast with the emerging trends in law

## Object of these Rules

4. The object of these Rules is to enable Advocates in Kenya to acquire, maintain and enhance their capacity to provide competent legal services within a framework of the highest ethical standards of professional behaviour and etiquette to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.

## Transitional Arrangements

5. (1) Any Continuing Legal Professional Development activity carried out before the commencement of these Rules which complied with the Advocates (Continuing Legal Education) Regulations 2004 shall be deemed to comply with these Rules.  
  
(2) An exemption granted under the Advocates (Continuing Legal Education) Regulations 2004 before the commencement of these Rules shall, to the extent that it is not incompatible with these Rules, apply as an exemption under these Rules.

## Definitions

6. In these Rules unless the context requires otherwise:

“Accredited Provider”	means an institution or individual approved by the Council of the Society for purposes of providing CLDP to members of the Law Society of Kenya;
“Advocate”	has the meaning set out in the Advocates Act, (Cap.16 of the Laws of Kenya);
“Act”	means the Advocates Act (Cap. 16 of the Laws of Kenya);
“Approved CLPD Activity”	means any activity which meets the requirements of Rule 8 herein;
“Attendance”	means personal attendance at a complete course, Approved CLPD Activity, session or event of CLDP for a duration of not less than sixty minutes;

“CLPD Appeals Committee”	means the committee referred to in Rule 12 herein;
“CLPD Committee”	means the standing committee of the Law Society on Continuing Legal Professional Development.
“CLPD Event”	means an event approved under these Rules and includes activities such as conferences, seminars, lectures or workshops related to the law or the practice of the law
“CLPD”	means Continuing Legal Professional Development and includes relevant postgraduate studies and any Approved CLPD Activity;
“CLPD year”	means a calendar year, starting 1 January and ending 31 December of the same year;
“CLPD unit”	means a unit of measurement of CLPD equivalent to one hour of participation in an approved CLPD Event in accordance with these Rules, save that in the case of private study or participation in the work of any standing committee of the Society, two hours of Continuing Legal Professional Development activity shall constitute one CLPD unit; save also that CLPD units cannot be accumulated for courses, sessions or events which run concurrently;
“Council”	means the Council of the Law Society of Kenya as defined by Section 13 of the Law Society of Kenya Act (Cap. 18 of the Laws of Kenya);
“Course”	means and includes face-to-face sessions, distance learning, any structured coaching sessions (by audio, video, correspondence or internet);

“Participation”	means and includes preparation for, delivery of, or Attendance at a course or other Approved CLPD Activity;
“Practising Certificate”	means a practising certificate issued or renewed pursuant to the Advocates Act ( Cap.16 of the Laws of Kenya)
“The Society”	means the Law Society of Kenya established under Law Society of Kenya Act (Cap. 18 of the Laws of Kenya).

In these Rules, the masculine shall include the feminine.

### **CLPD Obligations of Advocates**

7. (1) In each CLPD year in which an Advocate holds a Practising Certificate he shall, unless exempted in whole or part, complete at least twenty-one (21) CLPD units.
- (2) During every three consecutive CLPD years an Advocate shall, in the Continuing Legal Professional Development activities undertaken for those years, complete at least six CLPD units on the subject of legal or professional ethics.
- (3) For the purposes of sub-rule (2) of this Rule the consecutive CLPD years referred to shall include the period from the 1<sup>st</sup> day of January of the year in which these Rules shall come into force to the actual date of the commencement of these Rules, assuming that the said date of commencement is not the 1st day of January.
- (4) An Advocate who has not accumulated the minimum CLPD Units in a CLPD year may accumulate CLPD units in the period 1<sup>st</sup> January to 28th February following that CLPD year. Any such CLPD Units cannot be taken in to account for any other CLPD year.
- (5) The obligations of this Rule shall commence from the CLPD year in which these Rules are brought into force.

## Approved CLPD Activities

8. (1) Having regard to the object of these Rules, Continuing Legal Professional Development activities approved by these Rules:
  - (a) may consist of a seminar, workshop, lecture, conference, discussion group, symposium, colloquium, multi-media or website based programme, or the research and preparation of an article published in a scholarly legal publication or a combination of those activities;
  - (b) shall be of significant intellectual or practical content and must deal primarily with matters related to the law or legal practice;
  - (c) shall, except where it involves research or preparation of an article, be conducted by persons who are qualified by practical or academic experience in the subject covered;
  - (d) shall be such as would extend the Advocate's knowledge and skills in areas that are relevant to his practice needs.
- (2) Private study is not a Continuing Legal Professional Development activity approved by these Rules unless it involves the private study of audio, electronic or video material specifically designed, and approved as a CLPD activity under these Rules for the purpose of updating an Advocate's legal knowledge:

Provided that no more than three CLPD units may be claimed for such activity in any CLPD year.
- (3) Engaging in legal practice or pro bono legal work is not a Continuing Legal Professional Development activity for the purposes of these Rules. However, in the case of work that falls under Legal Aid, the CLPD Committee shall have the discretion to determine the maximum number of units to be earned.
- (4) The preparation and/or presentation of material by an Advocate, to be used in a course of Continuing Legal Professional Development to Advocates and/or to other professionals and/or to other persons including pupils, is Continuing Legal Professional Development approved by these Rules:

Provided that in any CLPD year an Advocate may not claim more than five CLPD units for the preparation and/or presentation of material to be used in such a course of Continuing Legal Professional Development and no units shall be awarded for preparation and/or presentation of material in the same subject matter if a previous award had been granted to such an Advocate previously.

- (5) (a) The preparation of an article published in a legal publication prepared by an Advocate is a Continuing Legal Professional Development activity approved by these Rules:
- (b) An Advocate is entitled to one CLPD unit for every thousand words of any such article:

Provided that in any CLPD year an Advocate may not claim more than five CLPD units for the preparation of an article or articles to be published in legal publications.

- (6) An Advocate who is a member of an ad hoc or standing Committee of the Council or Society, and regularly attends its meetings, may claim one CLPD unit for each period of two hours he was engaged in committee work, if the work performed is in the opinion of the CLPD Committee of substantial significance to the practice of law and is reasonably likely to assist the Advocate's Continuing Legal Professional Development:

Provided, however, that in any CLPD year an Advocate may not claim more than four CLPD units in respect of committee work.

- (7) An Advocate who is a member of a committee, commission, task force or similar body which is engaged in the review or study of laws at a national or international level with a view to bringing about legal reform, or who is engaged in significant legal consultancy work involving law reform/review at a national or international level, may claim one CLPD unit for each period of two hours he was engaged in work for such committee, commission, task force or similar body, or in such legal consultancy:

Provided, however, that in any CLPD year an Advocate may not claim more than four CLPD units in respect of such work.

- (8) Where an Advocate is engaged in college or university studies leading to a certificate, diploma or degree at post-graduate level in an area of law which in the opinion of the CLPD Committee would be relevant to legal practice, or where an Advocate is engaged in teaching on a course leading to a certificate, diploma or degree at post-graduate level in an area of law which would be relevant to legal practice, he may claim one CLPD unit for each period of two hours he was engaged in such studies or teaching:

Provided, however, that in any CLPD year an Advocate may not claim more than four CLPD units in respect of such studies or teaching.

- (9) Where an Advocate is engaged in acting as an external examiner for a university course leading to the award of a post-graduate degree in an area of law, which would be relevant to legal practice, he may claim one CLPD unit for each period of two hours he was involved in such activity:

Provided, however, that in any CLPD year an Advocate may not claim more than two CLPD units in respect of such activity.

- (10) Where an Advocate claims CLPD units for Attendance at a lecture, seminar, workshop, conference, discussion group, symposium, colloquium or other similar event, any time that may have been devoted to opening and closing ceremonies, lunch, tea, coffee or other breaks, etc. shall be deducted from the time claimed for the purposes of CLPD activity.

- (11) The CLPD Committee may, if it thinks fit, specify;
- (a) the nature, content and format of particular courses and other activities which must be undertaken by any particular Advocate or class of Advocates in order to satisfy the mandatory requirements under these Rules
  - (b) the minimum number of CLPD Units which must be accumulated in each CLPD year in any particular areas of study and by any particular Advocate or class of Advocates.

## **Exemptions**

9. (1) In any CLPD year the Council may, upon application in writing from an Advocate in such form as the Council may from time to time require, exempt in whole or in part an Advocate from compliance with these Rules during that CLPD year on such conditions as it may specify, if there are special circumstances which warrant such exemption.
- (2) The Council may on application and for good cause to be recorded in writing, grant exemption to an Advocate in respect of the provisions of sub-rules (2) of rule 7.
- (3) An Advocate who commences practice on or after the start of a CLPD year must undertake such CLPD Activity as is referable to the balance of the CLPD year, on a pro rata basis:

## **Certification and Audit of CLPD Activity.**

10. (1) Every Advocate shall keep or cause to be kept a record of all CLPD activity undertaken by him in or towards compliance with these Rules and shall produce the same to the CLPD Committee or the Council as and when required to do so.
- (2) (a) When applying for renewal of a practising certificate an Advocate must provide such information and certification as the Society may reasonably require as to the Continuing Legal Professional Development activity or activities which the Advocate has undertaken in the CLPD year prior to the year for which a new practising certificate is sought.
- (b) The Council may, from time to time, prescribe the form in which the said information and/or certification is to be provided.
- (3) The Council may at any time require an Advocate to verify within thirty days that the Advocate has complied with these Rules by providing to the Council a statement (in such form as the Council may reasonably require), together with supporting evidence, that sets out:
  - (a) the number of CLPD units claimed for the period covered by the statement;



- (b) the activity or activities undertaken by the Advocate in respect of which the CLPD units have been claimed;
- (c) the reasons for claiming that the activity or activities in question satisfy or satisfies the criteria set out in these Rules; and
- (d) particulars of any exemptions granted pursuant to these Rules.

### **Enforcement Measures**

11. (1) In the event that an Advocate fails to comply with sub rule (2) of Rule 10 herein, the Council may issue a notice in writing to the Advocate:

- (a) drawing the attention of the Advocate to the failure to comply; and
- (b) requiring that the Advocate files with the Society within fourteen days from the date of the notice a proposal in writing that details a plan to be implemented by the Advocate to make up within ninety days from the date of the filing of the plan the deficiency in the Advocate's compliance with these Rules.

(2) If in a breach of sub-rule (1) above:

- (a) an Advocate fails within fourteen days to file with the Society a plan to be implemented by the Advocate to make up within ninety days from the date of the filing of the plan the deficiency in the Advocate's compliance with these Rules; or
- (b) having filed such a plan the Advocate fails to comply with the plan to be implemented by the Advocate to make up within ninety days from the date of the filing of the plan the deficiency in the Advocate's compliance with these Rules, the Council may refuse to recommend the issue of a practising certificate to the Advocate or apply for the suspension of his practising certificate if already issued.

(3) Failure to comply with these Rules may also constitute unsatisfactory conduct or professional misconduct under section 60 of the Act, for which the Council may initiate appropriate disciplinary proceedings.

## Appeals

12. (1) There shall be an Appeals Committee (hereinafter referred to as “the CLPD Appeals Committee”) to review decisions of the CLPD Committee.
- (2) The CLPD Appeals Committee shall consist of not less than three persons, appointed from time to time by the Council and comprising members of the Council or other Advocates who are not current members of the CLPD Committee.  
Provided that-
  - (a) the persons appointed have fifteen or more years of good standing and having complied with the CLPD Rules
  - (b) the composition of the CLPD Appeals Committee shall at all times take into consideration gender balance
- (3) A quorum of the CLPD Appeals Committee shall be three members.
- (4) An appeal to the CLPD Appeals Committee shall be by way of a request for reconsideration of the application or matter giving rise to the decision of the CLPD Committee.
- (5) An Advocate who is aggrieved by a decision of the CLPD Committee may apply for a review of that decision by the CLPD Appeals Committee by lodging a notice of appeal with the secretary of the CLPD Committee.
- (6) A notice of appeal pursuant to sub-rule (5) of this Rule shall be lodged within fourteen days of the appellant being notified by the CLPD Committee of its decision.
- (7) Unless the contrary is proved, an Advocate is deemed to have been notified by the CLPD Committee of its decision seven working days after the date of the posting of the notice of decision to the Advocate’s normal practising address.
- (8)
  - (a) A notice of appeal must be in writing and accompanied by any documentary evidence, written submission or other material sought to be relied upon by the Advocate.
  - (b) the CLPD Appeals Committee shall render its decision within fourteen days after the conclusion of the hearing of the appeal.

- (c) The decision of the CLPD Appeals Committee shall be final and binding on all the parties,  
Provided that the decision of the CLPD Appeals Committee shall be by the majority.
- (d) An appeal to the CLPD Appeals Committee may not be made more than once in a CLPD year on the same or substantially similar grounds.

### **Delegation of authority**

- 13. (1) The Council may delegate any of its powers and functions under these Rules to the CLPD Committee.
- (2) A delegation by the Council pursuant to these Rules must be in writing.

### **Accreditation of CLPD Activity**

- 14. (1) Any person or institution wishing to provide a course, session or event of CLPD shall make an application for accreditation to the Council in the prescribed form.
- (2) The Council shall consider the application for accreditation and shall reject or approve the same having regard to, any such matters as may appear relevant and in particular whether:
  - (c) The course, session or event is an educational programme;
  - (d) The objective of the course, session or event is that of the improvement of the professional competence of members of the Society;
  - (e) The course, session or event is an activity dealing with a subject matter that is directly relevant to the practice of law;
  - (f) The applicant has the expertise and resources necessary for achieving the goals of continuing legal professional development as envisaged by these Rules;
  - (g) The method sought to be used for the presentation or delivery of the course, session or event is appropriate for the dissemination of the relevant skills and knowledge to the participants; and
  - (h) The applicant has the infrastructure sufficient and conducive to the delivery of the course, session or event.

15. Providers of Continuing Legal Professional Development approved under these Rules should use the following statement on brochures or other material employed in the marketing of any such course, session or event:

*"Members of the Law Society of Kenya may claim one CLPD unit for each hour of Attendance, refreshment or meal breaks not included."*

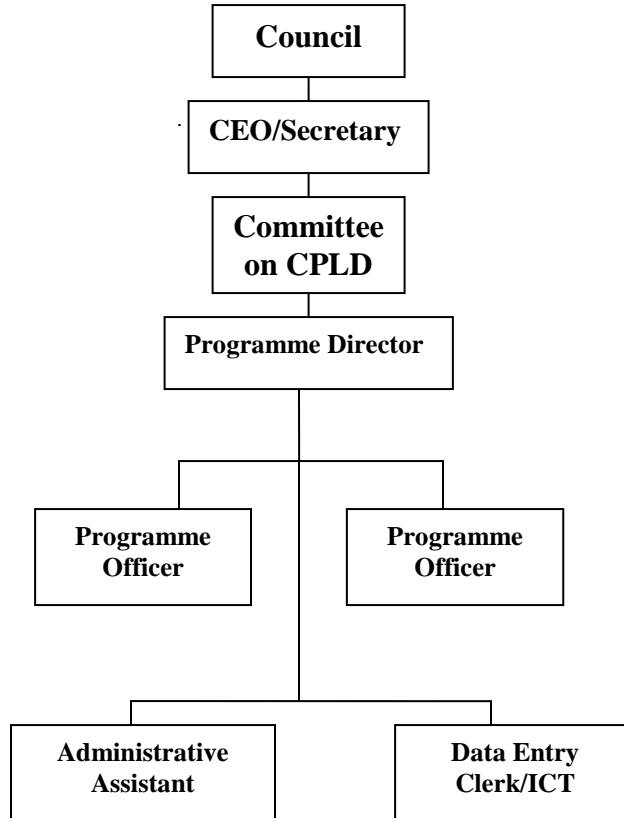
16. If any Advocate wishes to claim CLPD units for a course, session or event which is organised and delivered neither by the Society nor by an Accredited Provider, he may apply to the CLPD Committee for approval of the course, session or event as meeting the requirements of these Rules:

Provided that any application made under this Rule shall, except in exceptional circumstances to be recorded in writing, be made at least fifteen days in advance of the date of commencement of the course, session or event.

## Appendix F

### ORGANISATION OF THE CLPD DEPARTMENT AT THE LSK

#### 1. Proposed organisational structure



## **2. Staffing needs and job descriptions**

The CLPD Department should consist of a Programme Director, at least two Programme Officers, an Administrative Assistant and a Data Entry Clerk. Indicative job descriptions for the said positions are outlined below.

### **A. PROGRAMME DIRECTOR**

He/she will have the following responsibilities and powers:

- to draw up plans and policies for consideration by the CLPD Committee to improve the CLPD programme;
- to formulate the curriculum and content of individual CLPD events in consultation with the said CLPD Committee;
- to plan and co-ordinate all the functions and activities of the CLPD programme;
- to prepare an annual calendar of CLPD events and present it to the CLPD Committee for its approval;
- to plan, organise and conduct awareness campaigns in respect of the CLPD programme among members of the LSK;
- to convene, in consultation with the Chairman of the CLPD Committee on CLPD, meetings of the CLPD committee and to ensure that appropriate notice is given to members of such meetings;
- to attend meetings of the said CLPD Committee, take minutes thereof, and circulate the minutes among those entitled to receive them;
- to keep the said Committee informed of the status of, and developments in, the CLPD programme;
- to advise the said CLPD Committee and/or the CEO of the LSK, as may be appropriate, on all financial and budgetary requirements of the Department;

- to plan for human resources and infrastructural requirements for the Department, and to oversee the securing of all requisite provisions, including technical and other equipment, furniture and office supplies;
- to identify, approach and contact experts in different areas of law and/or legal practice who may be suitable as speakers/trainers for CLPD events from time to time;
- to identify, approach and contact chairpersons to preside over and guide discussions at CLPD events;
- to implement decisions, recommendations and instructions of the CLPD Committee, ensure follow-up of pending matters, and report back to the said CLPD committee as necessary;
- to oversee the work of the other programme staff, and to initiate such action as may be necessary where there are failures, omissions or defaults.

## **B. PROGRAMME OFFICER/S**

Each programme officer will report to the Programme Director and he/she will perform the following roles and functions:

- to undertake research and advice on Programme, event and subject contents to ensure that they meet the needs of the members in attendance;
- To draft and despatch suitable responses to the routine correspondence concerning the CLPD Department or its activities;
- To receive accreditation applications compile and collate for the Accreditation sub-committee's consideration.
- In consultation with the chairperson, to convene and attend the Accreditation subcommittee meetings and record decisions.
- To arrange for issuing of attendance and participation certificates to participants at CLPD events.
- To arrange for record taking at all events and for compilation of papers.
- To respond to Accreditation applicants informing them of CLPD Committee decisions.
- To do an analysis of evaluations forms to derive feedback on the content and venues.

- Do all that he/she may be assigned by the Programme Director.
- To assist both the Programme Director in the planning administration and implementation of CLPD seminars, workshops and the Programme generally.
- To arrange for logistical support in relation to Programme activities including in particular transport, accommodation facilities both for personnel and conferences of seminars, security arrangements, meals for participants and guests.
- To disseminate seminar papers, materials where available to all participants or members as may be directed by the Senior Programme Officer or the Programme Director.

#### **D. ADMINISTRATIVE ASSISTANT**

The department shall have an administrative assistant who shall perform the following role and functions;

1. To prepare requisitions memos for: -
  - (a) Conference charges.
  - (b) Petty cash.
  - (c) Fuel and other allowances.
  - (d) Honoraria.
  - (e) Courier charges.
2. To ensure that a physical record of attendance is kept by availing registration forms or other documents and ensuring participants sign in.
3. To give telephone responses to the enquiries relating to compliance status.
4. To deal with members who come to the CLPD offices to make enquiries.
5. To publicise each CLPD Seminar.
6. To negotiate conference charges.
7. To get invoices for the conference charges for forwarding to the accounts office.
8. Perform any other task relating to the administration of the CLPD programme including data entry.

#### **E. DATA ENTRY CLERK**

1. To maintain a database of the society's members attendance at CLPD sessions.



2. To monitor and report individual members compliances status.
3. To apply ICT for the furtherance of the programme objectives and increase efficiency of programme implementation.