GOVERNMENT NOTICE NO. 50

LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT

(NO. 31 OF 2018)

MALAWI LAW SOCIETY (ELECTIONS) RULES, 2021

ARRANGEMENT OF RULES

RULE

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IN EXERCISE of the powers conferred upon the Malawi Law Society by section 73 of the Legal Education and Legal Practitioners' Act, and with the approval of the Annual General Meeting, the Society hereby make the following Rules—

Citation

1. These Rules may be cited as the Malawi Law Society (Elections) Rules, 2021.

Interpretation

2. In these Rules, unless the context otherwise requires—

"disciplinary proceedings before the Disciplinary Committee of the Society" means disciplinary proceedings which have gone beyond the conduct meeting stage of the disciplinary process; and

"previous chairperson" means a person who has previously served a full term as a chairperson of the Society.

3.—(1) There shall be an elections sub-committee of the Society (hereinafter referred to as the "sub-committee") which shall be responsible for the conduct of elections of the Society. Elections sub-committee

(2) The sub-committee shall consist of—

(*a*) one previous chairperson of the Society; and

(*b*) four respected legal practitioners of which, two shall be of either gender.

(3) The membership of the sub-committee shall consist of at least one member from each chapter of the Society.

(4) Members of the sub-committee shall be appointed by the Executive Committee of the Society.

(5) A person shall qualify to be appointed a member of the sub-committee if he has been a member of the Society for at least five years.

(6) The members of the sub-committee shall elect, from amongst their number, a chairperson and vice-chairperson of the sub-committee.

(7) A member of the sub-committee shall hold office for a period of two years, unless he earlier resigns, ceases to hold office or is removed from office in accordance with subrule (9).

(8) A member shall serve a maximum of two terms at a time.

(9) A member of the sub-committee shall cease to hold office upon—

(*a*) expiry of his term of office;

(*b*) resignation by giving one-month notice, in writing, to the Chairperson of the Executive Committee of the Society;

(*c*) becoming mentally or physically ill, where upon the member is no longer, by reason of the illness, capable of performing his duties as a member of the sub-committee;

(*d*) being removed from office by a resolution of the Society at an Annual General Meeting;

(*e*) being suspended or barred from legal practice; or

(*f*) being removed from a position of trust by a court of law.

(10) A member of the sub-committee shall not be eligible to contest for any elective office of the Society.

4.—(1) The sub-committee shall conduct and supervise the conduct of every election of the Society. Functions of the sub-committee

(2) Without prejudice to the generality of subrule (1), the sub-committee shall—

(*a*) call for, receive, scrutinize and approve nominations for election of office bearers;

(*b*) verify with appropriate committees of the Society or other authorities the suitability of a candidate for election;

(*c*) organize, conduct and determine the outcome of the elections;

(*d*) monitor election campaign by candidates and their agents;

(*e*) receive and resolve complaints that may arise in the course of nomination, campaign, casting of votes or determination of results; and

(*f*) perform any other duties in relation to elections as the Annual General Meeting may direct, from time to time.

(3) A decision of the sub-committee under paragraph (*e*) of subrule (2) shall be final.

(4) In exercise of any of its functions, the sub-committee shall have all the powers vested in the Society necessary for the effective carrying out of the functions in subrule (1).

(5) Subject to compliance with these Rules, the Act and any other rules made thereunder, the sub-committee shall exercise its powers, functions and duties independent of any direction or interference by any authority or person.

Meetings and procedure of the sub-committee

5. The provisions of sections 59, 60 and 61 of the Act relating to meetings of the Honours Committee shall apply *mutatis mutandis* to meetings of the sub-committee.

Elective offices

6.—(1) The elective offices of the Executive Committee of the Society are—

(*a*) Chairperson;

(*b*) Deputy Chairperson;

(*c*) Treasurer;

(*d*) Secretary;

(*e*) one chapter representative from each chapter of the Society; and

(*f*) such number of committee members, not less than three, as the Society may determine.

(2) Committee members elected under paragraph (f) of subrule (1) shall include representatives of interest groups within the profession as designated by the Executive Committee of the Society from time to time.

Eligibility for election

7.—(1) A person shall not be eligible for election as Chairperson or Deputy Chairperson of the Society unless that person—

(*a*) is a member of the Society with a valid annual legal practitioner's licence;

(*b*) is a legal practitioner of at least ten years standing at the Bar;

(*c*) is duly nominated for election in accordance with rule 8;

(*d*) is not subject to ongoing or pending disciplinary proceedings before the High Court or Disciplinary Committee of the Society;

(*e*) has not been found liable for professional misconduct by the High Court or Disciplinary Committee of the Society in the five years preceding the election;

(*f*) has not been removed from a position of trust by a court of law in the five years preceding the election; and

(*g*) is not employed in the public service.

(2) A person shall not be eligible for election as secretary, treasurer, chapter representative or committee member unless that person—

(*a*) is a member of the Society with a valid annual legal practitioner's licence;

(*b*) is a legal practitioner of at least five years standing at the Bar;

(*c*) is duly nominated for election in accordance with rule 8;

(*d*) is not subject to ongoing or pending disciplinary proceedings before the High Court or Disciplinary Committee of the Society;

(*e*) has not been found liable for professional misconduct by the High Court or Disciplinary Committee in the five years preceding the election; and

(*f*) has not been removed from a position of trust by a court of law in the five years preceding the election.

Nomination of candidates

8.—(1) A person wishing to be a candidate in an election shall complete and deliver or cause to be delivered to the sub-committee a nomination form prescribed by the sub-committee.

(2) Where a candidate is nominated by another member of the Society, the nominee shall sign the nomination form to signify his or her consent to the nomination.

(3) A nomination form under subrule (1) or (2) shall be signed by two nominators who are members of the Society and entitled to vote at the election.

(4) The nomination period shall be a period of twenty-one days and shall close seven days before the date of the election.

(5) The sub-committee shall verify whether a nominee is eligible for nomination and whether his or her nomination has complied with subrules (1), (2), (3) and (4) before declaring the nominee duly nominated for election.

(6) The sub-committee shall publish, on the Society's website and any other suitable media, names of duly nominated candidates for each elective office at least five days before the date of the election.

(7) Where the subcommittee determines that no candidate has been duly nominated to any position, the subcommittee shall, in respect of that position, call for further nominations.

(8) Nominations under subrule (7) shall close at least twenty-four hours before the election time.

(9) Where no candidate is duly nominated under subrule (7) the subcommittee shall invite nominations for the position during the elections.

Withdrawal of nomination

9.—(1) A candidate may withdraw a nomination at any time not later than three days before the date of the election by giving written notice of the withdrawal to the sub-committee.

(2) The sub-committee shall immediately publish a withdrawal of nomination under subrule (1) on the Society's website and other media where the nomination was published under rule 8 (6).

Voters' roll

10.—(1) The sub-committee shall cause to be prepared and kept, in respect of each election, a voters' roll consisting of members who are entitled to vote.

(2) The voters' roll shall be displayed on the Society's website at least two days before the election date.

Campaign

11.—(1) A duly nominated candidate may campaign for election in accordance with any guidelines issued by the sub-committee.

(2) A candidate shall direct his or her campaign at members of the Society and not the general public.

(3) A candidate shall not campaign on any sectarian ground including tribe, nationality, age, gender, religion, political party or other organization affiliation.

Election of office bearers

12.—(1) The polls for any elective office shall be conducted at the Annual General Meeting and shall constitute part of the business of the Annual General Meeting.

(2) The sub-committee shall prescribe the voting procedure for an election at least three days before the election day.

(3) The election procedure prescribed under subrule (2) shall be published on the Society's website at least two days before the election day.

(4) Where only one candidate is duly nominated for a elective office the sub-committee shall declare the candidate duly elected for that office.

(5) Where two or more candidates have been duly nominated for election to a particular elective office, the sub-committee shall conduct an election for that office.

(6) Each member of the Society on the voters' roll may cast one vote for every elective office to be filled.

(7) A candidate or his agent shall be entitled to be present and observe the counting of votes cast.

(8) The sub-committee shall, as soon as the tallying and verification of the number of votes cast in favour of each candidate is ascertained, announce the results of the election.

(9) A candidate who obtains the greatest number of valid votes cast shall be declared a winner.

(10) For purposes of determining the winning candidate, the results as determined under subrule (8), shall be conclusive.

(11) Where there is a tie of votes of the leading candidates on any elective office, the subcommittee shall conduct a second round of voting in which the leading candidates whose votes are tied shall be the only candidates.

(12) Where there is a tie of votes after the second round of voting, the sub-committee shall conduct further rounds of voting until a winner is declared.

13. The Malawi Law Society Rules are amended by revoking rule 12. Amendment of Cap. 3:04 sub.leg. p22a

Made on the 31st day of August, 2021.

C. C. NGUNDE
Secretary

P. G. MPAKA
Chairperson