

FEES SURVEY 2009

1. The Fees Committee of the Johannesburg Bar Council has in the past always published parameters for counsel's fees. However, the Johannesburg Bar Council has recently resolved to no longer publish any parameters of fees. This was, inter alia, by reason thereof that fees, by their very nature, cannot be laid down in any hard and fast rule, the Competition Commission not approving of the publishing of a recommended fee list and a decision taken by the General Council of the Bar to no longer approve of the setting of parameters of fees.
2. It will be recalled that, in order to assist the Fees Committee in its task to determine the reasonableness of a member's fee, a questionnaire was recently distributed to members of the Johannesburg Bar. The Fees Committee of the Johannesburg Bar indicated that it intended publishing the results obtained from this survey. However and upon reflection, more particularly by reason of concerns arising from the Competition Act, it has been resolved not to publish the results obtained from the survey.

THE FOLLOWING RULES SHALL IN FUTURE APPLY:

3. When charging a fee counsel is reminded of the provisions of Uniform Rules of Ethics 7.1.1 which provides, amongst other things, as follows:

'Counsel is entitled to a reasonable fee for all services.'

The determination of a reasonable fee in respect of a particular service, must, in all circumstances, be assessed on the principles – relevant to the determination of a reasonable fee – set out in Uniform Rules of Ethics 7.1.1, namely –

- 3.1 the time and labour required to be spent;
 - 3.2 the novelty and difficulty of the questions involved;
 - 3.3 the skill required to conduct the matter properly;
 - 3.4 the customary charges charged by counsel of compatible standing for similar work;
 - 3.5 the amount involved; and
 - 3.6 the nature and extent of the controversy and its importance to the client.
4. The attention of counsel is specifically drawn to the words 'time and labour required'. Time and labour refer to the time which the matter, objectively regarded, requires. In short, the amount of time which may objectively be regarded as having been reasonably spent on a matter. Time reasonably spent on a matter is not necessarily the same as actual time spent, because the latter may include time wrongly spent on the matter as a result of inefficiency or excessive caution on the part of a member or other similar factors. Notwithstanding the provisions of Uniform Rules of Ethics 7.1.1, and

notwithstanding any agreement between a member and the client or attorney, to charge fees on a time basis, members must, in all cases, ensure that they charge only for time reasonably spent on the matter.

5. Counsel shall, save in exceptional circumstances or where members regularly deal with an attorney, at the earliest opportunity endeavour to agree a fee with the attorney or agree the basis upon which counsel will compute or arrive at a fee. An agreement on an hourly and daily rate will normally suffice.
6. Members are reminded that the charging by a junior of two-thirds of a senior's fees is subject to the principle that such junior's fee should, having regard to all the circumstances, still be objectively reasonable. The senior is responsible to assist the junior in assessing and determining what a reasonable fee for the junior would be in the circumstances of every case.
7. Members are obliged to disclose the following information, either in the brief returned to the attorney, or in the fee list (invoice):
 - 7.1 When the fee is calculated on a daily basis, the rate at which the fee is being charged, together with an indication of the nature of the work performed by counsel during that day e.g. appearance in court, preparation for trial, reading of record etcetera. In the event of other work than an appearance counsel should also state the actual hours spent on working on the matter that day.

- 7.2 Where the fee is calculated on an hourly basis, the date on which the time was spent, the time of day (i.e. stating the hours of the day) when such time was spent, and an indication of the nature of the work performed by counsel during the time in question e.g. on consultation, preparation for trial, reading of record etcetera.
8. The structure of an appearance fee is such that members are not permitted, in respect of a particular matter, to charge a fee on a time basis over and above the fee charged for the day in question. Additional work should be included into the day fee charged by a member and would typically include, in addition to the court appearance on the day, all other after hour work – including preparation and consultations – during any 24 hour period.
9. Members are not permitted to charge a fee for work not actually done, except in the following instances:
- 9.1 Where a trial, application or arbitration, as the case may be, does not proceed on the day on which it was set down for hearing either because it was settled or postponed. It would usually be regarded as reasonable for a member to charge a fee in lieu of the fee to be charged for the first day of hearing. This fee is to be charged in accordance with the following sliding scale:
- 9.1.1 If the matter is settled or postponed not more than three court days prior to the date of hearing, the fee which would

otherwise have been reasonable in respect of the first day fee.

9.1.2 If settled or postponed not less than three court days but not more than seven court days prior to the date set for the hearing, two-thirds of the fee which would otherwise be reasonable in respect of the first day fee.

9.1.3 If settled or postponed not less than seven court days and not more than 21 court days prior to the date set for the hearing, one-half of the fee which would otherwise be reasonable in respect of the first day fee.

9.2 In situations where a collapse fee is agreed upon in addition to the first day fee described in the previous sub-paragraph, and the trial or arbitration is settled or postponed or has already commenced and is then settled or postponed, a collapse fee may be charged in addition to the fees charged as described in the previous sub-paragraph up to the maximum collapse fee agreed upon, where such trial or arbitration does not last for the full period for which a member has been reserved. Any collapse fee needs to be expressly agreed upon in advance of the trial between a member and the instructing attorney. If no collapse fee has been agreed upon as aforesaid, a member is not entitled to charge a collapse fee nor any other fee over and above the aforementioned first day fee. A collapse fee will

be regarded reasonable if it equals no more than half of the time a member is required to reserve him/herself.

10. Counsel is reminded that –

- 10.1 all fees are payable within 97 days from the end of the month during which the work was done. No interest may be levied during this period. Should fees not be paid within the aforesaid period, the name of each firm, with which the instructing attorney is associated, needs to be reported to the Fees Committee, whereafter the name of the attorney and/or firm may be placed on a defaulters list to be published to all advocates who are members of a Bar that is affiliated to the General Council of the Bar of South Africa;
- 10.2 after the expiry of one month after the marking of the brief or the rendering of a fee list (invoice), whichever may occur first, members may not, without the Fees Committee's prior consent being obtained, and subject to Uniform Rules of Ethics 7.2.3, increase or reduce the fee charged.

R STOCKWELL SC
CHAIRMAN: FEES COMMITTEE