

A note from the chair of the Professional Committee

August 2014

The current members of the committee are:

F Snyckers (chair)

R Stevenson (secretary and court proceedings)

B du Plessis SC

Estelle Kilian (inquiries)

Andy Bester (fees)

Edmund Wessels (reports)

Reg Willis (Non-member complaints)

James Magodi (non-member complaints)

Paul Strathern

Mothibedi Panyane

Here is a quick run-down of the procedure as practised this year:

Complaints are first divided into fee disputes or professional disputes. These are dealt with separately. Sometimes a fee dispute becomes a professional dispute. As for professional disputes, the first port of call is to determine whether it relates to a member or to a non-member. Non-members are dealt with differently – the Bar Council does not have “discipline” jurisdiction over nonmembers, but is relied on by the courts to bring applications to court in appropriate cases to strike non-members off the roll of advocates, or to have them suspended from practice. Hence we have to investigate and

deal with non-member complaints too, to determine whether they fall into such a category.

Every new complaint comes to the chair of the professional committee (PC). The chair decides if the complaint warrants a response. If it does not, it gets sent to the ombud to manage with the complainant. The ombud might send it back to be dealt with by the PC. The ombud is not a member of the PC. The professional ombud is Pieter Pauw SC. The fees ombud is Dana du Plessis SC.

Should the matter merit a response, it goes to the member concerned for a response. The member is afforded 2 weeks to respond. One reminder is sent. The member is reminded that a failure to respond may lead to the matter being considered without the benefit of a response. The complainant gets an opportunity to reply to the response. If the reply raises new matter, the member tends to get an opportunity to respond to this. To avoid having matters stuck in the responses phase, the matters proceed to reporting if after one reminder there has been no answer or reply. After the responses phase, the matter is allocated for reporting. This is done to members of the committee, or to members of the bar. The report should be done in two weeks. After a few reminders, the report should be re-allocated. Matters tended to get stuck in this stage, so a lot of effort was expended this year to identify members to whom reports could be re-allocated for expeditious finalization. The reports then serve before the professional committee to consider. If the matter is a non-member complaint, the decision is usually whether it merits an application to court for a suspension from practice or a strike-off. If the matter is a member complaint, the decision is whether it fails to sustain a case for unprofessional conduct, or whether it needs to proceed to an inquiry, or whether it can and should be dealt with differently, without an inquiry. Serious matters against members usually require an inquiry. Any sanction against a member other than an informal "fireside chat" requires the approval of the Bar Council. Inquiries entail panels (of members), and a pro forma prosecutor. These are ad hoc and are appointed from

the ranks of members. Matters sometimes get stuck in inquiries for extended periods. Should an inquiry yield the outcome that an application to court must be brought, this is taken to the Bar Council for approval. The member is often afforded another opportunity to make representations to the Bar Council if a striking off application is contemplated.

Adverse findings entail the opportunity to seek leave to appeal to the General Council of the Bar. The GCB has recently updated its processes and the Johannesburg Bar will align its leave to appeal processes to align with those of the GCB – in essence having only a single process entailing leave to be sought directly from the GCB to the GCB.

A great deal of the PC chair's time is also taken up giving informal rulings to members who seek advice on ethical issues. These are recorded in anonymous form and reported to PC meetings. Other members of the PC also give informal rulings. If a member requires a full formal ruling from the PC, this is done at the PC meeting and issued to the member after deliberation by the PC.

The PC meets once every three weeks. The BC meets once every two weeks in term.

Kind Regards

Frank Snyckers SC