

8 April 2020

To: All members  
**JOHANNESBURG SOCIETY OF ADVOCATES**

Dear Colleagues

**Re: LETTERS TO MEMBERS THAT INSTRUCTING ATTORNEYS WILL NOT ASSUME PRIMARY AND UNCONDITIONAL OBLIGATION TO PAY COUNSELS' FEES**

1. The Professional and Fees Committee ("**the committee**") has received a number of enquiries regarding the guidelines circulated to members of the Johannesburg Society of Advocates ("**JSA**") on 27 March 2020. The committee therefore provides the following clarification and emphasis regarding members' obligations when approached by attorneys who require them to perform instructions on the basis that counsel will be paid "... *if and when (the attorneys' firm) is paid by the client concerned.*"
2. Paragraph 22.3.1 of the Legal Practice Code of Conduct ("**the code**") provides that "*counsel are independent practitioners of advocacy and agents of the rule of law, who resist any undue influence from anyone ...*"
3. On the grounds set out in the circular, members of the JSA were directed not to accept or to continue to work on briefs on the terms of the impugned conditions cited above.
4. Members must adhere to GCB rule 7.8, which provides: "*Counsel may not agree with the attorney briefing him that counsel will await payment of the fees payable on that brief until the attorney shall have received them from the lay client.*"
5. Members who wilfully contravene the code, the GCB Uniform Rules of Conduct and/or the Local Rules and Practice of the JSA, may be found guilty of professional misconduct.
6. Upon finding a member guilty of professional misconduct, the committee may recommend to the Bar Council ("**the council**") that the member should be called upon to appear before the council to show cause why his or her membership of the JSA should not be terminated, alternatively suspended, and why an application should not be brought to have him or her struck, alternatively suspended, from the roll of advocates.
7. The guidelines set out in paragraph 9 of the circular:
  - 7.1. permit members, if they are willing to do so, to agree upfront with the instructing attorney that fees shall be paid no later than four months and seven days after the end of the month in which the national lockdown is lifted;



VAT No: 4280123037

Ground Floor, Sala House  
2 Protea Place  
SANDOWN 2196

P O Box 650493  
BENMORE 2010

Tel: (011) 292-6900  
Fax: (011) 292-6901  
E-mail: [jhbbar@law.co.za](mailto:jhbbar@law.co.za)  
[jhbadmin@law.co.za](mailto:jhbadmin@law.co.za)

[www.johannesburgbar.co.za](http://www.johannesburgbar.co.za)

- 7.2. do not grant a blanket extension to practitioners to deviate from JSA rule 3.1.1, which provides: "*Fees become due at the end of the month in which they have been earned and shall be paid no later than 3 months and 7 days thereafter.*"
- 7.3. do not apply to fees invoiced by members before March 2020;
- 7.4. do not entitle members to change the payment terms for any matter already completed and accounted for without permission from the council.
8. The committee emphasizes that the previous circular addressed counsels' obligations under the code, as well as the GCB and JSA rules. The circular is not directed at the conduct of any firm of attorneys in particular and no attorneys' firm was named therein. The committee's stance is based on principle and is not intended to engage in a dispute with individual firms, whose longstanding and enduring support of members of the JSA is highly valued.

Yours faithfully



Adv C F van der Merwe SC  
Chair, Professional and Fees Committee