

LOCAL RULES AND PRACTICE
OF
THE JOHANNESBURG BAR

WHICH SHOULD BE READ IN CONJUNCTION WITH THE UNIFORM RULES
OF PROFESSIONAL ETHICS

1. LOCAL RULE PURSUANT TO RULE 1.5

It is not the function of the Bar Council to consider the private affairs of its members in the absence of an allegation of improper or unprofessional conduct. If any creditor alleges that a member has failed to honour his commercial commitments, his creditor should take appropriate steps to recover moneys due to him.

1(a) LOCAL RULES PURSUANT TO UNIFORM RULE 1.8

[These rules have been superseded by the Criteria and Procedures for the Conferment of Silk Selection adopted at a Special General Meeting on 25 February 2010 – see chapter 9 below.]

1(b) LOCAL RULES PURSUANT TO UNIFORM RULE 4.1

1(b).1 Counsel are independent practitioners of advocacy.

1(b).2 The practice of advocacy is a referral profession, and accordingly, counsel do not solicit mandates, and only accept mandates on brief from attorneys admitted to practice.

1(b).3 Counsel are required to hold chambers at places approved by the Bar Council, from which places they conduct their practices.

- 1(b).4 As a general rule, counsel consult with instructing attorneys, clients and witnesses at approved chambers.
- 1(b).5 Where circumstances arise which reasonably indicate that consultations cannot conveniently be conducted at counsels' chambers, counsel may direct that the consultations be conducted at some other appropriate place, which place may be the offices of the instructing attorney; provided that counsel, in directing that the consultations be conducted at some other appropriate place, shall not compromise their independent status.

[Amended at the Bar Council meeting on 28 May 2000.]

2. LOCAL RULES PURSUANT TO UNIFORM RULE 4.22

- 2.1. Information made available to the public about members or groups of members:
- 2.1.1. must be accurate and objective;
 - 2.1.2. must not harm or diminish the reputation or standing of the Bar, the Bench or the legal profession generally;
 - 2.1.3. must not make comparisons, directly or indirectly, with other members or groups of members;
 - 2.1.4. must not include statements about the quality of the member's work, size or success of his or her practice or success rate;
 - 2.1.5. must not in relation to groups of members, amount to puffery or branding, suggest that the group in question

has a particular corporate identity or profile apart from its members, that it is better resourced, or has a more distinguished history or is composed of more able members than any other group;

2.1.6. may disclose a member's name, where he or she holds chambers, qualifications and specialities, if any;

2.1.7. may in respect of a group of members, disclose its location, members' names and any other information about such members as is detailed in paragraph 2.1.6;

2.1.8. may in the case of members be recorded on a business card or in the case of groups in a brochure.

2.2. A member shall not in relation to his practice use any title other than "Advocate".

[Amended at the Bar Council meeting on 28 March 2000.]

2(a) LOCAL RULE PURSUANT TO UNIFORM RULE 4.25.1

2(a).1 It is unprofessional conduct to delay for an unreasonable time in the handing down of a judgment.

2(a).2 Without derogating from the overriding standard of reasonableness, and without in any way suggesting that it is reasonable to delay delivery of a judgment for up to 6 months, where any judgment is delayed by more than 6 months, this will be deemed unprofessional conduct unless exceptional circumstances are demonstrated to exist.

[Adopted at the Bar Council meeting on 14 October 2014.]

3. LOCAL RULES PURSUANT TO UNIFORM RULE 7

3.1. Ad Rule 7.7.2

- 3.1.1. 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.
- 3.1.2. Where fees become due by agreement earlier than these rules provide a member shall not without the prior consent of the Bar Council be entitled to pursue the procedure of having a defaulting attorney placed on the list of defaulters for a failure to pay fees on such earlier agreed date.

3.2. Ad Rule 7.7.3

The procedure in respect of defaulting attorneys is as follows:

- (a) If any fees which are, in terms of Rule 2.1 above, due to a member, remain unpaid on the seventh day of the fourth calendar month calculated from the first day of the month following the month in which the work was done in respect of which the fee is due, such member shall immediately notify the Secretary thereof on the prescribed form.
- (b) On receiving such notice of default the secretary shall immediately notify the practitioner concerned that he is in default and that, failing payment within 7 days of such notification, he shall be listed. If within that period the fees are not paid and there is *bona fide* dispute between the member and the practitioner, which shall have been notified to the secretary, and if the secretary shall have received no written request for the

exercise by the Bar Council of the hereinafter mentioned right to grant an extension, the secretary shall notify to each member in writing the fact of such default. From the date of such notification until such fees, together with all fees which shall have been notified to the secretary by members as being owing to them by the said practitioner shall have been paid, the said practitioner shall be listed.

(c) Provided that the Bar Council may in its discretion grant to the practitioner in question on his application an extension of time for payment.

(d) The disqualification of a practitioner who has been listed in the manner aforesaid shall remain in force until the secretary receives notice from all members concerned that all fees in arrears due to them have been paid.

4. LOCAL RULES IN RESPECT OF LAW CENTRES

4.1. Members may accept full-time or part-time employment at a law centre provided that the law centre is one which has the approval of the Bar Council. As a member he shall be entitled to all benefits and be subject to all responsibilities or membership of the Society, and save as set out in this chapter, shall be subject to all the rules of the Society.

4.2. A member in the full-time employment of a law centre may appear as an advocate in a Court or Tribunal only upon the instructions of an attorney normally employed at the law centre and is neither bound nor, save with the permission of the Bar Council, permitted to accept a brief in any court in which he

professes to practise other than a brief from an attorney normally employed at that law centre.

- 4.3. A member who accepts part-time employment at a law centre:
 - (a) must notify the council before accepting the part-time employment of the terms thereof and subsequently of any proposed variation of those terms;
 - (b) must receive no reward in respect of that employment other than his remuneration as notified to the Bar Council.
- 4.4. The remuneration of a member employed full-time at a law centre may only be by way of salary paid by the law centre provided that such member may accept appointment as an arbitrator and, with the permission of the law centre, may retain all or part of the fees earned by him from such appointment. A member employed at a law centre may in no circumstances receive a fee directly from a lay client.
- 4.5. A member who is employed part-time at or who attends a law centre on a voluntary basis may accept paid instructions in proceedings from an attorney employed by the law centre if he has not himself advised the client on whose behalf he is briefed at the law centre in relation to those proceedings. Save as aforesaid the remuneration of a member who is employed part-time at a law centre shall also be only by way of salary.
- 4.6. A member whilst employed at a law centre may appear as an advocate in Courts or Tribunals in accordance with the following rules:

- (a) He shall not, save in special circumstances, appear without an attorney or other representative of the law centre in attendance.
- (b) In respect of each appearance as an advocate he must have a brief prepared in the name of the law centre and signed by an attorney employed by the law centre, indicating:
 - (i) the name of the case;
 - (ii) the Court or Tribunal;
 - (iii) his name;
 - (iv) the name of the law centre;
 - (v) the nature of the brief.
- (c) The decision of the Court or Tribunal must be recorded on the brief which shall be returned to and kept by the law centre.

4.7. A member employed at or attending a law centre may do any of the following in connection with his work at the law centre without instructions of an attorney:

- (a) Interview and take statement from clients or witnesses at his discretion.
- (b) Write and sign letters on behalf of the law centre provided that he does not add after his name the description "advocate".

- (c) Carry on correspondence with third persons and negotiate settlements on behalf of clients of the law centre.
- (d) Permit himself to be described as an advocate on letter headings and other official publications used at or distributed by the centre.
- (e) Draft letters on behalf of clients of the law centre for signature by them.
- (f) Draft pleadings on behalf of clients of the law centre for signature by them.

5. LOCAL RULES PURSUANT TO UNIFORM RULE 6

5.1. Pro Deo Defences

- 5.1.1. It is the duty of all counsel to undertake *pro deo* defences when directed to do so by the Bar Council.
- 5.1.2. Once a *pro deo* brief has been accepted by a member, that brief remains his responsibility, and that brief cannot be relinquished without the prior leave of the *pro deo* secretary.
- 5.1.3. If a *pro deo* matter is postponed, it remains the responsibility of the member to whom it has been allocated. Accordingly if a proposed postponement date is unsuitable to the counsel, he should inform the court of such fact. If the court nonetheless fixes an unsuitable date, then this does not relieve *pro deo* counsel of his responsibility but it is a matter

which may be brought to the attention of the *pro deo* secretary in terms of 5.1.2 above.

[Rule 5.1.4 was deleted at the Annual General Meeting on 23 October 2014.]

5.2. PRO BONO RULE

Definition of pro bono services

5.2.1 For the purposes of this rule, pro bono services constitutes advocates' work which is rendered gratuitously on brief from an attorney or an instructing institution which is recognised by the Bar Council and where the lay client is either unable to pay for the work or the lay client is a non-governmental, non-profit body advancing charitable, religious, civic, community, educational or public interests and where the payment of counsel's fees would be inappropriate.

Requirement to render pro bono services

5.2.2 Every member is required to render a minimum of 20 hours pro bono service in each calendar year.

5.2.3 When a member is reserved for a day in court, such a day shall equate to 10 hours service.

5.2.4 The cab-rank rule applies to pro bono briefs and a member may accordingly not refuse a pro bono brief if the member is available and has not yet rendered the minimum hours during that year.

Exemptions

5.2.5 A member will be excused for not having rendered the required pro bono service during the course of a calendar year if the member can show, to the satisfaction of the Bar Council, that the member, during the course of the relevant year:

- (a) Served as an acting judge for a period of not less than 4 weeks;
- (b) rendered at least 20 hours' service to the Society;
- (c) delivered lectures to pupils or participated in the training or examination of pupils for a total period of not less than 20 hours;
- (d) rendered advocates' work in terms of a contingency agreement that complies with GCB Rule 7.10 for a period of not less than 5 days where the work falls within the definition of pro bono services in paragraph 5.2.1 above;
- (e) rendered advocates' work for a period of not less than 5 days at less than 50% of the members normal fee where the work falls within the definition of pro bono services in paragraph 5.2.1 above;
- (f) sat as a commissioner of the Small Claims Court for a total period of not less than 25 hours.

Provided that a member who has served part of the required pro bono service during the course of a calendar year will be excused for not having rendered the remaining portion of his or her required pro bono

service, if the member can show, to the satisfaction of the Bar Council, that the member, during the course of the relevant year satisfies the requirements of paragraphs (a) to (f) above, pro-rated in accordance with the proportion of required pro bono service that has not been performed.

[Rule 5.2.5 amended at the Bar Council meeting on 14 October 2014.]

5.2.6 The following are instructing institutions recognised by the Bar Council for purposes of this rule:

- (a) Attorneys employed at university law clinics;
- (b) attorneys employed in non-governmental organisations;
- (c) the Legal Aid Board;
- (d) justice centres;
- (e) a judge, magistrate or other presiding officer of any court or tribunal;
- (f) ProBono.Org;
- (g) any other entity designated by the Bar Council in writing.

5.2.7 In all other matters briefs for pro bono work should be from attorneys or patent agents.

- (a) It is preferable that the attorney or patent agent should him- or herself also act pro bono.

- (b) If the attorney does not him- or herself act pro bono in the matter, the member must request the attorney or patent agent to state, in writing, that unless counsel accepts the pro bono instruction, the lay client will not have adequate access to justice.

Administration

5.2.8 The pro bono subcommittee of the Bar Council must maintain a directory of members' names and contact details and special areas of interest and the subcommittee must make the list available to the briefing institutions referred to in paragraph 5.2.6 above as well as to the Law Society of the Northern Provinces for distribution amongst its members.

5.2.9 Once a member has been appointed or has accepted a brief to act pro bono in accordance with this rule, such member:

- (a) shall disclose this fact to the Court and to the member's opponent, if applicable; and
- (b) may not relinquish the appointment or brief without the prior written consent of the subcommittee and without compliance with any additional legal requirements.

Certification

5.2.10 By the end of February every year every member shall, in respect of the preceding calendar year, file with the Bar Council a signed certificate in the form

that the Bar Council may prescribe from time to time.

- 5.2.11 Where such certificate discloses that the member has rendered fewer than 20 hours pro bono service during the year under review, the member shall in addition provide an explanation for the member's failure to render the prescribed minimum service.
- 5.2.12 The member shall, specifically, state the grounds on which he or she requires to be exempted for the year under review on one or more of the grounds set out in paragraph 5.2.5 above.
- 5.2.13 The failure to render a return without a satisfactory explanation for the failure will be regarded as unprofessional conduct.
- 5.2.14 The failure to render 20 hours of pro bono service without a satisfactory explanation during the year under review, will be regarded as unprofessional conduct.

Promotion of pro bono services

- 5.2.15 Notwithstanding anything to the contrary contained in these rules it shall not be deemed to be unprofessional conduct for a member to make the fact known that he or she is obliged and prepared to perform pro bono services in accordance with the provisions of this rule and the member may send to any attorney who has briefed him or her a notice in the form that the Bar Council may from time to time prescribe promoting the pro bono scheme of the Johannesburg Society of Advocates as set out in this

rule.

Special projects

5.2.16 The Chair of the pro bono subcommittee may invite members to participate in special pro bono projects of the Bar Council and the Chair may, with the consent of the Bar Council:

- (a) designate a project as a special project for purposes of this rule;
- (b) determine the basis of the participation of members in a special project.

5.2.17 The Chair shall, annually, report to the general membership on all special projects.

[Amended at the Annual General Meeting on 27 October 2011.]

6. LOCAL RULES – GENERAL

6.1. Assessors

Save with the leave of the Bar Council, no member shall act as an assessor unless he has been a member of the Society for a period of at least one year.

6.2. The Bar Council may in its discretion permit holders of University academic posts to be members of the Johannesburg Bar on such terms as to pupillage, chambers and subscriptions as the Bar Council may decide in each case.

