

DIE PROKUREURSORDE VAN DIE VRYSTAAT
NUWE REËL EN WYSIGINGS VAN BESTAANDE REËL

Onderstaande nuwe reël en wysiging tot die bestaande reëls van die Prokureursorde van die Vrystaat, is deur die Prokureursorde aangeneem en na oorlegpleging van die Raad met die Regter-president van die Vrystaatse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika, deur die Hoofregter van Suid-Afrika kragtens die bepalings van artikel 74 van die Wet op Prokureurs, 1979, (Wet 53 van 1979) soos gewysig, goedgekeur.

THE LAW SOCIETY OF THE FREE STATE
NEW RULE AND AMENDMENTS TO EXISTING RULE

The under mentioned new rule and amendments to the existing rule of the Law Society of the Free State have been made by the Society and after consultation of the Council with the Judge-President of the Free State Provincial Division of the Supreme Court of South Africa, have been approved by the Chief Justice of South Africa in terms of section 74 of the Attorneys Act (Act No. 53 van of 1979), as amended.

19 DISCIPLINARY RULE

- (1)(a) Subject to the provisions of this rule, the Council and/or the Chief Executive Officer and/or the Executive Officer shall determine how often a Disciplinary Committee shall meet.
- (b) The Council shall determine the manner in which the Chief Executive Officer, the Executive Officer and the Disciplinary Committee shall discharge their duties.
- (c) The Council shall fill any vacancy on any Disciplinary Committee.
- (2) Subject to any limitation imposed by a resolution of the Council when assigning its duties, or any variation thereof, the Chief Executive Officer and/or the Executive Officer shall be charged with the following duties, namely:-
- (a) to consider and investigate any complaint formally made against a practitioner;
- (b) before it investigates any complaint, to require a complainant to make his or her complaint formally in writing, and/or to verify it by affidavit;
- (c) to require the complainant to furnish such further evidence, written or oral, documentary or otherwise as it may require for the purpose of ensuring that:-
- (i) the complaint has been formally made; and
- (ii) the Chief Executive Officer and/or the Executive Officer and/or the Disciplinary Committee is able to ascertain the precise nature of the complaint;
- (d) where, in his or her opinion, a *prima facie* case of misconduct on the part of a practitioner has been made out, to furnish the practitioner with such particulars of the complaint as may be necessary to enable that practitioner to know the case he or she has to meet and to call on him or her to furnish a reply to the Chief Executive Officer and/or the Executive Officer within a stipulated time;
- (e) to require a practitioner to verify his or her reply referred to in rule 2(d) by affidavit;
- (f) to summarily to dismiss a complaint where he or she is of the opinion that it does not disclose a *prima facie* charge of misconduct or where a complainant has neglected to comply with the requirements of a Disciplinary Committee and/or the Chief Executive Officer and/or the Executive Officer;
- (g) when, upon a consideration of the complaint and the practitioner's reply, he or she is of the opinion that no case of misconduct has been made out against the practitioner, to dismiss the complaint

- and to notify the Council, the complainant and the practitioner accordingly;
- (h) when he or she is of the opinion that a *prima facie* complaint has been made out against a practitioner, to refer such complaint in accordance with this rule to a Disciplinary Committee;
 - (i) to notify the Council, the complainant and the practitioner concerned of his or her finding, and when so authorised by a Disciplinary Committee of the Council, whether generally or specially in any particular case, to publicise such information concerning the finding as may be determined by the Council;
 - (j) save to the extent set forth in this rule, to preserve the confidential nature of the proceedings; and
 - (k) to do all things necessary to ensure that disciplinary proceedings are conducted justly, expeditiously and in accordance with this rule.
- (3) Subject to any limitation imposed by resolution of the Council when assigning its powers, or any variation thereof, and subject to the provisions of the Act, a Disciplinary Committee shall *mutatis mutandis* have the powers set out in sub-rule 2 hereof including the following, namely:-
- (a) to determine the information, if any, to be furnished by the Chief Executive Officer and/or the Executive Officer to a complainant; or what assistance, if any, shall be given by the Chief Executive Officer and/or the Executive Officer to a complainant who, for good cause, cannot lodge a complaint unaided;
 - (b) to investigate *mero motu* any complaint made by the Council;
 - (c) when upon the determination of a complaint, a Disciplinary Committee is of the opinion that *prima facie* the conduct of the practitioner constitutes misconduct and that a finding of guilt would warrant an application for the striking off of such practitioner from the roll, or his or her suspension from practicing, it shall not make a finding, but it shall make a recommendation to the Council and simultaneously therewith forward the record of the enquiry to the Council for such action as the Council may deem proper;
 - (d) in all cases other than those referred to in rule 3(c), to make a recommendation to the Council to impose such punishment as it deems fit and where after the Chief Executive Officer and/or the Executive Officer will cause it to be carried into effect;
 - (e) when, upon a consideration of the complaint and the practitioner's reply, a Disciplinary Committee is satisfied that the complaint discloses a *prima facie* case of misconduct on the part of the practitioner, a Disciplinary Committee may:-
 - (aa) determine the matter summarily without a hearing and impose a punishment; provided that at the same time as it

- notifies the practitioner in writing of the imposition of such punishment, it shall afford the practitioner the opportunity of demanding within a stipulated time, an enquiry to be conducted in terms of this rule instead of submitting to such summary punishment; or
- (bb) decide to hold a summary enquiry, or a formal enquiry in the manner hereinafter set forth in this rule in which event it may appoint an attorney (other than from amongst the members of the Council) or an advocate to present the case on behalf of the complainant, at the expense of the Society;
- (f) save in a case contemplated by in sub-rule 3, upon the summary determination of a complaint, or at the conclusion of a summary enquiry or the conclusion of a formal enquiry, to find the practitioner:-
- (i) not guilty; or
 - (ii) (a) guilty of unprofessional conduct; or
(b) guilty of dishonourable conduct; or
(c) guilty of unworthy conduct; or
(d) guilty of any one or more of the above;
- (g) if at the conclusion of an enquiry, a Disciplinary Committee is of the opinion that the case is one which is contemplated by the provisions of rule 3(c), it shall not make any finding but it shall refer the matter to the Council for such action as the Council may deem proper; and
- (h) to dispense with any requirements of this rule respecting summonses, notices, affidavits, documents, service or time, in any case where it appears to be just so to do; and/or extend the time for doing anything under this rule.
- (4)(a) Whenever a Disciplinary Committee decides in terms of rule (3)(e)(bb) to hold a summary enquiry or a formal enquiry, such enquiry shall be commenced by serving on the practitioner concerned a summons substantially in the form of Schedule A, requiring the attendance of the practitioner.
- (b) When holding an enquiry not likely to result in a recommendation that a practitioner be struck off the roll or suspended from practice, a Disciplinary Committee, may, either before or at the commencement of the hearing, offer the practitioner the choice of a summary or formal enquiry.
- (c) The practitioner's choice in terms of rule 4(b) shall then be recorded; provided that in the event of the practitioner neglecting or refusing to make such choice, he or she shall be deemed to have rejected the offer of summary enquiry.

- (d) At a summary enquiry a Disciplinary Committee may dispense with the attendance of a practitioner and in its discretion, determine the complaint on the basis of such written, oral, documentary, or other evidence as it deems necessary for a just and proper determination of the matter: Provided that the practitioner may demand: -
- (i) to be present during the hearing of any oral evidence;
 - (ii) to inspect any written, documentary or other evidence to be taken into consideration by the disciplinary committee;
 - (iii) that any witness testifying before a Disciplinary Committee shall be required at any time during the course of his or her evidence to give his or her evidence on oath and to be subject to cross-examination;
 - (iv) the right to make written or oral submission in his or her own defense;
 - (v) that a summons be issued and served at his or her expense to procure the attendance of any witness at any enquiry, save where the Disciplinary Committee is satisfied that such demand has been made for the sole purpose of causing delay.
- (5) A practitioner summoned to appear at any enquiry, whether summary or formal, before the Council or a Disciplinary Committee shall be entitled to legal representation.
- (6) Subject to provisions of these rules, the Chairperson of a Disciplinary Committee shall determine the manner in which an enquiry, whether summary or formal, shall be conducted. In the event of this rule not providing specifically for any matter he or she shall be guided by the practice and procedure prevailing in a Court of Law.
- (7) Subject to the provisions of the Act, this rule shall apply *mutatis mutandis* to any proceeding against an articled clerk; provided that in such proceedings his or her principal shall also be present at the enquiry, unless excused.

24. PRO BONO SERVICES

24.1 Definitions

Pro bono services shall include, but not be limited to, the delivery of advice, opinion or assistance in matters, falling within the professional competence of an attorney, conveyancer and notary, to facilitate access to justice for those who cannot afford to pay, through recognised structures, approved in terms of sub-rule 24.3 and identified in terms of sub-rule 24.4.

Recognised structures shall include, but not be limited to, the office of the Registrars of the High Court when issuing *in forma pauperis* instructions, small claims courts, community (non-commercial) advice offices, university clinics, non-government organisations, the office of the Inspectorate of Prisons, Circle and specialist committees of the Society and structures approved by the Council from time to time in terms of sub-rule 24.6 and identified in terms of sub-rule 24.8.

Those who cannot afford to pay shall be those who ordinarily qualify for assistance in terms of a means test as used by the Legal Aid Board and approved by the Council from time to time.

A clearing office/ desk is that office established by the Society for the purpose of the managing and administration of the entire process of accreditation of a recognised structure, setting the criteria of assessment of applications for *pro bono* work and the allocation of such work to attorneys and shall be accommodated in the office of the Society.

24.2 Practicing members who have practiced for less than 40 years shall, subject to being asked to do so, perform *pro bono* services of not less than 24 hours per calendar year, save that –

24.2.1 an attorney who becomes a practicing member during the course of a year shall perform *pro bono* services equal to not less than 2 hours per month, or part thereof, of practicing member status acquired in the first year of practice;

24.2.2 in the year of publication of this rule, practicing members shall perform *pro bono* services equal to not less than 2 hours per month, or part thereof, from the month of publication to the end of that year.

- 24.3 Members may refer to the Society, for approval by Council as *pro bono* services, a written description of areas of professional work proposed for recognition as *pro bono* services.
- 24.4 The Society shall, within 30 days of publication of this rule and from time to time, publish a list of services which, when performed by attorneys at no charge for those who cannot afford to pay, shall be recognised as *pro bono* services capable of being delivered in compliance with the provisions of this rule.
- 24.5 *Pro bono* services shall be delivered through recognised structures only to those who cannot afford to pay for professional services and who qualify in terms of a means test.
- 24.6 Members may refer to the Society, for approval by Council as a recognised structure, a written description of a structure proposed for recognition.
- 24.7 The Society may enter into joint venture agreements with recognised structures to determine the relationship between it and such structure and to set up the rules and procedures in terms of which the clearing process will be applied to enable practitioners to render *pro bono* work in a structured manner capable of being properly managed and recorded.
- 24.8 The Society shall, within 30 days of publication of this rule and from time to time, publish a list of recognised structures, including structures with which the Society has concluded joint venture agreements for the delivery of *pro bono* services.
- 24.9.1 Members shall submit to the Society a certificate providing full particulars of *pro bono* services delivered, within 60 days of delivery thereof, failing which, the service shall be treated as not having been rendered in terms of this rule.
- 24.9.2 The clearing office/desk shall after the practitioner has satisfactorily completed the *pro bono* mandate, issue a completion certificate to the practitioner verifying the delivery of such service.
- 24.10 The form of the certificates referred to in sub-rule 24.9 shall be one as approved by the Society from time to time.
- 24.11 The Society shall keep a record of services delivered per member, which record shall be raised from member certificates. A report of all services rendered shall be extracted annually and shall be retained by the Society. On 1 January of each year, all individual member records shall be updated to show the availability of hours for the new year.

The Society shall report to its members annually at the Annual General Meeting, and shall make such reports generally available, on the total delivery of *pro bono* services by members.

The Society shall cause particulars of *pro bono* hours still to be served by members in a calendar year to be published on its website and for reduced hours to be displayed against submission by members of certificates. This information will also be available from the Society, on request. It shall be the responsibility of practicing members to ensure that the Society's records as to *pro bono* services rendered are complete so that the correct information is published on the website and generally made available.

- 24.12 Members may elect to deliver *pro bono* services through a single recognised structure. The Society shall cause a member's election of the recognised structure through which he/ she chooses to deliver his/ her *pro bono* services to be published on its website. This information will also be available from the Society, on request. It shall be the responsibility of the practicing member to notify the Society of his/ her election so that this information is published on the website and generally made available.
- 24.13 Disbursements incurred in respect of *pro bono* services shall be borne by the client, provided that these disbursements may be taxed by a taxing committee of the Society.
- 24.14 It shall be unprofessional conduct for a practicing member who has still to perform *pro bono* service hours to refuse, with no good cause, to deliver *pro bono* services.
- 24.15 In the event of the Society receiving a complaint of refusal to deliver *pro bono* services, with no good cause, it shall be entitled to treat its record of services rendered as complete, save only for services rendered within 60 days of the complaint that are not on record. The member against whom the complaint is made shall be responsible to provide the Society with certificates, relating to such additional services, within 21 days of receipt by the Society of the complaint, failing which, services alleged to have been rendered, but not on record, will be treated as not having been rendered for the purpose of investigating the complaint. Pending investigation of the complaint, the Society shall refer the complainant to another practicing member, for assistance.
- 24.16 Professional standards applicable to services rendered by attorneys shall apply to *pro bono* services.

24. PRO BONO DIENSTE

24.1 Definisies

Pro bono dienste sal insluit, maar nie beperk wees nie tot, die lewering van advies, opinie of hulp in sake, wat binne die professionele bevoegdheid van 'n prokureur, aktevervaardiger of notaris val, om toegang tot regspleging te fasiliteer vir diegene wat nie kan bekostig om te betaal nie, deur erkende strukture, goedgekeur kragtens subreël 24.3 en uitgewys ooreenkomstig kragtens subreël 24.4.

Erkende strukture sal insluit, maar nie beperk wees nie tot, die kantoor van die Griffiers van die Hooggeregshof waneer *in forma pauperis* Instruksies uitgereik word, howe vir kleinreise, gemeenskap (nie-kommersiële) advieskantore, universiteitsklinieke, nie-regeringsorganisasies, die kantoor vsn die prisoniers-vriend, Sirkel en spesialiskomitees van die Genootskap, en strukture soos goedgekeur deur die Raad kragtens subreël 24.6 en uitgewys ooreenkomstig subreël 24.8.

Diegene wat nie kan betaal nie, sal diegene wees wat gewoonlik kwalifiseer vir hulp deur gebruik te maak van die middeletoets soos gebruik deur die Regshulpraad en goedgekeur deur die Raad van tyd tot tyd.

'n Klaringskantoor is die kantoor wat deur die Orde daargestel word vir die doel om die beheer en administrasie van die akkreditasieproses van 'n erkende struktuur te hanteer, riglyne vir die beoordeling van aansoeke vir *pro bono* werk daar te stel en die toekenning van sulke werk aan prokureurs, aktevervaardigers en notarisse te administreer en sal in die kantoor van die Orde gesitueer wees.

24.2 Praktiserende lede wat vir minder as 40 jaar praktiseer sal onderhewig daaraan dat hulle versoek word daartoe, *pro bono* dienste lewer van nie minder nie as 24 uur per kalenderjaar, behalwe dat:-

24.2.1 'n prokureur wat 'n praktiserende lid word gedurende die loop van 'n jaar *pro bono* dienste sal verrig gelykstaande aan nie minder nie as 2 ure per maand, of gedeelte daarvan, sedert verkryging van die status van 'n praktiserende lid in die eerste jaar van praktyk; en

24.2.2 in die jaar van publikasie van hierdie reël, sal praktiserende lede *pro bono* werk verrig gelykstaande aan, maar nie minder as 2 ure per maand nie, of gedeelte daarvan, bereken vanaf die maand tot die einde van daardie jaar.

24.3 Lede mag 'n geskrewe uiteensetting verwys, vir goedkeuring deur die Raad, van gebiede van professionele werk voorgestel vir erkenning as *pro bono* dienste.