

**KWAZULU-NATAL SOCIETY OF ADVOCATES**  
**EQUALITY AND DIVERSITY POLICY**

**FOREWORD**

1. The KwaZulu-Natal Society of Advocates (“KZN Bar”) is committed to promoting equal opportunities in the advocates profession and increasing the demographic representivity of the KZN Bar.
2. It is in the best interests of the KZN Bar, the judiciary and the public that individuals of the highest ability and talent are attracted to, and retained in, the profession.
3. Despite improvements in terms of diversity, advocates from previously disempowered groups remain under-represented at the KZN Bar. This group comprises black and female members, who are under-represented at all levels but particularly in the ranks of senior counsel. The KZN Bar notes that the attrition rate amongst these members is of concern.
4. The KZN Bar is committed to promoting equal opportunities in the advocates’ profession and increasing the demographic representivity of the Bar by adopting practical, accommodating, inclusionary and sensitive methods. The KZN Bar approach reflects a concern with fair treatment and respect for individual dignity, and with strengthening the Bar as a competitive association of practitioners who serve the interests of the public and the judicial system.
5. The KZN Bar further recognises the need to promote itself as the preferred component of the legal profession in the Republic.

6. Presently, the demographics of the KZN Bar is comprised as set out in annexure “A”.
7. This Equality and Diversity Policy (“the policy”) addresses the following areas:
  - 7.1. promotion of equality and prohibition on unfair discrimination (section A);
  - 7.2. access to work (section B):-
    - 7.2.1. exposure to silks and senior members of the Bar;
    - 7.2.2. marketing and networking with attorneys;
    - 7.2.3. skills transfer;
    - 7.2.4. transformation directory;
  - 7.3. housing (section C);
  - 7.4. regular feedback and communication (section D);
  - 7.5. mentoring (section E);
  - 7.6. maternity (section F);
  - 7.7. harassment (section G); and
  - 7.8. transformation fund (section H).

**A. PROMOTION OF EQUALITY AND PROHIBITION ON UNFAIR DISCRIMINATION**

1. Racist and sexist attitudes and practices undermine equality and diversity. The KZN Bar rejects all harmful and discriminatory practices.
2. All advocates are required to comply with the prohibition against discrimination in section 9 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) as well as the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. This policy has been drawn in accordance with the values and requirements of these laws/rules of conduct, and should be adopted and promoted by all members of the KZN Bar.
3. It may be regarded as unprofessional conduct for an advocate to conduct himself or herself in a manner that offends against the principles of non-racialism, non-sexism and equality or to conduct him or herself in any manner that is discriminatory.

**B. NETWORKING, MARKETING AND ACCESS TO WORK**

Access to work is pivotal to the development of advocacy skills and sustainable practices. It is also the primary challenge for new members of the Bar.

**Exposure to senior members and silks of the KZN Bar**

1. Members of more than ten years’ standing (senior members) can play a significant role in redressing past disadvantage and expanding the work opportunities available to under-represented members by:

- 1.1 recommending black and female junior members as their juniors in matters where the instructing attorney intends to brief junior counsel in the normal course (a junior briefing proposal);
  - 1.2 proposing that black and female members be briefed as their juniors or additional juniors on a fee-sharing basis, in matters where the instructing attorney does not intend to brief junior counsel or additional junior counsel (a fee-sharing proposal). A senior member may not involve a female or junior member on the basis of a fee-sharing basis unless the senior member's instructing attorney has agreed that the junior or female member may be so involved and agrees to brief him/her on that basis;
  - 1.3 engaging black and female junior members to provide research assistance on an agreed remuneration basis (a researcher devilling engagement); and
  - 1.4 when asked by an attorney to recommend another counsel to be briefed in a matter in which the senior member is not engaged, recommending black and female junior members with the expertise or experience appropriate to the matter in question (a briefing recommendation).
- 2.
- 2.1 The measures described in 1.1 – 1.4 above apply equally to senior counsel (silks).
  - 2.2 Senior counsel are urged to actively engage black and female juniors for drafting and research (devilling) on a remuneration basis.

3. Senior members and silks are urged, whenever possible, to employ one or more of the abovementioned means of advancing the transformation of the KZN Bar.
4. In determining the work required of the junior member in respect of a junior briefing proposal or a fee-sharing proposal, the senior member and silk must bear in mind that the arrangement is aimed at effecting transformation of the profession, not only by expanding access to work, but also by the transfer of skills to the junior member, and must engage with the junior member as far as possible in the work including drafting and research required by the brief.
5. In identifying a junior or female member for work in terms of this section of the policy, senior members and silks should consult the transformation directory.
6. The opportunity to become involved in a matter on the basis of a junior briefing proposal, a fee-sharing proposal, devilling engagement and a briefing recommendation must be offered to the junior member by the senior member/silk with a full and precise explanation at the outset of:-
  - 6.1 what is required of the junior member in performing the work required in the brief;
  - 6.2 how and by whom the junior member will be remunerated; and
  - 6.3 the rate at which the junior member will be remunerated.
7. Where a junior member has been engaged in terms of a junior briefing proposal and a fee sharing proposal, the senior member/senior counsel may seek a special order allowing the taxation of the fees charged by all counsel (including the junior member) in accordance with the arrangement so that the instructing attorney can recoup on taxation the

fees of counsel in the amounts that would ordinarily have been charged had it not been for this briefing arrangement<sup>1</sup>.

8.

- 8.1 The time spent by senior counsel and senior members shall be allotted to *pro bono* services as contemplated in Rule 20 of the KZN Bar rules.
- 8.2 Senior counsel and senior members must, by 30 November of each year, provide to the Transformation Committee a written record of the measures taken during that year to provide assistance and support to junior and female members in this regard.

#### Marketing and networking

9. Work is secured through attorneys but often, new members of the Bar are not familiar with, or have not worked with, attorneys, including those instructed by state owned enterprises and government departments. Female members may similarly not enjoy exposure to attorneys. Facilitating introductions between such members and attorneys is often all that is required for the formation of a working relationship.
10. Marketing and networking opportunities or events should be made available by groups and the Transformation Committee to those members interested in participating. The events should be aimed at promoting under-represented members.

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<sup>1</sup> *Capstone 556 (Pty) Ltd and Another v Commissioner, South African Revenue Service and Another* 2011 (6) SA 65 WCC at [59]

Cape Bar Policy: Expanding Access to Work for Black and Female Junior Counsel.

11. Marketing activities should be sensitive to religious and family commitments. For example, activities should be arranged so that they do not exclude, indirectly, those who have childcare commitments or financial constraints, or those whose religious beliefs preclude the drinking of alcohol or socialising at particular times, and should be organised so that all members can, as far as practicable, be equally involved, accommodated and promoted.

Skills transfer

12. Seminars and lectures should be arranged on a broad range of topics to assist young professionals in developing competences in various fields to enable members to develop diverse practice areas.
13. Training on practice development and practice management should also not be forgotten.
14. Members should also be encouraged to write or contribute articles in professional publications and become involved with any legal advisory or support centres or organisations.

Transformation directory

15. A database should be maintained by the Bar Council and managed by the Transformation Committee, indicating the names of junior and female members; these members are presumed to be willing to accept work in terms of the policy unless they inform the Bar Council in writing to the contrary.
16. The KZN Bar website plays an important role in members' marketing. Member profiles on the Bar website should be updated regularly.

Where possible, it should include a photograph and state the members' years at the Bar, contact details and preferred practice area.

17. The KZN Bar should also include a search function on its website that makes finding black and female members (of any seniority) easier.

### C. HOUSING

1. Setting up chambers is a key milestone for any practitioner. Failure to secure chambers, particularly at the end of pupillage, can delay and detrimentally effect career progression.
2. Unlike other Bars, the KZN Bar does not own the buildings from which its members occupy chamber space.
3. Presently, the allocation of chambers is dealt with by groups that are already established, on an *ad hoc* basis, with groups (i.e. wings of floors) making decisions as to who will join as new group members as and when vacancies arise/chambers become available. As a result, many junior and female members are required to search for chamber space without assistance, to form groups with other juniors or to share chambers. This has led to a certain degree of institutional erosion and contributed to an imbalance in exposure and guidance that senior and silk members of the Bar are able to share with the under-represented members.
4. A record should be kept of who has, and who has not, secured chambers. The records should be managed jointly by Bar Council and the Housing Committee.
5. Groups are encouraged, in making decisions regarding the allocation of chambers, to consider the following factors:

- 5.1 the achievement of a representative mix of members both in terms of gender and race;
  - 5.2 the achievement of a representative mix of senior and junior members;
  - 5.3 the court and membership seniority of the applicant for chambers.
6. When chambers become available:
- 6.1 the Bar Council must immediately be notified;
  - 6.2 the chambers should be adequately advertised to members, who shall be invited to apply for such chambers;
  - 6.3 interviews should be held, as far as is practically possible, so all members have an opportunity to compete on an equal footing;
  - 6.4 the Housing Committee of the Bar Council should assist members in their applications;
  - 6.5 the Bar Council should be informed as soon as the chambers are allocated and to whom;
  - 6.6 in awarding chambers the groups and/or the Housing Committee should give preference to female and black members with due regard to the transformation directory.
7. The sharing of chambers is permissible upon written approval of the Bar Council. A sharing arrangement should not exceed six months in order to promote equality and fairness.

8. In the interests of security, preference for parking bays, that is those closest to access points to chambers, should be given to female and physically challenged members.
9. New members who have not secured chambers by January of the year following their pupillage, should be assisted by the Housing Committee which shall ensure that all reasonable endeavours are made to assist the member in finding accommodation. Sharing of chambers in such circumstances is permissible, subject to oversight from and conditions set by the Bar Council.

**D. REGULAR FEEDBACK AND COMMUNICATION**

1. The Transformation Committee should arrange regular feedback sessions and practice development meetings for under-represented members. The purpose of these meetings would be to enable discussion of:
  - 1.1 work opportunity challenges being experienced by junior and female members;
  - 1.2 whether members have suggestions relating to solutions and strategies which they believe would be advantageous to them in creating better work-opportunities and developing their practices;
  - 1.3 support and assistance to junior members and the enhancement of their practice administration and management;
  - 1.4 challenges relating to housing.

2.

- 2.1 Members have an obligation and a right to communicate with the Bar Council on KZN Bar and practice related matters. In keeping with convention, members may approach their Bar representative or the Chairperson in person or in writing.
- 2.2 All complaints and comments from members shall be dealt with confidentially, at the discretion of the Chairperson and/or the Bar Council.

**E. MENTORING**

1. A mentoring committee should be set up within the KZN Bar for the purpose of offering advice and guidance in relation to practice development or practice management for members in their first year of practice.
2. Such mentoring would entail a junior member being assigned to a senior member or silk who shall provide guidance and assistance.

**F. MATERNITY POLICY**

1. The KZN Bar is committed to the attainment of formal and substantive gender equality.
2. Nationally, women comprise 25% of Bar members and 9% of senior council<sup>2</sup>.
3. There is a need to attract and retain women at the Bar.

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<sup>2</sup>

General Council of the Bar, Membership statistics as at 30 April 2016.

4. Arrangements for maternity are crucial in retaining women in the profession.
5. Groups within the KZN Bar are encouraged to adopt maternity leave policies which regulate the occupation of chambers as well as the payment of rent and group fees and related expenses.
6. The aim of this section is to:-
  - 6.1 encourage female members of the KZN Bar to return to chambers following maternity, and to continue to build successful practices, thereby contributing to the growth and success of the Bar as a whole;
  - 6.2 prevent any and all discrimination arising out of maternity and gender;
  - 6.3 give effect to the values and goals of the KZN Bar in encouraging strong female members to remain and progress in practice.

Absence from chambers:-

7. Members taking maternity leave are entitled to a one year leave of absence without any loss of domestic seniority, and to have that period extended for a further period by the Bar Council on good cause shown.
8. Members on maternity leave may, at their election, practice from home during the maternity leave period, provided they obtain written consent from the KZN Bar Council to do so.

Assistance with payment of Bar subscription fees

9.

- 9.1 As a result of having to give birth or having given birth, a member is relieved from the obligation to pay Bar fees for a period of three (3) months (the maternity period).
- 9.2 After the expiry date of the maternity period, a member shall revert to paying her full Bar fees.

10.

- 10.1 In order to qualify for this benefit, a member shall make a written application to the Chairperson of the Bar Council at least two months before the commencement of the maternity period.
  - 10.2 Non-compliance with requirements of paragraph 5.1 above may be condoned at the discretion of the Bar Council.
11. The provisions of paragraph 4 and 5 above shall apply equally where a member is the primary caregiver of an adopted child.
12. A member is ordinarily not entitled to a special financial dispensation by virtue of having to take paternity leave. However, the Bar Council may, on written application, consider and approve a request by a male member for a special financial dispensation as a result of the birth and/or adoption of his child.

Maternity Fund

13.

- 13.1 The Bar should create a Maternity Reserve Account which must be credited annually with a portion of Bar dues and ensure that the balance in the account is sufficient to meet the estimated

costs during the forthcoming year of remissions from Bar dues which, when incurred, must be debited against that account.

- 13.2 The Maternity Reserve Account should be administered as part of the Transformation Fund (see section H of this policy).

Assistance with payment of chambers rental and group contributions

14. Groups within the KZN Bar are encouraged to adopt maternity leave policies which regulate the occupation of chambers as well as the payment of rent and group fees and related expenses by members on maternity leave.
15. Groups are encouraged to assist members embarking on maternity leave to sub-lease their chambers for the period of time equivalent to the maternity leave taken by the member rather than to allow the member on maternity leave to absorb the costs.
16. Groups are encouraged to support members who are on maternity leave by assisting them:
  - 16.1 to collect outstanding fees and ensuring that the member's practice remains sustainable when she returns from leave;
  - 16.2 adjourning the member's matters whilst she is on leave to a date/s when she returns to work;
  - 16.3 discounting or suspending group contributions.

**G. HARASSMENT<sup>3</sup>**

1. The KZN Bar is committed to providing a working environment that is free of any form of unfair discrimination or harassment.
2. The KZN Bar aims to promote a working environment, which is conducive to the professional growth of its members and employees and to the promotion of equality of opportunity.
3. The KZN Bar also aims to create an environment in which members and pupils respect one another's integrity, dignity and privacy.
4. The KZN Bar will not tolerate any form of harassment and will take all necessary steps to ensure that its members and employees are not subject to any form of harassment.
5. All members of the KZN Bar have a responsibility to help maintain a work environment and Bar that is free from all forms of harassment.
6. This section of the policy applies to:
  - 6.1 members of the Bar;
  - 6.2 pupils;
  - 6.3 applicants for pupillage;
  - 6.4 students/scholars engaged in work experience with members of the KZN Bar;

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<sup>3</sup> This section is derived from The Johannesburg Society of Advocates Harassment Policy and the GCB 2017 Draft Proposal: Policy on the Procedure for the Handling of Cases of Sexual Harassment.

- 6.5 employees of the Bar or employees of members of the KZN Bar;
- 6.6 any other members having dealings with members of the KZN Bar where the harassment has taken place in the workplace and/or in the course of the harasser's practice as an Advocate;
- 6.7 all premises where the business of the KZN Bar is conducted (including all Court buildings);
- 6.8 all KZN Bar related activities performed at any other site;
- 6.9 any social, business or other function where conduct or comments may have an effect on the KZN Bar or relationships within the Society.

Definition of Harassment

7. Harassment is any form of unwanted conduct which has the aim or effect of diminishing a person's dignity or creating a humiliating or offensive environment for that person.
8.
  - 8.1 The essence of all harassment is that it is unwelcome conduct which is offensive or sexual in nature to the recipient.
  - 8.2 The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another.
9. The KZN Bar prohibits any behaviour which causes offence or distress to another and which is perceived by that person as relating to or arising from his/her race, religion political belief, sex, sexual orientation

or disability and which constitutes less favourable treatment on such grounds.

10. Harassment may take a variety of forms and includes behaviour:

- 10.1 which is unwanted by the recipient;
- 10.2 which causes a hostile or threatening working environment;
- 10.3 where rejection or submission is used as a basis for decisions concerning the recipient.

11. Sexual attention becomes harassment if:

- 11.1 the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
- 11.2 the recipient has made it clear that the behaviour is considered offensive; and/or
- 11.3 the perpetrator should have known that the behaviour is regarded as unacceptable.

12. The following are examples of behaviour which may amount to harassment:

- 12.1 physical assault , including sexual assault;
- 12.2 demands for sexual favours in return for career advancement;
- 12.3 physical conduct of a sexual nature includes unwanted physical contact;

- 12.4 exclusion from social networks and activities;
  - 12.5 isolation;
  - 12.6 bullying;
  - 12.7 compromising suggestions or invitations;
  - 12.8 verbal and non-verbal forms of harassment including unwelcome innuendos, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about one's body, inappropriate questions about a person's sex life and unwelcome whistling at a person;
  - 12.9 display of offensive materials, including on computer screen;
  - 12.10 e-mailing of offensive materials.
13. Disciplinary action will be taken against any member or employee of the KZN Bar found to have harassed a colleague or other person in accordance with the KZN Bar rules regulating complaints and discipline.

Resolving complaints of harassment

14. The KZN Bar is committed to providing a supportive environment in which to resolve problems of harassment and has put in place a number of options for resolving problems. A non-adversarial approach will be adopted.

Informal resolution options

15.

- 15.1 When an incident of harassment occurs, the recipient should communicate their disapproval and objections immediately to the harasser if they feel able to do so and request the harasser to stop.
- 15.2 If the harasser does not stop or if the recipient is uncomfortable about addressing the harasser directly, he or she should bring their concerns to the attention of the Chairperson of the KZN Bar in the event that the alleged perpetrator is a member and/or to the Chairperson and the Pupillage Convenor if the perpetrator is a pupil. The Chair of the Bar Council and/or the Pupillage convenor (as the case may be) will provide advice or support as requested and will undertake any investigation necessary to resolve the matter, speedily and in confidence.
- 15.3 Within one week of the receipt of the informal complaint an investigation will be made, if necessary.

Formal complaints resolution

16.

- 16.1 Where the person subject to harassment does not wish to pursue the informal resolution options or has exhausted such options, he/she may make a formal complaint to any of the designated advisers or to named individual/s of the Bar. All such complaints will be promptly investigated.
- 16.2 A formal complaint should be made in writing. Within one week of the receipt of the complaint an investigation of the allegation

will be made and completed within 14 days, unless there are good reasons for delay.

- 16.3 Investigations will be conducted in accordance with standards of natural justice.
- 16.4 If the allegation of harassment is upheld, appropriate remedial action will be taken.
- 16.5 In addition to the sanction that may be imposed on a member or a pupil by the KZN Bar as part of a complaint resolution, members of the KZN Bar who engage in harassment may be liable for damages in the event of a civil claim or may face further sanctions imposed by the Bar Council or even criminal sanctions.

#### Raising a complaint

17. A person experiencing harassment is encouraged to raise a complaint at an early stage, preferably through the informal procedure. Raising a complaint at an early stage is more likely to result in a satisfactory resolution.
18. If left unresolved, the harassment may escalate to the point where the situation becomes much more difficult to deal with effectively.
19. Any member, employee or pupil at the KZN Bar has the right to bring to the attention of an appropriate person any behaviour which they consider to be contrary to the harassment policy, irrespective of whether they are the recipients of the harassment.
20. A member, pupil or employee of the KZN Bar who witnesses behaviour which they consider contravenes the harassment policy should take

immediate action to indicate that such behaviour is unacceptable or should immediately report such behaviour to the Chairperson of the KZN Bar and/or the Pupillage Convenor.

Confidentiality

21. The KZN Bar recognises that a recipient of harassment may find it difficult to come forward with a complaint and it is understood that recipients and alleged harassers may be particularly concerned about confidentiality and the effect that a complaint may have on career advancement.
22. To protect the interests of the complaint, the person complained against, and any others who may report or be witnesses to incidents of harassment, confidentiality will be maintained throughout any investigatory process to the extent that this is practical and appropriate under the circumstances.
23. The KZN Bar council has a duty to ensure that harassment does not recur.
24. All records of complaints, including notes of meetings, interviews, results of investigations and other relevant material will be kept confidential by the KZN Bar council except where disclosure is required for disciplinary or other remedial processes.

Victimisation

25. The KZN Bar is committed to ensuring that no person who brings forward a harassment concern in good faith is subject to any form of reprisal.

26. Any victimisation of a complainant, witness or anyone else involved in the investigation of a complaint will be viewed as professional misconduct.
27. The raising of such a complaint will not have any adverse consequences for the complainant, particularly in relation to membership of the KZN Bar and promotion decisions.

Pupil Supervisors

28. Pupillage is a period of professional training and the KZN Bar regards it as inappropriate for a sexual relationship to develop between a pupil mentor, any other member or employee of the KZN Bar and a pupil.
29. No member of the KZN Bar may participate in decisions concerning a pupil where they are or have been in a relationship with that pupil.

Appeal

30. When the member and/or the complainant is advised of the outcome of a formal complaint, the Bar Council shall advise such member and the complainant of the rights of appeal available to them in terms of clauses 6 (b), 6(c) and 6(d) of the Constitution of the General Bar Council ("the GCB"). A copy of those provisions (annexed hereto marked "A") should be repeated in or annexed to the letter of advice of the outcome of disciplinary procedure to the relevant member and/or complainant.

**H. TRANSFORMATION FUND**

1. To promote, achieve and sustain the improvements contemplated in this policy will require a nominal financial contribution from members.

2. The levy shall be implemented as set forth in the annual budget which is to be approved at the KZN Bar AGM

### **References**

1. The Cape Bar Access to Work Policy (adopted in October 2016)
2. The Cape Bar Transformation Policy
3. The Johannesburg Society of Advocates Maternity Policy (adopted in 2012)
4. The Johannesburg Society of Advocates Transformation Policy
5. Michelle Norton SC, in “*Where are the Women: The Other Transformation Issue*” Advocate, April 2017, pages 27 – 34
6. Law Council of Australia: Model Equal Opportunity Briefing Policy for Female Barristers and Advocates (20 March 2004)
7. Review of the application in NSW of the Equitable Briefing Policy of the Law Council of Australia (August 2015)
8. Law Council of Australia, *National Model Gender Equitable Briefing Policy*, June 2016
9. General Council of the Bar Draft Proposal: *Policy on the Procedure for the Handling of Cases of Sexual Harassment* (2017)
10. General Council of the Bar membership statistics as at 30 April 2016
11. KZN Society of Advocates membership statistics as at 30 April 2017

Acknowledgements

1. S. Mahabeer
2. J. Bhika
3. T. R. Palmer