

SOCIETY OF ADVOCATES OF KWAZULU-NATAL
RULES OF PROFESSIONAL CONDUCT AND ETIQUETTE

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SOCIETY OF ADVOCATES OF KWAZULU-NATAL

RULES OF PROFESSIONAL CONDUCT

AND ETIQUETTE

The Rules of Professional Conduct and Etiquette set out herein are intended for the guidance of members of the Profession. They are not exhaustive and do not cover every point that may arise in the course of the practice of the Profession.

1 GENERAL:

- (a) Counsel appearing in a division in which he does not normally practise should observe both the rules of etiquette prevailing in the division in which he normally practises and those of the division in which he is appearing. For the purposes of this rule "division" shall include any other territory.
- (b) **Professional Misconduct:** If counsel has reasonable grounds for believing that another counsel has been guilty of unprofessional conduct, it is his duty to report the matter to the Council, unless the information is privileged and such privilege is not waived.
- (c) Each member shall keep chambers. Such chambers shall be at premises approved by the Council. Notwithstanding the foregoing, the Council may permit members to practise from home, and without chambers, for a maximum period of one year where such an exemption from the rule is requested on account of the birth or impending birth of a child to such member, for the purpose of caring for the child.
(Amended 8 September 2007)
- (d) Further notwithstanding the provisions thereof, the Council may exempt a member of the Society from the provisions of clause 1 (c) hereof provided that:
 - (i) such member is an associate member of the Society; or
 - (ii) such member is a member of a constituent Bar of the General Council of the Bar of South Africa and practises from chambers approved by the Bar of which he or she is a member; or
 - (iii) such member practises as an advocate or in similar capacity in a foreign jurisdiction from the chambers situate in that jurisdiction;

And provided further that in granting such exemption the Council may impose such terms and conditions as it deems appropriate. **(Amended on 13 September 2014)**

2 SENIORITY:

- (a) Senior Counsel shall rank in seniority in accordance with their patents.
- (b) The seniority of a stuffgownsmen shall be reckoned from the time when he was first admitted as an advocate in the Republic or South-West Africa, provided that if his name has at any time been removed from the Roll of Advocates and he has thereafter been re-admitted as an advocate, his seniority shall date from the time of his re-admission save that such time shall be antedated for a period equal to the total of any periods during which his name was on the Roll of Advocates.

3 ADVERTISING:

(Resolution to delete Rule 3 in its entirety adopted on 30 August 2003)

4 PROFESSIONAL RELATIONSHIPS

- (a) **Partnerships:** No relationship in the least degree resembling partnership in practice is permissible.
- (b) **The right of counsel to participate in other callings while in practice at the Bar**
 - (i) A full-member of the Bar is not entitled to accept salaried employment which may affect his or her professional independence.
 - (ii) A full-member of the Bar may hold a post as a teacher of law at a university or other educational institution provided that the responsibilities attached to that position do not compromise his or her independence or normal duties as a practising Advocate.

(Rule 4(b) deleted and substituted 5 September 2009)

- (c) It is essential that practising advocates should retain their professional independence. Any system of payment which converts a devil's services into employment by the members requesting such services is undesirable. Thus, although it is not improper for the member requesting such service to show his appreciation therefor in tangible form, any form of payment which obliges the devil to do the work is undesirable.

5 PROFESSIONAL INDEPENDENCE

Briefs should not be accepted if counsel briefed might reasonably be thought to have been in a position to exercise influence in the decision to deliver the brief to him.

For instance:

- (a) A director should not accept a brief on behalf of the Company of which he is a director;
- (b) A member of a local authority should not accept a brief on behalf of that local authority.

6 COUNSEL AND ATTORNEYS:

(a) Briefing:

- (i) Counsel may render professional services only if briefed to do so. "Brief" means a specific instruction addressed to the counsel concerned by the attorney. Where counsel receives a brief sent by a country attorney "c/o" his city agent, the briefing attorney is the country attorney.

It is the duty of counsel when offered a brief by an attorney practising in another province, to ascertain from the Secretary of the Society of Advocates of Natal whether such attorney is in good standing under the Defaulters' Rules before counsel accepts such brief.

Where counsel is briefed for a number of Plaintiffs who have instituted separate actions arising out of the same occurrence, he must insist on receiving a separate brief for each Plaintiff, even where their cases are consolidated, and he is obliged to charge at least the fee prescribed in Rule 8(a)(ii) in respect of each brief.

- (ii) Briefs may be accepted only from practising attorneys except in the following cases:-

- (a) State prosecutions and appeals;
- (b) *Pro-Deo* defences;
- (c) Matters undertaken at the request of the Court;
- (d) Patent matters, in which case briefs may be accepted from Patent agents;
- (e) Parliamentary draftsmen and advisers to Provincial Administrations and such other similar bodies which meet with the Council's approval.

Note: With regard to the position of advocates appointed as arbitrators, umpires, *curators-ad-litem* and commissioners under the Companies Act, there have been cases where they have had difficulty in recovering their fees when they have not received briefs. It is felt that for the protection of members of the Bar, these cases should not be cited as exceptions under this rule, and that in all such cases the advocates concerned should insist upon receiving a brief or briefs. Normally the attorney who approaches the advocate to obtain his consent to act in one of these capacities should provide the brief.

- (iii) If duly instructed by an attorney, a member may properly agree to accept a particular brief *pro amico*, or for a nominal fee. But it is improper for a member to hold himself out to an attorney or attorneys, or to anyone else, as being generally prepared to undertake a case, or particular types of cases, *pro amico*, or for a nominal fee.

A member appearing *pro amico* on behalf of another member must be briefed to appear by an attorney.

It is undesirable for counsel who has agreed to act *pro amico* for any litigant, to ask an attorney to send him a brief in the matter. The litigant himself must instruct an attorney to deliver a brief to counsel.

- (iv) The rule set out in sub-rule (i) applies even though no fee is being charged, and also to cases falling under Rule 8(a)(vi).

(b) **Interviewing clients and witnesses:**

- (i) Lay clients or witnesses should not be interviewed except in the presence of the attorney or his clerk.
- (ii) In cases where it is impossible for the attorney or his clerk to attend, no interview should take place unless the member is in possession of a brief from the attorney for that particular interview.

- (c) **Counsel's Chambers in Attorneys' Offices:** It is undesirable that counsel should have chambers in attorneys' offices. There is nothing improper in counsel's chambers being in the same building as attorneys' offices, but the access to such chambers should not be through the offices of an attorney.

- (d) **Recommending of Attorneys:** It is unprofessional conduct for an advocate to recommend the name of an attorney or firm of attorneys even as one of a series.

- (e) **Conferences in Attorneys' Offices:** Consultations should be held at such premises as counsel deems appropriate in the circumstances. (Amended on 24 August 1991)

7 DUTIES WITH REGARD TO BRIEFS AND THE CONDUCT OF CASES:

(a) Duty to accept briefs:

An advocate is under an obligation to accept a brief in the Courts in which he professes to practise, at a proper professional fee, unless there are special circumstances which justify his refusal to accept a particular brief. In particular, every person who is charged before the Courts has the right to the services of counsel in the presentation of his defence. Subject to what has been said above, it is the duty of every advocate to whom the privilege of practising in Courts of Law is afforded, to undertake the defence of an accused person who requires his services. Any action which is designed to interfere with the performance of this duty is an interference with the course of justice.

Any advocate is at liberty to say that he will not practise before a particular court or tribunal without a special fee of a named amount. Where a special fee is required, the advocate should insist upon having, in addition to a reasonable brief fee, a special fee of constant amount for every brief before tribunals of the same class; but there is no objection to his having special fees differing in amount for tribunals of different classes.

A member of the Bar cannot refuse to appear against a non-member, nor can a member of the Bar refuse to take an appeal in a matter which was taken by a non-member in the lower court.

(b) Duty to client:

- (i) According to the best traditions of the Bar, an advocate should, while acting with all due courtesy to the tribunal before which he is appearing, fearlessly uphold the interests of his client without regard to any unpleasant consequences either to himself or to any other person.
- (ii)
 - (1) Counsel has the same privilege as his client of asserting and defending the client's rights, and of protecting his liberty or life by the free and unfettered statement of every fact, and the use of every argument and observation, that can legitimately, according to the principles and practice of law, conduce to this end; and any attempt to restrict this privilege should be jealously watched.
 - (2) It is inadvisable to lay down what an Advocate defending a client on a charge of crime may legitimately do in the course of his defence, but he is not entitled to attribute to another person the crime with which his client is charged wantonly or recklessly, nor unless the facts or circumstances given in evidence, or rational inferences drawn from them raise at the least a not unreasonable suspicion that the crime may have been committed by the person to whom the guilt is so imputed.
 - (3) Where a client makes a confession to his counsel either before or during criminal proceedings, counsel should explain to the client the basis on which counsel may continue with the case, namely:

- Counsel may not in the proceedings assert that which he knows to be untrue nor may he connive at or attempt to substantiate a fraud.
- He may appropriately argue that the evidence offered by the prosecution is insufficient to support a conviction or may take advantage of any legal matter which might relieve the accused of criminal liability.
- He may not, however, set up an affirmative case which he knows to be inconsistent with the confession.

If the client, having been so informed, desires counsel to appear on the above-mentioned basis, counsel should continue to hold the brief and act in accordance with the principles set out above. If the client desires counsel to give up the brief, counsel must do so.

(iii) **Cross-examination as to credit:**

- (1) Questions which affect the credibility of a witness by attacking his character, but are not otherwise relevant to the actual enquiry, ought not to be asked unless the cross-examiner has reasonable grounds for thinking that the imputation conveyed by the question is well-founded or true.
- (2) An advocate who is instructed by an attorney that in his opinion the imputation is well-founded or true, and is not merely instructed to put the question, is entitled *prima facie* to regard such instruction as reasonable grounds for so thinking and to put the questions accordingly.
- (3) An advocate should not accept as conclusive the statement of any person other than the attorney instructing him that the imputation is well-founded or true, without ascertaining, so far as is practicable in the circumstances, that such person can give satisfactory reasons for his statement.
- (4) Such questions, whether or not the imputations they convey are well-founded, should only be put if, in the opinion of the cross-examiner, the answers would or might materially affect the credibility of the witness; and if the imputation conveyed by the question relates to matters so remote in time or of such a character that it would not affect the credibility of the witness, the question should not be put.
- (5) In all cases it is the duty of the advocate to guard against being made the channel for questions which are only intended to insult or annoy either the witness or any other person and to exercise his own judgment both as to the substance and the form of the question put.

(iv) **Interviewing witnesses:**

- (1) **State Witnesses:** Subject to what follows, it is improper for the legal representatives of an accused person to interview witnesses for the prosecution. No general exception to this practice has been formulated but any deviation should be dealt with on its particular merits as and when it arises.

Applications to interview State witnesses should be made to the prosecutor concerned, or to the Senior Public Prosecutor or Attorney-General as the case may be. Such applications are dealt with having regard to:

- (1) the person making the application;
- (2) the reason given for the request;
- (3) the nature of the case; and
- (4) the particular witness whom it is sought to interview.

With these considerations in mind, the application is either refused or appropriate safeguards are imposed.

This rule is accepted as a rule of professional etiquette on the basis that the prosecution and the police do not suppress any evidence of State witnesses that is or may be favourable to the accused, and they will invariably supply the defence with the names of witnesses, whom it is not proposed to call for the prosecution, if it appears that their evidence may be of assistance to the defence.

- (2) **Witnesses in Civil cases:** A litigant and/or his legal representative is entitled to interview any person whom he has reason to believe is in possession of information which may assist the litigant in his case, and he cannot be deprived of this right by the fact that the other side has subpoenaed, taken a statement from, or interviewed such person. The other side should, however, be notified prior to the interview, that the interview will take place. But the other side is not entitled to be present at the interview.
- (3) **Interviewing Witnesses already sworn:** It is in general undesirable for counsel to interview any witness after he has been sworn or has made a solemn declaration to speak the truth. It is improper for counsel to interview a witness who is under cross-examination, unless circumstances make such an interview necessary. Where such circumstances exist counsel who desires to hold the interview must inform his opponent before doing so but it is unnecessary to state the purpose of the interview.
- (4) **Professional as opposed to personal interest:** It is undesirable that counsel should become personally, as opposed to professionally, associated with his client's interests. He should not, for example, stand bail for his client, or take part in a public movement for his reprieve.

(vi) **Counsel as a witness in a case:**

- (a) It is in general improper for a member to appear as counsel and to testify as a witness in the same case;
- (b) A member ought not to accept a brief as counsel in a case in which he has reason to believe that he will be required to testify as a witness;
- (c) When it becomes apparent, after he has accepted a brief as counsel in a case, that it is necessary in his client's interests that he testify as a witness therein, a member ought forthwith, and before so testifying, to withdraw from further participation therein as counsel, unless his client's interests would be prejudiced thereby notwithstanding the willingness of the Tribunal adjudicating upon such case to adjourn its hearing to enable other counsel to be briefed;
- (d) The provisions of this sub-rule apply not only to *viva voce* evidence but also to evidence on affidavit.

(vii) **Evolving schemes on behalf of clients to evade provisions of the law:**

Counsel is entitled to advise his client whether any proposed conduct will contravene the law. Further, he is entitled to advise a course of conduct which will so order the affairs of the client as to avoid liability under taxing and other similar statutory provisions.

Counsel is clearly not entitled to devise a scheme which involves his client in the commission of any offence.

(vii) (*bis*) **Settling reasons for the decision of any tribunal or person whose decision is attacked or questioned on review:**

When acting for any tribunal or person whose decision has been, is about to be or may be attacked or questioned on review, Counsel may settle the formulation of the reasons for such decision, for the purposes of their disclosure either in affidavits filed in the review proceedings or in any other document supplying them, by expressing them in language which he regards as appropriate and simultaneously indicative of their true meaning, as intended by the tribunal or person who gave the decision.

He may not, however, when settling the formulation of such reasons, in any material respect or to any material extent add to, subtract from or alter the true meaning of such reasons, as intended by such tribunal or person.

(viii) **Personal attention to briefs, and avoidance of "clashes":**

Counsel may not accept a brief unless he is satisfied, when he accepts it, that he can attend to it personally, and that it will not clash with any other work.

Where it becomes reasonably probable that counsel will be unable personally to attend to the brief he must inform his instructing attorney at the earliest

possible moment, and request his instructions as to what is to be done with the brief.

It is improper for counsel to hand on a brief received by him to anyone else except with the authority of the instructing attorney.

It is grossly improper conduct for counsel, in an endeavour to avoid a clash with other work, to arrange with any Court, Tribunal, Board or other body to have any matter called out of turn or stood down, save in the following special circumstances, viz:-

- (a) Where counsel is engaged in another Court *non lucri causa* (including *pro-Deo* and assessor);
- (b) Where counsel is engaged in another division of the Motion Court;
- (c) Where counsel desires to adjourn a matter by consent.

(ix) **Retainer Rules:**

- (a) A retainer is the retainer of the lay client.

General Retainers:

- (b) A general retainer must specify the courts, tribunals or matters to which it applies.
- (c) Counsel is not bound to accept a general retainer.
- (d) A general retainer is not binding unless and until accepted by counsel, and ranks for priority according to the date of acceptance.
- (e) A general retainer may by its terms be limited as to its duration. In the absence of any such limitation a general retainer lasts, subject to sub-rule 9, during the joint lives of counsel and client.
- (f) A general retainer applies only to proceedings to which the client on whose behalf the retainer was given is a party. A general retainer on behalf of a body corporate or unincorporate does not apply to any proceeding to which the individual members or a member of the body and not the body itself are parties and in particular a general retainer on behalf of a holding company does not apply to proceedings to which a subsidiary company, and not the holding company itself, is a party.
- (g) A general retainer applies to a proceeding in which the client on whose behalf it is given appears separately, but not to a proceeding in which he appears jointly with another person.
- (h) The giving of a general retainer confers no authority on counsel. A brief must be delivered in order to authorise counsel to take any step in a proceeding.
- (i) If, after the commencement of any proceeding to which a general retainer applies:-

- (aa) no brief or special retainer is delivered to the retained counsel within a reasonable time; or
- (bb) the retained counsel has enquired of the attorney acting for the lay client in such proceeding whether he is to receive a brief or special retainer, and has not received a brief or special retainer within seven days, or has received an answer in the negative, the counsel may treat the general retainer as determined and may accept a brief or retainer from another party;

Provided that:

- (1) The non-delivery of a brief to a Silk holding a general retainer on any occasion on which it is usual to instruct a junior counsel only and junior counsel only is in fact instructed, shall not operate to determine the general retainer of the Silk.
- (2) When more than one junior counsel hold general retainers the delivery of a brief to one only of such counsel on any occasion on which it is usual to instruct one junior counsel only, and one junior counsel only is in fact instructed, shall not determine the general retainer of the other or others of such counsel.
- (3) A general retainer shall not be determined by failure to deliver a brief or special retainer in a case coming before a tribunal before which the counsel cannot appear without receiving a special fee, provided that in such case he shall be at liberty to accept a brief or special retainer from any other party unless prevented from doing so by some other rule.
- (4) The non-delivery of a brief or special retainer which, in accordance with sub-rule (m), counsel has intimated that he cannot be required or ought not to accept shall not operate to determine a general retainer.

- (j) **Special Retainers:** A counsel who has received a special retainer is entitled to a brief on every occasion on which counsel is briefed in a proceeding to which the special retainer applies:

Provided always: A special retainer does not entitle a Silk to a brief on any occasion on which it is usual to instruct a junior counsel only and a junior counsel only has in fact been instructed. When more than one junior counsel has been retained, only one of such junior counsel is entitled to a brief on any occasion on which it is usual to instruct one junior counsel only, and one junior counsel only has in fact been instructed.

- (k) **Return of Special Retainer Fees:** There is no obligation on counsel to return a special retainer fee should he subsequently find it necessary to return his brief on account of lack of time to attend to it, or for any other proper reason. The consideration for a special retainer fee is that the recipient will not take the brief of the opponent.

- (l) **Appeals:** When a counsel has held a brief for any party in any proceeding he shall not accept a special retainer or brief on an appeal (including in that expression any appeal to the Appellate Division) from any decision in such proceeding for any other party without giving the original client the opportunity of retaining or delivering a brief to him for such appeal.

- (m) **Embarrassment:** No counsel can be required to accept a retainer or brief or to advise or draw pleadings if he has previously advised another person on or in connection with the same matter, and he ought not to do so if he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by such other person, or if his acceptance of a retainer or brief or instructions to draw pleadings or advice would be inconsistent with the obligation of any retainer held by him and, if he has received any such retainer, brief or instructions inadvertently, he should return the same.

Note: The Council has ruled that it is improper for a member to accept a brief to appear in a matter when he has at an earlier stage appeared and/or signed any pleading for the other party in that matter.

- (n) **Opinions and Pleadings:** Subject to the provisions of sub-rule (m), the employment of counsel to settle the summons or other document initiating any proceeding or any pleading or any affidavit therein, or to advise in connection with any proceeding, whether before or after the commencement thereof, or to appear on any interlocutory application in any proceeding, shall be equivalent to the delivery of a special retainer for that proceeding unless accompanied by express notice to the contrary, in which case counsel is not thereby precluded from acting for any other party. This rule shall not apply in cases where a member is briefed on a purely formal motion which does not necessitate the merits of the case being laid before him. Such formal motion does not include an application for leave to proceed by way of edictal citation.

- (o) When a brief is offered or delivered to any counsel, and he finds that another counsel has become entitled to a brief in terms of sub-rule (n) and has not been briefed:

- (i) First-named counsel shall in the first instance communicate with the other counsel, inquiring whether he has any objection to the first-named counsel accepting the brief;
- (ii) If the other counsel states that he has some objection, first-named counsel shall communicate with the attorney offering or delivering the brief to ascertain whether there is any sufficient explanation why a brief has not been offered or delivered to the other counsel. Unless a sufficient explanation is given, first-named counsel should refuse or return the brief.

In considering what is sufficient explanation, the following rules apply:

- (1) The expressed wish of the lay client to be represented by counsel other than counsel so entitled to the brief is a sufficient explanation.

(2) Where the attorney concerned gives an explanation that he is not prepared to pay the fee asked by counsel so entitled to the brief, counsel to whom the brief is offered or delivered should not accept the brief unless he has satisfied himself by communicating with former counsel that former counsel is not prepared to accept the brief at the fee which the attorney is prepared to pay.

(3) Change of attorneys is not itself a sufficient explanation.

(p) In these rules "proceeding" includes any action, suit, appeal or other proceeding in any court or before any tribunal, but an appeal from the decision in any such proceeding or any proceeding in insolvency or criminal proceeding arising out of any other proceeding shall be deemed to be a separate proceeding. Any application for leave to commence any proceeding shall be deemed to be an interlocutory application in such proceeding.

(x) **Appearing as Counsel at meetings, etc:**

Where a member of the Bar is briefed to represent the interests of an individual member or body of members of a company, association or other body at a corporate meeting, or to speak on behalf of a deputation, he should inform the chairman of the meeting or the person meeting the deputation of the capacity in which he is present.

(xi) When counsel appears on his own behalf, he should not be robed, and should not address the Court from a part of the Court reserved for counsel.

(xii) **Canvassing or securing Judges to hear a particular case:**

It is improper for any member to take any steps designed to ensure that a particular Judge is a member of the Bench hearing a particular case. In particular it is grossly improper for a member to approach a particular Judge, to hear or not to hear, a particular case except when that approach is for the purpose of informing the Judge in question that there is some proper objection to his hearing the case.

8 FEES:

(a) General:

- (i) Counsel's fee on brief and in court (or before any tribunal, board or other body) should either be marked on the brief before the brief is delivered or agreed between the attorney and counsel before counsel marks the brief.
 - (ii) If no agreement is reached as aforesaid, counsel shall mark his brief at what he regards as a reasonable fee and advise his instructing attorney that he is entitled to invoke the disputes procedure in relation to fees applicable in terms of the constitution of the liaison committee subsisting between the Society of Advocates of Natal and the Natal Law Society.
 - (iii) In the case of chamber work the delivery of an unmarked brief authorises the marking of a reasonable fee which:-
 - (a) if the matter is of a routine nature, where discussion with the attorney would be superfluous, shall be marked by counsel without reference to the attorney, but subject to the attorney's right to invoke the disputes procedure if he regards the fee as excessive;
 - (b) in any other case shall be agreed between the attorney and counsel before counsel marks the brief and failing such agreement shall be marked by counsel in accordance with sub-rule (ii) hereof.
 - (iv) A brief may not be marked at a fee to be such a fee as may be allowed on taxation.
 - (v) Once marked, the fee may not be increased or reduced or waived except with the consent of the Council provided that where counsel is appointed to an office by the Court (e.g. as *Curator-ad-litem*) he may reduce his fee to the fee allowed on taxation without referring the matter to the Council, and provided further that a fee may be altered within one month of being marked without the consent of the Council.
- Note:** No general rules can be laid down as to the circumstances in which the Council will consent. Each case will be considered on its merits.
- (vi) 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.
 - (vii) (a) In matters affecting an attorney which directly concern only his professional status or conduct, it is general practice for members of the Bar not to charge a fee.
 - (b) In such matters, members may charge a fee in connection with litigation on the understanding that such fees will be waived to the extent that the attorney is not successful in recovering fees from the other side.
 - (c) Subject to the permission of the Council in each particular case, a member may accept a brief to appear on behalf of another member (who is the litigant) on the basis that he will charge fees only if the litigant member is successful.

- (viii) Fees for any professional services may only be paid by or through an attorney, save in the cases set out in Rule 6(1)(ii) or by the Legal Aid Board, or the Road Accident Fund, provided that the instructing attorney consents to payment by the Road Accident Fund in writing.

(Amended 16 September 2017).

- (ix) These rules shall not apply to *in forma pauperis* cases insofar as these rules are inconsistent with the rules of Court on such matters.
- (x) Counsel may not accept payment in *pro deo* cases from any person other than the Registrar of the Court, even where such payment is tendered *ex gratia*.
- (xi) **(Deleted at AGM on 24 August 1991)**
- (xii) A fee on brief does not include a fee on conference with the client or witnesses and such conference must therefore be charged for separately.
- (xiii) It is obligatory on counsel to charge the fee marked on his brief, even where the case is settled or not proceeded with.
- (xiv) If counsel is served by his instructing attorney with a notice of taxation he should ignore it.
- (xv) Counsel may not accept a Bill of Exchange, Promissory Note, good for, I.O.U., or post dated cheque in payment of fees, provided that there is no objection to the acceptance of a cheque payable immediately or post dated to a date earlier than the date upon which the fees become overdue. **(Rule 8(a) – amended 11 August 1990).**

(b) **Fees on brief:**

- (i) A fee on brief is chargeable by counsel in order to compensate him for work done in preparation for the trial of a case and for the loss of opportunity to earn fees from other work suffered in consequence of his acceptance of a trial brief. Where neither of these factors is present, counsel will not ordinarily be entitled to charge a fee on brief.
- (ii) The factors which are ordinarily to be taken into consideration when fixing a trial fee are the following:-
- (a) The time and labour spent in preparation for the trial, the novelty and difficulty of the questions involved in the case and the skill required in order properly to conduct the case;
- (b) The amount involved in the dispute and its importance to the client.
- In assessing a proper fee on brief it is relevant for counsel to have regard to the customary charges of counsel of comparable standing at the same Bar for similar services.
- (iii) Where a trial is settled in advance of the hearing the factors set out in paragraphs (ii)(a) and (b) will determine whether a fee on brief is to be charged and if so the amount thereof.
- (iv) Where counsel is not entitled to charge a fee on brief under this rule, the brief should be returned by him upon being advised that the case has been settled.
- (v) Where a fee on brief is chargeable under this rule, the amount thereof should

not, unless otherwise requested by the attorney, be determined or settled between counsel and his attorney until the first day of the trial which has been settled.

- (vi) Where a case occasions extraordinary disruption to counsel's practice or loss of opportunities to accept other work, for example, because of its duration, public notoriety or the amount of preparatory work involved, counsel should make special arrangements with the attorney concerning the circumstances in which a fee on brief will be charged and the amount thereof. Such special arrangements may involve a departure from sub-rules (i), (ii) and (v) hereof.
- (vii) If counsel is approached by the attorney prior to the case with a view to agreeing a fee on brief he is not entitled to refuse to do so. If no agreement can be reached the attorney may withdraw the brief, subject to payment of fees where such are properly chargeable under these rules, or may proceed on the basis that the disputes procedure under rule 8(a)(ii) will be invoked.
- (viii) This rule shall also apply in determining the proper fee chargeable in opposed applications and, *mutatis mutandis*, where the trial of an action is adjourned.
(Rule 8(b) - inserted 11 August 1990).

(c) **Refresher:**

Where counsel is engaged in a case for more than one day a refresher is chargeable in respect of the days after the first day. If the hearing does not occupy the whole of any day, that is a factor to be taken into account in fixing the amount of the refresher. This applies where the case has not occupied the whole of the first day, and in such a case that fact may be taken into account in fixing a refresher, even if the whole of the second day is occupied on the same case. If part only of the second day is occupied counsel may decide not to charge a refresher at all.

9. DEFAULTERS' RULES:

- (a) It is the duty of every member to keep proper fee records showing at least the following:-
 - (i) a daily record of fees earned;
 - (ii) the names of attorneys who brief him during the month;
 - (iii) all outstanding fees.
- (b) Members may require fees to be paid in advance. If this is not done a list of all outstanding fees must be rendered monthly. An exception is in respect of matters where permission has been granted by the Bar Council for fees to be collected after a period of six months.
- (c) In matters other than matters covered by paragraph (d), fees shall be paid within one month calculated from the first of the month following the month in which the fees accrued, unless otherwise agreed with the consent of the Bar Council.

(Amended 5 February 1991).

- (d) In opposed matters involving appearances before any tribunal fees should be paid within one month, calculated from the first of the month following the month in which the fees accrue, unless Counsel has for good cause agreed with his attorney prior to accepting the brief for that appearance, that his fees, including any fees incurred in the course of preparation for such appearance, may be paid over a longer period (whether or not in instalments), in which event the fees should be paid in accordance with such agreement.

(Rules 9 (c) and (d) – Amended 23 November 2017).

- (e) Where an agreement as is envisaged in paragraph (d) above is reached, counsel shall be obliged forthwith to report to the Bar Council:
 - (i) the fact of such agreement;
 - (ii) the identity of the attorney and the lay client;
 - (iii) the terms of such agreement;
 - (iv) the cause justifying the conclusion of such agreement.
- (f) Such an agreement shall only be varied by counsel with the approval of the Bar Council. Where no special agreement is reached or where the attorney finds himself unable to comply with the terms of a special agreement, an agreement to afford the attorney further time for payment or for counsel to continue the matter on a contingency basis may only be concluded by counsel with the approval of the Bar Council. ("Contingency basis" means a fee dependent on success in the matter).
- (g) In an appropriate case, such as unforeseen insolvency of the client, counsel may, with the approval of the Bar Council, waive fees already incurred or any portion thereof.
- (h) Where fees become overdue because:
 - (i) no special agreement has been concluded and they have not been paid within the period subscribed in (c) and (d) above;

the period prescribed in (c) and (d) above;

- (ii) they have not been paid timeously in accordance with any special agreement in regard to which the failure to pay any agreed instalment on due date shall render that portion of the fee overdue;
- (iii) payment is not made in accordance with any amended agreement or extension of time approved by the Bar Council;
 - (1) counsel shall affix to his fee note a sticker requiring the attorney to pay within seven days;
 - (2) in the event of payment not being received, counsel shall be obliged to report such non-payment to the Secretary, who in turn shall report the matter to the Secretary of the Law Society, to take such steps against the defaulting attorney as that Society deems fit;
 - (3) in the event of payment not being received within fourteen days of the Secretary of the Law Society being so advised, the Secretary of the Bar Council shall place the attorney on the list of defaulters.
- (i) Once an attorney is placed on the defaulter's list he shall be entitled to have his name removed therefrom on paying all fees which were overdue for payment by him at the time he was placed on the defaulter's list.
- (j) It shall constitute unprofessional conduct for counsel:
 - (i) to conclude an agreement for the payment of his fees over a period longer than six months without first obtaining the approval of the Bar Council thereto;
 - (ii) to fail to report to the Bar Council any agreement concluded in terms of paragraph (d) hereof;
 - (iii) to enter into any agreement with an attorney for the payment of his fees over a period longer than two months other than in accordance with these rules;
 - (iv) to enter into an agreement in accordance with paragraph (d) hereof, unless there exists good cause for his doing so in the interests of providing access to justice for the lay litigant.
- (k) Where counsel enters into an agreement with his attorney contrary to the provisions of this rule he shall be guilty of unprofessional conduct, and shall not be entitled to invoke the provisions of the defaulter's rules to enforce payment of his fees by that attorney until such fees become overdue in accordance with the agreement concluded by him with his attorney.

(Rules 9(c) to (k) - Amended 11 August 1990).

- (l) Where a partnership firm of attorneys is dissolved, all fees owing by the partnership to counsel become payable on dissolution and counsel may demand payment of his fees from any partner. Should the fees remain unpaid for a period of three months from the end of the month in which the fees were earned any member who has made such a demand shall notify the Secretary in writing, who shall forthwith follow the procedure set out in Rule 9(h).

- (m) Notwithstanding the provision of any other rule, a member shall be under no obligation to accept a brief from an attorney whose name appears on the list of defaulters.
- (n) The Bar Council, having caused the name of an attorney to be entered on the list of defaulters, may at its discretion remove the name of such attorney, or replace it on the list, without obtaining the consent of the counsel directly concerned.
- (o) A member may levy interest on amounts due and payable by an attorney to that member, calculated from the due date for payment until the date of receipt of payment, at the mora rate, prescribed from time to time.
- (p) The Defaulters' Rules also apply to the State Attorney.

(Rule 9(m) to (t) deleted and replaced with Rule 9(m) to (p) 1 September 2012)

10 SILKS AND JUNIORS:

- (a) A junior who wishes to make application for appointment as a Silk shall give written notice of his/her intention to the Chairman of the Society, stating:
 - (i) his/her full name;
 - (ii) the date upon which he/she was admitted as an advocate;
 - (iii) the period for which he/she has practised at the Bar;
 - (iv) the nature and extent of his/her practice for 2 to 3 years before the application for Silk.
- (b) The opening date for such application shall be 31 March of each year and the closing date for such applications shall be 30 April each year.
- (c) In addition to the factors set out in paragraph (d) below, the following general criteria shall serve as guidelines to the Silks on the Council:-
 - (i) having regard to the concept of Silk which is a high honour conferred on an individual by the Head of State and that the echelon of Silks within the body of members of the Bar is intrinsically that of a leading minority, there may in any given year be no suitable candidates.
 - (ii) in deciding on the recommendations that may prudently be made for the conferment of silk in any given year, due regard shall be had to the number, race and gender composition of the body of Silks at the Bar and the ratio of Silks to juniors in Kwazulu-Natal. In addition, regard may be had to applicants' specialized fields of practice at the Bar.
- (d) As soon as possible after the closing date the Silks on the Council, taking into account all factors they consider relevant, namely:
 - (i) the reputation of the candidate, having regard to his/her honour and integrity;
 - (ii) whether he/she has established a good senior/junior practice and undertakes a range of work, including complex matters before higher courts such as the Constitutional Court, the Supreme Court of Appeal and the Labour Appeal Court;
 - (iii) his/her contributions to transformation;
 - (iv) his/her assistance in promoting the Bar in its activities, particularly in the education and training of pupils;
 - (v) his/her activities in the community, whether charity, upliftment, *pro bono* work and other good works which can reflect well on the Bar as a whole or on the individual in particular;

shall decide which, if any, of the proposing applicants should be permitted to apply. The decision of the majority of Silks shall be binding and, if there is an inequality of votes, the Chairman shall have a casting vote, provided that (and notwithstanding the provisions of this sub-Rule) the Chairman of the Society may in his discretion, or on the request of the Silks on the Council, call upon the applicant to provide such further information which may be relevant before arriving at a decision on his/her application.

- (e) If the Silks on the Council do not support a proposed application, the applicant may not proceed with the application and, if he/she does, he/she shall be deemed to be guilty of professional misconduct and shall be liable, on being found guilty, to such punishment as the Council shall deem proper, including, in particular, suspension or expulsion from membership of the Society.
- (f) The Chairman shall inform the Judge President informally of the proposed application which the Silks support.
- (g) The Chairman shall inform each of the proposed applicants informally of the Judge President's attitude to his/her proposed application.
- (h) After the Judge President's attitude to a proposed application has been conveyed to the applicant, the applicant may make formal application to the Secretary of the Society stating:-
 - (i) his/her intention to apply for Silk;
 - (ii) his/her full names;
 - (iii) the date upon which he/she was admitted as an advocate;
 - (iv) the period for which he/she has practised at the Bar.
- (i) A formal application shall then be made to the Minister of Justice containing the following information:
 - (i) the full names of the applicant;
 - (ii) the date upon which he/she was admitted;
 - (iii) the language in which his/her letters of appointment are to be issued.
- (j) Where more than one application is allowed the applications shall be placed in chronological order according to the seniority of the applicants.
- (k) The Chairman shall send all of the applications which have been allowed to the Judge President under cover of a letter in which he/she states:
 - (i) that he/she confirms the date of admission of the applicant;
 - (ii) the period for which the applicant has practised at the Bar;
 - (iii) that the applicant has conducted himself/herself in a honourable and responsible manner;
 - (iv) that the applicant's practice justifies the conferring upon him/her of senior status;
 - (v) that the Silks on the Council support the application.
- (l) The application will be forwarded to the Minister of Justice by the Judge President.

(Amended 16 September 2017).

- (m) In any matter in which two or more Counsel are briefed each shall be entitled to a reasonable fee for his services which fee shall be determined without reference to any fixed percentage of any other fee.
- (n) Counsel may not recommend other counsel to lay clients but may recommend other counsel to an attorney:

- (i) if asked by the attorney concerned to do so;
 - (ii) in relation to a specific brief or matter;
 - (iii) if he *bona fide* believes that the counsel recommended by him is suitably qualified to deal with such brief or matter.
- (o) There is nothing unprofessional in accepting a brief as Junior to a dual practitioner.
- (p) A Leader's permission for his Junior to be absent during the hearing of any matter shall be given only in exceptional circumstances.

(Amended 26 November 1984).

11 PUPILS:

- (a) Every person, approved by the Council, who has filed an application to Court for his admission as an advocate shall be eligible to become a pupil member of the Society on such terms and for such period as the Council may decide: provided that no such pupil member shall be entitled to vote at meetings of the Society or be required to pay any subscription in respect of such pupil membership.
- (b) On accepting a Pupil Member the Council will assign him to the tutelage of a Master who is a member of the Society and who is of sufficient standing in the opinion of the Council to undertake the responsibility of instructing the Pupil Member.
- (c) It is the duty of every Member to undertake the training of such Pupil Members as may be assigned to him by the Council:
- (d) The Master shall assist his pupil by training him in court work generally, and, in particular by enabling him to obtain from him a certificate to the effect that he has satisfied the following minimum requirements:
 - (i) that he has assisted actively (from the stage of preparation for trial to the conclusion of the trial) in the preparation and conduct of:-
 - (a) three civil trials, of which at least one must have been in the Magistrate's Court and one in the Supreme Court;
 - (b) six criminal trials, of which at least one must have been in the Magistrate's Court and one in the Supreme Court;
 - (ii) that he has assisted actively in the settling of affidavits for, and in the preparation and presentation of argument in, two opposed applications (whether in the Supreme Court or Magistrate's Court);
 - (iii) that he has assisted actively in the preparation and conduct of two appeals (whether Civil or Criminal or both, and irrespective of the Court appealed from or the Court appealed to);
 - (iv) that he has gained reasonable experience of unopposed Supreme Court motion work and unopposed divorce work;
 - (v) that he has received adequate instruction and is familiar with the ethics and traditions of the profession and the rules of the Society;
 - (vi) that he has been kept busy at all times during his pupil membership.
- (e) Subject to any exemption granted in terms of sub-rule (j) below, a Pupil Member is required to be a Pupil Member for a minimum period of four months or for such longer period as it may take him to obtain the certificate referred to in sub-rule (d) above.
- (f) Upon the Pupil Member's compliance with the requirements set out in sub-rules (d) and (e) above and provided that he shall have passed the examination set by the National Bar Examination Board, he may be admitted by the Council as a Member of the Society, after which he will be free to receive briefs and to practise on his own account. **(Amended 24 August 1985).**

- (g) With regard to *pro-Deo* criminal trials, the following rules apply in respect of Pupil Members:-
- (i) It is the responsibility of the Master of a Pupil Member to find appropriate cases being conducted *pro-Deo*, if not by himself then by an advocate capable of giving proper instruction to the Pupil Member and to arrange for the Pupil Member to take part in the trials of such cases.
 - (ii) The Master or such other advocate conducting the defence *pro-Deo* (as the case may be) shall supervise the part played by the Pupil Member in the preparation for the trial.
 - (iii) The Pupil Member shall robe and appear in Court as an unpaid junior to the advocate conducting the defence *pro-Deo*.
- (h) A Master may also arrange for his pupil to appear in Court as unpaid junior to a Member appearing for the prosecution, subject to the conditions set out in sub-rule (g) above, *mutatis mutandis*.
- (i) When a Pupil Member appears in Court as his Master's unpaid junior (whether in a *pro-Deo* defence or any other criminal or civil case), he may be assigned to such tasks in Court as his Master deems appropriate. The Master is at all times obliged to be present in Court and not to leave the Pupil Member to conduct any part of the proceedings on his own.
- (j) Exemption from all or any of the requirements referred to above may be granted to any Pupil Member who has, prior to his admission as a Pupil Member or during his term of pupil membership, to the satisfaction of the Council, had practical experience of the whole or any portion of the prescribed requirements.
- (k) For the purpose of enabling his pupil to obtain one or more of the credits referred to in sub-rules (d)(i), (d)(ii), (d)(iii) and (d)(iv) above, it is the responsibility of the Master of a Pupil Member to find appropriate cases being conducted, if not by himself, then by an advocate capable of giving proper instruction to the Pupil Member, and to arrange for the Pupil Member to take part in the preparation and hearing of such cases.

12 APPOINTMENTS:

No member of the Bar should make known, except insofar as is absolutely necessary, the fact that he has been offered, or has refused, an appointment to the Bench, whether acting or otherwise.

13 ROBINING:

Note - It is impossible for the Council to lay down any rule of permanent duration in regard to this matter. The practice at present (January, 1979) is for counsel to robe in the Supreme Court, The Bantu Appeal Court, The Bantu Divorce Court, before a Court-Martial and before a Select Committee of the Provincial Council, but not in the Magistrates' Court. This list does not purport to be exhaustive, and in circumstances which may arise in the future members should, when in doubt, consult the Chairman of the Bar Council.

14 PROFESSIONAL INDEMNITY INSURANCE:

Every member of the Society shall be obliged to take out professional indemnity insurance in such form and for such minimum cover as is determined by the Society from time to time and to pay the premiums due on such policy. Should a member fail or refuse to meet the said obligation, he may be found to be guilty of professional misconduct and shall be liable on being found guilty to such punishment as the Council shall deem proper. **(Inserted 24 August 1985)**

15 RULES RELATING TO COMPLAINTS AND ENQUIRIES:

- (a) The Chairman may appoint any member to investigate a complaint against a member.
- (b) Any person so investigating shall be entitled, after informing the member of the complaint, to require the member whose conduct is being investigated to produce any books, records or documents with regard to or relevant to the investigation of the matter being investigated.
- (c) If, in the opinion of the member investigating, a proper investigation requires that he should have the assistance of any other member or members or any other person whatsoever, he may approach the Chairman with a view to obtaining the assistance of any person hereinbefore referred to and, if so authorised, shall be entitled to obtain such assistance.
- (d) If the person so investigating is of the opinion that the member concerned ought to be charged with misconduct (including any breach of the Rules of Professional Conduct and Etiquette) he shall frame the charge which shall be submitted to the Council.
- (e) The Council shall thereupon decide whether the enquiry shall be conducted by the Council or by a committee of members of the Society. If the enquiry is to be conducted by a committee, the Council shall appoint the committee which shall consist of not less than 3 and not more than 5 members of the Society and the Chairman of such committee shall, where practicable, be a Silk.
- (f) A committee so appointed shall have all the powers of the Council with regard to the conduct of the enquiry.
- (g) The enquiry shall be conducted in such manner as the Council or the committee, as the case may be, shall direct.
- (h) If the member concerned is found guilty of the charge the Council or the committee may impose any penalty referred to in paragraph 9(e) of the Constitution.
- (i) If the enquiry is conducted by a committee any person found guilty may appeal to the Council in such manner and in accordance with such procedure as the Council may direct.

(Amended 26 September 1989)

- (j) If the Council conducts the enquiry any person found guilty may appeal to an Appeal Committee (which shall consist of not less than three and not more than five Silk members of the Society) appointed by the Council. This Committee shall have the power to conduct the appeal in such manner as it directs.
- (k) A person who has lodged a complaint against any member, and who is aggrieved by the decision of the person, or group of persons or committee investigating such complaint or of the enquiry committee or the Council acting on the advice or recommendations thereof may appeal to the Council or (if it is in respect of the Council's decision) to an Appeal Committee appointed and empowered as aforesaid.
- (l) Any appeal provided for in this Rule shall be noted before the expiry of one month from the decision appealed against.

(Amended 13 September 2014)

16 BY-LAWS RELATING TO THE *PRO-DEO* REPRESENTATION OF ACCUSED PERSONS:

(Resolution to delete Rule 16 in its entirety adopted on 5 September 2005)

17 DISCHARGE OF FINANCIAL OBLIGATIONS TO THE SOCIETY

All members of the Society shall pay monthly, on due date, any monies owing by them to the Society. Any member who fails or refuses to discharge their financial obligations to the Society timeously, may be subjected to such sanction as the Council deems appropriate. **(Introduced 2 September 2000)**

NOTE: Pages 27 to 29 removed on account of deletion of Rule 16

ADVERTISING

- (a) (i) Counsel may advertise.
 - (ii) An advertisement must be factually true and must not be of a kind that is or might reasonably be regarded as:
 - (aa) false, misleading or deceptive;
 - (bb) in contravention of any legislation;
 - (cc) vulgar, sensational or otherwise such as would bring a court, the counsel, another counsel or the legal profession into disrepute or ridicule.
 - (iii) Counsel may on the basis of specialised qualification or experience and with the prior approval of his or her Bar Council advertise or hold himself or herself out as being a specialist or as offering specialist services.
- (b) The Bar Council shall establish an advertising subcommittee to perform the functions set out hereafter. The chair of the Advertising Subcommittee shall be a silk.
- (c) (i) Save as is provided for in Rule 18(d), prior to the publication of any advertisement in any form, such advertisement shall be submitted to the Advertising Subcommittee for approval of its form, content and mode of publication. Such application shall be made in writing.
 - (ii) Any issue as to whether an advertisement complies with or falls within Rule 18(d) shall be decided by the Advertising Subcommittee.

- (iii) Counsel shall have the right to appeal to the Bar Council in the event of counsel being aggrieved by any decision made by the Advertising Subcommittee in connection with an advertisement or proposed advertisement of that counsel.
 - (iv) The Bar Council shall be entitled to rescind or vary any of its own decisions, or a decision of the Advertising Subcommittee, concerning any particular advertisement in the event of a review of such decision being requested in writing by at least ten members of the Society in good standing; provided that the Bar Council's decision on review shall be final in relation to the particular advertisement in question.
- (d) An advertisement complying in all respects with the following provisions may be published without reference to the Advertising Subcommittee.
 - (i) The advertisement shall be written, and shall be specifically and solely directed and sent by advertising counsel to an attorney or a firm of attorneys.
 - (ii) The advertisement may contain the following information concerning counsel.
 - (aa) Physical and postal address.
 - (bb) Telephone, fax, e-mail and docex details.
 - (cc) Degrees and diplomas.

- (dd) The period for which counsel has practised as an advocate.
 - (ee) Date of taking silk.
 - (ff) Admission as a legal practitioner in other jurisdictions.
 - (gg) Particulars of counsel's work experience outside of practice as an advocate, but excluding any reference to employment in an acting or full-time capacity as a judicial officer or as a member of any tribunal before which counsel may in the future be briefed to appear.
 - (hh) Membership of any other professional society.
 - (ii) Counsel's involvement in any other society or association.
- (iii) The advertisement shall be of and concerning advertising counsel alone, and shall not contain the name of nor any reference to any other advocate, or seek to claim any association or link between counsel and any other advocate, attorney or lay client.
- (iv) The advertisement may contain a photograph of counsel.
- (v) The advertisement shall:
- (aa) contain no information in any form save for the foregoing;
 - (bb) comply in every respect with Rule 18(a); and

- (cc) convey the information contained therein without undue emphasis upon style and advertising strategies which serve to hinder rather than to facilitate intelligent selection of counsel.
- (vi) The Advertising Subcommittee shall have the power to relax the provisions of Rule 18(d)(ii)(gg) as regards full-time employment either as a judicial officer or as a member of a tribunal, when in a particular case the period of service in such capacity by counsel was so lengthy that a failure to disclose it would unfairly prejudice counsel in giving an account of her or his employment history prior to commencement of practice as an advocate.
- (e) A response from counsel to a request directed to counsel by an attorney in the ordinary course of practice for particular information concerning counsel's experience in any type of matter, counsel's charging practices or counsel's availability shall not be regarded as advertising. However counsel shall ensure that the response given complies in every respect with Rule 18(a)(ii).
- (f) Copies of all advertisements published by counsel shall be retained by counsel for a period of at least two years after the date of last publication of such advertisement. In the case of the same advertisement being sent to a number of attorneys, it shall be sufficient for counsel to retain a representative copy of the advertisement together with a list of all attorneys to whom such advertisement was directed.

- (g) Counsel may not engage a tout. Counsel may not make any payment to any person for the purpose of procuring professional instructions, save for payment of ordinary commercial rates for work done by third parties in connection with the production and publication of any approved advertisement.
- (h) To the extent that the following Rules arise in connection with any proposed advertisement, the Advertising Subcommittee shall apply them.
 - (i) It is the duty of counsel to vouch for the correctness of the contents of an advertisement when seeking approval. No advertisement may be approved which involves puffery or claims which cannot be verified.
 - (ii) No advertisement shall contain material which would or might have the effect of diminishing public confidence in the administration of justice.
 - (iii) No advertisement may contain comparisons with or criticisms of other persons, whether they be advocates or members of any other profession. No advertisement may identify any person other than advertising counsel without the written consent of such person.
 - (iv) Counsel may not advertise a willingness to do work on a contingency basis without at the same time disclosing whether or not and to what extent disbursements will be claimed.

- (v) No advertisement may contain communications which directly or indirectly guarantee or predict the outcome of the service offered by counsel.
- (vi) No advertisement shall include statements about counsel's success rate.
- (vii) No advertisement shall identify cases in which, or lay clients by whom, counsel is or has been engaged. Client confidentiality shall not be breached in any advertisement.
- (viii) No advertisement may state or imply that counsel has the ability improperly to influence a Court, Court officer, Governmental Agency or Government Official.
- (ix) Save as provided in Rule 18(d)(vi) with respect to an advertisement contemplated by Rule 18(d), no advertisement may refer to counsel's employment in an acting or full-time capacity as a judicial officer or as a member of a tribunal before which counsel may in the future be briefed to appear.
- (i) In making its decision on an advertisement submitted for approval, the Advertising Subcommittee shall consider the following principles.
 - (i) Advertising by counsel should not be so frequent or obtrusive as to cause annoyance to those to whom it is directed.
 - (ii) Counsel must ensure that the information contained in any advertising which counsel publishes is disseminated in an objective and understandable fashion, and would facilitate an attorney's ability to select an advocate. Counsel

should strive to communicate such information without undue emphasis upon style and advertising strategies which serve to hinder rather than to facilitate intelligent selection of counsel.

- (iii) Group advertising is undesirable unless all members of the Society are part of the group.
- (iv) Advertisements of groups comprised of only some members of the Society tend to be misleading or deceptive because they convey or tend to convey an advantage in briefing any one member of such group by reason of his or her association with the other members of such group.
- (v) Advertising time charges otherwise than with respect to consultations might reasonably be regarded as misleading or deceptive by reason of the inability of counsel to make a verifiable representation as to the time which may be employed by counsel in performing any task.
- (vi) Advertisements by counsel quoting a fee for a task or service should not be approved unless they are accompanied by a statement that a full written description of such service or task is available in counsel's chambers, and the Advertising Subcommittee has seen and approved such written description as one sufficient to meet the requirements of Rule 18(a).
- (vii) Advertising should be directed at attorneys and not at the public.

- (viii) If an advertisement is to be published in such a way as to render it likely that members of the public will have access to it, then the content of the advertisement should be assessed taking that factor into account.
- (ix) Save when the Bar Council's approval has been given as contemplated by Rule 18(a)(iii), all advertisements which contain an expression of interest on counsel's part in receiving work in any particular field shall also contain a statement to the effect that counsel does not claim any special expertise in such field. Such statements shall be given the same prominence in the advertisement as the expression of interest.
- (j) (i) An application for the approval of an advertisement contemplated by Rule 18(a)(iii), or for general approval of a right to advertise as contemplated by Rule 18(a)(iii), shall be made to the Advertising Subcommittee. If the advertisement is found otherwise in order, the Advertising Subcommittee shall refer the question contemplated by Rule 18(a)(iii) to the Bar Council with the Subcommittee's recommendation, and a statement of reasons therefor.
- (ii) The Bar Council shall not approve any application for approval in terms of Rule 18(a)(iii) unless it is satisfied:
 - (aa) that the field in respect of which specialist expertise is claimed is indeed a special field, and not a field of general practice;

(bb) that counsel has the special expertise in question;

(cc) where the application is made on the basis of specialised qualification alone, that the qualification is of a kind which on its own justifies a claim to be a provider of specialist services;

(dd) that counsel has notified her or his professional indemnity insurer of counsel's intention to advertise the specialist service or expertise concerned.

(k) Notwithstanding anything contained in these rules the Advertising Subcommittee or the Bar Council shall be entitled to take into account any considerations not inconsistent with Rule 18(h) which, in the view of such Subcommittee or the Bar Council, are relevant to the determination of whether or not any advertising complies with the provisions of Rule 18(a).

(Resolution to incorporate Rule 18 adopted on 30 August 2003).

19 UNREASONABLE DELAY IN DELIVERY OF JUDGMENTS

- (a) It shall constitute unprofessional conduct for a member who has acted as a judge to delay the delivery of judgment unreasonably in a matter heard by the member, which shall be determined from the time of completion of the relevant court proceedings.

- (b) For the purposes of sub-rule 19(a) above, unless urgency dictates that judgment should be delivered sooner or the parties to the suit request that the delivery of the judgment be deferred, it shall be deemed to be reasonable for judgment to be delivered by a member within three months of the completion of the relevant court proceedings.

Resolution to incorporate Rule 19 adopted on 5 September 2009

Definition of *pro bono* services

- 20.1. 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

- 20.2. Every member is required to render a minimum of twenty hours ***pro bono*** service in each calendar year.
- 20.3. When a member is reserved for a day in court, such a day shall equate to ten hours service.
- 20.4. 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

- 20.5. 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 four weeks;
- b) Rendered at least twenty hours' service to the Society, and / or the GCB;
- c) Delivered lectures to pupils or participated in the training or examination of pupils for a total period of not less than twenty 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 five days where the work falls within the definition of **pro bono** services in paragraph 20.1 above;
- e) Rendered advocates' work for a period of not less than five days at less than 50% of the members normal fee where the work falls within the definition of **pro bono** services in paragraph 20.1 above;
- f) Sat as a commissioner of the Small Claims Court for a total period of not less than twenty five hours.
- g) Rendered a service or conducted an activity which appears on a list of designated services or activities and the time credits therefor as determined and published by the Bar Council from time to time.

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) or (c) to (g) above, pro-rated in accordance with the proportion of required **pro bono** services that has not been performed.

20.6. 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) Pro Bono.Org;
- g) Any other entity designated by the Bar Council in writing.

20.7. 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

20.8. The **pro bono** sub-committee of the Bar Council must maintain a directory of members' names and contact details and special areas of interest and the sub-committee must make the list available to the briefing institutions referred to in paragraph 20.6 above as well as to the KwaZulu-Natal Law Society for distribution amongst its members.

20.9. 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 sub-committee and without compliance with any additional legal requirements.

Certification

20.10. 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.

- 20.11. Where such certificate discloses that the member has rendered fewer than twenty 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.
- 20.12. 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 20.5 above.
- 20.13. The failure to render a return without a satisfactory explanation for the failure will be regarded as unprofessional conduct.
- 20.14. The failure to render twenty 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

- 20.15. 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 know 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 KwaZulu-Natal Society of Advocates as set out in this rule.

Special projects

20.16. The Chair of the ***pro bono*** sub-committee 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.

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