

25 April 2016

Notice No: 2016/021

IMPORTANT NOTICE TO ALL MEMBERS REGARDING TRANSFORMTION

- 1 It has come to the Bar Council's notice that some members may not be mindful of an important resolution adopted at the October 2015 AGM. Please be reminded thereof, and ensure that you make every effort to include black juniors in substantial briefs in an effort to achieve meaningful transformation at the Bar.

The terms of Resolution D were as follows:

- 1 It shall be unprofessional conduct for lead counsel to accept a brief or remain on brief where:**
 - 1.1 there are 3 or more counsel on brief, including lead counsel, for the same client or set of clients in the same matter; and**
 - 1.2 no member of the team of counsel is a black person.**
- 2 For the purposes of this rule the term 'black person' is a generic term which is used in the same sense as the Employment Equity Act defines 'black people'.**
- 3 In giving effect to this rule it shall be the responsibility of lead counsel to take appropriate steps to ensure that black women are identified and given special preference.**
- 4 The remaining issues set out in proposed resolution D will be dealt with by the Transformation Sub-**



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Committee for adoption by the Johannesburg Bar Council after consultation with the Groups.¹

- 5 We implore members not to seek to circumvent the resolution, or frustrate its purpose. Please be mindful of substance rather than form. Dishonest attempts either to avoid the obligation to include black counsel or, having included black counsel, to emasculate black counsel's effective contribution by interposing or adding one or more white junior counsel to the team will be regarded in a serious light.
- 6 For example, splitting briefs or teams of counsel representing the same or related sets of clients in the same matter with the same interests will be carefully examined. In each case, counsel will be required to show on the facts that such conduct did not constitute a dishonest circumvention of the resolution.
- 7 The Transformation Committee is in the process of formulating proposals to address gender issues in general and these will be presented to the Bar Council in due course.

J Kane
J KANE SC

CHAIR: JOHANNESBURG BAR COUNCIL

V Ngalwana
V NGALWANA SC

CHAIR: TRANSFORMATION COMMITTEE

¹ The Transformation Committee is in the process of preparing a detailed monitoring mechanism, as contemplated herein.