

JOHANNESBURG SOCIETY OF ADVOCATES

PRO BONO POLICY



INTRODUCTION

1. This policy regulates the process of dealing with pro bono referrals.
2. The Johannesburg Society of Advocates (“JSA”) is committed promoting access to justice in South Africa.
3. The JSA is mandated to require its members to undertake pro bono services and allocate such work amongst its members on a basis that is fair, reasonable, equitable and transparent.¹
4. The JSA rules provide that each member must provide 20 hours of pro bono services and the cab-rank rule applies to pro bono briefs (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).

DIRECTORY

5. The Pro Bono subcommittee of the Bar Council must maintain a directory of members’ names and contact details and special

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¹ GCB Uniform Rules of Ethics – updated 2017.

areas of interest and the subcommittee must make the list available to the briefing institutions referred to in paragraph 8 below as well as to the Gauteng Legal Practice Council for distribution amongst its members.²

6. The Chairperson of the subcommittee must appoint a member of the subcommittee to maintain the directory of:
 - 6.1 members' names and contact details;
 - 6.2 special areas of interest; and
 - 6.3 the appointed member must make the list available to the institutions referred to in paragraph 5.
7. The Directory is to be updated every four years.

REFERRALS

8. The following are instructing institutions recognised by the Bar Council³ for purposes of this rule:
 - 8.1 Attorneys employed at university law clinics;
 - 8.2 Attorneys employed in non-governmental organisations;
 - 8.3 the Legal Aid Board;
 - 8.4 Justice Centres;

² Local Rules 5.2.8

- 8.5 a Judge, Magistrate or other presiding officer of any court or tribunal;
 - 8.6 ProBono.Org;
 - 8.7 any other entity designated by the Bar Council in writing.
9. In all other matters briefs for pro bono work should be from attorneys or patent agents.
- 9.1 It is preferable that the attorney or patent agent should also act pro bono.
 - 9.2 If the attorney does not 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.

PROCESS FOR INTAKE

10. Applications for pro bono assistance can be made in the form set out in annexure A. The form must be available on the JSA website. Applications are to be submitted to the JSA's Administration. If a person cannot fill in the form (for example a person in detention) the JSA's Administration must obtain the information sought in the form over the phone.
11. The JSA's Administration must keep a register of applications containing the following information:

³ Clause 5.2.6 of the Local Rules

- 11.1 The name of the applicant.
 - 11.2 The date of the application.
 - 11.3 The case number.
 - 11.4 The result of the application.
 - 11.5 The counsel who accepted the brief.
12. The Chair of the Committee must appoint two members to attend to issues of intake. The JSA's Administration must forward the requests to the members appointed to deal with intake. The JSA's Administration forwards the request to the members appointed for intake.
13. The members appointed for intake must decide whether to accept a request. The members are to be guided by the following criteria:
- 13.1 Whether the person can afford legal advice;
 - 13.2 The prospects of success of the matter;
 - 13.3 Whether the matter requires litigation;
 - 13.4 Whether the matter has a broader public interest;
 - 13.5 Whether the person has previously been assisted;
 - 13.6 Whether Legal Aid can assist.
 - 13.7 The importance of the case to the applicant for assistance.

14. A decision on whether to accept a request for assistance must normally be made within a week of the request being submitted in the proper form, and must be conveyed in writing to the applicant for assistance.
15. If the request is accepted, the brief must be allocated. In deciding to whom the brief will be allocated, the pro bono committee must consider –
 - 15.1 the seniority required by the brief;
 - 15.2 the area of speciality required by the brief;
 - 15.3 the need for more than one counsel;
 - 15.4 the Directory; and
 - 15.5 the need to spread pro bono briefs fairly between the members.
16. If a member refuses a brief, it must be noted in the Directory, together with the reason for refusal.
17. Once a brief is allocated, the receiving member is subject to the provisions of the rules set out in Annexure B. One of the requirements is that the cab rank rule applies. In particular, the member shall disclose this fact to the Court and to the member's opponent, if applicable; and may not relinquish the appointment or brief without the prior written consent of the subcommittee and without compliance with any additional legal requirements.

PAYMENT

18. The Legal Practice Act provides that a litigant may be paid for a brief taken on a pro bono basis if costs are awarded.⁴

4 92. Recovery of costs by legal practitioners rendering free legal services.—(1) Whenever in any legal proceedings or any dispute in respect of which legal services are rendered for free to a litigant or other person by a legal practitioner or law clinic, and costs become payable to that litigant or other person in terms of a judgment of the court or a settlement, or otherwise, that litigant or other person must be deemed to have ceded his or her rights to the costs to that legal practitioner, law clinic or practice.

(2) (a) A litigant or person referred to in subsection (1) or the legal practitioner or law clinic concerned may, at any time before payment of the costs referred to in subsection (1), give notice in writing to—

- (i) the person liable for those costs; and
- (ii) the registrar or clerk of the court concerned,

that the legal services are being or have been rendered for free by that legal practitioner, law clinic or practice.

(b) Where notice has been given as provided for in paragraph (a), the legal practitioner, law clinic or practice concerned may proceed in his or her or its own name, or the name of his or her practice, to have those costs taxed, where appropriate, and to recover them, without being formally substituted for the litigant or person referred to in subsection (1).

(3) The costs referred to in subsection (1) must be calculated and the bill of costs, if any, must be taxed as if the litigant or person to whom the legal services were rendered by the legal practitioner, law clinic or practice actually incurred the costs of obtaining the services of the legal practitioner, law clinic or practice acting on his or her or its behalf in the proceedings or dispute concerned.

REQUEST FOR PRO BONO LEGAL ASSISTANCE

(To be completed by the attorney/other referral body acting on behalf of the client seeking assistance)

1. **ATTORNEY'S PARTICULARS**

Title (Mr/Ms):	First Name:	Surname:
Firm:		
Address:		
		Postal code:
Telephone No.:	Office:	Cell:
E-mail address:		

2. **PARTICULARS OF THE CLIENT:**

Title (Mr/Ms):	First Name:	Surname:
Identity No.:		Gender (M/F):
Residential Address:		
		Postal code:
Telephone No.	Home:	Work

Cell no:
E-mail address:
Marital status (Married/ Single):
Has the client previously been afforded pro bono assistance by the Johannesburg Bar Council? Yes / No
If so, please indicate: (a) the year in which this occurred: _____ (b) the name of the pro bono counsel allocated to the matter: _____

3. **FINANCIAL INFORMATION OF THE CLIENT:** (where applicable):

Employment Status (Employed/Unemployed/Pensioner/Other):
Monthly Gross Salary:
Pension Amount (State/Private):
Other Income (Please specify):
Value of Fixed Property:

[Note: The Johannesburg Bar Council may request further information or documents.]

4. **PARTICULARS OF THE LEGAL MATTER:**

Date on which the attorney recorded in section 1 was instructed:	
Is the attorney recorded in section 1 acting pro bono?	
If the answer is no, please be aware that – save in exceptional circumstances – your request for assistance will not be accommodated. A detailed motivation as to why counsel should act pro bono (on a separate folio) should accompany this application if you believe that exceptional circumstances exist.	
Has the matter been to court?	
If yes:	
(i)	What is the name of the court?
(ii)	What was the outcome of the court proceedings?
(iii)	When is the client required to appear in court again?

4.1 Please provide a brief summary of the legal matter:

5. **DECLARATION BY CLIENT:**

I, the client referred to in section 2 above, do hereby confirm that the information contained in this form which was provided by me is within my personal knowledge, and is true and correct. I accept that, if the information is not correct, that pro bono assistance may at any time be withdrawn.

SIGNATURE: **DATE:**

GCB RULES REGARDING PRO BONO WORK

19. The GCB rules⁵ mandate the JSA to require its members to undertake pro bono work on the basis that:
- 19.1 it allocates such work amongst its members on a basis that is fair, reasonable, equitable and transparent;
 - 19.2 where a member is required to take instructions from a person who is not a practising attorney, the provisions of rule 5.12.3 shall apply;
 - 19.3 a member may recover fees in terms of a written contingency fee arrangement lodged with and approved by the Bar Council prior to the commencement of the work.
 - 19.4 each of the constituent Bars shall make provision in their domestic rules for the provision of pro bono services to be rendered by their members at levels and at intervals as each constituent Bar may approve from time to time.

⁵ GCB Uniform Rules of Ethics updated 2017.

JSA LOCAL RULES

20. Pro bono work 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.
21. Every member is required to render a minimum of 20 hours pro bono service in each calendar year.
22. When a member is reserved for a day in court, such a day shall equate to 10 hours service.
23. 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

24. 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:

24.1 served as an acting judge for a period of not less than 4 weeks;

- 24.2 rendered at least 20 hours' service to the Society;
- 24.3 delivered lectures to pupils or participated in the training or examination of pupils for a total period of not less than 20 hours;
- 24.4 rendered advocates' work in terms of a contingency agreement that complies with GCB Rule 7.10 for a period of not less than 5 days where the work falls within the definition of pro bono services in paragraph 5.2.1 above;
- 24.5 rendered advocates' work for a period of not less than 5 days at less than 50% of the members normal fee where the work falls within the definition of pro bono services in paragraph 5.2.1 above;
- 24.6 sat as a commissioner of the Small Claims Court for a total period of not less than 25 hours.
25. Provided that a member who has served part of the required pro bono service during the course of a calendar year will be excused for not having rendered the remaining portion of his or her required pro bono service, if the member can show, to the satisfaction of the Bar Council, that the member, during the course of the relevant year satisfies the requirements of paragraphs (a) to (f) above, pro-rated in accordance with the proportion of required pro bono service that has not been performed.

Administration

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

26.1 shall disclose this fact to the Court and to the member's opponent, if applicable; and

26.2 may not relinquish the appointment or brief without the prior written consent of the subcommittee and without compliance with any additional legal requirements.

27. In addition, the local rules prescribes -

Special projects

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

28.1 designate a project as a special project for purposes of this rule;

28.2 control the basis of the participation of members in a special project.

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

**PRO BONO COMMITTEE
JOHANNESBURG BAR COUNCIL**