



Willie Duminy SC

"The Bar can no longer rely on monopoly. It will survive and expand through excellence – all-round excellence, not just in the quality of its advocacy and specialist advisory work, but its accessibility and the efficiency with which it provides its services."

THIS is the opening paragraph of the foreword by Peter Goldsmith QC to the practice management guidelines produced for the Bar in England. The publication resulted from recognition by the Bar Council in England that it had an important role in improving the Bar's services beyond enforcing its code of conduct. It consists of a volume in nine sections dealing with organisation and management of chambers, client care, non-discrimination and equal opportunities, financial management, staff management, management of briefs, instructions and communications, management of chambers premises and facilities, pupillage and entry into practice, and conduct before, at and after court. Much of the subject-matter is specific to practice in England and will not be of assistance to advocates in South Africa. However, it remains instructive and interesting to note the breadth of the field covered by the publication and the subjects on which the Bar Council thought it helpful to give guidance to its members. They range from aspects of the physical accommodation of practitioners, through attorney and client relations to court conduct.

Practice management for the Bar

Willie Duminy SC
Cape Bar

The Bar of England and Wales published its *Standards and Guidelines for Barristers and Chambers** in 1997. Willie Duminy SC of the Cape Bar reviews this publication, highlighting points of interest to members of the Bar in South Africa.

Client care

In this section it is noted that most comments and criticisms from clients relate to the return of briefs and the turn-around time for papers, as opposed to the quality of advice. The guideline suggests that advocates should have written policies and procedures for management of their briefs, in the form of a client care policy. The client in this sense includes the professional client, namely the attorney.

Much emphasis is placed on keeping the client informed of progress on a proactive basis, in writing. It is suggested that chambers draw up time limits within which reports are to be made and/or that specific events or milestones in litigation be identified which might require a verbal or written report by the barrister. In the South African context much of the responsibility for management of this sort rests on the shoulders of the instructing attorney. Advocates should realise, however, that they play an essential role not only in communicating with their instructing attorneys about the development and progress of a matter, but in enabling the attorneys to satisfy the client's need to know that the case is receiving the attention it deserves. Having a written client care policy and adhering to it concentrates the mind and enables those giving the service to see the matter from the client's perspective.

Another aspect on which emphasis is placed, is information as to charges. A large part of this section is devoted to the need for information about the basis upon which fees are charged and the recording of chargeable time. Experience has apparently shown that not only are clients much happier when they have

proper information of chargeable time spent on their matters, but that in many cases this results in an increase in counsel's bills. This demonstrates the benefits of time based billing, as opposed to simply "weighing" the brief!

Management of briefs

High standards of client care cannot be maintained without efficient management of briefs. The guidance given to advocates in this section deals with the receipt and examination of briefs, identification of potential clashes of professional commitments, progress and monitoring of a brief and the completion thereof. Some of the procedures are peculiar to the system of chambers in England and would not be applicable here. Counsel in practice in South Africa would, however, do well to adopt the basic case management checklist appended to this chapter in suitably modified form. The checklist provides for the date of specific actions to be filled in, the name of the person involved and the action required. The list includes the following items:

- 1) Brief instructions received and date stamped;
- 2) Brief instructions perused by counsel;
- 3) Brief accepted and client advised;
- 4) Brief not accepted – reason recorded and client advised;
- 5) Variations (some possibilities are suggested in the form);
- 6) Client advised of result/advice dispatched; >

* Our thanks to the Bar of England and Wales for supplying us with a copy of the publication - Editor.

- 7) Fee note issued;
- 8) Completion and papers returned.

It is easy to see that all members of the Bar can only benefit by keeping such a list in relation to each brief or set of instructions received.

Financial management

In the introduction to this section it is noted that one of the standard criticisms levelled against chambers in England is that they manage themselves in an old-fashioned way without modern tools and techniques. It is, of course, so that the financial management of an advocate's practice is relatively simple, by comparison to other businesses. In the past, hardly any advocates employed sophisticated accounting systems to assist them in the management of income and expenditure. In South Africa most new entrants to the profession do, however, seem to be computer literate and will probably benefit by using some kind of computerised accounting system. Some of the old dogs (please excuse this gender specific expression; the politically correct version does not seem acceptable) are also being taught new tricks and may be persuaded to use their computers as word management devices, and not only as word processors.

The practice management guideline recommends that financial management information should include, *inter alia*, an annual budget of expenditure linked to a cash flow statement, a capital expenditure budget, quarterly variance analysis of actual expenditure against budgeted expenditure, monthly statements of income with annualised summaries, monthly bank statements together with up-to-date reconciliations, records and supporting documents of output and input value added tax and monthly lists of aged debtors for credit control purposes.

Locally, records covering most of the aforementioned topics are required to be kept by counsel either by law, the ethical rules or (perhaps more importantly) by bank managers. It is, however, useful to see these topics addressed as a cohesive whole. It can only be to the

practitioner's benefit to realise that there is an inter-relationship between these aspects of financial management and that they should be managed in such a way that the relevant information is easily to hand and can be conveniently compared with the other data to which it relates.

Credit control and management of fee income features as an important part of this section. This is not the time or place to deal with the intricacies of that important and often difficult subject. What must, nevertheless, be plain, is that no system designed to enforce timeous payment of counsel's fees can begin to be implemented in the absence of reliable information as to fees billed, invoices and statements rendered and payments received. The importance of accurate accessible records is patent and advocates here would also do well to reflect on the adequacy of their accounting systems in these respects.

Court conduct

This section of the practice management guideline does not replace the applicable code of conduct, but supplements it with practical advice. In the section on contact with witnesses, barristers are cautioned to be alert to the risks that discussion of the substance of a case with a witness may lead to suspicions of coaching and thus tend to diminish the value of the witness's evidence in the eyes of the court or place him in a position of professional embarrassment. These dangers are most likely to occur if discussions with witnesses take place before the barrister has been placed in possession of a witness's statement or in the absence of the instructing attorney or his representative.

Counsel is also cautioned against discussions taking place in the presence of more than one witness of fact or where consultations involve the disclosure to one witness of fact of the factual evidence of another witness. According to the guideline such practices have been strongly deprecated by the courts as tending inevitably to encourage the rehearsal or coaching of witnesses and to increase the risk of

fabrication or contamination of evidence. These are important matters which affect all trial lawyers. Not only is it unethical to coach a witness, but fabrications are often easily exposed, usually with disastrous consequences for the client's case. The attention given to these aspects not only emphasises their importance, but should prompt re-assessment of the standards maintained by the profession in South Africa.

Regarding conduct after court the guideline stresses counsel's duty to bear his client's position in mind and to show understanding and consideration for feelings of distress and anguish which a client may express if there is an unsuccessful outcome to a hearing. Counsel's duty is to ensure that both his lay and professional client understand the decision of the court and its immediate implications and he should, if asked, be able to explain the reasoning of the court as dispassionately as possible. The point is also made that if an advocate forms the view that a decision should be appealed, he should inform his professional client, even when not asked to do so.

This selection of items that may be of interest to advocates in South Africa is illustrative of the usefulness a practice management guideline may have. Compiling such a guideline clearly requires insight, foresight, knowledge and experience of practice and more than a fair measure of professional and commercial sense and logic. Of course, it can also be a costly exercise which, if it is to be done properly, should involve outside consultants and advisors. It is nevertheless a project which the GCB should seriously consider undertaking in South Africa. The pressures on the advocates' profession are perceived to be multiplying rapidly, and bear down most acutely on junior members of the Bar. Practical and thoughtful written management guidance is likely to be of invaluable assistance to practitioners in meeting the challenges and demands they face and can only benefit the profession as a whole by enhancing the quality of service rendered by its members and ensuring the greatest possible client satisfaction. 