

Jurisdictional issues fall to be considered with the internet. This is so because the internet is one seamless world without geographical or territorial boundaries. To a certain measure in a contractual transaction the parties may be able to choose the law applicable to the transaction and even choose a forum for the determination of any dispute. These may be subject to overriding public policy considerations and local consumer law legislation.

Consider that it is possible to gamble at an electronic casino at a web site in North America with a credit card in the privacy of ones own home in South Africa. The of

gambling regulation and licences, foreign exchange immediately give the South African authorities an interest in regulating or prohibiting this cyber-casino. Similarly the sale of life assurance policies to South African residents by a Caribbean registered company of doubtful financial standing ought to attract the attention of local regulators.

The technology has brought with it problems of enforcement of jurisdiction by the ease with which authority may be avoided by the use of the internet. A simple illustration is the fact that software may be purchased by credit card and transmitted across and down loaded

from the internet without the scrutiny of customs officials. The payment of import duty and VAT is thereby avoided.

Like it or not, the advent of the internet has had a profound impact on society and the way in which we communicate and interact. The law has to be developed and adapted to meet the new technology and the revolutionary re-organization it has brought with it. We can only hope as lawyers that we have developed some jurisprudence before all that presently bewilders us is and fills some of us with fear is rendered obsolete by the advent of a newer technology. 

GCB reports

Pro bono initiative

Contributed by GJ Marcus SC, Johannesburg

Introduction

Advocates, by tradition, do work without charge when asked to do so. The request will usually emanate from an attorney on behalf of a litigant in need. Occasionally a judge will invite an advocate to appear as an *amicus curiae*. There have also been occasions when advocates have participated in campaigns to provide legal defence to those charged under the pass laws and the Group Areas Act.

The commitment by advocates to do work *pro bono* is largely a matter of choice and not a matter of ethical obligation. The purpose of this memorandum is to propose the creation of an institutionalised mechanism for the obligatory provision of *pro bono* work by advocates.

The present position

There is presently no structured system for the provision of *pro bono* services. Moreover, it is probably true to say that the majority of advocates do not perform any *pro bono* work at all. This may not reflect an unwillingness to do so. In all likelihood, it is the product of an absence of an institutional mechanism in terms of which advocates may be called upon to render services without charge.

It is beyond debate that there is an

acute need for legal services in South Africa. The legal aid system is under severe strain. The resources of the Legal Aid Board are now almost exclusively directed to criminal work. There is simply not enough money for the funding of civil litigation. Public interest legal organisations like the Legal Resources Centre (LRC) and University-based legal aid clinics also function under severe financial constraints. In the result, many people in dire need of legal services simply cannot afford legal representation.

It is suggested that the Bar should seriously address this problem. The justification, if it be required at all, lies in the traditions of the Bar and the General Council of the Bar's Statement of Intent to provide "access to justice for indigent persons" and the commitment to attain "justice for all according to the Rule of Law." These goals will remain unfulfilled without a commitment to *pro bono* work sanctioned by the constituent Bars.

A proposal

It is suggested that the only realistic way in which the stated commitment of the Bar can be realised is by the imposition of an obligation on members to perform work *pro bono* and the creation of structures to implement and co-ordinate the system. To achieve this goal, I make three specific proposals set out below.

– *First*, there ought to be a specific obligation on members to perform a

stipulated minimum amount of *pro bono* work. This would require an amendment to the Uniform Rules of Professional Ethics imposing the obligation. This entails no radical innovation. Rule 6.1 of the Uniform Rules already imposes an obligation on "all counsel to undertake *pro deo* defences when directed to do so by the Bar Council". Rule 6.3.1 likewise imposes a duty on all counsel "so directed by the Bar Council, to undertake legal aid matters." The only difference between the existing situation and the proposal is that the obligation to perform *pro bono* work would be, in most cases, without remuneration. (In some cases the prospect of working on contingency may well result in remuneration in the event of success.)

The minimum amount of *pro bono* work ought to be specified. I would suggest that this ought to be no less than two working days a year. In this regard, the obligation to perform *pro bono* work would extend not simply to representing clients in court. There is no reason, for example, why a mechanism could not be created requiring advocates to give advice for a day or more in a legal aid clinic or similar institution. The stipulation of a minimum amount of work may, however, result in advocates regarding this as a maximum and may militate against the creation of an ethos of public service.

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whether she could read became relevant and he was the only one who could inform the court, he declined and became detached – he always was – an outsider who never became involved except as a reader. Lawyers should not be readers but actors and participants implementing and initiating social

change. If anything, the changes in civil procedure reflect the greater and increasing involvement of lawyers in social issues.

Endnotes

¹ Julian Barnes *A History of the World in 10 $\frac{1}{2}$ Chapters* Jonathan Cape Picador (1989).
² At page 306.

³ *The Portable Rabelais* Colonial Press (1946) 5th printing at 501 ff.
⁴ *Hedendaagse Rechtsgeleertheit* (1742) (1939 ed translated by Gane) 4.15.3, 4, 5, 6, 25 ff.
⁵ At 281-2.
⁶ Phoenix House (1997) translated by Carol Brown. 

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The obligation ought to extend to every advocate, irrespective of seniority, but excluding juniors of three years standing. This would ensure that those starting out are not subjected to unduly onerous burdens and would simultaneously ensure that clients are represented by advocates with some experience.

- *Second*, each constituent Bar should establish a *pro bono* committee to implement the system. The envisaged committee would assume responsibility for ensuring a fair allocation of work and monitoring compliance with the obligation. The committee would also be the conduit through which requests for *pro bono* assistance would be channelled. The committee would be required to liaise with attorneys and other referral agencies.
- *Third*, the GCB should assume responsibility, at a national level, for publicising the initiative. It is of importance that the Bar be seen to be willing to perform public service (and to actually perform it) and to break the stereotype of a greedy, self-interested profession. The GCB committee would also liaise with other interested institutions at a national level.

The proposals referred to above require the active co-operation of attorneys and other referral agencies such as the LRC and legal aid clinics. I would accordingly suggest that once the *pro bono* committees at Bar and national level are established, co-operation with the law societies and other interested parties be initiated in order to ensure that the system is publicised and that, in the case of litigation, it operates in a way which respects the referral system. It is also important that there be co-ordination with the LRC and legal aid clinics if

the obligation to perform *pro bono* work can be implemented by making advocates available to furnish advice to the clients of such institutions.

Finally, the GCB committee should liaise with statutory bodies such as the Human Rights Commission, the Commission for Gender Equality and the

Public Protector in order to assist with legal representation and the like, flowing from the work of these bodies.

The AGM noted the report and resolved that all Bars should consider ways to implement a pro bono initiative and report back to Exco. 



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