

- (c) end of September/beginning of October: NBEB examinations;
 - (d) remainder of October: oral examinations and mentoring to continue;
 - (e) November: advanced advocacy training for those who have passed their examinations;
 - (f) December: wind down.
- 5.2 Pupils will not be granted a certificate without satisfactory attendance at all practical advocacy training courses.

6 Practice supervision system

This will await the LPB. But certain of the recommendations (particularly those referred to at 6.3 and 6.4 below) deserve consideration by individual Bars at this stage already.

The recommendations are:

- 6.1 Reference will be made to pupil mentors, and to pupils. The term “master” is outdated.
- 6.2 One pupil mentor per pupil, subject to the discretion of each Bar to appoint more mentors per pupil.
- 6.3 The GCB is to draft guidelines for pupil mentors as to their responsibilities and functions, which guidelines are to be distributed annually to mentors.
- 6.4 In order to create more cohesion and a higher level of responsibility:
- (a) Where possible, each Bar is to allocate a silk to an appropriate number of pupils and pupil mentors, the ratio to be determined on the basis of available numbers (e.g. one silk to every six pupils/mentors);
 - (b) the allocated silk is then to assist with the practical training of the pupils allocated to him/her where and to the extent that this is appropriate and practicable;
 - (c) the pupil mentor’s certificate is to be co-signed by the particular silk.
- 6.5 Where possible, mentors and mentor-silks are not to be taken from the existing lecturers and trainers.

7 Court appearances of pupils, and other employment

Implementation of this aspect of the recommendation will await the LPB.

The committee recommended as follows:

- 7.1 Pupils are entitled (and indeed encouraged) to appear with their pupil

mentors or other members of the Bar approved by the mentor from the commencement of pupillage.

- 7.2 A pupil may appear independently only in the second six months of pupillage and then only:
- (a) In unopposed matters;
 - (b) on these conditions:
 - (i) the pupil remains subject to the overall supervision and direction of the pupil mentor;
 - (ii) the presiding judge or officer is informed beforehand of the fact that the pupil is a pupil;
 - (iii) the pupil must in open court when placing himself or herself on record state clearly his/her status as a pupil;
 - (iv) a pupil in accepting a brief must put it on record to the instructing attorney that he/she is a pupil and must ensure that the attorney is fully aware thereof.
- 7.3 Pupils may take up part-time hourly-paid or otherwise casual employment during pupillage, provided that the employment activities are entirely restricted to weekends and/or to week nights from 20h00. Prior permission of the Bar Council is not required in such cases, but each Bar Council retains the right to require individual pupils to limit or terminate part-time activities in the event of these interfering with pupillage.

8 Already-qualified legal practitioners who apply for membership of the Bar

It is envisaged that the LPB will retain for the Bar the right to determine the conditions on which legal practitioners may join the Bar. On the one hand we don’t want to make it unnecessarily difficult for already-qualified legal practitioners (i.e. attorneys) to switch to the Bar, but on the other hand we want to ensure proper training bearing in mind the different requirements of being an advocate. A further difficulty the committee faced was the need to slot this group into the fixed one-calendar-year-pupillage under the LPB. It was recommended as follows:

- 8.1 In principle, the period of and programme for pupillage will be the same under the LPB for pupils who have not yet qualified as legal practi-

tioners as it is for pupils who have already qualified as legal practitioners, viz. twelve months.

- 8.2 Provision for partial or complete exemption from this requirement is as follows:
- (a) No-one may be in any way exempted from any of the requirements of pupillage unless he or she has practised as a legal practitioner for at least four years;
 - (b) a legal practitioner who has so practised for at least four years may (as is the case at present) apply to the Bar Council of the Bar which he/she wishes to join for complete or partial exemption from the requirements of pupillage, subject thereto that:
 - (i) no-one may be exempted from the requirement of having to pass the NBEB examinations;
 - (ii) no-one may be exempted from the requirement of having to satisfactorily attend advanced practical advocacy training (ideally we would have liked to include basic practical advocacy training in this as well, but the obstacle is that in terms of 5 above, basic practical advocacy training takes place in the first six and a half months, and advanced such training only in the eleventh month). 

Referral rule: judgment

On Friday, 6 September 2002 the Supreme Court of Appeal handed down judgment in the matter of *Competition Commissioner v General Council of the Bar of SA* case no 350/2001, 6 September 2002 – unreported. The court upheld the commissioner’s appeal in part, in holding that Roos J should not himself have exempted the rule precluding members from accepting briefs with non-members, and the rule precluding members from accepting briefs on contingency without Bar Council consent. Those rules were remitted to the commissioner for reconsideration.

The SCA dismissed the appeal in part, in upholding that Roos J was correct in

exempting the referral rule from the application of the Competition Act 89 of 1998. It held that the referral rule was the law of the land and that the commissioner was not entitled to refuse to exempt it.

Each party was ordered to pay its own costs of the appeal.

The SCA dismissed the cross-appeal, holding that the mere fact that the commissioner did not observe audi alteram partem did not by itself justify an inference of bias. The effect is that the prohibitions against partnerships, advertising, indiscriminate chamber location, and accepting briefs from defaulters, were also remitted to the commissioner for reconsideration. [Members are reminded that since the judgment of Roos J the prohibitions against advertising and accepting briefs from defaulters have in any event been scrapped.]

Each party was ordered to pay its own costs of the cross-appeal. 

Arrest and detention of Zimbabwean judge

The General Council of the Bar of South Africa expressed its deep concern regarding the arrest and detention of a retired Zimbabwe judge on 13 September 2002. The media release reads as follows:

“Mr Justice Fergus Blackie (65) was taken from his home in a pre-dawn police raid. It has since been necessary for his family to institute habeas corpus proceedings to secure his safety and production before a court.

This development mirrors the sudden arrest and detention of the chairman and secretary of the Zimbabwe Law Society in July. In both incidents resort was had to police raids, seizure of leading members of the Zimbabwe legal community, and thereafter reference to possible criminal charges. It also follows steps taken over the past year against the judiciary resulting in seven resignations, and in relation to which the Chief Justice of South Africa last year in a public statement expressed serious concern.

At a world Bar gathering in Edinburgh in July, advocates and barristers from Australia, Hong Kong, Ireland, the Uni-

ted Kingdom, New Zealand and South Africa reiterated their solidarity with Zimbabwe’s legal profession in its endeavours to provide access to the courts and to serve the rule of law. This latest development is being taken up urgently by the GCB with the UN Special Rapporteur on the Independence of Lawyers and the Judiciary, Dato’ Param Kumaraswamy, the Human Rights Committee of the International Bar Association, and Bar organisations around the world.” 

SA Fellowship of Advocacy Trainers

On 10 September 2002 at a function held for the advocacy trainers at the Johannesburg Bar, Willem van der Linde SC, chairman of the GCB, announced the establishment of the South African Fellowship of Advocacy Trainers. Its patron is Constitutional Court Justice Johann Kriegler, and its national convenor is Sharise Weiner SC, Johannesburg Bar.

The fellowship has established links with other advocacy training departments at the various referral Bars internationally and hopes to increase the “exchange” programme which the GCB presently has with the members of the IATC, Gray’s Inn, and the Faculty of Advocates, Scotland. Further proposals and ideas were explored at the Barristers’ and Advocates’ Forum at the IBA Conference in Durban on 24 October. An annual newsletter will be sent to the 220 South African advocacy trainers, who have since 1996 trained over 1000 pupils who have entered the profession. 

Legal aid

Extracts from the report of the the GCB’s representatives on the Legal Aid Board (LAB), Halima Saldulker and Philip Mokoena

• The Legal Aid Board’s new premises are situated at 29 De Beer Street, Braamfontein; Private Bag X76, Braamfontein

2017; tel: 011877-2000; fax: 011877-2222. All postal and fax items are to be addressed to the Chief Executive Officer at the above address. Under no circumstances is any correspondence or account relating to any judicare matter to be addressed to any other postal address or fax number.

• During late 2001 the Legal Aid Board (LAB) undertook to review the judicare tariffs.

It has now approved an 8% tariff increase in respect of judicare work with effect from 1 July 2002. A circular to this effect will be distributed by the LAB.

• As part of the LAB’s vision to make justice more accessible to all of South Africa’s indigent the establishment of eight new justice centres is currently underway. There are presently 26 justice centres and it is envisaged that new centres will be established in Butterworth, Vryheid, Louis Trichardt, Lichtenburg, Upington, Worcester, and Lusikisiki.

• According to the CEO of the LAB, the prudent financial management at the LAB over the past year has resulted in the organisation’s being in the best financial state in its history. All the financial management and accounting issues that contributed to the collapse of the organisation have been dealt with and what remains for the future is good management.

• The LAB has re-engineered the existing processes of paying accounts and although this process sometimes attracts complaints, we are advised that the new method is much simpler and faster. This will result in accounts being paid within 30 days which is in accordance with accepted business practice.

Complaints have been received by the GCB’s representatives from the Port Elizabeth, Pretoria and Johannesburg Bars (members of the Scottish chambers) that their LAB accounts have not been paid within 30 days and these have been reported to the CEO of the LAB. We have been advised that the complaints are being dealt with.

We have received numerous complaints from the LAB that members are not complying with all the requirements when submitting their accounts and that this causes the delay in the payment of practitioner’s accounts. Bars are requested to bring to the notice of all their members the procedure for accounts enquiries as set out in the LAB’s Circular