

in all the experience was well worth giving up a Sunday.

Mere attendance at a diversity workshop itself is, I believe, the first step in confronting these issues. Apart from the obvious transformation ideals to which the Bar aspires, understanding the challenges a fel-

low member has faced in his or her life or the cultural setting in which a member grew up, will go a long way to making our experience at the Bar more rewarding than merely making money. And who knows you may even get more briefs. 

London Bar excursion: Practice Management System and Transformation

Roshnee Mansingh and Ishmael Semanya SC, members of the Johannesburg Bar Interim Council and Transformation Committee

Introduction

Ishmael Semanya SC and Roshnee Mansingh were nominated by the Johannesburg Bar to visit London to investigate, report and make recommendations on the Practice Management System (including the clerk of chambers, also known as practice manager, chambers director, chief executive officer) at the London Bar and the adaptability of that system (if at all), to our local conditions and transformation imperatives.

During the week 12-15 June 2006, twenty-four persons, inter alia, one judge, nine barristers and eight practice managers, were interviewed. They shared with us their invaluable insight into the workings of the practice management of the various sets of chambers in London.

The general functions of a practice manager

The general functions of the practice manager are clerking, marketing and client care, financial, management, administrative and information technology:

Clerking

- Full control over the entire diary ensuring that members' time is managed efficiently.
- Assess and agree fees, discussing with the barrister concerned as appropriate.
- Review unallocated sets of instructions as soon as received and allocate to the appropriate barrister.

Marketing and client care

Assist each barrister to plan their practice by regular discussions on their work to date and future opportunities.

Maintain and develop contact with solicitors by telephone, formal and informal meetings.

Working with the administrator and the Practice Development Committee to arrange seminars and marketing functions for existing and potential clients.

Getting into court to see barristers perform and meet with clients.

Financial

Regular checking of chambers' bank and management accounts for all expenses.

Collection of contributions

Budgeting for income and expenditure annually in advance.

Control of monthly payment of salaries to all staff; PAYE.

All VAT returns for barristers and for chambers.

Ensure the fees clerk reports all income to barristers, prepare year-end statements.

Management

Recruit and manage all staff for reporting lines.

Regular appraisals with staff.

Advise on training and development.

Liaise with head of chambers with regular and ad hoc meetings (for example on disputes or disciplinary matters with members or staff), and with management committee.

Formal and informal meetings with one or more staff to provide for good communications between clients, barristers and staff.

Administrative

Ensure that the administrator is fulfilling her functions, eg premises, cleaning, library.

IT

Remain up to date with chambers IT system through training and personal development programme.

Advise on upgrades when appropriate.

Budget and manage all IT costs.

NOW
is the time
to subscribe to
Juta's electronic
Statutes &
Law Reports

Unlock your practice's
potential

WITH

Juta's electronic
SA STATUTES

all extant statutes from 1910 to date

SA LAW REPORTS

*superior court judgments
from 1947 to date*

introducing

JUTA'S | **QUARTERLY** | REVIEW
of south african law

FREE

for subscribers

Tried and trusted through
the years, now better

VALUE
than ever before.

It all **ADDS** up

Contact

Juta Law Customer Services:

Tel: 021 763 3600

Email: cserv@juta.co.za

www.jutalaw.co.za



Agree with IT committee new developments; help to select new applications, hardware, and advice on location.

Skills required of a practice manager

Ability to assess potential and limitations of each barrister and match to client demands.

Ability to maintain good communications with all barristers.

In depth experience as a junior clerk.

Good inter-personal skills with wide range of people (from senior members of the judiciary to cleaners or court ushers).

Ability to work under pressure, ie to deal with several tasks at the same time.

Be able to make decisions.

Knowledge of market trends and rates of fees.

Working knowledge of court procedures and working methods.

Aptitude for hard work.

Patience and sense of humour.

Ability to communicate effectively orally and in writing.

Word-processing and spreadsheet skills.

Basic financial management knowledge and skills eg to draw up budgets, cash-flows.

To be 'computer literate.'

The advantages of having a practice manager

Race and gender prejudice

The challenge of the Bar to address briefing patterns is to find answers to race and gender prejudice that comes from the history we share and in particular the chauvinistic nature of the legal profession. Sometimes the discrimination of blacks and female members is not a deliberate and conscious one, but more a function of sub-conscious practices of doing business with people one is more familiar with.

The practice manager can be engaged with specific performance targets that direct his or her energies into ensuring that the provision of work is also alive to the dictates of correcting the briefing patterns in a manner that includes the empowerment of black and female members.

Members' profiles

One of the challenges regarding the correction of the briefing patterns is a legitimate concern voiced by attorneys that they do not know the new members who join the Bar in particular black and female members. The *Hortor's Directory* is the only formal reference point. As an instrument, *Hortor's* has proved inadequate to introduce new members to the market and in particular to describe the abilities of those members.

Practice managers at the London Bar, have as their responsibilities, amongst others, the introduction of the new members to the providers of work (solicitors/attorneys). The practice manager would have an interview with a new member and profile their new member's background, competencies and field of practice that the new member wishes to pursue. We believe this intervention will help address the complaint raised by attorneys that they do not know who the new members are.

Procurement of work

The other challenge that faces the junior members of the Bar is that they cannot access work. What normally happens is that a member would take chambers at great cost and hope that the telephone will ring with an attorney on the other side seeking to engage the services of the member. The new members with no particular legal background find it a barrier to introduce themselves to the attorneys and to do so within the ethical boundaries of our profession. The result is the high attrition rate that happens to junior members in their early years of practice.

The practice manager would have a responsibility to procure work for the set of chambers and the members of that chambers that use that system. We believe that for as long as the procurement of work is done within the ethical boundaries of the profession and meets with the norms and standards approved by the Bar Council, the system might go some distance in helping junior members in particular to procure work.

Maintenance of professional standards

Junior members sometimes receive briefs from attorneys on matters that they are not suitably qualified to do and which may later prove to undermine their ability to build the necessary confidence with the attorneys that brief them.

What the practice manager would do, amongst others, is to ensure that the skills of a new entrant to the Bar is closely analysed so that the work that is procured is matched to the skills and practice direction of the member who then does that work. We believe that this may also be a useful intervention in our transformation initiative.

Quality control

The investigation of challenges to transformation has had attorneys, judges and clients complain, in some instances, that the quality of work done by some of our member and, in particular, our most junior members, is not up to the required standard. This difficulty may be a result of many things.

What a practice manager would do in this regard would be to pay close attention that the new member does work that is in line with the skills levels of the member and in

that way ensure that there is no mismatch between the work that is sent to a junior member and the abilities and competencies of that member.

Complaints mechanism

It is often difficult for members to know whether the work they do has met with the approval of the clients or attorneys for which the work was done. It is not easy for an attorney to address the complaint directly with a member. Often what happens is that the attorney would be lost to the member for good, but the damage may be irreparable, even tangentially to the Bar.

The intervention of a practice manager also helps resolve the client-relations challenges. It is easier for a practice manager to engage a dissatisfied attorney or client, establish the nature of the complaint and later have that complaint addressed in a manner that generally helps to improve the professional standard of members.

Financial management of individual practice

Those of our members whose membership is terminated in terms of section 10(e) of the Bar's constitution for failure to pay their subscriptions and other dues is, in part, because of lack of skills in financial management of their practices. It takes some understanding of how practice pattern happens and which periods of the year are lower than the others. For this reason, members require financial aptitude to adjust to the challenges, including tax compliance, with regard to the financial soundness of practice.

The practice manager would assist the member in the billing of clients and collection of monies due to members. The junior members' difficulties in having their accounts paid on time is largely reduced where the combined weight of members of the chambers helps to ensure that the 'defaulting attorney' appreciates the need to meet the accounts of each and every member in the set of chambers.

Infrastructural support

The junior members at the Bar, understandably, do not have dependable support structures, including typing facilities. It is not infrequent that the delay in returning the briefs is due to poor infrastructural support.

A practice management system helps to address this area since the junior member only has to do the work. All other logistical support systems would be provided by the practice management system offered by that set of chambers.

All for one and one for all rule

One of the advantages of members practicing in a chamber is that the junior members in particular have the advantage of obtaining advice from their more senior members.

This tradition is probably one of the most important in the skilling of junior members. The Bar still observes this practice, but we believe it is an area that may be improved upon.

What obtains when a practice manager markets the set of chambers to the attorneys, is that the integrity of the system depends on each and every member taking interest in the efficient discharge of the work by each and every member of the chambers. For this reason alone, the senior members appreciate the direct impact on their own practices in helping the junior members. Both seniors and juniors have each other's best interest on sight.

Increasing representativity at the Bar

The failure rate amongst pupils is in part due to the fact that we are probably attracting to the Bar people who are not suitably trained for the challenges that are attended to practice at the Bar. There is often an opinion that the Bar has now become a last resort option for people who cannot otherwise find alternative engagement either in the public sector or the attorneys' profession.

The practice manager may also be used to head hunt at various universities candidates who have a better chance to establish and sustain a practice at the Bar.

Practice development of members

The development of the practice of members often happens in a rather haphazard manner. Some members tend to do a particular type of work not necessarily as an area of personal preference but rather because of the type of briefs they receive. Since the flow of work is unpredictable, members tend to accept work that is not in sync with the direction they would prefer.

The practice manager can, in consultation, with a member design the direction the member wants for his or her practice. Once the practice manager and the member have agreed on the line of specialisation that the member intends to develop, a strategy can then be adopted to achieve this end. Where a member intends to position his or her practice for silk, this aspect may also be factored into the programme of action implemented.

The challenges for implementing practice management systems

The first challenge is *change*. If implemented, the system will introduce new ways of doing things and invariably the immediate response would be one of cautious approval. The way to overcome this challenge is to have a general appreciation of the benefit that this might bring, particularly to the junior members of the profession. The other

incentive would be the way this helps the Bar address transformation challenges.

Some of the senior members of the profession may see the introduction of a practice manager as somewhat invading their personal space where the practice manager may have to manage the diary of the practitioner, collecting the fees due to members, which area has hitherto been private and personal.

The one main challenge relates to the funding of introducing and operating this type of practice management system. It is advisable to leave to each set of chambers to design the method by which this task can be undertaken.

Regard being had to the recommendation that follows, it is a concern that if certain sets of chambers introduce the practice management system and others not, some members may legitimately feel at a disadvantage compared to their colleagues who are in sets of chambers that use the system.

The one other challenge relates to the negotiation of fees. This aspect has a number of difficulties that require urgent attention and review. There is very little debate that the provision of legal services must meet and be subject to the dictates of the market. The review of our fee parameters must be sufficiently flexible and subject to the overriding rule that counsels' fees must at all times be *reasonable*.

The marketing of chambers and members would obviously have to be in line with the provisions of rule 4.17 of the Uniform Rules of Professional Conduct that provides that members may advertise provided the advertisement is factually true and is not of a kind that is or might reasonably be regarded as false, misleading, or deceptive; in contravention of any legislation; or vulgar, sensational or otherwise such as would bring a court, the counsel, another counsel or the legal profession into disrepute or ridicule.

Fully implemented, the system if practised by all sets of chambers, will introduce competition amongst the sets of chambers. This in itself, although a challenge, is ultimately good for the profession.

It is important to remember that the profession still remains a referral profession and the intersection of an attorney is still central to its efficacy.

The way forward

Since the system is predicated on chambers as a unit that drives the system, it is important that members practise within groups. This system is in line with practice at the Johannesburg Bar.

If the system is to be introduced, the Bar Council would have to set the norms and standards that are to be met by those sets of chambers that seek to introduce the practice management system. The Bar Council would retain the right to ensure that the implementation of the system does not offend any of the rules that define us as a profession.

The norms and standards introduced by the Bar may include that each set of chambers must have a written—

- constitution that describes the management structure of the chambers, the decision-making structure, the meetings and their frequency, the financial structure and responsibilities of the management structure, the authority to enter into commitments on behalf of chambers and the members, policy and arrangement for the selection of entry and departure of tenants, the ownership of and liability for assets and property used by chambers, policy and arrangements for the fair and just resolution of disputes within chambers, reference to chambers' requirements to equity (race, gender and disability sensitive), the nomination of someone responsible for quality control and the requirement for continuous professional development;
- organisational structure such that external people would be able to have an understanding of how the system works in that particular set of chambers;
- strategy and marketing. The document would address matters such as a business plan for the set of chambers, the marketing plan and the marketing material. The Bar Council would have the power to review the marketing plan and approve them to ensure compliance with our ethical standards;
- client-care programme. The document may handle matters such as complaint mechanisms. This should not be confused with the ultimate responsibility of the Bar to enforce discipline;
- pupillage programme;
- expectation statement that answers to matters such as equality and diversity, and have to submit an annual chambers return to the Bar Council setting out its compliance with its norms and standards set by the Bar Council relating to, amongst others, briefing, continuing practical training, etc.

Recommendation

It is recommended that each set of chambers shall, *at its election*, establish a practice management system that complies with the general norms and standards approved by the Bar Council. 