

Pro bono assistance

By **TN Aboobaker SC**, convenor Pro Bono Committee, Johannesburg Bar

Report to the GCB's AGM on July 2013

I have been allocated the pro bono portfolio on the GCB. I have coopted the assistance of Andy Bester of the Johannesburg Bar who has a wealth of background and experience in relation to pro bono matters. I have also approached Judge ZM Yacoob to form part of the committee in an advisory capacity. I take it that there will be no objection to the three of us forming a pro bono committee.

There are a number of matters in respect of pro bono work which require to be considered by the GCB. These include the following:

- 1 Evaluation of the pro bono system and the extent to which change is necessary;
- 2 Whether the definition of pro bono should be extended to include specific categories of contingency work;
- 3 Establishing a vehicle to facilitate access to pro bono work in which attorneys play an equal role as full partners in the project;
- 4 Defining the relationship between pro bono work and contingency work and striking an appropriate balance;
- 5 Determining the categories of work which will qualify for pro bono assistance;
- 6 Identifying the sources from which such work can be generated;
- 7 Establishing whether a means test should apply to persons seeking pro bono assistance (pro bono is obviously meant for those who cannot afford);
- 8 Identifying those categories of matters in respect of which the means test is not necessary (such as public interest litigation)
- 9 Excluding from pro bono assistance those categories of work already being dealt with by institutions such as the Legal Resources Centre and section 27;
- 10 Establishing areas of cooperation between the Legal Resources Centre and Section 27 in relation to pro bono litigation;
- 11 Extending the scope of pro bono assistance to burning issues such as corruption which has now reached epidemic proportions in our country and defining the limits of such assistance;
- 12 Identifying those matters in which contingency arrangements may be more appropriate – is it really expected of advocates in matters where considerable energy and time has been spent and where a favourable costs order has been granted simply to abandon such an order thus allowing the losing party to benefit thereby?
- 13 Encouraging the public to use the services of advocates on a contingency basis especially in matters in which the issue of corruption arises;
- 14 Rearranging the allocation of credits for pro bono work taking into account both pro bono work and work done on a con-

tingency basis provided that these are received by members through a pro bono allocation process which the individual Bars will take responsibility for (this category must be limited to public interest matters and not contingency work generally and should specifically exclude third party matters);

- 15 Launching a media campaign in which the 'pro bono' services offered by the Bar are clearly set out giving some indication of those matters which would also qualify for assistance on a contingency basis.

I will be greatly indebted to the members of the Executive if they indicate their views on this subject. Bar Chairs are urged to circulate this memo to the relevant pro bono committees and to individuals handling pro bono matters within their Bar for their comments and to provide any relevant information which may be useful in drafting a comprehensive policy on pro bono assistance.

I have requested Andy Bester to consider some of the matters raised in this email and to give me his views thereon. He has very kindly agreed to furnish me with a memorandum. He has indicated that he has been independently wrestling with some of the very issues which have been troubling my mind. Hopefully, in the near future, and provided that the Bars are co-operative in providing the information requested, it may be possible for the pro bono committee to submit a substantial proposal to the Bar which if accepted will have the effect of translating the pro bono initiative into a very real benefit for the public and thereby increasing access to justice.

At present save for Johannesburg and Cape Town and perhaps KZN, the pro bono efforts by the Bar have been hobbling along without any proper direction and with very little understanding by the public generally of the existence of a pro bono initiative by the Bar and how to access the benefits thereof. It is time that the negative perception of the Bar as a self-serving entity is removed and that a commitment is secured from advocates generally and young advocates in particular to the pro bono cause.

Advocates must balance their desire to earn a substantial income against their duty to serve society in a very real and substantial way.

The expansion of pro bono services also presents a unique opportunity for young practitioners (subject to considerations of complexity etc.) to gain experience, to assist the community and to make money at the same time.

The debate must therefore be opened and it is important that contributions are made in order to crystallise thinking on this matter. **A**