GUIDELINES IN RELATION TO THE APPOINTMENT OF COUNSEL TO ACT IN 
FORMA PAUPERIS, PRO BONO AND AS AMICUS CURIAE

Adopted by the Cape Bar Council on 22 September 2011
Amended by the Cape Bar Council on 29 August 2013

Background

1. Rule 40, which provides for in forma pauperis representation, has been in operation for many years and continues to operate. In addition, and also for many years, counsel have made themselves available to act as amici curiae.

2. In 2004 the Cape Bar introduced a formal pro bono scheme in terms of which members of the Cape Bar of more than three years’ standing are required to render a minimum of 20 hours pro bono service each calendar year and to certify that they have done so, or to provide reasons why they have not done so.

3. In terms of the Bar’s Pro Bono Rules, pro bono services may be provided by counsel:

   3.1 on referral from attorneys in non-governmental institutions;

   3.2 on nomination by the Cape Bar Council to act in forma pauperis in a matter in which an attorney is acting on the same basis;
3.3 on referral by an attorney who is providing pro bono services through “recognised structures” as defined in the Rules of the Law Society of the Cape of Good Hope;

3.4 upon request to serve without remuneration in public institutions in an acting adjudicatory capacity (whether as judge, magistrate, small claims court commission or otherwise) or in the capacity of acting prosecutor or acting family advocate;

3.5 on referral by an attorney on behalf of a client who is unable to pay for legal services in a particular matter or where there is a public interest in the outcome of the litigation;

3.6 upon request by a judge or a magistrate;

3.7 by doing advocacy skills training (not pupil mentoring) as part of the Cape Bar’s formal training programme;

3.8 by assisting the chairperson of the Cape Bar Council, at the request of the latter, to perform his/her duties in his/her capacity as chairperson of the Parliamentary Committee of the General Council of the Bar of South Africa; or

3.9 by representing the Cape Bar in applications for striking-off of advocates or in opposition of applications for admission as advocates.
4. Members of the Bar are members of a referral profession and as such, in all matters where an attorney is required, counsel may not act *pro bono* unless briefed by an attorney.

5. Appointments of counsel to act *in forma pauperis, pro bono* or as *amicus curiae* are administered by the Cape Bar Council’s Pro Bono, IFP and Legal Aid Committee ("the Pro Bono Committee").

**Appointments to act *in forma pauperis* (IFP)**

6. A person who has been furnished by the registrar with IFP instructions in terms of Rule 40 of the Uniform Rules of Court and referred to an attorney, must deliver one copy of the IFP instructions to the Administrative Officer of the Cape Bar Council (“the Administrator”).

7. The Administrator will maintain a file containing IFP instructions which have been delivered but where there has not yet been a request by an attorney acting *in forma pauperis* (“an IFP attorney”) for an advocate to be nominated.

8. Where an IFP attorney requires an advocate to be nominated, s/he must make such a request by completing and delivering to the Administrator the Cape Bar’s “Request for Nomination of Advocate to act *in forma pauperis*” form ("the IFP Request Form"), which is Annexure “A" to these Guidelines.
9. The Administrator will forward the IFP Request Form, along with a copy of the IFP instructions, to the member of the Pro Bono Committee on duty at the time (“the Co-ordinator”).

10. The Co-ordinator will, with reference to the Cape Bar Council’s database recording members’ areas of practice and the free legal services provided by them in the previous two years, identify a suitable member and (in the absence of any fixed court dates or urgency) notify such member in writing (by pro forma letter) that s/he has been nominated to act in the matter. In matters where there is a fixed court date or urgency, the Co-ordinator will first approach suitable members telephonically to establish their availability to act in the matter.

11. The member nominated to act will be furnished by the Co-ordinator with the IFP instructions and the completed IFP Request Form.

Pro bono services

12. Persons who are not attorneys making enquiries about pro bono services should contact - or be referred to - the Administrator, who will advise them that:

12.1 they must first obtain the services of an attorney; and

12.2 they may do so by making a written application to the Cape Law Society for pro bono legal assistance (furnishing them where necessary with the Cape Law Society’s contact details and a copy of
the Cape Law Society’s standard application form for pro bono legal assistance).

13. Judges making enquiries about pro bono services for litigants must be referred to the Co-ordinator. Judges will be requested to make such enquiries through the Administrator.

14. Attorneys making general enquiries about pro bono services should contact or be referred to the Administrator, who will furnish them with a copy of these Guidelines.

15. An attorney who is acting pro bono and requires the services of an advocate should approach counsel of his or her choice to assist on a pro bono basis, furnishing such counsel - along with the brief - with a letter confirming that the attorney is acting pro bono in the matter.

16. Where such an attorney is unable to obtain the services of pro bono counsel, s/he must make a request for counsel by completing and delivering to the Administrator the Cape Bar’s “Request for pro bono legal assistance” (“the Pro Bono Request Form”), which is Annexure “B” to these Guidelines.

17. The Administrator will forward the Pro Bono Request Form to the Co-ordinator.

18. The Co-ordinator will consider whether, in the light of the nature of the matter, the means of the client and the nature of the services required, a member should be requested to act in the matter.
19. Where the Co-ordinator is of the view that a member should be requested to act in the matter, the Co-ordinator will, with reference to the Cape Bar Council’s database recording members’ areas of practice and the free legal services provided by them in the previous two years, identify a suitable member and (in the absence of any fixed court dates or urgency) request such member in writing to act in the matter. In matters where there is a fixed court date or urgency, the Co-ordinator will first approach suitable members telephonically to establish their availability to act in the matter.

**Amicus curiae services**

20. Judges requiring the Cape Bar Council to appoint counsel to act in the capacity of *amicus curiae* will be requested to direct such requests to the Chairperson of the Cape Bar Council.