

CAPE BAR *PRO BONO* RULES

1. For the purposes of these rules, *pro bono* service shall mean work:
 - 1.1. By a member on referral by an attorney on behalf of a client who, in accordance with the member or attorney's assessment, is unable to pay for legal services in terms of the means test in Uniform Rule 40 applied *mutatis mutandis*;
 - 1.2. Where there is a public interest in the outcome of the litigation;
 - 1.3. Which would qualify as community service in terms of section 29 of the Legal Practice Act 28 of 2014 ("the LPA"), or its associated Regulations;
 - 1.4. On referral from attorneys in non-profit companies or organisations, and school governing bodies;
 - 1.5. On nomination by the Registrar of a South African Court to act in terms of Uniform Rule 40 (such may no longer emanate from the Cape Bar);
 - 1.6. Upon request to serve without remuneration in public institutions in an acting adjudicatory capacity (whether as judge, magistrate, small claims court commissioner or otherwise), or in the capacity of acting prosecutor or acting family advocate;
 - 1.7. Upon request by a judge or a magistrate, to act as *amicus curiae* or friend of the court, or as counsel acting for the *pro bono* client (in the latter case, counsel must be instructed by an attorney);
 - 1.8. Comprising advocacy skills training as part of the General Council of the Bar and the Cape Bar's formal training programmes;
 - 1.9. On request by the chairperson of the Cape Bar Council ("the Bar Council"), to furnish comment on draft bills or on draft amendments to the Rules of Court; and
 - 1.10. By participating in a project run by the Pro Bono Committee ("the PBC") which has the sanction of the Bar Council as being a *pro bono* initiative.
2. Pro bono service excludes *pro amico* work i.e., work for a client who is a friend or relative of the member, unless such person qualifies in terms of the means test in Uniform Rule 40 applied *mutatis mutandis*.

3. Though these rules may impose additional obligations on members, nothing in these rules may be taken to diminish or alter a member's obligations in terms of section 29 of the LPA or its associated Regulations. However, compliance with the obligations imposed by these rules may in appropriate cases reduce or acquit members of their obligations in terms of the LPA.
4. Subject to the exemptions set out below, every member of the Cape Bar who has kept chambers at a recognised Bar for more than three years (including associate members but excluding associate academic members) is required to render a minimum of twenty hours *pro bono* service each calendar year, or such number of hours as may be imposed from time to time in terms of section 29 of the LPA or its associated Regulations.
5. Counsel shall accord a *pro bono* brief its normal precedence and not defer it to attend to paid matters to the prejudice of the *pro bono* client.
6. Once briefed, counsel may withdraw from a *pro bono* brief only -
 - 6.1. upon the same grounds that they may withdraw from a paid matter; or
 - 6.2. with the leave of the Chair of the PBC ("the Chair"), upon application, and for good cause shown; or
 - 6.3. with the leave of the Bar Council, upon application made to it, should the Chair decline permission in an application as contemplated in paragraph 6.2 above.
7. Members performing *pro bono* services shall keep adequate records of their attendances, in the same manner as required for a paid brief, containing sufficient detail to complete the certificate referred to in paragraph 12 below.
8. Where a member accepts a *pro bono* brief and anticipates that time required will be unusually extensive, he/she may apply to the Chair to carry the hours performed forward for more than 2 years.
9. Where a member is reserved for a day in court, such day shall equate to ten hours' service. A member shall further be entitled to claim *pro bono* hours for a day reserved in court if an opposed *pro bono* matter is postponed for reasons unrelated to the conduct of the instructing attorney or the relevant counsel.
10. Members may notify the PBC of their specific areas of interest for purposes of *pro bono* work.
11. Once a member has been appointed or has accepted a brief to act *pro bono* in accordance with these rules -
 - 11.1. such member shall disclose this matter to the judge / magistrate / presiding officer as soon as possible or (at the latest) at the hearing;

- 11.2. if the matter is opposed (or at any time becomes opposed) disclose this fact to his/her opponent.
12. By the end of February each year every member is required, in respect of the preceding calendar year, to file with the Bar Council's Administrative Officer, by email to probono@capebar.co.za and cbc@capebar.co.za, a certificate substantially in the form of annexure "A" signed by the member, indicating the number of hours of *pro bono* service rendered and the nature of the work done which qualifies in terms of paragraph 1 above.
13. This certificate shall accurately and honestly reflect:
 - 13.1. the date of any particular attendance;
 - 13.2. a description of the work performed;
 - 13.3. the number of hours of *pro bono* service performed on that particular day; and
 - 13.4. sufficient factual detail, including a description of the nature of the work performed, to establish that the work qualifies as *pro bono* service in terms of paragraph 1 above.
14. Where such certificate is submitted but discloses that the member has rendered fewer than 20 hours of qualifying *pro bono* service, the certificate shall in addition include a comprehensive explanation by the member for the member's failure to have rendered the prescribed minimum service.
15. Admission of guilt fines may be imposed, or disciplinary action may be taken against a member by the Bar Council where such member does not, or does not timeously, file a certificate, or where the member, without proper explanation, has rendered less than 20 hours of qualifying *pro bono* service. Fines imposed without disciplinary action will not affect a member's good standing.
16. To assist the Bar Council in deciding whether to impose a fine or institute disciplinary action in terms of paragraph 15 above, the Chair of the PBC, assisted as necessary by the Cape Bar secretariat, shall within three months, or a later date by written permission of the Bar Council, refer to the Bar Council the certificates of members in default of their obligations in terms of paragraph 12 above, separated into the following categories:
 - 16.1. members who have failed to submit a certificate;
 - 16.2. members who have failed to submit a certificate timeously, and have not performed the requisite 20 hours' *pro bono* service;
 - 16.3. members who have failed to submit a certificate timeously, but have performed the relevant 20 hours' *pro bono* service;

- 16.4. members who have submitted a certificate timeously, but who have failed to perform the requisite 20 hours' *pro bono* service; and
- 16.5. members who have submitted certificates timeously and have performed the requisite 20 hours' *pro bono* service.
17. Where such certificate discloses that the member has rendered more than 20 hours of *pro bono* service, the hours of service in excess of 20 hours may be carried forward for a maximum of two succeeding years and be claimed in each such succeeding year in reduction of such member's prescribed minimum service in such succeeding year.
18. Members are entitled to enter into contingency fee arrangements sanctioned in accordance with clause 5.12.4.3 of the Uniform Rules of Professional Ethics in respect of *pro bono* work, provided they comply with the Contingency Fees Act 66 of 1997, section 92 of the LPA and/or as set out in *Thusi v Minister of Home Affairs & 70 Other cases* 2011 (2) SA 561 (KZP). However, if a member ultimately receives payment pursuant to such an arrangement, such member shall not be entitled to claim such hours as *pro bono* hours, and, to the extent such hours have already been claimed as such, will be required to pro rate his or her *pro bono* hours going forward accordingly.
19. The following persons shall be exempt from performing *pro bono* service:
 - 19.1. The chairperson, the secretary and the member of the Bar Council responsible for disciplinary matters, as well as the chairs of the finance, staff and the housing committees of the Bar Council, such period of exemption to include the months preceding the commencement of such office in a particular year and the months succeeding the termination of such office in a particular year;
 - 19.2. Persons who have been granted leave of absence, for the period of such leave of absence. The member's *pro bono* obligations shall be pro-rated should the leave of absence not be for the entire calendar year in question;
 - 19.3. An acting judge or acting magistrate, for the period for which he/she so acts. The member's *pro bono* obligations shall be pro-rated for the calendar year in question, if the member has not been appointed as an acting judge / magistrate for the whole calendar year;
 - 19.4. Members who have been granted maternity leave, for the period of such leave. The member's *pro bono* obligations shall be pro-rated should the maternity leave not be for the entire calendar year in question.
20. The Bar Council shall further be entitled to exempt other members or categories of members from the obligation to render *pro bono* services in circumstances considered to be sufficiently exceptional to warrant exemption. A member applying for exemption shall in writing:
 - 20.1. clearly detail all the circumstances which give rise to the alleged need for such an exemption;

- 20.2. state the period of the exemption sought; and
 - 20.3. undertake to advise the Bar Council forthwith should there be a future change in circumstances which materially impact upon his/her ability to render *pro bono* services.
21. Members exempted shall not be exempt from the obligation to submit *pro bono* certificates as contemplated in paragraph 12 above. In such certificate, they shall (to the extent relevant) record the basis of their exemption and the effect this has on their obligation to perform *pro bono* services for the calendar year in question.
 22. Junior members exempt from *pro bono* as contemplated in paragraph 1 above are entitled (but not obliged) to perform *pro bono* service and port hours performed, while exempt, to future years on the following basis:
 - 22.1. During the first two calendar years of practice *pro bono* hours may be ported to the first year in which the member becomes *pro bono* liable;
 - 22.2. During the third year of practice *pro bono* hours may be ported to the first or second year in which the member becomes *pro bono* liable.
 23. A junior member who performs *pro bono* hours as above, and wishes to obtain the benefit of ported hours upon becoming *pro bono* liable, shall submit a certificate as contemplated in paragraph 12 above in respect of such hours by no later than the end of February in the year following the performance of the hours in question. That certificate, in addition to the detail required in paragraph 12 above, shall reflect that the member is not *pro bono* liable but is submitting the certificate to enable the hours in question to be ported.

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CAPE BAR *PRO BONO* CERTIFICATE

To be submitted by email to: probono@capebar.co.za and cbc@capebar.co.za

I, _____ hereby certify that during the calendar year January to end December _____ [year] I performed the following *pro bono* service qualifying as such under the Cape Bar's *Pro Bono* Rules¹ in particular:

Date	Parties	Briefing Attorney / Institution	Nature of Work	Hours
Sub -Total:				
Hours carried forward from _____ [2 years prior]:				
Hours carried forward from _____ [prior year]:				
Total:				

Explanation where total hours are fewer than 20 (attach explanation if necessary):

Name: _____

Signature: _____ **Date:** _____

IMPORTANT NOTE

Pro bono service is defined as work:

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2. Where there is a public interest in the outcome of the litigation;
3. Which would qualify as community service in terms of section 29 of the Legal Practice Act, or its associated Regulations;
4. On referral from attorneys in non-profit companies or organisations, and school governing bodies;
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6. Upon request to serve without remuneration in public institutions in an acting adjudicatory capacity (whether as judge, magistrate, small claims court commissioner or otherwise), or in the capacity of acting prosecutor or acting family advocate;
7. Upon request by a judge or a magistrate, to act as *amicus curiae* or friend of the court, or as counsel acting for the *pro bono* client (in the latter case, counsel must be instructed by an attorney);
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10. By participating in a project run by the Pro Bono Committee which has the sanction of the Bar Council as being a Pro Bono initiative.

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