

CAPE BAR POLICY

EXPANDING ACCESS TO WORK FOR BLACK AND FEMALE JUNIOR COUNSEL

(as amended by the AGM on 12 April 2023 and the BC meeting on 29 June 2023)

Introduction

1. The Cape Bar is committed to promoting equal opportunities in the advocates' profession, increasing the demographic representivity of the Bar, and building a pool of experienced black and female candidates for appointment to the Bench.
2. While there has been a steady increase in the numbers of black and female members and senior counsel, the statistics reflect the ongoing impact of historic disadvantage and demonstrate a critical need for more innovative transformation measures directed at advancing and achieving greater demographic representivity at the Cape Bar.
3. Access to work, which is pivotal to the development of advocacy skills and sustainable practices, is the primary challenge for new members of the Bar.

Role of senior members in expanding work opportunities

4. Members of more than ten years' standing (senior members) can play a significant role in redressing past disadvantage and expanding the work opportunities available to black and female junior members by:
 - 4.1. proposing black and female junior members to be briefed as their juniors in accordance with the Cape Bar's Access to Work Guidelines (annexed as "A") in matters where the instructing attorney intends to brief junior counsel in the normal course (a briefing proposal);
 - 4.2. proposing that black and female members be briefed as their juniors or additional juniors on a fee-sharing basis, in accordance with the Cape Bar's Access to Work Guidelines, in matters where the instructing attorney does not intend to brief junior counsel or additional junior counsel; (a fee-sharing proposal);

- 4.3. engaging black and female junior members to provide research assistance on a remuneration basis in accordance with Rule 4.26 of the Uniform Rules of Professional Conduct and the Cape Bar's Access to Work Guidelines (a research engagement); and
 - 4.4. when asked by an attorney to recommend another counsel to be briefed in a matter in which the senior member is not engaged, where possible recommending black and female junior members with the expertise or experience appropriate to the matter in question (a briefing recommendation).
5. Senior members are urged, wherever possible, to employ one or more of the abovementioned means of advancing the transformation of the Cape Bar.

Responsibility of silks in expanding work opportunities

6. In the period **1 January to 31 December** each year, all silks shall –
 - 6.1. involve at least two black and/or female junior members of five or less years' standing (at least one of whom shall be a black female junior member) in matters in which they are briefed, on the basis of a briefing proposal, a fee-sharing proposal, or a research engagement, as a result of which each such junior member is remunerated for at least ten hours of work; and
 - 6.2. by **28 February** each year, file with the Chair of the Bar Council, c/o the Cape Bar Council's Administrative Officer, a completed Senior Counsel Access to Work Certificate (annexed as "**B**").
7. No junior member is obliged to accept work offered to her or him on the basis of a fee-sharing proposal or a research engagement by a silk or senior member.
8. It shall constitute conduct unbecoming an advocate where the silk:
 - 8.1. does not, or does not timeously, file a certificate; or
 - 8.2. files a certificate that indicates non-compliance with paragraph 6.1 and does not provide a comprehensive explanation for their non-compliance

unless the Bar Council determines otherwise on good cause shown.
9. A silk's comprehensive explanation for non-compliance with paragraph 6.1 must indicate what steps the silk took to attempt to comply, and why those steps were unsuccessful.

10. To assist the Bar Council in deciding whether to impose a fine or institute disciplinary action in terms of paragraph 8 above, the Chair of the Transformation Committee, 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 names and certificates of silks in default of the obligations in terms of paragraph 8 above, separated into the following categories:
 - 10.1. silks who have failed to submit a certificate timeously or at all;
 - 10.2. silks who submitted a certificate, whether timeously or not, and who did not comply with paragraph 6.1, but provided an explanation;
 - 10.3. silks who submitted a certificate, whether timeously or not, and who did not comply with paragraph 6.1, but provided no explanation;
 - 10.4. silks who submitted a certificate and have complied with paragraph 6.1, but did not submit their certificates timeously; and
 - 10.5. silks who submitted certificates timeously and have complied with paragraph 6.1.

--ooOoo--

CAPE BAR GUIDELINES

EXPANDING ACCESS TO WORK FOR BLACK AND FEMALE JUNIOR COUNSEL

Application of the guidelines

1. These guidelines apply to the situations, described in paragraph 4 of the Cape Bar Policy: Expanding Access to Work for Black and Female Junior Counsel (the Policy), where members of more than ten years' standing (senior members) and silks involve black and female junior members (junior members) in matters in which they are briefed, on the basis of a briefing proposal, a fee-sharing proposal, or a research engagement.
2. These guidelines do not apply to the situation in which an attorney requests one or more senior members or silks to accept a brief with one or more junior members on the basis that all the members briefed will reduce their usual fees.

Obligations of the senior member and the junior member

3. No senior member or silk may involve a junior member in a matter on the basis of a fee-sharing proposal unless the senior member or silk's instructing attorney has agreed that the junior member may be so involved and agrees to brief the junior member on that basis.
4. In identifying junior members for work opportunities in terms of the Policy, senior members and silks are encouraged to consult the Transformation Directory which is available on the Cape Bar website.
5. The opportunity to become involved in a matter on the basis of a fee-sharing proposal or a research engagement must be offered to the junior member by the senior member or silk with a full and precise explanation, at the outset, of -
 - 5.1. what is expected of the junior member in performing the work required in the brief;
 - 5.2. how and by whom the junior member will be remunerated; and
 - 5.3. the rate at which the junior member will be remunerated.
6. In determining the work required of the junior member in respect of a briefing proposal, a fee-sharing proposal, or a research engagement, the senior member or silk must bear in mind that the arrangement is aimed at effecting transformation of the profession, not only by expanding access to work, but also by the transfer of

skills to the junior member, and should therefore ensure that the junior member is included as far as possible in the work required.

7. Where a junior member has been included in a brief on the basis of a fee-sharing proposal, both the junior member and the senior member or silk must indicate on their respective invoices the proportions of the senior member or silk's fee to which each is entitled.
8. Where a junior member has been engaged in terms of a fee-sharing proposal, the senior member or silk may, as recognised in *Capstone 556 (Pty) Ltd and Another v Commissioner, South African Revenue Service and Another* 2011 (6) SA 65 (WCC) para 59, seek a special order allowing the taxation of the fees charged by all counsel (including the junior member) in accordance with the fee-sharing agreement, so that the client can recoup on taxation the fees of counsel in the amounts that would ordinarily have been charged had it not been for the fee-sharing arrangement.

ACCESS TO WORK CERTIFICATE: SENIOR COUNSEL

I, , hereby certify that during the period 1 January to 31 December -

(a) I complied with paragraph 6.1 of the Cape Bar Policy: Expanding Access to Work for Black and Female Junior Counsel (the Policy) as follows:

	<u>Name of Junior Counsel</u>	<u>Nature of Work</u>	<u>Hours</u>
1.
2.
3.
4.

Total:

(b) The junior counsel indicated in paragraph (a) above -

- (i) include at least one junior counsel listed in the Cape Bar Transformation Director as a black female counsel;
- (ii) fall within the category of junior counsel who have practised for 0 to 5 years; and
- (iii) are not counsel with whom I had previously worked, when I involved them in the work indicated in paragraph (a) above.

(c) I failed to comply with paragraph 6.1 of the Policy for the following reasons:

.....

.....

.....

Signature:

Date