



# *Transformation Policy*

## **PRETORIA SOCIETY OF ADVOCATES**

### **TRANSFORMATION POLICY**

1. The Pretoria Society of Advocates embraces the philosophy and principles of transformation by recognising that it needs to address and redress past injustices and inequalities and ensure that those who have been historically disadvantaged are placed in a position where the playing field is levelled, where skills are transferred and where recognition is given to the principles and ideals enshrined in the Constitution of the Republic of South Africa, 1996.
2. The Pretoria Society of Advocates endorses the principles of non-racialism, non-sexism, non-discrimination, human dignity and equal treatment of its members and staff members.
3. Transformation of the advocates' profession remains a challenge and there is a lack of meaningful transformation. The Pretoria Society of Advocates intends embarking on a concerted effort to realise transformation. One of its objectives is to attain professionalism and excellence in legal practice irrespective of race, colour, religion or gender of its members.
4. In establishing a policy framework for genuine transformation, there must be an acceptance that in the past the legal profession excluded most blacks and white women from its ranks. Access to the profession was largely gender and race based.
5. Further steps need to be taken to increase the effective participation of black South Africans and white women in the advocates' profession. The stability and prosperity of the advocates' profession will be undermined if the aforesaid is not attained.
6. Equal participation in the advocates' profession can only be achieved by the promotion of the constitutional right to equality and the increased broad-based and effective participation of black practitioners and white women. The objective is to promote a more equitable distribution of briefs.

7. The Pretoria Society of Advocates accepts that there is a great need for newly qualified junior members, and particularly those of previously disadvantaged groups (i.e. black members and white female members), to be exposed to attorneys who may wish to brief them and to be exposed to experienced counsel, whether they be silks or senior-juniors, who may offer them opportunities for the transfer of skills.
8. To that end and to implement transformation effectively, the Pretoria Society of Advocates has identified the following areas that require attention. The Society will formulate a written action plan for urgent implementation in respect of each of the following:
  - 8.1 A skills transfer programme aimed at facilitating the briefing of junior members of up to 5 years standing, from previously disadvantaged groups on the basis that such a junior member's remuneration, by agreement between leading counsel, other junior counsel (if applicable), the instructing attorney and the client, is subsidised at a rate of preferably not less than 10% of leading counsel's fee, unless leading counsel, and where applicable other junior counsel, agree in writing to a higher percentage.
  - 8.2 A programme in terms of which all members of the Pretoria Society of Advocates of nil to one-year standing, are afforded an opportunity to get exposure to commercial work, more particularly bank foreclosure matters in relation to institutions with which agreement can be reached in this regard, and the attorneys involved in such matters, by participating in a project whereby briefs from such attorneys are distributed on a rotational basis among participating members.
  - 8.3 In matters that warrant and require that three or more counsel be briefed, at least one member of the team of counsel must be from a previously disadvantaged group.

- 8.4 An annual event to be hosted by the Pretoria Society of Advocates where newly qualified members who have just passed the Bar exam, are introduced to firms of attorneys involved in litigation.
  - 8.5 A concerted effort be made by all members, but especially white senior counsel, to alter unfounded perceptions held by attorneys and/or their clients that members, including senior members, from previously disadvantaged groups lack the ability and competence to deal with complex cases, and by doing so to enhance equal opportunity and equal access to briefs.
  - 8.6 A programme in terms of which deserving and interested senior members from previously disadvantaged groups are identified for exposure to more complicated commercial and other matters, by being paired with senior members to gain relevant experience that would assist with such members becoming better equipped and better qualified to eventually apply for senior status.
  - 8.7 The need to gather and maintain statistics of briefing patterns of members in cooperation with the Judge President of the Gauteng Division of the High Court, the State Attorney Pretoria, Government Departments, state-owned companies as well as public and private companies.
9. This Transformation Policy was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.

## **PRETORIA SOCIETY OF ADVOCATES : TRANSFORMATION INITIATIVES**

### **INTRODUCTION**

1. There is a dire need for transferring skills to members of previously disadvantaged groups. This can only happen if consideration is given to patterns of briefing counsel. Change must come "from the top". Senior counsel, senior juniors, instructing attorneys and clients need to deliberate on their briefing patterns and the allocation of work to address the issue of transformation.
2. It is common knowledge that the Government, State owned entities as well as public and private companies have policies in place imposing upon them an obligation to brief counsel from previously disadvantaged groups and have transformation initiatives and targets that need to be met.
3. To receive effective training and to develop their practices, members of previously disadvantaged groups need to be exposed to a mix of manageable cases to gain confidence and to eventually progress to more complex cases.
4. The initiatives identified by the Pretoria Society of Advocates to achieve these goals are detailed below.

**A. SUBSIDISATION OF MEMBERS OF PREVIOUSLY DISADVANTAGED GROUPS WITH UP TO 5 YEARS' EXPERIENCE**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including a skills transfer programme aimed at facilitating the briefing of junior members of previously disadvantaged groups of up to 5 (five) years standing on the basis that such a junior member's remuneration, by agreement between leading counsel and, where applicable, other counsel involved, as well as the instructing attorney and the client, is subsidised at a rate of preferably not less than 10% of leading counsel's fee, unless leading counsel and, where applicable, other counsel involved, agrees in writing to a higher percentage.
2. Often, due to lack of skills, junior members of previously disadvantaged groups are brought into matters that are beyond their experience and knowledge. The result is that they are perceived as being incapable of delivering quality work, which perception impacts on them obtaining work in future.
3. This transformation initiative anticipates that members of previously disadvantaged groups, other members of the Pretoria Society of Advocates and especially senior counsel, as well as instructing attorneys and their clients will all participate to ensure its success.
4. It comprises a programme to subsidise the fee of junior members of previously disadvantaged groups practising for five years or less.
5. The initiative entails the following:
  - 5.1. A senior member indicates that he/she is willing to subsidise a junior member of a previously disadvantaged group. The term "senior member" includes all senior counsel as well as all other members of the Society of more than five years standing.

- 5.2. The subsidised member is briefed by the instructing attorney with the consent of the client.
- 5.3. The subsidised member's fee must be agreed to by the leading counsel and, where applicable, other counsel involved in the matter, as well as the instructing attorney and the client.
- 5.4. The subsidised member's fee will be paid by the instructing attorney on receipt of the said member's account.
- 5.5. In certain matters the attorney and/or the client, and counsel, other than leading counsel, may contribute to the subsidised member's fee, which arrangement must be recorded in writing by the instructing attorney.
- 5.6. The initiative constitutes an ad hoc arrangement that must be agreed upon on a case-by-case basis by all the members of the legal team and the client.
- 5.7. The subsidised fee and hours of work required from the subsidised member must, in conjunction with the instructing attorney, be agreed with him or her at the inception of his or her appointment.
- 5.8. The objective of this initiative is to transfer skills and to empower junior members of previously disadvantaged groups.
- 5.9. The subsidised member must commit to fulfilling his or her obligations in respect of the services required for each brief.
- 5.10. Leading counsel and the instructing attorney must be cognisant of their responsibility to transfer skills to the subsidised member.

6. Despite what is set out above, all participating members must be mindful of the provisions of the Constitution of the Pretoria Society of Advocates and the Rules of Conduct.
7. This initiative can only be effectively implemented if members, instructing attorneys and clients commit to it. It is also imperative that there is ongoing professional development of members through regular training and mentoring.
8. All members of previously disadvantaged groups with up to five years standing are to provide details of the areas of the law which they are interested in and in which they require mentoring and the transfer of skills.
9. All members of previously disadvantaged groups are to provide details of their expertise and the areas of law in which they consider themselves to be specialists.
10. All other members of the Society that are interested and willing to participate in this transformation initiative must indicate that much, as well as the areas of law in which they practice or in which they consider themselves to be specialists, in writing to the General Manager of the Society by providing the information requested in the annexure hereto.
11. A database of all participating members will be kept by the General Manager of the Society.
12. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.



**INFORMATION SHEET FOR ADVOCATES**

**NAME & SURNAME:** \_\_\_\_\_

**CONTACT DETAILS:** \_\_\_\_\_

\_\_\_\_\_

**DELETE WHAT IS NOT APPLICABLE:**

- ☐ **PDI MEMBER**
- ☐ **NON PDI MEMBER**
- ☐ **SENIOR COUNSEL**
- ☐ **PDI MEMBER WITH LESS THAN 5 YEARS EXPERIENCE**

**PRACTICE INFORMATION:** \_\_\_\_\_

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**INDICATE WHETHER YOU ARE A SENIOR OR JUNIOR COUNSEL**

**ANY RELEVANT EXPERIENCE PRIOR TO BECOMING A MEMBER OF THE BAR:**

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**SENIORITY (YEARS AT THE BAR):** \_\_\_\_\_

**ANY RELEVANT QUALIFICATION RECEIVED AFTER LLB DEGREE:**

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**AREAS OF THE LAW OF WHICH YOU ARE INTERESTED IN:**

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**INFORMATION SHEET OF ATTORNEY AND CLIENTS - THAT WANT TO**  
**PARTICIPATE IN THE PRETORIA SOCIETY OF ADVOCATES**  
**TRANSFORMATION INITIATIVE -**

to be e-mailed to: [ptabar@law.co.za](mailto:ptabar@law.co.za) and [harshila@clubadvocates.co.za](mailto:harshila@clubadvocates.co.za)

**ATTORNEYS**

NAME & SURNAME: \_\_\_\_\_

CONTACT DETAILS: \_\_\_\_\_  
\_\_\_\_\_

PARTICULARS OF ATTORNEY: \_\_\_\_\_  
\_\_\_\_\_

AREAS OF PRACTICE: \_\_\_\_\_  
\_\_\_\_\_

**CLIENTS**

NAME: \_\_\_\_\_

CONTACT DETAILS: \_\_\_\_\_  
\_\_\_\_\_

**B. TRANSFORMATION INITIATIVE: EXPOSURE OF JUNIOR MEMBERS TO COMMERCIAL WORK**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including a programme in terms of which all members of the Pretoria Society of Advocates of nil to one-year standing are offered an opportunity to get exposure to commercial work, more particularly bank foreclosure matters, and the attorneys involved in such matters, by participating in a project whereby briefs from such attorneys are distributed on a rotational basis among participating members.
2. The Bar Council previously resolved, as part of its transformation agenda, to approach Nedbank to start a project aimed at exposing junior members of less than one year standing to commercial work, more particularly bank foreclosure matters in the unopposed motion court.
3. Pursuant to the aforesaid resolution meetings with Nedbank took place which culminated in the creation of the project explained below, which is fully supported by Nedbank and its panel of attorneys.
4. Nedbank is keen to see the project implemented as soon as possible and regards it as a pilot project which, if successful, will be rolled out nationally.
5. The project needs to be monitored closely and reported on monthly to determine the success or otherwise thereof (i.e. measured against the Bar Council's and Nedbank's expectations).
6. It was agreed that the project would be implemented on the following basis:
  - 6.1. The Pretoria Society of Advocates will compile a list of eligible junior members who are interested in participating in the project.

- 6.2. The Society will appoint a liaison officer who will be in possession of the list of participating members.
- 6.3. Nedbank will instruct its panel attorneys to send briefs in unopposed foreclosure matters to the Society's liaison officer to be distributed on a rotational basis among the members on the list.
- 6.4. The Society will train and equip participating members to ensure that each instruction is dealt with effectively and professionally.
- 6.5. Each participating member who receives a brief will be responsible for preparing the matter and moving same in the Unopposed Motion Court, on the instructions of the Nedbank panel attorney from whom the brief emanates, on behalf of Nedbank.
- 6.6. Upon fulfilment of the brief, the participating member must report back to the Society's liaison officer as well as directly to the Nedbank panel attorney who gave the instruction.
- 6.7. The participating member must submit his or her account directly to the Nedbank panel attorney involved and furnish a copy of the account to the Society's liaison officer.
- 6.8. Nedbank will provide the Society with a template of the format in which the Society's liaison officer is required to report back monthly to Nedbank and its panel attorneys in respect of each instruction.
- 6.9. Nedbank will, depending upon the success of the project, consider increasing the number of briefs allocated monthly by its panel attorneys to the project.
- 6.10. Regular meetings will be held between Nedbank and the Bar Council or the Transformation Committee representatives charged with overseeing the project, to assess the progress of the project and to attend to problem areas where necessary.

7. Each member who participates in the project:
  - 7.1. will have to attend all training sessions prescribed by the Bar Council or the Transformation Committee aimed at ensuring the proper handling of the instructions and applications in Court as well as billing the Nedbank panel attorneys for work done;
  - 7.2. will have access to senior colleagues for assistance prior to as well as on the day that each such matter is moved in Court, to ensure that a quality service is rendered to Nedbank;
  - 7.3. is expected to liaise with the Nedbank panel attorney from whom the instruction emanates as if the brief had been received by the member directly from such attorney;
  - 7.4. and who fails to comply with his or her obligations in terms of the project will be removed from the list and forfeit the opportunity to further participate in the project.
8. As this is a pilot project, amendments and adjustments will be made on a continuous basis where necessary to ensure that all participants reap maximum benefits from the project.
9. The invitation to participate in the project, annexed hereto must be sent to all eligible members by the General Manager of the Society.
10. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.

**C. TRANSFORMATION INITIATIVE: CASES THAT WARRANT AND REQUIRE THE APPOINTMENT OF THREE OR MORE COUNSEL**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including that in matters that warrant and require that three or more counsel be briefed, at least one member of the team of counsel must be from a previously disadvantaged group.
2. In all matters that require more than two counsel, one member of the team must be an individual from a previously disadvantaged group.
3. The member so identified must be formally briefed by the instructing attorney and is a fully-fledged member of the legal team.
4. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.

**D. TRANSFORMATION INITIATIVE: INTRODUCTION OF NEW MEMBERS TO ATTORNEYS**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including an annual event to be hosted by the Society where newly qualified members who have just passed the Bar exam, are introduced to firms of attorneys involved in litigation.
2. The Bar Council, in collaboration with the General Manager of the Pretoria Society of Advocates, must organise and host the aforesaid event as soon as practicable after the results of the Bar exam have become available.
3. All members of the Pretoria Society of Advocates are requested to submit names and contact details of attorneys involved in litigation and who is to be invited to attend the aforesaid event, to the General Manager of the Society.
4. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.



**E. TRANSFORMATION INITIATIVE: DISPELLING UNFOUNDED PERCEPTIONS REGARDING THE ABILITY AND COMPETENCE OF MEMBERS FROM PREVIOUSLY DISADVANTAGED GROUPS**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including that a concerted effort be made by all members, but especially white senior counsel, to alter unfounded perceptions held by attorneys and/or their clients that members, including senior members, of previously disadvantaged groups lack the ability and competence to deal with complex cases, and by doing so to enhance equal opportunity and equal access to briefs for all members.
2. All members, but especially white senior counsel, are called upon to, whenever the opportunity presents itself, actively seek to dispel the aforesaid unfounded perceptions and to encourage instructing attorneys and their clients to also make use of the services of members, including senior members, of previously disadvantaged groups.
3. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.

**F. TRANSFORMATION INITIATIVE: INVOLVING SENIOR MEMBERS OF PREVIOUSLY DISADVANTAGED GROUPS**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of each of which a written action plan for urgent implementation needs to be formulated, including a programme in terms of which deserving and interested senior members of previously disadvantaged groups are identified for exposure to more complicated commercial and other matters, by being paired with senior members of the Society to gain relevant experience that would assist such members becoming better equipped and better qualified to eventually apply for senior status.
2. It is accepted that black members and white female members have not been exposed to the same extent as white male members to quality briefs.
3. The Pretoria Society of Advocates has established that many of its senior members of previously disadvantaged groups, specifically female members are loath to apply for senior status as they are not briefed in many of the more complex cases due to, *inter alia*, unfounded perceptions regarding their ability and competence.
4. This initiative is aimed at specifically empowering such members and dispelling the aforesaid unfounded perceptions regarding their ability and competence.
5. Senior members that wish to participate in this initiative are requested to contact the Chairperson of the Transformation Committee or the General Manager of the Society to indicate their willingness in this regard.
6. Senior members are also requested to submit the names of deserving and interested members who would benefit from the aforesaid initiative, to the Chairperson of the Transformation Committee or the General Manager of the Society.

7. All such members who consider themselves deserving and are interested in benefiting from the aforesaid initiative are invited to submit a brief written submission to the Chairperson of the Transformation Committee or the General Manager of the Society motivating their inclusion and participation in the aforesaid initiative.
8. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.

**G. TRANSFORMATION INITIATIVE: STATISTICS OF BRIEFING PATTERNS**

1. The Pretoria Society of Advocates has, in its Transformation Policy, identified certain areas that require attention and in respect of which a written action plan for urgent implementation needs to be formulated, including the need to gather and maintain statistics of briefing patterns of members in cooperation with the Judge President of the Gauteng Division of the High Court, the State Attorney Pretoria, Government Departments, state-owned companies as well as public and private companies.
2. The Pretoria Society of Advocates intends requesting attorneys, specifically the State Attorney Pretoria and Government Departments, state-owned companies as well as public and private companies to maintain statistics of all members of previously disadvantaged groups that are briefed and in relation to the type of matter. The Society and its Transformation Committee will engage actively with the aforesaid stakeholders to evaluate and analyse the briefing patterns and to take steps to ensure that all members, specifically women, from previously disadvantaged groups are briefed and provided with a fair opportunity to gain access to appropriate briefs, taking into account their seniority and expertise.
3. The Judge President and the Deputy Judge President of the Gauteng Division of the High Court are presently keeping statistics of members from previously disadvantaged groups appearing in matters in that division. The Society intends liaising with the office of the Judge President to gain access to such statistics and also to actively engage with the Judge President's office concerning the appointment of suitably experienced members from previously disadvantaged groups for acting appointments and, on request from the Judge President's office, provide details of any member from a previously disadvantaged group who may be nominated for permanent appointment to the Bench.
4. This transformation initiative was formally adopted by the Bar Council of the Pretoria Society of Advocates on 30 April 2019.