

POLICY ON LEAVE OF ABSENCE, LEAVE TO PRACTISE FROM HOME, LEAVE TO PRACTISE FROM LEGAL CENTRES, DOOR CHAMBERS AND OTHERS

MEMBERSHIP OF THE SOCIETY AND THE HOLDING OF CHAMBERS

1. In accordance with the provisions of the Bar's Uniform Rules of Professional Conduct ("**the GCB rules**"), the Constitution of the Johannesburg Society of Advocates ("**the Johannesburg Bar Constitution**"), and the Local Rules and Practice of the Johannesburg Society of Advocates ("**the local rules**"), all members of the Johannesburg Society of Advocates ("**the Society**") are ordinarily required to practise, on a full-time basis, the profession of advocacy from chambers approved for those purposes by the Bar Council ("**the default position**").
2. The default position is best facilitated within chambers occupied by organised Groups so that:
 - 2.1. Members are readily accessible to other members for purposes of facilitating mentoring, advice and practice development;
 - 2.2. Members can be monitored and reviewed by their peers;
 - 2.3. Members and the Society can fulfil their mentoring duties to pupils and junior members.
3. All members of the Society are ordinarily subject to the default position unless an exemption has been granted otherwise.
4. An incident of the default position is that members are ordinarily obliged to pay to the Society a monthly subscription fee determined in accordance with the Johannesburg Bar Constitution and the local rules.
5. In the absence of the grant to a member of an exemption from the default position, a failure to comply with the default position may result in sanctions being imposed against a member.

THE PREROGATIVE TO PERMIT OF EXEMPTIONS

6. The prerogative and discretion to grant any exemption to a member as against the default position vests with the Bar Council or its duly authorised sub-committee ("**the committee**") and not with Groups.
7. An exemption to the default position may, on its merits, be granted by the Bar Council or the committee upon application to it by any member or, in the event that a member is unable to make application him/herself, by that member's Group on behalf of the member, or by any other person/s authorised and having the capacity to represent the member.

8. In deciding whether or not to grant an exemption to a member, the Bar Council or the committee,
 - 8.1. must have regard to:
 - 8.1.1. this policy document, including the transformation considerations referred to below;
 - 8.1.2. the duration of the exemption sought;
 - 8.1.3. the seniority of the member in question;
 - 8.1.4. the reason for which the exemption is sought;
 - 8.1.5. the extent to which the member will remain subject to or may potentially compromise his/her ethical obligations as an advocate and as a member of the Society;
 - 8.1.6. the extent to which the member will remain subject to the control and jurisdiction of the Bar Council and the Society;
 - 8.2. may have regard to, but is not bound by:
 - 8.2.1. any policy/ies of the group to which the member belongs;
 - 8.2.2. the member's personal circumstances; and
 - 8.3. must consider any submissions made by or on behalf of the member before taking a decision on whether or not to grant an exemption

Provided further that the decision and reasons, but not the debate, of the Bar Council or the committee must be minuted by the Bar Council or committee as the case may be and communicated in writing to the member or to the person/Group who made application on the member's behalf.
9. The Bar Council or the committee may, within their discretion, impose conditions upon the grant of an exemption, provided that in granting such conditions the Bar Council or the committee must have regard to such conditions as may previously have been imposed in comparable circumstances.
10. An exemption to the default position may not be granted by the Bar Council or committee where the purpose for which the exemption is sought is incompatible with the continued practice of the profession of advocate in the Republic of South Africa and the exceptions permitted under this policy document:
 - 10.1. so as to permit the member concerned to take up full time commercial career or occupation elsewhere;
 - 10.2. under circumstances where the member has no intention of again practising as an advocate in the Republic of South Africa; or

- 10.3. for a reason otherwise incompatible with the practice of advocate in the Republic of South Africa.
11. Any exemption granted in accordance with this policy document or under the rules may be revoked by the Bar Council or the committee at its/their discretion: Provided that before any such exemption is revoked the member concerned or, in his/her absence, his/her Group or the person authorised and having the capacity to represent the member is given notice of the intended revocation and is afforded an opportunity to make representations why the exemption should not be revoked.
12. Any exemption to the default position may be granted for a specified period not exceeding 12 months at a time. Upon the expiry of the period specified, and in the absence of any renewal of the exemption application, the exemption shall automatically lapse.
13. An exemption may, on application to the Bar Council or the committee, be renewed
- 13.1. for a further period as may be determined but not exceeding 12 months at a time; and
- 13.2. subject to this policy document and the local rules.

TRANSFORMATION

14. Subject to the default position, in deciding whether or not to grant a member an exemption from the default position, the Bar Council and/or the committee are enjoined, within the constraints of this policy document, to have regard to considerations of promoting transformation and access to the profession and Groups by members of historically disadvantaged groups.
15. In interpreting and applying this policy, the Bar Council and/or the committee are required to have regard to the need to facilitate and promote membership of the Society by women and to any maternity policy that has been or may be adopted by the Bar Council or by individual Groups.
16. Nothing in this policy should be interpreted as deterring the sharing of chambers by members of the Society.

LEAVE OF ABSENCE

17. The Bar Council or the committee may, on application, grant exemption to a member affording him/her a leave of absence from practising as an advocate and simultaneously dispensing with the requirement that they hold chambers.

18. A member who is on leave of absence may not, either in the Republic of South Africa or elsewhere, practise as an advocate or in a similar profession for remuneration for the period during which they are absent.
19. A member who is on leave of absence shall not be required to pay more than one-third of the annual subscriptions ordinarily payable by a member of comparable seniority or standing in the Society, provided that:
 - 19.1. a member who is absent by reason of family responsibilities or on maternity or paternity leave shall not be required to pay any subscriptions, and
 - 19.2. the member may, at the discretion of the Bar Council or committee, be required to pay an amount less than one-third of the annual subscriptions of a member of comparable standing and seniority.
20. The period that a member is on leave of absence will not count towards the member's seniority, unless otherwise determined in writing by the Bar Council or the committee.

DOOR MEMBERSHIP

21. The Bar Council or the committee may, upon application by any member, exempt that member from the requirement of holding full-time chambers and allow the member to hold door chambers instead.
22. Any such application for exemption and for permission to hold door chambers must be accompanied by confirmation by the member concerned and by the Group in which s/he will hold door chambers that the Group will permit him/her to hold door chambers in that Group.
23. Any permission from a Group to a member entitling that member to hold door Chambers in the Group is subject to the Bar Council or the committee permitting the member concerned to remain a member of the Johannesburg Society of Advocates whilst holding only door membership of a Group.
24. Door membership implies that the member does not hold or practise from chambers in a Group.
25. Door membership is intended for the following situations as described in this policy document:
 - 25.1. where the member is an associate member;-
 - 25.2. where leave has been granted to a member to practise from home;
 - 25.3. where leave has been granted to a member to practise from a legal centre or university;
 - 25.4. where a member is a full member of a constituent Bar of General Council of the Bar of South Africa and who holds chambers approved by that constituent Bar;

- 25.5. where a member practises as an advocate or its equivalent in a foreign jurisdiction; or
- 25.6. in exceptional circumstances and with the approval of the Bar Council upon application by the member concerned.

PRACTISE FROM HOME

- 26. The Bar Council or the committee may, on application, grant an exemption to members to practise from home.
- 27. A member seeking leave to practise from home must:
 - 27.1. at the same time apply for leave to hold door chambers and
 - 27.2. show that the member has been permitted by a Group to hold door chambers in that Group.
- 28. The exemption to practise from home will only endure for so long as the member in question remains entitled to hold door chambers in a Group.
- 29. Members who are granted exemption to practise from home will continue to pay an amount equivalent to the annual subscriptions of a member of the Johannesburg Society of Advocates of comparable standing and seniority, unless reduced or waived in writing by the Bar Council or the committee.
- 30. An exemption to a member entitling him/her to practise from home will not exempt the member concerned from his/her obligations towards his/her Group, including the obligation to pay to the Group such Group fees as may be agreed or have been agreed as between the member and the Group.
- 31. Only in exceptional cases will leave to practise from home be denied to a member:
 - 31.1. wishing to enter into semi-retirement due to ill-health;
 - 31.2. where the member is 65 years or older; or
 - 31.3. who has demonstrated him/herself to be the primary caregiver of a child or children of less than seven years of age.

LEAVE TO PRACTISE FROM LEGAL CENTRES

- 32. It is not undesirable to be both a member of the Johannesburg Bar and:
 - 32.1. to be employed by and practise, with the leave of the Bar Council, as an advocate at an approved public interest legal centre (“**a legal centre**”), or
 - 32.2. to be employed at a tertiary academic university approved by the Bar Council (“**a university**”).
- 33. The Bar Council or the committee may, on application, grant an exemption to members to practise as an advocate whilst employed at a legal centre or university: Provided that such member is not also employed in a commercial

career or occupation incompatible with the practice of the profession of advocate.

34. A member seeking leave to practise as an advocate at a legal centre or university must:
 - 34.1. at the same time apply for leave to hold door chambers or chambers and
 - 34.2. show that the member has been permitted by a Group to hold door chambers or chambers in that Group.
35. The exemption to practice from a legal centre or university will only endure for so long as the member in question remains entitled to hold door chambers or chambers in a Group.
36. Members who are granted exemption to practise at a legal centre or university will continue to pay an amount equivalent to the annual subscriptions of a member of the Johannesburg Society of Advocates of comparable standing and seniority, unless reduced or waived in writing by the Bar Council or the committee.
37. An exemption to a member entitling him/her to practise at a legal centre or university will not exempt the member concerned from his/her obligations towards his/her Group, including the obligation to pay to the Group such Group fees as may be agreed or have been agreed as between the member and the Group.

DUAL MEMBERSHIP

38. A member of any one of the constituent Bars of the General Council of the Bar of South Africa, who wishes to become a member of the Society and to also practise from Johannesburg, may apply to the Bar Council or the committee to do so.
39. Unless that member also applies for leave to hold door chambers, she or he will be required to hold chambers, pay full membership fees, and must fulfil all the obligations that other members of the Society are obliged to fulfil.
40. A member seeking dual membership with an exemption to hold door chambers must:
 - 40.1. at the same time apply for leave to hold door chambers and
 - 40.2. show that the member has been permitted by a Group to hold door chambers in that Group.
41. The exemption to practise as a dual member with door chambers will only endure for so long as the member in question remains entitled to hold door chambers in a Group and remains a full member in good standing of a constituent Bar of the General Council of the Bar.

ASSOCIATE MEMBERSHIP

42. Associate membership of the Society may be granted to:
 - 42.1. Any member or former member who practises as an advocate or its equivalent in a foreign jurisdiction;
 - 42.2. Any member who intends to retire from practice but wishes to retain his/her links to this Bar.
43. Any person who satisfies the criteria referred to in paragraph 42 above may apply to be an associate member of the Society and to be exempt from the requirement that he/she hold chambers or door membership or the requirement that she/he pay subscriptions.
44. Members who are granted exemption to remain as associate members will pay no more than half of the equivalent amount of the annual subscriptions of a member of the Society of comparable standing and seniority, unless reduced or waived in writing by the Bar Council or the committee.
45. A member seeking leave to remain as an associate member must show that she/he has been permitted by a Group to be an associate member of that Group.
46. The member may remain as an associate member only for so long as she/he is entitled to remain as an associate member of a Group
47. The Bar Council may, in its discretion and upon notice, terminate such associate membership.

HONORARY MEMBERSHIP

48. Honorary membership of the Society may be granted to advocates or persons who have practised in or are practising in equivalent professions (whether past members or not) who are recognised for their contribution to the practice of law, but who do not practise as members of the Society or in any equivalent profession.
49. The decision whether or not to confer honorary membership vests with the Society.
50. Proposed honorary members must be nominated by a member or Group of the Society.
51. An honorary member who has been nominated for such membership by a Group may be reflected as an honorary member of the Group concerned.
52. Honorary members will be exempt from the requirement to pay membership fees, the disciplinary control of the Bar, and the requirement to hold chambers, door chambers or associate membership of a Group.
53. The grant of honorary membership does not entitle any person to practise as an advocate in the event that he/she is not otherwise qualified to be admitted and to practise as an advocate.

54. The Bar Council may, in its discretion and upon notice, terminate such honorary membership.

EXCEPTIONAL CIRCUMSTANCES

55. There may be circumstances which do not fall within the scope of this policy document and which may, in exceptional circumstances, permit of extensions to or exemptions outside of the policies contained in or not contemplated by this document (“**exceptional circumstances**”).
56. The Bar Council must, upon application to it in relation to exceptional circumstances, consider each such application on its merits and decide whether or not to grant such application.
57. The grant, by the Bar Council, of an exemption under exceptional circumstances:
- 57.1. shall not be construed as an amendment to or variation of the policy contained in this document;
 - 57.2. must be taken into account by the Bar Council in considering future applications for an exemption based on exceptional circumstances.

CONTINUED EXEMPTIONS

58. All exceptions and exemptions that have previously been granted, by the Bar Council or one of its Committees, to any member prior to the adoption of this policy will remain in place on the terms on which it was granted to the individual member concerned: Provided that:
- 58.1. the exemption or exception so granted will not endure for more than 12 months from the date of the adoption of this policy;
 - 58.2. an exemption or exception permitted by a Group, in the absence of or without the added permission of the Bar Council or one of its Committees shall, within 3 months of the implementation of this policy, lapse subject to the right of a member to apply for an exemption under this policy.
59. Notwithstanding what is set out in paragraph 58 above, within 12 months of the adoption of this policy all previous exemptions and exceptions not granted under this policy will lapse, subject to the right of a member to apply for an exemption under this policy.