

Pro Bono Practices and Opportunities in South Africa

I. Introduction

Prior to 2003, no formal initiative in respect of pro bono practice has been developed in South Africa and only legal practitioners carried out pro bono work on an informal basis.

After 2003, promoted by the recognition that the government’s legal aid system was not adequate to address the South African public’s legal needs— particularly those of the poorest members of South African society, the Cape Law Society instituted a mandatory pro bono rule for its members. Since then, each of the regional law societies in South Africa has required their members to perform mandatory pro bono legal services. In addition, some of the country’s large commercial law firms have adopted innovative policies towards pro bono; however the strategic approach and emphasis among law firms varies.

In addition to these opportunities, legal professionals in South Africa may also provide pro bono legal services through legal NGOs. South Africa has a vibrant legal NGO community which is an important aspect of the access to justice landscape in the country. Lawyers seeking opportunities for pro bono legal service may also contact the state’s legal aid provider - Legal Aid South Africa (“**LASA**”) which also coordinates and provides pro bono opportunities in South Africa.¹

In addition, at the University of Cape Town, and at an increasing number of other law schools across the South Africa, it is a compulsory graduation requirement for law students to complete a total of 60 hours of community service.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	1. Describe the laws/rules that regulate the provision of legal services?	Article 4 of the Legal Practice Act 28, 2014 ² states that the South African Legal Practice Council is established with full legal capacity and has jurisdiction over all legal practitioners and candidate legal practitioners. ³
	2. Describe any licensure requirements governing the provision of legal services.	Article 26 of the Legal Practice Act 28, 2014 sets out that an Bachelor of Laws degree is required to practice law in South Africa. The degree should be obtained from a South African law school. If a law degree is obtained outside South Africa, the South African Qualifications Authority must be satisfied that the degree is equivalent to the Bachelor of Laws degree in South Africa and can be recognized by them as an equivalent degree. If equivalency is verified, candidates must satisfy certain other requirements to become either an attorney or advocate. These include being a South African

¹ Link to LASA 2017-2018 annual report: https://lasa.asn.au/wp-content/uploads/2018/11/LASA0388_Annual-Report.pdf (last visited on May 1, 2019).

² See <http://www.justice.gov.za/legislation/acts/2014-028.pdf> (last visited on May 1, 2019).

³ For the latest developments concerning the Legal Practice Act see <https://www.lssa.org.za/legal-practitioners/advisories/misc/legal-practice-act-28-of-2014/misc/legal-practice-act> (last visited on May 1, 2019).

		<p>citizen or permanent resident in South Africa. To qualify to be admitted and enrolled as a legal practitioner, each candidate is also required to undergo all the practical vocational training requirements and pass a competency-based examination, no matter whether they have obtained law degrees from South Africa or outside South Africa.</p>
<p>(b) Pro Bono Practice and Culture</p>		
	<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>There are no specific rules that regulate the provision of pro bono legal services in South Africa.</p> <p>Section 34 of the South African Constitution⁴ provides that everyone has a right to have a dispute resolved by the application of law decided in a fair public hearing before a court, which may give rise to a claim for legal assistance for civil matters. In the criminal law context, detained and accused persons have a constitutional right to legal counsel and to provision of a legal practitioner at state expense if substantial injustice would otherwise result. This is directed more at the provision of legal aid than pro bono legal services. Notably, a high percentage of legal aid (approximately 87%) goes toward criminal law proceedings.⁵</p> <p>Currently, r 25 of the Rules for the Attorneys’ Profession promulgated in 2016 regulates pro bono among attorneys (the Cape Law Society has its own rule) (see r 25 of the ‘Rules for the Attorneys’ Profession’ published under the authority of the Attorneys Act 53 of 1979 GenN2 GG39740/26-2-2016).⁶ It sets out the definitions of pro bono legal services, procedures for approval and delivery of pro bono legal services, the minimum pro bono hours required for each attorney, recording of pro bono hours and services, cost of pro bono legal services and unprofessional conduct for refusal of providing pro bono legal services without good cause. Under r 25, pro bono legal services means services approved or recognized under this rule, relating to, the delivery of advice, opinion or assistance in matters falling within the professional competence of a member, to facilitate access to justice for those who cannot afford to pay for such</p>

⁴ See <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf> (last visited on May 1, 2019).

⁵ LASA 2017-2018 Legal Aid Annual Report, page 17.

⁶ See <https://www.lssa.org.za/upload/RulesForTheAttorneysProfession2016.pdf> (last visited on May 1, 2019).

	<p>services, free of charge. This rule is similar to the various provincial law society rules that had been adopted by the KwaZulu-Natal Law Society, Free State Law Society, Law Society of the Northern Provinces and Cape Law Society, from around 2010 onwards. The General Council of the Bar, Johannesburg Bar Council, Pretoria Bar Council, Cape Bar Council and Eastern Cape Society of Advocates all have pro bono rules that apply to advocates.</p>
<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>Some South African law societies such as Law Society of the Northern Provinces and Cape Law Society mandate attorneys to provide 24 hours per year of free legal advice to members of the public who qualify for this service in terms of a means test.⁷</p>
<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Article 26 of the Legal Practice Act 28, 2014 sets out that a candidate legal practitioner in South Africa must complete all of the practical vocational training requirements prescribed by the Legal Practice Act which includes a requirement to provide community service. The community service can be, among others, service in the State, service at the South African Human Rights Commission, service as a judicial officer and the provision of legal education and training. It does not necessarily need to be the provision of pro bono legal services and the Legal Practice Act does not specify the minimum numbers of hours required.</p>
<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>Notably, a high percentage of legal aid (approximately 87%) goes toward criminal law proceedings.⁸ Given the socio-economic challenges evident in South Africa, there is also a strong need for civil proceeding representation. Although the Legal Aid Board thinks it achieved its targets in respects of new and finalized matters for both civil and criminal legal services delivery, the increased demand for civil legal services poses the challenge to its civil practitioners to render client-focused services while at the same time meeting the exacting time demands of a civil practice.⁹ The private sector is beginning to supplement the services provided by the Legal Aid Board, though</p>

⁷ See <https://www.lssa.org.za/upload/RulesForTheAttorneysProfession2016.pdf> and <https://www.lssa.org.za/contact-us/get-legal-representation> (last visited on May 1, 2019).

⁸ LASA 2017-2018 Legal Aid Annual Report, page 17.

⁹ LASA 2017-2018 Legal Aid Annual Report, page 22.

		funding and capacity remains strained in both spheres.
	5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?	The main providers of pro bono legal services are individual legal practitioners administered by law societies and law firms. In addition to these opportunities, legal professionals may also provide pro bono legal services through legal NGOs such as probono.org.
(c)	Obstacles to Provision of Pro Bono Legal Services	
	1. Do lawyers require a license to provide pro bono legal services?	As long as a lawyer is admitted to practice law in South Africa, they are eligible to provide pro bono legal services.
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<p>In terms of the Legal Practice Act 28 of 2014, foreign lawyers need to qualify as legal practitioners in South Africa in order to provide pro bono legal services.</p> <p>Unless a person is from a designated country (at present Swaziland, Namibia, Lesotho and the former Transkei, Bophuthatswana, Venda and Ciskei states), a person must complete a South African Bachelor of Laws degree and comply with the other requirements with regard to practical vocational training or community service, and pass the competency-based admission examination.</p> <p>Further requirements with regard to admission are provided in the Legal Practice Act 28 of 2014. A person must be a South African citizen or permanent resident of South Africa and be otherwise fit and proper in the opinion of the South African court's to be admitted as a legal practitioner.¹⁰</p> <p>See 'Becoming a legal practitioner'.</p>
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?	Lawyers in South Africa do not require professional indemnity legal insurance cover for any pro bono legal services that they provide.

¹⁰ See <https://www.lssa.org.za/about-us/about-the-attorneys-profession/foreign-lawyers> (last visited on May 1, 2019).

	<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>R 41 of the Rules for the Attorney’s Profession set out the approaches and publicity restrictions when advertising the legal services provided by the legal practitioners, including but not limited to, no disreputable, offensive or inappropriate publicity, no misrepresentation, no unfair competition, no referring to a client by name unless prior written consent of the client was obtained. It shall apply to the pro bono legal services provided by the practitioners.¹¹</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Lawyers do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked.</p>
<p>(d) Sources of Pro Bono Opportunities and Key Contacts</p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in South Africa.</p>	<p>Effective from March 1, 2015, state-funded legal aid came to be governed by the Legal Aid South Africa Act 39 of 2014.¹² The Legal Aid South Africa Act established LASA as the national public entity responsible for rendering and providing access to legal aid, advice and representation. LASA’s purpose is “to ensure access to justice and the realization of the right of a person to have legal representation as envisaged in the [South African] Constitution and to render or make legal aid and legal advice available.”</p> <p>A person can also get access to pro bono legal services through Legal Practice Council which administered pro bono and where attorneys are registered. The Legal Practice Council is a national, statutory body established in terms of section 4 of the Legal Practice Act, No 28 of 2014. The Legal Practice Council and its Provincial Councils regulate the affairs of and exercise jurisdiction over all legal practitioners (attorneys and advocates) and candidate legal practitioners.¹³</p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in South Africa.</p>	<p>The main non-governmental sources of pro bono and/or other pro bono resources in South Africa are as follows:</p>

¹¹ See <https://www.lssa.org.za/upload/RulesForTheAttorneysProfession2016.pdf> (last visited on May 1, 2019).

¹² See https://www.gov.za/sites/default/files/gcis_document/201412/383159-12act39of2014legalaidsaact2014a.pdf (last visited on May 1, 2019).

¹³ See https://www.gov.za/sites/default/files/gcis_document/201412/383159-12act39of2014legalaidsaact2014a.pdf and <https://www.lssa.org.za/public/getting-legal-assistance> (last visited on May 1, 2019).

		<ul style="list-style-type: none"> • ProBono.Org, for example, focuses specifically on connecting individuals seeking pro bono representation with attorneys¹⁴ • The Legal Resources Center¹⁵ • Lawyers for Human Rights¹⁶ • Center for Child Law¹⁷ • Socio Economic Rights Institute of South Africa¹⁸ • the Southern Africa Litigation Center¹⁹ • Section 27²⁰
	<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>ProBono.org, the Legal Aid Board²¹ and the law societies throughout South Africa offer the best resources for foreign lawyers interested in providing pro bono representation in South Africa.</p>

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¹⁴ See <http://www.probono.org.za/> (last visited on May 1, 2019).

¹⁵ See www.lrc.org.za/ (last visited on May 1, 2019).

¹⁶ See www.lhr.org.za/ (last visited on May 1, 2019).

¹⁷ See <http://www.centreforchildlaw.co.za/> (last visited on May 1, 2019).

¹⁸ See <http://www.seri-sa.org/> (last visited on May 1, 2019).

¹⁹ See <https://acjr.org.za/resource-centre/southern-africa-litigation-centre-salc> (last visited on May 1, 2019).

²⁰ See <http://section27.org.za/> (last visited on May 1, 2019).

²¹ See <http://www.legal-aid.co.za/> (last visited on May 1, 2019).