

# **CONSTITUTION OF THE EASTERN CAPE SOCIETY OF ADVOCATES**

## **PREAMBLE**

We, members of the organised profession of advocates in the Province of the Eastern Cape, duly cognizant of our duties and responsibilities in the broader society in which we operate, hereby commit ourselves to the promotion of democracy, to the protection and enhancement of the rule of law, to the ideal of an open society founded upon human dignity, the achievement of equality and the advancement of human rights and freedoms, and to the promotion of non-racialism and non-sexism, both within our ranks and in broader society. To these ends, and in order to regulate our affairs in an orderly fashion, we adopt this constitution.<sup>1</sup>

## **I. NAME AND OBJECTS**

- 1) The name of the Society shall be "The Eastern Cape Society of Advocates" hereinafter referred to as "the Society".
- 2) In this Constitution unless the context otherwise requires

"Society" means the The Eastern Cape Society of Advocates .

"Bar Council" means the Bar Council of the Society for the time being in office.

"Advocates (save for associated members) who normally practise in the Division" means those Advocates who are recognised for the time being by the Bar Council as normally practising in the Division; provided that no person shall be recognised who :

1. does not occupy Chambers approved by the Bar Council within the Division;
2. does not hold himself available to undertake work appertaining to an Advocate on behalf of the public; and
3. is not willing and available to accept the normal duties of the profession including pro deo work at the request of the Court.

"Bar of the Division" means those Advocates who normally practise in the Division.

"Division" means the area for the time being under the jurisdiction of the Eastern Cape Division of the High Court of South Africa, or of any other Court which may replace such Division for such area.

---

<sup>1</sup> Adopted at Special General Meeting held on 23 March 2007

"General Council" means the General Council of the Bar of South Africa as constituted at Johannesburg on 21 September 1946, a copy of whose Constitution is attached hereto.

"Member" or "members" means a member or the members, as the case may be, for the time being of the Society and shall include a pupil member or pupil members as temporary members.

- 3) The objects of the Society are :-
- (a) The protection of the interests of the Bar of the Division and of members in their professional capacity;
  - (b) The supervision of the conduct of members;
  - (c) The consideration and promotion of improvements in the teaching and practice of the law and in the administration of justice;
  - (d) To be a constituent Bar of the General Council, and to collaborate with and to assist in the furtherance and promotion of such Council's objects;
  - (e) The maintenance of the rule of law;
  - (f) To promote the achievement of equality within our ranks by the adoption and implementation of measures designed to protect and advance members or categories of members disadvantaged by unfair discrimination.<sup>2</sup>
- 4) The General Council :
- (a) The Society and its members shall abide by and conform to the lawful decisions of the General Council.
  - (b) The Bar Council shall from time to time appoint representatives to represent the Society on the General Council. The reasonable travelling and out-of-pocket expenses of representatives attending meetings of the General Council shall be paid out of the funds of the Society.

## **II. MEMBERS**

- 5) Membership :
- (a) Any person who is duly enrolled as an Advocate of the High Court of South Africa and who normally practises or intends to practise as an Advocate in the Division and who does not practise otherwise than as an advocate, shall be eligible for membership of the Society: Provided that no person shall be admitted as a member of the Society entitled to practise unless he or she has completed a period of pupillage of not less than twelve months as a pupil

member of the Society or has been exempted from such pupillage, either wholly or in part, by the General Council.

- (b) During the period of pupillage a pupil member shall not be entitled to accept briefs or receive any remuneration for work done in the course of such pupillage without the sanction of the Bar Council or in terms of the rules relating to supervised practice provided in the rules of pupillage laid down by the General Council or to practise on his own account and shall not be liable for the payment of ordinary subscriptions or dues to the Society.
  - (c) The Bar Council shall frame rules, which may be amended from time to time, governing the practical implementation of the service of such pupil member under pupillage and the duty of practising members of the Society to undertake the training of pupil members assigned to them by the Bar Council and matters incidental thereto.
  - (d) A General Meeting of the Society may elect to Honorary Membership persons who have achieved distinction in the practice of law or the administration of justice.
  - (e) Honorary Membership shall not confer any rights under this Constitution.
  - (f) The Bar Council may admit lecturers and students in the Faculty of Law of any university as associate members provided they qualify for membership in terms of clause 5(a)(i) above;
  - (g) Associate members will not be required to hold chambers;
    - i) Associate members will pay such bar dues, levies and other charges as the Bar Council may from time to time determine;
    - ii) Associate members are entitled to use the common room, library, fax and photocopy machine;
    - iii) Associate members may attend meetings of the Society but shall have no voting rights;
    - iv) Associate members may use the title “associate member” preceding the name of the Society;
    - v) Save as set out above, associate members will in all respects be subject to the Uniform Rules of Professional Ethics of the General Council, this Constitution and any Rules promulgated in terms thereof.
- 6) Every person described in Clause 5 (a) who is prepared to accept this Constitution and the obligations imposed thereunder as binding on him or her and has signed the roll of members referred to in Clause 8 hereof within one month of the coming into

operation of this Constitution, shall thereby become a member. Thereafter application for membership of the Society, with proof of the applicant's qualification, shall be made in writing to the Secretary of the Society, who shall submit the application to the next meeting of the Bar Council. In the event of the Bar Council being of the opinion that the applicant possesses the necessary qualification and is of good character, the Bar Council shall authorise his or her admission to membership of the Society and the Secretary shall forthwith notify the applicant that he or she may become a member subject to his or her signing the roll and paying the subscription for the current year prescribed in Clause 28. On complying with such notification, including the signing of the roll of members, the applicant shall become a member. No person shall become a member until he or she has duly signed the roll of members; provided, however, that where the applicant has, at any time, been admitted as an Attorney, or Law Agent, the Bar Council shall not authorise his or her admission to membership unless satisfied that he or she shall have ceased to have any capital invested in the business with which he or she was previously connected, or to be in any way interested therein, and provided that he or she has made a declaration to that effect in his or her application for admission to membership.

7) If the Bar Council decides not to authorise any applicant's admission the Secretary shall forthwith notify the applicant, who shall be entitled to appeal against such decision to the General Council. The provisions of Clause 22 shall apply, mutatis mutandis, to such appeal. If the General Council on such appeal so decides the applicant shall be entitled to become a member on the same conditions and as though his or her admission were authorised by the Bar Council.

8) The Secretary shall open and maintain in Grahamstown a roll of members. The roll shall be kept up to date by the Secretary by deleting the names of those who have ceased to be members and by permitting other persons to become members in terms of this Constitution. Upon signing the roll of members the signatories shall become bound by the provisions of this Constitution and be deemed to consent to the obligations imposed thereunder. The roll shall be headed :

"We the undersigned, having read the Constitution of the Society of Advocates of South Africa (Eastern Cape Division) undertake to abide by that Constitution (and any amendments thereof as and when duly made) and by all decisions and actions lawfully taken thereunder."

9) Save with the special consent of the Bar Council no member shall hold a brief with or act professionally in any way in the Republic with any Advocate who is not a practising member of a constituent Bar of the General Council, or, in Natal with a person with whom the members of the Natal Constituent Bar may not hold a brief; provided that a member may hold a brief in a criminal matter for the State with an officer of the State.

10) Membership of the Society shall cease :-

(a) Upon resignation duly accepted by the Bar Council;

- (b) Upon expulsion in the manner prescribed by this Constitution;
- (c) If the Bar Council so decides on the ground that the member is no longer an advocate who normally practises in the Division;
- (d) If the Bar Council decides that the member has lost the necessary qualification for membership prescribed in Clause 5 (a).
- (e) Provided that in the case of (c) and (d) the member shall have the same right of appeal (mutatis mutandis) as in the case of expulsion, and provided further that cessation of membership shall in no way affect the member's liability for amounts owing to the Society or for any actions or conduct during his membership.

### **III. BAR COUNCIL**

- 11) The property and management of the affairs of the Society shall be vested in a Bar Council.
- 12) Membership of the Bar Council :
  - (a) The Bar Council, all of whose members shall be members of the Society, shall consist of :
    - 1. a Chairman, who shall be a Senior Counsel;
    - 2. a Vice-Chairman, who shall also be a Senior Counsel;
    - 3. and 8 additional members, who shall be representative of all categories of members.
  - (b) Four of the members of the Bar Council shall practise in Grahamstown and six of the members shall practise in Port Elizabeth.
  - (c) The composition of the Bar Council shall be representative of all categories of members.
  - (d) A member of the Bar Council who moves practice from one centre to the other during his term of office, shall be obliged to resign from the Bar Council on so moving.
  - (e) \*\*\*\*
  - (f) \*\*\*\*

- 13) The election of members of the Bar Council shall take place in the following manner :
- (a) The member shall be elected at the Annual General Meeting of the Society by secret ballot, except where nominations are unopposed, in which event members shall be elected by a show of hands.
  - (b) Each person nominated for membership shall be so nominated and seconded orally by a member of the Society either present at the meeting or in writing signed by a proposer and seconder and handed to the Secretary prior to such meeting.
  - (c) The above procedure shall be followed for the election of any such other office bearers of the Society as it may be necessary to appoint from time to time.
- 14) Chairman of the Bar Council :
- (a) The Bar Council at its first meeting after election shall elect one of its members as Chairman and one as Vice-Chairman.
  - (b) Unless there are no seniors practising at one centre, the Chairman and Vice-Chairman shall not both come from Grahamstown or Port Elizabeth.
  - (c) No person shall be Chairman for a period longer than 3 years in succession.
- 15) Termination of membership of the Bar Council :
- (a) The members of the Bar Council shall retire annually on the completion of the election of the incoming Bar Council. All retiring members shall be eligible for re-election.
  - (b) In the event of the death, resignation or incapacity of any member of the Bar Council, the Bar Council may appoint someone to serve as a member during such incapacity or until the next annual election in due course of members of the Bar Council.
  - (c) The Bar Council shall be deemed to be duly constituted notwithstanding any vacancy in the number of its members.
- 16) There shall be elected annually at the Annual General Meeting a Secretary, and, if necessary, Assistant Secretaries, to attend to the affairs of the Society. Any vacancies occurring during the year shall be filled by the Bar Council. The Bar Council may appoint such officials as it may from time to time consider necessary on such terms as it may decide.
- 17) Powers and duties of the Bar Council :
- (a) The Bar Council shall, subject to any directions that may be given to it by the Society in General Meeting, have the following powers and duties :

- i) To frame such regulations and give such rulings as are necessary in its opinion for giving effect to the provisions of this Constitution.
- ii) To frame such rules and to give such rulings relating to the members in their professional capacity as it from time to time may deem advisable.
- iii) To represent the members of the Society in any matter of general concern to the Society, to exercise control over all members in matters affecting their professional status, rights, privileges and conduct and subject to the provisions of this Constitution, to take such action as it deems fit.
- iv) To hear and settle disputes between members and other persons as to fees due to any member or as to any other matter affecting their professional relations.
- v) To maintain a list of defaulting attorneys and to prescribe sanctions in regard to such Attorneys in their relationship with members of the Society.
- vi) To regulate and control the finances of the Society.
- vii) To submit any matter for decision or opinion to the General Council.
- viii) To make contracts on behalf of the Society in regard to the Society's affairs and property.
- ix) To appoint sub-committees from members to assist the Bar Council in carrying out the objects of the Society.
- x) To establish and maintain a Bar Benevolent Fund and Sick Benefit Fund for the purposes of assisting members and ex-members of the Society who, in its opinion, are in need of financial assistance and ought to receive assistance from such Fund.
- xi) Subject to the provisions of this Constitution to maintain discipline among members and to prescribe and enforce sanctions for breaches of discipline.
- xii) To decide whether a person has the necessary qualifications prescribed by this Constitution for admission as a member.
- xiii) To represent the Society in Court and in legal proceedings insofar as may be permitted in law, in regard to any matter affecting the Society, the Bar of the Division and any member or other Advocate of the Division.

- xiv) To do all such other things as may, in its opinion, further the objects of the Society or are necessary for or incidental to the carrying out of those objects or the abovementioned powers.
  - (b) All regulations, rulings and decisions made and actions taken in pursuance of the above powers shall be of force and effect unless and until set aside by a General Meeting of the Society duly convened in terms of this Constitution.
  - (c) Nothing in this clause shall be deemed to override the power of the Society in general meeting to exercise any of the functions of the Bar Council or to take any action it may think fit within the scope of the Constitution.
  - (d) No member, secretary, or assistant secretary of the Bar Council, shall be liable in damages or otherwise, for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office, or in relation thereto or arising therefrom and every such member, secretary and assistant secretary shall be indemnified out of the funds of the Society against all liability, loss or expense incurred by him as such.
- 18) The Bar Council may in all matters of common concern to the Eastern Cape and any other Bar, co-operate with the Bar Council of such Bar, and for this purpose may arrange joint meetings with the Councils concerned.
- 19) The Bar Council may delegate any of its functions to a Committee of not less than two of the members of such Council but the Bar Council may at any time terminate or modify such delegation.
- 20) Meetings of the Bar Council :
- (a) The Bar Council shall meet at least once every term which meetings shall, where practical, alternate between Grahamstown and Port Elizabeth. The Chairman, or in his absence, the Vice-Chairman, or in his absence the Senior member present, shall preside.
  - (b) In urgent matters it is permissible for the Bar Council to take decisions after members of the Bar Council had communicated by telephone, telefacsimile or telex with one another, provided that :
    - i) The requirements of a quorum are met;
    - ii) Such quorum is not made up exclusively of members from one centre;
    - iii) The resolution thus taken is ratified at the next Bar Council meeting held in terms of Clause 20 (a) above.
  - (c) The quorum for all meetings shall be five (5) and the Chairman shall have a deliberative as well as a casting vote.

- (d) Minutes of all meetings shall be kept and copies thereof shall be circulated to each member within fourteen (14) days of confirmation of minutes of the meeting by the Bar Council. Insofar as minutes may relate to disciplinary matters, members shall only be entitled to information pertaining to the Bar Council's final decision thereon provided that names of offending members need not be furnished, but such minutes shall not be available for inspection by members except with the consent of the Bar Council.

#### **IV. DISCIPLINE**

- 21) The Bar Council may conduct disciplinary proceedings in respect of the conduct of members, which proceedings shall be conducted in terms of the Complaints and Disciplinary procedure adopted by the Bar Council and amended from time to time.
- 22) No member of the Bar Council shall be disqualified from taking part in any such investigation or decision referred to in this Clause by reason merely of the fact that he has received information otherwise than in the course of the investigation, about any matter forming the subject matter of the investigation.
- 23) It shall be the duty of every member to furnish to the Bar Council all such information as he may be called upon to furnish, and to produce to the Bar Council or such member or members thereof all such books, documents or other records as he may be called upon to produce.
- 24) No member shall be relieved of his obligations under clause 23 hereof, by reason of the fact that the information, books, documents or records called for will or may relate to his or her own conduct in respect of which no charge has yet been formulated.
- 25) Any member against whom any decision has been made by the Bar Council in terms of the preceding clause and, with the leave of the Bar Council, any other person interested in such decision, may, by notice in writing to the Secretary within seven days after notification of such decision, appeal against the decision to the General Council. Upon receipt of such notice the Secretary shall forward it to the Secretary of the General Council, together with all documents and notes of evidence relating to the matter. Thereafter the General Council shall proceed to determine the appeal in accordance with the bye-laws and/or the specific requirements of the General Council whose decision on the appeal shall be final and binding on the Society and all persons affected.

#### **V. MEETINGS OF MEMBERS**

- 26) Meetings of members of the Society shall be held :
- (a) Once a year during the month of February or such date as the Bar Council shall decide, such meeting being the Annual General Meeting; or
  - (b) when so ordered by the Bar Council; or
  - (c) on a requisition signed by not less than six (6) members and handed in to the Secretary and stating the purpose for which the meeting is required, on a date to be fixed by the Bar Council.
- 27) At all meetings every member present shall be entitled to vote, and the Chairman (or in his absence the Vice-Chairman) (or in his absence the senior member present) shall preside and have a deliberative and casting vote. The quorum shall be one-quarter of the number of members on the roll. No associate member shall be entitled to vote at such meeting.
- 28) The business of any meeting shall be only such business as is specially mentioned in the notice convening the meeting and such other business as the Chairman may allow having due regard to the notice convening the meeting.
- 29) At least seven days clear notice shall be given of every meeting of members provided that in case of urgency and if the matter to be considered is not a proposed amendment of this Constitution, shorter notice may be given subject to the approval of two members of the Bar Council. All such notices shall be invalidated by the mere fact that such notice has not been received by any member.

## **VI. FINANCE**

- 30) Such of the property and funds of or under the administration of the Society as is owned by that Division shall be taken over by the Society and shall be vested in the Bar Council which shall be capable of suing and being sued on behalf of the Society. The Secretary for the time being shall accept service of process and, when authorised thereto by the Bar Council, sign all necessary powers for that purpose.
- 31) Subscriptions :
- (a) A monthly subscription shall be payable by members of the Society and shall be determined by the Bar Council from time to time.
  - (b) The Bar Council may in such circumstances as it may deem fit, remit the whole or any portion of the subscription of any member.

- (c) The Secretary shall send to any member whose subscription is more than three months in arrear a written demand therefor and if he or she does not pay within two weeks of demand he or she may be suspended from the Society by the Bar Council until payment is made; notification of such suspension shall forthwith be given in writing to him or her and all members by the Secretary. In case of payment not being made within six months from the date of his or her suspension his or her name may be erased from the roll of the Society by the Bar Council, which may thereafter re-admit him or her on payment of arrears and on such other terms as to future payments of subscriptions as it thinks fit. Notice of any suspension, erasure of name or re-admission shall forthwith be given in writing to the member affected and to all other members.
  - (d) In addition, each member shall be liable to contribute further in respect of any necessary expenses or liabilities incurred by the Society to an amount fixed by the Bar Council.
- 32) The Secretary shall open and maintain a Banking Account or Building Society Account in the name of the Society in such Bank or Building Society as the Bar Council shall determine, which shall also decide as to how the Banking Account shall be operated upon.
- (a) All subscriptions and other monies received on behalf of the Society shall be paid into this account as soon as possible.
- 33) The members of the Society shall be jointly liable, each being liable pro rata, for all debts and contracts incurred or entered into in the name of the Society during the period of such members membership of the Society.

## **VII. GENERAL**

- 34) Any matter affecting the Bar or any member or other Advocate in the Division may be brought before the Bar Council in writing by any person, and the Bar Council may, subject to the provisions of this Constitution, take such action thereon as it shall deem fit.
- 35) At the Annual General Meeting the Bar Council shall present to the members a Report dealing with matters affecting the Bar, the financial position of the Society and generally the activities of the Bar Council during the year and a new Bar Council and other officials shall be elected.
- 36) All notices of the Society sent to a member's Chambers shall be deemed to have been duly sent for the purposes of this Constitution.
- 37) This Constitution shall come into force immediately and may be amended by a

decision of the Society at a General Meeting duly convened in terms of this Constitution provided that :

- (a) The proposed amendment be circularised together with the Notice of the Meeting to members at least seven days prior to the meeting 3and
- (b) Two thirds of the members present at the meeting and entitled to vote, cast their votes in favour of the amendment.

.....  
\*\*\*\*

Clause 12 (e):

*In an endeavour to act, within the profession of advocacy, as an agent for change in a post-apartheid South Africa and to strive towards an ideal of non-racialism and non-sexism in an open society, and to give effect to the need to transform the profession in accordance with these values, the Society shall in the election of the representatives to the Bar Council seek to ensure, wherever reasonable possible*

- i) That no less than half of the members of the Bar Council shall be persons previously unfairly discriminated against on the basis of race and/or gender; and*
- ii) That such members are endorsed by Advocates for Transformation (AFT) who are members of this Society.*

Clause 12 (f):

*The provisions of clause (e) above shall cease to operate on the date of the Annual General Meeting of the Society held in 2010 and shall be deleted from this Constitution together with this clause. At the same time the membership of the Bar Council will be reduced from 14 additional members, as set out in clause 12(a) above, to 8. The numbers six and ten set out in clause 12(b) above will be reduced to 4 and six, and the quorum provision set out below at clause 20(c) will be reduced to five.*

Resolved at AGM 5 February 2010: "That the Eastern Cape Society of Advocates resolves that until the 2011 Annual General Meeting the principles set out in paragraph 12(e) of the Constitution of the Eastern Cape Society of Advocates (as amended at the Annual General Meeting February 2009) will be observed."

Clause 12 (f) removed at AGM on 4 February 2011, as per provisions thereof and resolution at AGM of 5 February 2010.

