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THE LAW SOCIETY OF ZIMBABWE

REVISED GUIDELINES ON ADVERTISING AND MARKETING FOR LEGAL PRACTITIONERS

These guidelines for the advertising and marketing of legal practitioners services have been approved by Council and will come into effect on 1 June 1996.

1.0 INTERPRETATION

In these guidelines: -

- 1.1 All reference to the rules of the Law Society in relation to a legal practitioner are reference to the regulations and/or by laws of the Law Society of Zimbabwe.
- 1.2 "Advertisement" and "advertising" except where the context requires, refer to any form of advertisement and include, *inter alia*, brochures, directory entries, stationery and press releases promoting a legal practitioners practice.
- 1.3 The expression "clients" will be interpreted strictly to refer to clients with whom the legal practitioner has or is likely to have an on-going professional relationship. Singular or irregular instructions, which arise, for example, from the client's regular legal practitioners being unable to represent the client on account of a conflict of interest, do not necessarily give rise to an on-going professional relationship. However it must be recognized that clients frequently retain more than one firm of legal practitioner; any firm retained in this way on an on-going basis is entitled to regard the client as a client for purposes of these guidelines.
- 1.4 Touting and advertising are specifically made unprofessional conduct on the part of a legal practitioner in terms of Section 23(1) of the Legal Practitioners Act as is "tendering or offering in response to advertisement, circulars or similar invitation, either directly or indirectly, for the performance of any work or business proper to the calling of a legal practitioner or commonly associated therewith."
- 1.5 In amplification of these requirements the Council of the Law Society publishes these guidelines for the assistance of legal practitioner, whether in private practice or not, and to be used in disciplinary enquiries in considering whether or not unprofessional conduct has taken place.

The fundamental principle remains however, that a legal practitioner shall conduct himself in a manner consistent with the good reputation of the profession and should refrain from any conduct, which might bring discredit to the profession regardless of whether or not such conduct may be specifically prohibited. Specifically any publicity undertaken by a legal practitioner must be in good taste with regard to both content and usage.

- 1.6 It is the responsibility of the legal practitioner concerned to ensure that the organisers of an event or publishers of an article or other material are aware of and comply with these provisions and excuses that they have been contravened without his knowledge or consent will not generally be accepted. It is further his

- 1.7 responsibility to ensure that even if he does comply strictly with these requirements, the impression is not given or left with his audience or readers that he is in any way advertising or touting.

2.0 FIRM PUBLICITY

- 2.1 A practicing legal practitioner may in his discretion publicise his practice, or permit another person to do so on his behalf, provided the publicity complies with the provision of these guidelines and provided that in publicising his practice he shall do nothing which in any manner compromises or impairs or is likely to compromise or impair any of the following:-

- 2.1.1 The legal practitioners independence or integrity;
- 2.1.2 The client's freedom to instruct a legal practitioner of his choice;
- 2.1.3 The legal practitioner's duty to act in the best interests of his client;
- 2.1.4 The good repute of the legal practitioners or the legal profession;
- 2.1.5 The legal practitioner's proper standard of work.

- 2.2 All publicity must be in good taste with regard to content, prominence and medium.

- 2.3 Publicity may not be misleading in any respect.

3. TOUTING NOT PERMITTED (Section 23 (1) of the Legal Practitioners Act
Nothing in these guidelines shall be construed as permitting a legal practitioner to tout, directly or indirectly, for work of a kind commonly performed by a practicing legal practitioner. Without limiting the generality of that expression "touting for work" by a practicing legal practitioner will include the following: -

- 3.1 Soliciting custom or work directly from any person
- 3.2 Entering into an arrangement with any person whether an employee or not, for the introduction of clients to the legal practitioner; but this will not apply to:
 - 3.2.1 any arrangement between a legal practitioner and another legal practitioner for the referral or work in the normal course of either's practice;
 - 3.2.2 any arrangement for the introduction to a legal practitioner or other legal practitioners with a view to them instructing him on an agency basis;
 - 3.2.3 making unsolicited visits or telephone calls, or sending unsolicited letters or printed material or invitations, to any person, (other than to an existing professional connection) whom the legal practitioner knows or should

reasonably be expected to know has an existing attorney/client relationship with another legal practitioner, where such conduct is carried out with a view to, or in calculated to, establishing an attorney/client or correspondent relationship with such person.

4. THE CONTENT OF PUBLICITY

4.1 Statutory requirements

The publicity of a legal practitioner must comply with the Legal Practitioners Act Cap 27:07, the Regulations and by laws of the Law Society and the General Law.

4.2 Comparison and criticisms of services

Publicity may not compare the quality of service provided by a legal practitioner with that provided by the legal profession generally or by any other identifiable legal practitioner or firm of legal practitioners nor may it claim to be superior in any respect. Publicity may not also criticise the quality of service provided by any legal practitioner or firm of legal practitioners.

4.3 Success Rate

Publicity may not refer to a legal practitioners success rate.

4.4 Naming Clients

4.4.1 A legal practitioner may refer to the name of a client in the public media only with the client's written consent. However reference may not be made to the name of a client in any advertisement by the legal practitioner of his practice.

4.4.2 A legal practitioner may name a client, with the client's consent, in advertising property for sale or to let on that client's behalf.

4.4.3 Paragraph 4.4.1 shall not prevent a legal practitioner from being named in the publicity of a client or from being identified as the client's legal practitioner in the publicity. If another person concerning the client's business, subject always to the regulations and by laws applicable from time to time, of the Law Society.

4.5 Naming of Staff other than Partners

4.5.1 A legal practitioner may not name any person in his publicity (including on his letterhead and stationery) who he is not permitted to name on his letterhead or stationery in terms of the Act, its regulations and by laws/

4.5.2 Legal practitioners are reminded of the danger of inadvertently holding out persons as partners and non-partners on a list. The status of non-partners' names should be indicated clearly to avoid any doubt, whenever a situation of inadvertently holding out might otherwise arise.

4.6 Legal Practitioners to be identified

Every advertisement by a legal practitioner must bear his name or the name of his firm.

4.7 Categories of Work

Publicity about a legal practitioner's practice may state or imply that he undertakes a particular category or work only if that practice itself is in fact able and qualified to handle that work competently.

In particular, a legal practitioner may not state that he undertakes conveyancing or notarial or patent work unless he or one or more of his partners, or any employee exclusively in his employ on a full time basis, has been admitted as a conveyancer or notary or patent legal practitioner or patent agent as the case may be.

4.8 Claims to Specialisation or Particular Expertise

4.8.1 Unless the context otherwise requires, in the interpretation of and for the purpose of this paragraph

4.8.1.1 "branch of the law" shall mean any branch or field of the law, subject to such exclusions, if any, as the Council of the Society may from time to time designate;

4.8.1.2 "Specialist" shall include the term "expert" and "specialise" shall bear a corresponding meaning and the words shall be interchangeable but shall not include a statement by a firm that it prefers to practice in any particular branch of the law.

4.8.2 A firm may hold itself out as a leading firm or a specialist or expert in any branch of the law.

4.8.3 A statement that a firm prefers to practice in any branch of the law shall be deemed not to be a claim by such firm to specialise in that preferred branch of the law.

4.8.4 The Council may, by notice in writing to a firm, require that firm to cease to hold itself out as a leader specialist or expert in any branch of the law if the Council is of the opinion that the firm does not have the requisite expertise in that particular branch of the law.

4.8.5 Cautionary Notes

4.8.5.1 Legal Practitioners are advised that the standard of expertise, care and skill required by a firm holding itself out as a specialist or expert in a branch of law must of necessity be higher than that of a firm which does not do so.

for damages for professional negligence in relation to the speciality than a firm which does not claim any speciality.

- 4.8.5.1 If a firm holds itself out as a specialist, the claim of speciality may render the legal practitioner who are partners or members of the firm liable to be disciplined by the Council for unprofessional, dishonorable or unworthy conduct if the firm's action in so holding itself out is not justified.
- 4.8.5.2 Although a statement by a firm that it prefers to practice in a particular branch of the law does not place that firm in the same position as one claiming to be a leader or specialist, it may nevertheless indicate that a higher standard of care and skill will be required from such a firm than from one which does not hold itself out to have a preferred area of practice. A firm which expresses a preferred area of practice may, therefore also render itself more readily liable to a claim for damages on the basis set out in 4.8.5.1 above.
- 4.8.5.3 These cautionary rules are conveyed to legal practitioners in good faith and are not intended to be a comprehensive list of pitfalls which a legal practitioner or his firm may encounter if they claim to specialise or if they indicate a preferred area of practice.

5. STANDARDS AS TO CHARGES

5.1 Clarity

- 5.1.1 A legal practitioner may not state in any publicity that he will undertake specific kinds of work for a specific charge.
- 5.1.2 A legal practitioner may publicise the basis on which he will charge for work, but such publicity must be clearly expressed. It must be stated what services will be provided for that basis of charging. Any circumstances in which the basis may be altered must be stated. It must be clear whether disbursements and taxes are included.

5.2 Comparisons and Criticisms of Charges

Publicity may not directly compare a legal practitioner's charges with those of any other legal practitioner or firm of legal practitioners. Publicity may not directly criticise the charges of any identifiable legal practitioner or firm of legal practitioners.

6. DIRECTORY HEADINGS

In a directory or other listing which includes the services of persons other than legal practitioners entry or advertisements may appear under a classification other than "Legal Practitioner" provided that:-

6.1 The appearance under that classification is not misleading;

- 6.2 The legal practitioner is described in the entry as a legal practitioner; and
- 6.3 The classification does not require a specific qualification which the legal practitioner does not have.
7. DESIGNATION OF A LEGAL PRACTITIONER'S PRACTICE
 A legal practitioner's practice may be designated only as that of a legal practitioner or legal practitioners. In addition a legal practitioner may use the designations "notary", "conveyancer", "patent legal practitioner", "trademark legal practitioner", "administrator of estates", or "appraiser", but only where at least one partner in the firm or an employee in the exclusive and full time employment of the firm is entitled to be described as such.
8. GROUP ADVERTISING
 It is permissible for independent firms of legal practitioners to act together in a group to advertise their services under a group or group logo.
- 8.1 Any group advertising conducted by two or more firms of legal practitioners must be accompanied by:-
- 8.1.1 the names of the firm by or on whose behalf the advertising is conducted; and
- 8.1.2 the word "legal practitioner" or "legal practitioners".
- 8.2 Any group advertising must conform with all other provisions of these guidelines.
- 8.3 Flag Advertising by a Firm
 Flag advertising means any advertisement which contains promotion material for a firm of legal practitioners or more than one legal practitioner.
- 8.3.1 Any flag advertising must be accompanied by:-
- 8.3.1.1 the name of the firm; and
- 8.3.1.2 the word "legal practitioner" or "legal practitioners"
- 8.4 Any flag advertising must conform with all other provisions of these guidelines.
9. PROFESSIONAL ANNOUNCEMENTS, ADVERTISEMENTS FOR STAFF ETC
 Any professional announcement, advertisement for staff, advertisement offering agency services or any other like advertisements by a legal practitioner must comply with the provisions of these guidelines.

10. INTERNATIONAL ASPECTS OF PUBLICITY

No publicity for a legal practitioner's practice may be conducted in a jurisdiction other than Zimbabwe in any manner that would contravene either:-

- 10.1 the provisions of these guidelines; or
- 10.2 any restrictions in force in that other jurisdiction concerning legal practitioners' publicity. For purposes of this paragraph, publicity shall be deemed to be conducted in the jurisdiction in which it is received. However, publicity will not be regarded as being conducted in the jurisdiction in which that publicity would be improper if it is conducted for the purpose of reaching persons in a jurisdiction where that publicity is permitted and its reception in the former jurisdiction is incidental.

11. SPECIFIC GUIDELINES REGARDING MARKETING

Brochures

11.1.1 A legal practitioner may display in his reception area brochures containing details about his practice and the nature of the services he offers. A brochure may not, however:

- 11.1.1.1 contain information which is false in any material respect;
- 11.1.1.2 contain information which is misleading or deceptive or which is likely to mislead or deceive;
- 11.1.1.3 contain material which is vulgar, sensational, or otherwise is such as would bring or be likely to bring the legal practitioner or the legal profession into disrepute;
- 11.1.1.4 claim or imply superiority for the legal practitioner over any other legal practitioners;
- 11.1.1.5 contain any testimonials or endorsements concerning the legal practitioner, or refer to any of his clients by name or in any other manner which will make them identifiable.

11.1.2 Such brochures may be sent or be made available to existing or former clients except former clients whom the practitioner should reasonably know are not likely to return to him as clients. The brochures may include guidance on how clients can assist the firm to deal properly with their business for example, ~~for example~~, by completing a questionnaire.

11.1.3 A prospective client who asks for information about the firm may be sent or give a brochure.

11.1.4 The brochure may contain an offer to give an estimate of charges in relation to any proposed mandate.

11.2 Radio and Television Broadcasts, Lectures and Articles in the Lay Press

The following principles apply to legal practitioners who take part in radio or television broadcasts, or who give talks or lectures to lay audiences, or who give interviews to the press, or who contribute articles on legal or non-legal subjects to the press:

11.2.1 Consent of the Council

The consent of the Council is not required by a legal practitioner intending to take part in any of these activities. However, the legal practitioner should ensure that he is properly qualified to speak or write on the topic in issue, and that what he does should not, be construed as touting for work.

11.2.2 Designations

A legal practitioner may be identified by name, by firm name (if desired) and by profession (if desired).

11.2.3 Generally in relation to broadcasts, lectures and press articles

11.2.3.1 a legal practitioner should not be permitted to publish anything identifying or likely to identify clients for whom he or his firm act unless in connection with specific matter and he has the client's written permission;

11.2.3.2 a legal practitioner must not, with a view to attracting or inviting instructions, enter into correspondence with listeners, viewers or readers who are not already his clients.

11.3 Telephone Directories, Law Directories and the Yellow Pages

11.3.1 it is permissible for a legal practitioner to insert the name of his firm in bold print in directories.

11.3.2 It is permissible for a legal practitioner to insert his name or the name of his firm in a law directory or in the yellow pages and in so doing to indicate the kind of work which he in practice undertakes, or in which he claims that he has expertise.

11.4 Information to clients regarding Developments in the Law

A legal practitioner may (and indeed is encouraged to) communicate with his client either verbally or in writing to advise him of the latest developments in the law or in regard to a specified area of the law and to obtain instructions for professional business in relation to those developments, provided that:

11.4.1 the content and nature of any material, whether printed, spoken or otherwise, used by the legal practitioner in the course of the communication complies with these guidelines;

11.4.2 the form of the communication does not derogate from the dignity of the legal profession;

11.4.3 the physical emotional and mental state of the client is such that he is capable of exercising reasonable judgement in employment a legal practitioner;

11.4.4 the communication does not involve undue influence, coercion duress, harassment or nuisance.

12. THE LEGAL PRACTITIONER'S RESPONSIBILITY FOR PUBLICITY

It is the responsibility of a legal practitioner to ensure that all his publicity, and all publicity for his services which is conducted by another person, complies with the provisions of these guidelines. This responsibility cannot be delegated. Where the legal practitioner becomes aware of any impropriety in any publicity appearing on his behalf, he must forthwith use his best endeavours to have the publicity rectified or withdrawn as appropriate.

13. GENERAL

13.1 The Council may be notice in writing to a legal practitioner:

✓ 13.1.1 order the alteration, withdrawal or discontinuance of an advertisement;

✓ 13.1.2 order the alteration or discontinuance of the use of statement in any advertisements or material marketing;

✓ 13.1.3 order the legal practitioner to discontinue his participation in any lectures, talks, public appearances or publications.

If in its opinion any of these guidelines have been or are being contravened.

14. LETTERHEADS AND DOCUMENTS

14.1 A legal practitioner's firm letterheads and other documents prepared or used during the course of his practice as a legal practitioner may not be misleading and must accord with the dignity of the profession.

✓ 14.2 Firm names may only include the names of current or former principals of the firm concerned.

14.3 The names of all the principals of the firm must appear on the firm letterhead although this shall not be mandatory in the case of letterheads smaller than the standard A4 size.

14.4 The names of qualified assistants may also appear on letterheads, but, if they do, some comprehensible device must be used to make it clear that they are not principals.

- 14.5 A person may only be described on a letterhead as a "consultant" with the prior written approval of the Council which will normally only be given in the case of a senior practitioner who has retired from the firm as such but retains an interest in it.
- 14.6 The term "associate" or any other term which does not make it clear whether a person named on a letterhead is a consultant, a principal or an employee may not be used. Only the names of registered legal practitioners who are principals, consultants or employees of the firm may be listed. Their academic and professional qualifications may be indicated as also may be the fact that they are admitted to the practice of law in some other country PROVIDED THAT they currently retain the right practice in that country. It shall not be permissible to list on the letterhead that the firm generally is admitted to practice in another country or countries unless each of the principals is so entitled.
- 14.7 The firm shall be described as "legal practitioners" and may in addition use all or any of the following descriptions: attorney, notary, conveyance, advocate, executor, administrator of estates, parliamentary agent. The term "patent and trade mark agents" may also be used where at least one of the principals listed is a member of the Patent and Trade Mark Institute of Zimbabwe.
- 14.8 Names of clients or correspondent firms may not be indicated while reference to branch offices in other places or centers within Zimbabwe is only permissible provided that the firm or offices have at least one principal in common.
- 14.9 The only other information which may appear on a firm letterhead is the firm's physical address, postal address, telephone numbers, telex numbers, telegraphic address, fax number, hours of business and where relevant the area of specialisation in law or areas of preferred law. An out of hours telephone number may be reflected also. A firm logo, which must bear some reasonable reflection of or reference to the firm's name may be printed or impressed upon the paper.
- 14.10 Changes in the information shown on a firm's letterhead should be reflected thereon within a reasonable time of the event.
15. BUSINESS CARDS
- 15.1 A legal practitioner may use a business card of normal size, which may contain no more information than is permitted on firm letterheads.
- 15.2 A business card may not be used for advertising a legal practitioner's practice or touting and may not be distributed generally nor left for display. It may only be handed out on request by clients, potential clients and other persons who reasonably need to have a record of the information contained therein.
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