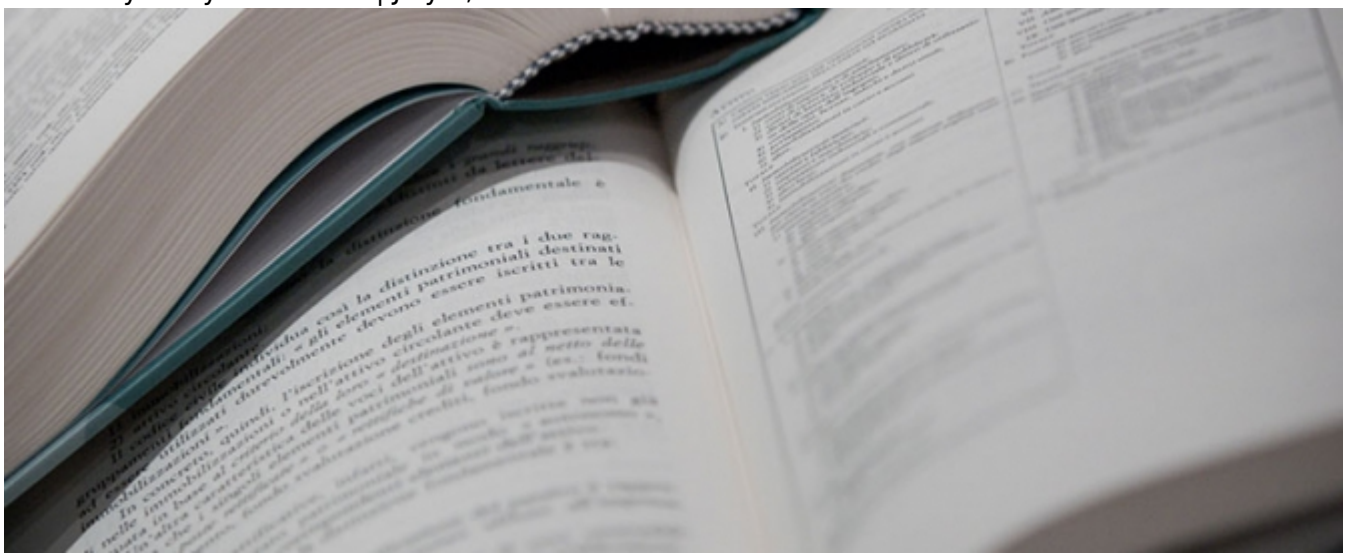
ADVOCATES TO DEAL DIRECTLY WITH THE PUBLIC – YAY OR NAY??

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written by Manyani Maseko | July 7, 2015



Introduction

After almost ten years of debate, the Minister of Justice revealed the Department of Justice's plans to allow for advocates to approach the public directly. This plan however has over the last year been met with staunch criticism from various members of the legal sector at large as it essentially seeks to repeal the existing legislation governing attorneys and advocates – namely, the Attorneys Act[i] and the Admission of Advocates Act[ii]. According to the report of Advocate Ishmael Semenya[iii], he stated that "this would be the single most anti-transformative measure ever to happen in the legal profession and would essentially de fact and de jure (in fact and in law) obliterate the advocate profession".[iv]

The Legal Practice Bill

Currently, members of the public do not deal directly with advocates who argue cases on their behalf. A member wishing to have their matter argued must approach an attorney who will then (should the need arise) approach an advocate to argue a matter before court. This is sometimes known as the "referral system". However according to clause 34(2)(b) of the Legal Practice Bill, B20 of 2012[v] ("the Bill"), advocates will now be afforded the opportunity to accept briefs (instructions) directly from the public provided they meet certain requirements[vi]. In other words, attorneys of record will no longer play the middle man between members of the public and advocates requested to argue on their behalf. Members of the public will no longer be required to use the services of an attorney prior to engaging an advocate and will have the choice of approaching either legal professional.[vii]

The pros and cons of the Legal Practice Bill

Should Parliament pass the Bill, legal practice in South Africa will change dramatically. For members of the General Council of the Bar, the fear is that should the Bill be assented to law there will be no distinction between advocates and attorneys. For John Jeffrey[viii], his argument was that many

countries had eradicated the notion that advocates are not allowed to deal directly with the public.[ix] Others have argued that the referral system remains quite costly for members of the public as they are essentially almost double charged to access legal recourse by paying for two "lawyers" to service one matter. JB Skhosana[x] stated that in making use of both an attorney and an advocate, "there usually remains no agreement with the advocate as they are contracted by the attorney who is paid in absentia." According to Nic Swart[xi], the passing of this bill would mean that "advocates would be directly responsible for any financial and administrative implications, in addition to the management of the matter previously attended to by attorneys as the middle man".

Conclusion

Although the Department of Justice under the auspices of the Government seems quite adamant that the Bill will be promulgated, we are yet to see what the final verdict will be regarding this contentious clause in the Bill and whether Parliament will ultimately allow for it. For now, the role of an attorney and an advocate remains distinguishable and their practice separate.

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[i] 53 of 1976.

[ii] 74 of 1964.

[iii] Chairperson of the General Council of the Bar.

[iv] "*Advocates profession will be 'obliterated' – Semenya*" Legalbrief Today Issue 3316 published on 15 July 2013.

[v] Published in Government Gazette No. 35357 on 15 May 2012, this Bill is yet to be promulgated to law; however, is likely to be completed within the next year (and according to John Jeffrey, before the 2014 national elections).

[vi] Advocates wishing to accept briefs directly from the public will be required to have fidelity fund certificates which include insurance to cater for any professional negligence which may ensue.

[vii] Section 34(2)(b) specifically provides that: "*An advocate may render legal services in expectation of a fee, commission, gain or reward determined in accordance with this Act or any other applicable law – (a) upon receipt of a brief from an attorney; or (b) upon receipt of a request directly from a member of the public for that service, provided that such request complies with any regulation that the Minister may make after consultation with the Council*". (My emphasis) For the purposes of this footnote, "Council" refers to the South African Legal Practice Council.

[viii] Deputy Justice Minister.

[ix] Jeffrey made this comment at the Public Interest Law Gathering at WITS University on Friday, 12 July 2013.

[x] Deputy Chief Law Advisor to the State.

[xi] Chief Executive of the Law Society of South Africa.