PABASA

PAN AFRICAN BAR ASSOCIATION
OF SOUTH AFRICA

STATEMENT ON THE PUBLIC ATTACKS ON LEGAL PRACTITIONERS

The Pan African Bar Association of South Africa ("PABASA") notes with deep concern the recent personal and public attacks on Advocates Muzi Sikhakhane SC and Tembeka Ngcukaitobi SC in relation to their work at the Zondo Commission of Inquiry.

The legal profession in South Africa is regulated by the Legal Practice Act, 28 of 2014 ("the LPA") which provides for the establishment of the Legal Practice Council ("the LPC") and Provincial Councils tasked with regulating the conduct of all Legal Practitioners – Attorneys and Advocates alike.

The Code of Conduct for Legal Practitioners ("the Code"), published pursuant to s 36(1) of the LPA, is the primary instrument by which the conduct of Legal Practitioners in South Africa is regulated. Some of the provisions of the Code that are central to the professional conduct of Legal Practitioners include the following:

> "Legal Practitioners shall … maintain legal professional privilege and confidentiality regarding the affairs of present or former clients or employers, according to law"

> "Counsel … shall not permit any person to dictate how the matter is to be conducted"



> "Counsel shall unreservedly assert and defend the rights of the client and in particular in order to protect the client's liberty, to the best of counsel's ability and within lawful bounds."
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> "Counsel shall, in the advancement of the client's cause, resist any conduct calculated to deflect counsel from acting in the best interests of the client and to that end counsel shall be fearless in the conduct of the client's case, and shall not be deterred by the threat of or the prospects of adverse consequences to counsel or any other person."
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> "Counsel shall not refuse to accept briefs in an area of practice in which they profess to practice … on the grounds that they disapprove of the client or of the client's opinions or alleged conduct or because of any disregard in which such person might be held"

The attacks on Adv Muzi Sikhakhane SC and Adv Tembeka Ngcukaitobi SC are seemingly informed by little more than the identity of the clients they represent. This is an affront to their integrity as Legal Practitioners. It is also part of a worrying trend where criticism of clients tends to morph unwarrantedly into virulent attack on their lawyers. This trend must be nipped in the bud if we are a society that respects constitutionalism.

In addition, we are informed that a complaint has been made by Adv Rod Solomons on behalf of an organization called South Africa First Forum to the LPC against Adv Muzi Sikhakhane SC and the junior advocates who represent former President Zuma. The complaint relates in the main to legal advice that they are assumed to have given their client. The junior advocates who form part of the former President Zuma's legal team are also implicated in the complaint and their professional integrity questioned. We trust the LPC to deal with the complaint fairly and objectively on its merits, and we do not pronounce on its merits or lack thereof.

However, we point out that the lodging of a complaint based on what the complainant (an Advocate) presumes was professional advice given by Counsel to his client (a matter of professional



privilege of which the Advocate complainant can have no personal knowledge whatsoever) may constitute harassment, calculated to deflect Counsel from acting fearlessly in the best interests of his or her client and in the conduct of the client's case.

All the Counsel whose good names and professional reputations have thus been publicly sullied are members of the PABASA. After careful consideration by its Executive Committee, PABASA has resolved to break its dignified silence on these unwarranted and unconstitutional attacks on Legal Practitioners for work done pursuant to their obligations and ethical duties as Legal Practitioners.

We have noted the statement issued by the LPC on 30 November 2020, particularly its emphasis on the point, often neglected in these attacks, that

> "any attack or harassment of [Advocates] because of who they act for is unwarranted, infringes on the rights of legal practitioners and their clients and is inimical to the Rule of Law."

We agree fully with the LPC in this regard. PABASA condemns public attacks on all Legal Practitioners, and urges members of the public to respect the Rule of Law and constitutionalism by allowing legal processes to take their course.

Nasreen Rajab-Budlender
Chairperson, PABASA
3 December 2020
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