GOVERNMENT NOTICE NO. 51

LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT

(No. 31 OF 2018)

MALAWI LAW SOCIETY (*PRO BONO* SERVICES) RULES, 2021

ARRANGEMENT OF RULES

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IN EXERCISE of the powers conferred upon the Malawi Law Society by section 73 of the Legal Education and Legal Practitioners' Act, and with the approval of the Annual General Meeting, the Society hereby make the following Rules—

Citation

1. These Rules may be cited as the Legal Education and Legal Practitioners (Malawi Law Society) (*Pro Bono* Services) Rules, 2021.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Bureau" means the Legal Aid Bureau established under section 3 of the Legal Aid Act; Cap. 4:01

"charitable organization" means a charitable, religious, civic, community, scientific, medical or educational organization or institution;

"disadvantaged individual" means an individual who is disadvantaged in obtaining access to justice due to the individual's financial circumstances, physical or intellectual disability, physical or mental illness or lack of education;

"*pro bono* legal service" means any legal service which a legal practitioner may perform under section 42 of the Act without expectation of earning a fee, gain or reward and includes—

(*a*) providing legal advice;

(*b*) providing legal representation in a dispute;

(*c*) providing any assistance in connection with the application of the law;

(*d*) providing any service the provision of which requires legal knowledge;

(*e*) drafting any legal document or any other document intended to have legal effect; and

(*f*) conducting awareness campaign on any law and its application;

"practice year" means the period beginning on 1st February in each calendar year and ending on 31st January in the next calendar year;

"relevant legal assistance scheme" means any of the following schemes—

(*a*) a legal aid scheme provided under the Legal Aid Act;

(*b*) a legal aid scheme provided by the Society; and

(*c*) any other scheme for matters of public interest as approved by the Society from time to time;

"relevant matter" means—

(*a*) any matter relating to—

(i) law reform;

(ii) law awareness;

(iii) the administration of justice;

(iv) access to justice;

(v) legal education;

(vi) the advancement of the legal profession, including professional conduct and discipline;

(vii) alternative dispute resolution; or

(viii) any other matter requiring legal expertise.

Provision of *pro bono* legal services

3.— (1) A legal practitioner shall provide *pro bono* legal services for at least twenty four hours in each practice year.

(2) The period prescribed under subrule (1) may be reduced *pro rata* where—

(*a*) a legal practitioner is unable to practice on health grounds or any other justifiable ground for a period in excess of one month; or

(*b*) a legal practitioner holds a practicing licence for part of a practice year.

(3) A legal practitioner who exceeds the period prescribed under subrule (1) in a practice year may apply to the Society for approval to transfer the excess hours to the following practice year.

(4) The Society may, upon verification of contents of a report filed under rule 8, approve the application under subrule (3), but the transfer shall not extend beyond one practice year.

(5) A legal practitioner who is appointed or accepts a brief to act *pro bono* in accordance with these Rules, may not relinquish the appointment or brief without the prior approval of the Society or the Director of the Bureau, as the case may require.

(6) A matter shall qualify for *Pro bono* legal service under section 42 of the Act and these Rules if it benefits—

(*a*) a disadvantaged individual;

(*b*) a charitable organisation; or

(*c*) the general public.

Recognized *pro bono* services

4. The following services shall be recognized as pro bono legal services for purposes of rule 3—

(*a*) providing any relevant law-related service to any individual who is reasonably perceived, by the legal practitioner providing the service, to be a disadvantaged individual;

(*b*) providing any relevant law-related service for the benefit of a charitable organization, disadvantaged person or group of persons under the auspices of a Government Ministry, Department or Agency;

(*c*) participating in an activity under any relevant legal assistance scheme;

(*d*) serving as a member of a committee established under the Act or any of its sub-committees;

(*e*) representing the Society in any legal proceeding including application for striking-off the Roll of a legal practitioner or admission to practice;

(*f*) serving, without remuneration, on a panel established by a public body to adjudicate or inquire into any matter;

(*g*) participating in any relevant matter under the auspices of the Society, a charitable organization or a Government Ministry, Department or Agency; and

(*h*) doing anything, approved by the Society, which significantly and evidently contributes to the attainment of the objects of the Society under section 64 of the Act.

Standard and quality of work

5. The professional standards applicable to services rendered by a legal practitioner in his or her normal course of duty shall apply to *pro bono* legal services.

Payment in lieu of *pro bono* work

6.— (1) The amount of money to be paid by a legal practitioner under section 42 (3) of the Act for failure to perform *pro bono* legal services shall be the equivalent of the prescribed hours for *pro bono* legal services in the practice year as a multiplicand and the prevailing party and party costs rate under the Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules as at the time of payment.

(2) Where a legal practitioner performs less than the prescribed *pro bono* legal service hours in a practice year, the shortfall may be covered through payment to the Society of an amount of money calculated in accordance with the formula in sub-rule (1).

Expenses and costs

7.— (1) Subject to section 22 of the Legal Aid Act, the Society or the Bureau, as the case may be, may reimburse to a legal practitioner the total cost of proved expenses incurred in the course of providing *pro bono* legal services.

(2) Except for *pro bono* work assigned by the Bureau, where a court awards costs to a legally aided person who is represented by a legal practitioner under a *pro bono* service scheme, the costs shall accrue to the Society and be dealt with in accordance with funds generated under rule 6 (1).

Report on *pro bono* legal service

8.— (1) A legal practitioner may, at any time irrespective of whether the matter has been finalized, submit to the Society a report providing full particulars of *pro bono* legal services performed during a practice year.

(2) A submitted report under subrule (1) shall be in a format as may be prescribed by the Executive Committee of the Society from time to time.

(3) The report shall contain, at a minimum, the following information—

(*a*) the charitable organisation, Government Ministry, Department or Agency to which, or under whose auspices the *pro bono* legal service was provided;

(*b*) the name of the disadvantaged individual or group of persons who received the *pro bono* legal service;

(*c*) the designation, if any, used by the legal practitioner in providing the *pro bono* legal service;

(*d*) a description of the *pro bono* service provided;

(*e*) estimated amount of time (in hours) spent providing the *pro bono* legal service;

(*f*) the date(s) on which, or the period over which, the *pro bono* legal service was provided; and

(*g*) the amount of honorarium, if any, offered for the *pro bono* legal service and whether or not the honorarium was accepted.

(4) The Society shall keep a record of *pro bono* legal services rendered by its members in each practice year.

(5) A legal practitioner who provides false information in a report submitted under sub-rule (1) commits a misconduct and shall be dealt with in accordance with section 91 of the Act.

Affidavit in support of application for licence

9. For the purposes of section 30(5)(*b*) of the Act, an application for an annual legal practitioner's licence shall be accompanied by a sworn declaration stating that the legal practitioner complied with the requirement under rule 3 in the previous practice year or that the legal practitioner was exempted from the requirement to perform *pro bono* legal services under section 42(5) of the Act.

Made on the 31st day of August, 2021.

C. C. NGUNDE
Secretary

P. G. MPAKA
Chairperson