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Thank you to our pro bono attorneys

This will be a regular feature where we pay tribute to the attorneys who consistently make the effort to assist our clients

The unsung heroes of ProBono.Org, Durban

By **Petrina Chetty**

Fawzia Khan of Fawzia Khan & Associates is a sole proprietor and general litigation attorney. She joined our panel in 2015. Since then, Ms Khan has maintained a consistent presence at ProBono.Org due to her desire to help people. Apart from taking on numerous matters, Ms Khan has assisted us with many of our special projects, such as the 16 Days of Activism help desks, and seminars for GreenAble and the KZN Blind & Deaf Society. Ms Khan is one of the attorneys that we can (and do!) approach when we need assistance urgently. In an organisation like ProBono.Org, it is most valuable to have attorneys like Ms Khan on our panel. She has proven that everyone can give back if they so wish.

Another attorney who we wish to acknowledge is Gregory Botha of Pitcher & Fisser Attorneys. Mr Botha is a general litigation attorney and also joined our panel in 2015. As Mr Botha practises in Pietermaritzburg, it is difficult

for our Pietermaritzburg-based firms to staff our help desks in Durban. Mr Botha compensates for that by being ever willing to take on individual matters and has assisted us tremendously in this regard. He has gone above and beyond his mandate to ensure that clients are assisted.

" I believe ProBono.Org helps to ensure that those less fortunate in our society have access to quality representation, ensuring these individuals' rights are properly protected and / or enforced, making 'access to justice' a reality for them."

Gregory Botha
Pitcher & Fisser Attorneys



We salute our East Rand pro bono attorneys

By **Swazi Malinga**

The ProBono.Org Palm Ridge help desk services the community of Thokoza, Alberton and Palm Ridge. The help desk is operational on Mondays and clients receive assistance with family law matters, deceased estate and maintenance cases. We would like to salute our volunteer attorneys from Klopper Jonker Attorneys and Sumadhi Naidoo Attorneys. Their dedication and hard work has kept this help desk afloat. They even go the extra mile by not just providing legal advice, but taking on cases and appearing in court for clients who cannot afford to pay legal fees. ●



Klopper Jonker Attorneys

Leana Eliot



P W Steinberg



Nerina Austin

"Giving back to the community by providing free legal services to the vulnerable and indigent is most fulfilling and highly rewarding"

Fawzia Khan
Fawzia Khan & Associates



Life Esidimeni – lessons on the importance of health checks for NGOs

By Tshenolo Masha

The appalling and unnecessary loss of life resulting from the Life Esidimeni tragedy has cast a spotlight on the many inefficiencies within our health system. It was however the lack of governance and legal advice in the NGOs involved that highlights the need for pro bono assistance for NGOs. Many of the organisations to which the Life Esidimeni patients were transferred were not properly registered to provide the services that they were contracted to provide and many opted to proceed in the hope that the funding received would be able to cover the loose ends. This was sadly not the case, and so began a downhill tumble of inexperience coupled with inadequate resources and support that disastrously led to the loss of many lives.

As with all tragedies, there are lessons that need to be learnt and actions put in place to ensure that they are not repeated. It is important that pro bono assistance for NGOs is provided to assist them with proper governance and contractual advice to avoid being drawn into dangerous spaces, in the hope of getting funding.

All law societies in South Africa recognise the role and contribution of NGOs in providing much needed assistance to impoverished members of society, many with limited resources and funding and a big commitment to social change. That is why pro bono legal work is extended to

NGOs. ProBono.Org renders services through volunteer attorneys to non-governmental, non-profit, community-based, public benefit, corporate or unincorporated bodies, trusts, foundations or charities working in the public interest or working to secure or protect human rights, which are mainly funded by donations.

Many NPOs are in desperate need of health checks to determine the organisation's legal standing, status and ability to enter into certain contracts. We believe that, had some of the NGOs that received Life Esidimeni patients had access to skilled pro bono attorneys, they would have received the appropriate advice on their ability and legal standing to deliver the contracted services and would have been better positioned to respond to their situations appropriately.

Pro bono services include advice, opinions and the appointment of an attorney and/or advocate where payment of legal fees would deplete the organisation's economic resources and adversely affect their ability to carry out their charitable or public interest work.

We are therefore calling on all legal professionals to contribute their knowledge and expertise in a practical and impactful manner. Each one of us has a duty to ensure that the law and access to the law is utilised for the greater good of our society and to protect the most vulnerable. Pro bono publico. ●



Mandatory Pro Bono or Not?

By Erica Emdon

I recently attended the Pro Bono Institute (PBI) annual conference in Washington DC. This conference, convened every year by the PBI, a United States based NGO that promotes pro bono, is a gathering of NGOs, law firms, pro bono lawyers, justice officials and bar associations (similar to our law societies and bar councils). At these annual meetings, with as many as 300 participants, people get together to share ideas about pro bono.

This year a very interesting panel discussion took place entitled 'Mandatory pro bono or not? Is it time to make it mandatory?'

The session was run as a debate looking at whether or not the state should mandate pro bono for lawyers.

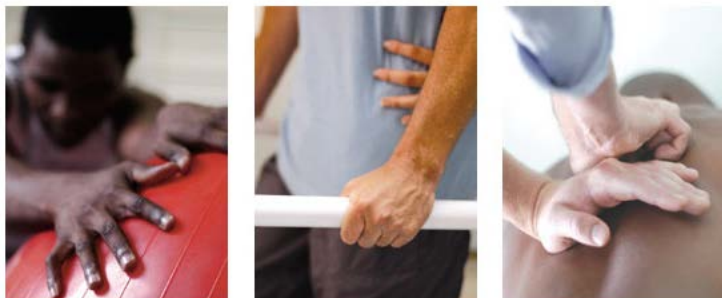
The proponent of state mandatory pro bono, Judge Lippman, said that since there has been an attack on state funding in the United States and because state funding meets less than half the need there is in the country, a strong case for mandatory pro bono is created. He believes that it is a privilege to be able to practise law and the role of the regulator should be to ensure that lawyers are meeting their obligations.

The opposing view covered by Jim Sandman is that mandatory pro bono is very impractical for three reasons:

1. Mandatory pro bono places a huge burden on legal NGOs who have to manage pro bono lawyers. Pro bono lawyers need help, mentoring and training. One has to be careful of incompetent work which means that you have to fund legal NGOs to manage and train pro bono lawyers.
2. You don't want clients to be served by lawyers who have been compelled to serve them and lawyers that aren't willingly undertaking their obligation. The clients are negatively affected.
3. Practically – the definition of pro bono is frequently expanded to things like serving on bar councils and CSR. Making it mandatory allows people to fulfill their obligations in ways other than serving low income people.

He added that pro bono should be done because it is in the fundamental DNA of being a lawyer. It is part of the culture of being a legal practitioner, the *raison d'être* of providing legal services, so it shouldn't have to be

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The Public Interest Law Gathering (PILG) is in Cape Town this year

The PILG is an annual event, which will be held this year from 24-26 July at the University of the Western Cape. ProBono.Org will be participating in a panel discussion on the Legal Practice Act. Please visit the PILG website for more information on the programme.

www.publicinterestlawgathering.com



Mandatory Pro Bono or Not? Continued...

mandatory.

His points are valid and raise a critical issue. If we share his view that doing pro bono is an essential element of being a lawyer, and the hallmark of the profession, why are we finding it so difficult to find enough pro bono attorneys and advocates to serve our clients, and the clients of other NGOs – the poor and vulnerable? Why are the same lawyers doing it again and again, while the vast majority show no interest or commitment to pro bono? Law society rules are putting some pressure on the latter group to do pro bono, which indicates that here in South Africa, at least for the time being, mandatory pro bono may be necessary. But isn't the ideal that it becomes a natural and routine part of every legal practitioner's professional life, internalised as Sandman says, into their DNA? ●

When can an employer be held liable for an employee's injuries?

By Swazi Malinga

When Mr A contacted our offices he was convinced that he had a claim against his employer for the injuries he sustained and, further, that he had a case of unfair labour practice against his employer. Mr A was employed by a company named B as a general cleaner and caretaker. B's main business was to maintain and service a block of flats at an upmarket suburb in Johannesburg.

On or about July 2015 Mr C asked Mr A to clean the windows of his flat. Upon his arrival on the day, Mr C gave Mr A a stepladder to use as the flat was on the first floor. While Mr A was on the ladder, the ladder broke and Mr A fell to the ground. He was taken to the nearest hospital where it was confirmed that he had broken his spine and would be confined to a wheelchair for the rest of his life.

Mr A was very disappointed that his employer refused to compensate him in any way or to report and lodge a claim on his behalf with the Labour Department under the Compensation for Occupational Injuries and Diseases Act (COIDA).

Mr A came to consult with us believing he had a case of 'vicarious liability' against B. We explained to Mr A that in a workplace context 'vicarious liability' refers to a situation where an employer can be liable for the acts or omissions of its employees, provided it can be shown that there is an employment contract in



existence; that the action took place in the course of their employment and that the employee's actions caused harm to another. However, in this instance the flat owner, Mr C, gave instructions in his personal capacity and, most importantly, Mr A is not an employee of Mr C. It is evident that B cannot be held liable for the actions of Mr A in terms of vicarious liability.

We had to discuss and explore other possible avenues that Mr A could use in order to claim for the injuries. We looked at a claim against COIDA in that COIDA provides for compensation in the case of disablement caused by occupational injuries sustained or diseases contracted by employees in the course of their employment, or death resulting from such injuries or disease; and provides for matters connected therewith. COIDA basically enables employees covered by the Act to make claims against the fund. In this case, the employer, B, rejected Mr A's case rightfully as Mr A was not carrying out functions or work under the instruction

of B in this case. We advised Mr A that he could explore a case against the owner of the flat, Mr C, for his injuries, but even so there were other difficulties that he could face with regard to pursuing such a case.

The fact that Mr C gave Mr A his ladder to use does not automatically make him liable for Mr A's injuries. Should Mr A want to pursue the case, the common law test of a reasonable man may be applied in this case in order to establish whether using the said ladder and or placing it in the manner that he did was dangerous and could lead to him getting injured. In this case the court may find that he had to some degree contributed to his injuries and that he should have inspected the ladder for his own safety as well. With all the above said, client was advised that he could proceed with the case against Mr C but he should be aware of the challenges he will face in proving his claim. The lack of evidence will not make things any easier for him as there is no information about the ladder, and no photographs were taken in order to be able to assess the condition of the ladder.

Although this is a very sad situation for a client who came with very high hopes that he had a good case against B, we had to tell him that legally he had no claim. Even though the injury occurred at a location where he was employed, there is no liability by the employer for his injuries in this instance. ●

ProBono.Org Office Changes

By Erica Emdon

Pretoria ProBono.Org office

ProBono.Org opened an office in Pretoria in May 2015, in a joint arrangement with the Law Society of the Northern Provinces. The office was based in Visagie Street Pretoria, and was established to enable the LSNP to have a place where clients could come for legal assistance. ProBono.Org agreed to recruit lawyers to do some of the legal work generated on a pro bono basis. Regrettably ProBono.Org has had to withdraw from the venture since funding for this office has placed considerable strain on its resources. It is confident however that the LSNP will continue a successful pro bono programme, based at the North Gauteng High Court, under the watchful eye of Humphrey Shivamba, the coordinator of pro bono at the LSNP.



Khayelitsha ProBono.Org office

In September 2016 ProBono.Org opened an office in Khayelitsha at an NGO centre funded and built by The Atlantic Philanthropies. The building stands grandly alongside the Magistrate's Court, hospital, SASSA and Legal Aid SA offices, and houses a range of NGOs that provide invaluable services to poor and needy people. These include Equal Education, the Equal Education Law Centre, the Treatment Action Campaign, Tekano and the Social Justice Coalition, among others. ProBono.Org was invited to open a legal clinic in the building which seemed like an opportunity to extend our services into the Western Cape. After settling in however, we have realised that the location of the building is difficult to access by clients who do not live in Khayelitsha and legal practitioners based more centrally in Cape Town. We have taken the difficult decision to relocate to the Cape Town CBD. Our new office will be close to the train station, within walking distance of the Cape Law Society, Magistrate's Court, Deeds Office, Master's Office and High Court. It is close to law firms and chambers and we believe, because of this more suitable location, it will enable ProBono.Org to take off most successfully in the Western Cape. The address and phone number will be released in August after the office opens. ●



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