

# LEGAL AID BOARD

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## FOR ACTION

Regional Operations Executives, Justice Centre Executives, High Court Unit Managers other Legal Aid Board Staff and Legal Practitioners and Legal Aid Officers at Magistrates' Courts.

## FOR INFORMATION

The Chief Justice, the President of the Constitutional Court, Judges President, The National Director of Public Prosecutions, Registrars and Bars of the Cape of Good Hope Provincial Division, Eastern Cape Division, South Eastern Cape Local Division, Northern Cape Division, Free State Provincial Division, Kwa-Zulu Natal Provincial Division, Durban and Coast Local Division, Transvaal Provincial Division, Witwatersrand Local Division, North West Division, Ciskei Division, Transkei Division and Venda Division, General Council of the Bar of South Africa, the Law Society of South Africa, the Law Societies of the Cape of Good Hope, Kwa-Zulu Natal, Free State and Northern Provinces, National Association of Democratic Lawyers, Black Lawyers' Association, Association of Independent Advocates of South Africa, The National Forum of Advocates of South Africa, The Magistrates' Commission, National Prosecuting Authority, Department of Justice, the Editor of De Rebus and the Editor of Advocate.

Dear Sir/Madam

## CIRCULAR NO. 2 OF 2005

### Further Decentralisation and the Abolition of Professional and Monitoring Committees

1. Annexure O to the Legal Aid Guide is hereby amended by the deletion of paragraphs 4.5.2, and 5.8 and 6 thereof. Chapter 7 of the Legal Aid Guide is hereby amended by the deletion of paragraph 1.2 (b). A further circular will be issued in due course outlining the Accreditation Scheme which will replace the arrangements currently set out in Annexure O to the Legal Aid Guide.
2. The effect of the above is to do away with Monitoring Committees and Professional Committees and to permit delegation of all powers by the Chief Executive Officer.

### Distribution of High Court Instructions in Criminal Trial Matters

3. The Justice Centre Executive at the seat of each division of the High Court must by not later than 31 March 2005 communicate with the Director of Public Prosecutions and the Judge President of the Division and the chairperson (if



any) of the Bar Council of the Division to ensure that it is known that in future all legal aid instructions in respect of the criminal defence of any accused person will emanate from the Justice Centre concerned of the Legal Aid Board and from no other person whatsoever. It must also be made clear that:

- 3.1 The only way in which any legal practitioner is instructed by the Legal Aid Board is by the delivery to that legal practitioner of an LA2 legal aid instruction.
- 3.2 No legal practitioner should expect to receive payment from the Legal Aid Board as a result of any "legal aid instruction" received orally or by any communication from any person other than an employee of the Board and other than in the LA2 format.
- 4.1 The practical consequence of this is that the practice which has developed in some divisions of asking legal practitioners to attend on an accused on the first day of a High Court trial to obtain a legal aid application which will subsequently be used to justify the issue of a backdated legal aid instruction must cease. The High Court Unit Manager at the seat of a Division of the High Court has the responsibility to ensure that accused persons indicted to appear before the High Court are identified and afforded an opportunity to apply for legal aid well in advance of the scheduled trial date. This must be done in sufficient time to enable the appointment of a legal aid practitioner and to enable that practitioner to consult and prepare for trial. This may best be achieved if the accused is afforded the opportunity to apply for legal aid simultaneously with his/her last appearance in the magistrate's court. If this cannot be achieved by liaison with the magistrates and the prosecution it will be necessary to obtain the trial roll from the Director of Public Prosecutions well in advance of each term so as to enable the accused to be afforded the opportunity to apply for legal aid while awaiting trial. Where this too cannot be achieved (e.g. if the accused is on bail and cannot be contacted) the prosecution and judiciary should be advised at the earliest possible date of a potential delay in the commencement of the trial so that alternative arrangements can be made.
- 4.2 If the accused indicates that he/she does not want legal aid written confirmation of this choice should, wherever possible, be obtained from the accused under the signature of the accused. The attached form marked "Annexure S" is to be used for the purpose. If the accused elects not to apply for legal aid this fact should timeously be communicated to the judge and prosecutor concerned so that they are made aware that the accused has either chosen to represent himself/herself or to provide privately for legal representation
- 4.3 To facilitate the task of High Court Unit Managers, Justice Centre Executives are required to provide all necessary cooperation and assistance where:
  - 4.3.1 It is necessary to liaise with magistrates and/or prosecutors to facilitate legal aid applications by accused persons on whom an

indictment is to be served at any magistrates court within the geographical area covered by the Justice Centre.

4.3.2 An accused person awaiting trial in the High court is physically to be located for purposes of a legal aid application whether as an awaiting trial prisoner or on bail, within the geographical area covered by the Justice Centre.

4.3.3 A legal practitioner to be instructed in a High Court Criminal Trial practices from offices/chambers located within the geographical area covered by the Justice Centre.

4.4 High Court Unit Managers have the responsibility of coordinating the provision of legal representation of accused persons indicated before the High Court. This responsibility extends to all High Court circuit court matters to be heard within their provincial local divisions. The execution of this co-ordinating role requires the close cooperation, occasionally at short notice, of the Justice Centre Executive at the location of the circuit court and the Justice Centre Executive within whose area the accused is detained/resides/is served with the indictment.

5. Justice Centre Executives are reminded of the need to ensure, wherever practical, that:

5.1 Legal practitioners employed by the Legal Aid Board are instructed; and

5.2 Where Circuit courts are conducted, local legal practitioners should be instructed in preference to legal practitioners who practise at the permanent seat of the court.

6. In a recent judgement in a matter of S v R M Maselwane and Others, Bertelsman J found that:

" 1. The practice by the Legal Aid Board not to pay legal practitioners for preparation and not to reimburse them for their expenses and travelling and subsistence expenses, if any, in matters where the practitioners have been requested by the Legal Aid Board to undertake the defence of accused who, after the practitioners have made themselves available and have prepared as foresaid, do not instruct the practitioners to appear on their behalf, is declared unconstitutional".

7. The timeous pre-trial issue of legal aid instructions will avoid the possibility of legal practitioners incurring permitted disbursements for which they will be unable to obtain reimbursement.

### **Judicare Tariff Increases**

8. At its meeting on 27 November 2004 the Legal Aid Board authorised certain amendments to the Tariffs of Fees payable to legal practitioners in respect of Criminal Matters. These amendments provide, inter alia, for separate preparation fees.

9. The Legal Aid Board has furthermore approved general increases in respect of both civil and criminal matters.
10. The legal aid tariffs applicable with effect from 1 April 2005 are set out in E and F hereto.

**Failure to properly fulfil legal aid mandate iro criminal trial by not applying for leave to appeal where required**

11. Some legal practitioners who accept legal aid instructions in respect of criminal trials fail to properly fulfil their legal aid mandates by not applying for leave to appeal where required in terms of the provisions of the Legal Aid Guide.
12. This not only amounts to a breach of their contractual obligation towards the Board, but results in delays in the execution of justice as far as the accused is concerned, and also causes considerable additional costs for the Legal Aid Board, due to the fact that fresh legal aid instructions may have to be given to another legal practitioner.
13. In terms of paragraph 1.2(i) of Chapter 3 of the Legal Aid Guide (10<sup>th</sup> edition) as amended by Circular 2 of 2004, the legal aid mandate of a practitioner who was instructed on a legal aid basis in respect of the defence of the accused in the court of first instance generally extends, and is not discharged until, such practitioner has brought an application for leave to appeal to the court of first instance provided such application is brought timeously, unless the practitioner has received written instructions from the accused not to apply for leave to appeal, or where the accused has not been sentenced to more than three months direct imprisonment. Paragraph 1.2 (i)(v) of Chapter 3 of the Legal Aid Guide (10<sup>th</sup> edition) as amended by Circular 2 of 2004 further provides:

"If the reason for not bringing an application for leave to appeal is that the accused instructed the legal practitioner not to bring such an application then the instructions of the accused are to be recorded in writing under the signature mark of the accused. Said instructions are to accompany the legal practitioner's final report in the matter. The Board will not consider any account for payment until the Board receives the accused's instructions. In the case of a legal practitioner employed at a Justice Centre the applicable JCE will not permit the file to be closed until the accused's instructions are on file".

14. Legal practitioners are hereby expressly notified that with effect from 1 April 2005 the Legal Aid Board will not consider any account for payment where a legal practitioner has failed to comply with the aforesaid provisions.

Yours faithfully



V N Vedalankar  
Chief Executive Officer

**ANNEXURE S**

**Refusal of Legal Aid By A Person Who May be Entitled Thereto  
In Terms of the Constitution**

I, the undersigned

\_\_\_\_\_  
Full Names

acknowledge that:

1. On \_\_\_\_\_ I was afforded an opportunity to apply for legal aid.  
date
2. I am aware of the seriousness of the mater in which I am involved and of the possible consequences of not being legally represented.
3. I am aware that I might be entitled to legal representation at State expense in terms of the Constitution.
4. I have chosen not to apply for legal aid.

\_\_\_\_\_  
Signature

## Fees and disbursements payable to Judicare Legal Practitioners in respect of Criminal Matters

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
<b>1.</b>	<b>Criminal trials – Appearance Fees <sup>1</sup></b>				
1.1	For appearing before any court when a postponement is granted at the request of the State.	118.00 Per postponement	118.00 Per postponement	120.00 Per postponement	N.A.
1.2	For appearing before court and any other professional services incidental thereto (excluding permitted preparation) on any trial day.	765.00 Per trial day	910.00 Per trial day	1027.00 Per trial day	N.A.
1.3	In the event of the duration of a trial day not amounting in aggregate to 4 hours the trial day fee set out above shall be reduced pro rata. The minimum fee permitted in respect of any trial day shall be:	118.00 Per day	118.00 Per day	120.00 Per day	N.A.
<b>2.</b>	<b>Preparation Fees <sup>2</sup></b>				
2.1	In respect of matters which proceed to trial after a plea of "not guilty" but which are finalised within five trial days, actual preparation shall be remunerated in respect of not more than two hours.	107.00 Per hour	150.00 Per hour	196.00 Per hour	N.A.
2.2	In respect of trials of an anticipated duration of more than five trial days duration	107.00 Per hour	150.00 Per hour	196.00 Per hour	N.A.
<b>3.</b>	<b>Increased Trial Day Fees <sup>3</sup></b>				
3.1	Only in very exceptional circumstances will any increased fees be permitted. In the event of increased trial day fees being authorised, such shall not exceed:	N.A.	1977.00 Per trial day	2589.00 Per trial day	N.A.

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
3.2	In highly rare and very exceptional circumstances, the National Operations Executive may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial at not more than 60% of the fees allowed to the first legal practitioner. In no circumstances will a third legal practitioner be permitted in respect of any accused or group of co-accused who are represented by a single legal team.	N.A.	1186.00 Per trial day	1553.00 Per trial day	N.A.
<b>4.</b>	<b>Bail Applications and Interlocutory Applications <sup>4</sup></b>				
4.1	A legal practitioner shall be remunerated for bail and other interlocutory applications not otherwise provided for at the rates set out above as if such bail or interlocutory application formed part of the trial of the accused.	765.00 Per trial day	910.00 Per trial day	1027.00 Per trial day	N.A.
<b>5.</b>	<b>Criminal Trials – General <sup>5</sup></b>				
5.1	Application for a transcript of the evidence	48.00 Per application	48.00 Per application	49.00 Per application	
5.2	Necessary perusal of a docket and/or record	2.00 per page	2.00 per page	3.00 per page	N.A.
<b>6</b>	<b>Criminal Appeals <sup>6</sup></b>				
6.1	Written report on the merits of a matter when required	155.00 Per report	155.00 Per report	218.00 Per report	218.00 Per report
6.2	Application to the court a quo for leave to appeal	107.00 Per application	107.00 Per application	158.00 Per application	N.A.
6.3	Drafting petition for leave to appeal to the High Court/application to the SCA including all typing, copies and attendances relevant thereto	N.A.	N.A.	316.00 Per petition	436.00 Per application
6.4	Drafting of documents not otherwise provided for, including all typing, copies and attendances relevant thereto	N.A.	N.A.	20,00 per page up to a max of 200,00	30,00 per page up to a max of 300,00
6.5	Application for a copy of a record in terms of Rule 66(9) of the Magistrate's Court, Rule 49A of the Uniform Rules, Rule 52 of the	48.00 Per application	48.00 Per application	49.00 Per application	49.00 Per application

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	Uniform Rules including all typing, copies and attendances relevant thereto				
6.6	Necessary perusal of any record for purposes of application for leave to appeal provided the legal practitioner attending to the application for leave to appeal is not the legal practitioner who represented the accused on trial.	2.00 per page	2.00 per page	3.00 per page	N.A.
6.7	Heads of argument including all typing, copies and attendances relevant thereto.	N.A.	N.A.	436.00 Per set of Heads	436.00 Per set of Heads
6.8	On appearing before the superior court to argue application for leave to appeal including the final report to the LAB and the report back to the legal aid applicant.	N.A.	N.A.	850.00 This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day	960.00 This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day
6.9	On appearing before the superior court to argue appeal and including the noting of judgement, the final report to the LAB and the report back to the legal aid applicant	N.A.	N.A.	1049.00 This fee includes any consultations or perusal on that day and any application made on that day	1499.00 This fee includes any consultations or perusal on that day and any application made on that day
6.10	Any necessary consultation with an accused or a witness whose evidence is yet to be led. Not more than one consultation per accused or per witness	155.00 Per consultation	155.00 Per consultation	158.00 Per consultation	158.00 Per consultation



Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
7.	<b>Tariff of Fees in respect of death sentence conversion matters, in terms of the Criminal Law Amendment Act 1997 (Act 105 of 1997) <sup>7</sup></b>				
7.1	Consultation with legal aid applicant, subject to a maximum of four hours.	N.A.	N.A.	158.00 Per hour	N.A.
7.2	Any document necessarily perused.	N.A.	N.A.	3.00 per page	N.A.
7.3	Drafting of written arguments, including all typing, copies and service.	N.A.	N.A.	20.00 per page Subject to a maximum of 200.00	N.A.
7.4	Appearing before court to submit oral argument, where requested by the court and authorised by the designated legal administration officer.	N.A.	N.A.	643.00 Per matter	N.A.
8.	<b>Disbursements <sup>8</sup></b>				
	The following disbursements shall be allowed over and above the fees set out above.				
8.1	The fees of any expert authorised by the LAB	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
8.2	Necessary revenue stamps.	As required by the prosecution	As required by the prosecution	As required by the prosecution	As required by the prosecution
8.3	Necessary travel outside of any magisterial district in which the legal practitioner concerned has an office	R2.50 per km	R2.50 per km	R2.50 per km	R2.50 per km
8.4	Necessary air travel	N.A.	N.A.	Economy class	Economy class
8.5	Where it is necessary for a legal practitioner to hire accommodation for himself/herself at the seat of a court LAB will pay such legal practitioner an allowance in respect of	R500,00 per night provided the seat of the	R500,00 per night provided the seat of the	R500,00 per night provided the seat of the	R500,00 per night provided the seat of the

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	accommodation	court is more than 130km from the offices/chambers of the legal practitioner	court is more than 130km from the offices/chambers of the legal practitioner	court is more than 130km from the offices/chambers of the legal practitioner	court is more than 130km from the offices/chambers of the legal practitioner
8.6	Where it is necessary for a legal practitioner to attend at a venue away from his/her chambers/offices the LAB shall pay such legal practitioner a subsistence allowance	R150,00 per day provided the seat of the court is more than 130km from the offices/chambers of the legal practitioner	R150,00 per day provided the seat of the court is more than 130km from the offices/chambers of the legal practitioner	R150,00 per day provided the seat of the court is more than 130km from the offices/chambers of the legal practitioner	R150,00 per day provided the seat of the court is more than 130km from the offices/chambers of the legal practitioner
8.7	Toll roads to the extent that such were reasonably necessary.	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses
	See also note 9				

## NOTES TO THE FEES AND DISBURSEMENTS PAYABLE TO LEGAL PRACTITIONERS IN RESPECT OF CRIMINAL MATTERS

With effect from 1 April 2005 Legal Practitioners shall be remunerated in accordance with Circular 2 of 2005.

### 1. Criminal Trials – Appearance Fees

- 1.1 No additional fees will be permitted in respect of any trial day lasting in excess of four hours or in respect of any waiting time or any other attendance whatsoever.

### 2. Preparation Fees

- 2.1 In respect of all trials of an anticipated duration in excess of 5 trial days the legal practitioner is to submit a detailed written motivation to the Justice centre Executives responsible detailing the preparation required and the anticipated duration thereof.
- 2.2 Justice Centre Executives must consult their delegations to determine what preparation fees they may authorise and which must be referred to Regional Operations Executives.
- 2.3 In exceptional circumstances preparation time in excess of 2 hours may be authorised in response to a detailed written motivation submitted to the Justice Centre Executive in respect of a trial of an anticipated duration of less than 5 trial days.

### 3. Increased Trial Day

- 3.1 In no circumstances will a third legal practitioner be permitted in respect of any accused or group of co-accused who are represented by a single legal team.

Tariff of Fees payable to Judicare Practitioners in respect of Civil Matters <sup>1</sup>

Number	Matter	Magistrate's Court	High Court	Supreme Court of Appeal	Constitutional Court
<b>1</b>	<b>Judicare Remuneration for Services according to levels <sup>2 + 3</sup></b>				
1.1	Hourly rates Level 1 Level 2 Level 3 Level 4 Level 5	171.00 214.00 257.00 321.00 N.A.	N.A. N.A. 262.00 327.00 436.00	N.A. N.A. N.A. N.A. N.A.	N.A. N.A. N.A. N.A. N.A.
1.2	Rates per completed four hour trial day Level 1 Level 2 Level 3 Level 4 Level 5	765.00 910.00 1027.00 1284.00 N.A.	N.A. N.A. 1046.00 1308.00 2589.00	N.A. N.A. N.A. N.A. N.A.	N.A. N.A. N.A. N.A. N.A.
1.3	Where a matter is postponed without evidence being led or argument being heard on the substantive matter or judgement being handed down pursuant to the hearing or submission of evidence a fee shall be allowed for appearing before court when the postponement is granted of:	118.00 Per postponement	120.00 Per postponement		
	See also Note 4 on the General Provisos applicable to all Civil matters not classified as Impact Services.				
<b>2</b>	<b>Impact Services <sup>5</sup></b>				
	Legal practitioners who perform impact services on the instruction of the LAB will be entitled to be remunerated as follows:				
2.1	To be negotiated and agreed in each instance but never more than:				

Number	Matter	Magistrate's Court	High Court	Supreme Court of Appeal	Constitutional Court
2.1.1	Attorneys and Junior Counsel	N.A.	Not more than double the amount that would be allowed by a taxing master as between attorney and client on the applicable statutory tariff if the work had been performed by an attorney		
2.1.2	Hourly rate for Senior Counsel and specialist attorneys	N.A.	800.00 to 1200.00 per hour	800.00 to 1200.00 per hour	800.00 to 1200.00 per hour
2.1.3	Senior Counsel and specialist attorneys per 10 hour day	N.A.	8000.00 to 12000.00 per day	8000.00 to 12000.00 per day	8000.00 to 12000.00 per day
<b>3</b>	<b>Disbursements<sup>8</sup></b>				
3.1	The following disbursements shall be allowed over and above the fees set out above.				
3.2	The fees of any expert authorised by the LAB.	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
3.3	Necessary revenue stamps	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs
3.4	Necessary sheriff's fees or like process (edictal citation). Necessary advertisement costs pursuant to the grant of a substituted service order.	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs
3.5	Necessary travel outside of any magisterial district in which the legal practitioner concerned has an office/chambers	2.50 per km	2.50 per km	2.50 per km	2.50 per km
3.6	Necessary air travel	N.A.	N.A.	Economy class	Economy class
3.7	Where it is necessary for a legal practitioner to hire accommodation for himself/herself at the seat of a court the LAB will pay such legal practitioner an allowance in respect of accommodation	500.00 per night provided the seat of the court is more than 130 km from the offices/chambers of the legal practitioner			
3.8	Where it is necessary for a legal practitioner to attend at a venue	150.00 per night provided the seat of the court is more than 130 km			

Number	Matter	Magistrate's Court	High Court	Supreme Court of Appeal	Constitutional Court
	more than 130km from his/her chambers the LAB shall pay such legal practitioner a subsistence allowance	from the offices/chambers of the legal practitioner			
3.9	Toll roads to the extent that such were reasonable necessary	Actual out of pocket expenses			
	See also Note 7				

## Notes to the Fees and disbursements payable to Judicare Legal Practitioners in respect of Civil Matters

### 1. Applicable Tariff

1.1 With effect from 1 April 2005 legal practitioners shall be remunerated in accordance with Circular 2 of 2005.

### 2. Experience levels of Legal Practitioners

2.1 At the commencement of each calendar year or so soon thereafter as practical each Legal Practitioner shall be classified as being of a level from one to five in accordance with the following criteria

#### 2.2

Level	Minimum Required Experience
1	Entry level (in respect of reserved work must be legally permitted to undertake the work)
2	Minimum one year full time general practice as a Legal Practitioner
3	Minimum three years full time general practice as a Legal Practitioner
4	Minimum five years full time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken
5	Minimum ten years full time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken

2.3 In calculating the time spent by a Legal Practitioner in full time practice regard shall be had to:

2.3.1 A period not exceeding two years as a candidate attorney provided the Legal Practitioner was subsequently admitted as an attorney; and

- 2.3.2 A period not exceeding one year as a pupil provided the legal practitioner subsequently became a member of the bar of which his/her master was a member; and
- 2.3.3 Any period during which the legal practitioner was engaged full time in legal practice in the Republic of South Africa as an attorney or as an advocate:
- 2.3.3.1 For his/her own account; and/or
  - 2.3.3.2 In partnership with other practising legal practitioners; and/or
  - 2.3.3.3 As a director of a company in which all directors and shareholders were practising legal practitioners; and/or
  - 2.3.3.4 As an attorney employed by a person, partnership or company described in 2.3.3.1, 2.3.3.2 or 2.3.3.3
  - 2.3.3.5 In the employ of the LAB; and/or
  - 2.3.3.6 In the employ of the State Attorney; and/or
  - 2.3.3.7 As a legal advisor but only in respect of non-litigious work and after admission as a legal practitioner
- 2.4 Before any legal aid instruction is allocated to any legal practitioner a Principal Attorney or High Court Unit Manager in the employ of the LAB shall classify the legal services required from level 1 to level 5 in accordance with paragraph 2.2 above.
- 2.5 No legal practitioner shall be permitted to provide any legal services requiring a higher level of experience than that legal practitioner had as at first of January in the year in which the legal aid instruction was allocated to him/her.
- 2.6 A legal practitioner may render legal services at a level below the maximum for which he/she is classified, subject thereto that such legal services shall be remunerated at the level at which the legal aid instruction is classified.
- 2.7 Where a legal practitioner in the employ of the LAB is required to make a decision as to whether the level of complexity of any matter is such as to justify its classification at Level 5, he/she:
- 2.7.1 Shall be entitled but not obliged to require the legal practitioner to demonstrate that he/she has the requisite level of expertise in addition to the minimum required experience set out in respect of Level 5 by reference to at least three reported decisions in which the legal practitioner acted as attorney or advocate on behalf of the successful party or parties.
  - 2.7.2 Shall be entitled but not obliged to refuse to permit the legal practitioner concerned to perform any legal services classified as "complex" in the event of failure to comply with 2.7.1 above.
- 2.8 Any reference to the High Court includes the Admiralty Court, the Land Claims Court, the Water Court, the Income Tax Court and the Labour Appeal Court.



3.

Level	Permitted Professional Services
1	<ul style="list-style-type: none"> <li>a. Matters which if conducted without legal aid would fall within scale A Magistrates' Court</li> <li>b. CCMA – where permitted by Commissioner and permitted by Legal Aid Guide</li> <li>c. Maintenance matters – where permitted by Legal Aid Guide</li> <li>d. Mediation and conciliation matters</li> <li>e. Paralegal work</li> <li>f. Domestic violence matters – where permitted by the Legal Aid Guide.</li> <li>g. Appearances before a Refugee Status Determination Officer at a hearing in terms of Section 24 of the Refugees Act No. 130 of 1998.</li> <li>h. Any civil or non-litigious matter not otherwise provided for</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>a. Matters which if conducted without legal aid would fall within Scale B Magistrates' Courts.</li> <li>b. Labour arbitrations whether before CCMA or otherwise, where permitted by Commissioner and the Legal Aid Guide</li> <li>c. Children's court matters.</li> <li>d. Child Justice matters.</li> <li>e. Appearances before a Standing Committee in respect of a Review in terms of Section 25 of the Refugees Act.</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>a. Matters which if conducted without legal aid would fall within Scale C Magistrates' Court</li> <li>b. Labour Court matters</li> <li>c. Divorce, custody, guardianship and Family Court matters not otherwise provided for</li> <li>d. General arbitrations and ADR not otherwise provided for</li> <li>e. Appearances before an Appeals Board in respect of an Appeal in terms of Section 26 of the Refugees Act</li> </ul>
Level 4	<ul style="list-style-type: none"> <li>a. Civil matters falling within the exclusive jurisdiction of the High Court</li> <li>b. Civil matters in the Magistrates' Courts in which jurisdiction would not have vested in any magistrate but for the consent of the parties to the jurisdiction of the Magistrates' Court</li> <li>c. Non litigious services customarily performed by an admitted attorney and as permitted by the Legal Aid Guide</li> </ul>
Level 5	<ul style="list-style-type: none"> <li>a. Civil appeals and reviews before any Provincial or Local Division of the High court</li> <li>b. Complex High Court civil matters classified as such (pursuant to detailed written representations) by an authorised legal practitioner in the employ of the LAB who himself/herself has the required experience in respect of this level.</li> <li>c. Complex non litigious services classified as such (pursuant to detailed written representations) by a legal</li> </ul>

**4. General Provisos**

- 4.1 A trial day means a day on which evidence is led and/or the court hears argument pursuant to the hearing or submission of evidence and/or hands down judgement pursuant to the hearing of evidence for an aggregate time of not less than four hours. Where a trial day is of less than 4 hours duration the trial day fee is reduced pro rata.
- 4.2 Save with the consent of the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE.
- 4.2.1 Not more than ten hours remunerated consultation, preparation and other pre trial chamber work after litis contestatio shall ordinarily be allowed in respect of each anticipated trial day in a civil trial or civil matter which is referred to evidence.
- 4.2.2 However, in respect of default judgements, settled or undefended matters and interlocutory applications such remunerated consultation, preparation and other pre trial chamber work shall ordinarily be limited to not more than two hours.
- 4.3 In addition to the foregoing the JCE or Legal Practitioner who approves a legal aid instruction to which the tariff set out above applies may approve the maximum amount payable by the LAB in terms of the judicare instruction.
- 4.4.1 Where the drafting of any pleadings, affidavits (of a non formal nature and excluding annexures) or heads of argument are required in any matter it shall ordinarily be expected of the Legal Practitioner concerned to draft at a rate of 100 words per 15 minutes..
- 4.4.2 Where the drafting of any other document is required it shall ordinarily be expected of the Legal Practitioner concerned to draft at a rate of 150 words per 15 minutes.
- 4.4.3 The rates set out in paragraphs 4.4.1 and 4.4.2 may be varied by the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE.
- 4.4.4 A Legal Practitioner who alleges that a specified period of time was spent in the drafting of any documents shall be presumed to have thereby vouched to the LAB what the rates set out in paragraphs 4.4.1 and 4.4.2 above were achieved unless he/she clearly, simultaneously and in writing advises the LAB to the contrary.

- 4.5.1 Where the perusal of any pleadings, affidavits (of a non formal nature and excluding annexures) or heads of argument are required in any matter it shall ordinarily be expected of the Legal Practitioner concerned to peruse at a rate of 7 pages per 15 minutes.
- 4.5.2 Where the perusal of any other document, including but not by way of limitation a record, is required it shall ordinarily be expected of the Legal Practitioner concerned to peruse at a rate of 10 pages per 15 minutes.
- 4.5.3 The rates set out in paragraphs 4.5.1. and 4.5.2 may be varied by the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE.
- 4.5.4 A Legal Practitioner who alleges that a specified period of time was spent in the perusal of any documents shall be presumed to have thereby vouched to the LAB that the rates set out in paragraphs 4.5.1 and 4.5.2 above were achieved unless he/she clearly, simultaneously and in writing advises the LAB to the contrary.
- 4.6 Where it is necessary to appoint a correspondent, a Legal Practitioner acting on a legal aid instruction shall, if there is an office of the LAB in the magisterial district concerned, offer the work, in the first instance, to the office of the LAB. In the case of any other correspondent the Judicare Legal Practitioner is required, in advance and in writing, to make it clear to the correspondent concerned:
- 4.6.1 That the Legal Practitioner, and consequently the correspondent, act on a legal aid instruction and are entitled to be remunerated by the LAB alone and on LAB tariffs.
- 4.6.2 That the correspondent will be contracting with the attorney and not with the LAB and will have no claim against the LAB directly.
- 4.7 A Legal Practitioner who accepts a legal aid instruction is ordinarily expected to render the necessary legal services himself/herself. An attorney may, with the consent of the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE, elect to instruct an advocate in a matter in the High Court, subject to the condition that if the LAB has a High Court Unit in the magisterial district in which the seat of the court is located, the work shall, in the first instance be offered, to the said High Court Unit. In the event of the work being declined by the High Court Unit and thereafter being offered to any advocate in private practice the attorney is required to make it clear to the advocate concerned:
- 4.7.1 That the attorney and consequently the advocate act on a legal aid instruction and are entitled to be remunerated by the LAB alone and on LAB tariffs.

- 4.7.2 That the advocate will be contracting with the attorney and not with the LAB and will have no claim against the LAB directly.
- 4.7.3 That the LAB will not pay either Legal Practitioner for any work that would have been unnecessary had the attorney elected to do all the work himself/herself and will not pay for any duplication of work.
- 4.7.4 That save with the express written consent of the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE, the attorney client costs payable by the LAB pursuant to the employment of an advocate shall not exceed the attorney client costs that would have been payable by the LAB if all the professional services had been rendered by the attorney instructed by the LAB.
- 4.8 No Senior Counsel may be instructed without the express written consent of the ROE or a Legal Practitioner employed by the LAB and delegated thereto by the ROE.
- 4.9 After the case has been finalised the legal practitioner must report to the Justice Centre Executive in writing setting out the following information:
  - 4.9.1 The case number
  - 4.9.2 The court where the matter was heard.
  - 4.9.3 The outcome of the matter
  - 4.9.4 The duration of the hearing
  - 4.9.5 Any other material information
- 4.10 In any civil matter a Legal Practitioner shall account to the LAB by way of detailed itemised account setting out, the date, the work performed, the time taken (with reference to a 24 clock) and the fees claimed.
- 4.11 No additional fees or disbursements are payable at levels 1 to 5 to any Legal Practitioner in respect of any matter not provided for by this tariff and not agreed to in writing by the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE. Thus, for example, the Legal Practitioner who draws a plea is entitled to be remunerated for his/her time spent drawing the document. This is an inclusive fee and the LAB may not separately be invoiced for tying, copying, delivery, filing and similar non professional services customarily rendered by the subordinate staff of the Legal Practitioner.

- 4.12 A Legal Practitioner shall retain his/her complete case file in respect of legal services rendered in any civil or non-litigious matter and shall permit the LAB, its auditors and agents access thereto during normal office hours on not less than five days notice for at least seven years after the finalisation of the mandate of the legal Practitioner.
- 4.13 Where a rate is permitted per hour and the performance of a task requires a portion of an hour the amount to be paid shall be calculated pro rata.
- 4.14 In any civil matter prior to litis contestatio or in any non-litigious matter at all a Legal Practitioner at Levels 1 to 5 shall not, without the consent of the JCE or a Legal Practitioner employed by the LAB and delegated thereto by the JCE, be entitled to be remunerated for in excess of 10 hours work over and above any necessary drawing and perusals. In any undefended civil matter or civil matter which is or could reasonably have been settled prior to litis contestation, this shall be reduced to four hours.
- 4.15 In the application of this tariff a page shall consist of 300 words.

**5. Impact Services**

- 5.1 Impact Services shall include Constitutional Court matters, civil appeals before the Supreme Court of Appeal, matters classified as impact litigation by the LAB and non litigious impact services classified as such by the LAB.
- 5.2 All representations in relation to the classification of any matter as an Impact Services Matter and all other correspondence ancillary thereto is to be addressed to the Impact Services Section at the National Office of the LAB.

**6. Disbursements**

- 6.1 The ROE, if it appears to him/her to be in the interests of the administration of justice and the LAB, be entitled to authorise the reimbursement of necessary travel within a particular magisterial district by legal practitioners practising in that magisterial district at the same rate applicable to travel outside the magisterial district. Applications in this regard are to be submitted via the JCE.
- 6.2 Save as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any matter incidental thereto from the LAB.

- 6.3 Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.
- 6.4 The LAB may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of the LAB booking and paying for meals and/or accommodation the allowances in respect of accommodation and/or subsistence, as the case may be, will not be paid.
- 6.5 Save as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees shall be paid to any legal practitioner without the prior written consent of the JCE or an admitted legal practitioner in the employ of the LAB delegated by the JCE to make such decision on his/her behalf.

7. **General**

- 7.1 All sums referred to are amounts exclusive of VAT.
- 7.2 Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by the LAB to any legal practitioner in respect of any matters whatsoever. The LAB will pay legal practitioners in accordance with its tariffs strictly according to services rendered and in so far as the applicable tariff makes provision for the service rendered.
- 7.3 It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that the LAB is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, the LAB will dispatch a cheque in payment of the said account within 30 days of receipt thereof or by electronic transfer, will instruct its bankers to effect payment, or, in the event of the LAB being unable to unwilling to effect payment, advise the legal practitioner in writing of the reason for non payment.