



LEGAL AID BOARD

Legal Aid House
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Johannesburg

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Braamfontein
2017

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JUSTICE FOR ALL

Our Ref: (P.J. Brits)
Your Ref.:

5 June 2002

FOR ACTION

Principals at Justice Centres, Legal Aid officers at magistrates' courts, all legal practitioners who provide Judicare services to the Legal Aid Board, all suppliers of goods and services including all parties with whom the Legal Aid Board has entered into a contract that provides for a domicilium citandi et executandi other than that set out in paragraph 3 hereof.

FOR INFORMATION

The Chief Justice, Judges President, The National Director of Public Prosecutions, Registrars, Directors of Public Prosecution 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; Bophuthatswana 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, Criminal Law Bar of South Africa, The Magistrates' Commission, Department of Justice, Department of Land Affairs, Department of Arts and Culture, the Editor of De Rebus and the Editor of Advocate.

Dear Sir/Madam

CIRCULAR NO. 1 OF 2002

1. Sections 1(b) and 2 of the Legal Aid Amendment Act No. 20 of 1996

By Proclamation No. R33 of 2002 sections 1 (b) and 2 of the Legal Aid Amendment Act No. 20 of 1996 were brought into operation with effect from 1 May 2002.

One of the consequences thereof is that Section 3B is inserted in the principal Act (the Legal Aid Act No. 22 of 1969). Section 3B sets out a procedure to be followed by all presiding judicial officers before any court order is granted requiring the provision of legal representation at state expense. Legal Aid Officers are required to advise the Executive: Access to Justice in writing of any court order granted on or after 1 May

2002 without consideration of the factors set out in Section 3B or without the court requesting and receiving a prior written report from the legal aid officer in terms of Section 3B.

2. **10th Edition of the Legal Aid Guide**

The coming into operation of Section 2 of the Legal Aid Amendment Act No. 20 of 1996 has the effect of bringing into operation the 10th edition of the Legal Aid Guide with effect from 1 May 2002. The 2002 Legal aid Guide replaced the 1996 Legal Aid Guide and all circulars up to and including Circular No. 1 of 2001. Circular 2 of 2001 and all circulars thereafter should be retained.

The 2002 Legal Aid Guide is being published by Juta Law and will be printed shortly. Legal practitioners will be able to obtain the 2002 Legal Aid Guide from the publishers and legal booksellers. The Board will distribute copies of the 2002 Legal Aid Guide to principals of Justice Centres and legal aid officers at magistrates' courts.

Practitioners should particularly take note of the provisions of Chapter 5 paragraph 18.7. A copy thereof is annexed for ease of reference.

3. **Change of Address and change of domicilium citandi et executandi**

During April 2002 the Legal Aid Board relocated its Head Office from Sunnyside, Pretoria to Braamfontein, Johannesburg. The particulars of the new Head Office are as follows:

Physical: Legal Aid House
 29 De Beer Street
 Corner Stiemens Street
 Braamfontein
 Johannesburg

Postal: Private Bag X76
 Braamfontein
 2017

Tel. No. (011) 877 2000

Fax No. (011) 877 2222

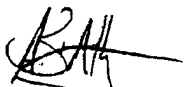
e-mail: info@legal-aid.co.za

All postal items are to be addressed to the Chief Executive Officer at the above address. All fax items are to be addressed to the Chief Executive Officer and transmitted to the above fax number. Under no circumstances is any correspondence or account relating to any judicare matter to be addressed to any other postal address or fax number.

The only exception to this rule is that legal aid officers from districts dealing with the Board's head office for approval of legal aid instructions in terms of circular 3 of 2001 should use fax number (011) 877 2171 and telephone number (011) 877 2042.

Legal aid officers are to ensure, until current stocks of LA2 forms are used up, that the word "Pretoria" in both the English and Afrikaans paragraphs 5.2 on the reverse of the LA2 B forms is deleted in respect of all instructions issued on or after 1 July 2002 and substituted by the word "Johannesburg".

Yours faithfully

A handwritten signature in black ink, appearing to read 'A.B. Ally', with a long horizontal stroke extending to the right.

A.B. ALLY

CHIEF EXECUTIVE OFFICER

5.18.7 If any dispute sounding in money arises after date of implementation of the Guide between the Board and any legal practitioner concerning the non payment of fees and/or disbursements and/or the under payment of fees and/or disbursements and/or the erroneous payment of fees and/or disbursements and/or the partial over payment of fees and/or disbursements and/or the

misrepresentation and consequent over payment of any fees and/or disbursements to which any legal practitioner is entitled, then and in that event if efforts to resolve any dispute by negotiation have failed, then either party:

- 5.18.7.1 May declare a dispute within 30 days of such dispute arising, or within 30 days of the issue in dispute having come to the knowledge of the aggrieved party, by delivering the details of the dispute to the defaulting party within 30 days after declaring the dispute, and;
- 5.18.7.2 May request that the dispute be referred by the parties, with legal representation, to arbitration by a single arbitrator at a place and time determined by him/her.
- 5.18.7.3 Such arbitration shall be conducted in the province where the legal practitioner practices and at Pretoria or Johannesburg or Pietersburg or Witbank or Potchefstroom or Cape Town or Port Elizabeth or Kimberley or Bloemfontein or Durban. A single arbitrator shall conduct such arbitration at the Board's office in the abovementioned city (in respect of the use of which no charge shall be levied) and shall be:
- 5.18.7.3.1 Selected by mutual agreement between the parties, or failing such agreement;
- 5.18.7.3.2 Nominated on the application of either party by the chairperson for the time being of the Association of Arbitrators.
- 5.18.7.4 At all times, every reasonable effort shall be made to ensure that such arbitrator has the necessary technical skills to enable him/her to adjudicate the dispute in a satisfactory manner.
- 5.18.7.5 The award of the arbitrator shall be final and binding on the parties, who hereby agree to give effect to the award. If the amount awarded by the arbitrator in any arbitration proceedings contemplated in terms of this paragraph 5.18.7:
- 5.18.7.5.1 is equal to or exceeds the amount last claimed by the claimant as at the date when the time, place and venue of the arbitration was communicated to all parties for the first time, costs of the arbitration, including the costs of the arbitrator, shall be warded against the defendant;
- 5.18.7.5.2 is equal to or less than the aggregate of the amounts paid on account and offered, whether with or without prejudice and whether on account or in full and final settlement, by the defendant as at the date when the time, place and venue of the arbitration was communicated to all parties

for the first time, costs of the arbitration, including the costs of the arbitrator, shall be awarded against the claimant;

5.18.7.5.3 is less than the amount so claimed by the claimant, but exceeds the aggregate of the amounts so paid on account and offered by the defendant, so much of the costs of the claimant shall be awarded against the defendant as bears to such costs the same proportion as the difference between the amount so awarded and the aggregate of the amounts so paid on account and offered, bears to the difference between the amount so awarded and the amount so claimed.

The provisions of this paragraph 5.18.7.5 above shall apply *mutatis mutandis* to a claimant in reconvention and a defendant in reconvention.

The arbitrator shall have a discretion to deviate from paragraphs 5.18.7.5.1, 5.18.7.5.2 and 5.18.7.5.3 above where in his opinion the conduct of the claimant was either vexatious or pettifogging in that the quantum of the costs exceed the amount in dispute.

The arbitrator will, when making an award of costs, specify the particular amount to be paid to him/her by each party and the tariff on which any costs payable to any other party is to be calculated. The arbitrator will also either himself/herself tax any bill of costs in respect of an arbitration or if there is a dispute as to the correct quantum thereof or will specify a willing and able person to undertake such taxation.

5.18.7.6 Either party shall be entitled to have the arbitrator's award made an order of court at the cost of the party requesting it.

5.18.7.7 The arbitration shall be held in accordance with procedures to be determined by the arbitrator. The arbitration shall be conducted in an informal and summary manner and shall be held as quickly as possible with a view to it being completed within 90 days of the appointment of the arbitrator.

5.18.7.8 In the event of a dispute, both parties shall proceed to perform in accordance with their contractual obligations with due diligence pending resolution of the dispute, subject to the provision of paragraph 5.18.9 below.

5.18.7.9 This paragraph 5.18.7 is severable from the rest of the contract between the Board and the legal practitioner and shall remain in effect if the contract is terminated.

5.18.7.10 Unless and until the arbitration provided for by this paragraph 15.8.7 has been held and determined, both the Board and the legal practitioner shall be barred from instituting any civil legal proceedings sounding in money against one another in any court in respect of the non payment of any fees and/or disbursements and/or the under payment of fees and/or disbursements and/or the partial over payment of fees and/or disbursements and/or the erroneous over payment of fees and/or disbursements and/or the misrepresentation and consequent over payment of any fees and/or disbursements to which the legal practitioner is entitled.