

LEGAL AID BOARD

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FOR ACTION

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

FOR INFORMATION

The Chief Justice, The President of the Supreme Court of Appeal, Judges President of All Divisions of the High Court, The National Director of Public Prosecutions, Registrars and Bars of the Cape 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, Mafikeng High Court, Bhisho High Court, Mthatha High Court and Thohoyandou High Court, General Council of the Bar of South Africa, the Law Society of South Africa, the Law Societies of the Cape, 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, Judicial Inspectorate of Prisons, Human Rights Commission, The Public Protector, Commission on Gender Equality, the Editor of De Rebus and the Editor of Advocate.

Dear Sir/Madam

CIRCULAR NO: 4 OF 2006

AMENDMENT OF THE MEANS TEST

The Legal Aid Board has approved the amendment of the means test

The purpose of this Circular is to implement the amended means test.

Paragraphs 2 and 3 of Circular 5 of 2004 which amended paragraphs 1 and 2 of



the 2002 Legal Aid Guide are hereby amended by the substitution thereof for the following:

1. INDIGENCE AND THE MEANS TEST

The Act does not define '*indigent person*'. Therefore, the LAB has laid down a *means test* that is revised from time to time. The means test determines *indigence* for the purpose of considering legal aid.

With effect from 1 July 2004, simplified means test forms have been used in all cases that cannot be disposed of on the LA1 form.

2. MEANS TEST ENQUIRY – 3 STEPS

The guidelines herein below set out 3 steps for determining qualification for legal aid through the means test in criminal or civil matters:

2.1 The First Step:

- The *legal aid applicant* completes, or is assisted in completing, the legal aid application [See Annexure A1]
- If the applicant is unemployed and has no income or assets, the enquiry is completed.
- If the applicant is employed, or has an income and assets, then the process continues to the next step.

2.2 The Second Step:

- The *person receiving the legal aid application* determines whether the legal aid applicant is single or a member of a *household*.
- The legal aid applicant completes the means test in the normal manner. (See Annexure A2 for applicants who are single, seeking assistance in a constitutional matter or for legal aid in litigation between spouses. (See Annexure A3 for all other applicants).
- If the legal aid applicant qualifies for legal aid under the means test, the legal aid applicant is both indigent and is unable to afford the cost of his/her own legal representation.
- If the legal aid applicant qualifies under the means test, this ends the enquiry into the legal aid applicant's ability to pay for the cost of his/her own legal representation.
- If the legal aid applicant is seeking legal aid under the Act, but does not pass the means test, then it must be assessed whether the applicant despite failing the means test will be able to afford the cost of legal representation. This assessment will at least entail an investigation of

the complexity and duration of the trial. If this is the case, then the process must continue to the next step.

2.3 The Third Step

If the legal aid applicant does not pass the means test as set out in Annexure A2 or A3, but if the matter otherwise qualifies for legal representation under other provisions of the Guide:

- The legal aid applicant completes an application form. (See **Annexure A4**).
- Annexure A4 is sent to the Justice Centre Executive (JCE) who will consider whether or not the legal aid applicant qualifies for legal representation at State expense.
- In deciding, the JCE should consider:
 - The income, expenditure, *assets* and *liabilities* of the legal aid applicant.
 - The nature and number of the charges or claims involved.
 - The number of *accused* or *litigants* involved.
 - The court in which the proceedings are to take place.
 - The anticipated duration of the proceedings.
 - Any factors relating to the complexity of the case and the personal circumstances of the accused/litigant reported to the JCE.

3. SINGLE APPLICANTS

A single applicant who has a *gross monthly income* of R2000 a month or less will qualify for completely *subsidized* legal aid.

Gross monthly income includes income from all sources.

Examples of what is included in gross monthly income:

- Salary/wages
- Overtime (provided not occasional)
- Allowances
- Subsidies
- Bonuses
- Interest received
- Rentals received
- Maintenance received
- Grants received
- Pension
- Dividends
- Commission.

4. HOUSEHOLDS

An applicant, who is a member of a household and whose household has a gross monthly income of R2 500 a month or less, will qualify for completely subsidized legal aid.

A 'household' means a group of people who live together for at least 4 nights a week and who share meals and resources.

5. NET ASSETS

The legal aid applicant or household will be permitted to have *net assets* up to R100 000 without being disqualified under the means test.

Assets' consist of:

- Moveable or immovable property, and
- Corporeal or intellectual rights to property.

Examples of assets:

- Investments
- A house
- Furniture
- A motor vehicle
- A right to occupy a farm under a will
- A right to receive a lump sum payment
- A claim against a debtor
- A sum of money in a bank account
- Shares in a company.

Examples of what are *not* assets:

- A bet on a horse in a race not yet run
- A lotto ticket for next Saturday's draw
- A hope of inheriting from a person who is still alive.

'Net assets' are assets less liabilities.

'Liabilities' are debts owed by the legal aid applicant.

Examples of liabilities:

- A mortgage bond
- The balance owing under a credit agreement

- An obligation to pay a sum of money
- A bank overdraft.

Examples of what are usually *not* liabilities (unless the person is in arrears):

- Income tax
- Rent
- Maintenance
- Clothing.

6. INDIGENCE OF GROUPS OR CLASSES OF APPLICANTS

Where it is necessary to determine whether a group or class of persons qualify for legal aid in terms of this guide or the impacts services policies, the justice centre receiving the legal aid application shall ensure that a sufficient number of means tests are completed to satisfy the LAB that a substantial portion of the group or classes are indigent. The ROE shall determine the number of individuals of the group or class who should complete a means test.

7. PARTIALLY SUBSIDISED LEGAL AID

The LAB may elect to introduce a scheme of partially subsidized legal aid for persons when:

- Gross monthly income or household income is more than the current legal aid limits for fully subsidized legal aid, or
- Net assets or household assets are more than the current legal aid limits for fully subsidized legal aid.

If this happens, interested parties will be advised by *Circular* of the details of the scheme, including the contributions payable by legal aid recipients.

8. LITIGATION BETWEEN SPOUSES

Where a person applies for legal aid for *litigation* or possible litigation between spouses, the applicant must be assessed as a single person.

Spouse refers to the partner of a 'married person'. In this Guide, a 'married person' means:

- A person married under the law of South Africa.
- A person joined in a union recognised under customary or common law as a marriage/union.
- A person joined in a same-sex union to the extent that this is recognised in the law of South Africa.

9. INCOME OR ASSETS OF PARENTS SPOUSES OR OTHER RELATIVES

No account is taken of the income or assets of the parents, spouses or any other relative of the legal aid applicant in any matter in which the applicant is *entitled to legal aid* under the Constitution.

10. PROPERTY AND MONEY FROM A DECEASED ESTATE

In determining the property of a legal aid applicant or his/her spouse, the person receiving the legal aid application shall take into account any property (including money) that a legal aid applicant is, or will be entitled to receive, from the estate of any deceased person.

This is taken into account even though:

- No distribution account has been drawn up.
- The legal aid applicant or his/her spouse has not yet taken transfer of or received delivery of the property.
- The property is held in the name of the estate or in the name of a trust.

11. ASSETS FROM A TRUST

Where any legal aid applicant (or spouse, dependent or descendant) is the beneficiary of a trust, he/she will be *deemed* to be the owner of the assets of the trust if the legal aid applicant was a founder of the trust.

Where any legal aid applicant or any member of the household is the beneficiary of a trust, and the household income is used to determine whether an applicant qualifies for legal aid, he/she will be deemed to be the owner of the assets of the trust.

Where there is more than one beneficiary, the applicant is deemed to be the owner of his/her percentage share of the assets of the trust.

12. MAINTENANCE AND GRANTS

Maintenance or any grant received for a dependent must be included in 'income'.

13. JCE'S DISCRETION

A JCE has the discretion to authorise fully subsidized legal aid for any applicant who is over the means test by up to R1000 a month. The JCE's decision will then be sent to the person receiving the legal aid application."

14. FRAUD AND ABUSE OF LEGAL AID

This section covers possible fraud and abuse by legal aid applicants, legal aid recipients or legal practitioners.

14.1 The spirit of providing legal aid

The LAB seeks to ensure that, as far as possible, legal representation is offered to indigent *litigants*.

Therefore, it is important that the principles and rules of this Guide are enforced so as to:

- Enable as many people as possible to receive legal aid, and
- Ensure that the system of legal aid and the LAB are not brought into disrepute as a result of the conduct of legal practitioners contrary to the letter and spirit of this Guide.

14.2 Possible steps open to the LAB

In keeping with the spirit of 6.3 the LAB reserves the right to:

- Terminate mandates to legal practitioners already in possession of instructions.
- End further mandates when the LAB's policies, procedures and rules are disregarded, *breached* or abused.
- In appropriate cases, initiate disciplinary procedures with the relevant authorities.
- Circulate to its various offices the names of legal practitioners disqualified from receiving instructions
- Withhold payment of any monies due to a legal practitioner in excess of reasonable fees and expenses.

14.3 Reasons to suspect fraud/abuse

Persons receiving legal aid applications, LAB employees or legal practitioners instructed by the LAB may have reason to believe that a legal aid applicant has committed fraud or abused legal aid.

☆ For example, legal aid applicants may have misled or attempted to

mislead a person receiving a legal aid application on their:

- Indigence, or
- Ability to afford legal representation.

Suspected fraud must be immediately fully reported in writing to the JCE. Other interested parties also have the right to take up the alleged fraud.

14.4 Copy of report to person suspected

The JCE must provide a copy of a report on the suspected fraud/abuse to the legal aid applicant or recipient, and give him/her a reasonable opportunity to respond to the allegations:

- The time given is normally at least 2 weeks.
- Any response must be addressed to the JCE in writing.
- Where the *legal aid recipient* is illiterate, the complaint must be communicated to the legal aid recipient orally, and the JCE must appoint an LAB employee to record the LAB recipient's response.

14.5 JCE's decision on steps necessary

After receipt of the response from the legal aid applicant or recipient, or if no response is received after a reasonable time, the JCE may decide, after investigating further, on one or more of these steps:

- Terminating legal aid
- Charging the legal aid applicant or recipient with fraud, where applicable.
- Starting civil action against the legal aid applicant or recipient.
- Authorise continuation of legal aid where no fraud/abuse is proved.

14.6 Forensic investigation

In appropriate cases, the Internal Audit Executive may order a forensic investigation of the financial circumstances of the applicant or recipient before or after legal aid is granted.

14.7 LAB's general response to fraud

The general policy of the LAB is to:

- Lay a criminal complaint against legal aid applicants or recipients who mislead the LAB on their means or who attempt to do this.
- Try to recover any monies disbursed on behalf of legal aid applicants or recipients who have misled the LAB on their means and ability to pay for their own legal representation.

14.8 Legal practitioner's duty: postponements

It is the duty of every legal practitioner acting on behalf of the LAB to ensure that the matter is dealt with as efficiently and speedily as possible:

- Every effort must be made to avoid any delay or postponement in proceeding with a case.
- Postponements should be avoided, bearing in mind the right of an accused to a withdrawal of the charge, or to have the trial proceeded with.

15 RECEIVING MONIES AFTER LEGAL AID INSTRUCTION

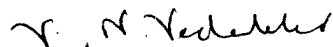
No additional moneys that are not due in terms of this policy or a court order may be received directly or indirectly by a legal practitioner from the client or from any other source after receiving a legal aid instruction for a particular matter. In this context, 'received' includes monies deposited to a trust account.

This conduct is also unethical conduct by the legal practitioner or candidate attorney, and may be referred to the relevant Law Society for investigation.

In Addition, any *salaried legal practitioner, candidate attorney* or employee of the LAB who accepts any money that is not due in terms of this policy or a court order from a legal aid applicant is guilty of misconduct.

This Circular shall be implemented with effect from 1 October 2006.

Yours faithfully



V N VEDALANKAR
CHIEF EXECUTIVE OFFICER.

LEGAL AID BOARD

Annexure A1
LA 13A



MEANS TEST (SINGLE PERSONS)

| | | |
|---|-------------|--------------------|
| Justice Centre: | Applicant: | LA Ref No: |
| A. Gross monthly income | | Applicant |
| Salary | + | R |
| Allowances | + | R |
| Subsidy | + | R |
| Bonuses | + | R |
| Interest | + | R |
| Rentals | + | R |
| Maintenance received | + | R |
| Other | + | R |
| | = | Total A = R |
| B. Assets | | Applicant |
| Fixed property: Reasonable market value | | R |
| Less Bonds | - | R |
| | Sub-total = | R |
| Investments & Savings | + | R |
| Monies due to applicant | + | R |
| TOTAL NET VALUE | = | R |
| DIVIDED BY 120 | = | Total B = R |
| C. CALCULATED MONTHLY INCOME (TOTALS A + B) | | = R |
| Less rebates: R2 000,00 for single applicant | | - |
| TOTAL (No legal aid in case of a PLUS-balance) | | = R |

Complete details of my salary, property and all other income and assets are correctly set out above. I realise that if any of the information set out above is false or incomplete, legal aid will be suspended immediately, and I will be prosecuted for fraud.

Date: Signature of applicant:

Date: Legal Aid Officer:

| |
|---|
| <p>If means test exceeded by R1000 or less: JCE discretion exercised YES / NO</p> <p>Reason for discretion</p> <p>.....</p> <p>Date: Signature of JCE:</p> |
|---|

LEGAL AID BOARD



MEANS TEST (HOUSEHOLDS)

Annexure A2

LA 13B

| | | | | |
|---|-------------|------------------|---------------|---------------------|
| Justice Centre: | Applicant: | | LA Ref No: | |
| A. Gross monthly income | | Applicant | Spouse | |
| Salary | + | R | R | |
| Allowances | + | R | R | |
| Subsidy | + | R | R | |
| Bonuses | + | R | R | |
| Interest | + | R | R | |
| Rentals | + | R | R | |
| Maintenance received | + | R | R | |
| Other | + | R | R | |
| Total A | = | R | + | R = R |
| B. Assets | | Applicant | Spouse | |
| Fixed property: Reasonable market value | | R | R | |
| Less Bonds | - | R | R | |
| | Sub-total = | R | R | |
| Investments & Savings | + | R | R | |
| Monies due to applicant | + | R | R | |
| TOTAL NET VALUE | = | R | R | |
| DIVIDED BY 120 (Total B) | = | R | + | R = R |
| C. CALCULATED MONTHLY INCOME (TOTALS A + B) | | | | = R |
| Less rebates: R2 500,00 for Household | | | | - |
| TOTAL (No legal aid in case of a PLUS-balance) | | | | = R |

Complete details of my salary, property and all other income and assets are correctly set out above. I realise that if any of the information set out above is false or incomplete, legal aid will be suspended immediately, and I will be prosecuted for fraud.

Date: Signature of applicant:

Date: Legal Aid Officer:

| |
|--|
| If means test exceeded by R1000 or less: JCE discretion exercised YES / NO Reason for discretion Date: Signature of JCE: |
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LEGAL AID BOARD



Annexure A3
LA 13C

Application for the provision of legal representation at state expense in terms of section 35(3) (g) of the constitution

PARTICULARS OF APPLICANT'S INCOME AND EXPENDITURE

| | | | |
|---|-------|--|---|
| BRANCH OR MAGISTRATE'S OFFICE | | NAME OF APPLICANT | |
| REFERENCE NUMBER | | COMPLEXITY | |
| NATURE OF CHARGE(S): If more than one record, total: | | CASE NUMBER | |
| CASE NUMBER | | IN WHICH COURT WILL TRIAL TAKE PLACE: Supreme Court/Regional Court/District Court* (Delete those inapplicable) ANTICIPATED DURATION OF THE TRIAL: | |
| INCOME AND ASSETS | | EXPENDITURE AND LIABILITIES | |
| 1. INCOME | | | |
| 1.1 Salary | R | 1. | R |
| 1.2 | R | 2. | R |
| 1.3 | R | 3. | R |
| 2. ASSETS | | 4. | |
| 2.1 Immovable | Value | 5. | R |
| Residence | R | 6. | R |
| Other | R | 7. | R |
| 2.2 Movable | Value | TOTAL | R |
| Vehicle | R | Liabilities | |
| Furniture | R | 1 | R |
| Other | R | 2 | R |
| TOTAL | R | TOTAL | R |

.....
SIGNATURE OF APPLICANT

.....
SIGNATURE LEGAL AID OFFICER

DATE.....