



Legal Aid
South Africa

National Office

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1 December 2010

FOR ACTION

Legal Aid SA: Regional Operations Executives
Justice Centre Executives
High Court Unit Managers
Other Legal Aid SA staff
Other: Accredited Judicare Legal Practitioners
Agent Legal Aid Officers at Magistrates' Courts

FOR INFORMATION

Judiciary: The Chief Justice
The President of the Supreme Court of Appeal
Judges President: South Gauteng High Court
North Gauteng High Court
North West High Court
Limpopo High Court
Free State High Court
Northern Cape High Court
Western Cape High Court
Eastern Cape High Court, Grahamstown
Eastern Cape High Court, Port Elizabeth
Eastern Cape High Court, Mthatha
Eastern Cape High Court, Bhisho
KwaZulu-Natal High Court, Pietermaritzburg
KwaZulu-Natal High Court, Durban
Land Claims Court
Labour Appeal Court
Labour Court
The Magistrates Commission
Legal Practitioners: The Law Society of the Northern Provinces
The Law Society of the Cape
The Law Society of the Free State
The Law Society of KwaZulu-Natal
The Law Society of South Africa
National Association of Democratic Lawyers
Black Lawyers Association
General Council of the Bar of South Africa
Cape Bar Council
Eastern Cape Society of Advocates (Grahamstown)

Your voice. For justice.



Eastern Cape Society of Advocates (Port Elizabeth)
Northern Cape Society of Advocates
Society of Advocates of the Free State
Society of Advocates of Natal (Pietermaritzburg)
Society of Advocates of Natal (Durban)
Society of Advocates of Mpumalanga
Pretoria Society of Advocates
Society of Advocates of SA (Witwatersrand Division)
North-West Bar Association
Bisho Society of Advocates (Bisho City)
Bisho Society of Advocates (East London)
The Society of Advocates of Transkei
Thohoyandou Bar Council
National Forum of Advocates
Church Square Association of Advocates
Consilium Group of Advocates

Prosecution: The National Director of Public Prosecutions

Director of Public Prosecutions: South Gauteng
North Gauteng
North West
Limpopo
Free State
Northern Cape
Western Cape
Eastern Cape, Grahamstown
Eastern Cape, Port Elizabeth
Eastern Cape, Mthatha
Eastern Cape, Bisho
KwaZulu-Natal, Pietermaritzburg
KwaZulu-Natal, Durban

Dept of Justice & Constitutional Development: Director-General

Registrar: Constitutional Court
Supreme Court of Appeal
South Gauteng High Court
North Gauteng High Court
North West High Court
Limpopo High Court
Free State High Court
Northern Cape High Court
Western Cape High Court
Eastern Cape HC, Grahamstown
Eastern Cape HC, Port Elizabeth
Eastern Cape HC, Mthatha
Eastern Cape HC, Bisho

KwaZulu-Natal HC, P'mburg
KwaZulu-Natal HC, Durban
Land Claims Court
Labour Appeal Court
Labour Court

Media: De Rebus
Advocate
Other: Human Rights Commission
Judicial Inspectorate of Prisons
Public Protector
Commission on Gender Equality

Dear Sir/Madam

CIRCULAR NUMBER 2 OF 2010
AMENDMENTS TO THE LEGAL AID GUIDE 2009

Notice is hereby given that the board of Legal Aid South Africa has approved the following amendments to the 2009 Legal Aid Guide (11th edition). The revised tariffs set out in Annexures E and F will come into operation on 1 April 2011. The amendments set out below in respect of Chapter 13 will come into effect from 1 January 2011 and will apply to all matters finalised after 1 January 2011. All other amendments set out below will come into effect from 1 January 2011. The striking through of words indicates the deletion of such words and the underlining of words indicates the insertion of new text.

1. CHAPTER 4

1.1 Paragraph 4.9.1(a) page 49

(a) Financial enquiries under section 65 and Administration Orders under section 74 of Magistrates' Courts Act

Legal aid is not available to judgement debtors for these proceedings under sections 65 and 74 of the Magistrates' Courts Act 32 of 1944.

~~This exclusion also includes proceedings that originate from cases where legal aid has already been granted to a litigant. The ROE however, may consent to proceedings under these sections to recover *capital* on behalf of clients and costs on behalf of Legal Aid SA.~~

1.2 Paragraph 4.11.1 page 53

4.11.1 USE OF THE ~~DIVORCE~~ REGIONAL CIVIL COURT

If legal aid is granted for bringing a divorce action, the action must be started in the ~~Divorce~~ Regional Civil Court, unless the JCE grants approval for *instituting action* in another court.

~~The Jurisdiction of Regional Courts Amendment Bill 48 of 2007 is currently under discussion. When this Bill becomes law, Legal Aid SA policy may have to change. Necessary Legal Aid SA amendments will be sent out by Circular.~~

2. CHAPTER 5

2.1 Paragraph 5.1.1 page 71

5.1.1 MEANS TEST ENQUIRY— 3 STEPS

These guidelines set out 2 steps for determining qualification for legal aid through the means test in criminal or civil matters and a 3rd step in criminal cases where the means test is exceeded by the applicant. A legal aid applicant must qualify both in respect of gross monthly income and net assets to pass the means test.

First:

- The legal aid applicant completes, or is assisted in completing, the legal aid application.

See Annexure C on page 220.

- If the applicant is unemployed and has no income or assets, or receives only a State grant or old age pension from the South African Social Security Agency (SASSA), the enquiry is completed.
- If the applicant is employed, or has an income and/or assets, then the process continues to the next step.

2.2 Paragraph 5.1.12 page 77

~~5.1.12 ASSETS FROM A TRUST~~

~~Where any legal aid applicant (or spouse, dependent, sibling, parent 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.~~

5.1.12 TRUST/ COMPANY/LEGAL PERSONALITY ASSETS

If any assets are owned by a trust, company or other legal personality but controlled either directly or indirectly by the legal aid applicant or his/her spouse, dependent, sibling, parent, descendant or nominee for the direct or indirect benefit of the legal aid applicant or his/her spouse, dependent, sibling, parent, descendant or nominee, such assets shall be deemed to

be owned by the legal aid applicant for the purposes of determining whether the legal aid applicant qualifies for legal aid.

Where there are beneficiaries other than the applicant and/or his/her spouse, dependent, sibling, parent, descendant or nominee, the applicant is deemed to be the owner of his/her percentage share of the said assets.

2.3 Paragraph 5.1.14 page 77

5.1.14 JCE'S DISCRETION

A JCE has the discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to ~~R1,000~~ R1,500 a month ~~for criminal cases in the Regional and High Court~~ in respect of gross income for all matters.

The JCEs decision will then be sent to the person receiving the legal aid application.

2.4 Paragraph 5.1.15 page 77

5.1.15 ROE'S DISCRETION

A ROE has the discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to ~~R2,000~~ R 3,000 a month ~~for criminal cases in the Regional and High Court~~ in respect of gross income for all matters.

A ROE has the discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to R 100,000.00 in respect of net assets for all matters.

The ROEs decision will then be sent to the person receiving the legal aid application.

2.5 Paragraph 5.5.3(a) page 83

(a) ~~3-stage~~ 4-stage approach to direction for legal aid by court

JCEs should liaise with judicial officers to arrange for the practical application of section 3B (1)(b) of the Act in these ~~3~~ 4 stages:

First

- A court should first advise an accused of the right to legal representation under section 73(2A) of the Criminal Procedure Act, as amended by Act 86 of 1996, and allow the accused a reasonable opportunity to get legal assistance under section 73 of the Criminal Procedure Act.

Second

- If the accused is refused legal aid, the accused should appeal against the refusal to the ROE.

Third

- The court may refer the case to Legal Aid SA for evaluation and report under section

3B(1)(b) of the Act if the accused reports to the court at a later date that:

- * He/She applied for legal aid, but was refused, and
- * The appeal against refusal of legal aid to the ROE was unsuccessful or that he/she did not receive a reply to the application/appeal within a reasonable period of time.

Fourth

The court may conduct an inquiry into the means of the applicant and for this purpose may:

- Subpoena the legal aid applicant, other witnesses and documents
- Require the legal aid applicant and other witnesses to give evidence under oath and to be subjected to cross examination.

3. CHAPTER 6

3.1 Paragraph 6.1.8 page 89

6.1.8 JCE TO CONSULT WITH ROE OR CCMC

In criminal matters to be conducted on a Judicare basis, the JCE must consult with the ROE in a Regional Court case and the CCMC in a High Court or Regional Court Commercial Crimes case before any legal aid instruction is issued ~~or before any Justice Centre starts providing legal aid, in (a) to (e) below and also with the ROE in District Court cases in (c) to (e) below, when:~~

- (a) The anticipated cost of any regional court ~~the matter~~ instruction is more than R50,000 or the anticipated cost of any High Court or Regional Court Commercial Crimes Court instruction is more than R 100,000.00.
- (b) The anticipated duration of ~~the matter~~ any regional court matter is more than 20 trial days or the anticipated duration of any High Court or Regional Court Commercial Crimes Court instruction is more than 40 trial days.
- (c) An increased fee exceeds the JCE's delegated authority in terms of the Approval Framework of Legal Aid SA.
- (d) The matter was previously privately funded and the JCE intends to allocate a Judicare instruction to the practitioner, who was previously privately instructed.
- (e) The matter is likely to attract public attention because of the nature of the matter or the identity of the client.

ROEs and the CCMC will monitor high cost and lengthy duration matters where the costs exceed R50,000 or ensue for longer than 20 trial days.

4. CHAPTER 7

4.1 Paragraph 7.1.2 page 98

~~7.1.2 THE MOVEMENT FROM JUDICARE TO SALARIED PRACTITIONERS~~

~~During the 1990s, starting with the Office of the Public Defender, Legal Aid SA became involved in a number of pilot projects in which legal aid was provided by *salaried legal practitioners* employed by Legal Aid SA or a *Co-operation Partner* of Legal Aid SA under a *Co-operation Agreement*.~~

~~In 1997, Legal Aid SA decided to move towards a system of salaried legal practitioners as the main way of providing legal aid in future. Since 2000, Legal Aid SA has established a nationwide network of *Justice Centres* where salaried legal practitioners provide legal aid.~~

7.1.2 SALARIED LEGAL PRACTITIONERS

Legal Aid SA mostly provides legal services by salaried legal practitioners employed at Justice Centres and satellite offices. In criminal matters one of the models for legal service delivery involves the stationing of a salaried legal practitioner at most district and regional magistrates' courts. The practitioner per court model is mostly used as it ensures the efficient and effective use of resources in covering the criminal courts.

The salaried legal practitioners employed by Legal Aid SA are obliged to adhere to all the legal and ethical obligations applicable to legal practitioners in private practice. Furthermore, in criminal matters, Legal Aid SA has its own Code of Professional Conduct for legal practitioners it employs.

This Code of Professional Conduct is contained in Annexure U hereto.

See Annexure U on page 313

4.2 Paragraph 7.1.3 page 98

~~7.1.3 JUSTICE CENTRES AND CO-OPERATION AGREEMENTS~~

~~Legal Aid SA is now rendering *access to justice* mainly by salaried legal practitioners and support staff at Justice Centres throughout the country.~~

In addition to direct service delivery through its Justice Centres and Satellite Offices, Legal Aid SA continues to make use of other means of facilitating access to justice. As a result, Legal Aid SA has entered into Co-operation Agreements with other persons and bodies to jointly render legal services to the public.

4.3 Paragraph 7.7.3 page 104

7.3.3 APPROVAL OF IMPACT SERVICES MATTERS

7.3.3.1 The ~~Legal Services Technical Committee (LSTC)~~ Constitutional Case Management Committee (CCMC) shall consist of the Chief Operations Officer, the National Operations Executive, the Legal Development Executive, a senior attorney

employed in the Legal Development Department and a non-executive member of the Board. The terms of reference of the CCMC are set out in Annexure V.

7.3.3.2 The Regional Operations Executives within whose area a proposed Impact Legal Service will be rendered will be a member of the LSTC CCMC when an Impact Legal Services proposal is considered, if it is envisaged that the proposed Impact Legal Services will have a regional rather than a national impact.

7.3.3.3 The non-executive member of the Board shall be selected by the Board annually and shall hold office until a successor is selected.

7.3.3.4 The NOE shall chair the LSTC CCMC.

7.3.3.5 Unless varied by this policy, meetings and proceedings of the LSTC CCMC will be governed by generally accepted rules.

7.3.3.6 Meetings of the LSTC CCMC will be held as the NOE deems appropriate. Meetings should be organised so that attendance is maximised.

7.3.3.7 The notice of each meeting of the LSTC CCMC, confirming the venue, time and date and enclosing an agenda of items to be discussed shall, save in exceptional circumstances, be forwarded to each member of the LSTC CCMC not less than 7 working days before the date of the meeting.

7.3.3.8 The quorum for decisions of the LSTC CCMC shall be any 3 members present and voting on the matter for decision.

7.3.3.9 The Chairperson, at his/her discretion, may invite such executives and senior management as appropriate, to attend and be heard at meetings of the LSTC CCMC.

7.3.3.10 Based on the functions performed by the non-executive Board member of the LSTC CCMC, in addition to his/her functions as a member of the Board, the member of the LSTC CCMC, who is a non-executive Board member, may be paid remuneration for his/her appointment as fixed by the Board.

The LSTC CCMC must approve all impact legal services matters irrespective of the expenditure authority of any officials of Legal Aid SA.

The NOE and LDE jointly may approve any urgent matters, where the total cost of the matter is less than R50,000 (including VAT) or they may authorise initial proceedings in a matter to prevent prescription or default. These matters must be reported to the LSTC CCMC at its next meeting for ratification.

7.3.3.11 All Impact Legal Services matters approved by the LSTC CCMC shall be reported to the Board at its next meeting.

See Annexure V on page 321.

4.4 Paragraph 7.3.4 page 105

7.3.4 APPEAL AGAINST DECISION OF THE ~~LSTC~~ CCMC

A proposer has the right of appeal to the CEO against the refusal of the ~~LSTC~~ CCMC to grant legal aid for a proposed impact matter.

The Senior Impact Litigation Attorney (SILA) shall inform the proposer of this right and, if requested within 3 months of being informed of this right, the Chairperson of the ~~LSTC~~ CCMC shall give detailed reasons for the refusal of legal aid.

The grounds of appeal must be submitted to the SILA in writing. The SILA must forward these to the CEO together with the application documents and his/her comments.

5. CHAPTER 9

5.1 Paragraph 9.2.5.1 page 116

9.2.5.1 The Legal Services Technical Committee (LSTC) shall consist of the Chief Operations Officer, the National Operations Executive, the Legal Development Executive, a senior attorney employed in the Legal Development Department and a non-executive member of the Board. The terms of reference of the LSTC are set out in Annexure W.

See Annexure W on page 324

6. CHAPTER 10

6.1 Paragraph 10.2.2(c) page 122

(c) Limited increased fees

In general, only fees set out in Legal Aid SA tariffs will be allowed. However, ROEs and the NOE have the discretion to permit payment of limited increased fees in very exceptional cases.

Full details must be submitted to the ROEs or the NOE when applying for increased fees.

The NOE must:

- Maintain a register of all increased trial day fees allowed at Legal Aid SA's National Office and Regional Offices.
- Report to the Board on all increased trial day fees granted.

The authorisation of additional work at standard tariff rates does not need to be

reported to the Board.

7. CHAPTER 11

7.1 Paragraph 11.2.3 page 145

~~11.2.3 RECOVERY OF CONTRIBUTIONS~~

~~Contributions recovered by legal practitioners must immediately be deposited directly into Legal Aid SA's trust bank account. The relevant deposit slip must be forwarded to the Chief Financial Officer (CFO).~~

11.2.3 RECOVERY OF CONTRIBUTIONS

(a) An accused who is obliged to make a contribution must be advised in writing in accordance with Annexure G4 to the Legal Aid Guide. The signature of the accused must be obtained on Annexure G4 before any legal aid instruction (Annexure D/LA2) is authorised. A copy of the signed Annexure G4 must be annexed to the legal aid instruction forwarded to the legal practitioner assigned to the accused. A further copy of the signed Annexure G4 must be handed to the accused. The signed original G4 must be retained by the JCE.

See Annexure G4 on page 252A

(b) At the first appearance after the authorisation of legal aid the assigned legal practitioner must place it on record that legal aid has been authorised subject to the payment of monthly contributions by the accused .

(c) Where legal aid is granted pursuant to a court order in terms of Section 3B of the Legal Aid Act and where a contribution is appropriate the JCE or his/her representative must request the presiding judicial officer to make the payment of monthly contributions by the accused part of the court order. A judicial officer has no legal authority in terms of Section 3B to himself/herself determine whether a contribution should be made and if so in what amount.

(d) Contributions are payable monthly in advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.

(e) Contributions must be deposited directly to the Trust Account of Legal Aid SA by the accused or his/her agent.

(f) No contribution may be received by any legal practitioner or the employee or agent of any legal practitioner acting on a legal aid instruction. No employee of Legal Aid SA may receive any contribution.

- (g) The accused must deliver proof of payment of all contributions due to his/her assigned legal practitioner by not later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.
- (h) If any accused fails to make any contribution due, legal aid terminates and the assigned advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.
- (i) Contributions must be deposited directly to the Trust Account of Legal Aid SA by the accused or his/her agent.
- (j) No contribution may be received by any legal practitioner or the employee or agent of any legal practitioner acting on a legal aid instruction. No employee of Legal Aid SA may receive any contribution.
- (k) The accused must deliver proof of payment of all contributions due to his/her assigned legal practitioner by not later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.
- (l) If any accused fails to make any contribution due, legal aid terminates and the assigned legal practitioner must advise the accused and the relevant judicial officer of the termination of legal aid either in writing or in court at the next appearance.

7.2 Paragraph 11.5.2 page 151

11.5.2 THE LEGAL PRACTITIONER'S RESPONSIBILITIES

The LA5 instructs the legal practitioner to:

- Give notice to any other party to litigation that any payment is to be made only to the legal practitioner instructed, or if he/she withdraws, to Legal Aid SA, and *not* to the legal aid applicant.
- Receive any amount due to the legal aid applicant as a result of any court order or settlement, and retain all amounts for costs and 50% of any other amounts until the legal aid applicant's debt to Legal Aid SA has been determined and discharged.
- Pay to Legal Aid SA all amounts due to Legal Aid SA, including the *benefit* to Legal Aid SA calculated in accordance with the provisions of this Guide.

For more information on costs and the benefit owing to Legal Aid SA, see 10.8 on page 143.

- For example a Judicare practitioner who on behalf of a successful legal aid litigant recovered R 150,000.00 general damages and R 50,000.00 party-and-party costs, but whose attorney-client costs were taxed at R 75,000.00 by Legal Aid SA would:
 - Bank both the R 150,000.00 and the R 50,000.00 in his/her trust account;
 - Pay R 75,000.00 (50% of the capital) to the client;
 - Pay R 50,000 (party-and-party costs) to Legal Aid SA;
 - Pay R 9,000 (the Benefit due to Legal Aid SA on the capital) to Legal Aid SA;
 - Pay R 25,000 (the difference between attorney-client costs and party-and-party costs) to Legal Aid SA;
 - Receive R 75,000.00 (the attorney-client costs) from Legal Aid SA for deposit in the practitioner's Business Account;
 - Pay R 41,000.00 (the balance of the capital) to the client, once accounts were finalised.

The process might be shortened by set-off but the result would still be that the client received a total of R 116,000.00 (in two installments) the practitioner received R 75,000.00 and Legal Aid SA received R 9,000.00 more than it disbursed. Although this example refers to a Judicare practitioner the same principles apply when legal aid is provided by a salaried legal practitioner at a Justice Centre.

8. CHAPTER 13

8.1 Paragraph 13.2.5 page 166

~~Legal practitioners who submit accounts enquiries relating to accounts that have been paid correctly before the date of the enquiry, will be debited R100 for each enquiry. All accounts must be submitted to Legal Aid SA by no later than four months after the finalisation of the matter. The practitioner who fails to submit his/her account within four months of finalisation forfeits the right to payment.~~

Accounts for criminal trials must be submitted to Legal Aid South Africa on the form in Annexure K1.

See Annexure K1 on page 257.

Accounts for civil matters must be submitted to Legal Aid South Africa on form in Annexure K6.

Account enquiries must be submitted to Legal Aid South Africa on the form in Annexure K2, with all necessary supporting documentation.

See Annexure K2 on page 259.

For the convenience of legal practitioners submitting accounts, there is a checklist in Annexure K3.

See Annexure K3 on page 260.

~~Legal practitioners who submit accounts enquiries relating to accounts that have been paid correctly before the date of the enquiry, will be debited R100 for each enquiry.~~

8.2 Paragraph 13.7.2 page 174

~~If negotiations fail, a dispute must be declared within a year of the dispute arising, or within a year of the issue in dispute coming to the knowledge of the aggrieved party. three months after Legal Aid SA notifies the practitioner that the account has been taxed. The account received by Legal Aid SA must have been in proper form with all necessary supporting reports, vouchers, certificates and documents as required by the Legal Aid Guide.~~

~~With a claim by a legal practitioner against Legal Aid SA for fees or disbursements, a dispute is *deemed* to arise, and come to the knowledge of the legal practitioner instructed by Legal Aid SA, by not later than 30 days after the date on which Legal Aid SA received the account on which the dispute is based.~~

The aggrieved party must deliver the details of the dispute to the defaulting party on 'Declaration of Dispute' standard form, as in Annexure K4 and Annexure K5.

See Annexure K4 on page 292 and Annexure K5 on page 293

8.3 Paragraph 13.8.1 page 177

Once a legal aid matter has been finalised, the legal practitioner must submit his/her account ~~by the end of the calendar month following the calendar month in which the matter was finalised as soon as reasonably possible, but in any event within four months of such finalisation.~~ Prescription starts running from the end of the second calendar month date on which the matter was finalised.

Legal Aid SA has 30 days after receipt of an account to tax the account, and then to pay, partially pay or refuse to pay the account. If the practitioner does not institute arbitration proceedings ~~within one year after the expiration of this period or of receiving Legal Aid SA's response, whichever is the earlier~~ three months of notification of the taxation of the practitioner's account, the practitioner's claim will also prescribe.

The CSE has discretion to extend the period within which to institute arbitration proceedings by not more than six months where satisfied that the extended period is required to tax and pay/partially pay the account and/or negotiate a settlement in relation to any account. Within one year after finalisation of a matter, the CSE also has discretion to authorise taxation and payment/part payment of an account, which was submitted within the compulsory 4 month period, where satisfied by written representations from the practitioner that there are satisfactory reasons for the delay in instituting arbitration proceedings. Any exercise by the CSE of discretion in terms of this paragraph shall be in writing.

9. ANNEXURES

9.1 Amended Annexures

The following Annexures have been amended:

C, E, F, G3, O2 (previously part of Appendix 3 to Annexure O) and O3 (previously the remainder of Appendix 3 to Annexure O).

Copies of the amended annexures are annexed.

9.2 New Annexures

The following Annexures have been added to the Legal Aid Guide:

G4, U, V and W.

Copies of the new annexures are annexed.

Yours faithfully

Ms Vidhu Vedalankar
Chief Executive Officer
Legal Aid South Africa

Your voice. For justice.

APPLICATION FOR LEGAL AID

GREY SHADED AREA/ BOLD BLOCKS ARE MANDATORY FIELDS AND MUST BE COMPLETED

X REF. NO

MATTER NO

COMPLETED BY (LAB OFFICIAL/ PRACTITIONER NAME)

OFFICE USE ONLY

A

APPLICANT NAME

SURNAME

ID NO. GENDER Male Female

NATIONALITY SA Citizen Other

BIRTH DATE D D / M M / C C Y Y

APPLICANT IS CHILD UP TO 18 ADULT 18-60 SENIOR CITIZEN 60+

Is this application on behalf of a MINOR? YES NO

MARITAL STATUS

Single Married Widowed Divorced

RACE Black Indian Other

White Coloured

HOME LANGUAGE

HOME ADDRESS

C O D E

PERIOD AT CURRENT ADDRESS YEARS MONTHS

Home Tel:

Work Tel:

Cell:

PARENT/GUARDIAN

B

MEANS TEST

Do you have an income? YES NO

Do you have any assets? YES NO Are you employed? YES NO

Do you or any of your family control any company or trust or legal personality? YES NO

Do you or your spouse expect to receive any money or property from a deceased estate and/or are either of you beneficiaries of any trust? YES NO

If the answers to all the above questions is No the applicant is not required to complete the full means test.

Qualifications Job

Name of employer

Time in current job Years Months

C

TYPE OF CASE CIVIL CRIMINAL LEAVE TO APPEAL PETITION APPEAL

MAIN CHARGE Most serious charge

D

CASE DETAILS

HIGH COURT REGIONAL COURT DISTRICT COURT

SEAT OF COURT

COURT ROOM

CASE NO.

SAPS CAS NO.

NEXT COURT DATE D D / M M / 2 0

Number of accused in matter

Bail granted Y/N Bail paid Y/N Bail amount R

Previous court date D D / M M / 2 0

Name of prison

Prisoner no.

Investigating officer

Date of arrest D D / M M / 2 0

E

SPOUSES DETAILS ONLY REQUIRED FOR CIVIL CASES

NAME

ID NUMBER / DATE OF BIRTH

F

DECLARATION

I declare that the above mentioned information is true, correct and complete. I understand that a false declaration could lead to the suspension of legal aid, and in appropriate circumstances, to criminal prosecution.

I irrevocably authorise Legal Aid South Africa to act as my attorney and to inspect, copy and carry out quality control tests in respect of the file of any legal practitioner appointed by Legal Aid South Africa to act on my behalf.

D D / M M / 2 0

SIGNATURE

Annexure E

TARIFF OF FEES AND DISBURSEMENTS IN CRIMINAL MATTERS - ~~2010~~2011

The fees and disbursements contained in this Annexure come into effect from 1 April 2010 for work done on or after 1 April ~~2010~~2011. The tariff of fees and disbursements applicable to work done from 1 April 2009 to 31 March 2010 appears in the 2009 Legal aid Guide. The tariff of fees applicable to work done from 1 April 2010 to 31 March 2011 appears in Circular 1 of 2010. The various tariffs of fees and disbursements that are applicable for work done prior to 1 April 2009 are listed on the Legal Aid SA website (www.legal-aid.co.za) under the heading “LAB Tariffs Pre- April 2009”.

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.	Criminal trials – Appearance ¹				
1.1 (a)	For appearing before any court when a postponement is granted at the request of the State	R160.00 <u>R166.00</u> Per postponement	R160.00 <u>R166.00</u> Per postponement	R160.00 <u>R166.00</u> Per postponement	Not applicable(NA)
1.1(b)	A telephone attendance to postpone a matter but this is not allowed for a practitioner's first appearance for client. This is only permitted where client is not in custody and the matter has not been set down for trial	R58.00 <u>R60.00</u>	R58.00 <u>R60.00</u>	R58.00 <u>R60.00</u>	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.1 (c)	<p>For appearing before the High Court (HC) where a matter has been set down for trial on a running roll and the matter is postponed at the request of the State to a date beyond the dates covered by the running roll on which the matter was initially set down (will only be paid once per matter and will not be paid in addition to a trial day fee)</p> <p>Where the matter is postponed to a date within the running roll period, then the postponement fee as per clause 1.1(a) will be payable, but only if the trial day fee or any portion of the trial day fee is not claimed.</p>	NA	NA	<p>R1,741.00 Per postponement where a practitioner has less than 5 years experience</p> <p>R2,321.00 Per postponement where a practitioner has more than 5 years experience R 2,000.00</p>	NA
1.2	<p>For appearing before court and any other incidental professional services (excluding permitted preparation on any trial day). This includes appearing before a judicial officer in pre-trial conferences, identity parades and inspections conducted by the Court.</p>	<p>R1,032.00 <u>R1,073.00</u> Per trial day</p>	<p>R1,227.00 <u>R1,276.00</u> Per trial day</p>	<p>R1,741.00 R 2,000.00 Per trial day if a practitioner has less than 5 years experience</p> <p>R2,321.00 Per trial day if a practitioner has more than 5 years experience</p>	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.3 (a)	If the duration of a trial day does not total 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:	R160.00 R166.00 Per day	R160.00 <u>R166.00</u> Per day	R160.00 <u>R166.00</u> Per day	NA
1.3 (b)	If a matter is finalised by means of a formal withdrawal (which must be in writing <u>as opposed to matters which are merely struck off the roll</u>), guilty plea, diversion or plea bargain, a finalisation fee, inclusive of all necessary consultations and preparations will be paid, <u>irrespective of when such consultations or preparation took place</u> . No additional preparation fees will be paid in respect of the trial. This will not preclude claims for postponements and court appearances before or after the date in respect of which the finalisation fee is claimed (eg. For sentencing).	R517.00 <u>R1,073.00</u>	R737.00 <u>R1,276.00</u>	R1,218.00 <u>R2,000.00</u> If practitioner has less than 5 years experience R1,624.00 If practitioner has more than 5 years experience.	NA
2	Preparation fees ²				
2.1	Practitioners may claim preparation and consultation fees from the date of instruction by Legal Aid South Africa.	R144.00 <u>R150.00</u> Per hour	R202.00 <u>R210.00</u> Per hour	R265.00 Per hour	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	<p>Preparation before the start of the trial is required (eg in the High Court up to 8 hours preparation should routinely be done prior to the date of the commencement of the trial).</p> <p>Necessary travelling and accommodation disbursements (as per Paragraph 7 below) outside of the magisterial district in which the practitioner practises will be paid if required to execute such preparation.</p> <p>In all matters actual preparation and necessary consultations prior to and during the trial shall be allowed and remunerated as follows:</p> <p>DC – Not more than 2 hours for the first accused and additional preparation and consultation time of not more than 1 hour per co-accused represented subject to a maximum of 8 hours per District Court matter</p> <p>RC – Not more than 4 hours for the first accused and additional preparation and consultation time of not more than 2 hours per co-accused represented subject to a maximum of 16 hours per</p>				

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	<p>Regional Court matter.</p> <p>HC- A minimum of 8 hours for the first accused for the first week of trial or part thereof, and then an additional 8 hours per week or part thereof for the remaining period of the trial. Where the practitioner represents additional co-accused, then additional actual preparation and consultation time of not more than 4 hours per co-accused represented subject to a maximum of 32 hours per week will be allowed.</p>				
2.2	<p>In respect of trials where a practitioner for valid reasons requires additional preparation and consultation time beyond what is allowed in 2.1 above, a written motivation for increased preparation and consultation time must be submitted to the ROE/NOE.</p>	<p>R144.00 <u>R150.00</u> Per hour</p>	<p>R202.00 <u>R210.00</u> Per hour</p>	<p>R265.00 Per hour</p>	<p>NA</p>
3.	<p>Increased trial day fees³</p>				
3.1	<p>Only in very exceptional circumstances will any increased fees be permitted. If increased trial day fees are authorised by the ROE/NOE, these shall not exceed:</p>	<p>NA</p>	<p>R2,667.00 <u>R2,774.00</u> Per trial day</p>	<p>R3,494.00 Per trial day</p>	<p>NA</p>

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
3.2	<p>In very exceptional circumstances, the NOE 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.</p> <p>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.</p>	NA	R1,599.00 R1,663.00 Per trial day (Maximum)	R2,095.00 Per trial day (Maximum)	NA
4.	Bail applications and interlocutory applications ⁴				
4.1	A legal practitioner shall be remunerated for bail and other interlocutory applications not otherwise provided for at the rates set out herein as if such bail or interlocutory application formed part of the trial of the accused.	R1,032.00 <u>R1,073.00</u> Per trial day	R1,227.00 R1,276.00 Per trial day	R1,741.00 <u>R2,000.00</u> Per trial day if a practitioner has less than 5 years experience R2,321.00 Per trial day if a practitioner has more than 5 years experience	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
5.	Criminal trials – General ⁵				
5.1	Application for a transcript of the evidence	R117.00 <u>R122.00</u> Per application	R117.00 <u>R122.00</u> Per application	R117.00 <u>R122.00</u> Per application	NA
5.2	Necessary perusal of a docket and/or record:	R2.90 <u>R3.01</u> Per page	R2.90 <u>R3.01</u> Per page	R2.90 <u>R3.01</u> Per page	NA
5.3	Preparation of heads of argument at the request of the court. Proof of the court's request must accompany the account. A folio consists of 100 words.	NA	R14.00 <u>R14.56</u> Per folio	R22.00 Per folio	NA
6.	Criminal appeals ⁶				
6.1	Written report on the merits of a matter when required.	R319.00 <u>R332.00</u> Per report	R319.00 <u>R332.00</u> Per report	R319.00 <u>R332.00</u> Per report	R319.00 <u>R332.00</u> Per report
6.1(a)	For appearing before any trial court when a postponement is granted at the request of the State or at the instance of the presiding Judicial Officer before hearing an application for leave to appeal:	R160.00 <u>R166.00</u> Per postponement	R160.00 <u>R166.00</u> Per postponement	R160.00 <u>R166.00</u> Per postponement	NA
6.2	Application to the court a quo for leave to appeal (where done by a practitioner who appeared at trial)	R349.00 <u>R363.00</u> Per application	R464.00 <u>R483.00</u> Per application	R581.00 Per application	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.3	Drafting petition for leave to appeal to the HC or application to the SCA including all typing and attendances relevant thereto	NA	NA	R840.00 Per petition	R1,260.00 Per application
6.4	Drafting of documents not otherwise provided for, including all typing and relevant attendances	NA	NA	R27.00 per page Up to a max of R523.00	R41.00 per page Up to a max of R 696.00
6.5	Application for a copy of a record under Rule 66(9) of the Magistrate's Court, Rule 49A of the Uniform Rules, Rule 52 of Uniform Rules including all typing and attendances relevant thereto.	R160.00 <u>R166.00</u> Per application	R160.00 <u>R166.00</u> Per application	R160.00 <u>R166.00</u> Per application	R160.00 <u>R166.00</u> Per application
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 or where the client indicated that he/she did not require leave to appeal but subsequently requested an application for leave to appeal and a period of longer than 3 months has expired since sentence.	R2.90 <u>R3.01</u> Per page	R2.90 <u>R3.01</u> Per page	R2.90 <u>R3.01</u> Per page	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.7	Heads of argument including perusal of record to prepare heads of argument, all typing and relevant attendances	NA	NA	R1,741.00 Per set of Heads	R1,741.00 Per set of Heads
6.8	On appearing before the trial court to argue application for leave to appeal including the final report to the LAB and the report back to the legal aid applicant (where done by practitioner other than the practitioner who appeared at the trial) This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day	R754.00 <u>R784.00</u>	R986.00 <u>R1,025.00</u>	R1,160.00	NA
6.9	On appearing before a 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 This fee includes any consultations or perusal on that day and any application made on that day	NA	NA	R1,741.00	R4,061.00
6.10	Any necessary consultation with an accused or a witness whose evidence is yet to be led.	R232.00 <u>R241.00</u> Per consultation	R232.00 <u>R241.00</u> Per consultation	R232.00 <u>R241.00</u> Per consultation	R232.00 <u>R241.00</u> Per consultation

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	Not more than one consultation per accused or per witness.				
7.	Disbursements ⁸				
	These disbursements shall be allowed over and above the fees set out above				
7.1	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
7.2	Necessary revenue stamps	As required by the prosecution	As required by the prosecution	As required by the prosecution	As required by the prosecution
7.2 (a)	Necessary copies of documents such as charge sheets, petitions and heads of argument.	R1.74 <u>R1.80</u> Per page	R1.74 <u>R1.80</u> Per page	R1.74 <u>R1.80</u> Per page	R1.74 <u>R1.80</u> Per page
7.3	Necessary travel outside of any magisterial district in which the legal practitioner has an office	R3.38 <u>R2.90</u> Per km	R3.38 <u>R2.90</u> Per km	R3.38 <u>R2.90</u> Per km	R3.38 <u>R2.90</u> Per km
7.4	Necessary air travel	NA	NA	Economy class	Economy class
7.5	Where it is necessary for a legal practitioner to hire accommodation at the court venue, the LAB will pay the legal practitioner an allowance in respect of accommodation NB – Where the actual	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	expenditure exceeds the allowance in paragraphs 7.5 and 7.6 but is still within the LAB Travel Policy, the practitioner may choose between requesting the LAB to book and pay for his /her expenses or pay on his /her own accommodation and then claim a refund from the LAB				
7.6	Where it is necessary for a legal practitioner to attend at a court venue away from his/her chambers/offices the LAB shall pay the legal practitioner a subsistence allowance	R202.00 Per day provided that the court venue is situated is more than 130km from the offices/chambers of the legal practitioner	R202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R 202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner
7.7	Toll roads to the extent that these were reasonably necessary	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses

2010 CRIMINAL TARIFFS: NOTES

1. Criminal Trials – Appearance fees

- 1.1. No additional fees will be permitted in respect of any trial day lasting in excess of 4 hours or for any waiting time or any other attendance whatsoever.
- 1.2. 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 after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial is less than 4 hours duration the trial day fee is reduced pro rata.

2. Preparation fees

- 2.1. In all trials where the legal practitioner requires consultation/preparation fees beyond what is stipulated in clause 2.1 of the tariffs, the legal practitioner must submit a detailed written motivation to the ROE/NOE responsible detailing the preparation required, including preparation per co-accused, perusal of documents, necessary consultations and the anticipated duration of these.
- 2.2. ROEs must consult their delegations to determine what preparation fees they may authorise and which must be referred to the NOE.

3. Increased trial day fees

- 3.1. In no circumstances will a third legal practitioner be permitted for any accused or group of co-accused who are represented by a single legal team.
- 3.2. ROEs must consult their delegations to determine what increased trial day fees they may authorise and which must be referred to the NOE.
- 3.3. The NOE shall ensure that at each ordinary meeting of the Board particulars of any increased fees authorised and particulars of any increased fees paid since its last such report are tabled for the information of members of the Board.

4. Bail applications

- 4.1. Not more than one bail application shall be conducted on a legal aid basis under any one case number without the prior written consent of the applicable JCE, which should only be granted in response to a detailed motivation in writing for any second or subsequent bail application.
- 4.2. Upon accounting to Legal Aid SA the legal practitioner shall indicate whether a bail application was launched and shall report on the result of this bail application.
- 4.3. If an accused on legal aid is granted bail in excess of ~~R5,576.00~~ R5,799.00 and the bail is paid by the accused (irrespective of whose name appears on the bail receipt), the legal practitioner acting on behalf of the accused shall immediately report this fact in writing to the applicable JCE. The applicable JCE shall give directions as to whether the matter is to be:
 - 4.3.1. Continued on legal aid; or
 - 4.3.2. Referred back for reconsideration of whether the accused qualifies for legal aid; or
 - 4.3.3. No longer conducted on a legal aid basis.
- 4.4. Bail appeals, like other appeals, will be dealt with by separate legal aid instructions and subject to the tariffs set out for Criminal Appeals.
- 4.5. Bail appeals will be remunerated at the tariff applicable to criminal appeals generally.

5. Criminal trials - General

- 5.1. The fees set out above are all inclusive fees and no additional fees will be permitted.
- 5.2. A legal practitioner submitting an account to Legal Aid SA may be required to attach to the account a certificate by the presiding judicial officer or his/her registrar (if any) verifying the appearances and times set out in the legal practitioner's account. This certificate is currently required for all criminal trials in the High Court but is not currently required for criminal trials in the magistrate's courts. For criminal trials in the magistrate's courts in which a fee is claimed for any appearance on or after 1 September 2003 the legal practitioner claiming these fees must submit a copy of the charge sheet and its annexures to Legal Aid SA with his/her account.
- 5.3. A legal practitioner who is appointed on a legal aid basis to represent an accused at a criminal trial after the accused has pleaded and after evidence has been led and if the legal practitioner was not present when such evidence was led, is entitled to apply to the trial court for the provision to the legal practitioner at the expense of the Department of Justice a copy of the transcript of the evidence led in his/her absence, and if this application is granted, to peruse the transcript. Except in the above circumstances, the perusal of a record, other than as part of the Preparation Fees allowed under Item 2 of the above tariff, shall only be allowed with the prior written consent of the ROE/NOE.
- 5.4. Where in excess of 2 hours preparation is permitted for any criminal trial, this preparation time shall include all necessary perusal of documents and no separate fee per page shall be paid for the perusal of any document.

6. Criminal appeals

- 6.1. The fees set out in Items 6.7, 6.8 and 6.9 shall be increased by 25% for each additional accused being represented to a maximum of an additional 150% for all accused.
- 6.2. Applications for bail pending appeal will be remunerated in accordance with the tariff applicable to bail applications for awaiting trial accused. Applications for bail pending appeal are not permitted on a legal aid basis if the accused was in custody before conviction.
- 6.3. The ROEs have a general discretion to agree special and/or increased fees in circumstances which justify deviation from the above tariff. Any request for increased fees must be fully motivated and must be submitted to the JCE in writing.

7. Disbursements

- 7.1. A ROE, if it appears to him/her to be in the interests of the administration of justice and Legal Aid SA, is 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 for this must be submitted in writing via the JCE.

- 7.2. Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.
- 7.3. 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.
- 7.4. Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances for accommodation and/or subsistence, as the case may be, will not be paid.
- 7.5. Except 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 any admitted legal practitioner in the employ of Legal Aid SA delegated by the JCE to make this decision on his/her behalf.
- 7.6. The subsistence allowance under item 7.6 of the tariffs may be paid to a practitioner, irrespective of whether this allowance is claimed in conjunction with a claim for accommodation, on condition that the claim complies with the requirements stipulated in these tariffs.

8. General

- 8.1. After the case has been finalised, the legal practitioner must report to the applicable JCE in writing setting out:
 - 8.1.1. The case number
 - 8.1.2. The court where the matter was heard
 - 8.1.3. The outcome of the matter
 - 8.1.4. The duration of the hearing
 - 8.1.5. Any other material information
- 8.2. All sums referred to are amounts exclusive of VAT.
- 8.3. Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by Legal Aid SA to any legal practitioner for any criminal matters, criminal appeals or any other matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.
- 8.4. It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA 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, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof

or, will instruct its bankers to effect payment by electronic transfer or, in the event of Legal Aid SA being unable or unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

- 8.5. The ROE/NOE has a general discretion to approve a fee that is not otherwise provided for in this tariff where it is deemed necessary to protect the interest of a client, but not beyond the rates for similar type work prescribed in this tariff.

TARIFF OF FEES AND DISBURSEMENTS IN CIVIL MATTERS¹ - 2010 2011

The fees and disbursements contained in this Annexure come into effect from 1 April 2010 2011 for work done on or after 1 April 2010 2011. The tariff of fees and disbursements applicable to work done from 1 April 2009 to 31 March 2010 appears in the 2009 Legal Aid Guide. The tariff of fees applicable to work done from 1 April 2010 to 31 March 2011 appears in Circular 1 of 2010. The various tariffs of fees and disbursements that are applicable for work done prior to 1 April 2009 are listed on the Legal Aid SA website (www.legal-aid.co.za) under the heading "LAB Tariffs Pre- April 2009."

Number	Matter	Magistrate's Court	<u>Regional Court</u>	High Court	Supreme Court of Appeal	Constitutional Court
1	Judicare remuneration for services according to levels ² + ³					
1.1(a)	Hourly rates Level 1 Level 2 Level 3 Level 4 Level 5	R248.00 <u>R258.00</u> R290.00 <u>R302.00</u> R349.00 <u>R363.00</u> R435.00 <u>R452.00</u> NA	<u>NA</u> <u>NA</u> <u>R385.00</u> <u>R473.00</u> <u>NA</u>	NA NA R406.00 R494.00 R581.00	NA NA NA NA NA	NA NA NA NA NA
1.1 (b)	Counsel fees (High Court Matters Only) Hourly rates —— Level 3 —— Level 4 —— Level 5	NA NA NA		R494.00 R581.00 R667.00	NA NA NA	NA NA NA
1.2(a)	Rates per completed 4 hour trial day Level 1 Level 2 Level 3	<u>R1,045.00</u> <u>R1,087.00</u> <u>R1,241.00</u> <u>R1,290.00</u> <u>R1,450.00</u>	<u>NA</u> <u>NA</u>	NA NA	NA NA NA NA	NA NA NA NA

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
	Level 4	R1,508.00 R1,741.00	<u>R1,770.00</u>	R2,031.00		
	Level 5	R1,811.00 NA	<u>R2211.00</u> NA	R2,610.00 R3,481.00		
1.2(b)	Counsel fees per completed 4 hour trial day (High Court Matters Only)					
	Level 3	NA		R2,031.00	NA	NA
	Level 4	NA		R2,610.00	NA	NA
	Level 5	NA		R3,481.00	NA	NA
1.3 (a)	Instruction to sue/ or defend or to counter claim or defend counter-claim, including perusal of all documentation and all necessary consultations to issue summons					
	Level 1	R209.00 <u>R217.00</u>	NA	NA	NA	NA
	Level 2	R278.00 <u>R289.00</u>	NA	NA	NA	NA
	Level 3	R336.00 <u>R349.00</u>	<u>R378.00</u>	R406.00	NA	NA
	Level 4	R418.00 <u>R435.00</u>	<u>R465.00</u>	R494.00	NA	NA
	Level 5	NA	NA	R581.00	NA	NA
1.3(b)	Fees for necessary correspondence written per folio and received per letter					
	Level 1	R12.00 <u>R12.48</u>	NA	NA	NA	NA
	Level 2	R13.00 <u>R13.52</u>	NA	NA	NA	NA
	Level 3	R14.00 <u>R14.56</u>	<u>R18.78</u>	R23.00	NA	NA
	Level 4	R15.00 <u>R15.60</u>	<u>R22.30</u>	R29.00	NA	NA
	Level 5	NA	NA	R41.00		
1.4	Where a matter is postponed without evidence being led or argument being heard on the substantive matter or judgement being handed down after the hearing or submission of evidence,	R159.00 <u>R165.00</u> Per postponement	<u>R165.00</u> Per postponement	R163.00 <u>R165.00</u> Per postponement	NA	NA

Number	Matter	Magistrate's Court	<u>Regional Court</u>	High Court	Supreme Court of Appeal	Constitutional Court
	a fee shall be allowed for appearing before court when the postponement is granted of:					
1.5	Merit reports In any matter where a practitioner is required to prepare a merit report, the practitioner shall be remunerated at the rate as stipulated in Item 1.1 above that corresponds to the level of the matter, subject to a maximum of 3 hours.					
	See also Note 4 on the General Provisos applicable to all civil matters not classified as Impact Services.					
2	Impact Services ⁵					
	Legal practitioners who perform impact services on the instruction of the Legal Aid SA will be entitled to be remunerated as follows:					
2.1	To be negotiated and agreed in each instance but never more than:					
2.1.1	Attorneys	NA	NA	Not more than double the amount that would be allowed by a taxing master as		

Number	Matter	Magistrate's Court	<u>Regional Court</u>	High Court	Supreme Court of Appeal	Constitutional Court
				between attorney and client on the applicable statutory tariff if the work had been performed by an attorney		
2.1.2	Junior Counsel	NA	NA	Not more than two thirds of the rates paid to Senior Counsel		
2.1.3	Hourly rate for Senior Counsel and specialist attorneys	NA	NA	R1,079.00 to R1,618.00 Per hour	R1,079.00 to R1,618.00 Per hour	R1,079.00 to R1,618.00 Per hour
2.1.4	Senior Counsel and specialist attorneys per 10 hour day	NA	NA	R10,794.00 to R16,192.00 Per day	R10,794.00 to R16,192.00 Per day	R10,794.00 to R16,192.00 Per day
3	Disbursements ⁶					
3.1	These disbursements shall be allowed over and above the fees set out above.					
3.2	The fees of any expert authorised by Legal Aid SA	At the rate and to the maximum authorised	<u>At the rate and to the maximum authorised</u>	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	<u>As set out in applicable statutory tariffs</u>	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	As set out in applicable	<u>As set out in applicable</u>	As set out in applicable	As set out in applicable	As set out in applicable

Number	Matter	Magistrate's Court	<u>Regional Court</u>	High Court	Supreme Court of Appeal	Constitutional Court
	advertisement costs pursuant to the grant of a substituted service order.	statutory tariffs	<u>statutory tariffs</u>	statutory tariffs	statutory tariffs	statutory tariffs
3.5	Necessary travel outside of any magisterial district in which the legal practitioner has an office/chambers	R3.38 <u>R2.90</u> Per km	<u>R2.90</u> Per km	R3.38 R2.90 Per km	R3.38 R2.90 Per km	R3.38 R2.90 Per km
3.6	Necessary air travel	NA	<u>NA</u>	NA	Economy class	Economy class
3.7	Where it is necessary for a legal practitioner to hire accommodation at the court venue the Legal Aid SA will pay the legal practitioner an allowance for accommodation		<u>R674.00</u> <u>Per night provided that the court venue is situated more than 130 km from the offices/chambers of the legal practitioner</u>			
3.8	Where it is necessary for a legal practitioner to attend at a court venue more than 130 km from his/her chambers the Legal Aid SA shall pay the legal practitioner a subsistence allowance		<u>R202.00</u> <u>per night provided that the court venue is situated more than 130 km from the offices/chambers of the legal practitioner</u>			
3.9	Toll road fees to the extent that these were reasonably necessary		<u>Actual out of pocket expenses</u>			
See also Note 7						

2010 2011 CIVIL TARIFFS: NOTES

1. Applicable Tariff

1.1. With effect from 1 April ~~2010~~ 2011, legal practitioners shall be remunerated in accordance with this annexure.

2. Experience levels of Legal Practitioners

2.1. At the commencement of each calendar year or as soon thereafter as practical each Legal Practitioner shall be classified as being of a level from 1 to 5 in accordance with these criteria:

2.2. Required experience per level

Level	Minimum Required Experience
1	Entry level (for reserved work must be legally permitted to undertake the work)
2	Minimum 1 year full-time general practice as a Legal Practitioner
3	Minimum 3 years full-time general practice as a Legal Practitioner
4	Minimum 5 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. The calculation of time spent by a Legal Practitioner in full-time practice shall take into account:

2.3.1. A period not exceeding 2 years as a candidate attorney provided the Legal Practitioner was subsequently admitted as an attorney; and

2.3.2. A period not exceeding 1 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 Legal Aid SA; and/or

2.3.3.6. In the employ of the State Attorney; and/or

2.3.3.7. As a legal advisor doing 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 Legal Aid SA shall classify the legal services required from level 1 to level 5 in accordance with paragraph 3 below.

- 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 Legal Aid SA 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.
- 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, the Labour Court and the Labour Appeal Court.

3. Matter Classification

Level	Permitted Professional Services
1	<ul style="list-style-type: none"> a. Matters which if conducted without legal aid would fall within Scale A Magistrates’ Court b. CCMA – where permitted by Commissioner and permitted by Legal Aid Guide c. Maintenance matters – where permitted by Legal Aid Guide d. Mediation and conciliation matters e. Paralegal work f. Domestic violence matters – where permitted by the Legal Aid Guide. g. Appearances before a Refugee Status Determination Officer at a hearing in terms of Section 24 of the Refugees Act No. 130 of 1998. h. Any civil or non-litigious matter not otherwise provided for
Level 2	<ul style="list-style-type: none"> a. Matters which if conducted without legal aid would fall within Scale B Magistrates’ Courts. b. Labour arbitrations whether before CCMA or otherwise, where permitted by Commissioner and the Legal Aid Guide c. Appearances before a Standing Committee in respect of a Review in terms of Section 25 of the Refugees Act
Level 3	<ul style="list-style-type: none"> a. Matters which if conducted without legal aid would fall within Scale C Magistrates’ Court b. Children’s court matters. c. Children’s Act matters. d. Divorce, custody, guardianship and Regional Court matters not otherwise provided for e. General arbitrations and ADR not otherwise provided for f. Appearances before an Appeals Board in respect of an Appeal in terms of Section 26 of the Refugees Act

Level 4	<ul style="list-style-type: none"> a. Civil matters falling within the exclusive jurisdiction of the High Court 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 c. Non litigious services customarily performed by an admitted attorney and as permitted by the Legal Aid Guide d. Labour Court matters e. Civil matters sounding in money in the Regional Court
Level 5	<ul style="list-style-type: none"> a. Civil appeals and reviews before any Provincial or Local Division of the High court b. Complex High Court civil matters classified as such (pursuant to detailed written representations) by an authorised legal practitioner in the employ of Legal Aid SA who himself/herself has the required experience in respect of this level. c. Complex non litigious services classified as such (pursuant to detailed written representations) by a legal practitioner in the employ of Legal Aid SA at executive level, customarily performed by a specialist attorney and as permitted by the Legal Aid Guide

4. General Provisos

- 4.1. A trial day means a day on which evidence is led and/or the court hears argument after the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial day is of less than 4 hours duration the trial day fee is reduced pro rata.
- 4.2. Except with the consent of the ROE/NOE a practitioner shall not be entitled to claim:
- 4.2.1. More than 10 hours remunerated consultation, preparation and other pre-trial chamber work after litis contestatio for 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 the remunerated consultation, preparation and other pre-trial chamber work shall ordinarily be limited to not more than 2 hours.
- 4.3. In addition to the above, 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 Legal Aid SA in terms of the judicare instruction.
- 4.4. Drafting documents
- 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 is 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 is 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 ROE/NOE only.
- 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 Legal Aid SA that 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 Legal Aid SA to the contrary.
- 4.5. Perusal of documents

- 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 is expected of the Legal Practitioner 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 is expected of the Legal Practitioner 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 ROE/NOE only.
 - 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 Legal Aid SA 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 Legal Aid SA 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 Legal Aid SA in the magisterial district concerned, offer the work, in the first instance, to the office of Legal Aid SA. 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 Legal Aid SA alone and on Legal Aid SA tariffs;
 - 4.6.2. That the correspondent will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA 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 ROE, elect to instruct an advocate in a matter in the High Court, subject to the condition that if Legal Aid SA 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 Legal Aid SA alone and on Legal Aid SA tariffs;
 - 4.7.2. That the advocate will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA directly;
 - 4.7.3. That Legal Aid SA 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 except with the express written consent of the ROE , the attorney client costs payable by Legal Aid SA pursuant to the employment of an advocate shall not exceed the attorney client costs that would have been payable by Legal Aid SA if all the professional services had been rendered by the attorney instructed by the Legal Aid SA.
- 4.8. No Senior or Junior Counsel may be instructed without the express written consent of the ROE or a Legal Practitioner employed by Legal Aid SA and delegated thereto by the ROE.
 - 4.9. After the case has been finalised the legal practitioner must report to the JCE in writing setting out:

- 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 Legal Aid SA by way of detailed itemised account setting out, the date, the work performed, the time taken (with reference to a 24 hour clock), the number of pages drafted or perused and the fees claimed.
- 4.11. No additional fees or disbursements are payable at levels 1 to 5 to any Legal Practitioner for any matter not provided for by this tariff and not agreed to in writing by the ROE/NOE . 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 all-inclusive fee and Legal Aid SA 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 for at least 7 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, a Legal Practitioner at Levels 1 to 5 shall not, without the consent of the ROE/NOE , 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 Legal Aid SA and non-litigious impact services classified as such by Legal Aid SA.
- 5.2. All representations in relation to the classification of any matter as an Impact Services Matter and all other correspondence ancillary thereto must be addressed to the Impact Litigation Unit at the National Office of Legal Aid SA.

6. Disbursements

- 6.1. The ROE, if it appears to him/her to be in the interests of the administration of justice and Legal Aid SA, is 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. Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.
- 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. Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA 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. Except 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 ROE/NOE.
- 6.6. The subsistence allowance under Item 3.8 may be paid to a practitioner, irrespective of whether this allowance is claimed in conjunction with a claim for accommodation, on condition that the claim complies with the requirements stipulated in these tariffs.

7. General

- 7.1. All sums referred to are amounts exclusive of VAT.
- 7.2. Under no circumstances will Legal Aid SA pay any collapse/reservation/cancellation/waiting/travelling fees to any legal practitioner for any matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that 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 Legal Aid SA 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, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof or, by electronic transfer, will instruct its bankers to effect payment, or, in the event of the Legal Aid SA being unable to unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

MEANS TEST FOR SINGLE PERSONS HOUSEHOLDS

Your voice. For justice.

A. GROSS MONTHLY INCOME		SINGLE APPLICANT		SPOUSE/ PARTNER ONLY COMPLETE IF HOUSEHOLD	
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: Gross Income:	=	R	+	R	= R
Less: PAYE Deduction	-	R	+	R	= R
Less: Rebates for household: R5 500 Rebates for single applicant: R5 000	-	R 5000	or	R 5500	= R
(No Legal Aid in case of a plus balance) TOTAL =					R
B. ASSETS		SINGLE APPLICANT		SPOUSE ONLY COMPLETE IF HOUSEHOLD	
Fixed property: Reasonable market value		R		R	
Less Bonds	-	R		R	
Sub-total	=	R		R	
Movable Property		R		R	
Investments & Savings	+	R		R	
Monies due to applicant	+	R		R	
TOTAL NET VALUE	=	R	+	R	= R
LESS R 75,000 if no fixed property or LESS R 300,000 if there is fixed property and applicant resides in the property					R
(No Legal Aid in case of a plus balance) TOTAL =					R

DECLARATION I declare that the above mentioned information is true, correct and complete. I understand that a false declaration could lead to the suspension of legal aid, and in appropriate circumstances, to criminal prosecution.

SIGNATURE OF APPLICANT: DD / MM / 20

TEST EXCEEDED BY R1,500 / LESS

JCE DISCRETION EXERCISED YES NO

Reason for discretion

.....
SIGNATURE OF JCE DD / MM / 20

TEST IS EXCEEDED BY R3,000 / LESS

ROE DISCRETION EXERCISED YES NO

Reason for discretion

.....
SIGNATURE OF ROE DD / MM / 20

If the application exceeds the ROE discretion and the matter is to be heard in the Regional Court or the High Court the LA13C must be completed and submitted to the CCMC.



Your voice. For justice.

ANNEXURE G4

CONTRIBUTION PAYABLE BY AN ACCUSED

I, the undersigned

(Full names of the accused)

Having applied for legal aid, having been found to exceed the Legal Aid SA means test by R_____ (amount in excess of the permitted income for contribution free legal aid) per month and having been granted legal aid subject to the payment of a monthly contribution, acknowledge that:

1. I will pay a contribution of R_____ (amount of contribution) monthly in advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to me.
2. Contributions must be deposited directly to the Trust account of Legal Aid SA by me or my agent.
Bank _____
Branch _____
Branch Code _____
Account Number _____
Account Name _____
Ref X _____
3. No contribution may be received by any legal practitioner or the employee or agent of any legal practitioner acting on a legal aid instruction.
4. No employee of Legal Aid SA may receive any contribution.
5. I must deliver proof of payment of all contributions due to my assigned legal practitioner by not later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to me.
6. If I fail to make any contribution due, legal aid terminates and the assigned legal practitioner must advise me and the relevant judicial officer of the termination of legal aid either in writing or in court at the next appearance.
7. It is the responsibility of my assigned legal practitioner to satisfy himself/herself that all contributions due have been paid. No remuneration will be paid for any legal services rendered after non-payment of any contribution due.

Signature of the accused

Date

Place

ACCREDITATION AGREEMENT FOR PRIVATE PRACTITIONERS
entered into between

_____ (“the Practitioner”)
(of _____)

and

Legal Aid South Africa (formerly the Legal Aid Board)
 (“Legal Aid SA”)
(of Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg)

Whereas:

- A. Legal Aid SA has appointed the Practitioner to its Directory of Accredited Practitioners; and
- B. Legal Aid SA is willing to instruct the Practitioner to render legal services on behalf of certain successful applicants for legal aid;

Now therefore the parties agree that:

- 1. The terms and conditions set out in Annexure O3 to the 2009 Legal Aid Guide, as amended, will apply to the relationship between the Practitioner and Legal Aid SA as fully and effectually as if herein inserted and repeated.
- 2. The provisions of the 2009 Legal Aid Guide as amended by circular and as replaced by new Legal Aid Guides approved in terms of Section 3A(2) of the Legal Aid Act 22 of 1969 will apply to each and every legal aid instruction received by the Practitioner and all rights and obligations and any disputes arising therefrom.

SIGNED at _____ this ____ day of _____ 20__.

AS WITNESSES

- 1. _____
- 2. _____

The Practitioner

Recommended/Not recommended

Justice Centre Executive

SIGNED at Johannesburg this ____ day of _____ 20__.

AS WITNESSES

- 1. _____
- 2. _____

For Legal Aid SA



TERMS AND CONDITIONS OF ACCREDITATION FOR PRIVATE PRACTITIONERS

Legal Aid South Africa (hereinafter referred to as “Legal Aid SA”) was established in terms of the provisions of the Legal Aid Act No. 22 of 1969.

- The objects of Legal Aid SA are to render or make available legal aid to indigent persons and vulnerable groups and to provide legal representation at State expense as contemplated in the Legal Aid Act, 1969 and the Constitution of the Republic of South Africa;
- The Constitution of the Republic of South Africa – No. 108 of 1996 provides that everyone is equal before the law and has the right to equal protection and benefit of the law;
- Legal Aid SA has in terms of the provisions of the Legal Aid Act the power inter alia to obtain the services of Legal Practitioners for fulfilling its objectives;
- Legal Aid SA has resolved to appoint the Practitioner to the Directory of Accredited Legal Practitioners which the Board is in the process of establishing, to assist the Board in attaining the objectives hereinbefore set forth;
- By signing Annexure O2 to the Legal Aid Guide the Practitioner binds himself/herself to the terms and conditions hereinafter set out;

1 DEFINITIONS

- 1.1 In these terms and conditions unless the context indicates otherwise:
- 1.1.1 “**Client**” or “**Legal Aid Applicant**” means the person applying for legal aid
- 1.1.2 “**Indigent**” or “**Indigent Person**” means a natural person who qualifies for legal aid under the Legal Aid SA Means Test.
- 1.1.3 “**Judicare**” means a delivery system for legal aid through instructing private legal practitioners to represent individual legal aid clients.
- 1.1.4 “**Justice Centre**” means Legal Aid SA centres or offices for administering and providing legal aid in many parts of South Africa.
- 1.2 Headings of clauses in these terms and conditions are for reference purposes only and shall not be taken into account in construing the content thereof.
- 1.3 Unless inconsistent with the context the masculine includes the other genders and the singular includes the plural and vice versa.

2 APPOINTMENT OF PRACTITIONER

- 2.1 Legal Aid SA hereby appoints the Practitioner to serve on its panel of Accredited Legal Practitioners with effect from the date of the signing of Annexure O2 to the Legal Aid Guide, but subject to the terms and conditions hereinafter set forth.
- 2.2 The Practitioner acknowledges that the appointment is a personal appointment and subject to the terms and conditions herein shall continue for so long as the Practitioner is accredited by Legal Aid SA and continues to practise as an Attorney/Advocate, either for his/her own account as an Advocate, or for his/her own account, or in partnership with other Attorneys or in incorporated practice with other Attorneys or employed as a professional assistant in an attorneys’ practice. In the event that the Practitioner is an Attorney in partnership at the time of this appointment and should the partnership dissolve thereafter, the appointment of the Practitioner will remain a personal appointment of the Practitioner, provided however that should he/she thereafter enter a new partnership, he/she as the representative partner of the new practice will sign a new copy of Annexure O2 on behalf of the new partnership, and provided further that such agreement shall reflect the Practitioner’s new *domicilium citandi et executandi*.

3 OBJECTS OF THE ACCREDITATION SCHEME

Legal Aid SA and the Practitioner acknowledge:

- 3.1 the need for the development of a strong sense of national and social responsibility with regard to their respective roles in the provision of legal services to the poor and vulnerable.
- 3.2 the need to provide legal services in the most efficient and economic manners at their disposal.
- 3.3 the need to ensure that quality legal services are provided to clients
- 3.4 the need, as far as possible to match appointed Practitioners' qualifications, skills, experience and expertise with the types and complexity of the cases for which such Practitioner is appointed.

4 WARRANTIES

The Practitioner warrants to Legal Aid SA:

- 4.1 He/She is duly admitted to practise in terms of the provisions of the law of the Republic of South Africa.
- 4.2 He/She will have and will maintain Law Offices or Chambers within the Magisterial District or Division of the High Court where he is appointed to perform Judicare work and which he/she selects as his/her main place of practice.
- 4.3 To accept appointment only where the matter in question falls within the special field of expertise of the Practitioner.
- 4.4 That once appointed in a particular matter the Practitioner will be available to deal with the matter expeditiously without having to seek unnecessary postponements thereof.

5 INFRASTRUCTURE

The Practitioner undertakes to ensure that within the Law Offices or Chambers:

- 5.1 There will be adequate secretarial/reception facilities available to ensure telephonic contact during office hours.
- 5.2 Fax facilities will be available.
- 5.3 There are internet services and an email system that can receive all Legal Aid SA documentation including instructions
- 5.4 Provision will be made for typed accounts and reports.
- 5.5 There will be reasonable and ready access for clients and provision will exist for consultations and meetings.
- 5.6 That a proper file management system is in place combined with an efficient diary system, which will enable files to be dealt with expeditiously and without unreasonable delay.
- 5.7 That option of legal aid instructions, sent by SMS will be responded to by SMS within the deadline specified in the SMS enquiring about the practitioner's availability.

6 UNDERTAKING TO COMPLY WITH LEGAL AID SA'S REQUIREMENTS

The Practitioner undertakes and agrees to comply fully with the terms and conditions of the Legal Aid Guide 2009 – 11th Edition or any substitution or amendment thereof, including amendments and additions contained in Circulars issued by Legal Aid SA from time to time, to the extent that such Legal Aid Guide is applicable to the relationship between the Board and the Practitioner. In particular, the Practitioner undertakes and agrees:

- 6.1 at an early stage, to advise private clients who may qualify, of the availability of legal aid.
- 6.2 in the event of a decision to not finally accept a legal aid instruction (LA2), to immediately return the legal aid instruction to the issuing Justice Centre, or if the instruction is accepted to without delay and in any event within five (5) working days of having received an instruction to sign and return the acceptance of the instruction to the issuing Justice Centre.
- 6.3 that such signed acceptance of an instruction:
 - 6.3.1 shall be deemed to be an acceptance of the instruction, in the case of an attorney on behalf of the firm, subject to the provisions of the current Legal Aid Guide and subsequent circulars amending such and shall be deemed to constitute an undertaking to deal with the instruction in accordance with the provisions of the Legal Aid Guide, including directives set out in the Legal Aid Guide regarding VAT and submission of accounts and the provision not to take any steps in a civil matter, except steps to prevent default judgment or prescription, until the decision of the Justice Centre Executive is obtained;
 - 6.3.2 shall be deemed to include a declaration that no services were rendered by the practitioner or the firm to the applicant prior to the date of the legal aid instruction (LA2) and that no fees are therefore owing by him/her, or alternatively be deemed to be an undertaking to within five

- (5) working days inform the Legal Aid South Africa if such services were rendered and of the amount of fees and disbursements owing by the client, failing which it may be assumed that no such services were rendered and that no payments by the client are owing;
- 6.3.3 shall be deemed to include acknowledgement that neither the instruction, nor any rights arising out of execution thereof may be ceded to any third party without the prior written consent of the National Operations Executive of the Legal Aid SA.
- 6.4 should the matter require appointment of a correspondent, to obtain the prior approval of the Justice Centre Executive who issued the instruction to appoint an accredited practitioner and firm as correspondent.
- 6.5 to include prayers for payment of costs in civil summonses including divorce actions.
- 6.6 to submit timely and regular reports to Legal Aid SA and undertakes to:
- 6.6.1 if the case number does not appear on the Board's instruction, advise the Board of the case number at the earliest opportunity.
- 6.6.2 regularly report progress of the matter in question, as applicable, at such intervals and at those stages of proceedings as required in terms of paragraph 12.5.2, chapter 12 of the Legal Aid Guide.
- 6.6.3 advise on the merits of the matter with special attention being given to merits in civil matters and criminal appeals.
- 6.6.4 advise on the pre-trial procedure and any pre-trial conference, which may be held, in which event such conference must be held timely prior to the trial of the matter to enable Legal Aid SA to consider the result of such conference and any possible settlement, which may arise there from.
- 6.6.5 upon withdrawal as the Attorney of Record to furnish proper and adequate reasons for withdrawal and to notify the client in writing or in open court.
- 6.6.6 to inform Legal Aid SA immediately he/she becomes aware of the fact that the opposing litigant has been accorded legal aid.
- 6.6.7 furnish Legal Aid SA with the outcome of the matter including Judgments together with copies of Orders of Court and Settlements as soon as the same become available.
- 6.6.8 investigate on a regular basis the qualification of the client in terms of the means test and inform Legal Aid SA in the event that a client no longer qualifies for legal aid.
- 6.6.9 comply fully with the provisions of the Legal Aid Guide concerning the cession, recovery and waiver of costs.
- 6.6.10 inform Legal Aid SA in appropriate circumstances of any abuse by Applicants to obtain legal aid by fraudulent or other means.
- 6.6.11 seek instructions from Legal Aid SA if the Practitioner's fees and disbursements are likely to exceed R 50 000.00 in any Regional Court matter or the anticipated cost of any High Court or Regional Court Commercial Crimes Court instruction is more than R 100,000.00.
- 6.6.12 seek instructions from Legal Aid SA if the anticipated duration of any regional court matter is more than 20 trial days or the anticipated duration of any High Court or Regional Court Commercial Crimes Court instruction is more than 40 trial days.
- 6.6.13 ensure that in the event of a partnership dissolving Legal Aid SA is informed immediately of the party to whom payment of any outstanding costs is to be made.
- 6.7 to ensure that proper references are placed on correspondence and accounts and that accounts, copies of charge sheets in criminal matters and reports are submitted immediately upon completion of cases to the Justice Centre that issued the relevant instructions.
- 6.8 to ensure that the Practitioner's mandate is not exceeded without the prior consent of Legal Aid SA.
- 6.9 to ensure the protection of Legal Aid SA's rights to recover costs.
- 6.10 to ensure that tenders, settlements and payments into Court are done in accordance with the Legal Aid Guide.
- 6.11 to ensure compliance with Section 8(A) of the Legal Aid Act 22 of 1969, as amended, and to ensure that other litigants receive notice that the Client has been granted legal aid.
- 6.12 to ensure the use of the prescribed Legal Aid SA documentation as contained in the Legal Aid Guide, as applicable.
- 6.13 to confirm in writing any approval or authorisation given verbally to the Practitioner in the course and conduct of any matter.
- 6.14 to agree to represent a co-accused in a criminal matter where there is no conflict of interest in accordance with the applicable legal aid tariff.
- 6.15 to ensure that any applications for leave to appeal are filed timeously and prosecuted in accordance with the time limits applicable to the matter in question.

- 6.16 to ensure the protection of the Client's rights to prevent prescription or default judgment.
- 6.17 to notify Legal Aid SA of any changes in the structure or details of the practitioner's firm, especially changes that affect the Black Economic Empowerment credentials of the firm, or if the practitioner changes firms.
- 6.18 not to give any information regarding any legal aid matter to any media representative, including the legal professional media without the prior written approval of the Justice Centre Executive of the Justice Centre that issued the relevant legal aid instruction.
- 6.19 in the first instance to take up any criticism of Legal Aid SA and its legal aid scheme with the applicable Regional Operations Executive of the Board before publishing such criticism in any manner.
- 6.20 to personally, or through the personally supervised services of an articulated clerk, with appropriate rights of appearance and articulated to the practitioner himself/herself perform legal aid instructions issued to the practitioner.
- 6.21 to personally attend the annual accreditation meeting called by the JCE.
- 6.22 to render an account in accordance with the provisions of the Legal Aid Guide within four months of the finalisation of any matter, failing which the right to payment prescribes.
- 6.23 if the practitioner disputes the correctness of any taxation by Legal Aid SA, to commence arbitration proceedings by the declaration of a dispute within three months of being notified by Legal Aid SA of the taxation, failing which the right to dispute the taxation prescribes.

7 MONITORING, QUALITY CONTROL AND FEEDBACK

The Practitioner agrees:

- 7.1 that where applicable his/her services will be monitored by a legal professional body and at the request of Legal Aid SA, such body may report on the quality of the services rendered by such Practitioner.
- 7.2 that any Judicial Officer may, at the request of Legal Aid SA, report on the quality of the services rendered by such Practitioner.
- 7.3 that the quality of the services rendered by the Practitioner may be evaluated by the staff of Legal Aid SA from time to time and to that end to permit such staff access to Judicare client files.
- 7.4 that clients represented by the Practitioner shall be entitled to report to Legal Aid SA on the quality of service rendered to them.

8 QUALITY CONTROL

- 8.1 In every matter in which Legal Aid SA instructs the Practitioner, the client has irrevocably authorised Legal Aid SA to act as his/her attorney in addition to any legal practitioner who may be appointed to act on his/her behalf.
- 8.2 Legal Aid SA is entitled to inspect, copy and carry out quality control tests in respect of the file of any legal practitioner appointed by Legal Aid SA to act on behalf of any legal aid recipient irrespective of whether the legal practitioner is in private practice or in the employ of Legal Aid SA.
- 8.3 The authorisation given by the legal aid recipient will survive the termination or finalisation of the mandate of any legal practitioner appointed by Legal Aid SA to act on his/her behalf.
- 8.4 This authorisation will only be utilised for quality control purposes and then only after all evidence in any case has been heard or the mandate of the Practitioner has been terminated.
- 8.5 Legal Aid SA undertakes to safeguard attorney/client privilege in respect of any information acquired by it in the course of any quality control tests.
- 8.6 The Practitioner undertakes to co-operate and assist with Legal Aid SA in the performance of the quality control tests and to make any closed file available to Legal Aid SA for inspection and/or copying within ten business days of such a request.

9 REMOVAL OF PRACTITIONER'S NAME FROM DIRECTORY OF ACCREDITED PRACTITIONERS

The Practitioner acknowledges having acquainted himself with the provisions of the Legal Aid Guide and acknowledges that Legal Aid SA shall be entitled to remove the Practitioner's name from the Directory of Accredited Practitioners in appropriate circumstances in accordance with the procedure set out in the Legal Aid Guide.

10 DAMAGES CLAIMS AGAINST PRACTITIONERS

The Practitioner warrants that he/she is acquainted with the provisions of the Legal Aid

Guide as amended by circulars from time to time and agrees to be bound by the terms and provisions thereof. Failure to comply with the provisions of the Legal Aid Guide may render the Practitioner liable to Legal Aid SA for damages in addition to any other remedy Legal Aid SA may enjoy in law.

11 EXCELLENCE

In as much as it is the objective of Legal Aid SA to achieve excellence in the provision of legal services to the indigent and the poor, the parties agree and undertake with each other to promote and foster such objectives with a view to improving the quality of services rendered to legally aided clients, to promote the overall efficiency of the judicial system and to extend the provision of services to previously disadvantaged communities to the best of their ability.

12 DOMICILIUM

In the event of either party wishing to declare a dispute, the parties hereto choose as their ***domicilium citandi et executandi*** the addresses set out in respect of each party in the most recent signed Annexure O2, at which addresses all notices, documents and processes shall be delivered. No notices, documents or process on or after the declaration of a dispute shall be delivered at any other addresses. Any communication addressed to any of the parties by registered post shall be deemed to have been received by the party concerned, by not later than the 5th business day following upon the posting thereof. Any document delivered by hand at such address shall be deemed to have been delivered on the day of delivery thereof.

13 WHOLE AGREEMENT, NON WAIVER

13.1 These terms and conditions read together with the applicable signed Annexure O2 constitute the whole Agreement between the parties relating to the subject matter hereof.

13.2 No amendment or consensual cancellation of this Agreement or any provision or term thereof or any Agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any Agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver, or relaxation or suspension, which is so given or made, shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

13.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any Agreement or other document issued or executed pursuant to or in terms of this Agreement shall operate as an estoppel against any party in respect of its rights under this Agreement nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.

13.4 This agreement will come into existence at Johannesburg when signed by the National Operations Executive or his nominee on behalf of the Legal Aid South Africa.

Code of Professional Conduct for Employees of Legal Aid SA who provide legal services in criminal matters

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Introduction

The Board of Legal Aid SA has decided to introduce this Professional Code of Conduct for the guidance of its employees who provide legal services in criminal matters.

This Professional Code of Conduct applies to employees of Legal Aid SA who provide services to detained and/or accused persons seeking and/or entitled to legal advice and/or representation in terms of Section 35 of the Constitution of the Republic of South Africa Act 108 of 1996.

For the purpose of this Code:

"the Act" means the Legal Aid Act 22 of 1969.

"Client" means a person who is seeking or receiving services funded or partially funded by Legal Aid SA.

"Employee" means any person (including a professional employee) who is employed by Legal Aid SA.

"Legal aid SA" means the body corporate established in terms of section 2 of the Act.

"Professional body" means the Law Society of South Africa, the General Council of the Bar of South Africa, any provincial/statutory law society, any bar or society of advocates falling under the General Council of the Bar or any other body authorised by statute to exercise disciplinary control over legal practitioners.

"Professional employee" means any attorney, advocate, candidate attorney, pupil advocate or paralegal, who is employed by Legal Aid SA to provide advice, assistance or legal representation to clients.

"Salaried service" means the service provided by employees of Legal Aid SA directly to clients.

1. Relationship with other Professional Codes of Conduct

1.1 An employee who is a member of a professional body shall comply with the rules of conduct of and have regard to any guidance issued by that body.

1.2 The Legal Development Executive will be the professional head of the salaried service ("the professional head of service") who shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.

1.3 This Code applies in addition to any professional, ethical or staff code that binds an employee. Where any serious doubt arises as to the interpretation of this Code, the issue will be referred to the professional head of service who will provide advice and guidance on the

matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with other professional codes.

2. Duty to Protect the Interests of the Client

2.1 The primary duty of a professional employee is to protect the interests of the client so far as consistent with any duties owed to the court and any other rules of professional conduct. Subject to this, a professional employee shall do his or her utmost to promote and work for the best interests of the client and to ensure that the client receives a fair hearing. A professional employee shall provide the client with fearless, vigorous and effective defence and may use all proper and lawful means to secure the best outcome for the client.

2.2 A professional employee shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof.

3. Duty to Act with Integrity and Independence

3.1 An employee shall act with honesty and integrity in carrying out his or her duties on behalf of the salaried service. He or she must never knowingly or recklessly give false or misleading information.

3.2 A professional employee has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the courts, Legal Aid SA, clients or any other source.

4. Duty to act Impartially and to avoid Discrimination

4.1 Employees shall treat clients fairly, reasonably and without discrimination. In carrying out this duty, an employee must not discriminate directly or indirectly against any other person on grounds of race, colour, ethnic or national origin, sex, marital status, sexual orientation, disability, age, political persuasion or religion. In respect of indirect discrimination, there is no breach of this requirement if the employee against whom any complaint is made shows that the act of indirect discrimination was committed without any intention of treating the complainant unfavourably on any ground in this paragraph to which the complaint relates.

4.2 A professional employee may accept instructions from any eligible client, provided that no conflict or significant risk of conflict of interest arises and that he or she can discharge those instructions effectively having regard to other professional obligations, unless there is some other substantial reason why the best interests of the client would not be served or a right of withdrawal would arise immediately under paragraph 11.1.

4.3 A professional employee shall only provide advice, assistance or representation to a client where he or she is competent to do so. Competence requires such legal knowledge,

skill, experience and preparation as is reasonably necessary to properly represent the best interests of the client.

4.4 A professional employee shall not refuse to advise, assist or represent a client because of the nature of the allegation or the client or because of the employee's personal views.

5. Duty of Confidentiality

5.1 Subject to paragraph 5.2, an employee shall keep all information about a client confidential within the salaried service. This is an ongoing duty that does not cease once employment has terminated, and can be enforced in a court by Legal Aid SA or the client.

5.2 The duty of confidentiality to a client is subject to any statutory provision, any court order and any relevant rules of professional conduct or otherwise setting out circumstances where the duty of confidentiality may be overridden.

5.3 Notwithstanding the duty of confidentiality, the salaried service shall permit such access to its client records as are necessary to enable the performance of quality audits

6. Duty to the Court

6.1 An employee shall never deceive or recklessly or knowingly mislead the court.

6.2 Subject to the provisions of this Code and any other rules of professional conduct, employees shall ensure that, in the public interest, they discharge their duties in a way which is consistent with the proper and efficient administration of justice.

7. Duty to avoid Conflicts of Interest

7.1 A professional employee may not act for any one or more clients if to do so would give rise to a conflict of interest.

7.2 The circumstances where a conflict of interest exists include when the duty of the professional employee to act in a client's best interests conflicts with the interests of:

(a) another client of the salaried service unless the professional employees representing the clients between whom a conflict exists report to separate supervisors in respect of the matter concerned and further provided that appropriate measures ("Chinese walls") are in place to safeguard the confidentiality of privileged information and documents;

(b) any employee of the salaried service; or

(c) any third party whose relationship to any employee of the salaried service would reasonably cause the client to believe that the professional employee may not act in that client's best interests.

7.3 Subject to paragraphs 7.4 and 7.5 where a professional employee provides advice, assistance or representation to a client and a conflict or a significant risk of conflict arises between the interests of that client and any other client of the salaried service, or between the professional employee and a client, then he or she must cease to act for all clients affected by the conflict.

7.4 If the conflict arises between two or more clients, the professional employee may continue to act for one client provided the salaried service is not in possession of relevant confidential information obtained whilst acting for the other client or clients.

7.5 Professional employees may however act for clients between whom there is a conflict or a significant risk of conflict provided the professional employees report to separate supervisors in respect of the matter concerned and further provided that appropriate measures (“Chinese walls”) are in place to safeguard the confidentiality of privileged information and documents.

7.6 If a professional employee ceases to act for a client due to a conflict of interest, then he or she has a duty to ensure that the client is referred to another representative, as appropriate.

8. Duty not to Offer or Accept Payments

8.1 Apart from refreshments for the client’s/employee’s immediate consumption in the employee’s/client’s presence, an employee shall not offer or accept any fee, commission, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, in the course of his or her employment.

9. Relationship with the Legal Profession, Judiciary and Prosecution

9.1 Save as permitted by the Pro Amico and Pro Bono policy of Legal Aid SA a professional employee shall not practise law other than in the performance of his or her duties as an employee.

9.2 All employees shall endeavour to maintain relationships with the legal profession, judiciary, prosecution and other agencies in the criminal justice system based on courteousness, mutual respect and professionalism.

10. Change of Legal Representative

10.1 If a client wishes to change legal representative, then an employee shall advise the client about the relevant rules and procedures including any set out in the Legal Aid Guide.

11. Withdrawal of Legal Representative

11.1 A professional employee shall cease to act for a client where:

- (a) a conflict or a significant risk of conflict of interest or breach of confidentiality arises;
- (b) a conflict or a significant risk of conflict arises between the client's interests and the duty to the court;
- (c) the client withdraws instructions; or
- (d) continuing to act would cause him or her to be professionally embarrassed.

11.2 A professional employee may cease to act for a client where:

- (a) the client's behaviour towards the professional employee or any other employee is violent, threatening or abusive; or
- (b) there is some other substantial reason for withdrawal, approved by the Justice Centre Executive/professional head of service or sanctioned by the applicable professional code of conduct.
- (c) there is a breakdown in the trust relationship with the client.

11.3 If a professional employee ceases to act then he or she shall give reasons to the client for doing so, except in the case of paragraph 11.1(c) above.

12. Public Interest Disclosure

12.1 If an employee believes that he or she is being required to act by Legal Aid SA in a way which:

- (a) is illegal, improper or unethical;
- (b) is in breach of professional rules;
- (c) may involve maladministration, fraud or misuse of public funds; or
- (d) is otherwise inconsistent with this Code or the Legal Aid SA's Code of Conduct/Citizen's Charter/Client Services Charter/Ethical Code;

he or she shall bring this to the attention of the Justice Centre Executive who shall notify the professional head of service, or to the professional head of service, as appropriate. The professional head of service shall carry out an investigation and make a report to the Board of Legal aid SA.

12.2 If any of the above circumstances arise, a professional employee must also consider whether it is appropriate to continue to act for a client.

12.3 This provision does not override the rules of professional privilege.

13. Excessive Caseload

13.1 If a professional employee considers that the acceptance of any further instructions is reasonably likely to lead to inadequate representation of existing clients, he or she shall decline to accept further instructions and shall bring this to the attention of the Justice Centre Executive who shall notify the professional head of service.

13.2 The professional head of service may conduct such investigations as he/she considers necessary and may delegate the conduct of any investigation or any portion thereof to any other employee.

13.3 The decision of the professional head of service as to whether any professional employee is obliged to accept any further instructions shall be final and binding.

14. Standards of Conduct

14.1 Subject to the provisions of this Code and any other rules of professional conduct, an employee shall not do anything to bring the salaried service or legal profession into disrepute in the course of his or her employment or otherwise.

14.2 An employee shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.

15. Complaints

15.1 A complaint against an employee under this Code shall be made to the Justice Centre Executive who shall investigate the complaint and notify the professional head of service.

15.2 The procedure to be followed in respect of a complaint against an employee under this Code shall be as prescribed by the professional head of service on a case by case basis observing the general principles of:

15.2.1 Affording all parties a reasonable opportunity to make representations; and

15.2.2 Permitting and if necessary providing legal representation where such is necessary to prevent substantial injustice.

15.3 A complaint against a professional employee may be dealt with under the procedure laid down by his or her professional body, as well as under the procedure in paragraph 15.1.

15.4 Subject to paragraphs 5.1 and 5.2 an employee shall co-operate with requests from a professional body for comments or information in respect of complaints that the body is investigating.



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CONSTITUTIONAL CASE MANAGEMENT COMMITTEE

TERMS OF REFERENCE

1. Purpose

The purpose of the Constitutional Case Management Committee (CCMC) is to:

- 1.1 Consider applications for legal aid where the applicant does not pass the means test as set out in the Legal Aid Guide (LAG) but the matter otherwise qualifies for legal representation under paragraphs 4.3.1 and 4.4.2 of the LAG.
- 1.2 Consider all applications for increased fees by Judicare practitioners that fall beyond the approval limits of ROEs and/or NOE.
- 1.3 Consider all new proposals for Impact litigation funding.
- 1.4 Monitor high cost/high risk matters as stipulated in paragraphs 5.2.6 and 6.1.8 of the Legal Aid Guide.
- 1.5 Monitor costs as per paragraph 6.3.8(d) of the Legal Aid Guide.

2 Membership

- 2.1 The CCMC shall consist of the following officials of the Legal Aid SA:
 - 2.1.1 Chief Operations Officer (COO);
 - 2.1.2 National Operations Executive (NOE);
 - 2.2.3 Legal Development Executive (LDE);
 - 2.1.4 Legal Manager - National Operations Department
 - 2.1.5 Senior Impact Litigation Attorney
 - 2.1.6 Corporate Services Executive (CSE)
 - 2.1.7 Legal Support Practitioner (LCP)
 - 2.1.8 One Board member nominated by the Board
- 2.2 Other officials such as the Regional Operations Executive and Justice Centre Executive, where the relevant matter emanates from their respective region or Justice Centre, may be invited to participate in the meeting as required.
- 2.3 The CCMC shall be chaired by the NOE or a person nominated by the NOE from time to time.

3 Powers of the CCMC

The CCMC shall have the following powers:

- 3.1 To approve legal aid in compliance with the Legal Aid Act and the Legal Aid Guide.
- 3.2 To request any additional information it deems necessary from the legal aid applicant
- 3.3 To fix conditions for the granting of legal aid including the requirement of a contribution to the Board by the legal aid applicant.
- 3.4 To make recommendations to the NOE on increased fee applications from Judicare practitioners
- 3.5 To approve new Impact litigation matters in accordance with the Impact Litigation policy.
- 3.6 To obtain such outside or independent professional advice as it considers necessary to conduct its duties. The costs for such advice will be paid from the National Operations Judicare Budget.
- 3.7 To access any relevant information it needs to fulfill its responsibilities.

4 Responsibilities of the CCMC

- 4.1 The Committee shall consider whether the applicant qualifies for legal representation at state expense in terms of Chapter 5 of the Legal Aid Guide where he/she has been classified as having exceeded the means test, in Regional and High Court criminal matters.
- 4.2 In deciding the above the Committee shall take into consideration the following:
 - 4.2.1 The income, expenditure, assets and liabilities of the legal aid applicant
 - 4.2.2 The nature and number of the charges or claims involved
 - 4.2.3 The number of accused or litigants involved
 - 4.2.4 The court in which the proceedings are to take place.
 - 4.2.5 The anticipated duration of the proceedings
 - 4.2.6 Any factors relating to the complexity of the case and the personal circumstances of the accused/litigant reported to the Committee
- 4.3 The committee shall monitor high cost / high profile matters as stipulated in paragraphs 5.2.6 and 6.1.8 of the Legal Aid Guide.
- 4.4 The Committee shall monitor costs in terms of paragraph 6.3.8(d) of the Legal Aid Guide.

5 Urgent Matters

Where the CCMC is unable to convene a meeting to decide on an urgent matter, then, in that case, the chairperson of the committee and one other member shall be authorized to take a decision on the matter. Such decision shall be tabled at the next meeting of the committee for consideration and where applicable, ratification.

6 Meetings of the CCMC

- 6.1 The Committee shall meet on notice when required but at least once a month at a venue to be agreed upon.
- 6.2 The Committee shall publish in advance a schedule showing dates of its monthly meetings. This schedule must be circulated to Justice Centres and also to the National Operations department.

- 6.3 The quorum for the meetings shall be four members and the quorum for the decisions of the CCMC shall be a majority of members who shall vote on the matter for decision in person.
- 6.4 The CCMC will be accountable to the LSTC and will submit the minutes of its meetings to LSTC.
- 6.5 The Committee may conduct its meetings via video/telephone conferencing.
- 6.6 Except under exceptional circumstances, at least 48 hours notice will be given of a meeting of the CCMC. Such notice will, where possible, include the agenda and any supporting documentation.

7 Procedure for considering applications

- 7.1 Where it has been established by a Justice Centre that the applicant exceeds the means test and that the matter is a Regional Court or a High Court criminal matter, the applicant will be required to complete annexure G3 to the LAG.
- 7.2 The JCE should submit a report with a recommendation to the CCMC attaching Annexure G3 and the relevant supporting documentation.
- 7.3 The decision of the Committee shall be communicated to the applicant through the relevant JCE within a reasonable period of time.
- 7.4 Where the Committee has declined the application the applicant will be entitled to appeal to the Chief Executive Officer whose decision shall be final in terms of the LAB internal processes.

8 Secretarial Services

The Legal Administration Section of the National Operations Department will provide the necessary administrative and secretarial services for the committee.



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LEGAL SERVICES TECHNICAL COMMITTEE TERMS OF REFERENCE

1. Purpose

The Legal Services Technical Committee ("LSTC") is constituted to assist the Chief Executive Officer (CEO) in implementing the Business Plan of the Legal Aid Board (LAB).

2. Membership

2.1. "LSTC" shall consist of the following officials of the Legal Aid Board:

2.1.1 Chief Operating Officer (COO)

2.1.2 National Operations Executive (NOE)

2.1.3 Legal Development Executive (LDE)

2.1.4 Regional Operations Executives

2.1.5 Senior Impact Litigation Attorney

2.1.6 National Operation's Principal Attorney

2.1.7 Two Board members nominated by the Board of the LAB

2.2. Other officials may be invited to participate in meetings as required;

2.3. "LSTC" shall be chaired by the NOE or a person nominated by the NOE from time to time.

3. LAB Board and Delegated Powers

3.1. Matters reserved for Board decision

The following matters are reserved for decision by the Board, on the basis of any recommendation as may be made from time to time by LSTC or other Committees:

3.1.1. All matters reserved for decision by the Board in the Approval Framework;

3.1.2. All matters which cannot be delegated by the Accounting Authority as per the PFMA, the Legal Aid Act and any other applicable legislation.

3.2. Matters delegated to the CEO and other Executives

3.2.1. The CEO has all the responsibilities of the Accounting Officer as provided for in the Public Finance Management Act.

3.2.2. The CEO's authority in managing the LAB and the Executive is unrestricted save by the Board, the Legal Aid Act, the Legal Aid Guide and the Public Finance Management Act.

3.2.3. The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and Officials through its *Approval Framework*.

4. Powers of Legal Services Technical Committee

The LSTC shall have all the power delegated to it in terms of the Board's Approval Framework.

5. Responsibilities of LSTC

The LSTC shall have the collective responsibility for:

- 5.1. managing the legal services delivery programme of the LAB so as to build an efficient and effective organization that can deliver independent and quality legal services in keeping with the organisation's constitutional and legal mandate;
- 5.2. all decisions delegated to it, and requiring approval, in terms of the Approval Framework;
- 5.3. the execution of all Board strategy, policies, programmes and plans relating to the legal services delivery programme of the LAB.
- 5.4. the preparation of effective, workable policies, strategies and plans on legal services delivery for the LAB including the Legal Aid Guide.
- 5.5. maintaining and expanding its national footprint of Justice Centres and Satellite Offices in order to improve its coverage of courts as well as to increase access to justice for clients of the LAB.
- 5.6. developing the competencies of our human resources to render professional legal services, thereby ensuring the achievement of the LAB's Vision and Mission.
- 5.7. ensuring access to the legal profession by including candidate attorneys as part of its staffing model.
- 5.8. engaging in appropriate research programmes to improve its legal services delivery programme.
- 5.9. maintaining a mixed model delivery system of Justice Centres, Judicare and Co-Operation Partners, including improving supply chain relationship management, as well as sourcing new co-operation partners.
- 5.10. approving impact litigation cases which could set precedents or have an impact on a large number of people
- 5.11. to position the LAB as an important stakeholder within the legal justice system being an independent provider of quality legal services.

6. Meetings of LSTC

- 6.1. Meetings of the LSTC will be held monthly unless the committee decides otherwise.
- 6.2. The quorum for decisions of LSTC shall be a majority of members, who shall vote on the matter for decision in person.
- 6.3 The meeting agenda will be split into different sections with Board members only being required to attend Section A of the meeting that will deal with Impact Litigation matters and Co-operation Agreement items.

7. Proceedings of LSTC

- 7.1. The LSTC will have due regard for the principles of governance and codes of best practice.
- 7.2. The LSTC will be accountable to m/exco and will report to M/exco monthly on all decisions taken by it.
- 7.3 Any decision taken by LSTC that is of a policy nature and impacts on the Business Plan must be referred to m/exco for approval.
- 7.4 All appeals against decisions made by LSTC with regards impact litigation or cooperation matters must be referred to the CEO.
- 7.4. Except under exceptional circumstances, at least 48 hours' notice will be given of a meeting of LSTC . Such notice will, where possible, include the agenda and any supporting papers.
- 7.5. A person assigned to undertake this task by the NOE will record minutes of LSTC meetings.