



**Legal Aid**  
South Africa

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27 June 2011

**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 1 of 2011**  
**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 (11<sup>th</sup> edition). The contributions scheme set out below will come into operation on 1 July 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 5**

**1.1 PARAGRAPH 5.1.1 page 71**

**5.11 MEANS TEST ENQUIRY — ~~3~~ 2 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, then legal aid should be refused and the legal aid applicant should be advised of the right to appeal in accordance with Annexure L. A legal aid applicant must qualify both in respect of gross monthly income and net assets to pass the means test.

⇒ See Annexure L on page 264.

*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.

*Second:*

- The *person receiving the legal aid application* determines whether the legal aid applicant is single or a member of a *household* or a child.

⇒ For more information, see 5.1.4 on page 73, 5.1.5 on page 74 or 5.1.2 on page 73.

- The legal aid applicant completes the means test in the normal manner.

⇒ See Annexure G1 & G2 on page 251.

- If the legal aid applicant qualifies for legal aid under the means test, the legal aid applicant is both indigent and is unable to afford the cost of his/her own legal representation.
- If the legal aid applicant qualifies under the means test, this ends the enquiry into the legal aid applicant's ability to pay for the cost of his/her own legal representation.
- If the legal aid applicant is seeking legal aid in a criminal case being heard before a Regional Court or a High Court, but does not pass the means test, and does not fall within the JCE's or ROE's discretion under 5.1.14 or 5.1.15, then legal aid must be refused and the legal aid applicant must be advised of his/her right to appeal against the refusal of legal aid in accordance with Annexure L. then it must be assessed whether the applicant, despite failing the means test, will be able to afford the cost of legal representation. This assessment will include an investigation of the complexity and duration of the trial, and the process must continue to the next step.

⇒ See 5.1.14 and 5.1.15 on page 77.

⇒ See Annexure L on page 264

*Third Appeal to CCMC:*

- If the legal aid applicant does not pass the means test as set out in Annexure G1 & G2, but if the matter otherwise qualifies for legal representation under 4.1.1 or 4.4.2 of this Guide, then the applicant may appeal against the refusal of legal aid to CCMC.
- The legal aid applicant completes Annexure G3 and must submit a detailed motivation setting out why he/she will not be able to afford the cost of his/her own legal representation from his/her own resources having regard to his/her income, expenditure, assets and liabilities.
- Annexure G3 and the detailed motivation is sent to the Constitutional Case Management Committee (CCMC) to consider the appeal against refusal of legal aid and to decide whether or not the legal aid applicant should qualify ~~qualifies~~ for legal representation at State expense.
- In deciding the appeal against refusal of legal aid, the CCMC should consider:
  - \* The income, expenditure, *assets* and *liabilities* of the legal aid applicant.
  - \* The nature and number of the charges involved.

- \* The number of *accused* involved.
  - \* The court in which the proceedings are to take place.
  - \* The anticipated duration and anticipated cost of the proceedings.
  - \* Any factors relating to the complexity of the case and the personal circumstances of the accused reported to the CCMC.
- Under section 3(d) of the Act read with 5.1.8, the CCMC may fix conditions for the payment of a contribution to Legal Aid SA by the legal aid applicant, which should, where possible, be made an order of court.”

## 1.2 PARAGRAPH 5.1.8 page 75

### 5.1.8 PARTIALLY SUBSIDISED LEGAL AID

~~(a) Applicants who exceed the means test may nevertheless receive legal aid if:~~

- ~~• Substantial injustice would result if the applicant is unable to afford the cost of his/her legal representation; and~~
- ~~• A person with authority to authorise legal aid exercises his/her/its discretion in favour of the applicant, despite the applicant exceeding the means test (see paragraphs 5.1.1, 5.1.14, 5.1.15 and 10.2.2(a)).~~

~~(b) If an applicant is granted legal aid, despite exceeding the means test by more than the limit of the authority of the JCE (see paragraph 5.1.14), a monthly contribution to the cost of providing legal aid will be payable by the applicant. The applicant will pay this contribution for every calendar month (or portion thereof) during which legal aid is provided.~~

~~(c) If a legal practitioner in the employ of Legal Aid South Africa is assigned to the applicant, the monthly contribution must be paid to the trust bank account of Legal Aid South Africa.~~

~~(d) Where legal aid is granted, subject to a contribution, the court must be requested to make the payment of such contribution an order of the court.~~

- (a) An applicant who exceeds the means test is not as of right entitled to legal aid merely because he/she is willing to pay the applicable cost recovery in monthly contributions. Each case has to be assessed by CCMC on its own merits according to:
- The criteria relevant to determine whether the applicant will suffer substantial injustice if legal representation is not provided at state expense;
  - Whether the applicant will be able to afford the cost of his/her own legal representation;

- Whether the applicant is able to adjust his/her standard of living to be able to afford the cost of his/her own legal representation.
- (b) The contribution amount must be paid monthly on advance until the cost recovery amount is paid in full, cessation of the trial or if the accused is convicted and sentenced to direct imprisonment, where after no further payment will become due and payable.
- (c) Where an applicant's circumstances change subsequent to the granting of legal aid subject to the payment of a contribution, then the applicant may motivate to CCMC for an amendment to the contribution amount.
- (d) If the accused fails to pay any contribution due, then legal aid will terminate 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.
- (e) If the assigned legal practitioner is instructed on judicare, then the judicare practitioner must take instruction from the client as to whether the client will privately fund the practitioner or terminates the practitioner's mandate.
- (f) Where a court in accordance with section 3B of the Act, read with 5.5.3(a), orders the provision of legal aid where an applicant exceeds the means test, then such court order must provide for a contribution in accordance with the provisions of this policy.

See 11.2.3 on page 145 for the procedure relating to the Recovery of Contributions (As amended by Circular 2 of 2010).

- (g) In criminal matters the cost recovery as per Table A and monthly contributions guidelines as per Table B hereto, subject to the discretion of CCMC, may be applied to any application for legal aid where legal aid is granted to any person whose monthly income or net assets exceeds the means test:

Table A - Cost Recovery per Court Type

Gross Monthly Income less Income Tax	Cost Recovery Percentage of Anticipated Cost			Cost Recovery Amount Taken at Anticipated Cost with regard to the Duration of the Matter									
	DC	RC	HC	District Court				Regional Court					
				1 Trial Day	2-3 Trial Days	4-5 Trial Days	>5 Trial Days - Per 5 trial days or part thereof	1 Trial Day	2-5 Trial Days	6-10 Trial Days	>10 Trial Days - Per 10 trial days or part thereof		
Up to R 8 000	0%	0%	0%										
R 8 001 - R 12 500	35%	25%	10%		R 1,070	R 1,926	R 2,782		R 1,484	R 3,180	R 4,240		
R 12 501 - R 20 000	75%	40%	20%		R 2,293	R 4,128	R 5,962		R 2,374	R 5,088	R 6,784		
R 20 001 - R 30 000	95%	95%	55%			R 5,228	R 7,552		R 5,639	R 12,084	R 16,112		
More than R 30 000	100%	100%	90%				R 7,950						R 16,960

Gross Monthly Income less Income Tax	Cost Recovery Percentage of Anticipated Cost			Cost Recovery Amount Taken at Anticipated Cost with regard to the Duration of the Matter						
	DC	RC	HC	High Court						
				1 Trial Day	5 Day Trial	10 Day Trial	15 Day Trial	20 Day Trial	>20 Day Trial - Per 20 trial days or part thereof	
Up to R 8 000	0%	0%	0%							
R 8 001 - R 12 500	35%	25%	10%		R 1,530	R 3,060	R 4,590	R 6,120	R 7,650	
R 12 501 - R 20 000	75%	40%	20%		R 3,060	R 6,120	R 9,180	R 12,240	R 15,300	
R 20 001 - R 30 000	95%	95%	55%		R 8,415	R 16,830	R 25,245	R 33,660	R 42,075	
More than R 30 000	100%	100%	90%			R 27,540	R 41,310	R 55,080	R 68,850	

Note 1 The cost recovery amount is based on the Judicare Criminal Tariffs  
 The Grey shaded area indicates that the applicants do not qualify for legal aid assistance

Table B - Monthly Contribution per Income Bracket						
	Gross Monthly Income less Income Tax	Cost Recovery Percentage of Anticipated Cost			Rate of Monthly Contribution	
		DC	RC	HC	Min Contribution	Max Contribution
1	Up to R 8 000	0%	0%	0%		
2	R 8 001 - R 12 500	35%	25%	10%	Minimum of R 300 + 10% of the amount over R 10 000	R 300
3	R 12 501 - R 20 000	75%	40%	20%	R 550 + 17.5% of the amount over R 12 500	R 550
4	R 20 001 - R 30 000	95%	95%	55%	R 1 862 + 27.5% of the amount over R 20 000	R 1,862
5	More than R 30 000	100%	100%	90%	As Decided by CCMC	R 4,612

Yours faithfully

*V. N. Vedalankar*

**Ms Vidhu Vedalankar**  
**Chief Executive Officer**  
**Legal Aid South Africa**