

1 August 2012

**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**

See Annexure "A"

Dear Sir/Madam

**CIRCULAR NUMBER 3 OF 2012**

**1.AMENDMENTS TO THE LEGAL AID GUIDE 2012**

Notice is hereby given that the Board of Legal Aid South Africa has approved the amendment of Chapter 8 and relevant annexures to the 2012 Legal Aid Guide (12<sup>th</sup> edition). The attached amended Chapter 8 and the annexures, which replaces the current Chapter 8 in total, comes into effect from 1 August 2012.

A detailed document on the various individual amendments to Chapter 8 and relevant annexures is available on the Legal Aid SA web page.

**2.NOTIFICATION TO JUDICARE PRACTITIONERS**

An e-mail notification has been sent to Judicare Practitioners on Legal Aid SA database to comply with the SARS tax clearance certificate requirements of the circular on or before 31 July 2012. The Law Society of South Africa has also published an article in its monthly newsletter informing all practitioners about the tax clearance certificate requirements of this revised policy.

Yours faithfully



Ms Vidhu Vedalankar

Chief Executive Officer

Legal Aid South Africa

**Your voice. For justice.**

## **ANNEXURE "A"**

### **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, Bisho  
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)  
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, Bhisho  
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, Bhisho  
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

## Chapter 8:

### Judicare

#### 8.1 Accreditation, including Black Economic Empowerment policy

The Judicare Accreditation System refers to an important aspect of Legal Aid SA's accreditation system, namely the need to advance Black Economic Empowerment.

To ensure quality legal service delivery by appropriately skilled, experienced and qualified legal representatives a private legal practitioner accreditation program is implemented by Legal Aid South Africa.

⇒ See 8.4 on page 125 for Legal Aid SA's policy provisions on BEE.

##### ✓ Summary guidelines

- Private *legal practitioners* who support Legal Aid SA's Vision and Mission, and who have the required experience, will be *accredited* to serve on a Directory of Accredited Practitioners from which *Judicare* appointments will be made.
- Legal practitioners may apply to be included in the Directory for the areas in which they practice.
- Participating practitioners will enter into an Accreditation Agreement with Legal Aid SA. Their applications for accreditation will include details of their firms, including information on their *Black Economic Empowerment* (BEE) component.
- An accreditation module on our legal administration computerised system allocates *Judicare* instructions to practices of accredited lawyers, incorporating principles such as:
  - \* Equity principles
  - \* BEE
  - \* The need to equitably distribute Judicare fee income
  - \* Competitiveness
  - \* Cost effectiveness

- \* Giving preference to local practitioners
- \* Matching experience with the requirements of each case.

⇒ For further details of Legal Aid SA's accreditation system for legal practitioners, see:

- Legal Aid SA's *Judicare Accreditation System* in 8.2A on page 113
- An explanation of Legal Aid SA's *exclusionary list* in 8.3 on page 122

## 8.2 Allocation of instructions to Judicare

Legal aid instructions are allocated to legal practitioners in accordance with Legal Aid SA's Judicare Accreditation System for *accredited legal practitioners*. Details of the Judicare Accreditation System and its operation are set out in paragraph 8.2A below.

⇒ See paragraph 8.2A on page 113.

✓ The distribution of legal aid instructions through the Judicare Accreditation System takes these factors into account:

- The lower average cost for each case achieved by salaried legal practitioners, compared to Judicare legal practitioners.
- The magisterial district or court in which a matter is to be heard.
- The magisterial district in which the *legal aid applicant* resides or is detained.
- The nature and complexity of the legal services required.
- The experience, competence and expertise of individual legal practitioners.
- *Conflicts of interest* between *legal aid recipients*.
- The need to advance Black Economic Empowerment.
- The need to periodically update lists of accredited legal practitioners.
- The need to prevent the receipt of a legal aid instruction by an excluded/suspended legal practitioner.
- Fairness and equity in the distribution of Judicare work and income.
- The need to conserve public funds by the use of a fixed tariff scheme.
- The importance of providing quality legal services that will advance the confidence of poor people in the administration of

justice and their access to justice. Therefore the need for practitioners to attend or participate in a briefing session concerning the Judicare Accreditation System.

- The ethics of legal practice, including the requirement that no legal practitioner should be asked, required or enabled to take on more work than he/she can timeously and competently perform.
- The need to ensure that practitioners are in good standing with the relevant professional body at the time of accreditation and remains in good standing.
- The need to ensure that only practitioners whose tax matters have been declared to be in order by SARS receive Judicare Instructions.

### 8.2A Judicare Accreditation System

#### 8.2A.1 OBJECTIVES

The main objective of Legal Aid SA is to render or make available legal aid as widely as possible to indigent and vulnerable persons within its financial means as contemplated in the Legal Aid Act, 1969 and to provide legal representation at State expense as contemplated in the Constitution.

The objective of Legal Aid SA Judicare Accreditation System is to create a system for the procurement of legal services that is fair, equitable, transparent, competitive and cost effective.

#### 8.2B Definitions

'**Accreditation**' means the procedure whereby an individual legal practitioner:

- (a) applies to Legal Aid SA to have his/her name placed on Legal Aid SA's Directory of Accredited (private) legal practitioners to whom legal aid instructions may be granted to act for clients, as envisaged in Section 3(a) of the Legal Aid Act, 1969 and the Constitution of South Africa; and
- (b) commits him/herself to providing those services according to agreed professional standards and undertakings and also in

terms of Legal Aid SA policies and procedures contained in the Legal Aid Guide; and

- (c) obtains the right to imprint upon his/her letterheads and stationery, and display on his/her electronic media Legal Aid SA's Accreditation Logo.

**'Accredited legal practitioner'** means a legal practitioner with right of appearance in any court in the Republic of South Africa in respect of which s/he has applied to be accredited and whose name appears on a Directory of Accredited legal practitioners updated by Legal Aid SA.

**'Black Economic Empowerment Ratio (BEE Ratio)'** means the ratio of 4 Black: 2 Indian: 2 Coloured: 1 White, which ratio shall be applied in relation to firms' or practices' BEE rankings when allocating Judicare instructions.

**'Black Economic Empowerment Ranking (BEE Ranking)'** means the BEE ranking of a firm or practice, determined by taking into account the ownership and employment equity of the firm or practice, with a higher weighting accorded to the ownership, which ranking determines the percentage of instructions that a practitioner linked to that firm should receive from the pool of Judicare instructions for a magisterial district in accordance with the BEE Ratio.

**'Black Economic Empowerment Adjusted Income Ranking (BEEAIR)'** means the BEE Ranking as adjusted with the average values of unfinished Judicare instructions issued to a firm or practice.

**'Judicare'** means a delivery system for legal aid through instructing private legal practitioners to represent individual legal aid clients.

**'Legal Aid SA Accreditation Logo'** means Legal Aid SA Accreditation Logo described in these Accreditation Rules, which an accredited legal practitioner may display as confirmation of his/her accreditation by Legal Aid SA.

**'Legal Aid SA'** means Legal Aid South Africa established by Section 2 of the Legal Aid Act, 1969.

## 8.2C Accreditation Rules

- 8.2C.1 Legal Aid SA has the right to determine which legal practitioner will be allocated to a legal aid recipient and further has the right to change the legal practitioner allocated to a particu-

lar legal aid recipient should this become necessary in the view of Legal Aid SA.

- 8.2C.2 No Judicare legal aid instruction shall be issued in favour of any legal practitioner in private practice unless approved in accordance with the policies and procedures of Legal Aid SA. Allocation of a Judicare instruction on Legal Aid SA's computer system shall be deemed to constitute such approval and signature. Judicare instructions shall be issued:
- (a) as a result of a conflict of interest between the legal aid applicant described in the said legal aid instruction and another legal aid applicant to whom legal aid was granted at an earlier date; or
  - (b) because the execution of the legal aid mandate requires the application of specialist legal knowledge and that no legal practitioner employed at the Justice Centre has the requisite specialist knowledge as at the date of the issue of the Judicare instruction in question; or
  - (c) in all other instances the use of Judicare practitioners will be in accordance with the Legal Aid Guide as amended from time to time.
- 8.2C.3 Legal Aid SA is not obliged to appoint any legal practitioner, other than a practitioner employed by Legal Aid SA or an accredited private legal practitioner, to fulfill its statutory object to render or make available legal aid to indigent persons at State expense.
- 8.2C.4 Legal practitioners not in the employ of Legal Aid SA, a Government Department, or a co-operation partner may apply to Legal Aid SA for accreditation and inclusion of their names on Legal Aid SA's Directory of Accredited legal practitioners. Applications should be lodged with a Justice Centre Executive.
- 8.2C.5 For purposes of the foregoing, a legal practitioner is any legal practitioner with right of appearance in any court in respect of which he has applied to be accredited.
- 8.2C.6 A legal practitioner shall be deemed to practice from a physical address within the magisterial district or High Court jurisdiction where the legal practitioner actually has his/her office or chambers. For purposes of Judicare criminal instructions a practitioner is not required to have law offices or chambers

within the magisterial district or High Court jurisdiction where such instructions are to be performed.

- 8.2C.7 A legal practitioner may apply to be accredited in more than one magisterial district or High Court jurisdiction.
- 8.2C.8 The fact that a legal practitioner happens to reside within a magisterial district or High Court jurisdiction shall not qualify said practitioner as practising within that magisterial district or High Court jurisdiction.
- 8.2.C.9 A practitioner will be required to submit a valid tax clearance certificate before any work will be allocated to a practitioner. Payments for work done can only be made to a practitioner who is at all times in possession of a valid tax clearance certificate from SARS.
- 8.2.C.10 Only attorneys who are members in good standing with a Law Society or an Advocate who is a member in good standing with a professional body of advocates that exercises effective disciplinary control over its members may be accredited. Legal Aid SA currently recognises the GCB, NFA, IAASA and the Church Square Association of advocates. Any other association of advocates must obtain recognition from Legal Aid SA before any member of such association can be accredited to render Judicare services to Legal Aid SA clients.
- 8.2C.11 Relevant experience in criminal matters shall be expressed in completed years, taking into account:
- Time spent as a practising attorney, or candidate attorney regularly undertaking the defence of criminal matters, and/or conducting of High Court matters since the date of the issuing of a certificate giving the legal practitioner right of appearance in the High Court.
  - In the case of advocates and pupil advocates, time spent in private practice during which period the advocate concerned regularly undertook the defence of criminal matters.

- Time spent employed as a magistrate hearing criminal matters.
  - Time spent as a public prosecutor in the district or regional courts.
  - Time spent in the employ of a Director of Public Prosecutions or as a Director of Public Prosecutions handling the conduct of criminal matters in courts.
- 8.2C.12 Relevant civil experience shall be expressed in completed years, taking into account the experience categories set out in the civil tariffs of Legal Aid SA (Annexure F to the Legal Aid Guide).
- 8.2C.13 Each accredited practitioner must submit a certificate of good standing to the relevant Justice Centre with the application for accreditation. Such practitioner must confirm their membership details and good standing in the Instruction form (LA2). Any misrepresentation will be reported to the relevant professional body and will result in the practitioner's removal from the Accreditation list.
- 8.2C.14 Justice Centre Executives, as soon as reasonable and after verifying from the Directory of Accredited Practitioners that any applicant practitioner is not currently registered as a practitioner who practices principally from another magisterial district or High Court jurisdiction, shall with due regard to Legal Aid SA's accreditation criteria consider applications for accreditation.
- 8.2C.15 Justice Centre Executives, in respect of magisterial districts and High Court jurisdictions in the service areas of their Justice Centres, shall separately consider applications for accreditation for all magisterial districts and High Court jurisdictions included in each application. A Justice Centre Executive, having satisfied himself/herself that a practitioner may be accredited, forwards the Accreditation Agreement for Private Legal Practitioners (Accreditation Agreement) to the National Operations Executive or anyone so delegated by the NOE in writing, for completion and signing. The NOE or NOE delegate returns a completed copy of the Accreditation Agreement to the Justice Centre Executive, who in turn supplies a copy thereof to the practitioner. Accreditation of a practitioner shall only take effect from the date on which an Accreditation Agreement for Private Legal

Practitioners is reduced to writing and signed in Johannesburg by the National Operations Executive or his delegate on behalf of Legal Aid SA.

- 8.2C.16 See Annexure O1 for Legal Aid SA's accreditation criteria.
- 8.2C.17 Justice Centre Executives shall ensure that the applicants are made aware of the following issues:
- General overview of Legal Aid SA.
  - Legal Aid SA's strategic objectives.
  - Legal Aid SA's philosophy about service to the poor and vulnerable.
  - The accreditation agreement ( Annexure O2) and the terms and conditions for accreditation for private practitioners ( Annexure O3).
  - Service excellence and quality control.
  - Judicare procedures and requirements as detailed in the Legal Aid Guide and circulars issued by Legal Aid SA between updates of the Legal Aid Guide.
  - Submission of accounts and supporting documents.
  - Accounts enquiry procedures.
  - Complaints procedure.
  - Suspension and placing of practitioners on the exclusionary list.
  - At such briefing sessions practitioners must be supplied with copies of the 'Accreditation Agreement for Private Practitioners' (See Annexure O2 and O3).
- 8.2C.18 Justice Centre Executives, upon receipt of the signed Accreditation Agreement for Private Practitioners from the National Operations Executive or his duly appointed delegate, or immediately upon refusal of an application for accreditation, shall give instructions to have the name and full details of the legal practitioner, including the approved or refused status, as applicable, entered onto Legal Aid SA's Directory of Accredited Legal practitioners.
- 8.2C.19 The Directory of Accredited Practitioners shall be maintained and managed by Justice Centre Executives or their duly delegated representatives on Legal Aid SA's computer system.

- 8.2C.20 The Directory of Accredited Practitioners shall indicate each accredited legal practitioner's chosen principal place of practice.
- 8.2C.21 Justices Executives shall inform applicants of the outcome of each application for accreditation.
- 8.2C.22 Justice Centre Executives, in respect of refused applications for accreditation shall state the reason(s) for refusal and inform the legal practitioners concerned, in writing, of the refusal(s) and of the reason(s) for refusal.
- 8.2C.23 A legal practitioner whose application for accreditation was refused shall have a right of appeal to the relevant Regional Operations Executive of Legal Aid SA, whose decision shall be final. An appeal against refusal shall be lodged with the Justice Centre Executive who refused the application. The Justice Centre Executive shall forward the appeal to the Regional Operations Executive together with a statement of reason(s) for the refusal. The Regional Operations Executive may seek advice from the NOE on the handling of an appeal against refusal of accreditation.
- 8.2C.24 The Directory of Accredited Legal practitioners comprises a database of the details of accredited legal practitioners from which an automated system for the allocation of Judicare instructions is operated.
- 8.2C.25 In respect of each accredited legal practitioner, along with his/her personal and firm or practice details, the names of the magisterial district(s) and High Court jurisdiction(s) where he/she may be granted Judicare instructions, and the various categories of matters in which he/she is willing to accept legal aid instructions (criminal, civil and specialist work, in the Magistrates' Courts and High Court respectively) and details of his/her experience, as well as his/her principal place of practice shall be recorded. Practitioners shall be preferred for Judicare instructions in the magisterial district or High Court jurisdiction of their principal place of practice over practitioners who do not practice principally from the relevant magisterial district or High Court jurisdiction.
- 8.2C.26 A Regional Operations Executive, where there are an insufficient number of practitioners to serve a magisterial district or High Court jurisdiction, shall approve the Directory listing for that

district or jurisdiction, of legal practitioners from a neighbouring magisterial district or jurisdiction, who have indicated their willingness to accept Judicare instructions in the magisterial district or High Court jurisdiction concerned on the express understanding that they will be entitled to payment of travelling expenses at the normal Legal Aid SA rate and, in the event that the distance between a legal practitioner's law offices/chambers and the court where a matter is to be heard exceeds 130 kilometres, accommodation expenses at the normal Legal Aid SA rate, until the minimum required number of practitioners for the district or jurisdiction concerned is satisfied. Practitioners listed for magisterial districts or High Court jurisdictions other than the districts or jurisdictions which he/she regards as his/her principal place of practice may waive his/her entitlement to travelling and accommodation expenses in respect of such other district. Waiver of such expenses shall have the effect that such practitioner is deemed to be practising principally from the relevant magisterial district or High Court jurisdiction.

- 8.2C.27 No attorney shall be listed in the Directory of Accredited Legal practitioners for purposes of being granted legal aid instructions in High Court matters unless this attorney has satisfied the Justice Centre Executive that the attorney is entitled to appear before the High Court.
- 8.2C.28 Candidate attorneys' names shall not be listed in the Directory of Accredited Practitioners and no Judicare instruction shall be issued in the name of a candidate attorney. Candidate attorneys may perform Judicare instructions on behalf of and under supervision of their own principals.
- 8.2C.29 No advocate's name whatsoever shall be listed in the Directory of Accredited Legal practitioners for purposes of being granted legal aid instructions in civil matters.

## 8.2D **Application for Accreditation**

- 8.2D.1 A legal practitioner shall apply for accreditation and inclusion of his/her name on the directory of accredited practitioners on the prescribed forms. See annexure O4.

8.2D.2 Applications for accreditation and inclusion on the Directory of Accredited legal practitioners shall be made by completing and submitting a standard Accreditation Form (Annexure O4). The application form will require the applicant to furnish the following information:

- Full names.
- Details of the firm or practice within which the practitioner practices.
- Physical address(es) of all offices or chambers from which the practitioner practices indicating the principal practice address.
- Postal address(es) of all offices or chambers.
- Telephone number(s).
- Fax number(s).
- Cellular number(s)
- E-mail address(es).
- Language proficiency.
- Proof of admission as an attorney/advocate.
- A statement of willingness to accept instructions in civil matters, if applicable, setting out types of cases that will be accepted/cannot be accepted, details of areas of specialisation and details of magisterial districts or High Court jurisdictions where such instructions will be accepted.
- A statement of willingness to accept instructions in criminal matters in the Magistrates' Courts, if applicable, setting out types of cases that will be accepted/cannot be accepted and details of magisterial districts where such instructions will be accepted.
- A statement of willingness to accept instructions in criminal matters in the High Court, if applicable, setting out types of cases that will be accepted/cannot be accepted and the names of main or circuit court seats where such High Court instructions will be accepted
- Written proof that the practitioner is entitled to appear before the High Court in instances where accreditation is sought for High Court.

- In the case of advocates who are members of professional bodies a certificate of membership of that body and confirmation that there are no proceedings to suspend, interdict or strike off the member from the roll.
- In the case of attorneys, a certificate of good standing from a Law Society and confirmation that there are no proceedings to interdict or strike off the member from the roll.
- Details of periods of relevant criminal and civil work experience, and details of types of civil casework experience, as applicable.
- Black Economic Empowerment (BEE) details of firms or sole practitioners.
- A valid tax clearance certificate.

### 8.3 Voluntary Withdrawal, Exclusion or Suspension from Accreditation Scheme

Legal Aid SA has compiled a *list* of legal practitioners to whom cases must not be referred.

Without limiting the generality of the under mentioned reasons, a legal practitioner may be placed on the list of practitioners to whom cases must not be referred if :

- The legal practitioner requests in writing that no further legal aid instruction should be issued to him/her or to his firm/her firm, or
- An attorney practising for his/her own account does not have a valid fidelity fund certificate or the firm where the attorney practises does not have a valid fidelity fund certificate, or
- A practitioner misrepresents that s/he is in good standing with a professional body that exercises disciplinary control over him/her when this is factually incorrect, or
- A practitioner consistently does not *comply* with the policies, procedures and rules of Legal Aid SA, or
- The legal practitioner is struck-off or suspended from the rolls of practising attorneys/advocates, or if the CEO decides to act on the request of a legal professional body to place the legal practitioner on the said list, or

- The CEO, or a person delegated by the CEO, decides that no further legal aid instructions are to be issued to a particular legal practitioner if it is found that the practitioner has acted in an unlawful or unethical manner.
  - ☆ Examples of unlawful or unethical conduct:
    - \* Receiving and demanding money from a legal aid client
    - \* Rendering false accounts
    - \* Failing to appear on behalf of a client without making alternative arrangements.
- The practitioner refuses to participate in Legal Aid SA quality review programme for Judicare Practitioners or unreasonably delays in complying with requests for submission of files selected for Quality Review.

A decision not to issue further instructions to a practitioner should be made after conducting an enquiry and considering representations from the affected legal practitioner.

- ✓ JCEs must take care to follow the exclusionary list, and thus not to send any legal aid instructions to a legal practitioner whose name appears on the list.

### 8.3A Voluntary Withdrawal

- 8.3A.1 A legal practitioner who wishes to withdraw from being included on the Directory of Legal practitioners shall in writing advise the Justice Centre Executive who approved the inclusion of the legal practitioner's name on the Directory.
- 8.3A.2 A Justice Centre Executive shall record the change in the status of a legal practitioner who withdrew from the accreditation scheme and this shall have the effect that no further new legal aid instructions can be allocated to the legal practitioner concerned. Payments in respect of instructions issued prior to the withdrawal of the practitioner from the scheme, shall not be affected by a withdrawn status.

### 8.3B Annotation of Accreditation List

- 8.3B.1 The status of a legal practitioner who may not receive cases together with the reason(s) for such status, shall be noted

against the practitioner's name in the Directory of Accredited Legal Practitioners. Judicare instructions shall not be issued to practitioners with an excluded, on hold or suspended status unless the excluded, on hold or suspended status is lifted with the approval of the National Operations Executive.

### 8.3C Temporary Suspension

- 8.3C.1 A practitioner shall be placed on temporary suspension if the practitioner:
- (a) does not update his/her records with Legal Aid SA
  - (b) does not follow the procedure for accounting set out by Legal Aid SA
  - (c) is abusive and derogatory to Legal Aid SA staff
  - (d) does not submit a valid tax clearance certificate from SARS.
  - (e) is under investigation for for any reason including but not limited to fraud, unethical behaviour or failure to comply with the LAG and Accreditation Agreement.
  - (f) Legal Aid SA's relationship with the practitioner has irretrievably broken down.
  - (g) is being subjected to an enquiry in terms of 8.3 read with 8.3D and it is deemed necessary by the CEO, or a person delegated by the CEO.

### 8.3.D Procedure to Exclude from Accreditation System

- 8.3D.1 The CEO or a person delegated by the CEO must follow these steps before possibly adding a legal practitioner to Legal Aid SA's *exclusionary list*:
- A letter setting out relevant or alleged acts is sent to the legal practitioner by fax, registered post or other means by which dispatch can be proved.
  - The legal practitioner has a reasonable opportunity of at least 2 weeks to reply to any allegations of fact, draw any relevant additional facts to the attention of Legal Aid SA, and make submissions.

- Legal Aid SA decides after conducting any necessary investigation.

8.3D.2 If the name of the legal practitioner is placed on the exclusionary list, the legal practitioner and the JCE responsible for any magisterial district in which the legal practitioner has an office will be advised in writing.

No legal aid instructions will be authorized for a legal practitioner who is on the exclusionary list.

8.3D.3 The names of legal practitioners with an on hold, excluded or suspended status shall be deemed to constitute Legal Aid SA's exclusionary list as referred to in other Legal Aid SA policy documents.

8.3D.4 The NOE will submit an updated exclusionary list to LSTC on a quarterly basis.

## 8.4 Black Economic Empowerment

8.4.1 Legal Aid South Africa needs to provide for a measure of preference in the allocation of Judicare instructions so as to encourage Black Economic Empowerment.

8.4.2 Each legal practitioner willing to undertake legal aid *matters* and, after his/her application for accreditation is approved, would be scored according to this scale:

i. African	4
ii. Coloureds and Asians	2
iii. Whites	1

8.4.3 Since the purpose of the policy is to advance Black Economic Empowerment, the equity partners/shareholders of the firms/companies (from whom the individual practitioners rated above derive) are also scored according to this scale:

i. African	4
ii. Coloureds and Asians	2
iii. Whites	1

8.4.4 Since black ownership is felt to be more important than affording black practitioners the opportunity to work and gain experience, the ownership scoring will be weighted at 60% and the individual legal practitioner scoring will be weighted at 40%.

- 8.4.5 The scoring of firms/companies as a whole can be scored according to this formula:

$$\frac{60\%X + 40\%Y}{Z + W}$$

X = aggregate scores of all equity partners/directors in the firm/company.

Y = aggregate scores of all legal practitioners from the firm/company willing to accept legal aid instructions.

Z = number of equity partners/directors in that firm/company.

W = number of admitted legal practitioners in the firm/company.

- 8.4.6 Legal aid instructions may then be distributed to the firms/companies on the rotation list for the magisterial district in the ratio established by the scoring of the firms/companies.

- 8.4.7 Thus, for example, if 5 firms scored as follows:

A – 4  
B – 2  
C – 2  
D – 1  
E – 1

Firm A would receive 4 of every 10 instructions, while firm E would only receive 1 out of every 10 instructions.

- 8.4.8 It would still be necessary to ensure, before issuing the legal aid instructions, that the designated individual legal practitioners are available and qualified to undertake work at the relevant grade or level.

## 8.5 Tariffs payable to Judicare practitioners

- ✓ This part sets out guidelines for paying legal practitioners carrying out Judicare assistance.

### 8.5.1 CRIMINAL TRIALS AND APPEALS

Annexure E sets out the fees and *disbursements* payable to Judicare legal practitioners for criminal trials, criminal appeals and related matters.

⇒ See Annexure E on page 260.

### 8.5.2 CIVIL CASES, APPEALS AND NON-LITIGIOUS WORK

Annexure F covers the fees and disbursements payable to Judicare legal practitioners for civil cases, civil appeals, *non-litigious* work and related matters.

⇒ See Annexure F on page 276.

### 8.5.3 NOE RECORD OF ANY INCREASED FEES AND DISBURSEMENTS

If a ROE or NOE exercises his/her *discretion* under Annexures E or F to authorise increased fees or disbursements for a legal practitioner, the ROE must ensure that all necessary details are timeously forwarded to the NOE.

The NOE has to report on authorising any increased fees to the Board at its next ordinary meeting.

## 8.6 Constitutional Case Management Committee

The Constitutional Case Management Committee (CMCC) has its own terms of reference and will consider applications for legal aid where the applicant exceeds the means test and the means test investigation proceeds to step 3 of the means test inquiry.

⇒ See Step 3 in 5.1.1 on page 75.

⇒ See Annexure V on page 350.

The CMCC will also monitor the cases referred to it to ensure that they are conducted cost effectively.

## 8.7 Judicare reports and accounts

### 8.7.1 LEGAL PRACTITIONER'S LIABILITY TO LEGAL AID SA FOR DAMAGES

A legal practitioner may be liable to Legal Aid SA for *damages* if, without the written *consent* of the JCE, the practitioner:

- Fails to include a claim for costs under 10.8 of this Guide in any process, including any plea and/or counterclaim, or
- Enters into any agreement of settlement or permits the legal aid applicant to enter into any settlement that directly or indirectly

waives Legal Aid SA's rights under section 8A of the Act without the consent of the relevant JCE, or

- Fails to take any steps prescribed in this Guide or customary in litigation to protect Legal Aid SA's rights to costs or anticipated costs, or
- Fails to retain from the capital amount, an amount due to Legal Aid SA under 10.8 of this Guide.

⇒ See 10.8 on page 149.

✓ **Consequences of damages:**

- Legal Aid SA does not have to pay any fees or disbursements due to the legal practitioner until these damages have been determined.
- Legal Aid SA may *set off* any fees and disbursements due to the legal practitioner against any damages found owing to Legal Aid SA.

### 8.7.2 REPORTING ON PROBLEMS

Except where otherwise indicated in this Guide, the task of a *person receiving a legal aid application* is completed after he/she has referred the applicant to a legal practitioner.

✓ **After being instructed, legal practitioners should:**

- Resolve problems by referring to this Guide.
- Take up unresolved problems with the JCE.
- Report any queries or other issues related to the client directly to the JCE.

### 8.7.3 REPORTING ON PROGRESS

Legal practitioners instructed by Legal Aid South Africa must submit a final account within 6 months from date of instruction, or report every 4 months on progress. If practitioners do not report within these time-frames, they may be requested in writing to report within 21 days.

✓ **If a legal practitioner still does not report within 21 days as requested:**

- Legal Aid South Africa's file on the case will be closed.
- It will be accepted, without *waiver* of any rights of Legal Aid South Africa, that no moneys are owed to the legal practitioner.

- ⇒ For further procedures on rendering accounts, see 13.2 on page 191.
- ⇒ For a pro-forma report in a criminal matter, see Annexure T on page 342.

#### 8.7.4 LEGAL PRACTITIONER'S ACCOUNT IN ORDER

If a legal practitioner's account is in order, Legal Aid SA will pay the legal practitioner who has been instructed, if they are in possession of a valid tax clearance certificate from SARS. This practitioner must then pay other service providers involved in the case, such as the *correspondent*, advocate or witnesses.

#### 8.7.5 ADVOCATES' ACCOUNTS

Legal Aid SA shall pay an advocate his/her fees directly where it has given a direct instruction to the advocate. Legal Aid SA may in its discretion pay an advocate directly for interim accounts rendered during litigation proceedings.

Legal Aid SA will only settle other accounts of advocates after receiving and considering the account of the attorney who instructed the advocate. Any direct payment to an Advocate will only be effected if they are in possession of a valid tax clearance certificate from SARS.

#### 8.7.6 MORE THAN ONE LITIGANT

Where legal aid is granted to more than one litigant in a case by instructing a single legal practitioner or practice, no additional fees are allowed, except as provided in Annexures E and F.

- ⇒ See Annexure E on page 260 and Annexure F on page 276.

#### 8.7.7 DISPUTES OVER LEGAL PRACTITIONER'S ACCOUNTS

Disputes may arise between Legal Aid SA and legal practitioners over issues such as:

- The non-payment, under-payment or erroneous payment of fees and disbursements.
- Misrepresentation and consequent over-payment of fees and disbursements.

Legal Aid SA and the legal practitioner should attempt to resolve the dispute by negotiation.

Further details for legal practitioners on procedures relating to accounts are set out in this Guide's Part 3: Procedures. These provisions are binding on all accredited legal practitioners.

⇒ For more on procedures for disputes, see 13.7 on page 200.

LA2

**LEGAL AID SA**

(Established under the Legal Aid Act No 22 of 1969)

**Your voice. For justice.**

Legal Aid SA Office: Reference No:
---------------------------------------

**INSTRUCTION TO LEGAL AID PRACTITIONER**

<b>PARTICULARS OF LEGAL PRACTITIONER</b>	
Name of advocate/Firm of attorneys:	
Name of Attorney:	
Postal Address:	
Telephone No:	Fax No:
Professional Membership:	Vendor No:
<b>PARTICULARS OF APPLICANT</b>	
Surname:	Residential Address:
First Names:	
Sex:	
Number Co-accused as per annexure:	
Marital Status:	
<b>PARTICULARS OF INSTRUCTION</b>	
Type of case: Criminal	Instruction:
	Case No:
Court:	Court No:
Seat of court:	Charges:
Date of next court appearance:	
<p>The applicant whose particulars appear above is referred to you on behalf of the Legal Aid for the rendering of legal aid in accordance with the provisions of the Legal Aid Guide.</p> <p>If you are unable to render the required assistance in accordance with the said provisions, please inform the applicant accordingly and return the instruction form to me.</p> <p>Your attention is also drawn to the remarks on the acceptance of instruction and undertaking PROBABILIS CAUSA page.</p>	
Date Stamp: _____ Legal Aid SA Official: _____	

**ACCEPTANCE OF INSTRUCTION AND UNDERTAKING PROBABILIS CAUSA**

1. I, the aforesaid legal practitioner accept this instruction /\* on behalf of my firm (in the case of an attorney) subject to the provision of the Legal Aid Guide.
2. I acknowledge that I am in possession of a Legal Aid Guide (and subsequent circulars amending such) and I am familiar with the content thereof. I acknowledge and confirm further that:
  - 2.1 I continue to be a member of the professional body as indicated in on the face of this LA2 and that I am still in good standing with the said professional body.
  - 2.2 I am in possession of a valid fidelity fund certificate (if applicable).
  - 2.3 Legal Aid SA cannot effect payment for work done if I have not submitted a valid tax clearance certificate from SARS at the time when payment is to be effected.
  - 2.4 I am not employed by a government department or a co-operation agreement partner of Legal Aid SA.
3. I undertake –
  - 3.1 to deal with this instruction in accordance with the provisions of the Legal Aid Guide;
  - 3.2 to comply with the directives regarding VAT as set out in the Legal Aid Guide;
  - 3.3 to comply with the directives regarding the submittance of accounts as set out in the Legal Aid Guide;
  - 3.4 subject to the provisions of the Legal Aid Guide, not to take any steps in a civil matter, except steps to prevent default judgement or prescription, until I have obtained the decision of the Chief Executive Officer of Legal Aid South Africa.
4. I declare that –
  - 4.1 no services in connection with this matter were rendered by me/my firm to the applicant prior to the date of this instruction and that no fees or disbursements are therefore owing by him/her;Or
  - 4.2 Services to the value of R.....where rendered by me/my firm to the applicant prior to the date of this instruction and that an amount of R..... is still outstanding
5. I accept that –
  - 5.1 notwithstanding my acceptance of this instruction by my signature hereunder, no contract will come in to existence with the Legal Aid South Africa unless and until the signed original hereof is received by the Legal Aid South Africa and scanned into its database;
  - 5.2 the contract resulting from this instruction between me/my firm and the Legal Aid South Africa will come into existence in Johannesburg which is the location of the control of scanned images held by the Legal Aid South Africa and the seat of its principle place of business at the National Office;
  - 5.3 this instruction is to be performed by me personally or by my candidate attorney (in case of an attorney );and
  - 5.4 neither this instruction, nor any rights arising out of the execution thereof, may be ceded to any third party without the prior written consent of the Chief Executive Officer of the Legal Aid South Africa.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**NAME IN PRINT**

\_\_\_\_\_  
**DATE**



Your voice. For justice.

**ANNEXURE O1**

**ACCREDITATION CRITERIA**

	<b>ACCREDITATION CRITERIA</b>	
	<b>ATTORNEYS</b>	<b>ADVOCATES</b>
Name not on exclusionary list	Yes	Yes
Admitted legal practitioner with right of appearance in court, (but excluding candidate attorneys) and pupil advocates whose accreditation is linked to their principals and mentors.	Yes	Yes
Law Offices/Chambers with infrastructure	Yes	Yes
Membership of Law Society or a Bar Council affiliated to the General Council of the Bar, or a professional body of Advocates that exercises effective disciplinary control over its members including the National Forum of Advocates of South Africa, or the Independent Association of Advocates of South Africa, or the Church Square Association of Advocates, as applicable	Yes	Yes
In respect of members of legal professional bodies, no pending disciplinary proceedings	Yes	Yes
Law Society /Bar Council/Professional Body certificate of good standing	Yes	Yes
Experience * - criminal District Court: No post admission experience requirement. Regional Court : 12 months post admission criminal work experience Other courts: 24 months post admission criminal work experience	Yes	Yes
Experience * - General civil: Minimum experience as required in terms of the civil tariff of fees (Annexure F to the Legal Aid Guide	Yes	No direct civil instructions to advocates
Valid tax clearance certificate submitted	Yes	Yes
Must not be Employee of Government Department or co-operation agreement partner	Yes	Yes

See paragraph 8.2C.11 and 8.2C.12, Chapter 8 of the Legal Aid Guide.



**Your voice. For justice.**

**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 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.
- 3. Legal Aid SA will not effect payment of any account unless the Practitioner is in possession of and provides Legal Aid SA with a valid tax clearance certificate from SARS.

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.
- 4.5 That s/he is a member of good standing in terms of the profession s/he is affiliated to and will forthwith advise legal Aid SA of any changes in his/her professional affiliation or good standing status.
- 4.6 That the practitioner is in possession of a valid fidelity fund certificate and will forthwith notify Legal Aid SA should s/he no longer be in possession of a valid fidelity fund certificate
- 4.7 That s/he or the firm has a valid tax clearance certificate from SARS and will forthwith notify Legal Aid SA should s/he or the firm no longer be in possession of a valid tax clearance certificate from SARS

### **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 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, tax clearance certificates 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 R100,000.00
    - 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 5<sup>th</sup> 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.