



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 SA Act 39 of 2014

- 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, 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. (Notwithstanding this provision that Judicare practitioners are tax compliant at the time that payment is made, this requirement has not been implemented by National Treasury. This requirement will therefore only be implemented once a date for its implementation is fixed by National Treasury).

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 articled clerk, with appropriate rights of appearance and articled 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.

11A PROTECTING THE BRAND OF LEGAL AID SA

11A.1 All issues that may arise between the practitioner and Legal Aid SA regarding the carrying out of the practitioner's mandate shall not be addressed through the courts.

11A.2 Where a Judicare practitioner is offered an instruction by the Justice Centre in urgent circumstances or under circumstances where the instruction is received too close to the court date, the practitioner shall, by accepting such instruction, undertake to comply with all preliminary requirements of the court, by the due date.

11A3 Where the judicare practitioner is not in a position to comply with any preliminary requirements before the court hearing, he shall notify the Justice Centre Executive or High Court Unit Manager in the case of High court matters in writing of the reasons therefore and, if he feels that he is still in a position to execute the mandate, what arrangements have been made to comply with the requirements of the court.

11A4 Where the Judicare practitioner has entered into arrangement with the prosecution with regard to the extension of the time required to comply with any preliminary requirements, such arrangement must be in writing and the JCE or HCUM should be furnished with a copy thereof.

11A5 An instruction to a Judicare practitioner cannot be returned to the Justice Centre within a period of 14 days prior to the hearing of the matter. Where for some reason, the Judicare practitioner is not in a position to execute the mandate, the practitioner shall arrange to meet the presiding officer, in the company of the relevant JC manager to explain the reason for him relinquishing the mandate, and to agree on the way the matter will be handled going forward.

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.