



**Your voice. For justice.**

# **LEGAL AID GUIDE**

## **2011**

**12th EDITION**

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## Foreword by the Chairperson

*Judge Dunstan Mlambo*

Legal Aid South Africa (formally known as Legal Aid Board) is an autonomous statutory body established by the Legal Aid Act 22 of 1969 (as amended). The objective of Legal Aid South Africa is to render or make available legal representation at state expense where substantial injustice would otherwise result, as contemplated in the Constitution of the Republic of South Africa, 1996 (The Constitution). This in turn affords and ensures access to justice which is a fundamental cornerstone of our young democracy.

Section 3A of the Legal Aid Act (the Act) provides for a Legal Aid Guide (the Guide) that should include details of policies and procedures for providing and administering legal aid. The aim of this guide is to clarify when legal aid is available and to set out criteria whereby an applicant may qualify for state funded legal representation having regard to the Constitution (including section 36 limitations), the Legal Aid Act as well as relevant legislation that gives content to the constitutional right to legal representation. This Legal Aid Guide 2011 was approved by the National Assembly on \_\_\_\_\_ and by the National Council of Provinces on \_\_\_\_\_ and thus represents approved policy of government with regard to the provision of legal aid in South Africa.

Legal Aid South Africa currently makes legal representation available in about 440,000 new matters per annum. It should be noted that it is not possible to make legal aid available in all matters and to applicants who are able to afford the cost of their own legal representation. There has to be a progressive realisation of the rights contained in our Constitution and I caution stakeholders against the growing expectation that Legal Aid South Africa should fulfil all the legal representation needs of those members of society who are unable to do so themselves.

Legal Aid South Africa is not able to provide unlimited legal aid due to budgetary and resource constraints. This is where the policies and procedures contained in this Guide are imperative in ensuring a sustainable and accountable legal aid system which is also transparent and fair in its application.

It is also crucial that all relevant stakeholders, including judicial officers, understand this context as well as the need for an ordered system of

making legal aid available. It behoves me to stress the need to ensure compliance with the policies and procedures contained in this Guide.

Lastly, I recognise the commitment of our Government to the rule of law. They have committed substantial resources to making legal representation a reality in terms of our Constitution. I acknowledge the support of the Minister of Justice and Constitutional Development as well as the Parliamentary Committees in this regard. It is a system, which despite some continuing challenges that will have to be tackled and addressed, that we as South Africans can truly be proud of.

Yours in ensuring access to justice.

Judge Dunstan Mlambo

Chairperson: Legal Aid South Africa

\_\_\_\_\_

## Acknowledgments

Legal Aid South Africa hereby wishes to acknowledge the contributions and efforts of the following persons in making the Legal Aid Guide 2010, 12th Edition, a reality to ensure that Access to Justice as guaranteed in our Constitution becomes a reality for all South Africans:

The Minister of Justice and Constitutional Development: \_\_\_\_\_

The Deputy Minister of Justice and Constitutional Development: \_\_\_\_\_

The Chairperson of the Portfolio Committee for Justice and Constitutional Development: \_\_\_\_\_

The Chairperson of the Select Committee for Security and Constitutional Affairs: \_\_\_\_\_

The Director General: Department of Justice and Constitutional Development: \_\_\_\_\_

\_\_\_\_\_: Department of Justice and Constitutional Development: Chief Director Court Services.

The Board Members of Legal Aid South Africa – both current and past.

The CEO & Executives of Legal Aid South Africa.

## Quick Contents

<b>How to use this Legal Aid Guide.....</b>	<b>1</b>
Abbreviations and acronyms .....	3
Explanations of useful words .....	5
 <b>PART 1: PREAMBLE.....</b>	 <b>21</b>
Chapter 1: Legal Aid South Africa Mandate and Structure .....	23
Chapter 2: Legal Aid South Africa Vision and Outcomes.....	31
Chapter 3: The Legal Aid Guide .....	33
 <b>PART 2: LEGAL AID POLICY .....</b>	 <b>35</b>
Chapter 4: Legal Aid Matters.....	37
Chapter 5: Qualifying for Legal Aid.....	75
Chapter 6: The granting and authorising of Legal Aid.....	91
Chapter 7: The delivery system for Legal Aid .....	103
Chapter 8: Judicare .....	111
Chapter 9: Co-operation Partners .....	131
Chapter 10: General policy .....	137
 <b>PART 3: LEGAL AID PROCEDURE .....</b>	 <b>155</b>
Chapter 11: Applying for Legal Aid.....	157
Chapter 12: Delivering Legal Aid.....	175
Chapter 13: Judicare Procedures .....	191
Chapter 14: Co-operation Partner Procedures.....	207
 <b>Annexures .....</b>	 <b>211</b>
<b>Subject Index .....</b>	<b>361</b>

## Detailed Table of Contents

<b>How to use this Legal Aid Guide</b> .....	1
Abbreviations and acronyms .....	3
Explanations of useful words .....	5
<b>PART 1: PREAMBLE</b> .....	21
<b>Chapter 1: LEGAL AID SOUTH AFRICA MANDATE AND STRUCTURE</b> .....	23
1.1 Establishment and aims of Legal Aid South Africa .....	23
1.2 Powers of Legal Aid South Africa.....	23
1.3 Place of business and legal service address .....	24
1.4 Overview of Legal Aid SA organisational structure .....	24
<b>Chapter 2: LEGAL AID SOUTH AFRICA VISION AND OUTCOMES</b> .....	31
2.1 Vision.....	31
2.2 Mission .....	31
2.3 Values.....	31
2.4 Outcomes .....	31
<b>Chapter 3: THE LEGAL AID GUIDE</b> .....	33
3.1 The administration of legal aid .....	33
3.2 Justice Centres.....	33
3.3 Copies of the latest Legal Aid Guide .....	33
<b>PART 2: LEGAL AID POLICY</b> .....	35
<b>Chapter 4: LEGAL AID MATTERS</b> .....	37
4.1 Legal aid provision .....	37
4.2 Residence of applicant and seat of court.....	39
4.3 Criminal trials under section 35(3)(g) of the Constitution and section 73 of the Criminal Procedure Act.....	40

4.4	Criminal appeals under section 35(3)(o) of the Constitution and sections 309, 309B, 309C, 309D and 316 of the Criminal Procedure Act.....	45
4.5	Legal aid in other criminal cases .....	50
4.6	Co-accused .....	50
4.7	Bail applications.....	50
4.8	Bail appeals .....	50
4.9	Civil cases .....	51
4.10	Labour cases .....	56
4.11	Divorce and family law cases .....	57
4.12	Non-litigious legal services .....	58
4.13	Land restitution cases .....	59
4.14	Labour tenant, ESTA and PIE cases .....	60
4.15	Asylum seekers .....	62
4.16	Hague Convention cases .....	63
4.17	Equality Court cases .....	64
4.18	Children's civil cases .....	65
4.19	Mental Health Care Act users .....	72
<b>Chapter 5: QUALIFYING FOR LEGAL AID.....</b>		<b>75</b>
5.1	Indigence and the means test .....	75
5.2	Proof of qualification .....	82
5.3	Legal aid under the Constitution.....	84
5.4	Legal aid in civil cases under the Legal Aid Act.....	85
5.5	Formal application for legal aid .....	85
<b>Chapter 6: THE GRANTING AND AUTHORISING OF LEGAL AID..</b>		<b>91</b>
6.1	Approval or refusal of legal aid.....	91
6.2	Appeal against refusal of legal aid .....	94
6.3	Termination of legal aid .....	95
<b>Chapter 7: THE DELIVERY SYSTEM FOR LEGAL AID.....</b>		<b>103</b>
7.1	The development of legal aid delivery methods.....	103
7.2	Choice of legal representative .....	104
7.3	Impact Services Policy .....	106

<b>Chapter 8: JUDICARE.....</b>	<b>111</b>
8.1 Accreditation, including Black Economic Empowerment policy	111
8.2 Judicare Accreditation System .....	112
8.2A Judicare Accreditation Programme .....	113
8.2B Definitions.....	113
8.2C Accreditation Rules .....	114
8.3 Exclusionary list.....	121
8.3A Withdrawal and exclusion.....	122
8.4 Black Economic Empowerment.....	125
8.5 Tariffs payable to Judicare practitioners .....	126
8.6 Constitutional Case Management Committee.....	127
8.7 Judicare reports and accounts .....	127
<b>Chapter 9: CO-OPERATION PARTNERS .....</b>	<b>131</b>
9.1 Provisions governing Co-operation Partners .....	131
9.2 Co-operation Agreements Policy.....	131
9.3 Managing co-operation agreements .....	135
<b>Chapter 10: GENERAL POLICY .....</b>	<b>137</b>
10.1 Confidentiality and privacy .....	137
10.2 Discretionary powers.....	138
10.3 Increased fees.....	141
10.4 Extending the legal practitioner's brief .....	141
10.5 Medical costs.....	142
10.6 General provisions for all civil matters.....	142
10.7 Fraud and abuse of legal aid.....	146
10.8 Costs in civil cases .....	149
10.9 Amendments to the Legal Aid Guide .....	152
<b>PART 3: LEGAL AID PROCEDURE .....</b>	<b>155</b>
<b>Chapter 11: APPLYING FOR LEGAL AID .....</b>	<b>157</b>
11.1 Processing applications – administration and verification.....	157
11.1A Manner of Receiving and Processing Legal aid Applications ...	158

11.2	Co-ordinating and evaluating applications – criminal cases. ....	164
11.3	Co-ordinating and evaluating applications – civil matters .....	168
11.4	Processing applications – categories of applicants.....	170
11.5	Duties to ensure payments to Legal Aid SA.....	172

## **Chapter 12: DELIVERING LEGAL AID ..... 175**

12.1	Allocating instructions.....	175
12.1A	Evaluation and Allocation of Judicare instructions.....	176
12.1B	National Operations Executive's discretion, exceptional instructions and restriction on performing of legal aid instructions to the instructed legal practitioner .....	178
12.2	Executing instructions – Legal Aid SA .....	179
12.3	Executing instructions – the legal practitioner.....	180
12.4	Executing instructions – general issues .....	183
12.5	Reporting on executing instructions .....	186
12.6	Procedures for appeals .....	187

## **Chapter 13: JUDICARE PROCEDURES ..... 191**

13.1	Judicare Accreditation System.....	191
13.2	Rendering accounts and payment of fees.....	191
13.3	Account assessment and taxation.....	194
13.4	Relationship between Legal Aid SA and a legal practitioner's subcontractors .....	196
13.5	Items excluded from payment under legal aid tariffs.....	197
13.6	Payment methods and intention to dispute .....	199
13.7	Procedures for disputes over a legal practitioner's account. ....	200
13.8	Prescription of accounts .....	204
13.9	Self-invoicing .....	205
13.10	Electronic Invoicing .....	206

## **Chapter 14: CO-OPERATION PARTNER PROCEDURES ..... 207**

14.1	Requesting, processing and approving Co-operation Agreements .....	207
14.2	Monitoring and managing Co-operation Agreements .....	208

<b>Annexures</b> .....	211
A Legal Aid Act .....	213
B Legal Aid South Africa contact details.....	221
C LA1 application .....	257
D LA2 instruction.....	258
E Tariff of fees and disbursements in criminal matters.....	260
F Tariff of fees and disbursements in civil matters .....	276
G1&2 LA13 means test for single persons and households .....	292
G3 LA13C when exceeding means test in constitutional matters...	293
G4 Contribution payable by an accused .....	294
H Confirmation of client's election relating to leave to appeal. ....	296
I Benefit to Legal Aid SA .....	297
J Expert witnesses .....	299
K1 Account in a criminal trial .....	300
K2 Account enquiry.....	302
K3 Practitioners' checklist when submitting accounts .....	303
K4 Declaration of dispute.....	305
K5 Details of dispute .....	306
K6 Account in respect of civil claims.....	308
L Refusal of legal aid .....	311
M Section 3B Report .....	312
N Curators appointment and certificate .....	314
O1 Accreditation criteria .....	315
O2 Accreditation Agreement for Private Practitioners .....	316
O3 Terms and Conditions of Accreditation for Private Practitioners.....	318
P Allocation of Magisterial Districts to Justice Centres.....	329
Q Refusal of Legal Aid Assistance by Accused .....	338
R LA5 acknowledgement and undertaking by Legal Aid applicant .....	339
S Annexure to LA2 with Co-accused details .....	340
T Judicare progress report in a criminal matter.....	341
U Code of Professional Conduct for Employees of Legal Aid SA who provide legal services in criminal matters.....	342
V Constitution Case Management Committee .....	350
W Legal Services Technical Committee .....	355
<b>Subject Index</b> .....	<b>361</b>

## How to use this Legal Aid Guide

The Legal Aid Guide gives us details of how Legal Aid South Africa carries out its mandate under the Legal Aid Act to provide and administer legal aid, and thus to assist in increasing access to justice and legal representation for people who are poor and vulnerable in South Africa.

### Why a guide in plain language?

We have written the Legal Aid Guide in *plain language*. This means that we have tried to make it easier to read and understand by simplifying and explaining words, and by structuring and designing it in a way that is more user-friendly. The meaning of this Guide, including its explanations of useful words, should be understood, interpreted and read in this plain language spirit. The exact meaning of these useful words may vary according to the context.

### Who is this Guide for?

Persons receiving legal aid applications, including agent legal aid officers, administrative officers, paralegals, candidate attorneys and legal practitioners working in Legal Aid South Africa offices, magistrates' offices and Justice Centres.

- Legal practitioners representing legal aid clients in our justice system.
- Paralegals advising and assisting people in getting and using legal aid.
- Community structures, unions and non-governmental organisations representing the interests of members and clients.
- Individuals needing legal representation and assistance to enforce their legal rights under the Constitution and other laws of South Africa.

### What does the Guide cover?

- In *Part 1 Preamble*, the overall work of Legal Aid South Africa, including its vision, mission, values, outcomes and objectives
- In *Part 2 Policy* the approach of Legal Aid South Africa to key issues such as the types of cases legal aid is available for, how to qualify



and apply for legal aid, and the different kinds of systems used to deliver legal aid.

- In *Part 3: Procedures*, the practical methods, processes and forms used to apply for, grant and administer legal aid in South Africa.

### What symbols are used in the Guide?

- ✓ *Guidelines*: Tips or steps to follow to do something.
- ★ *Example*: Practical example of how a policy or procedure works.
- ⇒ *Cross-reference*: Where to find more information elsewhere in this Guide or in an Annexure.

### Where can you find key information?

*Quick contents page*: for a quick look at what's in this Guide on page vii.

*Detailed content pages*: for a detailed list of topics in the Guide starting on page ix.

*Abbreviations or acronyms*: see the list on pages 3 and 4.

*Explanations of useful words*: see the list starting on page 5. We put these words in italics the first time we use them in a Chapter of the Guide.

*Annexures* for useful resource information like laws, tariffs, forms and contacts: see page 201 and also listed at the end of the *Detailed content pages* on pages ix to xiv.

*Subject index pages*: for a detailed list of subject matter in the Guide on page 347.

## Abbreviations and acronyms

*This is an alphabetical list of:*

- Abbreviations like CEO, and
- Acronyms like ESTA that we use in this Legal Aid Guide.

AIDS	Acquired Immune Deficiency Syndrome
BEE	Black Economic Empowerment
CCMA	Commission for Conciliation, Mediation and Arbitration
CCMC	Constitutional Case Management Committee
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operations Officer
CRLR	Commission for the Restitution of Land Rights
CSE	Corporate Services Executive
DCS	Department of Correctional Services
District Court	District Magistrate's Court
DLAO	Designated Legal Administration Officer
DOJCD	Department of Justice and Constitutional Development
DPP	Director of Public Prosecutions
Eg	For example
ESTA	Extension of Security of Tenure Act of 1997
HCUM	High Court Unit Manager
HIV	Human Immuno-deficiency Virus
HRE	Human Resources Executive
IAE	Internal Audit Executive
IT	Information technology
JCE	Justice Centre Executive
LCC	Land Claims Court
LDE	Legal Development Executive
LSTC	Legal Services Technical Committee

NGO	Non-governmental organisation
NOE	National Operations Executive
PIE	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998
Regional Court	Magistrate's Court for a regional division
ROE	Regional Operations Executive
SARS	South African Revenue Service
SILA	Senior Impact Litigation Attorney
The Act	The Legal Aid Act of 1969
The Board	The governing Board of Legal Aid South Africa
The Constitution	The Constitution of the Republic of South Africa of 1996
The Guide	The Legal Aid Guide
The Hague Convention	The Hague Convention on the Civil Aspects of international Child Abduction Act of 1996
v	Versus (in names of court cases)
VAT	Value-added tax

## Explanation of useful words

This is an alphabetical list to explain words italicised the first time they appear in a Chapter of this Legal Aid Guide. These are:

- Words used with a specific meaning for the purposes of legal aid, eg 'Co-operation Partner', 'Judicare'.
- Legal and technical words to assist in the reading and understanding of this Guide, eg 'compliance', 'justiciable', 'prima facie'.

Please note:

- The exact meaning of these useful words may vary according to the context.
- We italicise words in the explanations when these words appear elsewhere in this list.

### Access to justice

Being able to claim rights and *enforce obligations* in our justice system.

### Accountability

Having to report and be answerable for your policies, decisions and actions.

### Accredited

Recognised, eg *accredited legal practitioners* under the Legal Aid SA's *Judicare Accreditation System*.

### Accused

Person formally charged by the police with a criminal offence.

### Affidavit

Sworn statement made under oath.

### Afford/Affordability

Whether a person can afford or pay for legal representation depends on the person's means and the costs of the legal representation.

### Agent legal aid officers

Employees of the Department of Justice and Constitutional Development permitted to receive legal aid applications at magistrates' offices

and to send these applications for a decision at the nearest *Justice Centre*.

### **Appellant**

Person noting an appeal to a higher court to consider whether an original judgement is correct based on the facts or law of the case.

### **Applicant**

Person applying, eg making an application for the legal assistance that Legal Aid SA must provide.

### **Applicable to/Apply to/Applies to**

Is relevant to or is effective for, eg 'the policy applies to poor people'.

### **Arbitration**

When an independent person decides on the best and most effective way to resolve a dispute, eg between Legal Aid SA and a *legal practitioner* over a legal aid account.

### **Assets**

Your physical and non-material (non-physical) possessions, eg house, clothes, claim against a debtor, copyright to a book you wrote.

### **Asylum**

When foreigners qualify to stay as refugees in another country.

### **Asylum seeker**

Person applying for *Asylum*.

### **Attorney and client costs**

The legal costs between an attorney and a client for all the work done on a case, eg the cost of a legal consultation.

### **Balance of probabilities**

Legal test to decide whether you have proved a civil case — also used in legal aid applications to decide if you qualify for legal aid in criminal or civil cases. This means balancing all relevant and reasonable factors to arrive at a decision whether to grant legal aid or not on the basis that there is a good chance that you will succeed in your case.

### **Benefit**

The portion of a court judgement or case settlement that is due to Legal Aid SA and which a legal aid client gets from the judgement or settlement.

### **Best practices**

Good examples or standards to follow.

### **Bill of costs**

The *legal practitioner's* account to Legal Aid SA for payment by the unsuccessful *litigant* to a successful legal aid *litigant*.

### **Black Economic Empowerment**

Building the capacity of and creating opportunities for people who have been historically disadvantaged through apartheid policies and laws, eg creating opportunities for black *legal practitioners*.

### **Black Economic Empowerment Policy**

Legal Aid SA's policy to promote BEE as part of its *Judicare Accreditation System*.

### **Breach**

Breaking or not following a law, code or agreement, eg not *complying* with a legal aid instruction or a breach of a contract.

### **Candidate attorney**

Person with law degree serving articles of clerkship under a principal attorney.

### **Capital**

Assets and money used to start a business or invested to make money.

### **Cede**

Legally give up or transfer your rights, eg cede ownership of land, cede the recovery of costs in a legal aid case to Legal Aid SA.

### **Central Authority**

The State, represented by the Family Advocate, in international child abduction cases under the Hague Convention.

### **Certificate Probabilis Causa**

Certificate signed by a *legal practitioner* accepting a legal aid instruction.

**Circulars**

Updates and amendments to the Legal Aid Guide sent to all people administering legal aid, including *legal practitioners*.

**Claimant**

Person making a claim.

**Class action**

When a group of affected people bring a case jointly or on behalf of a wider group of people that may benefit from the outcome.

**Common law offences**

Laws that are not made by Parliament, but have been part of our legal system for centuries, eg murder, rape, theft, assault, or a new law created through judicial decision by the courts.

**Complainant**

Person making a complaint.

**Compliance/Comply**

Obey and work in accordance with laws, policies, procedures and contracts, eg comply with this Legal Aid Guide.

**Condonation**

Asking to be legally excused for having to make a late application, eg for leave to appeal. Good reasons must be given for the late application.

**Confidential/Confidentiality**

Information that is personal or private, and should not be publicly disclosed.

**Conflict of interest**

When there are competing interests or needs, eg Legal Aid SA may need to instruct different *legal practitioners* to represent co-accused in a criminal case.

**Consent**

Agree to or agreement.

**Contingency fee**

When legal practitioners are paid if they win a case.

**Co-operation Agreement**

Agreement between Legal Aid SA and an NGO partner to deliver legal services of a particular kind or in a defined region of South Africa.

**Co-operation Agreements Policy**

Legal Aid SA's policy governing *Co-operation Agreements*.

**Co-operation Partner**

Partners to Legal Aid SA under *Co-operation Agreements*, such as NGOs.

**Correspondent**

*Legal practitioner* in another city or town that assists with a task in a case.

**Criteria**

Factors used decide something, eg whether or not to grant legal aid, such as the seriousness of the case and the *applicant's* financial position.

**Curator ad litem**

Person appointed by the court to represent a person who lacks *legal capacity*, eg a minor child.

**Curator bonis**

Person appointed by the court to assist a person incapable of managing his/her own affairs.

**Damages**

Legal compensation for injury or harm caused by someone's unlawful actions.

**Deemed**

Regarded or treated as by a law, policy or procedure, eg the beneficiary of a trust is deemed to own the *assets* of the trust.

**Default judgement**

Judgement taken against someone in court when they do not arrive or have not responded to a claim.

**Defendant**

A person who has to answer a claim in a civil case.

**Disbursements**

Expenses of a legal practitioner in a case, eg telephone calls, photocopies.

**Discretion**

When you have the power to do or not to do something, eg a JCE's discretion to grant legal aid in certain kinds of cases. The exercise of a discretion must be reasonable and lawful.

**District Court**

An ordinary Magistrate's Court.

**Domicilium citandi et executandi**

Official address for receiving all legal documents.

**Due diligence procedures**

Performance and *compliance* standards and requirements that Legal Aid SA may ask *Co-operation Partners* to meet before concluding or renewing a *Co-operation Agreement*.

**Enforce/Enforcement**

Legally implementing or making effective.

**Enshrined**

When a principle, value or right is supported and included in a document or process, eg the idea of equality is enshrined in the Bill of Rights in our Constitution.

**Entitled to**

Have a right to, eg when you are entitled to legal aid under the Constitution.

**Equality Courts**

When Magistrates' Courts hear cases under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

**Exception**

Something that does not follow a general rule, policy or procedure.

**Exclusionary list**

Legal Aid SA's list of *legal practitioners* who may not be instructed in legal aid *matters*.

**Exempt/Exempted/Exemption**

When you are excused from doing something, eg legal aid documents are exempt from stamp duty.

**Express/Expressly**

Specifically stated or set out, eg in a law or policy.

**Fulfilled**

Achieved, implemented or satisfied, eg when your rights to things like equality and human dignity under our Constitution are fulfilled.

**Good standing**

Being allowed to practise professionally by the relevant law societies, eg instructing a *legal practitioner* who is in good standing.

**Household**

For legal aid qualification, a group of people who live together for at least 4 nights a week, and who share meals and resources.

**Impact Legal Services**

Legal services, including *non-litigious* services that have the potential to positively and significantly affect the lives of many *indigent* people or of particular groups of people.

**Impact Services matter**

A case or dispute that may qualify for legal aid under Legal Aid SA's *Impact Services Policy*.

**Impact Services Policy**

Legal Aid SA's policy on *Impact Legal Services*.

**Indigence**

How poor a person is.

**Indigent/Indigent person**

A person who qualifies for legal aid under Legal Aid South Africa's *means test*. (Not everyone who qualifies for legal aid will be assisted. Some matters are excluded)

**Instituting action/institution of action**

Starting a legal action.

**Interdict**

A court order instructing someone to do something or to stop doing something.

**Interim**

In the meantime— something that is temporary, eg an interim court order, an interim account.

**Interlocutory application**

An application to do something that is a step to the next necessary stage in the legal process, eg applying for *condonation* for a late application for *leave to appeal*.

**Judicare**

Delivery system for legal aid through instructing private *legal practitioners* to represent individual legal aid clients.

**Judicare Accreditation System**

Legal Aid SA's system for recognising *Judicare legal practitioners* and for the fair distribution of legal aid cases according to set *criteria*.

**Justice Centre**

Legal Aid SA centres or offices for administering and providing legal aid in many parts of South Africa.

**Justiciable**

When rights can be *enforced* in court.

**Leave to appeal**

Legal permission to appeal against a judgement or sentence in a case.

**Legal aid applicant**

Person applying for legal aid.

**Legal aid recipient**

Person receiving legal aid.

**Legal capacity**

By law able to act, eg sue someone.

**Legal personality**

A personality under the law, eg a company, a close corporation, an association, a trust.

**Legal practitioner**

An attorney or advocate.

**Legal precedent**

A case or court judgement that sets the law that other cases must follow.

**Liable**

Legally responsible for something, eg owing money.

**Liabilities**

What you must pay others, eg your debts.

**Litigant**

Person who is one of the *parties* or sides in a court case.

**Litigation**

Taking a case to court.

**Material loss**

Financial loss – a loss that can be measured in money.

**Matter**

Case, dispute or issue that legal aid is considered or given for.

**Matter reference**

Legal Aid SA's reference number for a particular case.

**Means test**

Legal Aid South Africa's test to decide if someone is *indigent* or can afford their own legal representation, and if they qualify for legal aid. (Not everyone who qualifies in terms of the means test will be assisted. Some matters are excluded)

**Merit report**

Detailed report from legal practitioner motivating whether a person's case is likely to succeed, including details such as developments to date, possible settlement and expected costs. The report is used to decide on granting or continuing legal aid.

**Net assets**

*Assets* less a person's *liabilities* – in other words, what is over after paying debts.

**Net monthly income**

Income from all sources after deductions for paying tax, including things such as salary, allowances, pensions and dividends.

**Non-compliance**

Not following or obeying a law, policy, procedure or contract.

**Non-litigious**

Matters or issues that do not go to court, but may be solved in other ways.

**Obligations**

Legal duties.

**On commission**

When evidence is heard outside of South Africa in a case that is continuing in a South African court.

**Onus**

Legal duty or responsibility, eg the prosecutor's onus of proving an accused guilty.

**Oral argument**

Verbal argument in court or another forum.

**Paralegal**

Person who is not a *legal practitioner*, but who has legal knowledge, skills and experience. South Africa's Legal Practice Bill proposes to officially recognise and regulate the training and role of paralegals in our legal system.

**Party**

Person or side involved in a legal case.

**Party and party costs**

Costs between the opposing *parties* or sides in a legal case, eg paying for the time spent by the other side's *legal practitioner* if costs are awarded against you in a case.

**Penal jurisdiction**

The court's power to sentence in cases involving crimes, eg drug-dealing, drunken driving.

**Pending**

Waiting for or until something happens, eg pending a court date or judgement.

**Person receiving the legal aid application**

Person permitted to receive applications, eg *agent legal aid officers*, *paralegals*, *candidate attorneys* and *legal practitioners* in magistrates' offices and *Justice Centres*.

**Petition**

Special kind of legal application to court in a High Court *matter*, eg a petition for *leave to appeal*.

**Physically resident**

Currently living in South Africa.

**Plaintiff**

Person making a claim in a civil case.

**Plea**

Saying whether you are guilty or not guilty in a criminal case, or what your defence is in a civil claim against you.



**Prejudice**

Unfairly or negatively affect.

**Prescribed/Prescription**

Legal time-limit before a case falls away.

**Prima facie**

On the face of it, whether you have a strong enough case or evidence in a case.

**Privilege/Privileged**

Information that is private between a client and *legal practitioner*, or between a client and Legal Aid SA or person receiving the legal aid application.

**Prospects of success**

The chances of success in a case.

**Pupil advocate**

Person with legal degree serving pupillage under a supervising advocate.

**Quantitative jurisdiction**

The court's power to decide claims up to a certain amount of money.

**Quantum**

The amount of a claim for money.

**Regional Court**

A regional Magistrate's Court.

**Remedy**

Legal relief or help, eg receiving *damages* as compensation for injuries, getting a decision against you *reviewed* and changed.

**Rescission**

A special application to court to have a judgement set aside.

**Respondent**

The person answering an application in a civil case, or an appeal in a civil or criminal case.

**Review**

When a higher court considers a decision made by a lower court or another body to see if it is correct and followed set procedures.

**Rule of law**

When government and people are subject to and respect the law.

**Salaried legal practitioner**

Lawyers employed by an Legal Aid SA *Justice Centre* or a *Co-operation Partner*.

**Security**

When you pay into court an amount to cover costs, eg costs of the opposing side in a court case.

**Set off**

Balance or cancel off one amount against another, eg Legal Aid SA sets off fees and *disbursements* due to a *legal practitioner* against *damages* owing to Legal Aid SA by the practitioner.

**Spouse**

The partner of a married person under the law of South Africa, including customary and common law, as well as the civil union partner of a person in a civil union under the Civil Union Act 17 of 2006. Civil union partners are called 'spouses' when electing a 'marriage' or 'partners' when choosing a 'civil partnership'.

**Stakeholders**

People who have an interest in a particular issue or process.

**Standard Operating Procedures**

Guide for people working in *Justice Centres*.

**Statute/Statute law**

Law passed by national or provincial parliament, eg an Act, Regulations under an Act.

**Statutory**

To do with or in laws passed by national or provincial parliaments.



**Statutory body**

Bodies with certain legal powers created by *statute*.

**Statutory offences**

Crimes under statute laws, eg corruption, squatting.

**Subsidised**

Sponsored or supported financially.

**Substantial injustice**

When a person without legal aid would experience significant injustice by being sentenced, or having the possibility of being sentenced, to direct imprisonment of more than 3 months in a criminal case, or where his/her constitutional or personal rights are affected in a civil *matter*.

**Superior court**

A higher court, eg a High Court compared to a Magistrate's Court.

**Systemic issues**

These are cases and issues that are caused by deeply rooted beliefs and practices within our society.

**Third party**

An outside or independent person – in other words, someone besides the people or bodies involved on either side of a dispute.

**Unencumbered**

Not burdened – free from legal restrictions or duties.

**Vexatious/Vexatiousness**

When a case is made without sufficient grounds with the aim of annoying or embarrassing the other side.

**Vulnerable**

People, who may be at risk of being abused, unfairly discriminated against or exploited, eg women, children, people living with HIV, refugees, farm workers.

**Waive/Waiver**

Choosing not to exercise or use provisions or rights, eg waiving the need for documentary proof, waiving the right to a claim.

**Without prejudice**

Reserving your rights – in other words, without giving up any of your legal rights, eg making an offer 'without prejudice' to settle a dispute.

**PART 1:**

# **PREAMBLE**

## Chapter 1:

# Legal Aid South Africa Mandate and Structure

### 1.1 Establishment and aims of Legal Aid South Africa

- (a) Legal Aid South Africa is an independent *statutory body* established by the Legal Aid Act 22 of 1969, as amended.
- (b) The aims of Legal Aid SA are to:
  - Give legal aid or to make legal aid available to *indigent persons* within its financial means.
  - Provide legal representation at State expense, as set out in the Constitution of the Republic of South Africa, 1996 (the Constitution) and relevant legislation giving content to the right to legal representation at State expense.

### 1.2 Powers of Legal Aid South Africa

The Legal Aid Act gives Legal Aid SA powers to achieve its aims. These powers include allowing Legal Aid SA to:

- (a) Obtain the services of legal practitioners and to pay them.
- (b) Fix conditions for giving legal aid, including conditions on:
  - The recovery of costs *ceded* to Legal Aid SA.
  - People receiving legal aid paying contributions to costs.
  - The payment of a proportion of amounts recovered by successful *litigants*.
- (c) Set out benefits to Legal Aid SA arising from legal actions.
- (d) Create new procedures for giving legal aid, including making *Co-operation Agreements* with other bodies.
- (e) Do all things and perform all functions that are necessary to allow Legal Aid SA to achieve its aims.

### 1.3 Place of business and legal service address

The National Office of Legal Aid SA is Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg, South Africa.

The National Office of Legal Aid SA is its principal place of business and its *domicilium citandi et executandi*. This means that this is the address for the service of all legal process relating to legal proceedings involving Legal Aid SA.

### 1.4 Overview of Legal Aid SA organisational structure

Legal Aid SA is governed by a Board of non-executive members, commonly referred to as the Board of Directors. The Board members are drawn from diverse backgrounds and are appointed by the Minister of Justice and Constitutional Development. Their term of office is 3 years, but a Board Member whose term of office has expired may be re-appointed.

The Chief Executive Officer (CEO) leads a team of Executive Managers, based at Legal Aid SA's National Office, including the Chief Operations Officer (COO) and the National Operations Executive (NOE).

⇒ For a visual overview of Legal Aid SA's national structure and National Office, see 1.4.1 on page 26.

Legal Aid SA has 6 Regional Offices headed by 6 Regional Operations Executives (ROEs), who report to the NOE at the National Office. The Regional Offices are:

- Limpopo and Mpumalanga
- Gauteng
- Free State and North West
- KwaZulu-Natal
- Western Cape and Northern Cape
- Eastern Cape

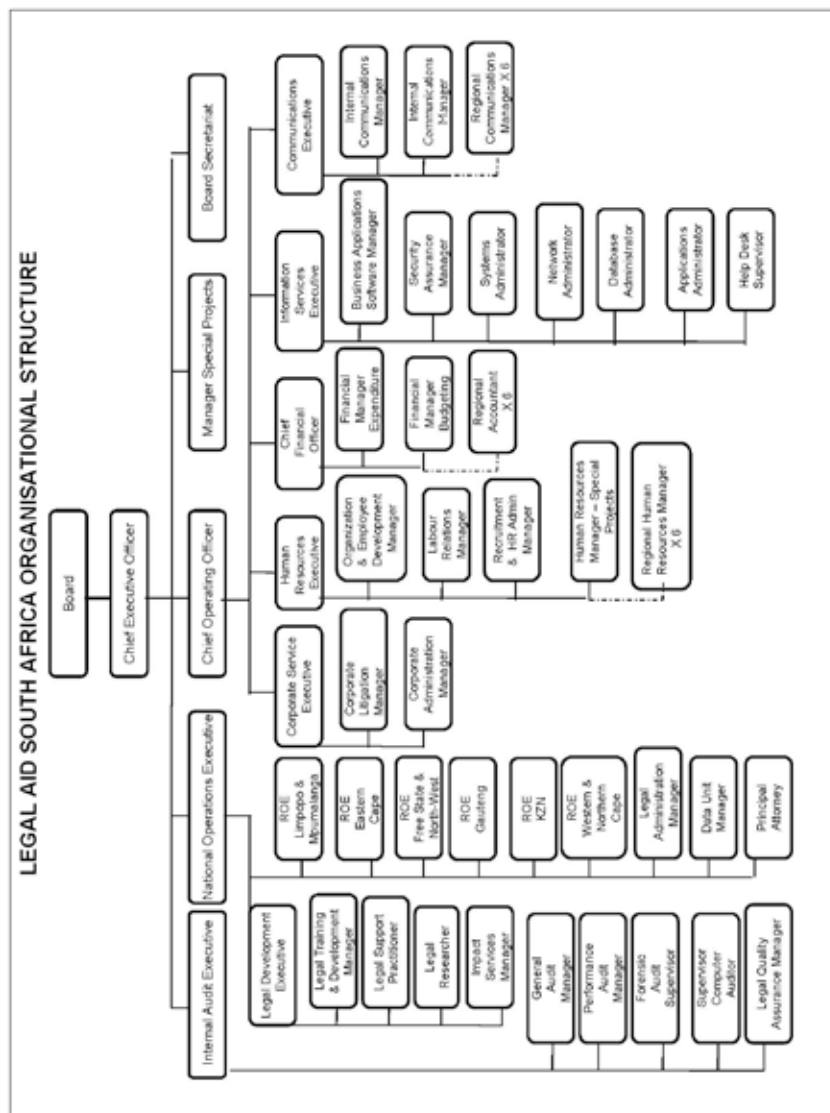
⇒ For a visual overview of Legal Aid SA's Regional Offices organisational chart, see 1.4.2 on page 27.

Legal Aid SA has 64 *Justice Centres* and 66 Satellite Offices spread all over the Republic of South Africa. The Centres are headed by the Justice Centre Executive (JCE), who reports to the ROE. The Justice Centres and their Satellite Offices are responsible for the actual delivery of legal aid services.

During the 2010/2011 financial year Legal Aid SA will establish Civil Units at 13 Justice Centres. While Legal Aid SA has civil law capacity at all Justice Centres, the planned Civil Units will provide more specialist civil law advice and legal representation.

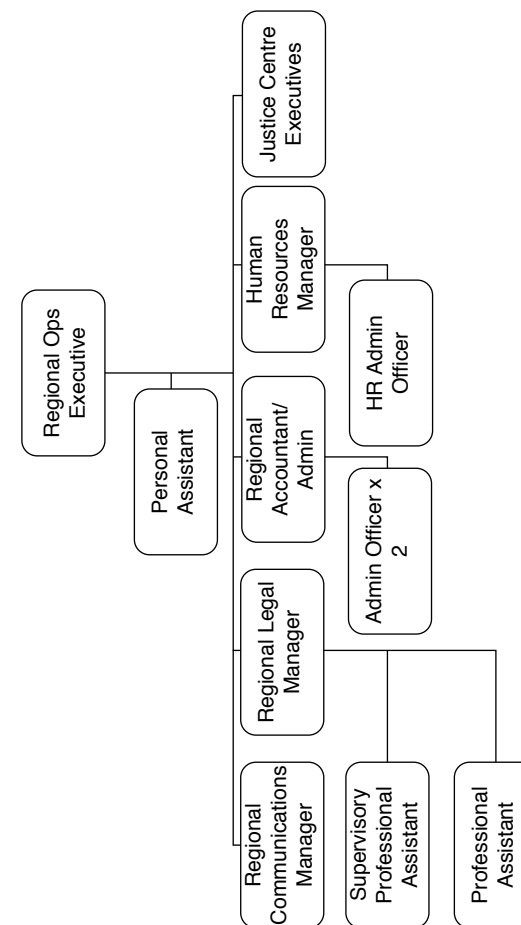
⇒ For a visual overview of Legal Aid SA's Justice Centres organisational chart, see 1.4.3 on pages 28 and 29.

## 1.4.1 ORGANISATIONAL CHART:



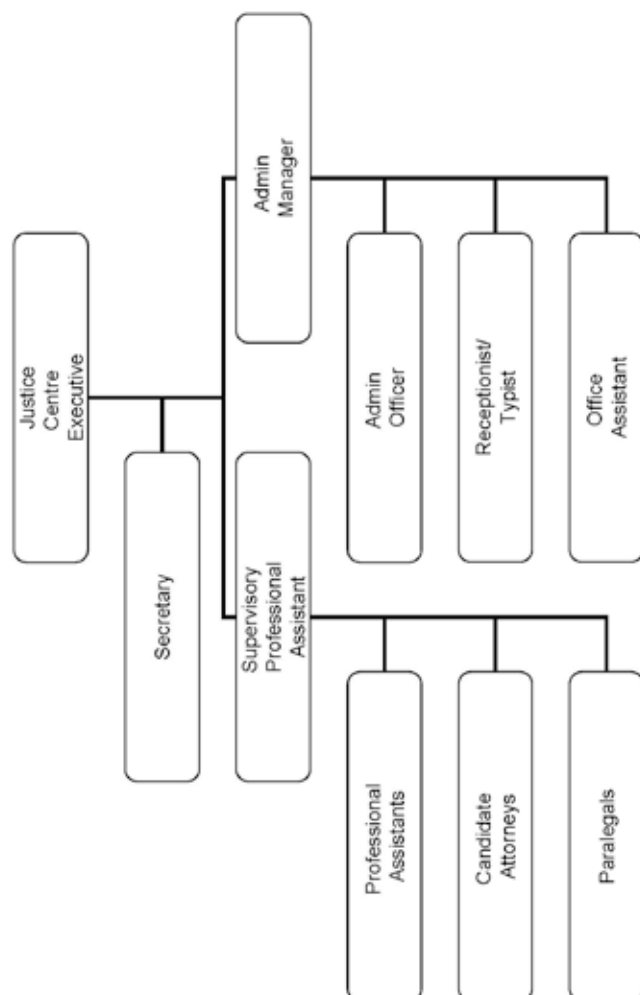
## 1.4.2 ORGANISATIONAL CHART:

## LEGAL AID SOUTH AFRICA REGIONAL OFFICE STRUCTURE



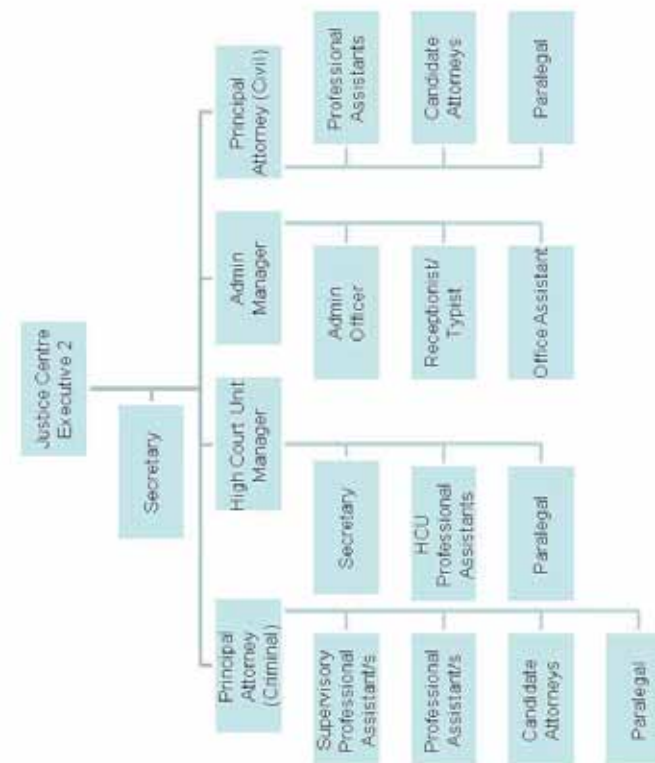
## Justice Centre Level 1 Office Structure

## 1.4.3 ORGANISATIONAL CHART:



## 1.4.4 ORGANISATIONAL CHART:

## Justice Centre Structure with High Court Unit



## Chapter 2:

# Legal Aid South Africa Vision and Outcomes

- ✓ In addition to its statutory aims, Legal Aid SA has identified its own vision, mission and values.

## 2.1. VISION

A South Africa in which the rights enshrined in The Constitution are protected and defended to ensure peace and justice for all.

## 2.2. MISSION

To be a leading provider of quality, professional legal services, ensuring effective access to justice for the poor and vulnerable, in an independent, efficient and caring manner.

## 2.3. VALUES

- I. Passion for justice
- II. Caring
- III. Respect for human dignity (ubuntu) and diversity
- IV. Empowerment
- V. Integrity
- VI. Accountability

## 2.4. OUTCOMES

- Outcome 1:** An effective and efficient justice sector as is realisable within our mandate.
- Outcome 2:** Justice for all focusing on the poor & vulnerable and ensuring that the Constitution is a living document for all the people in SA.
- Outcome 3:** A sustainable, efficient and independent organisation fulfilling its mandate.
- Outcome 4:** Citizens and communities committed to and living by the rights enshrined in our Constitution ie creating a rights consciousness.

## Chapter 3:

### The Legal Aid Guide

#### 3.1 The administration of legal aid

- (a) Section 3A of the Legal Aid Act (the Act) provides for a Legal Aid Guide (the Guide that should include details of policies and procedures for providing and administering legal aid).
- (b) This Guide replaces the Legal Aid Guide of 2009 and subsequent update *Circulars*. It will be annually updated to include all relevant Circulars, and all policy amendments must be approved by Parliament.
- (c) Legal Aid SA's Chief Executive Officer (CEO) will announce when this 12th Edition of the Guide comes into operation. This date must be not more than 3 months after the National Assembly and National Council of Provinces ratify it.

#### 3.2 Justice Centres

All Legal Aid SA *Justice Centres* will be governed by:

- The provisions of this Guide.
- Circulars issued by Legal Aid SA.
- The provisions of the *Standard Operating Procedures* of Legal Aid SA, as amended from time to time.
- The decisions of Legal Aid SA.
- Directives of the CEO of Legal Aid SA.

#### 3.3 Copies of the latest Legal Aid Guide

Legal Aid SA regards the provision of legal aid as an important element in fair litigation. It is therefore the duty of *legal practitioners*, at the earliest opportunity, to advise prospective clients of the availability of legal aid in appropriate circumstances.

- (a) In order to be fully informed, legal practitioners must ensure that they have a copy of the latest Guide and amending Circulars when accepting instructions.



- (b) *Accredited* legal practitioners may obtain one copy of the Guide from Legal Aid SA.
- (c) Practitioners may also access the Guide and Circulars in electronic format on Legal Aid SA website at [www.legal-aid.co.za](http://www.legal-aid.co.za).

## PART 2:

# LEGAL AID POLICY

## Chapter 4:

### Legal Aid Matters

#### 4.1 Legal aid provision

The Constitution sets out when the State must provide legal representation. The State makes legal representation available through Legal Aid SA.

Legal aid is available under the Legal Aid Act read with:

- The provisions of the Constitution, including any limitations under section 36 of the Constitution, and
- Relevant legislation and law that gives content to the constitutional right to legal representation.

Legal Aid SA *applies a means test* and the provisions of the Constitution in making legal aid available.

#### ✓ Key guidelines on how Legal Aid SA makes legal aid available:

- The means test determines if a person is *indigent* according to the Legal Aid Act.
- Section 35(3)(g) of the Constitution says that legal representation must be granted at State expense to accused, detained and sentenced persons if *substantial injustice* would otherwise result. 'Substantial injustice' takes place if:
  - \* A person cannot afford legal representation, and
  - \* Without legal representation would be imprisoned, or has the possibility of being sentenced, to direct imprisonment of more than 3 months,
  - \* If given the option of a fine, the fine is or would remain unpaid for 2 weeks after the date of sentence.
- Legal aid is not available to persons who can *afford* their own legal representation. The *affordability* of legal representation depends on the person's means and the costs of the legal representation.
- An accused in a criminal trial, who cannot afford legal representation, receives legal aid if it is likely that, if convicted, he/she will

be sentenced to an effective term of imprisonment of more than 3 months.

- In criminal appeals, an accused gets legal representation when:
  - \* Sentenced to an effective term of imprisonment of more than 3 months and if given the option of a fine, the fine is unpaid 2 weeks after the date of sentence, and
  - \* He/she is unable to afford legal representation.

⇒ See the limitations mentioned in 4.4.2(c) and 4.4.3 on page 47.

- A *litigant* who is indigent in a civil *matter* will only be granted legal aid if the matter has *prospects of success* on a *balance of probabilities*. This depends on the availability of resources where substantial injustice would otherwise result.

⇒ For more information, see in 4.9 on page 51.

#### 4.1.1 PERSONS ENTITLED TO LEGAL AID UNDER THE CONSTITUTION

- ✓ These are people with a right to legal aid under the Constitution and relevant legislation where no legal representation would lead to substantial injustice:

- Children in civil cases – section 28(1)(h) of the Constitution, read with section 55 of the Children's Act 38 of 2005, but not limited to cases mentioned in the Children's Act.
- Arrested, detained or sentenced persons – section 35(2)(c) of the Constitution, as provided for in section 73 of the Criminal Procedure Act 51 of 1977.
- Accused persons – section 35(3)(g), including the right of appeal to, and review by, a higher court (section 35(3)(o)), as provided for in sections 73, 309, 309B, 309C, 309D and 316 of the Criminal Procedure Act.
- Within its available resources, Legal Aid SA may progressively also grant legal aid to persons to implement section 7 of the Constitution that deals with respecting, protecting, promoting and fulfilling the rights in the Bill of Rights. Section 7 of the Constitution should be read with:
  - \* Relevant legislation giving content to section 7, and
  - \* The provisions of this Guide dealing with indigence, substantial injustice and the merits of a legal aid matter.

## 4.2 Residence of applicant and seat of court

Legal Aid SA grants legal aid in criminal cases to:

- Any indigent person;
- Any other person who qualifies for legal aid under this Guide; and who is *physically resident* in the Republic of South Africa.

Legal Aid SA grants legal aid in civil matters to:

- All children resident in SA.
- Any indigent person who qualifies for legal aid under this Guide and who is both physically resident in the Republic of South Africa and a citizen or permanent resident of the Republic of South Africa.

✓ No legal aid will be provided for litigation in any foreign court.

#### 4.2.1 EXCEPTIONS TO RESIDENCE, CITIZENSHIP OR PERMANENT RESIDENCE REQUIREMENTS

- ✓ These are the *exceptions* to the general rules:

- The National Operations Executive (NOE) may grant legal aid in exceptional circumstances if the issues in a case are *justiciable* in a court of the Republic of South Africa, but the legal aid applicant is not physically resident in South Africa.
- The requirement of 'physical residence' does not apply to cases involving *Asylum seekers* and the Hague Convention.

⇒ For more detail on Asylum seekers and the Hague Convention, see 4.15 on page 62 and 4.16 on page 63.

#### 4.2.2 FACTUAL ENQUIRY INTO RESIDENCE

The enquiry on whether or not a person is physically resident in the Republic of South Africa is a factual enquiry to be conducted at the date of application. It is not dependent on the legal question of whether or not the legal aid applicant is legally *entitled to* be physically resident in South Africa.

#### 4.2.3 EVIDENCE ON COMMISSION OUTSIDE SOUTH AFRICA

When legal aid has been granted for a case in a South African court, and evidence is to be heard *on commission* outside South Africa, the

NOE may authorise one or more legal practitioners to attend on a legal aid basis if:

- Funds are available, and
- Good reasons exist.

### 4.3 Criminal trials under section 35(3)(g) of the Constitution and section 73 of the Criminal Procedure Act

Section 35(3) of the Constitution says:

“Every accused person shall have the right to a fair trial, which shall include the right – (g) to have a legal practitioner assigned to the accused person by the State and at State expense, where substantial injustice would otherwise result, and to be informed of the right promptly.”

In giving content to section 35(3), section 73 of the Criminal Procedure Act says:

“(2) An accused shall be entitled to be represented by his legal adviser at criminal proceedings if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.

(2A) Every accused shall—

- at the time of his/her arrest;
- when he or she is served with a summons in terms of section 54;
- when a written notice is handed to him or her in terms of section 56;
- when an indictment is served on him or her in terms of section 144(4)(a);
- at his or her first appearance in court, be informed of his or her right to be represented at his or her own expense by a legal adviser of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance.”

The number of cases with automatic reviews indicate that there continue to be accused facing substantial injustice who are not legally represented. In addition, no accused who could receive a minimum

sentence should be unrepresented due to the unaffordability of legal representation.

The JCE of each *Justice Centre* must, in consultation with the courts, put measures into place to ensure that no accused is unrepresented in these circumstances.

#### 4.3.1 HIGH COURT AND REGIONAL COURT CASES

- ✓ If the Director of Public Prosecutions or the Public Prosecutor decides to charge an accused in the High Court or the Magistrates' Court for a regional division (a *Regional Court*), an accused will qualify for legal aid without further enquiry into the nature and seriousness of the charge if the accused is unable to afford the cost of his/her own legal representation.

#### 4.3.2 DISTRICT COURT CASES

Where a legal aid applicant is charged in a district Magistrate's Court (a *District Court*), the JCE should consider guidelines (a)–(d) on pages 39 to 42 in deciding whether the accused qualifies for legal aid, provided the accused is unable to afford the cost of his/her own legal representation.

##### (a) Increased jurisdiction

- ✓ Legal aid may be granted in matters where District Courts have increased *penal jurisdiction* in cases dealing with:
  - Stock theft
  - Dealing in drugs
  - Unlawful possession of or unlicensed dealing in firearms or ammunition
  - Dealing in liquor without a licence
  - Drunken driving
  - Driving under the influence of alcohol or drugs
  - Overloading of a vehicle under the Road Traffic Act
  - Reckless and/or negligent driving
  - Any attempt to commit any of the above offences.

**(b) Specific common law offences**

✓ Legal aid may be granted when the accused is charged with one of these listed *common law offences*:

- Abduction
- Administering poison or other noxious substances
- Arson
- Assault (including common assault)
- Bigamy
- Bribery
- Compounding
- Culpable homicide
- Defeating and/or obstructing the ends of justice
- Extortion
- Forgery and/or uttering
- Fraud
- Housebreaking
- Incest
- Indecent assault
- Kidnapping
- Malicious injury to property
- Murder
- Public violence
- Rape
- Receiving stolen property
- Robbery
- Sedition
- Theft (including shoplifting)
- Treason
- Trespass
- Unnatural sexual offences (including bestiality)
- Any attempt to commit any of these listed common law offences.

Legal aid is not necessarily available for criminal defamation, public indecency and contempt of court. JCEs have a general discretion to grant legal aid in these cases where resources permit and where the JCE is convinced that the accused will experience substantial injustice if not legally represented.

**(c) Specific statutory offences**

✓ Legal aid may be granted when the accused is charged with one of the listed *statutory offences* related to:

- Administration of justice
- Animal and nature conservation
- Children
- Corruption
- Counterfeiting currency
- Dealing in unwrought precious metals or uncut gemstones
- Escaping from custody and/or obstructing the police
- Persons with mental disabilities
- Squatting
- Vehicle theft
- Witchcraft
- Any attempt to commit any of these listed statutory offences.

**(d) Other criminal cases**

✓ Apart from the kinds of cases mentioned in 4.3.2(a) – (c), JCEs should assume that legal aid applicants charged before a District Court would not experience substantial injustice if unrepresented.

But a JCE, in assessing an applicant for legal aid charged with an offence in the District Court that is excluded from the legal aid scheme, should determine whether the applicant will suffer substantial injustice considering all these factors:

- The simplicity or complexity of the case in law and in fact, including the imposing of an appropriate sentence, and
- The accused's general ability to represent himself/herself, and

- The gravity of the case, which depends on the nature of the charge against the accused and the possible consequences to him/her of a conviction.

#### 4.3.3 MISCELLANEOUS ISSUES

##### (a) Need for the JCE to be satisfied on balance of probabilities

In criminal cases, the JCE, after proper investigation, must be satisfied that there are prospects of success on a balance of probabilities in these kinds of cases:

- Bail appeals
- Reviews
- Interlocutory *applications* to a court that is not the trial court
- Condonation applications
- Applications to lead further evidence.

##### (b) Applicant already receiving legal representation

- ✓ In a criminal case, a legal aid applicant is not entitled to legal aid if he/she is entitled to legal representation at the expense of the State Attorney or a government department.

##### (c) Legal representation in respect of compulsory HIV testing

- ✓ In terms of section 30(1)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, a victim of a sexual offence or an interested person acting on behalf of such victim may apply to a magistrate for an order that the alleged sexual offender be tested for HIV and that the results of such test be disclosed to him/her. This application is a separate legal proceeding quite distinct from the trial in the matter.

Section 31(2)(a) of the Amendment Act says that for the purposes of such proceedings the magistrate hearing the application may consider evidence by or on behalf of the alleged offender, if to do so will not give rise to any substantial delay. Where the investigating officer brings the application, there is no provision in the Act for the evidence of the alleged offender to be heard but the interests of justice and of a fair hearing would probably require this.

Alleged offenders against whom such applications are brought shall be entitled to legal aid for legal representation at such hearing.

Where the alleged offender is already on legal aid for the trial, then the legal aid instruction extends to appearing at such an application. Where the alleged offender has not been charged or is not on legal aid for the trial, then the alleged offender will have to apply for legal aid for the appointment of a legal representative to appear on his/her behalf at the hearing of the application.

In cases done on a *judicare* basis the practitioner may charge for his/her appearance at such application on the same basis as if such application were a bail application or interlocutory application in a criminal trial, on the tariff applicable from time to time in Annexure E.

⇒ See Annexure E on Page 260.

#### 4.4 Criminal appeals under section 35(3)(o) of the Constitution and sections 309, 309B, 309C, 309D and 316 of the Criminal Procedure Act

Section 35 (3) of the Constitution says:

“Every accused person shall have the right to a fair trial, which shall include the right –

(o) of appeal to, or review by a higher court.”

Various sections of the Criminal Procedure Act give content to section 35(3) of the Constitution. Sections 309, 309B, 309C and 309D deal with the right to an appeal from the Magistrate’s Court, while section 316 provides for the right to an appeal from the High Court.

The right to an appeal is an integral part of the right to a fair trial. When substantial injustice would otherwise result, the accused is entitled to legal representation at State expense to appeal. Procedures in the Criminal Procedure Act guide the exercise of this right within the overall aims of the Constitution. The Constitutional Court has ruled:

“This Court has never held that a leave-to-appeal procedure is inevitably in breach of the requirements of the Constitution. There are practical reasons why a leave-to-appeal procedure is desirable.”

⇒ See clause 51 of *Shinga v The State and Another*, CCT 56/06.

#### 4.4.1 APPEALS TO THE HIGH COURT OR THE SUPREME COURT OF APPEAL

✓ The Criminal Procedure Amendment Act 42 of 2003, as amended by Criminal Law Amendment Act 38 of 2007, has these effects:

- Accused persons convicted and sentenced by a magistrate on or after 1 January 2004 need to get leave to appeal before an appeal can be proceeded with.
- All children under 14 and unrepresented children under 16 sentenced to imprisonment (not wholly suspended) by the High Court do not need to get leave to appeal as they have an automatic right of appeal.
- All children under 16 and unrepresented children between 16 and 18 convicted in a Regional Court do not need to get leave to appeal against the judgment or sentence by a magistrate as they have an automatic right of appeal.
- Accused persons convicted and sentenced before the High Court need to get leave to appeal before launching an appeal.
- Accused persons who wish to appeal to the Supreme Court of Appeal against dismissal of an appeal to the High Court need to get leave to appeal before launching an appeal.
- Section 7 of the Criminal Procedure Amendment Act does not apply to appeals *pending* before the High Court or Supreme Court of Appeal on 1 January 2004.
- Accused persons convicted and sentenced by a magistrate before 1 January 2004, but who have not appealed before 1 January 2004, will have to apply for condonation and leave to appeal under section 7 of the Criminal Procedure Amendment Act.
- From 31 December 2007, an accused person sentenced to life imprisonment by a Regional Court has an automatic right of appeal to the High Court.
- In *M K Shinga v The State* (CCT506/06), the Constitutional Court declared that various provisions of sections 309 and 309C of the Criminal Procedure Act were unconstitutional. This decision does not affect the requirement for accused convicted and sentenced in the Magistrates' Courts to obtain leave to appeal from the trial court or the Judge President of the High Court where the trial

court refused leave to appeal. But the ruling of the Constitutional Court means:

- \* 2 judges must consider a *petition* for leave to appeal.
- \* The full record of the proceedings must be submitted with the petition.
- \* The appeal must be heard in open court, not in a judge's chambers.

#### 4.4.2 SUBSTANTIAL INJUSTICE IN CRIMINAL APPEALS

✓ There will be substantial injustice in an intended criminal appeal if legal representation is not made available to the accused at State expense in a case where:

- (a) The accused is unable to afford the costs of his/her own legal representation for the application/petition for leave to appeal, or for the appeal; and
- (b) The accused has been sentenced to imprisonment with an unsuspended portion of more than 3 months, and if given the option of a fine, the fine is unpaid 2 weeks after the date of sentence; and
- (c) An application for leave to appeal has been made in time or a period of less than one year has expired since the date of sentence; and
- (d) The accused has not been given the right to an appeal or review by a higher court, as required by the Constitution.

⇒ See paragraph 52 of *Shinga v The State and Another*, 2007 (4) SA 611 (C).

#### 4.4.3 LIMITATION OF RIGHT TO LEGAL AID

✓ The limited resources available to Legal Aid SA make it necessary to limit the right to legal aid in appeals to:

- (a) An application for leave to appeal to the trial court that sentenced the client.
- (b) An application/petition for leave to appeal to a higher court if leave to appeal is refused by the trial court.
- (c) An appeal, if leave to appeal is granted under 4.4.3(a) or 4.4.3(b), or the accused has an automatic right of appeal.

Any further assistance with an appeal should only be granted if there are prospects of success in proceeding further with the appeal.



#### 4.4.4 TIMEOUS PROSECUTION OF APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS

It is the responsibility of the legal practitioner instructed on a legal aid basis to conduct a criminal trial to:

- (a) Obtain the client's instruction on whether he/she wishes to appeal against his/her conviction and sentence, if the client is sentenced to a sentence based on 4.4.2 (b) above. Clients should be actively encouraged to choose to apply for leave to appeal at this early stage.
- (b) Obtain the client's confirmation in writing on whether he/she chooses to appeal or not. Then Annexure H must be completed and submitted to the relevant Justice Centre within 7 days of signing the annexure.

⇒ See Annexure H on page 296.

- (c) Apply for leave to appeal from the trial court, preferably in writing, immediately after sentence and within the time limits, once instructed to appeal by the client.
- (d) Serve and file the petition for leave to appeal, or application for leave to appeal to the higher court, and the power of attorney, if leave to appeal is refused by the trial court.
- (e) Advise the Justice Centre Executive of the outcome of the application for leave to appeal, together with any final outcome report and account.
- (f) Forward the notice of appeal and/or Rule 49(1) Notice and power of attorney timeously, if leave to appeal is granted, to the Justice Centre from which the original instruction came.

The legal aid mandate of a practitioner is not completed until all of 4.4.4(a) to (f) have been attended to. The Board will not consider any account for payment, except where interim accounts are allowed, until:

- (a) The Board receives the client's instructions in Annexure H (4.4.4(b) above) indicating that he/she chooses not to appeal, or;
- (b) The application for leave to appeal is granted by the trial court, or;
- (c) Where the trial court refused leave to appeal, the application/petition for leave to appeal to the relevant court is served and filed.

#### 4.4.5 OUT OF TIME APPLICATION FOR LEAVE TO APPEAL OR APPEAL

If an accused person wants legal aid for an application/petition for leave to appeal or an appeal that is out of time, legal aid should be granted for both the condonation application and the application for leave to appeal, or the appeal itself. But the limitations in 4.4.2(c) and 4.4.3 above still apply.

Where the accused was not on legal aid at the time of sentence, and a period of more than one year (as set out in 4.4.2(c)) has expired, the JCE or High Court Unit Manager (HCUM) may provide legal assistance where there is a risk of substantial injustice to the accused.

#### 4.4.6 LEGAL AID INSTRUCTION ON APPEAL

It is not necessary for an accused who was on legal aid for the trial to re-apply for legal aid for an appeal, once leave to appeal has been granted.

If an accused has been granted leave to appeal, the JCE will liaise with the HCUM at the court where the appeal is to be heard to instruct a legal practitioner practising at that court to prosecute and argue the appeal.

#### 4.4.7 ACCUSED NOT PREVIOUSLY ON LEGAL AID

Where legal aid is needed for an application/petition for leave to appeal or an appeal, where the accused was not on legal aid during the trial, the accused will have to apply for legal aid.

#### 4.4.8 MEANS TEST PROCEDURE

Chapter 5 of this Guide sets out the procedure for deciding whether or not the accused is unable to afford the cost of his/her own legal representation for an appeal.

⇒ See Chapter 5 on page 75.

#### 4.4.9 NOT QUALIFYING UNDER THE MEANS TEST

✓ If the legal aid applicant does not qualify for legal aid under the *means test* calculation in Annexure G2, then Chapter 5 sets out further steps to follow.

⇒ See Annexure G2 on page 292.



#### 4.4.10 APPLICATIONS FOR LEGAL AID FINALISED IN TERMS OF PREVIOUS POLICIES

All decisions on applications for legal aid for applications/petitions for leave to appeal and appeals dealt with *under policies applicable* at the time of the decision are still valid.

#### 4.5 Legal aid in other criminal cases

Accused, who do not qualify for legal representation at State expense under the Constitution, will not receive legal aid unless this is granted by a court order under section 3B of the Legal Aid Act.

#### 4.6 Co-accused

Whenever possible, the JCE should appoint one legal practitioner to represent all the accused in any one criminal trial or appeal. But this should not generally be more than 5 accused for each practitioner.

- ✓ The JCE must appoint more than one legal practitioner when the JCE decides that there may be a *conflict of interest* between the co-accused.

#### 4.7 Bail applications

There may not be more than one bail application for an accused in a case on a legal aid basis without the prior written *consent* of the JCE. The JCE must be satisfied that there are changed circumstances that justify a further bail application.

Legal practitioners must check that their clients continue to qualify for legal aid. If a legal aid client is released on bail, a legal practitioner should satisfy himself/herself that the client continues to qualify for legal aid.

#### 4.8 Bail appeals

Legal aid may not be granted in bail appeals without the JCE's consent. The JCE must be satisfied that on a balance of probabilities there is a chance that the bail appeal will succeed.

If an applicant wants legal aid for a bail appeal that is out of time, the JCE or HCUM must consider the prospects of success, on a balance of probabilities, of any necessary condonation application.

#### 4.9 Civil cases

When Legal Aid SA has sufficient resources, legal aid is available for the categories of cases described in 4.1.1 of this Guide where substantial injustice would otherwise result.

⇒ See 4.1.1 on page 38.

- ✓ These *criteria* decide if a person has a right to legal aid in civil cases at State expense:

- (a) The seriousness of the issue for the person, for example, if the person's constitutional rights or personal rights are at risk.
- (b) The complexity of the relevant law and procedure.
- (c) The ability of the person to represent himself or herself effectively without a lawyer.
- (d) The financial situation of the person.
- (e) The person's chances of success in the case.
- (f) Whether the applicant has a substantial disadvantage compared with the other party in the case.

Where these criteria are met, the applicant should get legal aid as long as Legal Aid SA has the necessary resources and the other requirements of this Guide are met.

##### 4.9.1 EXCLUSION OF LEGAL AID IN CERTAIN CIVIL CASES

- ✓ Legal aid may not be granted for cases listed in (a) – (q) below, but a decision not to grant legal aid in these kinds of cases must be consistent with Legal Aid SA's obligations under section 7 of the Constitution, read with relevant legislation giving content to these constitutional rights:

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

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

**(b) Administration of estates and insolvency cases**

Legal aid is not available for:

- The administration, voluntary surrender or sequestration of an estate, or
- The liquidation of a legal person, or
- Assisting with an application for the rehabilitation of an unrehabilitated insolvent.

But legal aid may be granted for the administration of an estate to protect the best interests of children under section 28(1)(h) of the Constitution if the child qualifies for legal aid under 4.18 of this Guide.

**(c) Certain personal damages cases**

Legal aid is not available for an action claiming *damages* on the grounds of defamation, breach of an engagement contract, infringement of dignity, infringement of privacy, seduction, adultery or inducing someone to desert or stay away from his/her spouse. But legal aid may be granted to defend these kinds of actions.

The limitations on legal aid do not *apply to*:

- Litigation in the *Equality Courts*, or
- Legal aid under Legal Aid SA's *Impact Services Policy*.

⇒ See the *Impact Services Policy* in 7.3 on page 106.

**(d) Small Claims Court cases**

Legal aid is not available for any action that an applicant could bring in a Small Claims Court.

In addition, legal aid is not available for the prosecution of a claim that does not exceed the *quantitative jurisdiction* of the Small Claims Court by more than 50%. The reason is that the likely costs of the case rarely justify legal action, and it can easily be brought within the jurisdiction of the Small Claims Court by abandoning (giving up) part of the claim.

**(e) Insufficient prospects of success, enforcement and costs recovery on balance of probabilities**

Legal aid is not available for any civil matter where the JCE has not been satisfied on a balance of probabilities that there are prospects of success, *enforcement* and, where applicable, recovery of costs.

This limitation will not apply to *Impact Services matters* or matters under section 38 of the Constitution.

**(f) No substantial and identifiable material benefit**

Legal aid is not available for cases where, in the opinion of the JCE, there is no substantial and identifiable material benefit to the client. While starting and defending actions in burial disputes is excluded, legal aid is available when burial disputes may be resolved through alternative dispute resolution.

This limitation will not apply to litigation in an Equality Court and Impact Services matters.

**(g) Civil appeals**

Legal aid is not available in civil appeals without the NOE's consent.

The NOE must be satisfied that:

- On a balance of probabilities, there is a chance that the appeal will succeed, and
- The costs of the appeal will justify the benefit to the legal aid applicant.

⇒ #See also paragraph 12.6.2 page 189.

**(h) Legal Aid SA exclusions**

Legal aid is not available in cases excluded by the Board from time to time.

**(i) Costs outweigh benefits**

Legal aid is not available for any case in which, in the opinion of the JCE, the benefit or the potential benefit to the client does not justify the anticipated costs of the case.

This exclusion does not apply to Equality Court cases or to Impact Services matters.

**(j) Prescription of claim**

Legal aid is not available for a claim that has *prescribed* or is unlikely to be acted on within the time left before *prescription* and where condonation is unlikely to be obtained.

**(k) Conveyancing and notarial matters**

Legal aid is not available for any notarial or conveyancing matters. In these cases, clients should be referred to the relevant Law Society for pro bono (free) assistance.

**(l) Matters not involving litigation**

Legal aid is not available for any *non-litigious* matter, including any *arbitration* or mediation.

This limitation applies to *Judicare* cases, but not to:

- Justice Centres or *Co-operation Partners*.
- Labour tenant, Extension of Security of Tenure Act (ESTA) or Prevention of Illegal Occupation and Eviction from Land Act (PIE) matters.
- Proceedings to enforce Commission for Conciliation, Mediation and Arbitration (CCMA) awards.
- Litigation in the Labour Courts and Labour Appeal Courts.

⇒ For more about non-litigious legal services through Justice Centres, see 4.12 on page 58.

⇒ For more detail on labour tenant, ESTA and PIE cases, see 4.14 on page 60.

⇒ For more information on other labour cases, see 4.10 on page 56.

**(m) Applicant entitled to other State funded legal representation**

Legal aid is not available for a civil matter where the legal aid applicant is entitled to legal representation at the expense of the State Attorney or a government department.

**(n) Road Accident Fund and personal injury claims**

Legal aid is not available for bringing claims against the Road Accident Fund or any kind of personal injury claims except in the case of minors. Legal aid can be made available when a minor child is the *claimant*, assisted by their guardian. These kinds of cases should be done on a *contingency fee* basis by private practitioners.

**(o) Unrealistic expectations**

Legal aid is not available in all civil cases where a client has unrealistic expectations of what can be achieved or awarded through winning the case.

**(p) Administrative tribunals**

Legal Aid is not available for hearings before administrative tribunals eg:

- Parole hearings
- Liquor licensing applications
- Rezoning applications

In appropriate cases, legal aid may be granted to review decisions of administrative tribunals.

**(q) Restrictions on number of civil matters**

Legal aid applicants are restricted to one civil matter on legal aid at a time unless additional matters are approved by the ROE.

**4.9.2 MAINTENANCE AND DOMESTIC VIOLENCE CASES**

✓ In maintenance and domestic violence cases, Legal Aid SA may provide indigent legal aid applicants with:

**(a) An initial consultation**

An initial consultation to advise a possible litigant on his/her rights, the procedure to be followed and the chances of success.

**(b) Legal representation under conditions**

Legal representation in any court hearing, but only if:

- The legal aid recipient's claims or defences have a chance of success on balance of probabilities, and
- The opposing *party* is represented by an admitted legal practitioner or is an admitted legal practitioner.

**4.9.3 APPOINTMENT OF A CURATOR AD LITEM OR A CURATOR BONIS****(a) Decision by ROE**

When legal aid is required for the appointment of a *curator ad litem* or a *curator bonis*, the case must first be referred to the ROE for a decision.

✓ If the proposed curator is not an Legal Aid SA employee, steps (b) and (c) below must be followed.

**(b) Completion and signing of forms**

When a *curator ad litem* or a *curator bonis* is appointed, the attorney must complete Annexure N and the proposed curator must sign the completed form and return it to Legal Aid SA.

⇒ See Annexure N on page 314.

**(c) Appointment without meeting requirements**

If an attorney appoints a *curator ad litem* or a *curator bonis* without meeting these requirements, Legal Aid SA reserves the right not to pay the curator.

**4.10 Labour cases****4.10.1 LEGAL AID ASSISTANCE**

## ✓ Legal Aid SA may grant legal aid for:

- Legal representation in Labour and Labour Appeal Courts.
- Assistance to farm workers in finalising their rights under the Labour Relations Act 66 of 1995, as required under section 8(3) of the Extension of Security of Tenure Act 62 of 1997 (ESTA).
- Assistance to Legal Aid SA clients to enforce Commission for Conciliation, Mediation and Arbitration (CCMA) awards except where there is no prospect of recovery

⇒ See 4.9.1(e) on page 52.

Section 149(1)(b) of the Labour Relations Act allows the CCMA, in co-ordination with Legal Aid SA, to further provide for legal assistance and advice in non-litigious forms of dispute resolution. When arrangements are made to implement this provision, *stakeholders* will be advised by an Legal Aid SA *Circular*.

**4.10.2 NO LEGAL AID ASSISTANCE**

## ✓ Legal Aid SA does not provide legal representation for conciliation and arbitration proceedings at the CCMA or Bargaining Councils.

⇒ For more information on non-litigious matters, see 4.9.1(l) on page 52 and non-litigious services, see 4.12 on page 58.

**4.11 Divorce and family law cases****4.11.1 USE OF THE REGIONAL CIVIL COURT**

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

**4.11.2 DIVORCES IN THE HIGH COURT**

## ✓ The JCE must consider these factors when exercising discretion to grant legal aid for instituting a divorce action in the High Court:

- Cost effectiveness
- Logistical factors like the distance to the court
- The interests of the client.

**4.11.3 LIMITS ON DIVORCE ASSISTANCE**

## ✓ Legal aid will not be granted:

- For a divorce appeal case.
- In a divorce if the JCE is satisfied that there are, on a balance of probabilities, no prospects of success for the legal aid client to get what he/she is asking for.
- Where it is established that the client married a foreigner for payment so that the foreigner can get South African citizenship.

**4.11.4 CUSTODY OR ACCESS TO CHILDREN**

## ✓ Legal aid may only be granted to vary or enforce a divorce order when:

- The issue in dispute deals with the custody of children or access to children, and
- The application is supported by a report of a social worker or the Family Advocate.

The Family Advocate does not prepare a report unless proceedings have been instituted. Proceedings may initially be started to get the

Family Advocate's Report, but they should be held over:

- While waiting for the report of the Family Advocate, and
- Until the JCE has considered the legal practitioner's *merit report* after receipt of the Family Advocate's report.

The JCE may still grant legal aid if convinced that the Family Advocate's report may be incorrect. The JCE may obtain further reports from relevant experts to decide the prospects of success, on a balance of probabilities, of continuing litigation in spite of an unfavourable Family Advocate's report.

The JCE may authorise the continuation of legal aid, if after receipt of further reports, the JCE is satisfied, on a balance of probabilities, that there are prospects of success.

#### 4.11.5 CONTRIBUTIONS TO COSTS

##### (a) Applying for a contribution to costs

If a JCE has reliable information that the other party in a divorce action has the financial ability to make a contribution towards costs or to pay the costs, the JCE must direct that an application for a contribution towards costs be made at the first available opportunity after issuing the divorce summons. It is not necessary to bring this application if the costs of the application will be more than the amount of the contribution.

##### (b) Extending the original legal aid instruction

If the outcome of the application in (a) has not been sufficiently successful, the JCE may extend the original instruction to continue divorce proceedings.

#### 4.12 Non-litigious legal services

##### 4.12.1 NON-LITIGIOUS ASSISTANCE THROUGH JUSTICE CENTRES

##### (a) When non-litigious legal aid is allowed

- ✓ Legal aid may only be given for non-litigious legal services, including arbitration and mediation, if the main service provider is:
  - A *salaried legal practitioner* employed by a Justice Centre or Co-operation Partner.

- A person working under the control and supervision of a salaried legal practitioner employed by a Justice Centre or Co-operation Partner.

##### (b) Legal aid for specialist or expert advice

However, in appropriate circumstances, the JCE can get advice or an opinion from a specialist or expert if necessary to properly advise a client.

#### 4.13 Land restitution cases

The Restitution of Land Rights Act 22 of 1994 provides for the restitution of registered or unregistered rights in land by people or communities who were dispossessed on or after 19 June 1913 under racially-based discriminatory laws.

##### 4.13.1 CASES BEFORE 1 APRIL 1998

Legal Aid SA acted as the agent of the Commission for the Restitution of Land Rights (CRLR) in providing legal representation under section 29(2) of the Restitution of Land Rights Act.

Where legal aid was granted before 1 April 1998, Legal Aid SA should be reimbursed by the CRLR for any fees and *disbursements* incurred, irrespective of the date on which these were actually incurred.

##### 4.13.2 CASES AFTER 1 APRIL 1998

Limited legal aid continues to be possible for cases under the Restitution of Land Rights Act.

##### 4.13.3 TYPES OF CASES

##### ✓ Guidelines for land rights legal aid:

- In general, legal aid is excluded for claims under the Restitution of Land Rights Act. But legal aid is possible for proceedings before the Land Claims Court and matters reasonably linked to these proceedings when:
  - \* The Land Claims Commissioner makes funds available to Legal Aid SA to fund these matters, or
  - \* The Land Claims Commission is the opposing party to the litigation or possible litigation.



- Legal aid is not available for the claim lodgement and investigation.

#### 4.14 Labour tenant, ESTA and PIE cases

Legal Aid may be available for persons affected by the Land Reform (Labour Tenants) Act 3 of 1996, the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Prevention of Illegal Occupation and Eviction from Land Act 19 of 1998 (PIE). Legal aid for these kinds of cases depends on specific funding being made available to Legal Aid SA by government.

Section 1 of the Land Reform (Labour Tenants) Act defines a labour tenant:

“Labour tenant means a person —

- (a) Who is residing or has the right to reside on a farm;
- (b) Who has or has had the right to use cropping or grazing land on the farm referred to in paragraph (a) or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) Whose parent or grandparent resided or resides on the farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm, including a person who has been appointed a successor to a labour tenant in accordance with the provisions of Section 3(4) and (5) but excluding a farm worker.”

JCEs should treat cases involving labour tenants and farm labourers as a civil matter. Therefore, if the legal aid applicant qualifies for legal aid, a legal aid instruction must be issued for a merit report before proceeding with the case. In 4.14.1 to 4.14.8, we examine guidelines for handling labour tenant, ESTA and PIE matters.

##### 4.14.1 LEGAL AID WHEN FACED WITH EVICTION

- ✓ While legal aid is not normally granted to a defendant or respondent before the *institution of action*, legal aid may be granted to labour tenants, or ESTA or PIE occupiers, if they satisfy the JCE that they or family members are threatened with eviction. This may, as a result, require legal representation to finalise their rights under the Labour Relations Act 66 of 1995, as set out in section 8(3) of ESTA.

##### 4.14.2 DISCRETION TO APPOINT OUTSIDE ATTORNEY

- ✓ With labour tenants and farm labourers, the JCE has a discretion to appoint an accredited attorney who practices outside the magisterial district, but in the province within which the dispute arises.

##### 4.14.3 LABOUR TENANT OR FARM LABOURER?

Where it is unclear whether the legal aid applicant is a labour tenant or a farm labourer, legal aid may be granted in the alternative.

- ★ For example: in terms of the provisions of the Land Reform (Labour Tenants) Act, 1996 alternatively the provisions of the Extension of Security of Tenure Act, 1997.
- ✓ When legal aid is granted under this Chapter of the Guide, the legal aid instruction must clearly refer to either the Land Reform (Labour Tenants) Act of 1996 or the Extension of Security of Tenure Act of 1997.

##### 4.14.4 EXTENDING A LEGAL PRACTITIONER'S MANDATE

The JCE has the discretion, after receiving well-motivated written representations, to extend the mandate of any legal practitioner to act in any labour tenant, ESTA or PIE matter to include legal proceedings in the High Court or the Land Claims Court.

##### 4.14.5 APPLYING FOR RESCISSION OF JUDGEMENT

Where a JCE realises that judgement has already been granted against any labour tenant, or ESTA or PIE occupier, an instruction must initially be issued for the launching of an application for *rescission* of judgement.

- ★ For example: in terms of the Land Reform (Labour Tenants) Act, 1996 and/or the Extension of Security of Tenure Act, 1997 and/or the Prevention of Illegal Occupation and Eviction from Land Act 19, 1998.

##### 4.14.6 DISCRETION TO AUTHORISE ALTERNATIVE DISPUTE RESOLUTION

- ✓ In labour tenant, ESTA and PIE matters where litigation has already started, the JCE has discretion to authorise mediation, arbitration or other alternative dispute resolution on a legal aid basis, including Judicare, if satisfied by written representations from the legal

practitioner that these methods are likely to:

- Eliminate or shorten litigation.
- Reduce the fees and disbursements that would otherwise be payable by Legal Aid SA.

Where mediation is authorised by the JCE, the attorney instructed on a legal aid basis may receive payment for fees and disbursements at the civil tariff rates in Annexure F. The Department of Land Affairs or the relevant local authority must be approached to arrange for the services of a mediator at the expense of the Department or local authority.

⇒ See Annexure F on page 276.

#### 4.14.7 INTERIM FEES

The JCE may authorise the payment of interim fees in any labour tenant, ESTA or PIE matter in which a legal practitioner makes written representation to the JCE.

### 4.15 Asylum seekers

Legal aid is available to Asylum seekers applying or intending to apply for *Asylum* under Chapters 3 and 4 of the Refugees Act 130 of 1998.

#### 4.15.1 NO RESIDENCE REQUIREMENT FOR ASYLUM SEEKERS

- ✓ This Guide's policies and procedures for granting legal aid in civil cases apply to asylum cases, except that:
  - It is not necessary for an Asylum seeker applying for legal aid for an Asylum case to be physically resident in South Africa.
  - It is sufficient if, at the date of the application for legal aid, an Asylum seeker is physically present in South Africa.

#### 4.15.2 APPLYING ANYWHERE IN SOUTH AFRICA

An Asylum seeker, who applies for legal aid for an application for asylum under Section 21 of the Refugees Act, may apply anywhere in South Africa.

#### 4.15.3 SECTIONS 24, 25 AND 26 OF REFUGEES ACT

- ☆ Examples of proceedings:
  - Section 24 (decision by a Refugee Status Determination Officer)

- Section 25 (review by the Standing Committee)
- Section 26 (appeals to the Appeal Board).

An Asylum seeker, who applies for legal aid for legal representation in proceedings under these sections of the Refugees Act, may apply anywhere in South Africa, but the services will be co-ordinated by the Justice Centres in Pretoria, Johannesburg, Cape Town, Port Elizabeth or Durban.

- ✓ The Justice Centre where the application was made, must refer these matters to the closest of the Justice Centres listed above, as the Tribunals for hearing Section 24, 25 or 26 proceedings only sit in the 5 cities mentioned.

#### 4.15.4 LEGAL PRACTITIONER'S MANDATE FOR APPLICATION ONLY

When legal aid is granted for an application for Asylum under section 21 of the Refugees Act, the legal practitioner's mandate ends after the application is lodged, and the legal practitioner reports and accounts to the JCE. The mandate may be extended by the JCE if it is necessary to deal with issues and queries arising out of the application.

#### 4.15.5 PRIORITISING INSTRUCTIONS IN ASYLUM CASES

- ✓ The JCEs in Pretoria, Johannesburg, Cape Town, Port Elizabeth and Durban must, when distributing legal aid instructions for proceedings under sections 24, 25 and 26 of the Refugees Act, give preference:
  - Firstly, to Co-operation Partners who specialise in refugee work.
  - Secondly, to Justice Centres.
  - Thirdly, to private legal practitioners, using Legal Aid SA's *Accreditation System*.

⇒ For information on the Accreditation System, see Annexure O1 on page 315.

### 4.16 Hague Convention cases

Depending on the availability of resources, legal aid is available for Hague Convention cases. These are cases when the *Central Authority* in South Africa *complies* with its duties under articles 7g and 26 of the Schedule to the Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1996 – the Hague Convention. This must be

read with sections 274 to 280 of the Children's Act 38 of 2005 dealing with Hague Convention matters.

The 'Central Authority' refers to the State, represented in practice by the Family Advocate.

#### 4.16.1 SPECIAL RULES FOR HAGUE CONVENTION CASES

✓ This Guide's policies and procedures for granting legal aid in civil cases apply to Hague Convention cases, except that:

- It is not necessary for the applicant to be physically resident in South Africa.
- It will seldom, if ever, be possible for the legal aid applicant to appear in person before the JCE to complete the means test and legal aid application.
- If the legal aid applicant does not qualify under the means test, the National Operations Executive (NOE) must be notified so that he/she may advise the Central Authority.
- The legal practitioner instructed does not have to conduct any legal proceedings in the Divorce Courts, and may choose to start proceedings in the appropriate Division of the High Court.
- The legal practitioner shall be selected by the ROE, and not in accordance with Legal Aid SA's Accreditation System.

⇒ See Annexure O1 on page 303.

- The *person receiving the legal aid application* must consult the ROE before authorising any instruction for a Hague Convention case.
- The ROE may consult with the Central Authority in selecting a competent legal practitioner to instruct.

#### 4.16.2 TARIFF FOR HAGUE CONVENTION CASES

The fees and disbursements allowable in Hague Convention cases done on a Judicare basis fall under Legal Aid SA's tariff for civil matters.

⇒ See Annexure F on page 276.

#### 4.17 Equality Court cases

Legal aid is available for matters governed by the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. But personal

damages claims that are excluded under this Guide may not be dealt with as part of an equality court action or claim.

The fees and disbursements allowed in Equality Court cases done on a Judicare basis are set out in Legal Aid SA tariffs for civil matters.

⇒ See Annexure F on page 276.

#### 4.18 Children's civil cases

Section 28(1)(h) of our Constitution sets out the circumstances when the State must provide legal representation to children in civil matters.

The State makes legal representation available through Legal Aid South Africa. Legal aid is available under the Legal Aid Act, provisions of the Constitution and other relevant legislation such as the Children's Act 38 of 2005.

Legal Aid SA normally applies a means test and the provisions of the Constitution in making civil legal aid available. The means test determines if a person is indigent according to the Legal Aid Act.

Legal aid is not available to persons who can afford their own legal representation. The *affordability* of legal representation depends on the person's means and the costs of the legal representation.

##### 4.18.1 SUBSTANTIAL INJUSTICE

The Constitution provides that legal representation must be granted at State expense in civil proceedings affecting a child if *substantial injustice* would otherwise result (section 28 (1)(h)).

✓ These criteria decide if a child has a right to legal aid in civil cases at State expense:

- The seriousness of the issue for the child, for example, if the child's constitutional rights or personal rights are at risk.
- The complexity of the relevant law and procedure.
- The ability of the child to represent himself or herself effectively without a lawyer.
- The financial situation of the child or the child's parents or guardians.
- The child's chances of success in the case.
- Whether the child has a substantial disadvantage compared with the other party in the case.



Where these criteria are met, the child should get legal aid as long as Legal Aid SA has the necessary resources and the other requirements of this Guide are met.

#### 4.18.2 LEGAL AID APPLICATION

- ✓ An application for legal aid by a child is similar to other legal aid applications, except that:
  - A child or any adult acting on behalf of the child may apply for legal aid.
  - If there is a court order requiring legal aid to be provided, then the application for legal aid (LA1) does not have to be signed.
  - If there is no court order, then the person acting on behalf of the child may sign the application for legal aid on behalf of the child.

If the child is not assisted by an adult, then the JCE should assist in obtaining the necessary information to complete the application for legal aid on behalf of the child.

The JCE must then sign the application certifying that he/she completed the application for legal aid on behalf of the child.

#### 4.18.3 MEANS TEST

- ✓ The means test is similar in an application for legal aid by a child, except that:
  - Where the child is not assisted by his/her parents or guardians, then the child's means will be considered.
  - Where the child is assisted by his/her parents or guardians, then their means will be considered.
  - If the child is assisted by his/her parents or guardians, who exceed the means test and can afford to provide legal representation for the child, yet fail, refuse and or neglect to do this, then legal aid will be provided to the child if substantial injustice would otherwise result.

If this happens, Legal Aid SA may institute proceedings against the parents or guardians to recover these costs if:

- \* The parents or guardians could afford to provide legal representation for the child as a part of their duty of support, and
- \* They neglected, failed or refused to provide legal representation for the child.

#### 4.18.4 INSUFFICIENT PROSPECTS OF SUCCESS, ENFORCEMENT AND COSTS RECOVERY ON BALANCE OF PROBABILITIES

- ✓ Where a child is the *respondent or defendant* in a civil matter, the merits of the civil matter are irrelevant and a child will be entitled to legal aid irrespective of the merits.
- ✓ If a child wishes to bring civil proceedings, then the merits will be relevant.

#### 4.18.5 THE CHILDREN'S ACT: LEGAL REPRESENTATION OF CHILDREN

If substantial injustice would otherwise result, sections 29(6)(a) and (b) of the Children's Act direct a court to appoint a legal practitioner to represent the child at the court proceedings and order the parties to the proceedings, or any one of them, or the State, to pay the costs of the representation.

Sections 55(1) and (2) of the Children's Act say that, where a child involved in a matter before the Children's Court is not represented by a legal representative, and the court is of the opinion that it would be in the best interests of the child to have legal representation, the court must refer the matter to Legal Aid SA to prepare a section 3B report.

Legal Aid SA must:

- Deal with the matter according to section 3B of the Legal Aid Act, adapted to the context of the child.
- Evaluate the matter and submit a report back to the court under section 3B(2).

Once the court has received the written report from Legal Aid SA, then the Court may order the Board to provide legal representation at State expense.

- ✓ The effect of section 55 is to limit the right to legal representation at State expense for matters relating to the Children's Act to when the court orders Legal Aid SA to provide legal representation for children.

#### 4.18.6 TYPES OF CHILDREN'S ACT MATTERS WHERE LEGAL REPRESENTATION CAN BE ORDERED

##### (a) Parental responsibilities and rights agreements

Before registering a parental responsibilities and rights agreement, or making a parental responsibilities and rights agreement an order of

court, the Family Advocate or the court must be satisfied that the parental responsibilities and rights agreement is in the best interests of the child.

⇒ See sections 22(4) and 22(5) of the Children's Act.

#### **(b) Assignment of contact and care to interested person by order of court**

Any person having an interest in the care, well-being or development of a child may apply to the High Court, a divorce court in divorce matters or the Children's Court for an order granting the applicant contact with the child or care of the child, with some conditions if necessary.

⇒ See section 23 of the Children's Act.

#### **(c) Assignment of guardianship by order of court**

Any person having an interest in the care, well-being and development of a child may apply to the High Court for an order granting guardianship of the child to the applicant.

⇒ See section 24 of the Children's Act.

#### **(d) Person claiming paternity**

A person who is not married to the mother of a child, and who is or claims to be the biological father of the child, may apply for an amendment to the registration of birth of the child identifying him as the father of the child, if the mother consents to this amendment.

Where the mother refuses to consent, is incompetent to give consent, cannot be located or is deceased, then a person may apply to a court for an order confirming his paternity of the child.

⇒ See section 26(1)(b) of the Children's Act and section 11(4) of the Births and Deaths Registration Act 51 of 1992.

#### **(e) Termination, extension, suspension or restriction of parental responsibilities and rights**

A person may apply to the High Court, a divorce court in a divorce matter or a children's court for an order suspending for a period, terminating, extending or limiting any or all of the parental responsibilities and rights which a specific person has in relation to a child.

This application may be combined with an application for the assignment of contact and care over the child to the applicant.

⇒ See sections 23 and 28 of the Children's Act.

#### **(f) Child in need of care and protection**

A children's court must decide the question of whether a child is a child in need of care.

✓ The Children's Act says that a child is in need of care and protection if, the child:

- Has been abandoned or orphaned and is without any visible means of support.
- Displays behaviour which cannot be controlled by the parent or care-giver.
- Lives or works on the streets or begs for a living.
- Is addicted to a dependence-producing substance and is without any support to get treatment for this dependency.
- Has been exploited or lives in circumstances that expose the child to exploitation.
- Lives in or is exposed to circumstances which may seriously harm the child's physical, mental or social well-being.
- May be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he/she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child.
- Is in a state of physical or mental neglect.
- Is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights, or a family member of the child, or by a person under whose control the child is.

In addition, a child who is a victim of child labour or a child in a child-headed household may also be a child in need of care and protection.

⇒ See sections 150 to 160 of the Children's Act.

#### **(g) Adoption**

A child is adopted if the child has been placed in the permanent care of a person under a court order following section 242 of the Children's Act.

In considering an application for the adoption of a child, a court must take all relevant factors into account, as listed in section 240 of the Children's Act. This includes whether the adoption is in the best interests of the child.

⇒ See sections 228 to 253 of the Children's Act.

The Children's Court may make an order for an adoption between countries (inter-country adoption) if all requirements have been complied with, including section 231 on persons who may adopt a child.

⇒ See also sections 254 to 273 of the Children's Act.

#### (h) Child abduction provisions of the Hague Convention

The Hague Convention on International Child Abduction is in force in South Africa, with its provisions subject to our Children's Act.

The Children's Act directs that a legal representative must represent the child in all applications under the Hague Convention if the requirements of Section 55 are met.

⇒ For more on Hague Convention cases, see 4.16 on page 64.

✓ Legal Aid SA policies and procedures for granting legal aid in civil cases apply to Hague Convention cases, except that:

- It will seldom, if ever, be possible for the legal aid applicant/child to complete the means test and legal aid application.
- If the legal aid applicant does not qualify under the means test, the NOE must be notified so that he/she may advise the Central Authority.
- The ROE must select the legal practitioner for the child (in other words, not following Legal Aid SA's Accreditation System).
- The person receiving the legal aid application must consult the ROE before authorising any instruction for a Hague Convention case.
- The ROE may consult with the Central Authority in selecting a competent legal practitioner to instruct for the child.

⇒ See sections 270 to 280 of the Children's Act.

The fees and disbursements allowed in Hague Convention cases done on a Judicare basis fall under Legal Aid SA's tariff for civil matters.

⇒ See Annexure F on page 276.

#### 4.18.7 OTHER LEGISLATION REQUIRING LEGAL REPRESENTATION FOR CHILDREN

##### (a) Intervention in divorce, maintenance or custody proceedings

The ROE must give prior written consent for a child to get legal representation to intervene in divorce, custody or maintenance proceedings between the parents of the child if:

- This is needed to protect the best interests of a child, and
- If substantial injustice would otherwise result.

⇒ See the Divorce Act 70 of 1979 and the Maintenance Act 99 of 1998.

##### (b) Administration of estates

Legal aid may be granted for the administration of an estate where it is required to protect the best interests of a child and if the child qualifies for legal aid according to 4.18.2 on page 64.

⇒ See the Administration of Estates Act 66 of 1965.

##### (c) Road accident fund and personal injury claims

If substantial injustice would otherwise result, legal aid is available for bringing claims against the Road Accident Fund and for bringing personal injury claims where a minor child is the claimant, assisted by his/her guardian.

⇒ See the Road Accident Fund Act 56 of 1996.

##### (d) Domestic Violence Act

Legal aid may be granted to a child in a domestic violence matter where it is required to protect the best interests of a child and if substantial injustice would otherwise result.

⇒ See the Domestic Violence Act 116 of 1998.

##### (e) Refugees Act

Legal aid may be granted to an unaccompanied foreign minor under the Refugees Act where it is required to protect the best interests of a child and if substantial injustice would otherwise result.

⇒ See the Refugees Act 130 of 1998.

#### 4.18.8 OTHER MATTERS REQUIRING LEGAL REPRESENTATION FOR CHILDREN

##### (a) Money claims

Legal aid may be granted to a child for a money claim that exceeds the Small Claims Court jurisdiction by more than 50% where it is required to protect the best interests of a child and if substantial injustice would otherwise result.

##### (b) *Curator ad litem* and *curator bonis* applications

When legal aid is required for the appointment of a *curator ad litem* or a *curator bonis*, the case must first be referred to the ROE for a decision.

✓ If the proposed curator is not an Legal Aid SA employee, these steps must be followed:

- When a *curator ad litem* or a *curator bonis* is appointed, the attorney must complete Annexure N and the proposed curator must sign the completed form and return it to Legal Aid SA.

⇒ See Annexure N on page 314.

- If an attorney appoints a *curator ad litem* or a *curator bonis* without meeting these requirements, Legal Aid SA reserves the right not to pay the curator.

#### 4.19 Mental Health Care Act users

Legal aid is available to health care users, where substantial injustice would otherwise result, in accordance with section 15 of the Mental Health Care Act 17 of 2002.

✓ The Legal Aid Guide's provisions on the means test are relevant to an application for legal aid by a mental health care user, except that:

- Where the mental health care user is not assisted, then the means of the mental health care user will be considered.
- Where the mental health care user is assisted by his/her parents, guardian, spouse, life partner or child, then his/her means will be considered.
- If the mental health care user is assisted by his/her parents, guardian, spouse, life partner or child, who exceed the means test and can afford to provide legal representation for the mental health care user, yet fail, refuse and or neglect to do this, then legal aid will be provided to the mental health care user if substantial injustice would otherwise result.

If this happens, Legal Aid SA may institute proceedings against the parents, guardian, spouse, life partner or child to recover these costs if:

- \* The parents, guardian, spouse, life partner or child could afford to provide legal representation for the mental health care user as a part of their duty of support, and
- \* They neglected, failed or refused to provide legal representation for the mental health care user.

## Chapter 5:

# Qualifying for Legal Aid

### 5.1 Indigence and the means test

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

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

⇒ Compare the LA1 form in Annexure C on page 257 with the amplified form in Annexure G1 & G2 on page 292.

#### 5.1.1 MEANS TEST ENQUIRY — 3 STEPS

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

*First:*

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

⇒ See Annexure C on page 257.

- 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 77, 5.1.5 on page 78 or 5.1.2 on page 77.

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

⇒ See Annexure G1 & G2 on page 292.

- 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 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 S. 5.1.14 and S. 5.1.15 on page 81/82.

Third:

- 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.
- The legal aid applicant completes Annexure G3.
- Annexure G3 is sent to the Constitutional Case Management Committee (CCMC) to consider whether or not the legal aid applicant qualifies for legal representation at State expense.
- In deciding, 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 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, the CCMC may fix conditions for the payment of a contribution to the Board by the legal aid applicant, which should be made an order of court

⇒ See 4.1.1 on page 38 and 4.4.2 on page 47.

⇒ See Annexure G1 & G2 on page 292 and Annexure G3 on page 293.

### 5.1.2 CHILDREN

- ✓ The means test for households is *applicable* to children or their parents or guardians in all matters as set out in paragraph 4.18.2(b).

⇒ See 4.18.3 on page 66.

### 5.1.3 SASSA GRANTS

- ✓ SASSA grants are not taken into account in calculating income for purpose of the means test.

### 5.1.4 SINGLE APPLICANTS

- ✓ A single applicant who has a *net monthly income* after deduction of income tax of R5, 500 a month or less will qualify for completely *subsidised* legal aid.

'Net monthly income' includes income from all sources.

★ Examples of what is included in net monthly income:

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



**5.1.5 HOUSEHOLDS**

- ✓ An applicant, who is a member of a household and whose household has a net monthly income after deduction of income tax of R6, 000 a month or less, will qualify for completely subsidised legal aid.

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

**5.1.6 NET ASSETS**

- ✓ A legal aid applicant or household who do not own immovable property will be permitted to have net movable assets (including physical and/or intellectual rights to property) of up to R100,000 without being disqualified under the means test.
- ✓ A legal aid applicant or household who own immovable property will be permitted to have net immovable assets and movable assets (including physical and/or intellectual rights to property) of up to R500, 000, but the applicant/household must physically reside in the immovable property or at least one of the immovable properties (where more than one) unless the ROE authorises to the contrary.

'Assets' consist of:

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

☆ Examples of assets:

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

☆ Examples of what are *not* assets:

- A bet on a horse in a race not yet run

- A lotto ticket for next Saturday's draw
- A hope of inheriting from a person who is still alive.

'Net assets' are assets less liabilities. 'Liabilities' are debts owed by the legal aid applicant.

☆ Examples of liabilities:

- A mortgage bond
- The balance owing under a credit agreement
- An obligation to pay a sum of money
- A bank overdraft.

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

- Income tax
- Rent
- Maintenance
- Clothing accounts.

**5.1.7 INDIGENCE OF GROUPS OR CLASSES OF APPLICANTS**

Where it is necessary to determine whether a group or class of persons qualify for legal aid according to this Guide or *Impact Services Policy*, the *Justice Centre* receiving the legal aid application shall ensure that a sufficient number of means tests are completed to satisfy Legal Aid SA that a substantial portion of the group or class are indigent. The ROE should determine the number of individuals of the group or class who should complete a means test.

**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, such contribution should be made an order of the court, wherever possible.

### 5.1.9 LITIGATION BETWEEN SPOUSES

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

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

- A person married under the law of South Africa.
- A person joined in a union recognised under customary or common law as a marriage/union/universal partnership.
- A civil union partner of a person in a civil union (a marriage or a civil partnership) entered into under the Civil Union Act 17 of 2006.

### 5.1.10 INCOME OR ASSETS OF PARENTS, SPOUSES OR OTHER RELATIVES

- ✓ No account is taken of the income or assets of the parents, spouses or any other relative of the legal aid applicant in any matter in which the applicant *is entitled* to legal aid under section 35 of the Constitution.
- ✓ The income of parents or guardians of a child is taken into account in civil matters, as set out in 4.18.3.

⇒ See 4.18.3 on page 66.

- ✓ The income of parents, guardians, spouses, life partners or children of a mental health care user is taken into account, as set out in 4.19.

⇒ See 4.19 on page 72.

### 5.1.11 PROPERTY AND MONEY FROM A DECEASED ESTATE

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

This is taken into account even though:

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

### 5.1.12 TRUST/COMPANY/LEGAL PERSONALITY ASSETS

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

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

### 5.1.13 MAINTENANCE AND GRANTS

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

### 5.1.14 JCE'S DISCRETION

- ✓ A JCE has the discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to R1 500.00 a month in respect of gross income for all matters.



The JCE's decision will then be sent to the person receiving the legal aid application.

#### 5.1.15 ROE'S DISCRETION

- ✓ A ROE has the discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to R3,000 a month in respect of gross income for all matters.
- ✓ A ROE has a discretion to authorise fully subsidised legal aid for any applicant who is over the means test by up to R100,000.00 in respect of net assets for all matters.

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

## 5.2 Proof of qualification

- ✓ In general, an applicant for legal aid must satisfy the JCE that he/she is a natural person, who is indigent as set out in this Guide. The documentary proof of income, value of assets and other relevant information must be verified where possible.

### 5.2.1 DOCUMENTARY EVIDENCE

Whenever possible, the person receiving the legal aid application must obtain documentary evidence of income, assets and liabilities. This includes copies of trust deeds and financial statements of trusts in the circumstances set out in 5.1.12.

⇒ See 5.1.12 on page 81.

All documentary evidence, together with the completed means test, must accompany the application form.

⇒ Depending on the circumstances, refer to Annexures C, G1 & G2 or G3.

### 5.2.2 PROOF OF INCOME AND ASSETS

Proof of income, or State grant or old age pension, must be submitted with the legal aid application, with whatever supporting documents are available.

☆ Examples of proof of income:

- An official salary voucher
- A letter of confirmation from the employer

- A certified statement of income and expenditure
- Any relevant tax assessment or bank statements
- Certificates of investments
- Documentary evidence on all issues referred to in Annexures G1, G2 or G3.

⇒ See Annexure G1 and G2 on page 292 or G3 on page 293.

### 5.2.3 WRITTEN DISCLOSURE OF ASSETS

Legal Aid SA may ask a legal aid applicant to make a written disclosure of all assets and to consent in writing to the release to Legal Aid SA of all information required.

⇒ For information on the privacy and confidentiality of information given to Legal Aid SA, see 10.1 on page 137.

### 5.2.4 A PERSON WITHOUT INCOME

If legal aid is granted to a person without income, the reason why the person has no income must be stated briefly on the LA1 application form. The person receiving the application must explain to the applicant the consequences of a false statement about their income or assets, and that they may face prosecution for giving false information.

⇒ See Annexure C on page 257.

### 5.2.5 FURTHER FACTORS AFFECTING QUALIFICATION

- ✓ After checking minimum basic requirements for qualifying for legal aid, JCEs must also be guided by:
  - The magnitude of the risk – in other words, the likely costs of providing legal aid in a particular matter.
  - The likelihood of the legal aid applicant not qualifying for legal aid after further enquiry.
  - The available resources to render legal aid in *non-litigious* matters.

⇒ For more on non-litigious matters, see 4.9.1(l) on page 54 and 4.12 on page 58.

If the JCE decides that there is a high risk relating to costs or that an applicant is not likely to qualify after further enquiry, then the matter should be referred to the ROE or CCMC under 5.2.6.

### 5.2.6 HIGH COST AND HIGH RISK MATTERS

ROEs and the CCMC will monitor high cost and lengthy duration matters where the costs exceed R 50 000 or ensues for longer than 20 trial days.

The ROE or CCMC will choose whether or not to request a forensic enquiry before deciding whether or not the application for legal aid is to be granted.

⇒ See also 10.7 on pages 146 to 147 on forensic investigations where fraud and abuse of legal aid is suspected.

## 5.3 Legal aid under the Constitution

Under the Constitution, Legal Aid SA must determine 'where *substantial injustice* would otherwise result' if legal aid was not given. This is limited by section 36 of the Constitution and any relevant legislation giving content to the rights in the Constitution.

⇒ For more on substantial injustice, see 4.1 on page 37, 4.9 on page 51 and 4.18.1 on page 65.

### 5.3.1 URGENT DECISIONS

Where the urgency of the case demands it, the person receiving the legal aid application may communicate the information in Annexures G2 and G3 to the JCE telephonically with a view to getting an urgent decision.

⇒ See Annexure G1 & G2 and G3 on page 292 and 293.

### 5.3.2 CHILDREN

- ✓ For legal aid under section 35(3)(g) of the Constitution, a child will not have to qualify for legal aid through any means test if the child needs legal representation for a criminal case.
- ✓ For legal aid under section 28(1)(h) of the Constitution, read with any relevant legislation, a child will have to qualify for legal aid, as set out in 4.18.

⇒ See 4.18.1–3 on pages 65 and 66.

Legal Aid SA may decide to make a claim against the parents to recover the costs incurred, if the parents could afford to provide legal representation for the child as a part of their duty of support, and failed, refused or neglected to do this.

## 5.4 Legal aid in civil cases under the Legal Aid Act

Owing to financial limitations, Legal Aid SA is forced to restrict the aid it provides and in certain cases must decline to offer assistance.

⇒ See 4.9 – 4.19 on pages 51 to 72 for details.

Legal Aid SA uses the requirements set out in 5.4.1 and 5.4.2 to assist in determining qualification for legal aid in civil cases.

### 5.4.1 PROSPECTS OF SUCCESS ON A BALANCE OF PROBABILITIES

- ✓ To qualify for legal aid in a civil case, the applicant's case must have, on a *balance of probabilities prospects of success* and where applicable, prospects of *enforcement*.

### 5.4.2 DUTY ON LEGAL PRACTITIONER

- ✓ Before a *legal practitioner* enters into or continues with litigation on a legal aid basis, he/she must:
  - Be satisfied that the client in a civil case has prospects of success on a balance of probabilities, and
  - Convince the JCE by written report and response that there is a prospect of success, and where applicable, prospects of enforcement on a balance of probabilities.

## 5.5 Formal application for legal aid

### 5.5.1 PERSONS WHO MAY RECEIVE LEGAL AID APPLICATIONS

- ✓ These persons may receive legal aid applications when the need arises:
  - (a) Any person who is admitted to practise as an attorney or as an advocate, and who is employed by Legal Aid SA.
  - (b) A *candidate attorney* or *pupil advocate* employed by Legal Aid SA.
  - (c) The administrative staff employed at Legal Aid SA's Justice Centres.
  - (d) Administrative Managers at Justice Centres.
  - (e) *Paralegals* at Justice Centres.

- (f) *Agent legal aid officers* of the Department of Justice and Constitutional Development.
- (g) A person who is, in the opinion of the NOE, a fit and proper person to act.

Based on a good reason, the NOE may also withdraw the authority of any person to receive legal aid applications.

Where the application is received by a person mentioned in (a) or (b) above, they may immediately render legal services to the applicant where it *prima facie* appears that the applicant qualifies for legal aid.

### 5.5.2 PERSONAL APPLICATION

- ✓ An applicant for legal aid must apply for legal aid by calling on a person who may receive legal aid applications personally, or personally submitting a completed application.

- (a) An application for legal aid by or on behalf of a child must be dealt with as set out in 4.18.2.

⇒ See 4.18.2 on page 66.

- ☆ Example of non-personal application:

If a personal application is not possible in exceptional circumstances, a close relative or another responsible person, who has personal knowledge of the circumstances, may give the particulars and sign the application for legal aid on behalf of the person applying for legal aid.

Where practical, persons receiving legal aid applications should discourage the practice of submitting legal aid applications through other people.

- ✓ No person who has an interest in the outcome of a legal aid application may receive the legal aid application.

- ☆ Examples of people with an interest:

- A *Judicare* legal practitioner,
- The employee or agent of a *Judicare* legal practitioner.

### 5.5.3 REPORTS TO COURTS IN CRIMINAL CASES AND CONTRIBUTIONS ORDERED BY COURTS

Under section 3B(1) of the Act, a court must, before directing that a person has a right to legal representation at State expense, refer the case for evaluation and report by Legal Aid SA.

ROEs must liaise with Chief Magistrates, Regional Court Presidents and the Judge President of any High Court that has its permanent seat within the area of the Justice Centre.

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

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

#### First

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

#### Second

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

#### Third

- The court may refer the case to Legal Aid SA for evaluation and report under section 3B(1)(b) of the Act if the accused reports to the court at a later date that:
  - \* He/She applied for legal aid, but was refused, and
  - \* The appeal against refusal of legal aid to the ROE and NOE was unsuccessful or that he/she did not receive a reply to the application/appeal within a reasonable period of time.

#### Fourth

- The court may conduct an inquiry into the means of the applicant and for this purpose may:
  - \* Subpoena the legal aid applicant, other witnesses and documents
  - \* Require the legal aid applicant and other witnesses to give evidence under oath and to be subjected to cross-examination.

### (b) Limiting the number of Legal Aid SA reports

As legal aid is in practice granted to the vast majority of criminal accused who apply, the 4-stage approach in 5.5.3 (a) aims to reduce the number of reports that JCEs have to draft and to make best use of Legal Aid SA's limited resources, funds and personnel.

- ✓ Wherever possible, judicial officers should be requested by their Judges President, Regional Court Presidents or Chief Magistrates to avoid calling upon Legal Aid SA to evaluate and report on cases unless and until legal aid is refused and any appeal against the refusal of legal aid is finalised.

The 4-stage approach also forces the legal aid applicant to exhaust his/her internal *remedies* before approaching the court for help.

⇒ For more on 'internal remedies', see 6.2 on page 94.

### (c) Reporting to the court

If a JCE is requested by a court to evaluate and report on whether an accused should get legal representation at State expense, the JCE must consider the application under the provisions of this Guide.

⇒ For the procedure for compiling this report under section 3B of the Act, see 11.2.1 on page 164.

### (d) Court ordering recovery of costs

Under section 73(2C) of the Criminal Procedure Act, as amended by Act 86 of 1996, a court may order that the costs or portion of the costs of legal representation provided at State expense must be recovered from the accused.

Under section 3(d) of the Act, Legal Aid South Africa may also fix conditions for the payment of a contribution to the Board by the legal aid applicant, especially when the legal aid applicant exceeds the means test but is granted legal aid at State expense after the assessment under Step 3 of the means test enquiry in 5.1.1 on page 65.

The contribution to be paid by the legal aid applicant will be determined by Legal Aid South Africa in accordance with the powers set out in section 3(d) of the Act. The contribution to be paid by the legal aid applicant should be made an order of court, wherever possible.

⇒ For the procedure for advising the legal practitioner about the court order, see 11.2.2 on page 165.

### (e) Duties of private legal practitioner

Unless the court order directs otherwise, Legal Aid SA will expect the legal practitioner to collect the contribution ordered by the court from the accused before submitting a final account to Legal Aid SA.

Legal Aid SA will thus deduct the amount of contribution from the amount due to the legal practitioner, whether the legal practitioner has in fact collected this contribution or not.

### (f) Recovery of costs under court order

Unless the court order directs otherwise, in cases where Legal Aid SA employs the instructed legal practitioner, the JCE with the assistance of the practitioner must recover the contribution of the legal aid applicant before *plea*.

⇒ For the procedure for depositing contributions recovered in (e) and (f), see 11.2.3 on page 165.

## 5.5.4 APPLICATIONS FOR CIVIL CASE CONTINUATIONS

In a legal aid application for the continuation of a civil case on legal aid where legal aid was not previously granted in the matter, the applicant or his/her attorney must send the JCE a full merit report before an instruction is issued.

⇒ For the details to include in the report, see 11.3.2 on page 165.

- ✓ The JCE must consider the merit report. If the JCE decides that the matter has prospects of success on a balance of probabilities, then legal aid may be granted

## Chapter 6:

# The granting and authorising of Legal Aid

## 6.1 Approval or refusal of legal aid

### 6.1.1 LEGAL AID SOUTH AFRICA GUIDING PRINCIPLES

#### ✓ (a) Equality before the law

Every person is entitled to equality before the law. Legal Aid SA therefore tries, within its means, to balance the scales of justice in an independent and impartial manner.

Legal Aid SA seeks to apply this principle in meeting the legal aid demands of South Africa as a developing country, and in implementing the provisions of Chapter 4 of this Guide.

⇒ See Chapter 4, including 4.1 on page 37.

#### ✓ (b) Means test

Under the provisions of Chapter 5 of this Guide, legal aid may not be granted to a person if the JCE is satisfied that the *applicant* has sufficient disposable *capital* or *assets* to raise sufficient finance to pay for the required legal aid himself/herself.

#### ✓ (c) JCE's discretion

Until otherwise notified by *Circular* or in individual cases in writing by the ROE's, JCE's should refuse legal aid to all persons who do not strictly qualify under the *means test* or within their permitted R1,000 a month *discretion* as contained in 5.1.14.

But this principle does not *apply to* applicants with a right to legal aid under the Constitution for criminal cases in the Regional and High Courts.

#### ✓ (d) ROE's discretion

Until otherwise notified by *Circular* or in individual cases in writing by the NOE, ROEs, should refuse legal aid to all persons who do not strictly qualify under the *means test* or within their permitted R3,000 a month *discretion* as contained in 5.1.15.

But this principle does not *apply to* applicants with a right to legal aid under the Constitution for criminal cases in the Regional and High Courts.

### 6.1.2 REFUSAL OF LEGAL AID IN CRIMINAL CASES

✓ Legal aid will be refused in District Court cases if:

- The case is not listed in 4.3.2, subject to the JCE's discretion, and/or
- The applicant does not qualify under the means test.

⇒ See 4.3.2 on page 41.

⇒ For the procedure related to refusal, see the example in 11.1.1 on page 157.

### 6.1.3 PROSPECTS OF SUCCESS ON A BALANCE OF PROBABILITIES IN CIVIL CASES

In civil cases, Legal Aid SA must always be satisfied that there are merits to the case. If there is little or no *prospect of success* and *enforcement on a balance of probabilities*, legal aid will be refused.

✓ In order to determine these issues, the JCE must always issue an instruction to authorise a merit report in civil cases in this style:

"To investigate a civil claim or defend civil proceedings (state legal problem here) and to submit a report under 6.1.3 of this Guide before further costs are incurred."

⇒ For the details of what is required in an initial merit report, see 11.3.1 on page 168.

### 6.1.4 QUALIFYING FOR LEGAL AID BASED ON LIMITED INCOME AND ASSETS

✓ Any JCE, Administration Manager, or admitted legal practitioner employed by Legal Aid SA may authorise the issue of a legal aid instruction when:

- The *legal aid applicant's* income and assets mean that he/she qualifies for legal aid without the exercise of any discretion, and
- The *matter* for which legal aid is granted qualifies for legal aid under this Guide without the exercise of any discretion, and
- The legal aid instruction is programmatically recommended by Legal Aid SA's software system.

If no Administration Manager or admitted legal practitioner is available to approve the issue of a legal aid instruction, then the JCE may give written authorisation to other employees of Legal Aid SA to authorise these instructions.

### 6.1.5 DISCRETION NEEDED TO APPROVE INSTRUCTION

✓ No legal aid instruction may be issued without the approval of the appropriate JCE the appropriate ROE or the NOE when:

- The legal aid applicant's income and assets mean that he/she does not qualify for legal aid without the exercise of discretion, and/or
- The matter for which legal aid is granted does not qualify for legal aid under this Guide without the exercise of discretion, and/or
- The refusal of the legal aid instruction is programmatically recommended by Legal Aid SA's software system.

### 6.1.6 DELEGATION OF RESPONSIBILITIES TO APPROVE INSTRUCTION

✓ The responsibilities in 6.1.5 may be delegated in writing in these ways:

- A JCE may delegate to an employee of Legal Aid SA who:
  - \* Qualifies to act as a principal attorney under the Attorneys Act, or
  - \* Is a High Court Unit Manager.
- An ROE and the NOE may delegate to an employee of Legal Aid SA who is an admitted legal practitioner or an Administration Manager.

### 6.1.7 JCE TO VERIFY PARTICULARS

The JCE or anyone delegated to approve legal aid must verify the correctness and completeness of all particulars given by an applicant.

Wherever appropriate, documentary proof must be called for to establish the applicant's income, expenses, assets and liabilities.

### 6.1.8 JCE TO CONSULT WITH ROE OR CCMC

✓ In criminal matters to be conducted on a Judicare basis, the JCE must consult with the ROE in a Regional Court case and the CCMC



in a High Court or Regional Court Commercial Crimes case before any legal aid instruction is issued, when:

- The anticipated cost of any regional court instruction is more than R50, 000 or the anticipated cost of any High Court or Regional Court Commercial Crimes Court instruction is more than R100, 000.00.
- 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.
- An increased fee exceeds the JCE's delegated authority in terms of the Approval Framework of Legal Aid SA.

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

### 6.1.9 MORE THAN ONE PRACTITIONER FOR A CLIENT

The NOE or ROE must approve the appointment of more than one legal practitioner for any one legal aid client.

## 6.2 Appeal against refusal of legal aid

### 6.2.1 APPEAL TO ROE

- ✓ An applicant has the right of appeal to the ROE against the refusal of a JCE to grant legal aid.

The JCE shall inform the applicant of this right and, if requested within 3 months of being informed of the right, the JCE shall give detailed reasons for the refusal of the legal aid.

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

### 6.2.2 APPEAL TO NOE

- ✓ An applicant has the right of appeal to the NOE against the refusal, on appeal, of the ROE to grant legal aid.

The ROE shall inform the applicant of this right and, if requested within 3 months of being informed of the right, the ROE shall give detailed reasons for the refusal of the legal aid.

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

### 6.2.3 LIMITATION OF APPEALS AGAINST REFUSAL OF LEGAL AID

If the NOE also refuses legal aid, the legal aid applicant's internal remedies are exhausted. There are no further internal appeals beyond the NOE.

- ✓ A dissatisfied legal aid applicant may:
  - Apply for judicial relief.
- ☆ For example, a review of the NOE's decision.
  - Approach the presiding judicial officer in serious criminal cases to issue an order requiring a report under section 3B of the Act.

⇒ For more information on section 3B reports, see 11.2 on page 164 and Annexure M on page 312.

### 6.2.4 NOE'S REASONS

The NOE will give reasons for the decision to the applicant or his/her legal representative if requested in writing within 3 months after the decision was communicated to the legal aid applicant or his/her legal representative.

## 6.3 Termination of legal aid

### 6.3.1 DIFFERENT CATEGORIES OF TERMINATION

- ✓ Legal aid can be terminated through the conduct or decisions of:
  - The legal aid recipient.
  - The instructed legal practitioner.
  - Legal Aid SA itself.

**(a) The legal aid recipient**

- ☆ Examples of how the legal aid recipient can cause legal aid to terminate:
  - \* By ceasing to qualify under the means test.
  - \* By failing to appear in court.
  - \* By unreasonable refusal to accept a settlement.
  - \* By not timeously *complying* with a contribution order.
  - \* By terminating the mandate of the legal practitioner instructed unreasonably and without just cause (a good reason).
  - \* By making it impossible for the legal practitioner to carry out his/her mandate.

Where legal aid is terminated by the legal aid recipient or as a result of his/her conduct, the issue of whether to instruct a further legal practitioner will have to be considered and decided by the JCE. This will be based on the facts of each particular case.

**(b) The legal practitioner**

- ☆ Examples of where the instructed legal practitioner may withdraw or have his/her mandate terminated through no fault of the client:
  - \* As a result of a *conflict of interest*.
  - \* By ceasing to be in practice.
  - \* By ceasing to be an *accredited* legal aid practitioner.
  - \* By being unable to continue to act through ill-health or other cause that makes it impossible to carry out his/her *obligations* as a practitioner.
  - \* By having his/her mandate withdrawn by Legal Aid SA as a result of incompetence or inaction, or failure to submit reports timeously.

Where the legal practitioner stops acting in a legal aid matter, the legal aid recipient is *entitled* to get another legal practitioner if he/she continues to qualify for legal aid. But this may not apply to situations where the termination arose as a result of the conduct of the legal aid recipient.

**(c) Legal Aid South Africa**

- ☆ Examples of when Legal Aid SA terminates legal aid, not in response to the actions or conduct of others, but as a result of its own decisions:
  - \* A change in policy on the type of matters for which legal aid is available.
  - \* A suspension of legal aid in certain types of matters as a result of a lack of resources.
  - \* The legal aid recipient gives just cause for the termination of the practitioner's mandate.

Where Legal Aid SA has to terminate legal aid because of its own policies or resources, it will ensure that the legal aid recipient does not suffer prejudice as a result of the termination.

**6.3.2 ACCUSED NOT APPEARING**

Legal aid shall end if the accused doesn't appear timeously in court on the appointed day without a good reason. The accused should be given a reasonable opportunity to give reasons for not appearing in court.

If the accused does not give valid or acceptable reasons for not appearing, the legal practitioner must withdraw from acting in the matter and, if on judicare, render an account to Legal Aid SA up to that date.

**6.3.3 DISMISSAL OR WITHDRAWAL OF PRACTITIONER**

In all criminal and civil cases, a legal aid applicant does not have a right to have a second or subsequent legal practitioner appointed on a legal aid basis for the same case.

- ✓ If the legal aid applicant dismisses the first legal practitioner or causes the first legal practitioner to withdraw, the legal aid applicant will have to satisfy the JCE that the first legal practitioner was dismissed or had to withdraw for a good reason, before getting further legal aid assistance.

**6.3.4 LEGAL PRACTITIONER OR RECIPIENT NOT PROCEEDING**

- ✓ If a JCE becomes aware, after an instruction has been issued, that the case is not being proceeded with by the legal practitioner or legal aid recipient, the JCE must:



- Terminate the instruction in writing.
- Advise the legal aid applicant in writing that the legal aid instruction has been terminated.

If the instruction was terminated due to the practitioner's failure to proceed with the matter, and not because the legal aid recipient did not give instructions, then the applicant may request the JCE to appoint a new practitioner to proceed with the matter.

### 6.3.5 DUTY OF LEGAL PRACTITIONER NOT TO PROCEED

✓ The legal practitioner acting in a legal aid case must refuse to proceed if he/she has reason to believe that one or more of these situations has arisen:

- The applicant's problem is trivial or arises from *vexatiousness* – in other words, without sufficient grounds and just to cause annoyance.
- The circumstances suggest that no real or substantial benefit will be achieved by the rendering of legal aid.
- The legal costs involved would be out of proportion to the relief the applicant wishes to get.
- Considering all the circumstances of the case, legal aid should not have been granted for financial or other reasons.

The legal practitioner must inform the JCE of the decision not to proceed within a month after legal aid was granted.

### 6.3.6 ABUSES OF LEGAL AID LEADING TO POSSIBLE TERMINATION

#### (a) Basis for a complaint

Any person who is a *party* to a case before any court in which another person is receiving legal aid, may make submissions to the JCE if he/she believes that:

- The legal aid applicant does not or no longer qualifies for legal aid, or
- In a civil case, the legal aid applicant lacks a reasonable prospect of success on a balance of probabilities.

The *complainant* would need to be aware of facts or be able to produce documents to support the submissions.

#### (b) Submissions to JCE in writing

All submissions to the JCE must be on *affidavit* supported, if appropriate, by relevant documents.

If a complainant is illiterate, the JCE shall make reasonable arrangements to assist the complainant to present his/her submissions as an affidavit.

#### (c) Ethics Hotline

If a legal aid practitioner asks a legal aid client for money or another benefit that is not payable or due, the conduct of the practitioner should be reported immediately to Legal Aid SA's Ethics Hotline on 0800 204473.

☆ For example, if a legal practitioner asks an accused on completely *subsidised* legal aid for money, the conduct of the practitioner should be reported immediately.

#### (d) Communicating with legal practitioner

On the receipt of a complaint on affidavit, the JCE must write to the legal practitioner representing the legal aid applicant. The JCE must provide a copy of the complaint received and give the legal aid applicant a reasonable opportunity to reply. This should normally be at least 2 weeks.

#### (e) Investigating complaint

The JCE must decide if legal aid is to be continued after:

- Receiving the legal aid applicant's reply, or after deadline, if no reply is received, and
  - Conducting further investigations that may be necessary in the opinion of the JCE.
- ✓ In considering this kind of complaint, the complainant carries the *onus* (duty) of proving on a balance of probabilities that legal aid should be withdrawn. The JCE must advise the legal practitioner representing the legal aid applicant of his/her decision. In appropriate circumstances, the legal aid recipient must also be advised personally.

**(f) Suspending legal aid**

The JCE may have to consider the question of whether or not to continue with legal aid in the case. In this kind of case, the JCE may, pending the finalisation of any investigation, decide to suspend legal aid if he/she is of the view that the complainant has a *prima facie* case for the withdrawal of legal aid.

**(g) Keeping the client informed**

If the JCE decides to terminate or suspend legal aid, the legal aid recipient must be advised of this in writing, in addition to notifying his/her legal representative.

**(h) Onus on practitioner**

The JCE may have to consider questions such as:

- Should the mandate of a particular legal practitioner in a specific case be terminated?
- Should a particular legal practitioner receive instructions or be allowed to continue acting under legal aid instructions?
- ✓ In these kinds of situations, the legal practitioner concerned has the onus of proving on a balance of probabilities that he/she should:
  - Continue with the case, or
  - Continue to receive legal aid instructions, or
  - Continue with carrying out legal aid instructions already accepted.

**(i) LEGAL AID SA's duty to pay on termination**

No legal practitioner has a right to either receive a particular legal aid instruction or to receive legal aid instructions in general. Legal Aid SA may also terminate the legal aid instruction if valid grounds exist in law.

When terminating any legal aid instructions for any valid reason, Legal Aid SA's only duty is to pay the legal practitioner the fees and *disbursements* for completed work under this Guide. Payment must take place within 30 days after the legal practitioner has reported and accounted to Legal Aid SA. Legal Aid SA will not be *liable* for any *damages* through termination.

⇒ For more information on disputes over payments to legal practitioners, see 13.7 on page 190.

**6.3.7 MONITORING OF CONTINUED QUALIFICATION**

During the handling of legal aid cases, legal practitioners must at all times be aware of possible abuse of Legal Aid SA's services by legal aid applicants and mindful of their duties under the Legal Aid Act and the Legal Aid Guide, and of their general good practice and governance duties.

In order to check if applicants continue to qualify for legal aid, practitioners must:

- Establish from clients during subsequent interviews if the client continues to qualify for legal aid according to the means test.
- Report any relevant changes of circumstance or any other irregular use of Legal Aid SA's services immediately to the JCE.
- ✓ If the client no longer qualifies the matter may not be continued on a legal aid basis without the JCE's written consent.

**6.3.8 LIMITING OF COSTS**

As Legal Aid SA is financed from public funds, it is in the public interest that legal costs are kept as low as possible.

**(a) Encouraging clients to reduce costs**

- ✓ Legal aid clients whose actions lead to unnecessary costs must be advised that this conduct could lead to the withdrawal of legal aid. Problems related to unnecessary costs must be brought to the JCE's attention immediately.

**(b) Tenders and settlements**

If a legal aid *litigant* unreasonably refuses to accept a reasonable offer of settlement or insists on making an unreasonably high claim, this must be brought to the attention of the JCE.

- ✓ The JCE may at any time during legal proceedings:
  - Advise the legal aid client to settle if the overall merits of the case warrant a settlement.
  - Terminate or suspend further legal aid if of the view that the client is acting in an unreasonable way.

If legal aid is terminated, the legal aid client still has a duty to pay a pro rata (proportional) percentage of the benefit and costs recovered from the other party for the period that legal aid was in place.

### (c) Appointment of Senior Counsel

Senior Counsel may not be appointed in a legal aid matter unless approved in writing by the NOE. The fees payable to senior counsel may not exceed the approved legal aid tariffs.

### (d) Monitoring of costs by the CCMC

In all matters referred to it under 5.1.1 on page 72, the CMCC will monitor the case to ensure that legal costs are kept as low as possible.

## Chapter 7:

## The delivery system for Legal Aid

### 7.1 The development of legal aid delivery methods

#### 7.1.1 THE JUDICARE APPROACH

Legal aid was implemented throughout the Republic of South Africa on 2 March 1971.

During the first 20 years of its existence, Legal Aid SA provided legal aid through the *Judicare* system. This meant that legal aid was granted for individual cases, and payment in each case was made to private *legal practitioners* under the existing legal aid tariff.

#### 7.1.2 SALARIED LEGAL PRACTITIONERS

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

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

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

⇒ See Annexure U on page 342

#### 7.1.3 CO-OPERATION AGREEMENTS

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

### 7.1.4 A MIX OF DELIVERY SYSTEMS

Legal aid is thus increasingly being granted in appropriate circumstances where the client is represented by a salaried legal practitioner employed by Legal Aid South Africa at a Justice Centre. The Justice Centre Executive normally, but not exclusively, makes referrals to these legal representatives.

Judicare continues to supplement Legal Aid South Africa's capacity to provide legal services through its Justice Centres in a mix of delivery mechanisms, as decided by Legal Aid South Africa from time to time. A Justice Centre must render legal services through salaried legal practitioners in all matters within their area of jurisdiction.

✓ However, Judicare may be used in these circumstances:

- In matters where there is a conflict of interest between *legal aid applicants* and separate legal representatives are required.
- In matters where specialist knowledge is required that is not available at the Justice Centre.
- In matters where Justice Centre lacks the capacity to adequately represent the legal aid applicant.
- In all other matters on condition that the total amount of Judicare does not exceed the 10 – 15% overall limit on Judicare.

## 7.2 Choice of legal representative

### 7.2.1 NO RIGHT TO CHOOSE PRACTITIONER

✓ No legal aid applicant has the right to choose the legal practitioner who will be instructed in a case.

There are no *exceptions* to this rule, and it *applies to* all civil and criminal *matters*.

### 7.2.2 QUALIFICATION AND GOOD STANDING

✓ Legal aid instructions may only be received by:

- A legal practitioner admitted and in *good standing* in the Republic of South Africa, or
- A company or firm with all its directors or partners admitted and in good standing in the Republic of South Africa, or
- A candidate attorney or pupil advocate employed by Legal Aid SA.

### 7.2.3 CO-ACCUSED OR CO-LITIGANTS

#### (a) Applicants for legal aid in the same case: no conflict of interest

Where more than one legal aid applicant applies for legal aid for the same case, the *person receiving the legal aid application* will ask the legal aid applicants if there is any *conflict of interest* between them.

✓ If no conflict of interest is disclosed to the person receiving the legal aid application, he/she must instruct a single legal practitioner to represent all legal aid applicants in that case. But this should not generally exceed 5 accused for each practitioner.

#### (b) Single practitioner instructed for more than one applicant

Where a single legal practitioner is instructed to represent more than one legal aid applicant, this must be done by setting out the details of the first legal aid applicant on the LA2 form, and detailing the particulars of the remaining legal aid applicants in Annexures to the LA2.

⇒ See Annexure D on page 258 and Annexure S on page 340.

✓ The legal practitioner, who receives a single legal aid instruction for more than one legal aid applicant, must ensure, from the start of the case, that no conflict of interest exists between his/her clients.

#### (c) Applicants for legal aid in the same case: conflict of interest

If a single practitioner discovers a conflict of interest, the legal aid instruction must be returned to the JCE with an appropriate letter so that separate legal aid instructions may be issued to other legal practitioners.

✓ When a conflict of interest is disclosed, the JCE must instruct separate legal practitioners for each legal aid applicant or group of legal aid applicants. If the separate practitioners are both or all employed by Legal Aid SA:

- Each practitioner must report to a separate supervisor.
- Precautions must be put in place to ensure the *confidentiality* of *privileged attorney/client communications*.

#### (d) Appointing legal practitioner to determine if there is a conflict of interest

The JCE or HCUM may, in a case where there may be a potential conflict of interest, appoint a legal practitioner to consult with all legal aid

applicants involved in the particular case to determine whether or not there is any conflict between them. The legal practitioner appointed to investigate may not appear on behalf of any of the legal aid applicants when the case goes to court.

### 7.3 Impact Services Policy

This section sets out Legal Aid SA's *Impact Services Policy* introduced in January 2004, as amended.

#### 7.3.1 POLICY

7.3.1.1 Legal Aid South Africa provides legal services and legal representation in the execution of its statutory mandate as set out in the Legal Aid Act 22 of 1969 (the Act). These services are provided by salaried legal practitioners employed by Legal Aid SA at Justice Centres, by legal practitioners in private practice through the Judicare scheme and through non-governmental organisations (NGOs) with whom Legal Aid SA has entered into Co-operation Agreements.

In the execution of its mandate, Legal Aid SA has decided to diversify its areas of funding and thereby extend its assistance to as many *indigent persons* as it can reach. From time to time, matters arise in which the opportunity exists for Legal Aid SA to undertake or fund *litigation* or other legal work which has the potential to positively affect the lives of a far larger number of indigent persons than the person or persons to whom legal services are rendered directly.

7.3.1.2 There are 3 ways in which these matters, if handled with the necessary skill and expertise will have the potential described in 7.3.1.1:

- The opportunity exists to establish a *legal precedent*, jurisprudence or clarify aspects of the law that will be followed in dealing with indigent persons in similar matters, or
- Either by a *class action* or by the litigation of a small number of matters calculated to bring about the settlement of a much larger group of disputes, the matters have the potential to resolve a large number of disputes or potential disputes, and obtain wider collective objectives, or

- By the strategic intervention and rendering of *non-litigious* legal services the potential exists to materially improve the lives of a group or a significant segment of a group.

7.3.1.3 *Impact Legal Services* thus could be, but are not restricted to, matters in which the legal assistance to be rendered relates to litigation likely to establish a legal precedent.

7.3.1.4 Impact Legal Services are not a new means of delivering legal services. These legal services could be rendered by:

- Salaried legal practitioners employed at Legal Aid SA's Justice Centres and Impact Litigation Unit, or
- Legal practitioners in private practice, or
- A Co-operation Partner of Legal Aid SA, or
- A law clinic, or
- Any combination of the above.

7.3.1.5 *Impact Services matters* will be distinguishable from routine legal aid matters by the level of resources devoted to individual matters precisely because of the far-reaching potential impact of these.

7.3.1.6 Legal Aid SA will define its strategic priorities annually, which will be published for information. Legal Aid SA will give preference to proposals responding to Legal Aid SA strategic priorities, but will also consider other proposals that motivate the need for specific services for the poor.

#### 7.3.2 SUBMISSION OF PROPOSALS

7.3.2.1 A proposal for the rendering of Impact Legal Services shall be in writing and shall set out:

- (a) The nature and extent of the proposed legal services, as well as evidence that the services offered will benefit a substantial number of indigent people.
- (b) Sufficient facts, expert opinion (where appropriate) and legal submissions to enable an assessment of whether the proposed litigation (litigious services) has a reasonable prospect of success, or of whether the proposed legal services (non-litigious legal services) will enable a beneficial strategic intervention that will significantly affect the lives of a group or a sizeable portion of a group.



- (c) A detailed budget for the Impact Legal Services setting out details of each of the stages of litigation and the total expenditure planned at each stage, including cash flows and when the said funds would likely be required.
  - (d) Clear deliverables, key performance indicators and time-frames for each of the various stages of litigation, as well as the legal representative's experience in the area of impact litigation.
- 7.3.2.2 A manager will be responsible for the co-ordination of the activities of all other service providers on the team, and who will also be responsible for the submission of regular monthly reports and a final report on finalisation of the matter.
- The final report must include:
- (a) The areas of law that may have been tested before court.
  - (b) The relevant legislation, if any and other references used in the litigation of the matter.
  - (c) The areas of law, if any, which may need to be reviewed by a relevant law-making or regulatory body.
- 7.3.2.3 Where legal services are to be provided by legal practitioners, who are not employed by Legal Aid SA, the proposal will either be required to set out a programme for the transfer of the required skills to appropriate employees of Legal Aid SA or to justify the outsourcing of these legal services operationally.
- 7.3.2.4 Where the principal contractor (eg attorney) who will manage and co-ordinate the activities of subcontractors (eg advocates, expert witnesses) is not employed by Legal Aid SA, Legal Aid SA will provide legal aid either fully or partially, on condition that the main service provider enters into a written agreement with Legal Aid SA, for services offered.
- 7.3.2.5 Where the main service provider is a legal practitioner in private practice, the legal practitioner must be *accredited* from time to time according to any accreditation rules prescribed by Legal Aid SA.
- 7.3.2.6 Where the main service provider is an NGO, the NGO shall comply, with the necessary changes, with all the requirements prescribed by Legal Aid SA for a Co-operation Partner, as set out in Legal Aid SA's policy on Co-operation Agreements.

- 7.3.2.7 Every proposal must include a *merit report*, as set out in 6.1.3 and 11.3.1 of this Guide.

⇒ See 6.1.3 on page 92 and 11.3.1 on page 168.

- 7.3.2.8 In addition to Impact Legal Services undertaken or funded by Legal Aid SA as a result of proposals submitted to it, Legal Aid SA may itself initiate the delivery of Impact Legal Services.

### 7.3.3 APPROVAL OF IMPACT SERVICES MATTERS

- 7.3.3.1 The Constitutional Case Management Committee (CCMC) shall consist of the Chief Operations Officer, the National Operations Executive, the Legal Development Executive, a senior attorney employed in the Legal Development Department and a non-executive member of the Board. The terms of reference of the CCMC are set out in Annexure V.
- 7.3.3.2 The Regional Operations Executives within whose area a proposed Impact Legal Service will be rendered will be a member of the CCMC when an Impact Legal Services proposal is considered, if it is envisaged that the proposed Impact Legal Services will have a regional rather than a national impact.
- 7.3.3.3 The non-executive member of the Board shall be selected by the Board annually and shall hold office until a successor is selected.
- 7.3.3.4 The NOE shall chair the CCMC.
- 7.3.3.5 Unless varied by this policy, meetings and proceedings of the CCMC will be governed by generally accepted rules.
- 7.3.3.6 Meetings of the CCMC will be held as the NOE deems appropriate. Meetings should be organised so that attendance is maximised.
- 7.3.3.7 The notice of each meeting of the CCMC, confirming the venue, time and date and enclosing an agenda of items to be discussed shall, save in exceptional circumstances, be forwarded to each member of the CCMC not less than 7 working days before the date of the meeting.
- 7.3.3.8 The quorum for decisions of the CCMC shall be any 3 members present and voting on the matter for decision.

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

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

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

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

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

⇒ See Annexure V on page 350.

#### 7.3.4 APPEAL AGAINST DECISION OF THE CCMC

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

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

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

#### 7.3.5 TARIFF OR FEES PAYABLE BY LEGAL AID SA

⇒ For detail on Legal Aid SA's tariffs including tariffs for Impact Legal Services, see Annexure F on page 276.

## Chapter 8:

### Judicare

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

##### ✓ 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 Service Level Agreements with Legal Aid SA. Their applications for accreditation will include details of their firms, including information on their *Black Economic Empowerment* (BEE) component.
- A transparent database system allocates *Judicare* instructions to practices of accredited lawyers, incorporating principles such as:
  - \* Equity principles
  - \* BEE
  - \* The need to distribute *Judicare* fee income
  - \* Giving preference to local and full-time 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 8.2 on page 108.
- An explanation of Legal Aid SA's *exclusionary list* in 8.3 on page 117.

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.

## 8.2 Judicare Accreditation System

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 revise lists of accredited legal practitioners.
- The need to prevent the receipt of a legal aid instruction by an excluded legal practitioner.
- Fairness and equity in the distribution of Judicare work and income.
- The need to conserve public funds.
- 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.
- 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.

## 8.2A Judicare Accreditation Programme

### 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.

### 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 any legal practitioner with right of appearance in any court in respect of which he has applied to be accredited and whose name appears on a Directory of Accredited legal practitioners maintained 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 the scheme set out in the Legal Aid Guide of Legal Aid SA, as amended by subsequent circulars, by which Legal Aid SA offers legal aid instructions to private legal practitioners.

**‘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 An accused person to whom legal representation is assigned in a criminal matter in terms of Section 35(3)(g) of the Constitution, 1996 or who is granted legal aid in terms of the legal aid scheme conducted by Legal Aid SA under the Legal Aid Act, is not entitled to choose the legal practitioner who will represent, assist or advise him/her. Legal Aid SA has the right to determine which legal practitioner will be allocated to which legal aid recipient and further has the right to change the legal practitioner allocated to a particular 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:
- 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
  - 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

- 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 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. Legal practitioners who did not initially apply for accreditation must apply in terms of paragraph 8.3A.1 below.
- 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.
- 8.2C.9 A legal practitioner shall apply for accreditation and inclusion of his/her name on the Directory of Accredited Practitioners on the prescribed application forms. See Annexure O3.

8.2C.10 Applications for accreditation and inclusion on the Directory of Accredited legal practitioners shall be made by completing and submitting a standard accreditation application form. 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.
- Details of courts seats for which instructions will not 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.

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 on or before 31 March of each year. Failure to do so will result in the practitioner being suspended from the accreditation list until a valid certificate is submitted. Each Justice Centre will revise the Directory of Accredited Practitioners on 31 March every year, which revision entails receipt of current certificates of good standing of practitioners from professional bodies, consider, recommend or decline applications for accreditation for magisterial districts and High Court jurisdictions in the service area of the relevant Justice Centre. (See Annexure P for details of magisterial districts and High Court jurisdictions under the control of each Justice Centre).
- 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 (Service Level Agreement SLA) to the National Operations Executive or anyone so delegated by the NOE in writing, for completion and signing. The NOE returns a completed copy of the SLA 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 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 service level agreement with private practitioners rights and duties.
- 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.
- Other appropriate information.

At such briefing sessions practitioners must be supplied with copies of the 'Accreditation Agreement for Private Practitioners' (See Annexure O2).

- 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.
- 8.2C.30 A legal practitioner who, not having applied for accreditation upon initial compiling of the Directory of Accredited Legal practitioners, may apply for inclusion in the Directory at any other time. The application and approval process for interim applications shall be as set out in paragraphs 8.2C.13 to 8.2C.24 above.

### 8.3 Exclusionary list

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

The name of a legal practitioner may be placed on the exclusionary list 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 consistently does not *comply* with the policies, procedures and rules of Legal Aid SA, or
- The legal practitioner is struck-off/suspended from the rolls of practising attorneys/ advocates, 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.

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 Withdrawal and Exclusion

- 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.

- 8.3A.3 The status of a legal practitioner who is suspended for reasons other than those mentioned in 8.3A.5 and 8.3A.6 below, together with the reason(s) for being suspended, 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 on hold or suspended status unless the on hold or suspended status is lifted with the approval of the National Operations Executive.
- 8.3A.4 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 certificate of good standing
  - (e) is under investigation for fraud or unethical behavior
  - (f) and Legal Aid SA's relationship has irretrievably broken down.
- 8.3A.5 Without limiting the generality of the foregoing a practitioner shall be placed on the exclusionary list:
- (a) if an attorney practising for his/her own account, or the firm where the attorney practices does not have a valid fidelity fund certificate, or
  - (b) if, at 31 March each year, a practitioner is unable to produce a certificate of good standing from a professional body that exercises disciplinary control over him/her
  - (c) if a practitioner is struck off or suspended from the rolls of practicing attorneys or advocates, or if the CEO decides to act on the request of a legal professional body to place the name of the legal practitioner on the exclusionary list, or
  - (d) if a practitioner does not comply with policies, procedures and rules of Legal Aid SA, or
  - (e) if the CEO, or a person delegated by the CEO, after conducting an enquiry and considering representations



from the affected practitioner, 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, such as, but not only:

- receiving and demanding money from a client,
- rendering false accounts,
- failing to appear on behalf of a client without making alternative arrangements.

8.3A.6 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.

8.3A.7 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.

8.3A.8 The status of a legal practitioner who is excluded from being granted any legal aid instruction for reasons mentioned in 8.3A.4 and 8.3A.5 above together with reasons for his/her exclusion shall be noted against the practitioner's name in the Directory of Accredited legal practitioners.

8.3A.9 The names of legal practitioners with exclusion status shall be deemed to constitute Legal Aid SA's exclusionary list as referred to in other Legal Aid SA policy documents.

8.3A.10 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. 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.

### 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.

## Chapter 9:

### Co-operation Partners

#### 9.1 Provisions governing Co-operation Partners

- ✓ The operation of a *Co-operation Partner* is governed by:
  - The *Co-operation Agreement*, as amended or re-negotiated from time to time.
  - The decisions of any management committee appointed under the *Co-operation Agreement* and authorised to act by the *Co-operation Agreement*.
  - Relevant provisions of the *Co-operation Agreements Policy* in this Guide or any updates to the *Co-operation Agreements Policy* from time to time.
  - Any decision of Legal Aid SA or directive of the CEO that they may be *entitled to enforce* under a *Co-operation Agreement*.

#### 9.2 Co-operation Agreements Policy

This Co-operation Agreements Policy sets out and explains Legal Aid SA policy on Co-operation Agreements with Co-operation Partners:

##### 9.2.1 BACKGROUND TO CO-OPERATION AGREEMENTS

- 9.2.1.1 Legal Aid South Africa provides legal services and legal representation to carry out its mandate in the Legal Aid Act 22 of 1969. *Salaried legal practitioners* employed by Legal Aid SA at *Justice Centres* primarily deliver these legal services.
- 9.2.1.2 Legal Aid SA in keeping with its mix of delivery systems will also provide legal services through both the *Judicare* approach and Co-operation Agreements with non-governmental organisations (NGOs) capable of delivering either legal services of a particular specialist nature or within a particular geographical region.

##### 9.2.2 POLICY ON CO-OPERATION AGREEMENTS

- 9.2.2.1 Legal Aid SA will enter into agreements with NGOs and other organisations to provide legal services that contribute to

achieving Legal Aid SA's Vision, as long as the relevant organisations have aims and objectives that do not contradict those of Legal Aid SA.

- 9.2.2.2 Legal Aid SA will define its strategic priorities from time to time and publish these for information. Legal Aid SA will give preference to proposals responding to its strategic priorities, but will also consider other proposals motivating the need for specified services for the poor.
- 9.2.2.3 Agreements mentioned in 9.2.1 of this Policy will be partnerships in which both Legal Aid SA and the organisations will contribute.
- 9.2.2.4 The bulk of the funding provided by Legal Aid SA should be used to directly benefit the poor through delivery of legal services to the poor.
- 9.2.2.5 Legal Aid SA will take into account the existing legal services available in any particular geographical area.
- 9.2.2.6 Legal Aid SA will not fund existing operations, but only the expansion of legal service delivery through new or additional projects. However, Legal Aid SA will be mindful of not making this an absolute rule, as a deserving NGO that has been providing efficient services may run out of funding.
- 9.2.2.7 The partner NGOs must be properly constituted with a constitution and —
  - i. Have a proven track record of effective community service.
  - ii. Make full disclosure of all sources of funding and activities.
  - iii. Submit audited balance sheets annually.
  - iv. Make all documents available for inspection.
  - v. Permit an audit of financial affairs by Legal Aid SA and the Auditor General.
  - vi. Carry out its own audits on the quality and quantity of legal services provided and report to Legal Aid SA on the results.
  - vii. Indemnify Legal Aid SA against any claim that may be made against it, and take out professional insurance to the satisfaction of Legal Aid SA.

- viii. Provide a cost-effective legal service to *indigent* people.
- ix. Provide a service free of charge to those who could otherwise not afford the service. Legal Aid SA's means test must be administered in every case.
- x. Keep proper files and adhere to proper office management systems.
- xi. Conduct itself in accordance with the regulations of the relevant professional bodies.
- xii. Keep a comprehensive database so that statistics can be monitored.
- xiii. Provide monthly statistical data, subject to quarterly verification.

### 9.2.3 SALARIES

The salaries paid by the NGO may not be more than the salaries paid to equivalent Justice Centre staff.

### 9.2.4 FAILURE BY NGO

If the NGO does not meet its contractual and reporting obligations, Legal Aid SA has the right to terminate the agreement after giving the NGO at least 2 month's notice.

### 9.2.5 APPROVAL OF CO-OPERATION AGREEMENTS

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

⇒ See Annexure W on page 355

- 9.2.5.2 The Regional Operations Executives within whose area a proposed Co-operation Agreement will operate will be a member of the LSTC when a proposed Co-operation Agreement is considered.

- 9.2.5.3 The non-executive member of the Board shall be selected by the Board annually and shall hold office until a successor is selected.
- 9.2.5.4 The NOE shall chair the LSTC.
- 9.2.5.5 Unless varied by this policy, meetings and proceedings of the LSTC will be governed by generally accepted rules.
- 9.2.5.6 Meetings of the LSTC will be held as the NOE deems appropriate. Meetings should be organised so that attendance is maximised.
- 9.2.5.7 The notice of each meeting of the LSTC, confirming the venue, time and date and enclosing an agenda of items to be discussed shall, except under exceptional circumstances, be forwarded to each member of the LSTC not less than 7 working days before the date of the meeting.
- 9.2.5.8 The quorum for decisions of the LSTC shall be any 3 members present and voting on the matter for decision.
- 9.2.5.9 The Chairperson, at his/her discretion, may invite such executives and Senior management as appropriate, to attend and be heard at meetings of the LSTC.
- 9.2.5.10 Based on the functions performed by the non-executive Board member of the LSTC, in addition to his/her functions as a member of the Board, the member of the LSTC, who is a non-executive Board member, may be paid remuneration for his/her appointment as fixed by the Board.
- 9.2.5.11 The LSTC must approve all Co-operation agreements irrespective of the expenditure authority of any officials of Legal Aid SA.
- 9.2.5.12 All Co-operation Agreements approved by LSTC shall be reported to the Board at its next meeting.

## 9.2.6 APPEAL AGAINST DECISION OF LSTC

A proposer has the right of appeal to the CEO against the refusal of the LSTC to approve a Co-operation Agreement.

The NOE shall inform the proposer of this right and, if requested within 3 months of being informed of this right, the NOE shall give detailed reasons for the refusal.

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

## 9.3 Managing co-operation agreements

### 9.3.1 MANAGING THE CONTRACT

#### (a) Duties of ROEs

ROEs must monitor the performance of all Co-operation Agreement partners on a monthly basis. They must ensure that Co-operation Partners *comply* timeously with all contractual guarantees.

#### (b) Duties of Co-operation Partners

If Co-operation Partners do not comply with contractual guarantees or *breach* a Co-operation Agreement, the ROEs will inform the LSTC to:

- Timeously instruct the appropriate officers of Legal Aid SA to cease payment of any instalments, and
- Take steps to terminate the Co-operation Agreement.

#### ✓ Co-operation Partners must submit:

- Monthly reports of progress to the ROEs, and
- An annual report to the LSTC.

#### (c) Supervision by Justice Centre legal practitioners

In certain areas, Legal Aid SA works in co-operation with advice offices that have *paralegals* and other employees who are not under the control and supervision of a *salaried legal practitioner* employed by a Justice Centre.

Legal Aid SA will not accept any responsibility or *liability* in these cases unless the relevant case files are taken over by the nearest Justice Centre to render litigation services in accordance with a relevant Co-operation Agreement.

### 9.3.2 MANAGING FINANCIAL PROCEDURES

#### (a) Monitoring compliance

The ROEs will monitor compliance by Co-operation Partners with annual financial statements.

**(b) Dealing with non-compliance**

If Co-operation Partners do not provide acceptable annual financial statements, or do not comply with the Co-operation Agreement, the ROEs, in consultation with the Chief Financial Officer and NOE, will consider and implement *remedies* to:

- Ensure that the Co-operation Partner complies with the relevant procedures, or
- Recommend to the LSTC to terminate the Co-operation Agreement.

Any *non-compliance* and action on it will be reported to the LSTC.

**Chapter 10:****General policy****10.1 Confidentiality and privacy****10.1.1 THE CLIENT'S CONFIDENTIALITY AND PRIVILEGE**

✓ All information that comes to the notice of an official or representative of Legal Aid SA must at all times be treated as *confidential* and may only be disclosed when it relates to determining:

- Whether the *legal aid applicant* qualifies for legal aid.
- The merits of the *matter*.

The *privilege* of the client must be recognised and applied. Thus any information given in confidence to an *agent legal aid officer* or a JCE may be communicated to other officials of Legal Aid SA and to the *legal practitioner* appointed to the extent that the privilege is *deemed* to have been *waived* to the extent required to proceed with the matter.

However, the information may not be communicated to any other person, unless:

- The client *consents*, or
- A *statute* orders this, or
- A court order directs this.

**10.1.2 CIRCUMSTANCES FOR POSSIBLE DISCLOSURE OF INFORMATION**

Where the right of a legal aid applicant to receive legal aid or to continue a matter on a legal aid basis is challenged by any other party to the case, there may be possible grounds for disclosing relevant information.

✓ A legal administration officer, public defender, HCUM, principal attorney or JCE may disclose details of the legal aid applicant's application for legal aid and any *merit report* received by Legal Aid SA that are necessary for deciding the issue of whether Legal Aid SA should grant or continue legal aid.

Apart from these circumstances, decisions on the possible disclosure of information rest with the CEO as Legal Aid SA's Information Officer, and

any Deputy Information Officers appointed by the CEO under the Promotion of Access to Information Act 2 of 2000.

## 10.2 Discretionary powers

### 10.2.1 CONTRIBUTION TOWARDS LEGAL AID SOUTH AFRICA'S COSTS

#### (a) Contribution to costs

Legal Aid SA does not generally require clients to make an initial contribution to costs except as set out here. However, Legal Aid SA retains the right to reinstate a system that requires clients to contribute. If this is done, a *Circular* from the CEO will advise *stakeholders*.

Under section 73(2C) of the Criminal Procedure Act, as amended by Act 86 of 1996, a court may order that the costs or portion of the costs of legal representation provided at State expense must be recovered from the accused. The contribution to be paid by the accused will be determined by Legal Aid SA according to the powers set out in section 3(d) of the Act.

Legal Aid SA may also under section 3(d) of the Act fix conditions for the payment of a contribution to the Board by the legal aid applicant, especially where the legal aid applicant exceeds the *means test*, but is granted legal aid at State expense after the assessment under Step 3 of the means test enquiry in 5.1.1 on page 72.

The contribution to be paid by the legal aid applicant will be determined by Legal Aid SA according to the powers set out in section 3(d) of the Act. The contribution to be paid by the legal aid applicant should be made an order of court.

⇒ For the procedure for advising the legal practitioner about the court order, see 11.2.2 on page 165.

#### (b) Comparing different LEGAL AID SA rights in relation to costs

✓ This right to a contribution to costs by clients is different from other rights that Legal Aid SA has in relation to costs:

- The right to recover costs from the other *parties* to the litigation – these are *ceded* to Legal Aid SA under section 8A of the Act.
- The *benefit* to Legal Aid SA payable by the client out of the proceeds of an action.

- The right to recover any difference between *attorney and client costs*, and *party and party costs*.

⇒ For more information on the benefit due to Legal Aid SA, see 10.8.3 on page 150.

### 10.2.2 NOE'S DISCRETION

#### (a) Departing from means test

The NOE may consider the application of any person, who does not qualify under the means test but who, subjectively judged, is *indigent* and deserves sympathetic consideration on the grounds of exceptional or other circumstances.

All Regional Court and High Court criminal cases should be referred to the CCMC for consideration under 5.1.1 on page 72.

#### (b) Withdrawing legal aid

At all times, the NOE has the *discretion* to withdraw legal aid previously granted on grounds the NOE deems appropriate.

#### (c) Limited increased fees

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

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

The NOE must:

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

The authorisation of additional work at standard tariff rates does not need to be reported to the Board.

#### (d) Interim fees

The NOE has the discretion to authorise the payment of interim fees in any matter in which a legal practitioner makes written representations.

Interim accounts for practitioners' fees are paid only if the NOE (or a person having delegated authority from the NOE) has authorised such payments; or, if there have been five or more appearances in a month in



a criminal case in the High Court; or if a High Court case has been postponed for more than three months.

#### (e) Exercising discretion on reasonable grounds

The NOE has a general discretionary power in administering legal aid as prescribed by Legal Aid SA from time to time. This discretion must be exercised on reasonable grounds.

The NOE may not *waive*:

- Any provision of the Guide requiring the NOE to report to the Board.
- Any limitations on maximum increased *Judicare* fees for any class of work.
- The provisions of this paragraph.

### 10.2.3 GENERAL DISCRETIONARY POWERS

#### (a) Discretion of CEO

The CEO may exercise a general discretion to:

- Waive any condition, procedure or policy set out in this Guide as long as this is within the overall authority of the Legal Aid Act.
- Provide for any issue not covered in this Guide.

However, when the CEO exercises this discretion, he/she must report on it to the Board or Board Executive Committee at its next regular meeting.

#### (b) Delegation of NOE's authority

- ✓ The NOE may, in consultation with the CEO, delegate some or all of the authority the NOE has under this Guide:
  - This delegation must be in writing and signed by the NOE.
  - The NOE may delegate powers to other officers or agents of Legal Aid SA.
  - The NOE may delegate to these officers or agents the authority to further delegate.
  - The NOE may not delegate any authority to any person who is not an employee of Legal Aid SA or an employee of the Department of Justice and Constitutional Development.

#### (c) Suspending services

Legal Aid SA may suspend the granting of legal aid for certain services from time to time.

#### (d) Restrictions on costs

Legal Aid SA may restrict legal costs in certain kinds of cases from time to time.

### 10.3 Increased fees

#### 10.3.1 CRIMINAL CASES

- ✓ It ROEs or the NOE exercise their discretion under Annexure E to authorise increased fees or *disbursements* for any legal practitioner, the NOE must record in a report and submit to Legal Aid SA at its next ordinary meeting, details of:
  - The case in which discretion was exercised.
  - Any increased or additional fees and disbursements to any legal practitioner.
  - The reasons for the exercise of discretion in the case.

⇒ See Annexure E on page 260.

#### 10.3.2 CIVIL MATTERS

The authorisation of fees or disbursements on the scale applicable to *Impact Services matters* may only be done by the LSTC, except:

- ✓ Where the amount involved is less than R50 000 including VAT, the NOB and LDE jointly may authorise the fees and disbursements.

⇒ See Annexure F on page 276.

### 10.4 Extending the legal practitioner's brief

- ✓ A legal practitioner who has been briefed must not give legal aid assistance beyond the scope of his/her instruction without the written consent in advance by the JCE.
- ☆ For example, the practitioner must not make applications (including applications for a contribution towards costs) or institute actions that are additional to or beyond the main instruction without the JCE's consent.

Telephonic authorisation may be obtained for the proposed action in urgent circumstances, but the legal practitioner has a duty to confirm this authorisation in writing. Only then will the granting of authorisation be *deemed* to be completed.

## 10.5 Medical costs

Legal Aid SA does not pay costs related to:

- The medical treatment, operations or hospitalisation of the applicant.
- Travel for visiting medical practitioners.
- Clients attending a medical consultation or examination.

✓ Legal Aid SA is only responsible for rendering and making legal services available.

## 10.6 General provisions for all civil matters

### 10.6.1 OPPOSING PARTY ALSO ON LEGAL AID

If it comes to the notice of a legal practitioner who has been instructed that the opposing party is also acting on legal aid, no further proceedings in the matter should be taken, except to prevent substantial prejudice to either of the parties:

- The practitioner must notify the JCE immediately and provide details.
- The ROE will decide whether, and if so how, legal aid will be provided for the further prosecution or defence of the matter.

### 10.6.2 BUDGETS FROM LEGAL PRACTITIONERS

#### (a) Legal practitioner to send budget and other information to JCE

✓ At least 8 weeks before the hearing or, if legal aid is granted within a shorter period before the hearing, at the time of legal aid being granted, the attorney, together with any advocate, must send the JCE:

- A full and comprehensive budget of the expected expenditure for the hearing.
- A re-evaluation of the issues referred to in 6.1.3 and 11.3.1 of this Guide.

- Any other relevant information that can be reasonably expected to be necessary for the JCE to decide whether to proceed with the action or to dispose of it in some other way.

⇒ See 6.1.3 on page 92 and 11.3.1 on page 168.

#### (b) Urgently giving JCE any changes in budget and other information

If at any stage during proceedings, circumstances change so as to differ from those already communicated to the JCE, these changes must immediately be sent to the JCE. If necessary, the case must stand down or a short postponement must be arranged in order to communicate with the JCE and make a decision on the further availability of legal aid.

### 10.6.3 PRESCRIPTION OR DEFAULT JUDGEMENT

✓ If it becomes necessary to prevent *prescription* taking place or a *default judgement* being taken, the attorney must take reasonable steps to protect the rights of the legal aid applicant while:

- Complying with the provisions of 6.1.3 of this Guide, or
- Awaiting the JCE's response to the legal practitioner's report under the provisions of 6.1.3 of this Guide.

⇒ See 6.1.3 on page 92.

### 10.6.4 LEGAL AID SA AUTHORISATION AFTER LEGAL PRACTITIONER'S REPORT

✓ If after receiving a legal practitioner's report under the provisions of 6.1.3 or 11.3.1 of this Guide, the JCE decides to authorise the legal practitioner to proceed on a legal aid basis, this authorisation is limited to the lesser of:

- The total expected financial involvement of Legal Aid SA, as last reported by the legal practitioner, or
- The total financial involvement of Legal Aid SA directly authorised by the JCE.

⇒ See 6.1.3 on page 92 and 11.3.1 on page 168.

However, the JCE may vary the budget for a particular matter by agreement recorded in writing.

**10.6.5 AUTHORISATION OF EXPERTS**

- ✓ Legal Aid SA is not liable to reimburse or pay any legal practitioner for the fees charged by any expert, unless prior written authorisation was granted for the instruction of the expert.

**10.6.6 TARIFFS**

- ✓ The Judicare tariff set out in Annexure F applies to all civil matters where a legal practitioner in private practice is instructed:
  - By a Judicare legal aid instruction, or
  - As *correspondent* for a Justice Centre, or
  - As an advocate briefed by a Justice Centre.

⇒ See Annexure F on page 276.

**10.6.7 TENDERS, SETTLEMENTS AND PAYMENTS INTO COURT****(a) Settlements in civil cases**

A legal practitioner instructed in a civil or divorce case may at his/her discretion negotiate a settlement and, with the consent of the JCE, waive a claim for costs or contribution towards costs.

If the JCE grants authority telephonically, the legal practitioner must confirm the circumstances and the authority in writing. The practitioner must be aware of the rule of practice in litigation that 'costs follow the unsuccessful party'.

**(b) LEGAL AID SA costs as part of settlements**

Settlements for an all-inclusive amount (including costs) must be avoided as far as possible.

- ✓ Where this is not possible, the legal practitioner must inform the legal aid litigant that:
  - The costs owing to Legal Aid SA under section 8A of the Act or otherwise, were included in the lump sum, and will be paid to Legal Aid SA out of this lump sum settlement.
  - A party and party *bill of costs* must be drawn up to determine the amount owing to Legal Aid SA that is part of the lump sum settlement.

**(c) Notifying the JCE**

- ✓ If a tender, offer of settlement or payment into court is made, the legal practitioner must immediately:
  - Notify the JCE in writing.
  - Send the JCE a full report on the merits of the case and the issues relating to the tender, offer of settlement or payment into court.

If legal aid is granted for a continuation of an action, any tender, offer of settlement or payment into court that has already been made, must similarly be reported to the JCE.

**10.6.8 SECURITY AND COSTS IN CIVIL MATTERS****(a) No funds for security**

Legal Aid SA does not provide funds for the purpose of giving *security*.

**(b) Exemptions from giving security**

A client is exempted in certain circumstances from the duty to give security for the costs of an opposing party and to pay certain court fees. This is covered in Rule 47A of the Uniform Rules, Rule 6(6) of the Rules of Supreme Court of Appeal, Rules 51(1) and 51(4) of the Magistrates' Court Rules, and the Rules of the Divorce Court.

**(c) Payment of security before granting legal aid**

If any sum must be deposited as security, legal aid must not be granted until it is clear that the client has the means to make payment of this security.

**(d) Security under Magistrates' Court Act Rules**

Legal practitioners should note the effect of the case of *Mthetwa and Others v Diedericks and Others 1996 (7) BCLR 1012 (N)*, on the requirement of security for costs set out in Magistrates' Courts Rule 49(1).

- ✓ A legal aid litigant does not have to put up security in a rescission of judgement application in the Magistrates' Courts.

## 10.7 Fraud and abuse of legal aid

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

### 10.7.1 THE SPIRIT OF PROVIDING LEGAL AID

Legal Aid SA seeks to ensure that, as far as possible, legal representation is offered to indigent litigants.

- ✓ Therefore, it is important that the principles and rules of this Guide are enforced so as to:
  - Enable as many people as possible to receive legal aid, and
  - Ensure that the system of legal aid and Legal Aid SA are not brought into disrepute as a result of the conduct of legal practitioners contrary to the letter and spirit of this Guide.

### 10.7.2 POSSIBLE STEPS OPEN TO LEGAL AID SA

- ✓ In keeping with the spirit of 10.7.1, Legal Aid SA reserves the right to:
  - Terminate mandates to legal practitioners already in possession of instructions.
  - End further mandates when Legal Aid SA's policies, procedures and rules are disregarded, *breached* or abused.
  - In appropriate cases, initiate disciplinary procedures with the relevant authorities.
  - Circulate to its various offices the names of legal practitioners disqualified from receiving instructions.
  - Withhold payment of any monies due to a legal practitioner in excess of reasonable fees and expenses.

### 10.7.3 REASONS TO SUSPECT FRAUD/ABUSE

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

- ☆ For example, legal aid applicants may have misled or attempted to mislead a person receiving a legal aid application on the applicant's:

- \* Indigence, or
- \* Ability to afford legal representation.

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

### 10.7.4 COPY OF REPORT TO PERSON SUSPECTED

- ✓ The JCE must provide a copy of a report on the suspected fraud/abuse to the legal aid applicant or recipient, and give him/her a reasonable opportunity to respond to the allegations:
  - The time given is normally at least 2 weeks.
  - Any response must be addressed to the JCE in writing.
  - Where the legal aid recipient is illiterate, the complaint must be communicated to the legal aid recipient orally, and the JCE must appoint a Legal Aid SA employee to record the legal aid recipient's response.

### 10.7.5 JCE'S DECISION ON STEPS NECESSARY

- ✓ After receipt of the response from the legal aid applicant or recipient, or if no response is received after a reasonable time, the JCE may decide, after investigating further, on one or more of these steps:
  - Terminating legal aid
  - Charging the legal aid applicant or recipient with fraud, where applicable.
  - Starting civil action against the legal aid applicant or recipient.
  - Authorising continuation of legal aid where no fraud or abuse is proved.

### 10.7.6 FORENSIC INVESTIGATION

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

### 10.7.7 LEGAL AID SA'S GENERAL RESPONSE TO FRAUD

- ✓ The general policy of Legal Aid SA is to:

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

### 10.7.8 LEGAL PRACTITIONER'S DUTY: POSTPONEMENTS

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

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

### 10.7.9 RECEIVING MONIES AFTER LEGAL AID INSTRUCTION

No additional moneys that are not due under this legal aid policy or a court order may be received directly or indirectly by a legal practitioner from the client or from any other source after receiving a legal aid instruction for a particular matter.

In this context, 'received' includes monies deposited to a trust account. This conduct is also unethical conduct by the legal practitioner or candidate attorney, and may be referred to the relevant Law Society for investigation.

- ✓ In addition, any *salaried legal practitioner, candidate attorney or employee of Legal Aid SA* who accepts any money that is not due under this policy or a court order from a legal aid applicant is guilty of misconduct.

⇒ For the implications of receiving additional moneys on future legal aid instructions, see 10.7.2 on page 146.

### 10.7.10 EXCLUSION OF PRIVATE CLIENTS IN JUDICARE MATTERS

Save with the written consent of the JCE, no legal practitioner who has accepted a Judicare instruction may simultaneously act for any private client in the same matter.

### 10.8 Costs in civil cases

#### 10.8.1 COST ORDERS AGAINST LEGAL AID RECIPIENTS

Legal Aid SA does not pay or contribute towards cost orders awarded against legal aid recipients.

- ✓ All legal practitioners carrying out legal aid instructions have a duty to inform legal aid recipients about the possibility of getting a costs order against them.

#### 10.8.2 PROTECTING LEGAL AID SOUTH AFRICA'S INTEREST IN COSTS

##### (a) Costs in legal aid cases

Once legal aid has been granted to a client in a civil case, the aspect of costs changes:

- The interest in costs is ceded to Legal Aid SA, together with a percentage of the settlement amount of the case, as determined by Legal Aid SA from time to time – also called the 'benefit' to Legal Aid SA.
- The client has no further interest in the issue of costs.
- Legal Aid SA pays the legal practitioner according to this Guide.

##### (b) Duty of practitioners to protect Legal Aid SA interests

- ✓ The attorney who acts for the legal aid applicant in his/her capacity as *plaintiff/applicant or defendant/respondent* must:
  - Include a claim for costs in the summons, application, plea, counter-claim or notice of opposition.
  - Try throughout proceedings to recover costs or to enforce an order for costs against the unsuccessful party.

Legal practitioners involved in legal aid cases must ensure that they conduct and finalise cases in a way that properly considers the interests of Legal Aid SA.



## ☆ Examples:

- ✱ Any attempt to bring a case to finality that has a direct or indirect impact on Legal Aid SAs right to recover costs, must be referred to the JCE for prior consent before conclusion.
- ✱ An order or agreement that each party will pay its own costs, must not be proposed, put forward or accepted without the consent of the JCE.
- ✱ An agreement that a party will pay his/her costs to the date that legal aid was granted and thereafter that each party will pay its own costs, is likewise unacceptable.
- ✱ Any action by a legal practitioner acting on a legal aid basis that would unnecessarily increase any legal costs without a good reason must be avoided.

Legal Aid SA reserves the right to refuse payment of any costs that arise without its consent or without its interests being considered.

### 10.8.3 LEGAL AID SA SHARE OF SETTLEMENTS

#### (a) Payment of benefit due to LEGAL AID SA

- ✓ When a litigant, who is being assisted by Legal Aid SA, obtains a financial benefit as a result of a settlement or judgement at any stage after legal aid was granted, the legal practitioner must deduct a percentage of the benefit and pay it to Legal Aid SA. This percentage is determined by Legal Aid SA from time to time and laid down in Annexure I.

This is the percentage benefit that is currently payable to the Board:

- Benefit obtained – R0 to R20 000 = 0%
- Benefit obtained – R20 001 to R100 000 = 5% of the amount over R20 000
- Benefit obtained – Above R100 000 = R4 000 plus 10% of the amount over R100 000

The sum owing is known as the 'benefit' to Legal Aid SA, and is paid whether or not legal costs have been recovered or not. The benefit to Legal Aid SA is calculated on the balance of the financial benefit to client after deducting any costs included in a lump sum award.

⇒ See Annexure I on page 297.

#### (b) Including Legal Aid SA benefit

Legal practitioners must take care when advising clients on any proposed lump sum settlement or any settlement which provides for only a partial contribution to costs. Legal Aid SA will recover attorney and clients costs (less any partial contribution) from the lump sum. Legal Aid SA will in addition recover the 'benefit due to the Board' from the remainder of the lump sum. The result is that a client accepting a lump sum settlement may ultimately only receive up to 50% less than the sum settled for.

- ✓ On recovery of the party and party costs and the benefit due to Legal Aid SA, the practitioner must pay these amounts to Legal Aid SA.

If a practitioner sends a bill of attorney and client costs for an amount greater than the costs recovered on a party and party basis, then the difference between the attorney and client costs and the party and party costs must be paid from the capital amount recovered:

- This difference may only be paid up to a maximum of 50% of the capital amount.
- The ROE may waive the recovery of the difference in writing.

#### (c) Duty of practitioner

- ✓ It is the duty of a legal practitioner acting on a legal aid basis to inform the client of Legal Aid SA's share of settlements, and to ensure that this is paid to Legal Aid SA, together with costs.

### 10.8.4 LEGAL AID SOUTH AFRICA STEPS TO PROTECT ITS INTERESTS

#### (a) Withholding payments to practitioners

- ✓ Legal Aid SA reserves the right to withhold settling any outstanding accounts due to legal practitioners until all reporting duties have been complied with, or any dispute resolved.

#### (b) Checking on practitioners

If circumstances warrant this, the JCE may monitor the performance of a legal practitioner acting on a legal aid basis.

## ☆ Examples:



The JCE can confirm with the presiding officer that:

- \* The client was satisfactorily represented, or
- \* Proper appearances in court took place, or
- \* The legal practitioner obtained no unnecessary postponements.

⇒ For more detail on the monitoring of practitioners, see paragraph 8.3A on page 122.

## 10.9 Amendments to the Legal Aid Guide

### 10.9.1 PERIODIC AMENDMENTS BY CIRCULAR

The Board of Legal Aid SA may from time to time amend this Guide and its

Annexures, including the tariffs set out in Annexures E and F.

☆ For example, the Board of Legal Aid SA may wish to cater for issues such as:

- \* Increases in the cost of living.
- \* New types of work to be conducted on a legal aid basis.
- \* The elimination of abuses.
- \* The clarification of uncertainties.

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

These amendments to the Guide must be set out in a Circular approved by the Board of Legal Aid SA and signed by the CEO.

✓ Any amending Circulars shall remain valid and in operation until either replaced by a subsequent Circular, or the date on which a new or updated Legal Aid Guide comes into operation.

### 10.9.2 DISTRIBUTION OF CIRCULARS

For legal practitioners, Circulars must be distributed, before the date on which amendments to the Guide come into operation, to:

- The Law Societies of the Northern Provinces, the Cape of Good Hope, the Free State and KwaZulu-Natal.
- The General Council of the Bar of South Africa.
- The National Forum of Advocates of South Africa.

✓ Distribution of Circulars to these structures is deemed to be notice to any legal practitioner performing legal aid work whether a legal practitioner is a member of these structures or not.

The Department of Justice and Constitutional Development (DOJCD) employs *agent legal aid officers*. The DOJCD must consent to distributing any Circulars to agent legal aid officers. Once the DOJCD consents, the subsequent distribution of a Circular makes the Circular binding on agent legal aid officers at the Magistrate's Court at which the Circulars were distributed.

**PART 3:**

**LEGAL AID  
PROCEDURE**

## Chapter 11:

### Applying for Legal Aid

#### 11.1 Processing applications – administration and verification

##### 11.1.1 MAKING THE APPLICATION AND THE MEANS TEST

A *legal aid applicant* may apply for legal aid at any *Justice Centre* or through any *agent legal aid officer* at a magistrate's office.

The legal aid application form that must be used is the LA1 form in Annexure C.

✓ The LA1 form incorporates a simplified *means test*:

- If the applicant answers no to all questions, it is not necessary to complete the detailed means test on form LA13A (single person) or LA13B (households).
- LA1 3A or LA1 3B must be completed if the answer to any question is yes.
- If the applicant exceeds the means test, but it is a criminal case in the Regional or High Court, he/she must complete LA13C.

⇒ See Annexure C on page 257, G1 and G2 on page 292 and G3 on page 293.

☆ Examples:

- If legal aid is granted in a constitutional matter, the originals of Annexures LA13A, LA13B or LA13C must be attached to the LA1 form (legal aid application) and forwarded by the *person receiving the legal aid application* to the JCE.

⇒ See Annexures G1 and G2 on page 292 and G3 on page 293.

- If legal aid is refused in a criminal case, the person receiving the legal aid application must get the legal aid applicant to complete Annexure L in duplicate. He/she must then:
  - \* Forward one copy of Annexure L to the JCE and
  - \* Give the second copy to the legal aid applicant.

⇒ See Annexure L on page 311.

The JCE must ensure that forms are properly completed.

### 11.1A Manner of Receiving and Processing Legal aid Applications

- 11.1A.1 Legal aid applications are processed in accordance with the provisions of the Legal Aid Guide as amended by Circulars from time to time.
- 11.1A.2 In respect of accused persons indicted before the High Court, or appellants in the High Court, and who were represented by Legal Aid SA in a lower court, the following procedures should be applied:
- JC's should immediately inform the HCU concerned of all matters that have been transferred to the High Court.
  - The JC should forward a copy of the LA1 as well as the indictment to the HCU. Where requested, the JC should forward any other documents contained in their file to the HCU.
  - The HCU should, as soon as a matter is referred to them, allocate a practitioner to the matter and inform the DPP's office of the practitioner allocated.
- 11.1A.3 In respect of accused persons indicted before the High Court or appellants in the High Court, who were not on legal aid before their cases were referred to the High Court, the following procedures should be followed:
- If it should come to the attention of the JC that the accused requires legal aid assistance at the time the matter is transferred to the High Court, the JC shall take a legal aid application from the accused, and refer the matter to the HCU as if it was a matter referred to in paragraph 3.42 above.
  - In all other cases, the HCU manager shall endeavour to obtain the court roll for both trials and appeals from the DPP, well in advance.
  - the HCUM should on receipt of the court roll, isolate all cases where it appears that the accused have no legal representation.
  - Where the accused/appellant is in custody, the HCU shall instruct the JC closest to the place where the accused/

- appellant is being held in custody, to take a legal aid instruction and forward it to the HCU concerned.
- All effort shall be made to contact accused/appellant who may be out on bail, in order to take legal aid applications from them so that a practitioner is allocated to them on time.
  - The HCU shall inform the DPP of all cases where no legal aid applications could be obtained from the accused persons/appellants who are out on bail.
- 11.1A.4 A Justice Centre Executive of the area concerned, in respect of each magisterial district within which a seat of a Division of the High Court is located, shall liaise with the Chief Magistrate of the district and any other Magistrate with whom it proves necessary to liaise, to advise of the new procedures and how to deal with accused without legal aid who want to apply.
- An accused who is informed that the Director of Public Prosecutions has decided that the accused is to be indicted before the High Court should simultaneously be advised that the legal aid already granted to the accused in respect of the proceedings before the Magistrate's Court will continue – upon transfer of the matter to the High Court.
  - If the accused indicates to the Magistrate that he/she is not on legal aid and has the need of legal representation in terms of Section 35(3)(g) of the Constitution, 1996 in respect of proceedings before the High Court, the Magistrate should refer the accused to the local Justice Centre representative to complete an application for legal aid.
  - If the accused is not in detention, the Magistrate should indicate to the accused where the Justice Centre representatives are located and if there is no local Justice Centre representative, where the agent legal aid officer employed by the Department of Justice and Constitutional Development can be found.
  - If the accused is in detention, the Magistrate should either arrange for the accused to be escorted to the local

legal aid representative or for the local legal aid representative to attend upon the accused at the cells of the Magistrate's Court.

### 11.1.2 PROCESSING THE APPLICATION

#### (a) Capturing electronically

A Justice Centre that receives an application for legal aid that relates to a *matter* that originates from a magisterial district that is not part of its coverage area, must:

- Process the application electronically on Legal Aid SA's computerised software system.
- Refer the matter to the applicable Justice Centre electronically.

#### (b) Registering

Once the legal aid application is completed and forwarded to the relevant Justice Centre, the agent legal aid officer's task is completed, except for registering the matter, and responding to queries or requests of the Justice Centre.

✓ The register of applications received by the agent legal aid officer must include:

- The name of the applicant
- The date of the application
- The case number
- The method of transmission to the Justice Centre
- The date of transmission to the Justice Centre
- Acknowledgment of receipt by a Justice Centre employee (if applicable)
- The result of the application.

If the application was delivered to an employee of a Justice Centre, then the employee must acknowledge receipt of the application by signing in the register for the applications received from the agent legal aid officer.

#### (c) Verifying details

The person receiving the legal aid application must verify the correctness and completeness of all the particulars of the *applicant*.

Wherever appropriate, documentary proof must be given on the applicant's income, expenses, *assets* and *liabilities*.

#### (d) General processing guidelines

- No manual instructions may be issued to any legal practitioner, unless this is in accordance with the agreed Business Continuity Plan of Legal Aid SA.
- LA1 forms must be completed for every application even if legal aid is refused, only advice is given, or the applicant is referred to another organisation for assistance.
- LA1 forms must be completed for each applicant.
- Where more than one person applies for legal aid in any one matter, the applications for co-applicants must be indexed according to Legal Aid SA software system procedures.
- No legal aid instruction (LA2) will be issued unless the application has been processed and evaluated following the legal aid application procedure.

### 11.1.3 PROCEDURE TO GRANT LEGAL AID

✓ Justice Centre Executives (JCES) must follow this 4-step procedure in deciding whether or not to grant legal aid:

#### First

- Would *substantial injustice* result, in the sense referred to in the Constitution, if the applicant is not given legal aid?

#### Second

- If the applicant's matter is not one for which legal aid is available under the Constitution, then is it a matter for which legal aid is available according to this Guide?

#### Third

- Is the applicant *indigent* according to the means test?

#### Fourth

- If the applicant is not indigent but would suffer substantial injustice under the Constitution if not given legal aid, then is he/she unable to afford the cost of his/her own legal representation?

**(a) Consequence of court order**

If a court has issued an order for legal aid to be granted in matter, and the JCE has no further discretion in the case, the JCE must issue a legal aid instruction.

⇒ See the LA2 form in Annexure D on page 246.

**(b) Review or appeal on court order**

Legal Aid SA may *review* or appeal against the decision of the judicial officer who issued the court order.

**(c) Speedy forwarding of court orders by JCEs**

A JCE, who receives a court order granting legal representation either by Legal Aid SA or at State expense, must within one business day:

- Forward the court order to the Litigation Section at the National Office of Legal Aid SA, and
- Follow up telephonically whether the court order was received.

**(d) Report by JCE**

Where Legal Aid SA must file a report under section 3B of the Act, the JCE of the nearest Justice Centre must complete the report.

⇒ Use Annexure M on page 312 as a guideline on format and issues to cover.

**11.1.4 COMPLETION AND SAFEKEEPING OF DOCUMENTS****(a) JCE's handling of documents**

JCEs must deal with the original application forms, supporting documents and instruction forms (LA2) in this way:

- Whether or not an application has been granted, the original LA1 forms must be filed in the matter file of the Justice Centre.
- The original and duplicate copy of the instruction form (LA2A and LA2B) must be forwarded to the *legal practitioner* instructed after the evaluation and allocation of the matter has been completed.

⇒ See Annexure C on page 257 and Annexure D on page 258.

**✓ Guidelines on the LA2 form:**

- The LA2A is the copy for the practitioner.

- The LA2B has the *certificate probabilis causa* on the back – this must be signed by the practitioner and returned to the Justice Centre to indicate that the practitioner accepts the instruction.

**(b) Full and clear completion of legal aid forms**

- ✓ Legal aid application forms must be completed in full in a clearly legible manner.

They should briefly but clearly state:

- Particulars of the action, charge or legal issues.
- The extent of the assistance required.
- The name of the particular court.

- ☆ For example, it is not enough to simply state that legal aid has been granted for 'civil action', 'claim for damages', 'criminal case' or 'continuation of action or proceedings'.

**(c) Assisting applicants**

Persons receiving legal aid applications must, where necessary, assist the applicant with:

- Completing application forms and means tests, where applicable.
- Preparing any appeals against the refusal of legal aid.

**(d) Full personal particulars**

- ✓ The particulars of the person requiring legal aid must be filled in on the application form. Great care should be exercised in getting the correct first names and surname.

- ☆ Example:

If the person is a dependant minor, the person receiving the legal aid application must also get and record the details of the parents or guardian. This must also be indicated on the instruction form.

- ☆ Example:

If a minor is self-supporting, this must be recorded in the instruction.

**(e) Reference number**

The reference number of each matter must be entered on all the prescribed documents relating to the case.



Legal practitioners must refer to the *mailer reference* in communicating with Legal Aid SA.

#### (f) Termination of matter

Should a JCE become aware, after an instruction has been issued, that the legal practitioner or the applicant is not proceeding with the matter, the JCE must:

- Terminate the instruction in writing, and
- Index the letter terminating the instruction to the matter file, and
- Close the matter.

#### 11.1.5 STAMP DUTY

The Department of Finance has decided that legal aid documents are *exempt* from stamp duties under section 4(1)(f) of the Stamp Duty Act 77 of 1968.

- ✓ This *exemption* does not apply to summonses and processes issued by a legal representative even if employed or instructed by Legal Aid SA.

## 11.2 Co-ordinating and evaluating applications — criminal cases

### 11.2.1 MERIT REPORT TO THE COURT

Section 3B of the Legal Aid Act (the Act) says that:

Before a court in criminal proceedings directs that a person be provided with legal representation at State expense, the court shall refer the matter for evaluation and report by the board.

- ✓ When compiling a *merit report* under section 3B of the Act, the JCE submits the report in triplicate in the format set out in Annexure M, and then:
  - Forwards the original to the Clerk or Registrar of the court.
  - Forwards one copy to the Litigation Section of Legal Aid SA.
  - Retains the remaining copy, together with a copy of the court order requiring the report and the LA1 (legal aid application).

⇒ See Annexure M on page 312.

### 11.2.2 COURT ORDERING RECOVERY OF COSTS

- ✓ In order to ensure that a court order for the recovery of costs comes to the attention of the legal practitioner on receipt of the original instruction, the JCE must attach a copy of the court order to the copies of the LA2 forms forwarded to the legal practitioner in the case.

⇒ See Annexure D on page 258.

### 11.2.3 RECOVERY OF CONTRIBUTIONS

- An accused who is obliged to make a contribution must be advised in writing in accordance with Annexure G4 to the Legal Aid Guide. The signature of the accused must be obtained on Annexure G4 before any legal aid instruction (Annexure D/LA2) is authorised. A copy of the signed Annexure G4 must be annexed to the legal aid instruction forwarded to the legal practitioner assigned to the accused. A further copy of the signed Annexure G4 must be handed to the accused. The signed original G4 must be retained by the JCE.
- ⇒ See Annexure G4 on page 294
- At the first appearance after the authorisation of legal aid the assigned legal practitioner must place it on record that legal aid has been authorised subject to the payment of monthly contributions by the accused.
  - Where legal aid is granted pursuant to a court order in terms of Section 3B of the Legal Aid Act and where a contribution is appropriate the JCE or his/her representative must request the presiding judicial officer to make the payment of monthly contributions by the accused part of the court order. A judicial officer has no legal authority in terms of Section 3B to himself/herself determine whether a contribution should be made and if so in what amount.
  - Contributions are payable monthly in advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.
  - Contributions must be deposited directly to the Trust Account of Legal Aid SA by the accused or his/her agent.
  - No contribution may be received by any legal practitioner or the employee or agent of any legal practitioner acting on a legal

aid instruction. No employee of Legal Aid SA may receive any contribution.

- (g) The accused must deliver proof of payment of all contributions due to his/her assigned legal practitioner by not later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to an accused.
- (h) If any accused fails to make any contribution due, legal aid terminates and the assigned 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.

#### 11.2.4 RESPONSIBILITY FOR MAGISTRATES' COURTS

In Magistrate's Court criminal trials, the responsibility of co-ordinating the legal representation of the legal aid applicant rests with the Justice Centre responsible for the magisterial district in which the trial will take place.

- ✓ JCEs should provide all necessary co-operation and assistance to liaise with magistrates or prosecutors to facilitate legal aid applications by accused persons, who have not been granted legal aid in a Magistrate's Court within the geographical area covered by the Justice Centre.

#### 11.2.5 RESPONSIBILITY FOR HIGH COURTS

In High Court criminal trials, the responsibility of co-ordinating the legal representation of the legal aid applicant rests with the High Court Unit of the Justice Centre at the permanent seat of the division in which the trial will take place.

- ✓ The High Court Unit Manager (HCUM) must:
  - Maintain lists of *accredited* legal practitioners available to accept legal aid instructions in High Court matters, at the seat of the division and for every magisterial district regularly visited by the division.
  - In advance of each court term, check the roll of the next term and advise the Director of Public Prosecutions (DPP) which accused have not applied for or have not been granted legal aid.

#### 11.2.6 ACCUSED APPLYING FOR LEAVE TO APPEAL

- ✓ If an accused has had legal aid for a trial and applies for *leave to appeal*, it will not be necessary to again apply for legal aid for the appeal, provided an application for leave to appeal is timeously made to the court hearing the trial and is granted.

For the appeal itself, the legal aid application must be referred to the HCUM at the seat of the appeal court to authorise a new legal aid instruction to conduct the appeal. This will take place after a Notice of Appeal has been served and filed with the necessary Special Power of Attorney in favour of Legal Aid SA or any legal practitioner appointed by Legal Aid SA to prosecute the appeal.

The appeal should be prosecuted by the practitioner who represented the accused at the leave to appeal application stage.

#### 11.2.7 ACCUSED NOT INITIALLY APPLYING FOR LEAVE TO APPEAL

If an accused chooses not to apply for leave to appeal, but subsequently applies for legal aid for leave to appeal, this should be considered as a new application. The JCE or HCUM should then act according to 4.4.5 on page 47.

If the application for legal aid is successful, an instruction for prosecuting an application for leave to appeal should be issued to the original practitioner or the next practitioner allocated by Legal Aid SA.

If the application for leave to appeal is successful, and after the Notice of Appeal and Special Power of Attorney have been served and filed, a new legal aid instruction must be issued by the JCE or HCUM to a practitioner practising at the seat of the relevant appeal court.

#### 11.2.8 REFUSAL OF LEAVE TO APPEAL: PETITION WITHIN TIME

If the trial court refuses an application for leave to appeal, and the accused chooses to apply for or *petition a superior court* for leave to appeal within the permitted time-period, then the practitioner must act according to 4.4.4(d) on page 46.

### 11.2.9 REFUSAL OF LEAVE TO APPEAL: PETITION OUTSIDE TIME

If the trial court refuses an application for leave to appeal, and the accused subsequently chooses to petition or apply to a superior court for leave to appeal outside the permitted time-period, this should be considered as a new application. The JCE or HCUM should then act according to 4.4.5 on page 47.

If the application for legal aid is successful, the JCE or HCUM should issue an instruction for prosecuting an application for leave to appeal to the original practitioner or the next practitioner allocated by Legal Aid SA.

If the petition or application for leave to appeal is successful, a new legal aid instruction must be issued to a practitioner practising at the seat of the relevant appeal court (after the Notice of Appeal and Special Power of Attorney have been served and filed).

## 11.3 Co-ordinating and evaluating applications – civil matters

### 11.3.1 PRELIMINARY ISSUES

#### (a) Acknowledgement and Undertaking form

The applicant must sign the prescribed Acknowledgment and Undertaking form (LA5) before legal aid is granted.

⇒ See Annexure R on page 339.

#### (b) Merit report

The JCE must ensure that the legal aid instruction is first issued for the submission of a merit report before any further steps are taken (except steps necessary to prevent *prescription*, *default judgement* or lapsing of the litigant's rights).

✓ The attorney must give all this information when submitting a merit report in a new civil matter:

- Whether the legal aid applicant is plaintiff/applicant or defendant/respondent.
- The court where the case is to be heard.
- The nature and amount of the claim.
- The factual background to the case.

- Full details of the merits of the case and a detailed explanation of the success that is expected.
- The availability of evidence and witnesses.
- The need for experts and other witnesses, and the expected costs of their evidence and testimony.

⇒ See Annexure J on page 299.

- The expected date for hearing and the anticipated duration of the trial.
- The financial ability of the other side to satisfy the claim and costs if the legal aid applicant is successful.
- The expected defences to be raised.
- The stage the matter has reached by the date of application, and all cost implications of the proceedings to that date.
- The nature and effect of any previous court orders in the case.
- The possibility of settling all or part of the dispute.
- The total expected financial involvement of Legal Aid SA.

#### (c) Liability for costs

The applicant must also be advised that he/she would be liable for any costs of the opposing party if this is awarded against him/her.

### 11.3.2 MERIT REPORT ON CIVIL CASE CONTINUATION

✓ Relevant details in a merit report for an application for continuing a civil case on a legal aid basis should include:

- The stage that the case has reached.
- What the disputes are.
- What the *quantum* (amount) is in a dispute primarily related to a claim for money.
- What the prospects of success are.
- Which legal representatives are already involved.
- Who financed the case up until the application for legal aid was lodged, and why that source cannot continue to finance the case.

- (g) Whether any settlement proposal has been received, and if so, what the contents are and the reasons why it was not acceptable.
- (h) Whether any proposal for a contribution towards costs was made or is available, and if so, what the amount is.
- (i) Whether a payment into court was made, and if so, what the amount is.
- (j) Whether any other payment has been made to the plaintiff, eg by the Workmen's Compensation Commissioner. The lump sum and the monthly amount must be given.
- (k) What experts such as Welfare Officers and Family Advocates may still be needed, or have been employed in the past. Copies of their reports must be submitted.
- (l) The expected costs of the finalisation of the case.
- (m) The ability of the other party to settle the claim and costs.
- (n) The total expected financial involvement of Legal Aid SA.

This report must be attached to the signed LA2 instruction form, if legal aid is granted, and sent to the JCE.

⇒ See Annexure D on page 250.

## 11.4 Processing applications – categories of applicants

### 11.4.1 CO-ACCUSED

Where more than one accused is represented by a single legal practitioner, the names and details of all the co-accused represented by the legal practitioner instructed must be recorded in an annexure to the LA2 instruction for the first legal aid recipient.

⇒ See Annexure S on page 340.

- ✓ **Separate legal aid instructions must never be issued for co-accused represented by the same legal practitioner**

### 11.4.2 LABOUR CASES

If an applicant requires legal aid for a Labour Court case, the legal aid applicant should apply at the nearest Justice Centre. A Labour Professional Assistant has been appointed at each of the Cape Town, Durban, Port Elizabeth and Johannesburg Justice Centres.

- ✓ **Labour cases should be referred to these Justice Centres unless the JCE of the Justice Centre has confirmed that they do not have the capacity to attend to the matter.**

If the applicant qualifies for legal aid under Legal Aid SA's normal criteria for civil matters, an instruction for a merit report should be issued to a legal practitioner.

- ✓ **This instruction should indicate that the merit report should reach Legal Aid SA within 14 days of instruction to allow the JCE to make a decision on the continuation of legal aid.**

### 11.4.3 MATRIMONIAL MATTERS

An applicant receiving legal aid for divorce proceedings, must himself/herself and at his/her own expense get a copy of the marriage certificate if they have lost or misplaced the original marriage certificate.

When a legal aid applicant applies for legal aid for a matrimonial *interdict*, this must be referred to the JCE for a decision.

- ✓ **The applicant must give information on:**
  - The grounds for the application.
  - How real the threat is in interdicts to protect life or safeguard property.
  - What effect an interdict will have on any children of the marriage.
  - Why an interdict is the only *remedy* that could be used.

### 11.4.4 ASYLUM SEEKERS

- ✓ **The legal practitioner's report to the JCE must include:**
  - A copy of the *Asylum* application.
  - A brief opinion by the legal practitioner on the merits of the application.
  - The Refugee Reception Officer's reference number for the application.

### 11.4.5 HAGUE CONVENTION CASES

The ROE must do a monthly report to the NOE on any legal aid instruction authorised under the Hague Convention.

- ✓ **This report must include:**
  - The reference number of the legal aid instruction.

- The name of the applicant.
- The relevant court where the matter will be heard.
- Any increased fees that have been authorised.

## 11.5 DUTIES TO ENSURE PAYMENTS TO LEGAL AID SA

### 11.5.1 LA5 UNDERTAKING

When legal aid is granted in any civil matter, the JCE must ensure that the legal aid applicant undertakes in writing on the LA5 form to authorise Legal Aid SA and the legal practitioner to ensure that monies owing to Legal Aid SA are collected.

⇒ See Annexure R on page 339.

The legal aid applicant undertakes:

- Not to personally seek payment of any amount claimed in *litigation*.
  - To immediately pay over any amount received because of litigation to the legal practitioner instructed or, if the practitioner withdraws, to Legal Aid SA.
- ✓ The JCE must ensure that the provisions of the said written undertaking are signed and understood by the legal aid applicant. A copy of the signed LA5 must accompany the legal aid instruction sent to the legal aid instruction sent to the legal practitioner.

### 11.5.2 THE LEGAL PRACTITIONER'S RESPONSIBILITIES

The LA5 instructs the legal practitioner to:

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

⇒ For more information on costs and the benefit owing to Legal Aid SA, see 10.8 on page 149.

- \*• For example a Judicare practitioner who on behalf of a successful legal aid litigant recovered R150,000.00 general damages and R50,000.00 party-and-party costs, but whose attorney-client costs were taxed at R75,000.00 by Legal Aid SA would:

- Bank both the R150,000.00 and the R50,000.00 in his/her trust account;
- Pay R75,000.00 (50% of the capital) to the client;
- Pay R50,000 (party-and-party costs) to Legal Aid SA;
- Pay R9,000 (the Benefit due to Legal Aid SA on the capital) to Legal Aid SA;
- Pay R25,000 (the difference between attorney-client costs and party-and-party costs) to Legal Aid SA;
- Receive R75,000.00 (the attorney-client costs) from Legal Aid SA for deposit in the practitioner's Business Account;
- Pay R41,000.00 (the balance of the capital) to the client, once accounts were finalised.

The process might be shortened by set-off but the result would still be that the client received a total of R116,000.00 (in two instalments) the practitioner received R75,000.00 and Legal Aid SA received R9,000.00 more than it disbursed. Although this example refers to a Judicare practitioner the same principles apply when legal aid is provided by a salaried legal practitioner at a Justice Centre.

## Chapter 12:

# Delivering Legal Aid

## 12.1 Allocating instructions

### 12.1.1 LEGAL PRACTITIONER NOT PROCEEDING

If, after being instructed, a *legal practitioner* decides not to accept or proceed with the case, the practitioner must:

- Inform the JCE of his/her decision, and
- Send a copy of his/her letter confirming this to the applicant, and
- Return the instruction forms to the JCE.

The JCE must then reallocate the matter.

### 12.1.2 EXCLUSIONARY LIST

#### (a) Procedure before placing name on list

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.

#### (b) Procedure after placing name on list

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 authorised for a legal practitioner who is on the exclusionary list.

⇒ For more information on the exclusionary list, see 8.3 on page 121.



## 12.1A Evaluation and Allocation of Judicare Instructions

- 12.1A.1 The functions of evaluating and allocating legal aid applications shall continue to be performed in accordance with the provisions of the Legal Aid Guide. Judicare instructions on Forms LA2 shall be produced from the accreditation database at Justice Centres.
- 12.1A.2 An agent Legal Aid Officer must only perform the function of receiving/completing legal aid applications (LA1), means tests (LA13 & LA13C) with supporting documentation and submitting these to the relevant Justice Centre for evaluation and allocation.
- 12.1A.3 Justice Centre Executives or their duly delegated representatives are accountable to check the completeness and accuracy of legal aid applications.
- 12.1A.4 Justice Centre Executives or their duly delegated representatives are responsible and accountable to check the correct allocation and, with due regard to paragraph 8.2C.2 to authorise the issuing of Judicare instructions to specific legal practitioners selected in terms of paragraphs 12.1A.10 and 12.1A.11 below.
- 12.1A.5 Justice Centre Executives or their delegates as specified above, by specifying the criteria of magisterial district(s) or High Court jurisdiction(s) where the contemplated legal aid instruction must be performed, case category, court type, and case type experience required, including specialisations, shall select from the computerised allocation system, the names of practitioners that fit these parameters, for approval and appointment on Judicare basis.
- 12.1A.6 Subject to any special requirements of a matter, which requirements shall be referred to the National Operations Executive of Legal Aid SA for decision in terms of paragraphs 12.1B.1 to 12.1B.5 below, a Judicare legal aid instruction shall be issued to a practitioner selected automatically by the computer system, subject to such practitioner's availability to take the matter. In the event that it becomes necessary to override the system selection in exceptional matters full reasons shall be recorded on the system by the Justice Centre

Executive or his/her duly delegated representative performing such override.

- 12.1A.7 Judicare instructions are issued to practitioners in terms of selection criteria determined automatically from LA1 applications for legal aid and the BEE rankings of firms or practices, as adjusted by the average values of uncompleted earlier Judicare instructions.
- 12.1A.8 In respect of each Judicare instruction issued to a legal practitioner the accreditation database shall automatically be updated, upon issuing of the instruction, with the average cost of such case. The system shall accumulate the average fees for all uncompleted instructions per firm or practice for purposes of adjusting the firm or practice's BEE ranking to a BEEAIR ranking.
- 12.1A.9 Enquiries about availability of practitioners to accept Judicare instructions shall be sent to practitioners by SMS and replies to such enquiries shall be received by SMS.
- 12.1A.10 An enquiry as to the availability of a practitioner to accept a Judicare instruction will remain open for eight working hours and will thereafter be deemed to have been withdrawn.
- 12.1A.11 Only in highly exceptional circumstances shall replies other than SMS replies be accepted and then only with proper recording of the reasons for accepting a reply in any other format.
- 12.1A.12 JCs may follow up on the availability of practitioners in highly exceptional or urgent matters and where all the selected practitioners are not available their unavailability will be recorded and the system will generate a new set of practitioners whom the instructions may be offered by SMS.
- 12.1A.13 A Justice Centre Executive or his/her duly delegated representative, having received confirmation of availability from a selected legal practitioner, proceeds to generate a legal aid instruction on form LA2 in favour of the practitioner concerned from the database system.
- 12.1A.14 A Justice Centre Executive or his/her duly delegated representative, dispatches the instruction documents to the instructed practitioner.

12.1A.15 A Justice Centre Executive or his/her duly delegated representative; having refused an application for legal aid shall inform the legal aid applicant and the agent legal aid officer who submitted the application if applicable, of the refusal by means of the prescribed Form LA9.

12.1A.16 The legal aid applicant shall be informed of the refusal of the application for legal aid and of his/her right of appeal against the refusal of legal aid. In the instance of an agent Legal Aid Officer having been informed of refusal of an application for legal aid, the agent Legal Aid Officer shall inform the applicant of the refusal and of the applicant's right of appeal against refusal of legal aid.

### **12.1B National Operations Executive's discretion, exceptional instructions and restriction on performing of legal aid instructions to the instructed legal practitioner**

12.1B.1 Notwithstanding anything contained in the Legal Aid Guide, the National Operations Executive (NOE) reserves the right to direct the instruction of any particular legal practitioner in any particular matter, notwithstanding that the chosen legal practitioner was not selected by the computerised selection system to receive the legal aid instruction in question, or that the chosen legal practitioner may not previously have been listed on the Directory of Accredited Practitioners, or that the chosen practitioner is listed on the Directory of Accredited Practitioners but does not fit the selection criteria for a legal practitioner for the particular matter.

12.1B.2 The direction of the NOE to authorise the issue of such exceptional instruction shall be in writing and shall be exercised on the basis of good cause. In the event of a criminal matter being part heard, and no matter shall be deemed to be part heard until the accused has pleaded and the State has thereafter commenced leading evidence, the NOE shall assume, subject to what is set out below that good cause exists for the issue of an exceptional instruction in favour of an accredited legal practitioner instructed by the legal aid applicant prior to the grant of legal aid. The NOE however has discretion to require the legal practitioner in question to satisfy him/her in

writing that the legal practitioner has not made himself/herself guilty of overreaching.

12.1B.3 If a matter is not part heard, the NOE shall assume that no good cause exists to justify the issue of an exceptional instruction unless and until the legal aid applicant has satisfied the NOE in writing that such good cause exists.

12.1B.4 A legal practitioner who accepts legal aid instructions in a criminal matter must personally execute the instruction at trial stage. However in District Courts postponements and bail applications may be done by any other practitioner in the firm including a candidate attorney although the instructed practitioner remains accountable.

12.1B.5 The rule against transfer of instructions may be relaxed in the event of illness preventing the legal practitioner from working, or other bona fide sudden and unforeseeable emergencies. Requests for relaxing of the rule must be made in writing to the National Operations Executive, or his/her duly appointed representative for this purpose and must be acknowledged in writing in order for it to be binding on Legal Aid South Africa. However, in no circumstances will Legal Aid SA be liable for payment of fees in respect of the rendering of professional services by any person other than the legal practitioner instructed and/or his/her approved subcontractors.

## **12.2 Executing instructions – Legal Aid SA**

### **12.2.1 SIGNING AND EVALUATING DOCUMENTS**

✓ *The person receiving the legal aid application must endorse legal aid documents with their first names, surname and designation:*

- Only persons employed by Legal Aid SA and employees who are properly delegated may evaluate and allocate a legal aid instruction.
- Only employees of the Department of Justice and Constitutional Development may be appointed as *agent legal aid officers*.

### **12.2.2 LEGAL AID SA FORMS AND COPIES OF GUIDE**

*Agent legal aid officers* in magistrates' offices must use Legal Aid SA's pre-printed forms to complete applications for legal aid.

The *Justice Centre*, to which the court has been allocated, is responsible for ordering and supplying sufficient LEGAL AID SA forms. The agent legal aid officer must place an order timeously to ensure that they do not run short of the necessary application forms.

Copies of the Legal Aid Guide and amending *Circulars* are sent to each magisterial district:

- They should be properly filed by the agent legal aid officer.
- If copies are lost, then additional copies can be requested from the Justice Centre.

### 12.2.3 COPIES OF CRIMINAL DOCKETS

Legal Aid SA will pay for the reasonable and necessary costs of getting a copy of the docket in a criminal matter. The legal practitioner may recover the amount by including it in the final account and attaching the relevant voucher.

The JCE must give advance approval if total *disbursements* for copies of dockets in a particular case are likely to be more than R500. This approval must be in writing and must be filed in the *matter* file at the Justice Centre.

## 12.3 Executing instructions – the legal practitioner

### 12.3.1 DUTIES WHEN ACCEPTING JUDICARE INSTRUCTIONS

- ✓ When accepting a *Judicare* instruction, a legal practitioner must:
  - Check that the instruction form issued has been fully completed and that the instructions are clear.
  - Be satisfied that he/she is able and qualified to render the required legal service.
  - Refer any illegibility, uncertainty or error to the JCE, who must refer it to the ROE if it cannot be resolved.
  - Where an applicant must contribute, collect the amount before any costs are incurred.
- ☆ For example, the legal practitioner must ensure that the name, vendor number and address of the legal practitioner set out in the legal aid instruction are correct in every respect. This is important because of Legal Aid SA's obligation to pay only the legal practitio-

ner corresponding to the vendor number appearing on the legal aid instruction.

- ✓ Legal aid instructions, and any rights or rendering of services arising out of them, may not be *ceded* or transferred.

### 12.3.2 CERTIFICATE PROBABILIS CAUSA

A legal practitioner must accept the instruction by signing the *Certificate Probabilis Causa*, as required by the *Judicare Accreditation System* yearly in advance and submitting it to the JCE. The contract between the legal practitioner and Legal Aid SA becomes effective when the Certificate Probabilis Causa is registered on Legal Aid SA's software system at its National Office.

- ✓ By accepting a legal instruction, a legal practitioner undertaken to handle the legal aid instruction in accordance with the provisions of the Guide that become conditions of the contract between the legal practitioner and Legal Aid SA.

### 12.3.3 EVALUATING MERITS AND TAKING EARLY STEPS

- ✓ Legal practitioners should evaluate the merits of a matter at the earliest possible stage to avoid fruitless *litigation*. Before entering into or continuing with litigation on legal aid basis, the practitioner must prepare and submit a *merit report* to the JCE, and the JCE must approve or refuse the continuation in writing.

The legal practitioner must take reasonable steps to avoid a *default judgement* being granted or to avoid *prescription*. When these steps are taken:

- Legal Aid SA reserves the right to decline payment for these steps if they became necessary through the practitioner's neglect or oversight.
- The merit report must be submitted to the JCE as a matter of urgency together with a summary of the steps taken and the reasons for these.

### 12.3.4 BRIEFING A CORRESPONDENT OR ADVOCATE

After being instructed, a legal practitioner must render all assistance himself/herself, and should brief a *correspondent* or advocate only when essential.

**(a) Written consent of JCE**✓ **A legal practitioner must have the written consent of the JCE to:**

- Brief an advocate to render any service that the practitioner by law is capable of rendering and would traditionally render himself/herself – this refers to services that an attorney was legally permitted to render before the coming into operation of the Right of Appearance in Courts Act 62 of 1995.
- Brief a senior advocate.

The JCE must index the written approval to the matter file on Legal Aid SA's software system and file the hard copy of the approval with the original legal aid application file.

**(b) Choice of correspondent or advocate**

- ✓ **The choice of a correspondent or advocate rests with the legal practitioner, provided that the legal practitioner must consult with the JCE to ensure that the proposed correspondent or advocate is accredited to receive legal aid instructions.**

The correspondent or advocate must be prepared to render services on the legal aid tariff and subject to the provisions of this Guide. He/She must be advised in advance in writing that the matter is a legal aid matter and the JCE should receive a copy of this advice.

**12.3.5 SCOPE OF INSTRUCTIONS**

A legal practitioner must have the written consent of the JCE to render assistance beyond the scope of the instructions, including making applications or *instituting actions* beyond the main instruction.

- ✓ **Legal aid beyond the scope of instructions must be approved in advance by the JCE:**

- A practitioner may get telephonic authorisation in urgent circumstances.
- The obligation rests with the practitioner to confirm an authorisation in writing.
- An authorisation is only regarded as complete when in writing.

**12.3.6 NOTICE THAT LEGAL AID IS BEING RENDERED**

The legal practitioner must, on behalf of Legal Aid SA, inform the opposing party and the registrar or clerk of the court in writing that legal

aid is being rendered to the *litigant* by Legal Aid SA under section 8A of the Act, and forward a copy of the notice to the JCE.

Giving proper notice of legal aid is essential to ensure that:

- Legal Aid SA may recover costs ceded to it in its own name, and
  - Legal practitioners appointed receive full payment of their fees.
- ✓ **In civil matters the required notice must specify the legal aid instruction number to enable interested parties to correspond with Legal Aid SA.**

**12.4 Executing instructions – general issues****12.4.1 CORRESPONDENCE AND POSTAGE**

- ✓ **Legal Aid SA will not pay for postage:**

- Sufficient postage must be placed on all postal correspondence sent to Legal Aid SA.
- Documents must not be mailed by registered or certified post.

**12.4.2 COPIES OF RECORDS AND DOCUMENTS**

An instructed legal practitioner must apply for the JCE's consent to recover the costs of getting copies of documents necessary for carrying out the instructions of Legal Aid SA. This relates to all documents in civil matters and all documents in criminal cases, except for copies of records.

The practitioner must submit a quotation for costs when applying for consent. If the cost of copies is more than R100 in any one matter, the practitioner must get the written consent of the JCE in advance.

**(a) Magistrates' Court cases**

Legal Aid SA does not pay for records of criminal trials in the Magistrates' Courts. The procedure set out in Magistrates' Court Rule 66(9) must be followed if a record is needed.

**(b) High Court cases before leave to appeal**

If a record is needed for any reason before the granting of leave to appeal, a quotation and written motivation should be submitted to the JCE.

✓ In deciding whether to authorise acquiring a record at the expense of Legal Aid SA, the JCE must take into account:

- Whether the application for *leave to appeal* can be brought within the prescribed time-limits, and
- If not, whether an application for condonation will have a *prospect of success on a balance of probabilities*.

### (c) Appeal records after leave to appeal

Where leave to appeal has been granted in the Magistrate's Court, High Court or Supreme Court of Appeal, Legal Aid SA does not pay for records of criminal appeals. The procedures set out in Magistrate's Court Rule 66(9), Uniform Rule 49(A)(i)(b) and Supreme Court of Appeal Rule 8(10) must be followed if a record is needed.

### 12.4.3 SERVING DOCUMENTS AND GIVING NOTICE

If necessary, a legal practitioner who has been instructed may use substituted service or edictal citation with the prior written consent of the JCE.

By agreement with Legal Aid SA, the Press Union of South Africa has recommended to its members that they publish advertisements in legal aid cases at a reduced 'welfare tariff'.

✓ **Guidelines:**

- When applying for consent, practitioners must submit an estimate of the costs.
- Advertisements must be submitted together with:
  - \* Notice from the legal practitioner certifying that it is a matter where Legal Aid SA is rendering assistance to an *indigent person*, and
  - \* A copy of the instruction form (LA2).
- A copy of the notice must accompany the account for payment to Legal Aid SA.

### 12.4.4 MEDICO-LEGAL SERVICES AND OTHER EXPERT WITNESSES

#### (a) Applying for consent

If the services of medical practitioners or other expert witnesses are required, a legal practitioner must get prior written consent from Legal Aid South Africa:

- The practitioner must send an estimate of the costs on Annexure J when applying to the JCE.
- If less than three quotations are obtainable, reasons must be submitted.
- If the anticipated cost exceeds R500 000, Legal Aid South Africa will need to follow a tender procedure.
- Approval or refusal must be given in writing.
- The authority to approve medico-legal services and other expert witnesses will be delegated in accordance with Approval Framework and Standard Operating Procedures of Legal Aid South Africa, save that JCE's only have the authority to approve such services and/or expert witnesses to a maximum of R10 000.

⇒ See Annexure J on page 299.

#### (b) Reduced medical fees in legal aid matters

The Medical Association of South Africa recommended in May 1986 that members should render services in legal aid cases at 75% of the customary fees.

✓ **When the services of medical practitioners are used in a legal aid case, legal practitioners must:**

- Give notice that it is a matter where Legal Aid SA is rendering assistance to an indigent person.
- Refer to the recommendation of MASA.
- Submit a copy of the instruction form (LA2) with the notice.
- Submit a copy of the notice with the account for payment to Legal Aid SA.

### 12.4.5 TRACING AGENTS AND OTHER CONSULTANTS

Legal Aid SA will only cover the expenses of tracing agents, investigators, claim consultants or persons who render services of a



similar nature when these services and their costs have previously been approved in writing by the JCE.

#### 12.4.6 RECOVERY OF COSTS

The ROE may consent to proceedings to recover costs that Legal Aid SA may be *entitled to*. These costs may be recovered in Legal Aid SA's name if the necessary requirements of section 8A of the Act have been *complied with*.

✓ **Practitioner guidelines:**

- A legal practitioner who recovers costs in Legal Aid SA's name may accept reasonable instalments and pay these over when a reasonable amount is available.
- The legal practitioner must submit reports on the recovery of costs to Legal Aid SA at least every 6 months.

### 12.5 Reporting on executing instructions

#### 12.5.1 THE NEED TO FINALISE AND CLOSE FILES

For each Judicare case, a matter file is opened physically and on Legal Aid SA's software system at the appropriate Justice Centre of Legal Aid SA. These files must from time to time be closed, archived and destroyed.

As soon as the necessary legal aid has been rendered to a person, or a matter becomes stale or for some other reason is disposed of, this fact must be reported to the JCE so that the matter can be finalised.

#### 12.5.2 PROGRESS REPORTS

Simple matters that are resolved within 3 months of the instruction may not need progress reports and it will be sufficient to report with the final account.

✓ For more complex, longer matters, the legal practitioner must report to the JCE at least every 3 months on progress giving any information relevant to the disposal of the matter.

☆ Examples of issues to report on:

- The complexities of the case
- Financial implications

- Settlement issues, including the possibility of curtailing the proceedings by plea-bargaining.

#### 12.5.3 CLOSING REPORT OR REPORTING ON INTERIM ORDER

✓ At the end of any matter or when any *interim* order is granted, the legal practitioner must submit a full report to the relevant JCE indicating:

- The outcome of the matter.
- All issues relating to costs and the possibility of recovering costs.
- The possibility of *enforcing* an order.

#### 12.5.4 REPORTING WITH ACCOUNTS

A legal practitioner must provide a progress report with the rendering of an account. If interim accounts are permitted, a progress report must accompany each account.

#### 12.5.5 DIVORCE REPORTS

✓ In divorce matters, the legal practitioner must submit all these documents on completion of the matter to ensure payment of his/her account:

- The final account
- A copy of the final order
- A copy of the settlement agreement (if any)
- A report on the *benefit* owing to Legal Aid SA and how 10.8 will be complied with
- A report on the costs and how they may be recovered.

⇒ See 10.8 on page 149.

### 12.6 Procedures for appeals

#### 12.6.1 CRIMINAL APPEALS

##### (a) Immediate application for leave to appeal

Whenever possible, an application for leave to appeal must be brought on the same day sentence is handed down. Where it is not possible, for whatever reasons, a detailed written explanation as to why it was not possible to bring the application for leave to appeal on the same day on



which sentence was handed down must accompany the account of the legal practitioner.

- ☆ For example, if the accused instructs the legal practitioner not to bring an application for leave to appeal or to file a notice under Magistrate's Court Rule 67(1), the instructions of the accused must be recorded in writing and signed.

⇒ See Annexure H on page 296.

### (b) Payment for appeals

- ✓ Legal Aid SA will not consider the legal practitioner's final account for payment until Legal Aid SA receives confirmation that:

- An application for leave to appeal has been made to the trial court, and
- An application or *petition* has been launched to a *superior court* if leave to appeal is refused by the trial court and the legal aid client has chosen to proceed with an application/petition for leave to appeal, and
- A notice under Rule 70 has been filed in a Magistrate's Court matter.

Alternatively, Legal Aid SA should receive confirmation that:

- The accused does not wish to apply for leave to appeal or to appeal (Annexure H to be submitted), or
- The accused was acquitted, or
- The accused was sentenced to less than 3 months direct imprisonment, or
- The accused was given the option of a fine and paid the fine within 2 weeks of the sentence.

⇒ See Annexure H on page 296.

### (c) Application to lead further evidence on appeal

An application to lead further evidence may not be brought on a legal aid basis unless the JCE or HCUM has first been satisfied that the application to lead further evidence has a reasonable prospect of success. But the application can go ahead without authorisation if brought simultaneously with a petition at no additional cost to Legal Aid SA.

### (d) Bail pending appeal

A legal practitioner, who is allowed to bring an application for leave to appeal or to launch a petition, may apply on behalf of the accused for bail pending an appeal if the accused was not in custody before conviction.

The JCE or HCUM must consent before any appeal against the refusal of bail pending an appeal may be conducted on a legal aid basis.

### (e) End of mandate

The mandate of the legal practitioner instructed on a legal aid basis, terminates when:

- Any application for leave to appeal and petition is disposed of, either favourably or otherwise, and
- Any necessary notice of appeal has been filed.

## 12.6.2 CIVIL APPEALS

### (a) Motivating documents and costs

An application for assistance to prosecute a civil appeal must be made in the usual manner and should be motivated in an annexure to the application form. The NOE must consider, if available, a copy of the record or judgement, and the presiding judicial officer's reasons for judgement.

If these documents are not available, an estimate of the costs of acquiring them should be given before making a decision to grant legal aid or not.

### (b) Impact of delay in authorising appeal

JCEs must notify applicants and attorneys that:

- There will be an unavoidable delay before the decision authorising legal aid can be made.
- In the circumstances, they should decide whether to give notice of appeal in the meantime.

### (c) Reasons for decision

- ✓ The NOE will give reasons for his/her decision to the applicant or legal representative if requested to do this in writing within a reasonable period after the decision was communicated to the legal aid applicant or legal representative.

## Chapter 13:

### Judicare Procedures

#### 13.1 Judicare Accreditation System

In all matters, JCEs must distribute instructions in accordance with the rules and procedures set out in the *Judicare Accreditation System* in Chapter 8.

⇒ See paragraph 8.2A on page 113.

Other sections of this Guide set out further information on the Judicare Accreditation System:

- 8.1 on page 107 summarises the purpose of the Judicare Accreditation System and highlights the *Black Economic Empowerment* (BEE) component.
- 8.2 on page 108 lists the factors considered in distributing legal aid instructions to practitioners.
- 8.3 on page 117 explains Legal Aid SA's *exclusionary list* of practitioners who may not receive legal aid instructions.

#### 13.2 Rendering accounts and payment of fees

##### 13.2.1 PAYMENT OF INTERIM FEES AND DISBURSEMENTS

Legal practitioners are only entitled to be paid their fees and disbursements once they have completed their mandate.

- ✓ Disbursements for amounts of R500 or more in any one matter may be claimed periodically from Legal Aid SA before the finalisation of a case.

The payment of any interim fees or disbursement is not an admission by Legal Aid SA that the amount was indeed payable. Legal Aid SA thus reserves the right to deduct any overpayment or any payment made in error at the final accounting and reconciliation stage.

##### 13.2.2 RENDERING ACCOUNTS

###### (a) Reporting on outcome

- ✓ When rendering an account, legal practitioners have a duty to report fully to the JCE on the outcome of a matter.

☆ For example:

- \* In a civil matter, reporting on any benefit obtained for an applicant and on any costs recovered or recoverable.
- \* In a criminal case, reporting on the outcome, with all the other statistical information required by Legal Aid SA from time to time.

### (b) Accounting fully on services rendered and disbursements

Except where *interim* accounts for fees and *disbursements* are allowed, the legal practitioner submitting an account to Legal Aid SA must account fully for all services rendered and all disbursements incurred on completion of the matter. Where required, the disbursements must be verified by original vouchers submitted to Legal Aid SA simultaneously with the account.

✓ Apart from permitted interim accounts, the legal practitioner should account to Legal Aid SA once only in a particular legal aid matter.

Legal Aid SA does not have to consider for payment any claims for fees, disbursements or VAT, or related vouchers, submitted by any person separately after the legal practitioner instructed by Legal Aid SA has already submitted a final account.

Legal practitioners should not submit subsequent repeated copies of accounts, unless specifically requested to do this in response to an account enquiry.

### (c) Advocate's account

In cases where an advocate is instructed, the legal practitioner must ensure that the advocate's account is submitted to Legal Aid SA together with his/her own account so that a proper evaluation of both accounts and the total costs of the case can take place.

The legal practitioner must also ensure that the advocate's account is in accordance with the prescribed tariff.

### 13.2.3 WHEN ACCOUNT PAYMENTS ARE DUE

- ✓ Legal Aid SA will only pay the fees and disbursements due to a legal practitioner when all these requirements are met:
- The mandate has been finalised (unless interim payments have been authorised by the JCE).
  - Any reports on the outcome of the *matter*, as required by this Guide, have been submitted to the JCE.

- An account drawn up in accordance with the requirements of this Guide has been submitted to the JCE.
- Legal Aid SA has received all necessary documents and vouchers.
- Legal Aid SA has had 30 calendar days to tax, check, approve and process payment to the legal practitioner.

### 13.2.4 FORMAT AND FURTHER INFORMATION REQUIRED

✓ Legal practitioners must ensure that:

- All accounts, including interim accounts, are submitted to the JCE of the *Justice Centre* that issued the legal aid instruction.
- An account is itemised and dated.
- Where a fee is calculated on a time basis or per folio, the time and number of folios is stipulated.
- The date on which any action was taken is indicated against the account item concerned.
- The amounts owing to *correspondents*, advocates or expert witnesses are clearly indicated and the accounts of these people are attached as vouchers.
- Correspondent's accounts are properly specified and dated, and that the items claimed follow the set tariff.

⇒ See Annexure K3 on page 303 for a full checklist.

### 13.2.5 PROCEDURES FOR ACCOUNT SUBMISSION AND ENQUIRIES

All accounts must be submitted to Legal Aid SA by no later than four months after the finalisation of the matter. The practitioner who fails to submit his/her account within four months of finalisation forfeits the right to payment.

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

⇒ See Annexure K1 on page 299.

⇒ See Annexure K6 on page 308.

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

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

⇒ See Annexure K2 on page 301.

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

⇒ See Annexure K3 on page 302.

### 13.3 Account assessment and taxation

#### 13.3.1 LEGAL AID SA'S RIGHT TO ASSESS AND TAX

✓ A legal practitioner accepts a legal aid instruction subject to:

- The provisions of this Guide and any subsequent directives (*Circulars* and specific directives).
- Legal Aid SA's right to tax any fees list, account invoice or *bill of costs* rendered by the practitioner.
- Legal Aid SA's right to delegate taxation to a person or persons of its choice.
- Legal Aid SA's right to check and revise the taxation.

These terms and conditions *apply to* all actions after legal aid instruction and to the settlement of any moneys due by Legal Aid SA.

#### 13.3.2 COSTS RECOVERABLE

If costs are awarded in a matter, the terms of section 8A of the Act apply. If these costs can be recovered or can be readily paid by the opposing party:

- A bill of *party and party costs* must be drawn and taxed.
- The legal practitioner must recover the taxed amount from the opposing side.

Whenever any costs or benefits are recoverable, the legal practitioner shall advise the JCE to obtain instructions, if necessary, for execution of the order. The legal practitioner must take all necessary and reasonable steps to protect the financial interests of Legal Aid SA.

✓ A legal practitioner who recovers the costs can deal with them in one of these ways:

- He/she may recover fees and disbursements after taxation by Legal Aid SA from the costs, if any, recovered from the other party. The practitioner must then pay over the balance recovered to Legal Aid SA together with the bill taxed against the other party and his/her own account in accordance with the current legal aid tariff.
- He/she may submit to Legal Aid SA a bill of *attorney and client costs* in accordance with the current legal aid tariff, and *set off* the amount of legal costs, if recovered in full. The practitioner must provide Legal Aid SA the appropriate taxed bill of costs or a photocopy of the bill.

#### 13.3.3 COSTS NOT RECOVERED OR RECOVERABLE

The legal costs, or the balance of costs including disbursements and the *benefit*, must be recovered from the financial benefit received by the client when:

- Legal costs are not recovered, or
- Legal costs are not recoverable, or
- The amount recovered is not sufficient to cover the legal costs and the benefit to Legal Aid SA.

✓ The amount of legal costs and the benefit to Legal Aid SA to be recovered from the financial benefit may not be more than 50% of the financial benefit to the client.

#### 13.3.4 GENERAL PROVISIONS TO RECOVER COSTS

Where a settlement has been negotiated, and it is a provision of the settlement that the litigant will be awarded his/her party and party costs without taxation, or a lump sum with or without a contribution to costs, the provisions of 10.6 and 13.3.2 of this Guide will apply, with the necessary changes.

⇒ See 10.6.7 on page 144 and 13.3.2 on page 194.

When accounting, the JCE must be provided with a copy of the agreement.

✓ Practitioner guidelines:

- The legal practitioner must get the authority of the JCE to permit the payment of more than 50% of the financial benefit to the client. It may be necessary to recover part of his/her costs or

disbursements, or the benefit to Legal Aid SA out of the financial benefit of the client.

- The legal practitioner must ensure that all amounts due to Legal Aid SA as costs or benefit are recovered and paid over to Legal Aid SA.

### 13.3.5 GENERAL PROVISIONS ON TAXATION OF ACCOUNTS

Every account taxed by an employee or agent of Legal Aid SA is checked by at least one other person on Legal Aid SA's software system.

Legal practitioners who are not satisfied with the taxation of their accounts are entitled to follow the procedure set out in 13.7 of this Guide dealing with disputes over accounts.

⇒ See 13.7 on page 200.

Legal Aid SA will forward a remittance advice reflecting the taxation of the account to the legal practitioner.

## 13.4 Relationship between Legal Aid SA and a legal practitioner's subcontractors

### 13.4.1 PAYMENTS TO SUBCONTRACTORS

Usually Legal Aid SA pays the legal practitioner, with whom it has contracted, or that legal practitioner's executor, trustee or liquidator.

✓ The ROE may authorise payment to a subcontractor directly, but this only happens when the ROE is satisfied that:

- The legal practitioner has not paid the subcontractor, and
- It would be in the interests of Legal Aid SA to make direct payment.

An order of a competent court is needed before Legal Aid SA has to pay any other person besides the legal practitioner with whom it contracted.

### 13.4.2 DISSOLUTION AND CHANGE OF NAME

Attorneys who dissolve partnerships or change the name of their practice must ensure that, before the partnership is dissolved or the name is changed, the partnership or practice gives written *consent* to the ROE:

- Signed by the individual practitioner carrying out the legal aid instruction, and
- Stating the person to be paid for fees and disbursements due before the date of dissolution or change of name.

The ROE will decide whether to pay the legal practitioner or practice originally instructed, or whether to pay the person designated by the legal practitioner. Any consent by the ROE to pay a legal practitioner or practice that is different from the one originally instructed, shall operate only for fees and disbursements earned before dissolution or change of name.

✓ A new instruction must be applied for to continue a matter on a legal aid basis after dissolution or change of name.

## 13.5 Items excluded from payment under legal aid tariffs

✓ Practitioners should note these provisions on items excluded in legal aid matters:

### 13.5.1 PRIOR NEGOTIATIONS AND RELATED COSTS

No compensation will be paid for negotiations with Legal Aid SA towards establishing the legal practitioner's willingness to accept a particular case, or costs related to this.

☆ For example:

- \* Consultations with the client with the aim of rendering legal aid.
- \* Correspondence with the JCE, Legal Aid SAs offices or the ROE.
- \* Perusing Legal Aid SA's instructions or other documents
- \* Making or receiving telephone calls.
- \* Incidental fees or disbursements at this prior stage.

### 13.5.2 COST FROM DATE OF INSTRUCTION

Legal Aid SA will only accept *liability* for costs incurred as from the date of Legal Aid SA's instruction, as indicated on the instruction form (LA2).

⇒ See Annexure D on page 258.

In exceptional cases, the ROE may authorise payment of legal costs incurred before date of instruction.

**13.5.3 ALL-INCLUSIVE FEES**

Where an all-inclusive fee for an item is allowed in the tariff, no allowance will be made for disbursements.

☆ For example, for letters and telephone calls.

**13.5.4 LEGAL AID FOR MORE THAN ONE LITIGANT**

Where legal aid is granted to more than one litigant in any one matter by the instruction of one legal practitioner or practice, no additional fees will be allowed, except as provided in Annexure E and Annexure F.

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

**13.5.5 TRAVELLING AND SUBSISTENCE**

Legal Aid SA does not accept liability for the travelling or subsistence expenses of legal aid recipients.

However, necessary witnesses in a civil case can claim reasonable travelling expenses, the loss of wages and accommodation.

**13.5.6 TRACING COSTS**

Legal Aid SA does not accept liability for the costs involved in tracing witnesses or opposing parties unless with the prior approval of the JCE.

**13.5.7 OTHER COSTS OR AMOUNTS AWARDED AGAINST UNSUCCESSFUL LITIGANTS**

Legal Aid SA does not accept liability for any costs or any other amounts awarded against an unsuccessful legal aid *litigant* on any grounds whatsoever, during the course of proceedings.

The JCE and the legal practitioner appointed by Legal Aid SA must inform clients about the exclusion of these costs.

☆ Example

A client is sued as *defendant* for damages caused to a motor vehicle in an accident. The court grants judgement in favour of the *plaintiff* for:

- \* The capital amount to repair the damages, and
- \* Interest on the capital amount from the date of the summons, and
- \* The taxed party and party costs of the plaintiff.

**13.6 Payment methods and intention to dispute****13.6.1 DIRECTING OF PAYMENTS BY LEGAL AID SA**

✓ Depending on the circumstances of each legal aid matter, amounts owing by Legal Aid SA to legal practitioners will be directed in one of these ways:

- Transferred to the account of the practitioner by electronic funds transfer.
- Paid by cheque forwarded to the practitioner.
- Set off against amounts owing by the practitioner to Legal Aid SA.
- Paid to a *third party*, but only if a court orders Legal Aid SA to pay amounts owing to the practitioner to the third party.
- Paid to the South African Revenue Service (SARS), but only if Legal Aid SA by law has to pay amounts owing to the practitioner to SARS.

**13.6.2 PAYMENT IN FULL AND FINAL SETTLEMENT**

lithe amount paid out by Legal Aid SA is within 5% of the account rendered by the practitioner or his/her subcontractors, then the amount is tendered in full and final settlement of all fees and disbursements due to the practitioner. An *exception* to this is when the entire payment offered is for interim fees or disbursements in a particular matter.

**13.6.3 DISPUTING OF ELECTRONIC PAYMENT**

If payment is made to the practitioner by electronic funds transfer, the practitioner must return the amount to Legal Aid South Africa, prior to referral to arbitration.

**13.6.4 DISPUTING OF CHEQUE PAYMENT**

If payment is made to the practitioner by cheque, deposit of the cheque is acceptance of the offer of payment. If the cheque is not accepted, the cheque must be returned to Legal Aid South Africa, prior to referral to arbitration.



### 13.6.5 DISPUTING OF SET-OFF PAYMENT

If payment is made by Legal Aid SA to a judgement creditor of the practitioner or to SARS, the practitioner must pay an equivalent amount to Legal Aid SA within 30 days of payment if the practitioner wishes to dispute the correctness of the amount paid.

### 13.6.6 DISPUTING OF PAYMENTS DIFFERING BY MORE THAN 5%

If the amount paid by Legal Aid SA differs from the account rendered by the practitioner or his/her subcontractors by more than 5%, and the practitioner wishes to dispute the correctness of the taxation by Legal Aid SA, then the provisions of this Guide dealing with disputes over practitioner's accounts must be followed.

⇒ See 13.7 on page 200.

## 13.7 Procedures for disputes over a legal practitioner's account

This section deals with money disputes arising from the implementation of this Guide between Legal Aid SA and any legal practitioner instructed by Legal Aid SA.

### 13.7.1 WITHHOLDING PAYMENT OF LEGAL PRACTITIONER'S ACCOUNT

✓ Legal Aid SA may withhold payment of all and any moneys due to an instructed legal practitioner until the finalisation of any dispute relating to account items, or any ethical or disciplinary matter linked to this dispute.

☆ For example, disputes may arise from:

- \* The non-payment of fees or *disbursements*.
- \* The under-payment of fees or disbursements.
- \* The erroneous payment of fees or disbursements.
- \* The over-payment of fees or disbursements.
- \* The misrepresentation and consequent over-payment of fees or disbursements.

✓ When efforts to resolve any dispute by negotiation have failed, then the steps in 13.7.2 to 13.7.16 should be followed, where applicable.

### 13.7.2 WHEN A DISPUTE ARISES

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

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

⇒ See Annexure K4 on page 305 and Annexure K5 on page 306.

### 13.7.3 REFERRAL TO ARBITRATION

Either the practitioner or Legal Aid SA may request that the dispute is referred, with legal representation, to *arbitration* by a single arbitrator at a time determined by the arbitrator.

### 13.7.4 PLACE OF ARBITRATION AND SELECTION OF ARBITRATOR

The arbitration must be conducted in the province where the legal practitioner practices and at the relevant Justice Centre that issued the legal aid instruction.

✓ A single arbitrator will conduct the arbitration and must be.

- Selected by mutual agreement between the parties, or if there is no agreement,
- Nominated on the application of either party by the existing chairperson of the Association of Arbitrators.

### 13.7.5 REQUIRED SKILLS OF ARBITRATOR

At all times, every reasonable effort shall be made to ensure that the arbitrator has the necessary technical skills to enable him/her to decide the dispute in a satisfactory manner.

**13.7.6 FINAL AND BINDING ARBITRATION**

- ✓ The award of the arbitrator shall be final and binding on the parties. The legal practitioner and Legal Aid SA thus have to give effect to the award.

**13.7.7 COSTS OF ARBITRATION AWARDED AGAINST DEFENDANT**

The costs of the arbitration, including the costs of the arbitrator, must be awarded against the *defendant* when:

- The amount awarded by the arbitrator is equal or more than the amount last claimed by the *claimant*:
  - \* At the date when the time, place and venue of the arbitration was communicated to all parties for the first time.

**13.7.8 COSTS OF ARBITRATION AWARDED AGAINST CLAIMANT**

The costs of the arbitration, including the costs of the arbitrator, must be awarded against the claimant when:

- The amount awarded by the arbitrator is equal to or less than the total of the amounts paid on account and offered by the defendant:
  - \* *With or without prejudice*
  - \* On account or in full and final settlement
  - \* At the date when the time, place and venue of the arbitration was communicated to all parties for the first time.

**13.7.9 LIMITED COSTS AWARD AGAINST DEFENDANT**

The arbitrator will make a limited costs award when the amount awarded by the arbitrator is less than the amount claimed by the claimant, but is more than the total of the amounts paid on account and offered by the defendant.

- ✓ Depending on the circumstances, a limited costs award will be made according to these formulae:
- (a) The defendant shall be ordered to pay  $x/y$  multiplied by 100% of the claimant's and the arbitrator's costs where:

$x$  = the difference between the award and the highest pre-arbitration offer.

$y$  = the difference between the highest pre-arbitration offer and the total amount claimed.

- (b) The claimant shall be ordered to pay  $z/y$  multiplied by 100% of the defendant's and the arbitrator's costs where:

$z$  = the difference between the claim and the award.

$y$  = the difference between the highest pre-arbitration offer and the total amount claimed.

The provisions of 13.7.6 – 13.7.9 with the necessary changes, apply to a claimant in reconvention and a defendant in reconvention.

**13.7.10 ARBITRATOR'S DISCRETION**

- ✓ The arbitrator may deviate from 13.7.7 – 13.7.9 where he/she views the conduct of the claimant as vexatious because the quantum of the costs is more than the amount in dispute.

**13.7.11 ARBITRATOR'S COSTS AND RELATED ISSUES**

The arbitrator will, when making an award of costs, specify the particular amount to be paid to him/her by each party and the tariff on which any costs payable to any other party is to be calculated.

The arbitrator will also either himself/herself tax any bill of costs in respect of an arbitration if there is a dispute as to the correct quantum, or will specify a capable person to do this taxation.

**13.7.12 MAKING ARBITRATOR'S AWARD AN ORDER OF COURT**

Either party may have the arbitrator's award made an order of court at the cost of the party requesting it.

**13.7.13 ARBITRATION PROCEDURE AND DURATION**

The arbitration will be held in accordance with procedures to be decided by the arbitrator. The arbitration should be conducted in an informal manner and held as quickly as possible with a view to it being completed within 90 days of the appointment of the arbitrator.

**13.7.14 PERFORMANCE DURING DISPUTE**

- ✓ During a dispute, the legal practitioner and Legal Aid SA must continue to perform with due diligence in accordance with their contractual obligations *pending* resolution of the dispute.

**13.7.15 DISPUTE PROVISIONS CONTINUING TO BE EFFECTIVE**

- ✓ The arbitration provisions of 13.7 of this Guide are severable from the rest of the contract between Legal Aid SA and the legal practitioner. In other words, these provisions are still effective even if the contract is terminated.

**13.7.16 NO CIVIL PROCEEDINGS ON DISPUTED PAYMENTS PENDING ARBITRATION**

Until an arbitration is finalised, the legal practitioner may not institute any civil legal proceedings relating to the moneys in dispute.

**13.8 Prescription of accounts****13.8.1 BEGINNING OF PRESCRIPTION**

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

Legal Aid SA has 30 days after receipt of an account to tax the account, and then to pay, partially pay or refuse to pay the account. If the practitioner does not institute arbitration proceedings within three months of being notified of the taxation of the account, the practitioner's claim will also prescribe.

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

**13.8.2 EFFECT OF ARBITRATION PROCEEDINGS**

A practitioner cannot litigate against the Board relating to the payment, part payment or non-payment of accounts unless the dispute has been arbitrated.

**13.9 Self-invoicing**

Legal Aid SA uses the self-invoicing method.

**13.9.1 DUTIES OF LEGAL PRACTITIONER**

Any legal practitioner, who wishes to be paid value-added tax (VAT) by Legal Aid SA, must annually, on or before 31 January in each calendar year:

- Give Legal Aid SA a certified copy of his/her VAT registration certificate, and
- A written undertaking to advise Legal Aid SA if he/she deregisters as a VAT vendor at any time.
- ✓ Legal practitioners who are registered as vendors for VAT must then:
  - Not issue tax invoices, debit or credit notes to Legal Aid SA for fees, but must provide a statement instead, on which they also quote their VAT registration number.
  - Account to SARS for VAT in legal aid matters, using the tax invoices provided by Legal Aid SA.

Legal practitioners who are not registered as vendors for VAT will invoice Legal Aid SA, stating on the invoice that they are not registered for VAT.

**13.9.2 DUTIES OF LEGAL AID SA**

Once the practitioner's statement has been taxed, Legal Aid SA will issue a tax invoice on behalf of the legal practitioner:

- The original will be forwarded to the legal practitioner together with payment, and
- Legal Aid SA will retain a copy for its records.

### 13.10 Electronic Invoicing

Legal Aid South Africa is investigating the feasibility of implementing a scheme for the electronic submission of invoices by legal practitioners. Once the scheme has been finalized it will be implemented by means of a circular and legal practitioners will be required to submit their invoices electronically for taxation and payment.

## Chapter 14:

### Co-Operation Partner Procedures

- ✓ The procedures set out in this chapter should be read together with the *Impact Services Policy* in 7.3 on page 102 and *Co-operation Agreements Policy* in 9.2 on page 126.

#### 14.1 Requesting, processing and approving Co-operation Agreements

##### 14.1.1 GENERAL PROCEDURES FOR PROPOSALS

By notices published in at least 2 newspapers that circulate nationally, the Legal Services

Technical Committee (LSTC) will invite proposals for *Co-operation Agreements*.

- ✓ Procedures for proposals:
  - Notices requesting proposals should be published annually by the end of November.
  - Notices must advise interested parties about:
    - \* Where they may inspect or obtain copies assessment of the needs assessment of the LSTC.
    - \* The assessment criteria to be used by the LSTC.
    - \* Any other relevant documentation.
  - Notices must call on interested parties to submit 6 copies of sealed proposals in the required format by the end of January each year.
  - The LSTC will notify interested parties by the end of February each year:
    - \* Whether their proposals have been accepted.
    - \* If accepted, to what extent, and on which terms and conditions.

##### 14.1.2 PROCEDURES FOR SCREENING PROPOSALS

###### (a) Policy and forensic checks

Every proposal submitted to the LSTC will be screened to ensure *compliance* with the Co-operation Agreements Policy.

⇒ See 9.2 on page 131.

The LSTC Committee may carry out forensic investigations it considers necessary to satisfy itself on the integrity of any proposed *Co-operation Partner*, or any of its staff or office bearers.

**(b) Declaration of interest**

- ✓ Any member of the LSTC having any financial or other interest in conflict or potential conflict with the interests of Legal Aid SA relating to any Co-operation Agreement proposal, must declare this interest in writing to the Chairperson of the LSTC before the proposal is discussed.

After a member of the LSTC declares an interest, the member must:

- Take no part in the discussion and decision on the proposal, and
- Absent himself/herself from the part of any meeting at which the proposal is considered.

## 14.2 Monitoring and managing Co-operation Agreements

### 14.2.1 GENERAL MONITORING AND REPORTING PROVISIONS

Before any Co-operation Agreement is concluded or renewed, the LSTC may prescribe the completion of *due diligence procedures* it considers necessary.

- ✓ Co-operation Partners must submit:
  - Monthly reports of progress to ROEs and an annual report to the LSTC.
  - Monthly statistics to the Regional Office on or before the 3rd day of each month.

### 14.2.2 NON-COMPLIANCE OR BREACHES

The ROE must inform the LSTC about any *non-compliance* with contractual guarantees or a *breach* of any Co-operation Agreement by a Co-operation Partner.

The LSTC must then, in good time, instruct appropriate officers of Legal Aid SA to stop payment of any instalments or to take steps to terminate the Co-operation Agreement.

### 14.2.3 FINANCIAL PROCEDURES

Regional Offices will be responsible to process the payment of the moneys due to the Co-Operation Partner on a monthly basis, subject to

the Co-operation Partner *complying* with the provisions of the Co-Operation Agreement.

- ✓ ROEs must also monitor compliance by Co-operation Partners with:
  - Contractually prescribed financial procedures
  - Accepted financial management procedures
  - The timeous submission of acceptable financial statements.

If there is any non-compliance, the ROE in consultation with the Chief Financial Officer and the NOE, will consider and implement *remedies* to bring the Co-operation Partner back into line or to terminate the Co-Operation Agreement. Any non-compliance and action taken on it must be reported to the LSTC.

# **ANNEXURES**



**LEGAL AID ACT NO. 22 OF 1969**

(ASSENTED TO 14 MARCH 1969)

(DATE OF COMMENCEMENT 26 MARCH 1969)

(English text signed by the State President)

**as amended by**

Legal Aid Amendment Act, No. 56 of 1971

General Law Amendment Act, No. 102 of 1972

Legal Aid Amendment Act, No. 47 of 1989

Legal Aid Amendment Act, No. 1 of 1991

General Law Amendment Act, No. 139 of 1992

Legal Aid Amendment Act, No. 20 of 1996

**ACT**

**To provide for legal aid for indigent persons and for that purpose to establish a Legal Aid Board and to define its functions; and to provide for other incidental matters.**

**1. Definitions**

In this Act, unless the context otherwise indicates—

“**Board**” means the Legal Aid Board referred to in Section 2;

“**Minister**” means the Minister of Justice.

**2. Establishment of Legal Aid Board**

There is hereby established a Board to be known as the Legal Aid Board, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing, subject to the provisions of this Act, all such acts as are necessary for or incidental to the carrying out of its objects, the exercise of its powers and the performance of its functions.

**3. Objects and General Powers of Board**

The objects of the board shall be to render or make available legal aid to indigent persons and to provide legal representation at State expense

as contemplated in the Constitution, and to that end the board shall, in addition to any other powers vested in it by the Act, have power—

[S. 3 amended by s.1 (a) of Act No. 20 of 1996, with effect from 17 October 1997.]

- (a) to obtain the services of legal practitioners;
- (b) to purchase or otherwise acquire or to hold or alienate any movable property or, with the approval of the Minister acting in consultation with the Minister of Finance, any immovable property;
- (c) to hire or let any movable or immovable property;
- (d) to fix conditions subject to which legal aid is to be rendered, including conditions in accordance with which any rights in respect of costs recovered or recoverable in any legal proceedings or any dispute in respect of which the aid is rendered, shall be ceded to the board, and conditions relating to the payment of contributions to the board by persons to whom legal aid is rendered;

[Para. (d) substituted by s. 1 of Act No. 47 of 1989.]

- (dA) to provide, subject to section 3A (3), legal representation at State expense as contemplated in section 25 (1) (c) and (3) (e), read with section 33 (2), of the Constitution, where substantial injustice would otherwise result;

[Para. (dA) inserted by s. 1 (b) of Act No. 20 of 1996, with effect from 1 May 2002.]

- (e) to do all such things and perform all such functions as may be necessary for or incidental to the attainment of the objects of the board.

### 3A. Legal Aid Guide

- (1) (a) Subject to the provisions of this act and in order to attain its objects and to exercise its powers referred to in section 3 (d) and (dA), the board shall, in consultation with the Minister, include particulars of the scheme under which legal aid is rendered or made available and the procedure for its administration in a guide called the Legal Aid Guide.
- (b) The provisions of the Legal Aid Guide shall be binding upon the board, its officers and employees.
- (2) The board shall, in addition to the submission of its annual report as contemplated in section 9 (11), submit the Legal Aid Guide at least once every year to the Minister and the Minister shall forthwith cause the Legal Aid Guide to be tabled in the National Assembly

and the Senate for ratification, and pending such ratification the Legal Aid Guide then in operation shall continue to apply.

- (3) Whenever the board considers an application for the rendering of legal aid, other than a matter referred to the board in terms of section 3B (1), and whether the application is made in terms of section 25 (1) (c) or (3) (e) of the Legal Aid Guide.

### 3B. Direction for legal aid by court in criminal matters

- (1) Before a court in criminal proceedings directs that a person be provided with legal representation at State expense, the court shall—
  - (a) take into account—
    - (i) the personal circumstances of the person concerned;
    - (ii) the nature and gravity of the charge on which the person is to be tried or of which he or she has been convicted, as the case may be;
    - (iii) whether any other legal representation at State expense is available or has been provided; and
    - (iv) any other factor which in the opinion of the court should be taken into account; and
  - (b) refer the matter for evaluation and report by the board.
- (2) (a) If a court refers a matter under subsection (1) (b), the board shall, subject to the provisions of the Legal Aid Guide, evaluate and report on the matter.
- (b) The report in question shall be in writing and be submitted to the registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the court and the person concerned.
- (c) The report shall include—
  - (i) a recommendation whether the person concerned qualifies for legal representation;
  - (ii) particulars relating to the factors referred to in subsection (1) (a) (i) and (iii); and
  - (iii) any other factor which in the opinion of the board should be taken into account.

[Paras. 3A and 3B inserted by s. 2 of Act No. 20 of 1996, with effect from 1 May 2002.]

#### 4. Constitution of Board

(1) The board shall consist of—

- (a) a judge of the Supreme Court of South Africa appointed by the Minister;
- (b) one practising advocate and four practising attorneys, nominated by the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa, respectively, and appointed by the Minister;
- (c) the Director-General: Justice;
- (d) the State Attorney;
- (e) a member appointed by the Minister by virtue of his knowledge and experience in the field of legal aid or any other field which in the opinion of the Minister will be to the advantage of the board;
- (f) three members nominated by the members referred to in paragraphs (a), (b), (c), (d), and (e) by reason of the fact that in the opinion of the members making the nominations they can further the aims of the board and appointed by the Minister.

[Sub-s. (1) amended by s. 2 of Act No. 47 of 1989 and substituted by s. 1 (a) of Act No. 1 of 1991.]

- (g) no more than six members appointed by the President in consultation with the Cabinet.

[Para. (g) inserted by s. 3 of Act No. 20 of 1996, with effect from 1 October 1998.]

- (1A) (a) The members of the board referred to in paragraphs (a), (b), (c), (d), and (e) of subsection (1) may co-opt one or more persons who in their opinion have the appropriate knowledge and experience, as associated members of the board for such period as the board may determine.
- (b) An associated member may attend meetings of the board only by invitation of the chairman.
  - (c) An associated member may take part in the proceedings of the board during meetings and perform the functions assigned to him by the board, but may not vote on any matter and shall not be taken into account for the purpose of the constitution of a quorum in terms of section 6 (1).

[Sub-s. (1A) inserted by s. 1 (b) of Act No. 1 of 1991.]

- (2) (a) The Minister may appoint a person to serve as an alternate in the stead of any member referred to in paragraphs (b) or (e) of subsection (1), during such member's absence from any meeting of the board, if such person is qualified to be appointed as such member and has been nominated in the same manner as such member.

[Para. (a) substituted by s. 9 of Act No. 139 of 1992.]

- (b) If any member of the board referred to in paragraph (c) or (d) of subsection (1) is unable for any reason to attend any meeting of the board, he may designate any officer in his department or office or, with the approval of the Minister, any other person to represent him at such meeting.

[Para. (b) substituted by s. 2 of Act No. 47 of 1989 and by s. 1 (c) of Act No. 1 of 1991.]

- (3) (a) The appointed members of the board and their alternates shall hold office for such period, not exceeding three years, as the Minister may at the time of the appointment determine.
- (b) Any member of the board or his alternate whose term of office has expired, shall be eligible for re-appointment.
- (c) The Minister may, if in his opinion there are good reasons for doing so, at any time terminate the period of office of any appointed member or his alternate.
- (4) No decision taken by the board or act performed under the authority of the board shall be invalid merely by reason of a vacancy on the board or the fact that any person not entitled to sit as a member sat as a member at the time the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of members present at the time, who were entitled to sit as members.
- (5) The member referred to in subsection (1) (a) or in his absence the member referred to in section (1) (c) or his representative shall preside at any meeting of the board: Provided that if both those members and the said representatives are absent from any meeting of the board, a chairman elected by the members present from among themselves, shall preside at such meeting.
- (6) The board shall out of its funds pay to a member of the board or his alternate, not being in the full-time service of the State, such remuneration and allowances and afford him such transport facilities in respect of his services as the Minister in consultation with the Minister of Finance may determine.

## 5. Meetings of Board

- (1) The meetings of the board shall be held at such times and places as the board may determine.
- (2) The chairman of the board may at any time, and shall at the request in writing of not less than eight members of the board, convene a special meeting of the board, to be held at such time and place as he may determine.

[Sub-s. (2) substituted by s. 4 of Act No. 20 of 1996, with effect from 1 October 1998.]

## 6. Quorums and Procedure

- (1) The quorum at any meeting of the board shall be eight members thereof.

[Sub-s. (1) substituted by s. 5 of Act No. 20 of 1996, with effect from 1 October 1998.]

- (2) Any decision at any meeting of the board shall be by majority of votes of the members present, and in the event of any equality of votes in regard to any matter, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

## 7. Delegation of Powers of Board

The board may delegate to any member, officer or agent of the board or to any officer in the public service any of its powers, but shall not thereby be divested of any power which it may so have delegated, and may amend or withdraw any decision by a member, officer or agent.

## 8. Officers and Agents of Board

The board may, with the consent or in accordance with the general instructions of the Minister acting in consultation with the Minister of Finance, appoint on such conditions and at such remuneration as may be approved by the Minister so acting, officers or agents to assist it in the performance of its functions.

### 8A. Recovery of costs by Board

- (1) Whenever in any judicial proceedings or any dispute in respect of which legal aid is rendered to a litigant or other person by the board, costs become payable to the litigant or other person in terms of a judgement of the court or a settlement or otherwise, it shall, subject to the powers of the board referred to in section 3 with regard to the fixing of conditions, be deemed that such litigant or other person has ceded his rights to such costs to the board.

- (2) If a litigant or person referred to in subsection (1) or his legal representative or the board has, at any time before payment of the costs deemed in terms of subsection (1) to be ceded to the board, whether before or after such costs become payable, given the person by whom the costs are to be paid at his last known address and the registrar or clerk of the court concerned notice in writing that legal aid is being or has been rendered, the board may proceed in its own name to have such costs taxed and to recover them, without being substituted on the record of the judicial proceedings concerned, if any, for the said litigant.
- (3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal aid was rendered, had obtained the services of the legal representative acting on his behalf in the proceedings or dispute concerned, without the aid of the board.

[S. 8A inserted by s. 24 of Act No. 102 of 1972 and substituted by s. 3 of Act No. 47 of 1989.]

## 9. Finances of Board

- (1) The funds of the board shall consist of—
  - (a) Monies appropriated by Parliament in order to enable the board to perform its functions;
  - (b) Monies received from any other source.
- (2) The board shall, subject to the provisions of subsections (3) and (5), utilise its funds for defraying expenses in connection with the performance of its functions.
- (3) The board may receive donations, bequests or contributions from any person and shall utilise monies so acquired for such purpose and in accordance with such conditions as the donors, testators or contributors may determine.
- (4) The board shall deposit all monies received by it in an account opened by it with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965).
- (5) The board shall invest any monies not required for immediate use or as a reasonable operating balance, with the Corporation for Public Deposits or in such other manner as the Minister of Finance determine.

[Sub-s. (5) substituted by s. 4 (a) of Act No. 47 of 1989.]

- (6) The board may utilise any balance of its monies remaining at the end of the financial year of the board concerned, for any expenses in connection with the performance of its functions.
- (7) The financial year of the board shall terminate on the thirty-first day of March in each year.
- (8) The board shall cause proper records of all its financial transactions, assets and liabilities to be kept.
- (9) The accounts of the board shall be audited by the Auditor-General.

[Sub-s. (9) substituted by s. 4 (a) of Act No. 47 of 1989.]

- (10) The board shall furnish the Minister with such information as he may call for from time to time in respect of the activities and financial position of the board, and shall in addition submit to the Minister an annual report, including a balance sheet and statement of income and expenditure certified by the Auditor-General.

[Sub-s. (10) substituted by s. 4 (c) of Act No. 47 of 1989.]

- (11) The Minister shall lay the said report upon the Table of Parliament within 14 days after receipt thereof, if parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of the next ensuing ordinary session.

[Sub-s. (11) substituted by s. 4 (d) of Act No. 47 of 1989.]

#### 9A. ....

[S. 9A inserted by s. 1 of Act No. 56 of 1971 and repealed by s. 2 of Act No. 1 of 1991.]

#### 10. Short title

This Act shall be called the Legal Aid Act, 1969.

#### Annexure B

LEGAL AID SOUTH AFRICA GAUTENG REGION						
No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
GAUTENG PROVINCE						
1	Alexandra	Mr Mmeli Motsepe	P O Box 1192 Bramley 2018  Dcex 5 GlenHazel	650 Louis Botha Ave Bramley Johannesburg 2018	011 786 3603 011 786 8170 011786 9311	011 786 0862
2	Benoni	Ms Nokuphiwa nguqu	P O Box 2972 Benoni 1500  Docex 12	23 Tom Jones Str Benoni 1501	011 845 4311	011 421 1082 011 420 2097
3	Germiston	Ms Aysha Ismail	P O Box 4302 Germiston South 1401  Docex 23	10th Floor Standard Bank Towers 247 President Street Germiston 1401	011 842 7300	011 825 7987 011 872 1527

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>GAUTENG PROVINCE</b>						
4	Johannesburg	Ms Ncikazi Moahloli	P O Box 62378 Marshalltown 2107	41 Fox Street Edura House Johannesburg 2000	011 870 1480	011 838 6658
5	Krugersdorp	Mr Joseph Mofokeng	Docex 259 P O Box 660 Krugersdorp 1740	3rd Floor ABSA Building Cnr Kruger & Human Street Krugersdorp	011 660 2335	011 660 2050
6	Pretoria	Ms Flavia Isola	Docex 19 P O Box 1281 Pretoria 0001	2nd Floor FNB Building 206 Church Street Pretoria	012 401 9200	012 324 1950
7	Soshanguve	Ms Mpho Kgabi	Docex 350 PO Box 401 Soshanguve 152	Medicos Centre Stand no 2093 Block H Soshanguve 0152	083 383 4731	012 797 2573

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>GAUTENG PROVINCE</b>						
8	Soweto	Mr Anton Crouse	P O Box 392 Pimville 1808	Ground Floor 75 Mmesi Park Office Dobsonville Shopping Centre Roodepoort Road Dobsonville 1808	011 988 9011	011 988 8975
9	Tembisa	Ms Nomawethu Mtebele	PO Box 1725 Tembisa 1620	Summore Hardware Bld 348 Rev Namane Street Tlalatlama Section Tembisa	011 926 0081	086 650 1248
10	Vereeniging	Ms Elzane de Jager	Docex 30 Kempton Park P O Box 3948 Vereeniging 1930	8 Jasmine Mansions Senator Mrks Ave Vereeniging 1938	016 421 3527	016 421 4287
Gauteng Regional Office		Ms Wilna Lambley ROE	Docex 25 P O Box 16237 Lyttelton	144 Cantonment Street Selborn Centre Lyttelton Pretoria 0157	012 664 2921	012 664 6920



## LEGAL AID SOUTH AFRICA KWAZULU NATAL REGION

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL</b>						
1	Durban	Mr Kishore Mehta	P O Box 4397 Durban 4000	Suite 401 4th Floor Salisbury House 330 Smith Street Durban 4001	031 304 0100 031 304 3162 031 304 3163	031 304 3564 031 304 0471
2	Empangeni	Mr Bhekizenzo Mthethwa	Docex 214 P O Box 38 Empangeni 3880	Mazuli House 7 Maxwell Street Empangeni 3008	035 792 4949 035 792 4952	035 792 4954
3	Ladysmith	Mr Mandla Ntobela	Docex 18 P O Box 1181 Ladysmith 3370	18A Queen Street Ladysmith 3370	036 638 2500	036 637 5036

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL</b>						
4	Newcastle	Ms Fathima Buckus	P O Box 1850 Newcastle 2940	65 Scott Street Newcastle 2940	034 328 7100	034 312 3426
5	Pietermaritzburg	Mr Bertus Appel	Docex 7 Suite 173 Postnet X9118 Pietermaritzburg 3200	20 Otto Street Pietermaritzburg 3201	033 394 2190 033 394 2264	033 342 2576
6	Pinetown	Mr Vis Nair	Docex 64 P O Box 1006 Pinetown 3600	Suite 27 Umdoni Centre 28 Crompton Street Pinetown 3600	031 719 2700	031 701 5880

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL</b>						
7	Port Shepstone	Mr Roger Jasson	P O Box 50148 Port Shepstone 4240 Docex 5 Port Shepstone	Shop 19 & 20 A Sheppie Mall Aiken Street Port Shepstone 4240	039 688 9600	039 682 5908
8	Umlazi	Ms Nomsa Nkosi	P O Box 36265 Ntlokozeni 4089 Docex 1	V1332 Ithala Industrial Park Cnr Mangosuthu Highway & Road 1902 Umlazi 4031	031 918 8100	031 906 1477
9	Verulam	Ms Fawzia Bacus	P O Box 183 Verulam 4340 Docex 380 Durban	Suite 1 Ayesha Razak Centre 1st Floor Ayesha Razak Centre 23 Groom Street Verulam 4340	032 533 2654 032 533 2657 032 533 2449 032 533 3068 032 533 3417 032 533 5328	032 533 2651

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL</b>						
10	Vryheid	Mr Velaphi Masuku	P O Box 852 Vryheid 3100 Docex 5 Vryheid	Ground Floor Suite ABSA Building 199A Church Street Vryheid 310	034 989 8300 034 989 8301	034 989 8311
KwaZulu Natal Regional Office		Mr Vela Mdaka ROE	P O Box 2489 Pinetown 3600 Docex 261 Durban	7th Floor Charter House Cnr Crompton & Union Street Pinetown 3600	031 717 8450	031 702 1960

## LEGAL AID SOUTH AFRICA EASTERN CAPE REGION

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>EASTERN CAPE</b>						
1	Aliwal North	Ms Netarie Verwey	P O Box 153 Aliwal North Docex 4	58 Somerset Street Aliwal North 9750	051 633 2530 051 633 2155	051 634 2662
2	Butterworth	Ms Tobeka Maqwati	P O Box 553 Butterworth 4960 Docex1	Suite 2 Bungalow Mall Umtata Road Butterworth	047 401 3800 047 491 0006	047 401 3809
3	East London	Mr Hope Bambiso	P O Box 7570 East London 5200 Docex 57	1 Commissioner Street East London 5201	043 704 4700	043 722 3503

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>EASTERN CAPE</b>						
4	Graaff-Reinet	Mr Joseph Bosealetse	P O Box 326 Graaff-Reinet 6280 Docex 3	64 Church Street Graaff-Reinet 6280	049 807 2500	049 892 6033
5	Grahamstown	Mr Vusi Dayimani	P O Box 105 Grahamstown 6140 Docex 18	69 High Street Grahamstown 6140	046 622 9350	046 622 8873
6	King Williams Town	Ms Linda Magaxeni	P O Box 2323 King Williams Town 5600 Docex 4	1st Floor Old Mutual Building Cnr Cathcart & Maclean Street King Williams Town	043 604 6600	043 642 4885
7	Mthatha	Mr Fuzile Ngxumeshe	P O Box 536 Mthatha 5099 Docex 13	22 Durham Street Mthatha 5099	047 501 4600	047 531 4144

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>EASTERN CAPE</b>						
8	Port Elizabeth	Ms Lynette Franklin	P O Box 3433 North End 6056  Docex 127	1st Floor President Centre 564 Govan Mbeki Ave North End 6001	041 408 2800	041 487 3335 041 484 5189 HCU 041 484 5189
9	Queenstown	Ms Lynette Marais	P O Box 1398 Queenstown 5320  Docex 28	No 2 - 4 Shepstone Road Queenstown 5319	045 807 3500	045 838 4620
10	Uitenhage	Mr Henry Lerm	P O Box 459 Uitenhage 6230  Docex 6	32-36 Baird Street Uitenhage 6230	041 991 1811	041 991 1815
Eastern Cape Regional Office		Mr Hope Bambiso ROE	P O Box 63799 Greenacres Port Elizabeth 6056  Docex 131	159 Cape Road Mill Park Port Elizabeth 6001	041 373 8296	041 373 1315

## LEGAL AID SOUTH AFRICA WESTERN CAPE & NORTHERN CAPE REGION

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>WESTERN CAPE PROVINCE</b>						
1	Athlone	Mr Mark Gaffley	P O Box 166 Athlone 7760  Docex 9	2nd Floor Melofin Centre 7764 Athlone	021 697 5252	021 697 5316
2	Bellville	Ms Ronelle Arendse	Docex 70 Bellville	68 Durban Road Van Der Stel Bldg Cnr Voortrekker & Durban Street Bellville 7535	021 949 3062	021 949 2534
3	Cape Town	Mr Cobus Esterhuizen	P O Box 516 Cape Town 8000  Docex 19	5th & 6th Floor Nedbank Building 85 St George Mall Cape Town 8001	021 426 4126	021 426 5766

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>WESTERN CAPE PROVINCE</b>						
4	George	Mr Pieter Terblanche	Docex 27 George	Tommy Joubert Building Cnr Craddock & Courtenay Street George 6530	044 802 8600	044 874 0779
5	Caledon	Mr Nelis Du Plessis	Docex 3 Caledon	19 Donkin Street Caledon 7230	028 212 1815	028 212 1826
6	Malmesbury	Mr Elroy MachHelm	Docex 6	1st Floor, The Frank Building 47 Voortrekker Road Malmesbury	022 482 1784	022 482 4449
7	Stellenbosch	Mr Shawn Flowers	P O Box 534 Stellenbosch 7600	Office 201, 2nd Floor Eikestad Mall Stellenbosch 7600	021 882 9221	021 882 9237
8	Vredendal	Mr Janus Roothman	Docex 3 Vredendal	9 Dorp Street Vredendal 8160	027 201 1030	027 213 2627

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>WESTERN CAPE PROVINCE</b>						
9	Worcester	Ms Musawakhe Sithabe	Docex 1 Worcester	1st Floor WC Building Cnr High & Stockenström Streets Worcester 6850	023 348 4040	023 348 4051
<b>NORTHERN CAPE PROVINCE</b>						
10	Colesberg	Ms Yolundi Ngxola-Tshona	Docex 4 Colesburg	30 Church Street Ortlepp House Colesburg 9795	051 753 2280 051 753 2281	051 753 2283
11	Kimberley	Mr Vincent Mayisela	P O Box 846 Kimberley 8300	43 Sidney Street Kimberley 8301	053 832 2348	053 832 2356

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>NORTHERN CAPE PROVINCE</b>						
12	Upington	Ms Moima Phakedi	Postnet 100 P/Bag X5879 Upington 8800	16 Weideman Street Upington 8801	054 337 9200	054 337 9210
			Docex 12			
Western & Northern Cape Regional Office		Ms Cordelia Robertson ROE	Docex 23 Stellenbosch	Shiraz House Brandwacht Office Park Stellenbosch 7600	021 861 3000	021 886 8657

**LEGAL AID SOUTH AFRICA**  
**FREE STATE & NORTH WEST REGION**

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>FREE STATE PROVINCE</b>						
1	Bethlehem	Mr Wouter de Villiers	P O Box 1324 Bethlehem 9700	Cnr Commissioner & Naude Street Bethlehem 9700	058 3036824	058 303 6823
			Docex 15			
2	Bloemfontein	Ms Noxolo Maduba	P O Box 9899 Bloemfontein 9300	113 St Andrews Street 2nd Floor St Andrews Building Bloemfontein 9301	051 447 9915 051 447 7263 051 447 0466 051 447 2136 051 447 0902 051 447 5043	051 447 2106
			Docex 46			



No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>FREE STATE PROVINCE</b>						
3	Botshabelo	Mr Machini Motloung	PO Box 6141 Botshabelo 9781  Docex 001 Botshabelo	Suite no 5 Varese Centre Botshabelo 9781	051 534 4398 051 534 4917	051 534 4930
4	Kroonstad	Mr Piet Grove	P O Box 2229 Kroonstad 9500  Docex 12	99 Murray Street Kroonstad 9501	056 216 4800	056 212 4522
5	Phuthadith-jaba	Mr Lot Madungandaba	Private Bag X 831 Witsieshoek 9870  Docex 1	Cnr Motloung & Setai Street FDC Office Block E Phuthadithjaba 9866	058 713 4953 058 713 4983 058 713 5000	058 713 5002
6	Welkom	Ms Stefani De Villiers	P O Box 335 Welkom 9460  Docex 1	Archiquant Building 8 Heerent Street Welkom 9460	057 357 2847 057 357 1680 057 357 1835 057 357 1724	057 357 1948

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>NORTH WEST PROVINCE</b>						
7	Ga-Rankuwa	Mr Hlanihla Shongwe	P O Box 23 Ga-Rankuwa North 0209 Docex 3 Akasia	Shop no 58A Ga-Rankuwa City Centre Ga-Rankuwa North 0209	012 700 1416	012 700 0890 012 700 1908
8	Klerksdorp	Ms Melinda de Kock	P O Box 2793 Klerksdorp 2570  Docex 9	West End Building Siddle Street 3rd Floor, Room 33175 Klerksdorp 2570	018 464 3022 018 462 2070	018 462 8607
9	Lichtenburg	Mr Bert Viljoen	P O Box 1208 Lichtenburg 2740  Docex 7	25 Bantjes Street Lichtenburg 2740	018 632 7600	018 632 7609
10	Mafikeng	Mr Kenneth Makgetha	P/Bag X2125 Mafikeng 2745  Docex 8	Mega City Complex East Gallery, 3rd Floor Mmabatho 2735	018 384 3503 018 384 4768	018 384 4796

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>NORTH WEST PROVINCE</b>						
11	Potchefstroom	Mr Peter Makamedi	P O Box 1447 Potchefstroom 2520	James Moroka Street Royal Building, 2nd Floor Potchefstroom 2531	018 293 0045	018 297 7425
12	Rustenburg	Ms Nkosingihpile Mazibuko	P O Box 2090 Rustenburg 0300	Thlabane Community Complex Office No. 21 Thlabane 0390	014 565 5704 014 565 5823 014 565 5822	014 565 6821
13	Vryburg	Mr Ernest Mogashoa	Docex 31 P O Box 652 Vryburg 8601	Cnr Decock & Vry Street Vryburg Star Mall Shop no A/3 1st Floor Vryburg 8601	053 927 0095	053 927 0119
Free State & North West Regional Office		Ms Martha Mbhele	Docex 7 P O Box 6861 Bloemfontein 9301	163 Nelson Mandela Drive Sanlam Building Bloemfontein 9301	051 412 8040 051 412 8041 051 412 8048 051 412 8046 051 412 8051 051 412 8050	051 447 3754
			Docex 125 Bloemfontein			

## LEGAL AID SOUTH AFRICA LIMPOPO & MPUMALANGA REGION

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>LIMPOPO PROVINCE</b>						
1	Makhado	Mr Thomas Madzaga	P O Box 4591 Louis Trichardt 0920	Noor Gardens Cnr Krogh & Devenish Str Louis Trichardt 0920	015 519 1100	015 519 1103
2	Modimolle	Ms Jacqueline Maimela	Docex 8 Louis Trichardt P O Box 4373 Modimolle 0510	Shop 8 Nyl Sake Sentrum Nelson Mandela Drive Modimolle 0510	014 717 4977	014 717 4980
3	Polokwane	Mr Thabo Ledwaba	Docex 8 P O Box 1314 Polokwane 0700	2nd Floor Pioneer Building 52 Landros Marais Street Polokwane 0700	015 291 2429	015 295 4386

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>LIMPOPO PROVINCE</b>						
4	Thohoyandou	Mr Raguvhu Madzhiye	P O Box 3550 Thohoyandou 0950	Shop 2 Metropolitan Complex Thohoyandou 0950	015 962 6206 015 962 6268 015 962 6269	015 962 6383
			Docex 3			
5	Tzaneen	Ms Tsakani Maluleke-Sihlangu	P O Box 2365 Tzaneen 850	2nd Floor Tzaneen Crossing Mall Cnr Lydenburg & Skurving Str Tzaneen	015 307 3129 015 307 6223 015 307 3227 015 307 3216	015 307 3113
<b>MPUMALANGA PROVINCE</b>						
6	Ermelo	Mr Matthew L Shongwe	P O Box 656 Ermelo 2350	14 Joubert Street Ermelo 2350	017 819 7291 017 819 7292	017 819 7270
			Docex 9 Ermelo			

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>MPUMALANGA PROVINCE</b>						
7	Middelburg	Ms Marlie Kotze	P O Box 827 Middelburg 1050	Room 102D, 1st Floor Wonderpark Centre Cnr Church & Dr Beyers Naude Street Middelburg 1050	013 243 5964 013 243 4296 013 282 1254 013 282 1253	013 282 1235
			Docex 3			
8	Nelspruit	Mr Sipho Ndhlovu	P O Box 5103 Nelspruit 1200	Room 806 8th Floor 30 Brown Street Nedbank Building Nelspruit 1200	013 753 2154 013 755 5019 013 752 6635 013 752 3691 013 752 2384 013 752 6207	013 755 1540
9	Witbank	Mr Rodney Mashego	P O Box 4373 Witbank 1035	Room 701 Sanlam Forum Building Arras Street Witbank 1035	013 656 5290 013 656 2061 013 656 0583	013 656 5291
			Docex 51		013 690 2283	

No	Justice Centre	Principal	Postal Address	Physical Address	Telephone Number	Fax Number
<b>MPUMALANGA PROVINCE</b>						
Limpopo & Mpumalanga Regional Office	Ms Zanele Msweli	P O Box 11237 Bendor Park 0713	Larciano Building 11 Rhodes Drift Avenue Bendor Polokwane 0700	015 296 0117 015 296 0148	015 296 0102	
		Docex 56 Polokwane				

### LEGAL AID SOUTH AFRICA SATELLITE OFFICES

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>GAUTENG PROVINCE</b>							
1	Benoni	1	Nigel		Kingsway Chambers 11 Kingsway Avenue Nigel 1491	011 814 5159	011 814 5259
2	Soweto	2	Westonaria		Shop 3 Elizabeth Centre President Street Westonaria	011 753 2604	011 753 2629
3	Vereeniging	3	Heidelberg		Portion 4 24 Uekerman Street Enslin Building Heidelberg 1441	016 341 4430	016 341 4430
		4	Frankfort		55 A Brand Street Frankfort	058 813 1624	058 813 2171

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>LIMPOPO PROVINCE</b>							
4	Makhado	5	Musina	PO Box 4591 Louis Trichardt 0920	Limpopo Building National Road Messina Ext 2 Musina	015 534 2946	015 534 2947
5	Modimolle	6	Lephalala	PO Box 17 Lephalala	1 Booyesen Street Stamax Building First Floor	014 763 1433	014 763 1437
6	Polokwane	7	Mokopane		31 Relief Street Spar Complex Business 20 Mokopane 0626	015 491 4461	015 491 4759
		8	Lebowakgo mo		Old Mutual Bld First Floor Lebowakgomo	073 149 3414	
		9	Bochum		Shalas Complex Block B2 Mainstreet Senwabarwana	072 513 6555	

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>LIMPOPO PROVINCE</b>							
7	Tzaneen	10	Giyani	PO Box 835 Giyani 826	Old Spar Supermarket Opp Shell Garage 1st Floor Main Road Giyani 0826	015 812 3065	015 812 3697
		11	Phalaborwa		Phalaborwa Old Medical Bldg Second Floor Wildevy Avenue	015 781 0960	015 781 0976
<b>KWAZULU NATAL PROVINCE</b>							
8	Empangeni	12	Ingwavuma	PO Box 38 Empangeni 3880	Cnr Jozini and KwaNgwanase Road Ingwavuma 3968	035 591 0950 035 591 1709	035 591 0907
		13	Mkuze	PO Box 38 Empangeni 3880	Shop 22F, Mkuze Plaza Old Main Rd Mkuze 3974	035 573 1655	035 576 1656

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL PROVINCE</b>							
9	Ladysmith	14	Estcourt	PO Box 1010 Ladysmith 3310	Shop No 1 127 Albert Street Estcourt 3310	036 352 1997	036 352 1998
10	Newcastle	15	Dundee	PO Box 1850 Newcastle 2940	Unit 13 56 Smith Street Dundee 3000	034 212 4351 034 212 4460	034 212 4534
11	Pietermaritzburg	16	Greytown	Suite 173 Postnet X9118 Pietermaritzburg 3200	Shop No 1 40 Bell Street Greytown 3250	033 417 2146	033 417 2146
		17	Bulwer	Suite 173 Postnet X9118 Pietermaritzburg 3200	Shop 5 Stavcom Building Main Road Bulwer	039 832 0515/6	039 832 0518

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>KWAZULU NATAL PROVINCE</b>							
12	Port Shepstone	18	Kokstad	PO Box 50148 Port Shepstone 4240	29 Barker Street Kokstad 4700	039 727 5081 039 727 5098	039 727 5082
		19	Ixopo	PO Box 33 Ixopo 3276	Shop No 3 Ixopo Bottlestore Bld Margaret Street Ixopo 3276	039 834 2962 039 834 9392	039 834 2967
13	Umlazi	20	Umzinto	PO Box 186 Umzinto 4200	Office A11 Hypersingh Centre Cnr Court & Textile Road Umzinto	039 974 4591	039 974 4591
14	Verulam	21	Stanger	P.O. Box 183 Verulam 4340	Suite 1 Stanger Mall Stanger Mall 55 King Shaka Street Stanger 4450	032 551 3740 032 551 3767	032 551 3957
15	Vryheid	22	Ulundi	PO Box 852 Vryheid 3100	Fairbreeze Office Park Princess Magogo Street Ulundi 3838	035 870 0832	035 870 3108



No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>MPUMALANGA PROVINCE</b>							
16	Ermelo	23	Piet Retief	PO Box 809 Piet Retief 2380	14 Kruger Street Piet Retief 2380	017 826 4567	017 826 2725
		24	Eerstenhoek	PO Box 112 Elukwatini 1192	Stand Number 88 Nhazatshe G Elukwatini 1192	017 883 1112 017 883 1113	017 883 1114
		25	Standerton	PO Box 656 Ermelo 2350	Office No 7 Time Square Building 48 Charl Cilliers Street Standerton	017 712 5928	017 712 5963
17	Middelburg	26	Groblersdal	PO Box 827 Middleburg 1050	Eldorado 7 Voortrekker Street Groblersdal 470	013 262 4770 013 262 4769	013 262 4768
		27	Siyabuswa				

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>MPUMALANGA PROVINCE</b>							
18	Nelspruit	28	Lydenburg	PO Box 1146 Lydenburg 1120	29 de Clerk Street Lydenburg 1120	013 235 9940 013 235 1667	013 235 1669
		29	Bushbuckridge	PO Box 2357 Bushbuckridge 1280	R40 Road Protea Building Bushbuckridge 1280	013 799 1831/3	013 799 1835
		30	Tonga	PO Box 1021 Kwalugedlane 1341	Stand 77 Tonga View N/A	013 780 3211 013 780 3221	013 780 3073
19	Witbank	31	Secunda	PO Box 7630 Secunda 2302 Docex 8	1st Floor Medical Centre Bld Secunda Complex Secunda	017 634 8532	017 634 6571
		32	Kwa-Mhlanga	PO Box 4373 Witbank 1035	Erf 538/7 Kwa-Mhlanga Bankview		

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>EASTERN CAPE PROVINCE</b>							
20	Aliwal North	33	Sterkspruit	PO Box 153 Aliwal North 9750	Site 99 Main Street Sterkspruit	051 611 0348 051 611 0351	051 611 0349
21	Graaff-Reinet	34	Somerset East/Oos	PO Box 448 Somerset East 5850	Visser Centre 12 Njoli Street Somerset Oos 5850	042 243 0610	042 24 33 048
		35	Cradock	PO Box 584 Cradock 5880	Nolte & Smith Building Adderley Street Cradock 5880	048 881 4867	048 881 2275
22	Grahamstown	36	Fort Beaufort	PO Box 487 Fort Beaufort 5720	No 68 Durban Street Fort Beaufort	046 645 2279	046 645 1318
23	King Williams Town	37	Stutterheim	PO Box 2323 King Williams Town	75 Hill Street Stutterheim 4930	043 683 1090	043 683 1093

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>EASTERN CAPE PROVINCE</b>							
24	Mthatha	38	Lusikisiki	PO Box 536 Mthatha	Shop 9 & 10 Embassy Building AMCA Road Lusikisiki	039 253 1442	039 253 1442
		39	Mount Fletcher	PO Box 536 Mthatha	271 Main Street Mount Fletcher	039 257 0501	039 257 0501
		40	Mount Frere	PO Box 536 Mthatha	4770 F339 Hospital Road Mt Frere	039 255 1473	039 255 1473
25	Port Elizabeth	41	Humansdorp	PO Box 393 Humansdorp 6300	Tredalux Building 23 Main Street (at the rear) Humansdorp 6300	042 295 2794 042 295 2906 042 295 2799 042 295 2782	042 295 2768
26	Queenstown	42	Elliot	PO Box 1398 Queenstown 5320	18 Market Street Elliot 5460	045 9311 984 045 9311 988	045 9311 986
27	Uitenhage	43	Kirkwood		32B John Street Kirkwood	042 230 0713	042 230 0679

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>WESTERN CAPE PROVINCE</b>							
28	Athlone	44	Mitchells Plain		Mitchells Plain Court Mitchells Plain 7785	021 397 6061	021 397 8130
30	Caledon	47	Swellendam		67 Voortrekker Street Swellendam 6470	028 514 3026	028 514 2674
31	George	48	Beaufort West		102 Bird Street Beaufort West 6970	023 415 1689	023 414 3162
		49	Riversdale		23 Dickson Street Riversdale 6670	028 713 4620	028 713 4621
		50	Oudtshoorn		Allied Building Room 302, 303 & 304 Kerk Street Oudtshoorn	044 279 2255	044 279 2558

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>WESTERN CAPE PROVINCE</b>							
32	Malmesbury	51	Atlantis		Shop 12 Wesfleur Medical Centre Atlantis 7349	021 572 8522	No Fax
		52	Vredenburg		1st Floor Standard Bank Bld Main Street Vredenburg 7380	022 713 1006	022 713 1007
33	Vredendal	53	Calvinia		No 20 Hantam Street Calvinia	027 341 2240	027 341 2264
		54	Springbok		Portion of Old Royal Food Cnr van Riebeck & Loop Street Springbok 8240	027 718 2449	027 718 2453

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>NORTHERN CAPE PROVINCE</b>							
34	Colesburg	55	De Aar	47 Church Street De Aar 7000	47 Church Street De Aar 7000	053 631 1950 053 631 0790	053 631 1321
		56	Victoria West	No 88 Church Street Victoria West 7070	No 88 Church Street Victoria West 7070	053 621 0039	053 621 0037
35	Kimberley	57	Hartswater		21 Tom Naude Street Hartswater 8570	053 474 0341	053 474 0312
36	Upington	58	Kuruman	3 Federale Mynbou Street Kuruman 8460	3 Federale Mynbou Street Kuruman 8460	053 712 3782	053 712 3783
		59	Prieska	PO Box 422 Prieska 8940	29 Loots Boulevard Prieska	053 353 1098 053 353 1184	No Fax
		60	Postmasburg				

No	Justice Centre	No	Satellite Office	Postal Address	Physical Address	Telephone Number	Fax Number
<b>NORTH WEST PROVINCE</b>							
37	Klerksdorp	61	Wolmaranstad		12 Kruger Street Kruger mail Wolmaranstad 2630	018 596 2775 018 596 2733	018 596 1004
38	Lichtenburg	62	Delareyville		Cnr du Toit & Louw Street CFK Centre Delareyville 2740	053 948 1092	053 948 1092
39	Potchefstroom	63	Carletonville		49 A van Zyl Smit Street Oberholzer 2500	018 787 2346	018 787 2346



**Legal Aid**  
South Africa

Your voice. For justice.

257

## Annexure D

LA2  
LEGAL AID SOUTH AFRICA

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

Legal Aid Office: ~Office~  
Reference No: ~InstructionRefNo~

Your voice. For justice.

\*~InstructionRefNo~\*

## INSTRUCTION TO LEGAL AID PRACTITIONER

PARTICULARS OF LEGAL PRACTITIONER	
Name of advocate/Firm of attorneys: ~Firm~ Name of Attorney: ~AttorneyName~ Postal Address: ~AttorneyPostalAddress~ Telephone No: ~AttorneyTelephone~ Docex No: ~AttorneyDocex~	
Fax No: ~AttorneyFax~ Vendor No: ~VendorNo~	
PARTICULARS OF APPLICANT	
Surname: ~ApplicantSurname~ First Names: ~ApplicantName~ Sex: ~Sex~  Residential Address: ~ApplicantAddress1~ ~ApplicantAddress2~ ~ApplicantAddress3~ ~ApplicantAddress4~  Number Co-accused as per annexure: ~NoOfCoAccused~ Marital Status: ~ApplicantMaritalStatus~	
PARTICULARS OF INSTRUCTION	
Type of case: ~CaseType~ Court: ~CourtType~ Seat of court: ~SeatOfCourt~ Date of next court appearance: ~NextDateOfAppearance~  Instruction: ~InstructionRefNo~ Case No: ~CaseNo~ Court No: ~CourtRoom~ Charges: ~Charges~	
The applicant whose particulars appear above is referred to you on behalf of the Legal Aid South Africa for the rendering of legal aid in accordance with the provisions of the Legal Aid Guide.	
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.	
Your attention is also drawn to the remarks on the acceptance of instruction and undertaking PROBABILIS CAUSA page.	
Date Stamp: ~InstructionDate~ Legal Aid Officer: _____	

## 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.
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 provision of the Legal Aid Guide, not to take any steps in a civil matter, except steps to prevent default judgment or prescription, until I have obtained the decision of the Chief Executive Officer of the 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 in to 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



### Annexure E

#### TARIFF OF FEES AND DISBURSEMENTS IN CRIMINAL MATTERS - 2010

The fees and disbursements contained in this Annexure come into effect from 1 April 2010 for work done on or after 1 April 2011. The tariff of fees and disbursements applicable to work done from 1 April 2009 to 31 March 2010 appears in the 2009 Legal Aid Guide. The tariff of fees applicable to work done 1 April 2010 to 31 March 2011 appears in Circular 1 of 2010.

The various tariffs of fees and disbursements that are applicable for work done prior to 1 April 2009 are listed on the Legal Aid SA website ([www.legal-aid.co.za](http://www.legal-aid.co.za)) under the heading "Legal Aid SA Tariffs Pre-April 2009".

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

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

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.3 (a)	If the duration of a trial day does not total in aggregate to 4 hours, the trial day fee set out above shall be reduced pro rata. The minimum fee permitted in respect of any trial day shall be:	R166.00 Per day	R166.00 Per day	R166.00 Per day	NA
1.3 (b)	If a matter is finalised by means of a formal withdrawal (which must be in writing as opposed to matter which are merely struck off the roll), guilty plea, diversion or plea bargain, a finalisation fee, inclusive of all necessary consultations and preparations will be paid, irrespective of when such consultations or preparation took place. No additional preparation fees will be paid in respect of the trial. This will not preclude claims for postponements and court appearances before or after the date in respect of which the finalisation fee is claimed (eg for sentencing).	R1073.00	R1276.00	R2000.00	NA
<b>2.</b>	<b>Preparation fees<sup>2</sup></b>				
2.1	Practitioners may claim preparation and consultation fees from the date of instruction by Legal Aid South Africa. Preparation before the start of the trial is required (eg in the High Court up to 8 hours preparation should routinely be done prior to the date of the commencement of the trial).	R150.00 Per hour	R210.00 Per hour	R265.00 Per hour	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	Necessary travelling and accommodation disbursements (as per Paragraph 7 below) outside of the magisterial district in which the practitioner practises will be paid if required to execute such preparation. In all matters actual preparation and necessary consultations prior to and during the trial shall be allowed and remunerated as follows: DC – Not more than 2 hours for the first accused and additional preparation and consultation time of not more than 1 hour per co-accused represented subject to a maximum of 8 hours per District Court matter. RC – Not more than 4 hours for the first accused and additional preparation and consultation time of not more than 2 hours per co-accused represented subject to a maximum of 16 hours per Regional Court matter. HC – A minimum of 8 hours for the first accused for the first week of trial or part thereof, and then an additional 8 hours per week or part thereof for the remaining period of the trial.				

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	Where the practitioner represents additional co-accused, then additional actual preparation and consultation time of not more than 4 hours per co-accused represented subject to a maximum of 32 hours per week will be allowed.				
2.2	In respect of trials where a practitioner for valid reasons requires additional preparation and consultation time beyond what is allowed in 2.1 above, a written motivation for increased preparation and consultation time must be submitted to the ROE/NOE.	R150.00 Per hour	R210.00 Per hour	R265.00 Per hour	NA
<b>3.</b>	<b>Increased trial day fees<sup>3</sup></b>				
3.1	Only in very exceptional circumstances will any increased fees be permitted. If increased trial day fees are authorised by the ROE/NOE, these shall not exceed:	NA	R2 774.00 Per trial day	R3 494.00 Per trial day	NA
3.2	In very exceptional circumstances, the NOE may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial at not more than 60% of the fees allowed to the first legal practitioner.	NA	R1 663.00 Per trial day (Maximum)	R2 095.00 Per trial day (Maximum)	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	In no circumstances will a third legal practitioner be permitted in respect of any accused or group of co-accused who are represented by a single legal team.				
<b>4.</b>	<b>Bail applications and interlocutory applications<sup>4</sup></b>				
4.1	A legal practitioner shall be remunerated for bail and other interlocutory applications not otherwise provided for at the rates set out herein as if such bail or interlocutory application formed part of the trial of the accused.	R1 073.00 Per trial day	R1 276.00 Per trial day	R2000.00 Per trial day	NA
<b>5.</b>	<b>Criminal trials – General<sup>5</sup></b>				
5.1	Application for a transcript of the evidence.	R122.00 Per application	R122.00 Per application	R122.00 Per application	NA
5.2	Necessary perusal of a docket and/or record.	R3.01 Per page	R3.01 Per page	R3.01 Per page	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
5.3	Preparation of heads of argument at the request of the court. Proof of the court's request must accompany the account. A folio consists of 100 words.	NA	R14.56 Per folio	R22.00 Per folio	NA
<b>6.</b>	<b>Criminal appeals<sup>6</sup></b>				
6.1	Written report on the merits of a matter when required.	R332.00 Per report	R332.00 Per report	R332.00 Per report	R332.00 Per report
6.1 (a)	For appearing before any trial court when a postponement is granted at the request of the State or at the instance of the presiding Judicial Officer before hearing an application for leave to appeal.	R166.00 Per postponement	R166.00 Per postponement	R166.00 Per postponement	NA
6.2	Application to the court a quo for leave to appeal (where done by a practitioner who appeared at trial).	R363.00 Per application	R483.00 Per application	R581.00 Per application	NA
6.3	Drafting petition for leave to appeal to the HC or application to the SCA including all typing and attendances relevant thereto.	NA	NA	R840.00 Per petition	R1 260.00 Per application

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.4	Drafting of documents not otherwise provided for, including all typing and relevant attendances.	NA	NA	R27.00 Per page Up to a max of R523.00	R41.00 Per page Up to a max of R 696.00
6.5	Application for a copy of a record under Rule 66(9) of the Magistrate's Court, Rule 49A of the Uniform Rules, Rule 52 of Uniform Rules including all typing and attendances relevant thereto.	R166.00 Per application	R166.00 Per application	R166.00 Per application	R166.00 Per application
6.6	Necessary perusal of any record for purposes of application for leave to appeal, provided the legal practitioner attending to the application for leave to appeal is not the legal practitioner who represented the accused on trial or where the client indicated that he/she did not require leave to appeal but subsequently requested an application for leave to appeal and a period of longer than 3 months has expired since sentence.	R3.01 Per page	R3.01 Per page	R3.01 Per page	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.7	Heads of argument including perusal of record to prepare heads of argument, all typing and relevant attendances	NA	NA	R1 741.00 Per set of Heads	R1 741.00 Per set of Heads
6.8	On appearing before the trial court to argue application for leave to appeal including the final report to the Legal Aid SA and the report back to the legal aid applicant (where done by practitioner other than the practitioner who appeared at the trial). This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day.	R784.00	R1 025.00	R1 160.00	NA
6.9	On appearing before a superior court to argue appeal and including the noting of judgement, the final report to the Legal Aid SA and the report back to the legal aid applicant. This fee includes any consultations or perusal on that day and any application made on that day.	NA	NA	R1 741.00	R4 061.00

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
6.10	Any necessary consultation with an accused or a witness whose evidence is yet to be led. Not more than one consultation per accused or per witness.	R241.00 Per consultation	R241.00 Per consultation	R241.00 Per consultation	R241.00 Per consultation
7.	<b>Disbursements</b> These disbursements shall be allowed over and above the fees set out above.				
7.1	The fees of any expert authorised by the Legal Aid SA.	At the rate and to the maximum authorised by the prosecution	At the rate and to the maximum authorised by the prosecution	At the rate and to the maximum authorised by the prosecution	At the rate and to the maximum authorised by the prosecution
7.2	Necessary revenue stamps.	As required by the prosecution	As required by the prosecution	As required by the prosecution	As required by the prosecution
7.2 (a)	Necessary copies of documents such as charge sheets, petitions and heads of argument.	R1.80 Per page	R1.80 Per page	R1.80 Per page	R1.80 Per page
7.3	Necessary travel outside of any magisterial district in which the legal practitioner has an office.	R2.90 Per km	R2.90 Per km	R2.90 Per km	R2.90 Per km
7.4	Necessary air travel.	NA	NA	Economy class	Economy class

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
7.5	Where it is necessary for a legal practitioner to hire accommodation at the court venue, the Legal Aid SA will pay the legal practitioner an allowance in respect of accommodation. <b>NB</b> – Where the actual expenditure exceeds the allowance in paragraphs 7.5 and 7.6 but is still within the Legal Aid SA Travel Policy, the practitioner may choose between requesting the Legal Aid SA to book and pay for his/her expenses or pay on his/her own accommodation and then claim a refund from the Legal Aid SA.	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R674.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner
7.6	Where it is necessary for a legal practitioner to attend at a court venue away from his/her chambers/offices the Legal Aid SA shall pay the legal practitioner a subsistence allowance.	R202.00 Per day provided that the court venue is situated is more than 130km from the offices/chambers of the legal practitioner	R202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R 202.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner
7.7	Toll roads to the extent that these were reasonably necessary.	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses

## 2010 CRIMINAL TARIFFS: NOTES

<b>1. Criminal Trials – Appearance fees</b>
1.1. No additional fees will be permitted in respect of any trial day lasting in excess of 4 hours or for any waiting time or any other attendance whatsoever.
1.2. A trial day means a day on which evidence is led and/or the court hears argument pursuant to the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial is less than 4 hours duration the trial day fee is reduced pro rata.
<b>2. Preparation fees</b>
2.1. In all trials where the legal practitioner requires consultation/preparation fees beyond what is stipulated in clause 2.1 of the tariffs, the legal practitioner must submit a detailed written motivation to the ROE/NOE responsible detailing the preparation required, including preparation per co-accused, perusal of documents, necessary consultations and the anticipated duration of these.
2.2. ROEs must consult their delegations to determine what preparation fees they may authorise and which must be referred to the NOE.
<b>3. Increased trial day fees</b>
3.1. In no circumstances will a third legal practitioner be permitted for any accused or group of co-accused who are represented by a single legal team.
3.2. ROEs must consult their delegations to determine what increased trial day fees they may authorise and which must be referred to the NOE.
3.3. The NOE shall ensure that at each ordinary meeting of the Board particulars of any increased fees authorised and particulars of any increased fees paid since its last such report are tabled for the information of members of the Board.
<b>4. Bail applications</b>
4.1. Not more than one bail application shall be conducted on a legal aid basis under any one case number without the prior written consent of the applicable JCE, which should only be granted in response to a detailed motivation in writing for any second or subsequent bail application.



## 2010 CRIMINAL TARIFFS: NOTES

4.2.	Upon accounting to Legal Aid SA the legal practitioner shall indicate whether a bail application was launched and shall report on the result of this bail application.
4.3.	If an accused on legal aid is granted bail in excess of R5 799.00 and the bail is paid by the accused (irrespective of whose name appears on the bail receipt), the legal practitioner acting on behalf of the accused shall immediately report this fact in writing to the applicable JCE. The applicable JCE shall give directions as to whether the matter is to be:
4.3.1.	Continued on legal aid; or
4.3.2.	Referred back for reconsideration of whether the accused qualifies for legal aid; or
4.3.3.	No longer conducted on a legal aid basis.
4.4.	Bail appeals, like other appeals, will be dealt with by separate legal aid instructions and subject to the tariffs set out for Criminal Appeals.
4.5.	Bail appeals will be remunerated at the tariff applicable to criminal appeals generally.
<b>5.</b>	<b>Criminal trials - General</b>
5.1.	The fees set out above are all inclusive fees and no additional fees will be permitted.
5.2.	A legal practitioner submitting an account to Legal Aid SA may be required to attach to the account a certificate by the presiding judicial officer or his/her registrar (if any) verifying the appearances and times set out in the legal practitioner's account. This certificate is currently required for all criminal trials in the High Court but is not currently required for criminal trials in the magistrate's courts. For criminal trials in the magistrate's courts in which a fee is claimed for any appearance on or after 1 September 2003 the legal practitioner claiming these fees must submit a copy of the charge sheet and its annexures to Legal Aid SA with his/her account.
5.3.	A legal practitioner who is appointed on a legal aid basis to represent an accused at a criminal trial after the accused has pleaded and after evidence has been led and if the legal practitioner was not present when such evidence was led, is entitled to apply to the trial court for the provision to the legal practitioner at the expense of the Department of Justice and Constitutional Development a copy of the transcript of the evidence led in his/her absence, and if this application is granted, to peruse the transcript. Except in the above circumstances, the perusal of a record, other than as part of the Preparation Fees allowed under Item 2 of the above tariff, shall only be allowed with the prior written consent of the ROE/NOE.

## 2010 CRIMINAL TARIFFS: NOTES

5.4.	Where in excess of 2 hours preparation is permitted for any criminal trial, this preparation time shall include all necessary perusal of documents and no separate fee per page shall be paid for the perusal of any document.
<b>6.</b>	<b>Criminal appeals</b>
6.1.	The fees set out in Items 6.7, 6.8 and 6.9 shall be increased by 25% for each additional accused being represented to a maximum of an additional 150% for all accused.
6.2.	Applications for bail pending appeal will be remunerated in accordance with the tariff applicable to bail applications for awaiting trial accused. Applications for bail pending appeal are not permitted on a legal aid basis if the accused was in custody before conviction.
6.3.	The ROEs have a general discretion to agree special and/or increased fees in circumstances which justify deviation from the above tariff. Any request for increased fees must be fully motivated and must be submitted to the JCE in writing.
<b>7.</b>	<b>Disbursements</b>
7.1.	An ROE, if it appears to him/her to be in the interests of the administration of justice and Legal Aid SA, is entitled to authorise the reimbursement of necessary travel within a particular magisterial district by legal practitioners practising in that magisterial district at the same rate applicable to travel outside the magisterial district. Applications for this must be submitted in writing via the JCE.
7.2.	Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.
7.3.	Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.
7.4.	Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances for accommodation and/or subsistence, as the case may be, will not be paid.



## 2010 CRIMINAL TARIFFS: NOTES

7.5.	Except as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees, shall be paid to any legal practitioner without the prior written consent of the JCE or any admitted legal practitioner in the employ of the Board delegated by the JCE to make this decision on his/her behalf.
7.6.	The subsistence allowance under item 7.6 of the tariffs may be paid to a practitioner, irrespective of whether this allowance is claimed in conjunction with a claim for accommodation, on condition that the claim complies with the requirements stipulated in these tariffs.
<b>8. General</b>	
8.1.	After the case has been finalised, the legal practitioner must report to the applicable JCE in writing setting out:
8.1.1.	The case number
8.1.2.	The court where the matter was heard
8.1.3.	The outcome of the matter
8.1.4.	The duration of the hearing
8.1.5.	Any other material information
8.2.	All sums referred to are amounts exclusive of VAT.
8.3.	Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by Legal Aid SA to any legal practitioner for any criminal matters, criminal appeals or any other matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.

## 2010 CRIMINAL TARIFFS: NOTES

8.4.	It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof or, will instruct its bankers to effect payment by electronic transfer or, in the event of Legal Aid SA being unable or unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.
8.5.	The ROE/NOE has a general discretion to approve a fee that is not otherwise provided for in this tariff where it is deemed necessary to protect the interest of a client, but not beyond the rates for similar type work prescribed in this tariff.
9.	<b>The Tariff (both Fees and disbursements) as set out in Annexure E to the 2009 Legal Aid Guide will be increased by 5% across the board with effect from 1 April 2010 for work done or disbursements incurred after 1 April 2010.</b>

## Annexure F

### TARIFF OF FEES AND DISBURSEMENTS IN CIVIL MATTERS<sup>1</sup> - 2011

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

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
1	Judicare remuneration for services according to levels <sup>2</sup> + <sup>3</sup>		Not applicable (NA)			
1.1	Hourly rates Level 1 Level 2 Level 3 Level 4 Level 5	R258.00 R302.00 R363.00 R452.00 NA	NA NA 385.00 473.00 NA	Not applicable (NA) NA R406.00 R494.00 R581.00	NA NA NA NA NA	NA NA NA NA NA

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
1.2	Rates per completed 4 hour trial day Level 1 Level 2 Level 3 Level 4 Level 5	R1,087.00 R1,290.00 R1,508.00 R1,811.00 NA	NA NA R1,770.00 R2211.00 NA	NA NA R2,031.00 R2,610.00 R3,481.00	NA NA NA NA NA	NA NA NA NA NA
1.3 (a)	Instruction to sue/ or defend or to counter claim or defend counter-claim, including perusal of all documentation and all necessary consultations to issue summons Level 1 Level 2 Level 3 Level 4 Level 5	R217.00 R289.00 R349.00 R435.00 NA	NA NA R378.00 R465.00 NA	NA NA R406.00 R494.00 R581.00	NA NA NA NA NA	NA NA NA NA NA

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
1.3(b)	Fees for necessary correspondence written per folio and received per letter Level 1 Level 2 Level 3 Level 4 Level 5	R12.48 R13.52 R14.56 R15.60 NA	NA NA R18.78 R22.30 NA	NA NA R23.00 R29.00 R41.00	NA NA NA NA NA	NA NA NA NA NA
1.4	Where a matter is postponed without evidence being led or argument being heard on the substantive matter or judgement being handed down after the hearing or submission of evidence, a fee shall be allowed for appearing before court when the postponement is granted of:	R165.00 Per postponement	R165.00 Per postponement	R165.00 Per postponement	NA	NA

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
1.5	<b>Merit reports</b> In any matter where a practitioner is required to prepare a merit report, the practitioner shall be remunerated at the rate as stipulated in Item 1.1 above that corresponds to the level of the matter, subject to a maximum of 3 hours.					
	See also Note 4 on the General Provisos applicable to all civil matters not classified as Impact Services.					
<b>2</b>	<b>Impact Services</b> <sup>5</sup> Legal practitioners who perform impact services on the instruction of the Legal Aid SA will be entitled to be remunerated as follows:					

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
2.1	To be negotiated and agreed in each instance but never more than:					
2.1.1	Attorneys	NA	NA	Not more than double the amount that would be allowed by a taxing master as between attorney and client on the applicable statutory tariff if the work had been performed by an attorney		
2.1.2	Junior Counsel	NA		Not more than two thirds of the rates paid to Senior Counsel		
2.1.3	Hourly rate for Senior Counsel and specialist attorneys	NA		R1,079.00 to R1,618.00 Per hour	R1,079.00 to R1,618.00 Per hour	R1,079.00 to R1,618.00 Per hour

Number	Matter	Magistrate's Court	Regional Court	High Court	Supreme Court of Appeal	Constitutional Court
2.1.4	Senior Counsel and specialist attorneys per 10 hour day	NA		R10,794.00 to R16,192.00 Per day	R10,794.00 to R16,192.00 Per day	R10,794.00 to R16,192.00 Per day
<b>3</b>	<b>Disbursements<sup>6</sup></b>					
3.1	<b>These disbursements shall be allowed over and above the fees set out above.</b>					
3.2	The fees of any expert authorised by Legal Aid SA.	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
3.3	Necessary revenue stamps	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs
3.4	Necessary sheriff's fees or like process (edictal citation). Necessary advertisement costs pursuant to the grant of a substituted service order.	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs	As set out in applicable statutory tariffs

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

## 2010 CIVIL TARIFFS: NOTES

<b>1. Applicable Tariff</b>	
1.1.	With effect from 1 April 2010, legal practitioners shall be remunerated in accordance with this annexure.
<b>2. Experience levels of Legal Practitioners</b>	
2.1.	At the commencement of each calendar year or as soon thereafter as practical each Legal Practitioner shall be classified as being of a level from 1 to 5 in accordance with these criteria:
2.2.	Required experience per level
Level	Minimum Required Experience
1	Entry level (for reserved work must be legally permitted to undertake the work)
2	Minimum 1 year full-time general practice as a Legal Practitioner
3	Minimum 3 years full-time general practice as a Legal Practitioner
4	Minimum 5 years full-time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken
5	Minimum ten years full time general practice as a Legal Practitioner and must be permitted to appear before the High Court if High Court work is to be undertaken
2.3.	The calculation of time spent by a Legal Practitioner in full-time practice shall take into account:
2.3.1.	A period not exceeding 2 years as a candidate attorney provided the Legal Practitioner was subsequently admitted as an attorney; and
2.3.2.	A period not exceeding 1 year as a pupil provided the legal practitioner subsequently became a member of the bar of which his/her master was a member; and

**2010 CIVIL TARIFFS: NOTES**

2.3.3.	Any period during which the legal practitioner was engaged full-time in legal practice in the Republic of South Africa as an attorney or as an advocate:
2.3.3.1.	For his/her own account; and/or
2.3.3.2.	In partnership with other practising legal practitioners; and/or
2.3.3.3.	As a director of a company in which all directors and shareholders were practising legal practitioners; and/or
2.3.3.4.	As an attorney employed by a person, partnership or company described in 2.3.3.1, 2.3.3.2 or 2.3.3.3
2.3.3.5.	In the employ of the Legal Aid SA; and/or
2.3.3.6.	In the employ of the State Attorney; and/or
2.3.3.7.	As a legal advisor doing non-litigious work and after admission as a legal practitioner.
2.4.	Before any legal aid instruction is allocated to any legal practitioner a Principal Attorney or High Court Unit Manager in the employ of Legal Aid SA shall classify the legal services required from level 1 to level 5 in accordance with paragraph 3 below.
2.5.	No legal practitioner shall be permitted to provide any legal services requiring a higher level of experience than that legal practitioner had as at first of January in the year in which the legal aid instruction was allocated to him/her.
2.6.	A legal practitioner may render legal services at a level below the maximum for which he/she is classified, subject thereto that such legal services shall be remunerated at the level at which the legal aid instruction is classified.
2.7.	Where a legal practitioner in the employ of the Legal Aid SA is required to make a decision as to whether the level of complexity of any matter is such as to justify its classification at Level 5, he/she:
2.7.1.	Shall be entitled but not obliged to require the legal practitioner to demonstrate that he/she has the requisite level of expertise in addition to the minimum required experience set out in respect of Level 5.

**2010 CIVIL TARIFFS: NOTES**

2.7.2.	Shall be entitled but not obliged to refuse to permit the legal practitioner concerned to perform any legal services classified as "complex" in the event of failure to comply with 2.7.1 above.
2.8.	Any reference to the High Court includes the Admiralty Court, the Land Claims Court, the Water Court, the Income Tax Court, the Labour Court and the Labour Appeal Court.
<b>3. Matter Classification</b>	
Level	Permitted Professional Services
1	<p>a. Matters which if conducted without legal aid would fall within Scale A Magistrates' Court</p> <p>b. CCMA – where permitted by Commissioner and permitted by Legal Aid Guide</p> <p>c. Maintenance matters – where permitted by Legal Aid Guide</p> <p>d. Mediation and conciliation matters</p> <p>e. Paralegal work</p> <p>f. Domestic violence matters – where permitted by the Legal Aid Guide.</p> <p>g. Appearances before a Refugee Status Determination Officer at a hearing in terms of Section 24 of the Refugees Act No. 130 of 1998.</p> <p>h. Any civil or non-litigious matter not otherwise provided for</p>
2	<p>a. Matters which if conducted without legal aid would fall within Scale B Magistrates' Courts.</p> <p>b. Labour arbitrations whether before CCMA or otherwise, where permitted by Commissioner and the Legal Aid Guide</p> <p>c. Appearances before a Standing Committee in respect of a Review in terms of Section 25 of the Refugees Act.</p>

## 2010 CIVIL TARIFFS: NOTES

3	<p>a. Matters which if conducted without legal aid would fall within Scale C Magistrates' Court</p> <p>b. Children's court matters.</p> <p>c. Children's Act matters.</p> <p>d. Divorce, custody, guardianship and Family Court matters not otherwise provided for</p> <p>e. General arbitrations and ADR not otherwise provided for</p> <p>f. Appearances before an Appeals Board in respect of an Appeal in terms of Section 26 of the Refugees Act</p>
4	<p>a. Civil matters falling within the exclusive jurisdiction of the High Court</p> <p>b. Civil matters in the Magistrates' Courts in which jurisdiction would not have vested in any magistrate but for the consent of the parties to the jurisdiction of the Magistrates' Court</p> <p>c. Non litigious services customarily performed by an admitted attorney and as permitted by the Legal Aid Guide</p> <p>d. Labour Court matters</p>
5	<p>a. Civil appeals and reviews before any Provincial or Local Division of the High court</p> <p>b. Complex High Court civil matters classified as such (pursuant to detailed written representations) by an authorised legal practitioner in the employ of Legal Aid SA who himself/herself has the required experience in respect of this level.</p> <p>c. Complex non litigious services classified as such (pursuant to detailed written representations) by a legal practitioner in the employ of Legal Aid SA at executive level, customarily performed by a specialist attorney and as permitted by the Legal Aid Guide</p>
<b>4. General Provisos</b>	
4.1.	A trial day means a day on which evidence is led and/or the court hears argument after the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial day is of less than 4 hours duration the trial day fee is reduced pro rata.

## 2010 CIVIL TARIFFS: NOTES

4.2.	Except with the consent of the ROE/NOE a practitioner shall not be entitled to claim:..
4.2.1.	More than 10 hours remunerated consultation, preparation and other pre trial chamber work after <i>litis contestatio</i> for each anticipated trial day in a civil trial or civil matter which is referred to evidence.
4.2.2.	However, in respect of default judgements, settled or undefended matters and interlocutory applications the remunerated consultation, preparation and other pre trial chamber work shall ordinarily be limited to not more than 2 hours.
4.3.	In addition to the above, the JCE or Legal Practitioner who approves a legal aid instruction to which the tariff set out above applies may approve the maximum amount payable by the Legal Aid SA in terms of the judicare instruction.
4.4.	Drafting documents
4.4.1.	Where the drafting of any pleadings, affidavits (of a non-formal nature and excluding annexures) or heads of argument are required in any matter, it is expected of the Legal Practitioner concerned to draft at a rate of 100 words per 15 minutes.
4.4.2.	Where the drafting of any other document is required it is expected of the Legal Practitioner concerned to draft at a rate of 150 words per 15 minutes.
4.4.3.	The rates set out in paragraphs 4.4.1 and 4.4.2 may be varied by the ROE/NOE only.
4.4.4.	A Legal Practitioner who alleges that a specified period of time was spent in the drafting of any documents shall be presumed to have thereby vouched to Legal Aid SA that the rates set out in paragraphs 4.4.1 and 4.4.2 above were achieved unless he/she clearly, simultaneously and in writing advises Legal Aid SA to the contrary.
4.5.	Perusal of documents
4.5.1.	Where the perusal of any pleadings, affidavits (of a non formal nature and excluding annexures) or heads of argument are required in any matter it is expected of the Legal Practitioner to peruse at a rate of 7 pages per 15 minutes.
4.5.2.	Where the perusal of any other document, including but not by way of limitation, a record is required it is expected of the Legal Practitioner to peruse at a rate of 10 pages per 15 minutes.



**2010 CIVIL TARIFFS: NOTES**

4.5.3.	The rates set out in paragraphs 4.5.1. and 4.5.2 may be varied by the ROE/NOE only.
4.5.4.	A Legal Practitioner who alleges that a specified period of time was spent in the perusal of any documents shall be presumed to have thereby vouched to Legal Aid SA that the rates set out in paragraphs 4.5.1 and 4.5.2 above were achieved unless he/she clearly, simultaneously and in writing advises Legal Aid SA to the contrary.
4.6.	Where it is necessary to appoint a correspondent, a Legal Practitioner acting on a legal aid instruction shall, if there is an office of Legal Aid SA in the magisterial district concerned, offer the work, in the first instance, to the office of Legal Aid SA. In the case of any other correspondent the Judicare Legal Practitioner is required, in advance and in writing, to make it clear to the correspondent concerned:
4.6.1.	That the Legal Practitioner, and consequently the correspondent, act on a legal aid instruction and are entitled to be remunerated by Legal Aid SA alone and on Legal Aid SA tariffs;
4.6.2.	That the correspondent will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA directly.
4.7.	A Legal Practitioner who accepts a legal aid instruction is ordinarily expected to render the necessary legal services himself/herself. An attorney may, with the consent of the ROE, elect to instruct an advocate in a matter in the High Court, subject to the condition that if Legal Aid SA has a High Court Unit in the magisterial district in which the seat of the court is located, the work shall, in the first instance be offered, to the said High Court Unit. In the event of the work being declined by the High Court Unit and thereafter being offered to any advocate in private practice the attorney is required to make it clear to the advocate concerned:
4.7.1.	That the attorney and consequently the advocate act on a legal aid instruction and are entitled to be remunerated by Legal Aid SA alone and on Legal Aid SA tariffs;
4.7.2.	That the advocate will be contracting with the attorney and not with Legal Aid SA and will have no claim against Legal Aid SA directly;
4.7.3.	That Legal Aid SA will not pay either Legal Practitioner for any work that would have been unnecessary had the attorney elected to do all the work himself/herself and will not pay for any duplication of work;

**2010 CIVIL TARIFFS: NOTES**

4.7.4.	That except with the express written consent of the ROE, the attorney client costs payable by Legal Aid SA pursuant to the employment of an advocate shall not exceed the attorney client costs that would have been payable by Legal Aid SA if all the professional services had been rendered by the attorney instructed by the Legal Aid SA.
4.8.	No Senior or Junior Counsel may be instructed without the express written consent of the ROE or a Legal Practitioner employed by Legal Aid SAe Legal Aid SA and delegated thereto by the ROE.
4.9.	After the case has been finalised the legal practitioner must report to the JCE in writing setting out:
4.9.1.	The case number
4.9.2.	The court where the matter was heard
4.9.3.	The outcome of the matter
4.9.4.	The duration of the hearing
4.9.5.	Any other material information
4.10.	In any civil matter a Legal Practitioner shall account to Legal Aid SA by way of detailed itemised account setting out, the date, the work performed, the time taken (with reference to a 24 hour clock), the number of pages drafted or perused and the fees claimed.
4.11.	No additional fees or disbursements are payable at levels 1 to 5 to any Legal Practitioner for any matter not provided for by this tariff and not agreed to in writing by the ROE/NOE. Thus, for example, the Legal Practitioner who draws a plea is entitled to be remunerated for his/her time spent drawing the document. This is an all-inclusive fee and Legal Aid SA may not separately be invoiced for typing, copying, delivery, filing and similar non-professional services customarily rendered by the subordinate staff of the Legal Practitioner.
4.12.	A Legal Practitioner shall retain his/her complete case file in respect of legal services rendered in any civil or non-litigious matter for at least 7 years after the finalisation of the mandate of the legal Practitioner.
4.13.	Where a rate is permitted per hour and the performance of a task requires a portion of an hour the amount to be paid shall be calculated pro rata.

## 2010 CIVIL TARIFFS: NOTES

4.14.	In any civil matter, prior to <i>litis contestatio</i> or in any non-litigious matter, a Legal Practitioner at Levels 1 to 5 shall not, without the consent of the ROE/NOE, be entitled to be remunerated for in excess of 10 hours work over and above any necessary drawing and perusals. In any undefended civil matter or civil matter, which is or could reasonably have been settled prior to <i>litis contestatio</i> , this shall be reduced to four hours.
4.15.	In the application of this tariff a page shall consist of 300 words.
<b>5. Impact Services</b>	
5.1.	Impact Services shall include Constitutional Court matters, civil appeals before the Supreme Court of Appeal, matters classified as impact litigation by Legal Aid SA and non litigious impact services classified as such by Legal Aid SA.
5.2.	All representations in relation to the classification of any matter as an Impact Services Matter and all other correspondence ancillary thereto must be addressed to the Impact Litigation Unit at the National Office of Legal Aid SA.
<b>6. Disbursements</b>	
6.1.	The ROE, if it appears to him/her to be in the interests of the administration of justice and Legal Aid SA, is entitled to authorise the reimbursement of necessary travel within a particular magisterial district by legal practitioners practising in that magisterial district at the same rate applicable to travel outside the magisterial district. Applications in this regard are to be submitted via the JCE.
6.2.	Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.
6.3.	Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.

## 2010 CIVIL TARIFFS: NOTES

6.4.	Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances in respect of accommodation and/or subsistence, as the case may be, will not be paid.
6.5.	Except as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees shall be paid to any legal practitioner without the prior written consent of the ROE/NOE.
6.6.	The subsistence allowance under Item 3.8 may be paid to a practitioner, irrespective of whether this allowance is claimed in conjunction with a claim for accommodation, on condition that the claim complies with the requirements stipulated in these tariffs.
<b>7. General</b>	
7.1.	All sums referred to are amounts exclusive of VAT.
7.2.	Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by Legal Aid SA to any legal practitioner for any matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.
7.3.	It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof or, by electronic transfer, will instruct its bankers to effect payment, or, in the event of the Legal Aid SA being unable to unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

## Annexure G1 &amp; G2



Your voice. For justice.

LA13

MEANS TEST FOR ☐ SINGLE PERSONS ☐ HOUSEHOLDS

A. GROSS MONTHLY INCOME	SINGLE APPLICANT		SPOUSE/ PARTNER <small>ONLY COMPLETE IF HOUSEHOLD</small>	
Salary	R		R	
Allowances +	R		R	
Subsidy +	R		R	
Bonuses +	R		R	
Interest +	R		R	
Rentals +	R		R	
Maintenance received +	R		R	
Other +	R		R	
<b>Total: Gross Income:</b>	= R		+ R	= R
<b>Less: PAYE Deduction</b>	- R		+ R	= R
<b>Less: Rebates for household: R6 000</b> <b>Rebates for single applicant: R5 500</b>	- R 5 500		or R 6 000	= R
(No LA in case of a plus balance) <b>Total = R</b>				

B. ASSETS	SINGLE APPLICANT		SPOUSE <small>ONLY COMPLETE IF HOUSEHOLD</small>	
Fixed property: Reasonable market value	R		R	
Less Bonds -	R		R	
Sub-total =	R		R	
Movable Property	R		R	
Investments & Savings +	R		R	
Monies due to applicant +	R		R	
<b>TOTAL NET VALUE</b>	= R		+ R	= R
<b>LESS R 100,000 if no fixed property</b>				
<b>or LESS R 500,000 if there is fixed property and applicant resides in the property</b>				
(No LA in case of a plus balance) <b>TOTAL = R</b>				

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

SIGNATURE OF APPLICANT:

D D / M M / 2 0

JCE DISCRETION EXERCISED

YES NO

Reason for discretion

SIGNATURE OF JCE

D D / M M / 2 0

ROE DISCRETION EXERCISED

YES NO

Reason for discretion

SIGNATURE OF ROE

D D / M M / 2 0

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



## Annexure G3



Your voice. For justice.

LA13C WHEN EXCEEDING MEANS TEST IN CONSTITUTIONAL MATTERS

## A PARTICULARS OF APPLICANT'S INCOME AND EXPENDITURE

BRANCH OR MAGISTRATE'S OFFICE

X-REFERENCE NO.

NAME OF APPLICANT

SURNAME

NATURE OF CHARGE(S): If more than one, record total number of charges

COMPLEXITY

CASE NUMBER

IN WHICH COURT WILL TRIAL TAKE PLACE ☐ High Court ☐ Regional Court ☐ District Court

ANTICIPATED DURATION OF THE TRIAL

## B

INCOME AND ASSETS		EXPENDITURE AND LIABILITIES	
1. INCOME		3. EXPENDITURE	
1.1 Salary	R	3.1	R
1.2	R	3.2	R
1.3	R	3.3	R
2. ASSETS		3.4	R
2.1 Immovable	Value	3.5	R
Residence	R	3.6	R
Other	R	3.7	R
2.2 Movable	Value	TOTAL= R	
Vehicle	R	4. LIABILITIES	
Furniture	R	4.1	R
Other	R	4.2	R
TOTAL=	R	TOTAL=	R

## C SIGNATURE AND DATE I certify that the details stated above are true and correct and undertake to immediately inform the Legal Aid South Africa of changes

SIGNATURE OF APPLICANT:

DATE:

D D / M M / 2 0





**Your voice. For justice.**

## ANNEXURE G4

### CONTRIBUTION PAYABLE BY AN ACCUSED

I, the undersigned

\_\_\_\_\_

(Full names of the accused)

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

1. I will pay a contribution of R\_\_\_\_\_ (amount of contribution) monthly in advance by not later than four days after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fourth of each succeeding month for each month or portion of a month during which legal aid continues to be extended to me.
2. Contributions must be deposited directly to the Trust account of Legal Aid SA by me or my agent.  
 Bank \_\_\_\_\_  
 Branch \_\_\_\_\_  
 Branch Code \_\_\_\_\_  
 Account Number \_\_\_\_\_  
 Account Name \_\_\_\_\_  
 Ref X \_\_\_\_\_

3. No contribution may be received by any legal practitioner or the employee or agent of any legal practitioner acting on a legal aid instruction.
4. No employee of Legal Aid SA may receive any contribution.
5. I must deliver proof of payment of all contributions due to my assigned legal practitioner by not later than the fifth day after the initial grant of legal aid in respect of the month in which legal aid is initially granted and the fifth day of each succeeding month for each month or portion of a month during which legal aid continues to be extended to me.
6. If I fail to make any contribution due, legal aid terminates and the assigned legal practitioner must advise me and the relevant judicial officer of the termination of legal aid either in writing or in court at the next appearance.
7. It is the responsibility of my assigned legal practitioner to satisfy himself/herself that all contributions due have been paid. No remuneration will be paid for any legal services rendered after non-payment of any contribution due.

\_\_\_\_\_  
 Signature of the  
 accused

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Place

## Annexure H



CONFIRMATION OF CLIENT'S ELECTION RELATING TO  
LEAVE TO APPEAL

Your voice. For justice.

**A**

STATE VERSUS

AGE OF ACCUSED  YEARS  MONTHS CASE NUMBER

COURT  ☐ Supreme Court ☐ Regional Court ☐ District Court

MAGISTRATE/JUDGE

SENTENCE

DATE OF SENTENCE  /  /  20

LEGAL AID REFERENCE NO

JUSTICE CENTRE

LEGAL REPRESENTATIVE

**B**

I (name)

- Hereby elect **not to apply/petition for leave to appeal** against my conviction and sentence. I realise that if I change my mind that I need to file an application/petition for leave to appeal within 14 days of my sentence/21 days of the date of refusal of leave to appeal and need to apply for Legal Aid within 1 year of being sentenced. If I do not do this, I will not qualify for legal aid(\*)
- Hereby elect **to apply/petition for leave to appeal** against my (\*)
  - ☐ CONVICTION ONLY (†) ☐ SENTENCE ONLY (†) ☐ CONVICTION AND SENTENCE (†)
- And wish to apply for Legal Aid in the appeal. I realise that my conviction on the present crime could be replaced by a more serious conviction on appeal and that my sentence could be increased on appeal.

**If the clients elects to appeal/petition the practitioner shall:**

- Obtain a completed and signed power of attorney from the client;
- Bring an application/petition for leave to appeal orally immediately after the passing of sentence or order and hand up the power of attorney or file and application/petition for leave to appeal and the power of attorney within the prescribed period;
- Attend to the application /petition for leave to appeal;
- **Send/Hand a copy of this form (completed and signed) to the relevant Justice Centre within 7 days of signature**

**If the client elects NOT to appeal/petition:**

- Send/Hand a copy of this form (completed and signed) to the relevant Justice Centre;
- File this form completed and signed in your office file and close the file

(\*) Delete if not applicable and initial (†) Tick the relevant box

**C SIGNATURE AND DATE**

I certify that the details stated above are true and correct and undertake to immediately inform the Legal Aid South Africa of changes

SIGNATURE/ THUMBPRINT OF APPLICANT

DATE:  /  /  20

SIGNATURE OF LEGAL REPRESENTATIVE

DATE:  /  /  20

## Annexure I



## BENEFIT TO LEGAL AID SA

1. The benefit to the Board will be 15% of the benefit to the client or the proceeds of the action financed by the Board effective on all instructions issued on or after 1 August 1993, but before 1 January 1997.
2. On 7 October 1996, the Board resolved that as from 1 January 1997:
  - 2.1. Special damages are altogether exempted from the stipulations of Chapter 10 paragraph 10.8.3 of the Guide.
  - 2.2. Maintenance payments are altogether exempted from the stipulations of Chapter 10 paragraph 10.8.3 of the Guide. However, the CEO has a discretion to determine what constitutes bona fide maintenance payments and what constitutes an acquisition of assets.
  - 2.3. Where a divorce results in the transfer of assets from one spouse to the other and/or an order providing for division of a joint estate, no contribution will be levied against any benefits so obtained.
  - 2.4. Legal aid litigants must otherwise contribute as follows on amounts realised from any action:
    - (a) R 0 to R20 000: 0%
    - (b) R 20 001 to R100 000: 5% of the amount over R20 000
    - (c) Above R100 000: R4 000 plus 10% of the amount over R100 000
3. On 21 April 2001 the Board ruled on Judicare legal aid instructions issued before 1 November 1999 that had not been finalised by 1 November 1999, yet had legal aid terminated as a result of the decisions taken by the Board on either 1 November 1999 (circular 5 of 1999) and/or 31 March 1999 (circular 1 of 2001).

The Board decided that in these matters:

- No benefit would be payable to the Board under Chapter 10 paragraph 10.8.3 of the Legal Aid Guide, and
- No attorney and client costs would be recoverable under Chapter 10 paragraph 10.8.3(b) of the Legal Aid Guide, but
- The costs (usually party and party costs) payable to the Board under section 8A of the Legal Aid Act would still be recovered.

## Annexure J



Your voice. For justice.

## EXPERT WITNESSES

**A**

LEGAL AID SA REFERENCE NO

APPLICANT NAME

SURNAME

JUSTICE CENTRE

PLAINTIFF/DEFENDANT  DATE    /    / 2 0

ATTORNEY FIRM ADDRESS

TEL

FAX NO

CELL

ATTORNEYS REFERENCE

**DATES/ DUE DATES**

TRAIL    /    / 2 0

SUMMARIES    /    / 2 0

RULE 37    /    / 2 0

**B**

Reasons for request

Nature of evidence

Area of dispute

**C**

	EXPERT 1		EXPERT 2		EXPERT 3	
NAME						
OCCUPATION						
TARIFF	Estimated Time / Days	Estimated Cost	Estimated Time / Days	Estimated Cost	Estimated Time / Days	Estimated Cost
CONSULTATION		R		R		R
PREPARATION		R		R		R
RESEARCH		R		R		R
ATTENDING COURT		R		R		R
OTHER		R		R		R
DISBURSEMENTS		R		R		R
<b>TOTAL ESTIMATES</b>	<b>DAYS</b>	<b>R</b>	<b>DAYS</b>	<b>R</b>	<b>DAYS</b>	<b>R</b>

Urgency  Reasons for choice

**D**

**DECISION:**

RECOMMENDED BY NAME/ DESIGNATE  DATE:    /    / 2 0

APPROVED BY NAME/ DESIGNATE  DATE:    /    / 2 0

SIGNATURE  SIGNATURE

## Annexure K1

## ACCOUNT IN A CRIMINAL TRIAL

SIGNATURE OF JUDGE'S CLERK REQUIRED FOR HIGH COURT  
(PLEASE USE A SECOND PAGE IF SPACE INADEQUATE)

Your voice. For justice.

## A DETAILS

PRACTITIONER'S NAME

CLIENT'S NAME

X-REFERENCE NO

## B POSTPONEMENTS BY THE STATE

DATE	NAME, TELEPHONE NUMBER AND SIGNATURE OF JUDGE'S CLERK	COST	
		RAND	CENT
Y Y M M D D	SIGNATURE		
Y Y M M D D	SIGNATURE		
Y Y M M D D	SIGNATURE		
Y Y M M D D	SIGNATURE		
Y Y M M D D	SIGNATURE		

## C CONFESSION / ID PARADE (WITH AUTHORISATION) BAIL APPLICATION

UNOPPOSED		OPPOSED		Signature of Judge's	RAND	CENT
Date	Time commenced	Time finalised				
Y Y M M D D	Y Y M M D D	H H M M				
Y Y M M D D	Y Y M M D D	H H M M				

D TRIAL DAYS (on which evidence was heard, argument heard and/or judgement handed down). **Waiting time excluded.**

Date	Time commenced	Time finalised	Signature of Judge's clerk	Rand	Cent
Y Y M M D D	Y Y M M D D	H H M M			
Y Y M M D D	Y Y M M D D	H H M M			
Y Y M M D D	Y Y M M D D	H H M M			
Y Y M M D D	Y Y M M D D	H H M M			

## E TRAVELLING: OUTSIDE DISTRICT

Date	From	TO	Total distance	RAND	CENT
Y Y M M D D					
Y Y M M D D					
Y Y M M D D					
Y Y M M D D					

## F DISBURSEMENTS (Attached vouchers except for travel by road) and give nature of disbursement)

	RAND	CENT

## G OUTCOME

OUTCOME OF THE MATTER SENTENCE (Mark applicable block) ☐ Guilty ☐ Not Guilty ☐ Charge/s Withdrawn ☐ Practitioner Withdraw

## I APPLICATION FOR LEAVE TO APPEAL

Date	Time commenced	Time finalised	Signature of Judge's clerk	Fee Claimed	
				RAND	CENT
Y Y M M D D	Y Y M M D D	H H M M			
Y Y M M D D	Y Y M M D D	H H M M			

Leave to appeal granted notice of appeal lodged on  20Leave to appeal refused: Prospects of success on Petition/Application for Leave to Appeal ☐ Accused does not wish to appeal (Attach Annexure H)Signature of accused (1)  Signature of accused (3) Signature of accused (2)  Signature of accused (4) 

## J OTHER (AUTHORISATION TO BE ATTACHED WHERE REQUIRED I.T.O. GUIDE)

Date	Service rendered and result	Fee Claimed	
		RAND	CENT
Y Y M M D D			
Y Y M M D D			
Y Y M M D D			
Sub Total			
VAT			
TOTAL			

SIGNATURE OF PRACTITIONER who certifies by his/her signature that he/she or his/her candidate attorney was personally present in Court on the date and between the times when the above services were rendered.



## Annexure K2

## ACCOUNT ENQUIRY



Your voice. For justice.

**A FROM** Legal practitioner instructed by the Legal Aid South Africa

PRACTITIONER'S NAME

POSTAL ADDRESS

TEL

FAX NO

CELL

LEGAL AID SA REFERENCE NO  DATE  /  /  20

**B TO** The Justice Centre Executive Legal Aid South Africa (Send to Justice Centre that issued the instruction)

YOUR REFERENCE

**C** Dear Sir/Madam  
RE: LEGAL AID  (Full names of legal aid recipient)

1. Your 2009 Legal Aid Guide refers.  
2. I enclose these documents:  
2.1 A copy of the Legal Aid Instruction (LA 2 Form) to which this enquiry relates.  
2.2 A copy/copies of the unpaid account(s) in this matter dated  /  /  20  
2.3 The finalisation report in the matter together with all requisite annexures.  
3. In so far as such may be applicable I also enclose:  
3.1 Copies of vouchers for disbursements.  
3.2 Copies of the written consents by the Legal Aid South Africa to any disbursements where the Chief Executive Officer's consent is required by the Legal Aid Guide.  
3.3 Copies of the authorisations by the Legal Aid South Africa of any increased fee arrangements applicable at any stage to this matter.  
3.4 Copies of any and all authorisations by the Legal Aid South Africa of any extensions or confirmation of the original mandate set out in the legal aid instruction (eg. a response to a merit report).  
3.5 Any explanatory memoranda that may be necessary for an informed taxation of these accounts.  
3.6 All and any necessary written authorisation to receive payment as successor in title of the legal practitioner originally instructed by the Board. Cessions are only applicable to instructions issued before 1 January 1999. With instructions issued on or after 1 January 1999 no cession is possible.  
4. I certify by my signature hereunder that:  
4.1 These account(s) have not been previously paid by the Legal Aid South Africa either partially or at all.  
4.2 The Legal Aid South Africa has not refused in writing to pay these account(s) or any portion thereof.  
4.3 I/the practice on whose behalf I sign this letter am/is the legal practitioner with whom the Legal Aid South Africa contracted in this matter. Alternatively, I have attached hereto the appropriate written authorisation (see paragraph 3.6 above).  
4.4 These account(s) are not the subject matter of litigation commenced against the Legal Aid South Africa.  
4.5 These accounts are not the subject matter of a dispute/arbitration with the Legal Aid South Africa in which a determination is pending by an arbitrator under paragraph 13.7.3 of the Legal Aid Guide.  
4.6 Where copies of documents are submitted, the originals have been forwarded to the Legal Aid South Africa at an earlier date.  
4.7 Where a copy of the LA2A form is submitted, the original signed LA2B was earlier submitted to the Legal Aid South Africa.  
5. I consent to the following legal practitioner receiving information on the status of the account relating to this enquiry.

LEGAL PRACTITIONER:

POSTAL ADDRESS

TEL

FAX NO

## Annexure K3

PRACTITIONER'S CHECKLIST  
WHEN SUBMITTING ACCOUNTS

Your voice. For justice.

**A CLEARLY INDICATE**

☐ Your firm's vendor code;

☐ The applicant's surname and full names *as they are spelt on the LA2 instruction form*;

☐ The Board's reference number as quoted on the LA2; and

☐ Your practice's VAT registration number, if any or advise if your firm is not registered for VAT.

**B GUIDELINES FOR THE COMPILATION OF ACCOUNTS IN CRIMINAL MATTERS**

☐ That all details on the LA2 are correct (especially the date of instruction and your firm's name and address);

☐ That the original signed LA2 is attached to your account, or a copy of the LA2 if the original was sent earlier;

☐ That the LA2 is signed by the practitioner whose name appears on the form for criminal cases and who performed the instruction, or, for civil cases, a partner or director of the firm/company;

☐ That the statement of account reflects all the activity dates, times, descriptions including pages perused/drafted and amounts claimed;

☐ That all the work claimed falls after the issue date of the instruction;

☐ That the original vouchers for disbursements, if applicable, are attached to your accounts;

☐ That your correspondent's account and specialist witnesses' accounts, if applicable, are attached to your account;

☐ With claims for motor vehicle travel, that you have specified the point from and the point to which you travelled and the distance in one direction, multiplied by two, eg. "X to Y and back: 50 kms x 2 – 100 kms";

☐ That your report on the outcome of the case is included in the account or in a separate letter/report (Criminal: Guilty and sentence / Acquitted / Practitioner withdrew and reason / State withdrew / Postponed and date to which postponed / Application/Petition for leave to appeal granted or refused. Civil: Copy of Court Order and / or settlement agreement, as applicable, together with your report on the recoverability of capital and costs, if applicable);

☐ For all criminal trials, that your account is submitted on the prescribed form;

☐ For High Court criminal trials, that the Judge's Clerk certificate confirming the dates and times or appearances is properly completed and signed;

☐ For interim accounts, that the account is numbered (Interim account # 1, etc);

☐ That any relevant authorisation letters for increased fees, additional preparation time, travel is attached to the account;

☐ That Annexure H (Confirmation of client's election relating to leave to appeal) duly signed by the client and legal representative is submitted; and

☐ For all criminal trials, that a copy of the charge sheet/indictment and relevant annexures are submitted with the account.

**C NOTE**

☐ The provisions of these paragraphs of the Legal Aid Guide –

- 10.6.5 and 12.4.4 on prior approval for the use of medico-legal and other expert witnesses;
- 6.3 on a practitioner's withdrawal
- 13.2 on interim accounts and disbursements;
- 10.8.3 and 13.2 on accounts and amounts accruing to the Board;

☐ Interim accounts for practitioners' fees are paid only if the NOE (or a person having delegated authority from the NOE) has authorised such payments; or, if there have been five or more appearances in a month in a criminal case in the High Court; or if a High Court case has been postponed for more than three months.

☐ That by including fax copies/photocopies of your LA2 instruction with all correspondence/accounts you assist to expedite the handling of the correspondence/accounts and reduce the chance of queries arising from reference errors or misspelt names.

## Annexure K3

PRACTITIONER'S CHECKLIST  
WHEN SUBMITTING ACCOUNTS

Your voice. For justice.

## D GUIDELINES FOR THE COMPILATION OF CIVIL ACCOUNTS

## Service Provided

- ☐ **Taking of instructions** - steps necessary to gather necessary data to proceed with the matter. All inclusive fee only, depending on the level of the practitioner
- ☐ **Merit report**
- ☐ **Pre litis contestatio** - Drafting and perusal of all pleadings and notices. **Number of words and time spent must be specified**
- ☐ **Pre trial preparation** - Consultation and preparation for trial.
- ☐ **Postponements** - Matter postponed without any evidence led or arguments heard
- ☐ **Trial** - Days on which evidence was heard or argument handed down
- ☐ **Necessary correspondence**. All correspondence between Legal Aid SA and Practitioners to secure legal representation is expressly excluded.
- ☐ Approved disbursements;  
**written proof of consent must be attached**

## Reference

- ☐ **Taking of instructions** - No. 1.3.(a) on page 266 Levels - No. 2 on p 268-9 of the Guide.
- ☐ 1.1(a) p264, 1.5 p267, 4.4.2 p 275,
- ☐ 1.1(a) 264 subject to the requirements of 4.2 and 4.4.1 and 4.4.2 on p 275 and 4.5.1 and 4.5.2 on p 275 as well as 4.11 on p 277 and 4.14 on p 278.
- ☐ Subject to limitations in 4.2 on p 275  
**(Time limit of 10 hours per trial day)**
- ☐ 1.4 on p 267 **(Time must be specified)**
- ☐ 1.2(b) and 4.1 on p 274 **(Time must be specified)**
- ☐ 13.5.1 on p 187 and 1.3(b) on p 266  
**written** (specify number of words),  
**received** (specify number of letters)
- ☐ 3 on p 269-270 as well as 6-7 on p 278-279

All references to paragraphs and page numbers in the above guidelines are references to sections in **Legal Aid Guide**.

## Annexure K4



Your voice. For justice.

## DECLARATION OF DISPUTE

**A** THE CLAIMANT IS   
 PHYSICAL ADDRESS   
 C  O  D  E  
 POSTAL ADDRESS   
 C  O  D  E  
 TEL   
 FAX NO  DOCEX (if any)   
 E-MAIL (if any)   
 PRACTITIONER REFERENCE

**B** A dispute is hereby declared under Chapter 8 paragraph 8.3.7 of the Legal Aid Guide in this matter:  
 LEGAL AID REFERENCE   
 NAME OF LEGAL AID APPLICANT   
 AMOUNT OF ACCOUNT R   
 AMOUNT PAID TO DATE ON ACCOUNT (if any) R   
 DATE OF ACCOUNT  20

**C** DATED AT   
 ON THIS  DAY OF  20   
 SIGNATURE

**D** CLAIMANT'S REPRESENTATIVE (FIRM)   
 PHYSICAL ADDRESS   
 C  O  D  E  
 POSTAL ADDRESS   
 C  O  D  E  
 TEL   
 FAX NO  DOCEX (if any)   
 E-MAIL (if any)   
 PRACTITIONER REFERENCE

TO: Legal Aid South Africa, Corporate Services Department, Litigation & Arbitration Section  
29 De Beer Street, **BRAAMFONTEIN**, JohannesburgBY HAND  
Per Courier/Sheriff

## Annexure K5

## DETAILS OF DISPUTE



**Your voice. For justice.**

A	THE CLAIMANT IS																								
	(FIRM/LEGAL PRACTITIONER) an attorney/advocate/a firm of attorneys of																								
	PHYSICAL ADDRESS																								
			C	O	D	E																			
	POSTAL ADDRESS																								
		C	O	D	E																				
TEL																									
FAX NO															DOCEX (if any)										
E-MAIL (if any)																									
PRACTITIONER REFERENCE																									

**B** The respondent is the Legal Aid South Africa, a body corporate established under section 2 of the Legal Aid Act No. 22 of 1969 of 29 De Beer Street, Braamfontein, Johannesburg, Private Bag X76, Braamfontein, 2001, Telephone No. (011) 877 2000, Fax No. (011) 877 2222, e-mail info@legal-aid.co.za, Docex 117, Johannesburg.

**C** The claimant was instructed to render legal services to \_\_\_\_\_

**LEGAL AID RECIPIENT** \_\_\_\_\_

ON      IN (NATURE OF MATTER) \_\_\_\_\_

**COURT** \_\_\_\_\_ AT (PLACE) \_\_\_\_\_

**CASE NO. (IF ANY)** \_\_\_\_\_ **LEGAL AID REFERENCE** \_\_\_\_\_  
(this reference no. is **COMPULSORY**)

A copy of the legal aid instruction (LA28) signed by the claimant/a representative of the claimant is annexed hereto marked "A".

**D** The designated legal practitioner of the claimant duly accepted the instruction; rendered services required in accordance with Annexure "A" and his/her/its mandate has been fulfilled.

**E** The claimant accounted to the respondent on     /  and a copy of the account is annexed hereto marked "B".

The following documentation is also included: *(tick and annex where appropriate)*

<input type="checkbox"/> Account of the correspondent attorney marked "C"	<input type="checkbox"/> A finalisation report marked "G"
<input type="checkbox"/> Account of the advocate (certified) marked "D"	<input type="checkbox"/> Legal Aid Guide Annexure H with clients election relating to appeal marked "H"
<input type="checkbox"/> Proof of disbursements marked "E"	<input type="checkbox"/> The judge's clerk certificate in High Court criminal matters marked "I"
<input type="checkbox"/> Court Court order or settlement agreement marked "F"	

**F** The respondent received the account on /20 (date)

**ALTERNATIVELY**

the account was posted to the respondent and is reasonably expected to have been received on (date, 10 days after date in paragraph E above). /20



**Your voice. For justice.**

**G** The Claimant declared a dispute by the delivery of the original of Annexure K4 ("Declaration of Dispute") hereto, to the Legal Aid South Africa on

D	D	/	M	M	/	2	0
---	---	---	---	---	---	---	---

[illegible]

**D** The respondent is indebted to the claimant in the sum of R [ ] [ ] [ ] [ ] [ ] [ ] plus interest.

**THE CLAIMANT NOMINATES AS ARBITRATOR:**

NAME

PHYSICAL ADDRESS

TEL

ALTERNATIVELY

NAME

PHYSICAL ADDRESS

TEL

DATED AT

ON THIS   DAY OF  20

SIGNATURE

K	CLAIMANT'S REPRESENTATIVE (FIRM)														
	PHYSICAL ADDRESS														
		C	O	D	E										
	POSTAL ADDRESS														
		C	O	D	E										
	TEL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	FAX NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		DOCEX (if any) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>													
	E-MAIL (if any)														
	PRACTITIONER REFERENCE														

**TO:** Legal Aid South Africa, Corporate Services Department, Litigation & Arbitration Section  
29 De Beer Street, **BRAAMFONTEIN**, Johannesburg

BY HAND  
Per Courier/Sheriff

## Annexure K6



Your voice. For justice.

 ACCOUNT IN RESPECT OF CIVIL CLAIMS  
 ACCOUNT DETAILS

**A**

FIRM NAME:

PRACTITIONER:

LEVEL OF INSTRUCTION:

CLIENT:

REFERENCE NUMBER:

COURT: MC/HIGH/SCA/CC

CASES NUMBER:

INTERIM/FINAL ACCOUNT:

OUTCOME OF THE MATTER:

**B** TAKING OF INSTRUCTIONS

DATE	DESCRIPTION	Fees claimed	
		Rand	Cent

**C** MERIT REPORT (max 3 hours)

DATE	DESCRIPTION	TIME COMMENCED	TIME FINALISED	Fees claimed	
				Rand	Cent

**D** PRE-LITIS CONTESTATIO WORK

DATE	DESCRIPTION	WORDS/PAGES	TIME COMMENCED	TIME FINALISED	Fees claimed	
					Rand	Cent

**E** PRE-TRIAL PREPARATION (TIME LIMIT I.T.O 4.2 ANNEXURE F)

DATE	DESCRIPTION	TIME COMMENCED	TIME FINALISED	Fees claimed	
				Rand	Cent

## Annexure K6



Your voice. For justice.

## ACCOUNT IN RESPECT OF CIVIL CLAIMS

**F** POSTPONEMENTS (APPEARANCE ONLY)

DATE	DESCRIPTION	TIME COMMENCED	TIME FINALISED	Fees claimed	
				Rand	Cent

**G** TRIAL / INTERLOCUTORY APPLICATION

DATE	DESCRIPTION	TIME COMMENCED	TIME FINALISED	Fees claimed	
				Rand	Cent

**H** CORRESPONDENCE

DATE	DESCRIPTION	WRITTEN/FOLIO	RECEIVED/LETTER	Fees claimed	
				Rand	Cent

**I** DISBURSEMENTS (ATTACH PROOF)

DATE	DESCRIPTION	AMOUNT	
		Rand	Cent

## Annexure K6



## ACCOUNT IN RESPECT OF CIVIL CLAIMS

Your voice. For justice.

J

## ACCOUNT SUMMARY

Number	Detail	Rand	Cent
1			
2			
3			
4			
5			
6			
ACCOUNT TOTAL			

K

## SIGNATURE OF PRACTITIONER

who certifies by his/her signature that he/she or his/her candidate attorney rendered the above services.

SIGNATURE  D D / M M / 2 0

## Annexure L



Your voice. For justice.

## REFUSAL OF LEGAL AID

**A** I, (Name)   
the undersigned, say that I applied for legal aid under REFERENCE NUMBER

**1. I WAS CHARGED** with this offence\* / I asked for assistance in this civil case \* (delete if not applicable)

**2. I WAS ADVISED:**  
2.1 In criminal cases section 35(3) of the Constitution of the Republic of South Africa of 1996, says that:  
*"Every accused person has a right to a fair trial which includes the right:*  
(g) *to have a legal practitioner assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*  
(o) *of appeal to, or review, by a higher court"*  
2.2 That a legal aid applicant does not have the right to choose the legal practitioner who will be chosen for him/her in a legal aid case.  
2.3 That a legal aid applicant who has ended the mandate of his/her practitioner without good cause does not have a right to the appointment of a second or subsequent legal practitioner on a legal aid basis.

**3. I UNDERSTAND THAT** I can request reasons for the decision of a Justice Centre Executive requesting these reasons in writing within 90 days of the decision to refuse legal aid being made. A request for reasons must be in writing delivered to the office of the Justice Centre Executive who originally received my application. The Legal Aid South Africa will respond to my request within 90 days of receiving it.

**4. I HAVE THE RIGHT** to appeal to the Regional Operations Executive of the Legal Aid South Africa against the decision of the Justice Centre Executive. I can do this by writing to the Regional Operations Executive of the Legal Aid South Africa within 90 days of the decision of the Justice Centre Executive and by handing my appeal to the Justice Centre Executive for sending on to the Regional Operations Executive either with or without comment.

**5. I HAVE THE FURTHER RIGHT** to appeal to the National Operations Executive of the Legal Aid South Africa against the decision of the Regional Operations Executive. I can do this by writing to the National Operations Executive of the Legal Aid South Africa within 90 days of the decision of the Regional Operations Executive and by handing my further appeal to the Regional Operations Executive for sending on to the National Operations Executive either with or without comment.

**6.** I (name)  the undersigned now certify that  
the Justice Centre Executive of  Justice Centre has informed me that:  
a. my application for legal aid in a civil / criminal matter has been refused; the reason for the refusal is:  
  
b. I have the right to appeal to the Regional Operations Executive of the Legal Aid South Africa against the refusal of legal aid and then a further appeal to the National Operations Executive if my appeal to the Regional Operations Executive is also unsuccessful;  
c. My written letter stating the grounds of my appeal should be handed to the Justice Centre Executive/Regional Operations Executive;  
d. My appeal will be submitted to the ROE/NOE together with the Justice Centre Executive's or Regional Operations Executive comments; and  
e. In a criminal matter I have the right to apply to court before my trial starts for an order that I am provided with legal representation at state expense. Before this order is considered, the court will refer this issue for evaluation and report by the Legal Aid South Africa under Section 38 of the Legal Aid Act.  
I also say that I understand the contents of this document.

**B** IF I AM UNABLE TO READ OR WRITE, AN EMPLOYEE OF THE JUSTICE CENTRE WILL ASSIST ME.

Signature of applicant  Date  D D / M M / 2 0

Signature of JCE  Date  D D / M M / 2 0

## Annexure M

## SECTION 3B REPORT



Your voice. For justice.

**A** IN THE MAGISTRATES' COURT FOR THE DISTRICT OF \_\_\_\_\_ (magisterial district)  
 OR IN THE REGIONAL MAGISTRATES' COURT FOR \_\_\_\_\_ (region)  
 OR IN THE \_\_\_\_\_ DIVISION OF THE HIGH COURT.  
 HELD AT (CITY/TOWN) \_\_\_\_\_  
 CASE NO. \_\_\_\_\_ LEGAL AID REFERENCE NO. \_\_\_\_\_  
 IN THE MATTER BETWEEN THE STATE AND \_\_\_\_\_ (Surname followed by first names of the legal aid applicant)

**1** REPORT BY THE LEGAL AID SOUTH AFRICA TO THE COURT UNDER SECTION 3B (2) OF THE LEGAL AID ACT 22 OF 1969 AS AMENDED BY THE LEGAL AID AMENDMENT ACT 20 OF 1996.

1. This report relates to the Honourable Court's order of \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ requiring the Legal Aid South Africa to evaluate and report on the above mentioned accused's application for the provision of legal representation at State expense under section 35 (3) (g) of the Constitution of the Republic of South Africa Act 108 of 1996.

- 2** 2. The personal circumstances of the accused are as per Annexure 'LAT', 'LAT3A' and 'LAT3C' hereto.

**3** 3.1 The accused is/is not\* entitled to legal representation at State expense.\*

3.2 Choose the appropriate

- ☐ The accused is an employee/ex-employee\* of the state and has a right in respect of the charges in question to other legal representation at State expense by or via the State Attorney. (provide details)

- ☐ The accused has been charged in the High Court or  
☐ The accused has been charged before a Regional Magistrate's Court or  
☐ The accused has been charged before a District Magistrate's Court with an offence for which the legislature has provided for increased penal jurisdiction and the offence is one of those specified in Chapter 4 paragraph 4.3.2(a) of the Legal Aid Guide as justifying the grant of legal aid or  
☐ The accused has been charged before a District Magistrate's Court with a serious common law offence specified in Chapter 4 paragraph 4.3.2(b) of the Legal Aid Guide or  
☐ The accused has been charged with a serious statutory offence belonging to one of the categories set out in Chapter 4 paragraph 4.3.2(c) of the Legal Aid Guide or  
☐ I have considered the factors set out in Chapter 4 paragraph 4.3(d) of the Legal Aid Guide and have come to the conclusion that the accused is entitled to legal representation at State expense. I am not able to disclose these factors to this Honourable Court as the disclosure thereof could prejudice the trial of the accused or  
☐ The nature and gravity of the charge on which the accused is to be tried or on which he/she has been convicted\* does not justify legal representation at State expense or  
☐ Other (specify) \_\_\_\_\_

**4** 4. \*Legal representation at State expense has **already been provided** in this matter and the Legal Aid South Africa has instructed

LEGAL PRACTITIONER \_\_\_\_\_ of \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 \_\_\_\_\_ C O D E  
 TEL \_\_\_\_\_ to represent the accused on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (Date of legal aid instruction) D D / M M / 2 0  
 UNDER \_\_\_\_\_ (Legal Aid South Africa reference number).

5

5.\*Legal representation at State expense was **previously provided** in this matter, the Legal Aid South Africa having

instructed LEGAL PRACTITIONER \_\_\_\_\_ of \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_ C O D E

TEL \_\_\_\_\_ to represent the accused on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 D D / M M / 2 0

UNDER \_\_\_\_\_ (Legal Aid South Africa reference number).

The legal practitioner/s referred to above is/are no longer acting in the matter because:\*

**5.1 The legal practitioner was dismissed by the accused for good cause**

\_\_\_\_\_ (provide details eg a conflict of interest existed between the accused and a co-accused represented by the same legal practitioner)

**5.2 The legal practitioner was dismissed by the accused without good cause**

\_\_\_\_\_ (provide details e.g. the accused didn't think the legal practitioner was good enough and/or wanted Prof Piet Poggenpoel S.C. LL.D to be appointed to act on his/her behalf.)

**5.3 The legal practitioner withdrew from the matter through no fault of the accused**

\_\_\_\_\_ (provide details eg the legal practitioner retired from practice).

6

\*In addition to the factors set out above the Legal Aid South Africa submits that the following factors should be taken into account.

6.1 \_\_\_\_\_  
 6.2 \_\_\_\_\_  
 6.3 \_\_\_\_\_

7

7. In the light of the above, the Annexures attached and the provisions of the Legal Aid Guide, the Legal Aid South Africa recommends that the court should find that:

- 7.1 The accused can/cannot\* afford the cost of his/her own legal representation;  
 7.2 The accused would, if convicted probably/probably not\* be sentenced to imprisonment with or without the option for a fine for a period of more than 3 months and if given the option of a fine would be unable to pay this within 2 weeks of date of sentence;  
 7.3 In a criminal trial, adequate legal representation would/would not\* make a material difference to the prospects of the accused receiving a fair trial;  
 7.4 In a criminal appeal, the time for the noting of the contemplated appeal has expired/has not expired and an application for condonation does/does not have a reasonable prospect of success (Supply reasons).

- 7.5 \*A legal practitioner was assigned to the accused to represent him/her, but was dismissed/constructively dismissed by the accused. The accused does not have a constitutional right to the provision of a legal practitioner to represent the accused at State expense.

8

8. The Legal Aid South Africa consequently recommends that legal representation at State expense should/should not\* be made available to the above accused.

SIGNATURE \_\_\_\_\_ NAME \_\_\_\_\_ JUSTICE CENTRE EXECUTIVE

JUSTICE CENTRE NAME \_\_\_\_\_

TO: THE CLERK/REGISTRAR\* OF THE COURT

\_\_\_\_\_

AND TO: The Corporate Services Executive  
 Legal Aid South Africa  
 Private Bag X76, Braamfontein 2017  
 or\* PeterB@legal-aid.co.za or\* Fax: 011-877-2222

\* Delete where not applicable.

## Annexure N



## CURATORS APPOINTMENT AND CERTIFICATE

Your voice. For justice.

**A**

APPLICANT NAME

SURNAME

LEGAL AID SOUTH AFRICA REFERENCE NUMBER

COURT WHERE PROCEEDINGS ARE TAKING PLACE

NAME OF CURATOR

ADDRESS

TEL

APPOINTED AS ☐ CURATOR BONIS ☐ CURATOR AD LITEM

REQUESTED BY

ON

REPRESENTING

IN THE MATTER OF

CASE NO

REPORT BACK DATE

MEMORANDUM: (PROVIDE ANY ADDITIONAL INFORMATION ON URGENCY OR COMPLEXITY OF MATTER AND EXTENT OF WORK REQUIRED, OR ANY OTHER RELEVANT INFORMATION.)

**B ROE APPROVAL**

APPROVED ☐ YES ☐ NO

SIGNATURE

**C CERTIFICATE**

I, the above named curator, certify that the above information is correct and that I will abide by and be bound by the provisions of the Legal Aid Guide.

SIGNATURE

## Annexure O1

LEGAL AID SOUTH AFRICA  
ACCREDITATION CRITERIA

	ACCREDITATION CRITERIA	
	ATTORNEYS	ADVOCATES
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 a 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 experience requirement. Regional Court: 12 months criminal work experience. Other courts: 24 months 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  No direct civil instructions to advocates

\* See paragraph 8.2C.11 and 8.2C.12, chapter 8 of the Legal Aid Guide





Your voice. For justice.

## ANNEXURE O2

**ACCREDITATION AGREEMENT FOR PRIVATE PRACTITIONERS**  
entered into between

\_\_\_\_\_  
("the Practitioner")  
(of \_\_\_\_\_)

and

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

Whereas:

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

Now therefore the parties agree that:

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

SIGNED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

AS WITNESSES

1. \_\_\_\_\_

\_\_\_\_\_  
The Practitioner

2. \_\_\_\_\_

Recommended/Not recommended

\_\_\_\_\_  
Justice Centre Executive

SIGNED at Johannesburg this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

AS WITNESSES

1. \_\_\_\_\_

\_\_\_\_\_  
For Legal Aid SA

2. \_\_\_\_\_



## ANNEXURE O3

## TERMS AND CONDITIONS OF ACCREDITATION FOR PRIVATE PRACTITIONERS

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

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

### 1 DEFINITIONS

- 1.1 In these terms and conditions unless the context indicates otherwise:

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

### 2 APPOINTMENT OF PRACTITIONER

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

**3 OBJECTS OF THE ACCREDITATION SCHEME**

Legal Aid SA and the Practitioner acknowledge:

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

**4 WARRANTIES**

The Practitioner warrants to Legal Aid SA:

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

**5 INFRASTRUCTURE**

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

- 5.1 There will be adequate secretarial/reception facilities available to ensure telephonic contact during office hours.
- 5.2 Fax facilities will be available.
- 5.3 There are internet services and an email system that can receive all Legal Aid SA documentation including instructions
- 5.4 Provision will be made for typed accounts and reports.
- 5.5 There will be reasonable and ready access for clients and provision will exist for consultations and meetings.

- 5.6 That a proper file management system is in place combined with an efficient diary system, which will enable files to be dealt with expeditiously and without unreasonable delay.
- 5.7 That option of legal aid instructions, sent by SMS will be responded to by SMS within the deadline specified in the SMS enquiring about the practitioner's availability.

**6 UNDERTAKING TO COMPLY WITH LEGAL AID SA'S REQUIREMENTS**

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

- 6.1 at an early stage, to advise private clients who may qualify, of the availability of legal aid.
- 6.2 in the event of a decision to not finally accept a legal aid instruction (LA2), to immediately return the legal aid instruction to the issuing Justice Centre, or if the instruction is accepted to without delay and in any event within five (5) working days of having received an instruction to sign and return the acceptance of the instruction to the issuing Justice Centre.
- 6.3 that such signed acceptance of an instruction:
- 6.3.1 shall be deemed to be an acceptance of the instruction, in the case of an attorney on behalf of the firm, subject to the provisions of the current Legal Aid Guide and subsequent circulars amending such and shall be deemed to constitute an undertaking to deal with the instruction in accordance with the provisions of the Legal Aid Guide, including directives set out in the Legal Aid Guide regarding VAT and submission of accounts and the provision not to take any steps in a civil matter, except steps to prevent default judgment or prescription, until the decision of the Justice Centre Executive is obtained;

- 6.3.2 shall be deemed to include a declaration that no services were rendered by the practitioner or the firm to the applicant prior to the date of the legal aid instruction (LA2) and that no fees are therefore owing by him/her, or alternatively be deemed to be an undertaking to within five (5) working days inform the Legal Aid South Africa if such services were rendered and of the amount of fees and disbursements owing by the client, failing which it may be assumed that no such services were rendered and that no payments by the client are owing;
- 6.3.3 shall be deemed to include acknowledgement that neither the instruction, nor any rights arising out of execution thereof may be ceded to any third party without the prior written consent of the National Operations Executive of the Legal Aid SA.
- 6.4 should the matter require appointment of a correspondent, to obtain the prior approval of the Justice Centre Executive who issued the instruction to appoint an accredited practitioner and firm as correspondent.
- 6.5 to include prayers for payment of costs in civil summonses including divorce actions.
- 6.6 to submit timely and regular reports to Legal Aid SA and undertakes to:
  - 6.6.1 if the case number does not appear on the Board's instruction, advise the Board of the case number at the earliest opportunity.
  - 6.6.2 regularly report progress of the matter in question, as applicable, at such intervals and at those stages of proceedings as required in terms of paragraph 12.5.2, chapter 12 of the Legal Aid Guide.
  - 6.6.3 advise on the merits of the matter with special attention being given to merits in civil matters and criminal appeals.
  - 6.6.4 advise on the pre-trial procedure and any pre-trial conference, which may be held, in which event such conference must be held timely prior to the trial of the matter to enable Legal Aid SA to consider the result of such conference and any possible settlement, which may arise there from.
  - 6.6.5 upon withdrawal as the Attorney of Record to furnish proper and adequate reasons for withdrawal and to notify the client in writing or in open court.

- 6.6.6 to inform Legal Aid SA immediately he/she becomes aware of the fact that the opposing litigant has been accorded legal aid.
- 6.6.7 furnish Legal Aid SA with the outcome of the matter including Judgments together with copies of Orders of Court and Settlements as soon as the same become available.
- 6.6.8 investigate on a regular basis the qualification of the client in terms of the means test and inform Legal Aid SA in the event that a client no longer qualifies for legal aid.
- 6.6.9 comply fully with the provisions of the Legal Aid Guide concerning the cession, recovery and waiver of costs.
- 6.6.10 inform Legal Aid SA in appropriate circumstances of any abuse by Applicants to obtain legal aid by fraudulent or other means.
- 6.6.11 seek instructions from Legal Aid SA if the Practitioner's fees and disbursements are likely to exceed R 50 000.00 in any Regional Court matter or the anticipated cost of any High Court or Regional Court Commercial Crimes Court instruction is more than R 100,000.00.
- 6.6.12 seek instructions from Legal Aid SA if the anticipated duration of any regional court matter is more than 20 trial days or the anticipated duration of any High Court or Regional Court Commercial Crimes Court instruction is more than 40 trial days.
- 6.6.13 ensure that in the event of a partnership dissolving Legal Aid SA is informed immediately of the party to whom payment of any outstanding costs is to be made.
- 6.7 to ensure that proper references are placed on correspondence and accounts and that accounts, copies of charge sheets in criminal matters and reports are submitted immediately upon completion of cases to the Justice Centre that issued the relevant instructions.
- 6.8 to ensure that the Practitioner's mandate is not exceeded without the prior consent of Legal Aid SA.
- 6.9 to ensure the protection of Legal Aid SA's rights to recover costs.
- 6.10 to ensure that tenders, settlements and payments into Court are done in accordance with the Legal Aid Guide.
- 6.11 to ensure compliance with Section 8(A) of the Legal Aid Act 22 of 1969, as amended, and to ensure that other litigants receive notice that the Client has been granted legal aid.

- 6.12 to ensure the use of the prescribed Legal Aid SA documentation as contained in the Legal Aid Guide, as applicable.
- 6.13 to confirm in writing any approval or authorisation given verbally to the Practitioner in the course and conduct of any matter.
- 6.14 to agree to represent a co-accused in a criminal matter where there is no conflict of interest in accordance with the applicable legal aid tariff.
- 6.15 to ensure that any applications for leave to appeal are filed timeously and prosecuted in accordance with the time limits applicable to the matter in question.
- 6.16 to ensure the protection of the Client's rights to prevent prescription or default judgment.
- 6.17 to notify Legal Aid SA of any changes in the structure or details of the practitioner's firm, especially changes that affect the Black Economic Empowerment credentials of the firm, or if the practitioner changes firms.
- 6.18 not to give any information regarding any legal aid matter to any media representative, including the legal professional media without the prior written approval of the Justice Centre Executive of the Justice Centre that issued the relevant legal aid instruction.
- 6.19 in the first instance to take up any criticism of Legal Aid SA and its legal aid scheme with the applicable Regional Operations Executive of the Board before publishing such criticism in any manner.
- 6.20 to personally, or through the personally supervised services of an articulated clerk, with appropriate rights of appearance and articulated to the practitioner himself/herself perform legal aid instructions issued to the practitioner.
- 6.21 to personally attend the annual accreditation meeting called by the JCE.
- 6.22 to render an account in accordance with the provisions of the Legal Aid Guide within four months of the finalisation of any matter, failing which the right to payment prescribes.

- 6.23 if the practitioner disputes the correctness of any taxation by Legal Aid SA, to commence arbitration proceedings by the declaration of a dispute within three months of being notified by Legal Aid SA of the taxation, failing which the right to dispute the taxation prescribes.

## **7 MONITORING, QUALITY CONTROL AND FEEDBACK**

The Practitioner agrees:

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

## **8 QUALITY CONTROL**

- 8.1 In every matter in which Legal Aid SA instructs the Practitioner, the client has irrevocably authorised Legal Aid SA to act as his/her attorney in addition to any legal practitioner who may be appointed to act on his/her behalf.
- 8.2 Legal Aid SA is entitled to inspect, copy and carry out quality control tests in respect of the file of any legal practitioner appointed by Legal Aid SA to act on behalf of any legal aid recipient irrespective of whether the legal practitioner is in private practice or in the employ of Legal Aid SA.
- 8.3 The authorisation given by the legal aid recipient will survive the termination or finalisation of the mandate of any legal practitioner appointed by Legal Aid SA to act on his/her behalf.
- 8.4 This authorisation will only be utilised for quality control purposes and then only after all evidence in any case has been heard or the mandate of the Practitioner has been terminated.



- 8.5 Legal Aid SA undertakes to safeguard attorney/client privilege in respect of any information acquired by it in the course of any quality control tests.
- 8.6 The Practitioner undertakes to co-operate and assist with Legal Aid SA in the performance of the quality control tests and to make any closed file available to Legal Aid SA for inspection and/or copying within ten business days of such a request.
- 9 REMOVAL OF PRACTITIONER'S NAME FROM DIRECTORY OF ACCREDITED PRACTITIONERS**  
The Practitioner acknowledges having acquainted himself with the provisions of the Legal Aid Guide and acknowledges that Legal Aid SA shall be entitled to remove the Practitioner's name from the Directory of Accredited Practitioners in appropriate circumstances in accordance with the procedure set out in the Legal Aid Guide.
- 10 DAMAGES CLAIMS AGAINST PRACTITIONERS**  
The Practitioner warrants that he/she is acquainted with the provisions of the Legal Aid Guide as amended by circulars from time to time and agrees to be bound by the terms and provisions thereof. Failure to comply with the provisions of the Legal Aid Guide may render the Practitioner liable to Legal Aid SA for damages in addition to any other remedy Legal Aid SA may enjoy in law.
- 11 EXCELLENCE**  
In as much as it is the objective of Legal Aid SA to achieve excellence in the provision of legal services to the indigent and the poor, the parties agree and undertake with each other to promote and foster such objectives with a view to improving the quality of services rendered to legally aided clients, to promote the overall efficiency of the judicial system and to extend the provision of services to previously disadvantaged communities to the best of their ability.

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

- 328

EASTERN CAPE JUSTICE CENTRES									
	Butterworth	East London	Graaff-Reinet	Grahamstown	King Williams Town	Mhatha	Port Elizabeth	Queenstown	Uitenhage
Alwal North	Alwal North	East London	Aberdeen	Adelaide	Kaisiammahook	Bizana	Henkey	Barkeley-East	Alexandria
Burgersdorp	Butterworth	Mdantsane	Cradock	Albany	King Williams Town	Elliottdale/Xhora	Humansdorp	Bolwaa	Kirkwood
Herschel	Guxwa		Graaff-Reinet	Alexandria	Middeldrift	Engcobo	Joubertina	Cacadu	Seydlerville
Jamestown	Centani		Jansenville	Bathurst	Peddie	Fligstad/Siphaqeni	Port Elizabeth	Cathcart	Uitenhage
Lady Grey	Idutywa		Middelburg EC	Bedford	Sutherland	Libode		Elliot	
Rouxville	Komga		Somerset East	Fort Beaufort	Zwelitsha	Lusikisiki		Hewu	
Smithfield	Nqamakwe		Willowmore	Stockenström		Mount Ayliff	Mount Freire	Hofmeyer	
Steynsburg	Tsomo			Victoria East		Maanduli	Indwe	Maclear	
Venterstad						Mt Fletcher	Molteno	Niabhembwa	
Zastron						Mhatha	Queenstown	Queenstown	
						Nqeleni	St Marks	Sterksroom	
						Nqeleni		Tarka	
						Niabankulu		Wodehouse	
						Qumbu		Xalanga	
						Tsolo			
						Uzimrivubu			

 Legal Aid  
South Africa  
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## FREE STATE JUSTICE CENTRES

Bethlehem	Bloemfontein	Botshabelo	Kroonstad	Phuthaditjhaba	Welkom
Bethlehem Clocolan Ficksburg Fouriesburg Lindley Petrus Steyn Rietz Senekal	Bloemfontein Brandfort Dealesville DeWetsdorp Edenburg Faurer-Smith Jagerfontein Koffiefontein Petrusburg Reddersburg	Botshabelo Excelsior Ladybrand Marquard Thaba Nchu Wepener	Koppies Kroonstad Lindley Venterburg Viljoenskroon Winburg	Bethlehem Harrismith Vrede Warden Witsieshoek	Boshof/Welkom JC Bothaville Buitfontein Hennenman Hoopstad Oudendaalrus Theunissen Virginia Welkom Wesselsbron

## GAUTENG JUSTICE CENTRES

Alexandra	Benoni	Germiston	Johannesburg	Krugersdorp	Pretoria	Soshanguve	Soweto	Tenbisa	Vereeniging
Alexandra	Benoni Boksburg Brakpan Nigel Springs	Alberton Germiston	Johannesburg Johannesburg/JHB JC	Krugersdorp Randfontein Roo-de-poort	Atteridgeville Prebela Pretoria Wonderboom	Bronkhorstspuit Cullinan Pretoria North Soshanguve Wonderboom	Johannesburg/SOW JC Westonaria	Kempton Park	Frankfort Heidelberg Heilbron Meyerton Meyerton Sasolburg Sebokeng Vanderbijlpark Vereeniging Villiers

## KWAZULU NATAL JUSTICE CENTRES

Durban	Empangeni	Ladysmith	NewCastle	Pietermaritzburg	Pinetown	Port Shepstone	Umlazi	Verulam	Vryheid
Durban/Durban JC	Eshowe Hlabisa Ingwavuma Inkanyezisi Lower Umfolozi Mundleni Pietermaritzburg Empangeni JC Ubombo	Bergville Estcourt Glencoe Klip River Weenen	Dannhauser Dundee Glencoe Maddadeni Newcastle Unicourt Volksrust (Newcastle JC) Wakensstroom	Greytown Impendle Kranskop Leesonvlei Mool River Msinga New Hanover Pietermaritzburg Richmond KZN Umvoti Underberg	Camperdown Chatsworth Pinetown	Alfred Ixopo Maituli Mount Currie Port Shepstone Umzimkulu Umzinto	Durban/Umlazi JC Umbumbulu Umlazi Umzinto	Inanda Lower Tugela Mapumulo Ndwedwe Nkandla Nongoma Nqutu Pongolani Pretoriusburg Vryheid	

## LIMPOPO JUSTICE CENTRES

Makhado	Modimolle	Polokwane	Thohoyandou	Tzaneen
Dzani Hlanganani Messina (Musina) Sekegese Soutpansberg Tshikavhusiku Tshitale	Ellisras Phalala Polgetersrus/Modimolle JC Thabazimbi Warmbad Waterberg	Mokong Nebo Pietersburg Polokwane Polgetersrus/Polokw JC Seshego Thabamopo	Makuya Mutale Sibasa Thohoyandou Vuwani	Bolobedu Giyani Leleba Leleba Lulekani Malamulele Namatgale Naphuno Phalaborwa Ritavi

MPUMALANGA JUSTICE CENTRES			
Ermedo	Middelburg	Nelspruit	Witbank
Amersfoort Bethal Carolina Ermedo Kangwane/Erstehook Piet Retief/ Ermedo JC Standerton Volksrust (Ermedo JC)	Belfast Groblersdal Mbombani Middelburg MPU Mouise	Barberton Belfast Lydenburg Mapulaneng Mhala Nelspruit Nkomazi Nskazi Pilgrim's Rest Praktiseer (Ga-Maratha) Sekukhuniland/ Limpopo Winvier	Balfour MPU Delmas Ekangala Evander Highveld Ridge Kriel Kwamhlanga Mkoba Witbank

NORTH WEST JUSTICE CENTRE					
Ga-Rankuwa	Klerksdorp	Lichtenburg	Mafikeng	Potchefstroom	Rustenburg
Brits Moretele Odi	Klerksdorp Wolmaransstad	Coligny Delareyville Disabotla Lichtenburg	Lehurutshe Marico Molopo Vryburg	Fochville Oberholzer Parys Potchefstroom Verstersdorp	Batokeng Koster Madikwe Mankwe Rustenburg Swartburg
					Vryburg Bloemhof Ganyesa Schweizer-Reneke Vryburg

NORTHERN CAPE JUSTICE CENTRES		
Colesberg	Kimberley	Upington
Bethulia (FS)	Barkley West	Gordonia
Bristown	Boshof/Kimberly JC	Griekwasiad
Carnarvon	Christiana	Kerhardt
Colesberg	Hartswater	Kudumane
De Aar	Herbert	Kunman
Hanover	Hopetown	Molihesiad
Noupoort	JankKempdorp	Postmasburg
Phillipolis	Kimberley	Prieska
Phillipstown	Koffiefontein	
Phillipolis	Taung	
Richmond NC	Warrenton	
Snydersburg		
Transposburg		
Victoria West		

WESTERN CAPE JUSTICE CENTRES								
Athlone	Belville	Caledon	Cape Town	George	Malmesbury	Stellenbosch	Vredendal	Worcester
Khayelisha Mitchells Plain Simonstown Wynberg	Belville Goodwood Ath JC Goodwood CT JC Kullsvier	Bredasdorp Caledon Grabouw Hermanus Somerset West Strand Swellendam Worcester	Cape Town	Beaufort West Caltztdorp Fraserburg George Heidelberg WC Knysna Ladismith Mossel Bay Mosselbay Murraysburg Oudtshoorn Prince Albert Riversdal Uniondale	Hopetfield Malmesbury Malmesbury/sbosch JC Vredenburg Western Cape	Kullsvier Paarl Somerset West Stellenbosch Strand Wellington	Calvinia Clanwilliam Namaqualand Van Rhyndorp Vredendal Williston	Ceres Langsburg Montagu Robertson Sutherland Tulbagh Worcester

## ANNEXURE Q



## REFUSAL OF LEGAL AID ASSISTANCE BY ACCUSED

Your voice. For justice.

A

I, the undersigned

FULL NAMES SURNAME CASE NO. COURT/PRISON COURT NO.  OR PRISON NO. 

acknowledge that:

- On  D  D /  M  M / 2 0 (date) I was given an opportunity to apply for legal aid.
- I am aware of the seriousness of the case in which I am involved and of the possible consequences of not being legally represented.
- I am aware that I might have a right to legal representation at State expense under the Constitution.
- I have chosen not to apply for legal aid.

SIGNATURE

B

## IF THE ACCUSED REFUSED TO SIGN PLEASE COMPLETE

## LEGAL AID SOUTH AFRICA OFFICIAL

NAME SURNAME 

Certify that the above was explained to the accused and that he/ she refused to sign

LEGAL AID SOUTH AFRICA OFFICIAL SIGNATURE

 D  D /  M  M / 2 0

## Annexure R



Your voice. For justice.

LA5 ACKNOWLEDGEMENT AND UNDERTAKING  
BY LEGAL AID APPLICANT

REFERENCE

A

I, the undersigned

FULL NAMES SURNAME acknowledge that I have been informed by the  Justice Centre that:

B

## 1. Contribution towards costs:

I will need to make a contribution of R  towards the costs of the case in which I am involved and for which I am requesting legal aid and that I will have to pay this amount to my attorney;

## 2. No moneys to be paid to attorneys/advocates or other persons:

Except for the payment of the money specified in paragraph 1.1 above, I will not pay any other amounts to any attorney, advocate or another person for any services given to me in this case;

## 3. Legal Aid South Africa provides only for own attorney-client fees:

The Legal Aid South Africa is only responsible for the payment of moneys due to my own legal representative and other persons for services given to me in this case. The Legal Aid South Africa does not have to pay any costs payable by me to the opposing side or legal representative as a result of any agreement or court order;

## 4. Financial benefit

This is the percentage benefit that is currently payable to the Board:

- Benefit obtained - R0 to R20,000 = 0%
- Benefit obtained - R20,001 to R100,000 = 5% of the amount over R20,000
- Benefit obtained - Above R100,000 = R4,000 plus 10% of the amount over R100,000

## 5. Costs awarded to client:

5.1 I have been informed that any costs that a court may award to me in this case or I get as a result of an agreement, is payable to the Legal Aid South Africa.

5.2 Any costs which may be awarded to me or any part of these costs that cannot be recovered from the opposing side, may be recovered from any financial benefit which may be awarded to me, but no more than 50% of the financial benefit that I may receive will be used for this purpose.

## 6. Choice of attorney:

I have been informed that I have no right to choose the legal practitioner who will be instructed in my case and that there are no exceptions to this rule.

C

SIGNATURE OF APPLICANT

SIGNATURE: JC EMPLOYEE

 D  D /  M  M / 2 0 D  D /  M  M / 2 0

## Annexure S



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## ANNEXURE TO LA2 WITH CO-ACCUSED DETAILS

**A** The undermentioned applicant is added to the Instruction to Practitioner (LA2) with reference no:

NAME OF APPLICANT ON ORIGINAL INSTRUCTION

**B PRACTITIONER PARTICULARS**

FULL NAMES (practitioner)

SURNAME

POSTAL ADDRESS

C O D E

**C CO-ACCUSED PARTICULARS**

FULL NAMES (Co-accused)

SURNAME

GENDER ☐ Male ☐ Female

CO-ACCUSED NUMBER

MARITAL STATUS ☐ Single ☐ Married ☐ Widowed ☐ Divorced

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

RESIDENTIAL ADDRESS

C O D E

**D INSTRUCTION PARTICULARS**

CHARGE:

CASE NO

DATE OF NEXT APPEARANCE  D  D /  M  M / 2 0

COURT

**E**

DATE STAMP

Authorised official's signature

D  D /  M  M / 2 0

## Annexure T



## JUDICARE PROGRESS REPORT IN A CRIMINAL MATTER

NAME OF FIRM:

CLIENT'S NAME:

REFERENCE NUMBER:

Accused's first appearance in court:

Instruction Date:

Date practitioner on record:

Number of Accused:

Last appearance date:

Next Date:

State ☐ Attorney ☐ Other ☐

Postponement details

(At whose request and why):

Possible factors contributing to delay in finalization and corrective measures proposed to speed up finalization:

Expected duration

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Annexure U

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

**Contents**

**Introduction**

1. Relationship with other Professional Codes of Conduct
2. Duty to Protect the Interests of the Client
3. Duty to Act with Integrity and Independence
4. Duty to act impartially and to avoid Discrimination
5. Duty of Confidentiality
6. Duty to the Court
7. Duty to avoid Conflicts of Interest
8. Duty not to Offer or Accept Payments
9. Relationship with the Legal Profession
10. Change of Legal Representative
11. Withdrawal of Legal Representative
12. Public Interest Disclosure
13. Excessive Caseload
14. Standards of Conduct
15. Complaints

**Introduction**

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

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

For the purpose of this Code:

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

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

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

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

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

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

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

**1. Relationship with other Professional Codes of Conduct**

- 1.1 An employee who is a member of a professional body shall comply with the rules of conduct of and have regard to any guidance issued by that body.
- 1.2 The Legal Development Executive will be the professional head of the salaried service ("the professional head of service") who



shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.

- 1.3 This Code applies in addition to any professional, ethical or staff code that binds an employee. Where any serious doubt arises as to the interpretation of this Code, the issue will be referred to the professional head of service who will provide advice and guidance on the matter, consulting wherever appropriate with those responsible for other professional codes. So far as it is possible to do so, this Code must be interpreted in a way which is compatible with other professional codes.

## **2. Duty to Protect the Interests of the Client**

- 2.1 The primary duty of a professional employee is to protect the interests of the client so far as consistent with any duties owed to the court and any other rules of professional conduct. Subject to this, a professional employee shall do his or her utmost to promote and work for the best interests of the client and to ensure that the client receives a fair hearing. A professional employee shall provide the client with fearless, vigorous and effective defence and may use all proper and lawful means to secure the best outcome for the client.
- 2.2 A professional employee shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof.

## **3. Duty to Act with Integrity and Independence**

- 3.1 An employee shall act with honesty and integrity in carrying out his or her duties on behalf of the salaried service. He or she must never knowingly or recklessly give false or misleading information.
- 3.2 A professional employee has a duty to maintain his or her professional independence and not to allow this to be compromised by prosecuting authorities, the courts, Legal Aid SA, clients or any other source.

## **4. Duty to act Impartially and to avoid Discrimination**

- 4.1 Employees shall treat clients fairly, reasonably and without discrimination. In carrying out this duty, an employee must not discriminate directly or indirectly against any other person on

grounds of race, colour, ethnic or national origin, sex, marital status, sexual orientation, disability, age, political persuasion or religion. In respect of indirect discrimination, there is no breach of this requirement if the employee against whom any complaint is made shows that the act of indirect discrimination was committed without any intention of treating the complainant unfavourably on any ground in this paragraph to which the complaint relates.

- 4.2 A professional employee may accept instructions from any eligible client, provided that no conflict or significant risk of conflict of interest arises and that he or she can discharge those instructions effectively having regard to other professional obligations, unless there is some other substantial reason why the best interests of the client would not be served or a right of withdrawal would arise immediately under paragraph 11.1.
- 4.3 A professional employee shall only provide advice, assistance or representation to a client where he or she is competent to do so. Competence requires such legal knowledge, skill, experience and preparation as is reasonably necessary to properly represent the best interests of the client.
- 4.4 A professional employee shall not refuse to advise, assist or represent a client because of the nature of the allegation or the client or because of the employee's personal views.

## **5. Duty of Confidentiality**

- 5.1 Subject to paragraph 5.2, an employee shall keep all information about a client confidential within the salaried service. This is an ongoing duty that does not cease once employment has terminated, and can be enforced in a court by Legal Aid SA or the client.
- 5.2 The duty of confidentiality to a client is subject to any statutory provision, any court order and any relevant rules of professional conduct or otherwise setting out circumstances where the duty of confidentiality may be overridden.
- 5.3 Notwithstanding the duty of confidentiality, the salaried service shall permit such access to its client records as are necessary to enable the performance of quality audits

## **6. Duty to the Court**

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

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

### 7. Duty to avoid Conflicts of Interest

- 7.1 A professional employee may not act for any one or more clients if to do so would give rise to a conflict of interest.
- 7.2 The circumstances where a conflict of interest exists include when the duty of the professional employee to act in a client's best interests conflicts with the interests of:
- (a) another client of the salaried service unless the professional employees representing the clients between whom a conflict exists report to separate supervisors in respect of the matter concerned and further provided that appropriate measures ("Chinese walls") are in place to safeguard the confidentiality of privileged information and documents;
  - (b) any employee of the salaried service; or
  - (c) any third party whose relationship to any employee of the salaried service would reasonably cause the client to believe that the professional employee may not act in that client's best interests.
- 7.3 Subject to paragraphs 7.4 and 7.5 where a professional employee provides advice, assistance or representation to a client and a conflict or a significant risk of conflict arises between the interests of that client and any other client of the salaried service, or between the professional employee and a client, then he or she must cease to act for all clients affected by the conflict.
- 7.4 If the conflict arises between two or more clients, the professional employee may continue to act for one client provided the salaried service is not in possession of relevant confidential information obtained whilst acting for the other client or clients.
- 7.5 Professional employees may however act for clients between whom there is a conflict or a significant risk of conflict provided the professional employees report to separate supervisors in respect of the matter concerned and further provided that appropriate measures ("Chinese walls") are in place to safeguard the confidentiality of privileged information and documents.

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

### 8. Duty not to Offer or Accept Payments

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

### 9. Relationship with the Legal Profession, Judiciary and Prosecution

- 9.1 Save as permitted by the Pro Amico and Pro Bono policy of Legal Aid SA a professional employee shall not practise law other than in the performance of his or her duties as an employee.
- 9.2 All employees shall endeavour to maintain relationships with the legal profession, judiciary, prosecution and other agencies in the criminal justice system based on courteousness, mutual respect and professionalism.

### 10. Change of Legal Representative

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

### 11. Withdrawal of Legal Representative

- 11.1 A professional employee shall cease to act for a client where:
- (a) a conflict or a significant risk of conflict of interest or breach of confidentiality arises;
  - (b) a conflict or a significant risk of conflict arises between the client's interests and the duty to the court;
  - (c) the client withdraws instructions; or
  - (d) continuing to act would cause him or her to be professionally embarrassed.
- 11.2 A professional employee may cease to act for a client where:
- (a) the client's behaviour towards the professional employee or any other employee is violent, threatening or abusive; or

- (b) there is some other substantial reason for withdrawal, approved by the Justice Centre Executive/professional head of service or sanctioned by the applicable professional code of conduct.
  - (c) there is a breakdown in the trust relationship with the client.
- 11.3 If a professional employee ceases to act then he or she shall give reasons to the client for doing so, except in the case of paragraph 11.1(c) above.

## 12. Public Interest Disclosure

- 12.1 If an employee believes that he or she is being required to act by Legal Aid SA in a way which:
- (a) is illegal, improper or unethical;
  - (b) is in breach of professional rules;
  - (c) may involve maladministration, fraud or misuse of public funds; or
  - (d) is otherwise inconsistent with this Code or the Legal Aid SA's Code of Conduct/Citizen's Charter/Client Services Charter/Ethical Code;
- he or she shall bring this to the attention of the Justice Centre Executive who shall notify the professional head of service, or to the professional head of service, as appropriate. The professional head of service shall carry out an investigation and make a report to the Board of Legal aid SA.
- 12.2 If any of the above circumstances arise, a professional employee must also consider whether it is appropriate to continue to act for a client.
- 12.3 This provision does not override the rules of professional privilege.

## 13. Excessive Caseload

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

- 13.2 The professional head of service may conduct such investigations as he/she considers necessary and may delegate the conduct of any investigation or any portion thereof to any other employee.
- 13.3 The decision of the professional head of service as to whether any professional employee is obliged to accept any further instructions shall be final and binding.

## 14. Standards of Conduct

- 14.1 Subject to the provisions of this Code and any other rules of professional conduct, an employee shall not do anything to bring the salaried service or legal profession into disrepute in the course of his or her employment or otherwise.
- 14.2 An employee shall not misuse his or her position or information acquired in the course of his or her duties to further his or her own private interests or those of others.

## 15. Complaints

- 15.1 A complaint against an employee under this Code shall be made to the Justice Centre Executive who shall investigate the complaint and notify the professional head of service.
- 15.2 The procedure to be followed in respect of a complaint against an employee under this Code shall be as prescribed by the professional head of service on a case by case basis observing the general principles of:
- 15.2.1 Affording all parties a reasonable opportunity to make representations; and
  - 15.2.2 Permitting and if necessary providing legal representation where such is necessary to prevent substantial injustice.
- 15.3 A complaint against a professional employee may be dealt with under the procedure laid down by his or her professional body, as well as under the procedure in paragraph 15.1.
- 15.4 Subject to paragraphs 5.1 and 5.2 an employee shall co-operate with requests from a professional body for comments or information in respect of complaints that the body is investigating.



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## CONSTITUTIONAL CASE MANAGEMENT COMMITTEE

### TERMS OF REFERENCE

#### 1. Purpose

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

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

#### 2. Membership

- 2.1 The CCMC shall consist of the following officials of the Legal Aid SA:
  - 2.1.1 Chief Operations Officer (COO);
  - 2.1.2 National Operations Executive (NOE);

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

#### 3. Powers of the CCMC

The CCMC shall have the following powers:

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

#### 4. Responsibilities of the CCMC

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

#### 5. Urgent Matters

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

#### 6. Meetings of the CCMC

- 6.1 The Committee shall meet on notice when required but at least once a month at a venue to be agreed upon.
- 6.2 The Committee shall publish in advance a schedule showing dates of its monthly meetings. This schedule must be circulated to Justice Centres and also to the National Operations department.
- 6.3 The quorum for the meetings shall be four members and the quorum for the decisions of the CCMC shall be a majority of members who shall vote on the matter for decision in person.
- 6.4 The CCMC will be accountable to the LSTC and will submit the minutes of its meetings to LSTC.
- 6.5 The Committee may conduct its meetings via video/telephone conferencing.
- 6.6 Except under exceptional circumstances, at least 48 hours notice will be given of a meeting of the CCMC. Such notice will, where possible, include the agenda and any supporting documentation.

#### 7. Procedure for considering applications

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



- 7.4 Where the Committee has declined the application the applicant will be entitled to appeal to the Chief Executive Officer whose decision shall be final in terms of the LAB internal processes.

## 8. Secretarial Services

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

## ANNEXURE W



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## LEGAL SERVICES TECHNICAL COMMITTEE TERMS OF REFERENCE

### 1. Purpose

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

### 2 Membership

- 2.1. "LSTC" shall consist of the following officials of the Legal Aid South Africa:
- 2.1.1 Chief Operating Officer (COO)
  - 2.1.2 National Operations Executive (NOE)
  - 2.1.3 Legal Development Executive (LDE)
  - 2.1.4 Regional Operations Executives
  - 2.1.5 Senior Impact Litigation Attorney
  - 2.1.6 National Operation's Principal Attorney
  - 2.1.7 Two Board members nominated by the Board of the Legal Aid SA
- 2.2. Other officials may be invited to participate in meetings as required;

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

### 3. Legal Aid SA Board and Delegated Powers

#### 3.1. Matters reserved for Board decision

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

- 3.1.1. All matters reserved for decision by the Board in the Approval Framework;
- 3.1.2. All matters which cannot be delegated by the Accounting Authority as per the PFMA, the Legal Aid Act and any other applicable legislation.

#### 3.2. Matters delegated to the CEO and other Executives

- 3.2.1. The CEO has all the responsibilities of the Accounting Officer as provided for in the Public Finance Management Act.
- 3.2.2. The CEO’s authority in managing the Legal Aid SA and the Executive is unrestricted save by the Board, the Legal Aid Act, the Legal Aid Guide and the Public Finance Management Act.
- 3.2.3. The Board delegates authority to the CEO, the Management Exco, LSTC, other committees and Officials through its Approval Framework.

### 4. Powers of Legal Services Technical Committee

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

### 5. Responsibilities of LSTC

The LSTC shall have the collective responsibility for:

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



**6. Meetings of LSTC**

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

**7. Proceedings of LSTC**

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

**SUBJECT INDEX**

*References are to page numbers.*

**A**

ABDUCTION OF CHILDREN .....	7, 40, 61, 68
ABUSE OF LEGAL AID .....	146–149
basis for complaint.....	98
communication with legal practitioner .....	99
copy of report to person suspected of .....	147
duty and onus of legal practitioners.....	100, 148
enforcement of principles and rules of legal aid .....	146
Ethics Hotline .....	99
forensic investigation .....	147
investigation of complaint .....	99
Justice Centre Executive's decision regarding steps required.....	147
keeping client's informed .....	100
Legal Aid South Africa's duty to pay on termination.....	100
preventative measures .....	101
receiving monies after legal aid instruction .....	148
submissions in writing.....	99
suspension of aid.....	100
ACCESS TO CHILDREN.....	57–58
ACCESS TO JUSTICE .....	5, 31
ACCOUNT IN CRIMINAL TRIAL .....	193
form.....	300–301
ACCOUNTABILITY .....	5
ACCOUNTS <b>see also</b> PAYMENTS	
advocate's, Judicare system .....	129
assessment and taxation, Judicare system.....	194
complete account and disbursements, Judicare system.....	194
declaration of dispute (form).....	306
details of dispute regarding account (form) .....	307–308
disputes .....	129
electronic invoicing .....	206

enquiry (form) .....	302
format and information required, Judicare system .....	193
full report with, Judicare system .....	187
items excluded from payment under legal aid tariffs .....	197–198
Judicare reports and accounts .....	127–128
practitioner's checklist when submitting accounts (form) .....	303–304
prescription of .....	204
procedure for, submission and enquiries .....	193–194
rendering of, Judicare system .....	187
requirements for payment, Judicare system .....	192–193
submission and enquiries, Judicare system .....	193–194
taxation of, Judicare system .....	194
<b>ACCREDITATION</b>	
agreement for private practitioners .....	316–328
approval and allocation of judicare instructions .....	133
criteria for .....	315
database for Accreditation Program and Directory of Accredited Practitioners .....	120
Directory of Accredited Legal Practitioners .....	113, 115, 119–121, 123, 124
evaluation and allocation of Judicare instructions .....	176–178
exclusionary list of legal practitioners not to be instructed .....	121–124
National Operations Executive's discretion, exceptional instructions and restrictions .....	178–179
rules .....	114
<b>ACCREDITED</b> .....	5
<b>ACCREDITED LEGAL PRACTITIONER</b> .....	113
<b>ACCUSED</b> .....	5
previously not on legal aid and leave to appeal .....	49
refusal of legal aid assistance by (form) .....	311
termination of legal aid when not appearing .....	97
<b>ACKNOWLEDGEMENT AND UNDERTAKING BY LEGAL AID APPLICANT (FORM)</b> .....	168, 339
<b>ADMINISTRATION OF ESTATES</b> .....	52

children and .....	71
<b>ADOPTION</b> .....	69
<b>ADVOCATES <i>see also</i> LEGAL PRACTITIONERS</b>	
accounts .....	129
application for accreditation by (form) .....	315–328
briefing .....	181–182
<b>AFFIDAVIT</b> .....	5
<b>AFFORDABILITY</b> .....	5
legal aid and .....	37–38
<b>AGENT LEGAL AID OFFICERS</b> .....	5
<b>ALLOCATION OF JUDICARE INSTRUCTIONS</b> .....	176–178
exclusionary list of practitioners .....	175
when legal practitioner not accepting or proceeding .....	175
<b>ALTERNATIVE DISPUTE RESOLUTION</b>	
labour tenant, ESTA or PIE matters .....	54
<b>APPEALS</b>	
against refusal of legal aid .....	94
against refusal of legal aid for proposed impact matter .....	110
against refusal to approve co-operation agreement .....	134–135
confirmation of client's election relating to leave to appeal against sentence and or conviction .....	296
copies of documents .....	183
criminal, tariffs of fees and disbursements .....	260–275
<b>APPEALS, CIVIL</b> .....	53, 189
impact of delay authorising appeal .....	189
Judicare tariffs .....	126
motivating documents and costs .....	189
reasons for decision .....	189
<b>APPEALS, CRIMINAL</b>	
accused previously not on legal aid .....	49
application for leave to appeal .....	167
application to lead further evidence on .....	188
applications finalised in terms of previous policies .....	50
bail pending .....	189

confirmation of client's election relating to leave to appeal against sentence and or conviction .....	44–45, 296
end of legal practitioner's mandate.....	189
High Court or Supreme Court of Appeal .....	46–47
immediate application for leave to appeal .....	187–188
legal aid instruction.....	49
limitation of right to legal aid .....	47
means test .....	49
means test, non-qualification.....	49
out of time application for leave to appeal or appeal.....	49
payment for .....	188
refusal of leave to appeal and petition outside time period .....	168
refusal of leave to appeal and petition within time period .....	167
right to .....	45
timeous prosecution of applications for .....	48
when legal representation made available .....	187–189
when substantial injustice if representation not made available .....	47
<b>APPEARANCE IN CRIMINAL TRIALS</b>	
tariff of fees and disbursements for criminal trials .....	260–275
<b>APPELLANT</b> .....	6
<b>APPLICABLE TO</b> .....	6
acknowledgement and undertaking by (form) .....	339
categories of .....	170–171
duty to ensure payments to Legal Aid South Africa .....	172
no right to choose legal representative .....	104
<b>APPLICATION FOR ACCREDITATION</b> .....	316
by legal firm or advocate (form) .....	316
by legal practitioner (form) .....	316
considering and processing of applications for accreditation... ..	118–122
inclusion of names on Directory of Accredited Legal practitioners .....	113, 115, 119
<b>APPLICATION FOR LEGAL AID</b> .....	151–165
children's civil cases .....	63

civil case continuations .....	86
completion and safekeeping of documents .....	154–156
co-ordinating and evaluating, civil matters .....	161–163
co-ordinating and evaluating, criminal matters .....	158–161
duties to ensure payments to Legal Aid South Africa .....	165
finalised in terms of previous policies .....	48
form to complete (LA1) .....	151, 245
formal .....	82–86
making application and means test .....	151
manner of receiving and processing legal aid applications .....	156–158
on behalf of child .....	83
personal .....	83
procedure to grant .....	153–154
processing of .....	141, 163–164
reports and evaluation from Legal Aid SA in criminal cases .....	84–86
who may receive applications .....	82–83
<b>APPROVAL OF LEGAL AID INSTRUCTIONS</b> .....	299–300
<b>ARBITRATION</b> .....	6
cost awarded against claimant .....	192
cost awarded against defendant .....	192–193
cost of arbitrator .....	193
discretion of arbitrator .....	193
dispute over legal practitioner's account .....	190–194
dispute provisions continuing to be effective during .....	194
limited cost awarded against defendant .....	192–193
making award an order of court .....	193
no civil proceedings pending arbitration .....	194
performance during dispute .....	194
place of .....	191
procedure and duration .....	193
selection of arbitrator .....	191
skills required by arbitrator .....	191
<b>ARBITRATOR see ARBITRATION</b>	
<b>ASSETS</b> .....	6

ASYLUM .....	6
ASYLUM SEEKERS .....	6, 60–61
application anywhere in South Africa .....	60
instructions prioritised .....	61
legal practitioner's mandate only for application .....	61
no residence requirement .....	60
proceedings in terms of ss. 24, 25 and 26 of Refugees Act .....	60–61
processing of application for legal aid .....	164
ATTORNEY AND CLIENT COST .....	6
AUTHORISATION OF LEGAL AID .....	86–97
after legal practitioner's report .....	138
appeal against refusal .....	90–91
approval or refusal .....	87–90
consultations between Justice Centre Executive, Regional Operations Executive and Constitutional Case Management Committee .....	89–90
delegation of responsibilities to approve instruction .....	89
discretion to approve instruction .....	89
Legal Aid South Africa's guiding principles .....	87–88
more than one practitioner per client .....	90
prospects of success on balance of probabilities in civil cases .....	88
qualification based on limited income and assets .....	88–89
refusal in criminal cases .....	88
termination of legal aid .....	91–93
verification of particulars .....	89

## B

BAIL	
appeals .....	48
applications and interlocutory applications, criminal matter tariffs .....	252, 255–256
applications for .....	48
pending criminal appeal .....	180
BALANCE OF PROBABILITIES <b>see also</b> PROSPECTS OF SUCCESS ON BALANCE OF PROBABILITIES .....	6

BENEFIT .....	7
BEST PRACTICES .....	7
BILL OF COSTS .....	7
BLACK ECONOMIC EMPOWERMENT .....	7
Judicare and .....	121–122
BLACK ECONOMIC EMPOWERMENT ADJUSTED INCOME RANKING (BEEAIR) .....	110, 168
BLACK ECONOMIC EMPOWERMENT POLICY .....	7
BLACK ECONOMIC EMPOWERMENT RANKING (BEE RANKING) .....	109
BLACK ECONOMIC EMPOWERMENT RATIO (BEE RATIO) .....	109
BREACH .....	7
BUDGETS	
of legal practitioners in civil matters .....	137–138
BURIAL DISPUTES .....	51

## C

CANDIDATE ATTORNEY .....	7
CAPITAL .....	7
CARE OF CHILDREN	
assignment of contract .....	66
CEDE .....	7
CENTRAL AUTHORITY .....	7, 61–62
CERTIFICATE <i>PROBABILIS CAUSA</i> .....	7, 154, 172
CHANGE OF NAME	
attorneys .....	186–187
CHIEF EXECUTIVE OFFICER	
discretion of .....	135
CHILDREN	
legal aid under Constitution .....	81–82
means test .....	74
other matters requiring legal representation .....	70
CHILDREN'S CIVIL CASES .....	63–70

abduction of children and Hague Convention .....	68
administration of estates.....	69
adoption .....	67–68
application for legal aid .....	64
assignment of contract and care by order of court.....	66
children in need of care and protection .....	67
<i>curator ad litem</i> and <i>curator bonis</i> applications .....	70
domestic violence .....	69
guardianship, assignment by order of court .....	66
insufficient prospect of success, enforcement and cost recovery on balance of probabilities .....	65
intervention in divorce, maintenance or custody proceedings .....	69
legal representation and .....	65
means test .....	64
money claims .....	70
parental responsibilities and rights agreements .....	65–66
paternity claims.....	66
personal injury claims .....	69
refugees .....	69
road accident fund and .....	69
substantial injustice and .....	63–64
termination, extension, suspension or restriction of parental responsibilities and rights .....	66–67
CHOICE OF LEGAL REPRESENTATIVE.....	100–102
co-accused and co-litigants .....	101
no right to choose, applicant.....	100
qualification and good standing .....	100
CIRCULARS .....	8
amending Legal Guide .....	146–147
distribution of .....	147
CIVIL APPEALS <b>see</b> APPEALS, CIVIL	
CIVIL MATTERS.....	49–54
administration of estates.....	50
applicant already receiving legal representation .....	52
authorisation of legal aid after legal practitioner's report.....	138

authorisation of legal aid and prospects of success.....	88
budgets from legal practitioners .....	137–138
checking on practitioner.....	134–135
continuations of cases .....	86
conveyancing and notarial matters.....	52
costs .....	133–144
costs against legal aid recipients.....	133
costs outweighing benefits .....	51
criteria for legal aid .....	49
<i>curator ad litem</i> or <i>curator bonis</i> , appointment of.....	53–54
damages, personal .....	50
default judgment .....	138
disbursements, tariffs of .....	278–279, 281–283, 369–370
domestic violence cases.....	53
exclusions by Legal Aid South Africa .....	51
exclusions of legal aid .....	49–52
experience level of legal practitioners, tariffs .....	271–273
experts, authorisation of .....	138
financial enquiries under s. 65 and administration order under s. 74 of Magistrates' Courts Act.....	49
increased fees .....	136
insolvency cases.....	50
insufficient prospects of success, enforcement and costs recovery .....	50–51
Judicare remuneration for services .....	264–267
Judicare tariffs .....	122
maintenance cases.....	53
non-litigious matters .....	52
opposing parties also on legal aid .....	137
personal injury claims .....	51–52
prescription of claim.....	51, 138
protection of Legal Aid South Africa's interest in costs .....	139–140
road accident fund claims.....	52
security and costs.....	140
settlements, Legal Aid South Africa's share.....	121–122

Small Claims Court cases .....	50
tariffs for impact services .....	268–269, 278
tariff of fees and disbursements in.....	138, 264
tenders, settlements and payments into court.....	139
where no substantial and identifiable material benefit.....	51
withholding payments to practitioners .....	146
under Legal Aid Act .....	82
unrealistic expectations .....	52
CLAIMANT.....	8
CLASS ACTION .....	8
impact legal services and .....	102
CO-ACCUSED	
conflict of interest between.....	101–102
instruction to legal practitioner regarding co-accused (annexure to form LA2) .....	246
one practitioner for all but not to exceed five.....	48
processing of application for legal aid .....	163
single practitioners instructed for more than one applicant.....	101, 125, 163
where no conflict of interest.....	101
CO-LITIGANTS	
conflict of interest.....	101
COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA) AWARDS	
enforcement and legal aid .....	52, 54
COMMON LAW OFFENCES .....	8
conflict of interest between.....	48
qualification for legal aid if charged in district court.....	39–42
COMPLAINTS REGARDING LEGAL AID ABUSE <b>see</b> ABUSE OF LEGAL AID	
COMPLETION AND SAFEKEEPING OF APPLICATIONS	
assistance to applicants .....	155
full and clear completion of.....	154
full personal details.....	155

handling by Justice Centre Executive .....	154
reference number .....	155
termination .....	155–156
COMPLIANCE .....	8
CONDONATION.....	8
CONFIDENTIALITY.....	8, 132–133
CONFLICT OF INTEREST .....	8, 101–102
appointment of legal practitioner to determine .....	101–102
CONSENT .....	8
CONSTITUTION	
legal aid and .....	36, 38, 42, 81, 153
CONSTITUTIONAL CASE MANAGEMENT COMMITTEE	
Judicare and .....	123–124
CONTACT DETAILS OF LEGAL AID SOUTH AFRICA–SATELLITE OFFICES .....	209–244
CONTINGENCY FEES.....	8
CONVEYANCING AND NOTARIAL MATTERS.....	52
CO-OPERATION AGREEMENTS.....	9
appeal against refusal to approve .....	129–130
approval of agreements.....	128–129
declaration of interests .....	197
duties of partners .....	130
duties of Regional Operations Executive .....	130
financial procedures .....	118–119, 197–198
forensic checks .....	196–197
management of.....	118–119
monitoring and reporting.....	197
non-compliance .....	131, 197
policy checks .....	196–197
proposals for .....	196
screening of proposals .....	196
supervision by Justice Centre legal practitioners .....	130
CO-OPERATION AGREEMENTS POLICY .....	9, 126–127



non-compliance with .....	197
CO-OPERATION PARTNERS .....	9, 126–130
failure by non-governmental organisations to co-operate .....	128
policy on .....	125–129
procedures .....	196–198
provisions governing .....	126
salaries .....	128
CO-ORDINATING AND EVALUATING APPLICATIONS, CIVIL MATTERS .....	161–163
acknowledgement and undertaking form .....	161
liability for costs .....	162
merit report .....	162–163
merit report on civil case continuation .....	163–164
CO-ORDINATING AND EVALUATING APPLICATIONS, CRIMINAL MATTERS .....	158–161
application for leave to appeal .....	160
court ordering recovery of costs .....	158
merit reports to court .....	158
recovery of contributions .....	159
refusal of leave to appeal and petition outside time .....	160–161
refusal of leave to appeal and petition within time-period .....	160
responsibility for high courts .....	159
responsibility for magistrates' courts .....	159
COPIES OF RECORDS AND DOCUMENTS .....	175
appeal records after leave to appeal .....	175
High Court cases .....	174
Magistrates' Court cases .....	174
CORRESPONDENCE AND POSTAGE .....	174
CORRESPONDENTS .....	9
briefing of by legal practitioner .....	155–156
COSTS <b>see</b> also TARIFFS	
all-inclusive fees .....	187
amounts awarded against unsuccessful litigants .....	188
arbitrator .....	202

civil appeals .....	286
civil cases .....	149–152
contribution to in divorce and maintenance matters .....	58
contribution to Legal Aid South Africa .....	138–141
from date of instruction .....	197
high cost and high risk matters .....	84
Legal Aid SA's rights relating to .....	133–134
legal aid to more than one litigant .....	198
limited cost awarded against defendant in arbitration matter ...	202–203
limiting of costs .....	101–102
medical .....	142
monitoring of .....	102
not recoverable in Judicare System .....	195
of arbitration awarded against claimant .....	202
of arbitration awarded against defendant .....	202–203
outweighing benefits .....	53
recoverable in Judicare System .....	194–195
recovery, insufficient and legal aid .....	52–53, 67
recovery of, Judicare System .....	111
recovery of, Legal Aid South Africa .....	186
recovery of ordered by Court .....	165
restrictions on .....	141
security and .....	145
tracing .....	198
travelling and subsistence .....	198
CRIMINAL APPEALS <b>see</b> APPEALS, CRIMINAL CRIMINAL MATTERS	
account in (form) .....	302
appeals .....	260
appearance, tariff of fees and disbursements .....	260
applicant already receiving legal representation .....	44
bail applications and interlocutory applications, tariff of fees and disbursements .....	265
balance of probabilities and legal aid .....	44
co-accused .....	50



co-ordinating and evaluating applications, criminal matters.....	164–168
disbursements .....	260, 269–270
entitlement to legal representation .....	37–38
HIV testing, compulsory and legal aid .....	44
increased fees .....	141
increased trial day fees.....	264, 271
Judicare tariffs .....	144
legal aid in terms of s. 3B of Legal Aid Act.....	50
perusal of document or record, criminal matters .....	265
preparation, tariff of fees and disbursements .....	271
qualification for legal aid if charged in High Court or Regional division of Magistrate's Court.....	75
qualification for legal aid if charged in Regional Court .....	75
refusal of legal aid .....	91
reports and evaluations from Legal Board ordered by courts .....	86–89
tariff of fees and disbursements .....	260
transcript of evidence, criminal matters .....	265
CRITERIA .....	9
<i>CURATOR BONIS AND CURATOR AD LITEM</i> .....	9
appointment of .....	55–56
appointment without meeting requirements .....	56
children, applications .....	72
completion and signing of forms.....	56, 163
Regional Operations Executive to decide on appointment .....	55
<b>CURATORS see also CURATOR BONIS AND CURATOR AD LITEM</b>	
appointment of (form) .....	314
CUSTODY OF CHILDREN.....	57–58

## D

DAMAGES.....	9
legal practitioners liable for.....	127
personal .....	52
DECEASED ESTATES	
money or property from and means test .....	81
DEEMED .....	9

DEFAULT JUDGMENT .....	9, 143
DEFENDANT .....	10
DELIVERY OF LEGAL AID .....	175–189
allocation of instructions .....	176–179
executing instructions, Legal Aid South Africa .....	179–180
executing instructions, legal practitioner .....	180–183
DELIVERY SYSTEM FOR LEGAL AID.....	103–110
choice of legal representative.....	104–106
development of .....	103–104
Judicare approach .....	103
Justice Centre's and co-operation agreements.....	103
mixed system.....	104
reporting on executing instructions.....	186–187
salaried practitioners .....	103
DIRECTION FOR LEGAL AID BY COURT IN CRIMINAL MATTERS.....	215
report in terms of s. 3B (2) of Legal Aid Act, No. 22 of 1969.....	215
DIRECTORY OF ACCREDITED LEGAL PRACTITIONERS	
compiling of database.....	133
inclusion of names on.....	115
procedure for placing practitioner on exclusionary list .....	122
withdrawal from Directory of Accredited Legal Practitioners....	122–124
DISBURSEMENTS.....	10
increase and Judicare .....	126–127
tariffs in civil matters .....	276–282
tariffs in criminal trials .....	260–274
DISCLOSURE OF INFORMATION	
circumstances where possible.....	137–138
DISCRETION.....	10
Chief Executive Officer's .....	140
delegation of National Operations Executive's authority .....	140
interim fees .....	139
Legal Aid South Africa and .....	138–140
limited increased fees.....	139

National Operations Executive's.....	139–140
on reasonable grounds.....	140
restrictions on costs and.....	141
suspension of services and.....	141
withdrawal of legal aid and.....	139
<b>DISPUTES</b>	
declaration of (form).....	305
details of, account (form).....	306
over legal practitioner's accounts.....	129, 200–204
over payments <b>see</b> PAYMENTS	
<b>DISSOLUTION</b>	
of partnership.....	196–197
<b>DISTRICT COURT</b> .....	10
common law offences and legal aid.....	42–43
increased penal jurisdiction and legal aid.....	41
qualification for legal aid if charged in.....	41–44
statutory offences and legal aid.....	43
substantial injustice if unrepresented and legal aid.....	43–44
<b>DIVORCE AND MAINTENANCE</b> .....	57–58
contribution to costs.....	58
custody or access to children.....	57–58
divorce court.....	57
extending original instruction.....	58
high court.....	57
limits on divorce assistance.....	57
reports.....	187
when legal representation required for children.....	71
<b>DIVORCE COURTS</b>	
divorces in.....	57
<i>DOMICILIUM CITANDI ET EXECUTANDI</i> .....	10
<b>DOMESTIC VIOLENCE CASES</b> .....	55
<b>DUE DILIGENCE PROCEDURES</b> .....	10

**E**

ELECTRONIC INVOICING.....	206
ENFORCEMENT.....	10
ENSHRINED.....	10
ENTITLED TO.....	10
EQUALITY BEFORE LAW.....	91
EQUALITY COURTS.....	10, 64–65
fees and disbursements.....	64–65
ETHICS HOTLINE.....	99
EVALUATION OF JUDICARE INSTRUCTIONS.....	176–178
EVIDENCE ON COMMISSION OUTSIDE SOUTH AFRICA.....	39–40
EVICTON.....	60
EXCEPTION.....	10
EXCLUSIONARY LIST OF PRACTITIONERS WHO MAY NOT BE INSTRUCTED.....	11, 121–122
Judicare and.....	121–122
procedure for placing practitioner on exclusionary list.....	175
status of legal practitioner on Directory excluded.....	119, 122–124
updated list submitted quarterly to Legal Services Technical Committee.....	124
<b>EXECUTING INSTRUCTIONS</b>	
briefing of correspondent or advocate.....	181–182
certificate <i>probabilis causa</i> .....	181
copies of criminal dockets.....	180
copies of records and documents.....	183–184
correspondence and postage.....	183
duties of legal practitioner when accepting Judicare instructions.....	180–181
evaluation of merits and initial steps.....	181
Legal Aid South Africa forms and copies of guide.....	179–180
notice that legal aid is rendered.....	182–183
reporting on.....	186–187
scope of instructions.....	182

signing and evaluating documents, Legal Aid South Africa .....	179
EXEMPTION .....	11
EXPERTS	
form for witnesses .....	299
in civil matters .....	281
non-litigious services .....	58–59
EXPRESS .....	11
EXTENSION OF LEGAL PRACTITIONER'S BRIEF .....	141–142
EXTENSION OF SECURITY OF TENURE ACT (ESTA)....	54, 56, 60–62
alternative dispute resolution .....	61–62
extension of mandate of legal practitioner .....	63
payment of interim fees .....	62
rescission of judgment .....	61

## F

FARM LABOURERS <b>see also</b> LABOUR TENANTS .....	60–61
discretion to appoint outside attorney .....	61
granting of aid when unclear whether labour tenant or .....	61
FEEs AND DISBURSEMENTS <b>see also</b> TARIFFS	
all-inclusive fees .....	198
full account to be rendered .....	194
increase .....	139, 141
increase (limited) .....	139
increase and Judicare .....	126–127
labour tenants, PIE and ESTA matters, payment of interim.....	60–62
payment of interim .....	191
tariff of fees and disbursements in civil matters .....	276–291
tariff of fees and disbursements in criminal matters .....	260–275
where more than one litigant .....	129
FINALISATION AND CLOSING OF FILES .....	186
FINANCIAL ENQUIRIES	
under s. 65 and administration order under s. 74 of Magistrates' Courts Act and legal aid.....	51
FORENSIC INVESTIGATION .....	147

## FORMS

acceptance of instruction and undertaking <i>probabilis causa</i> ....	246–247
acknowledgement and undertaking by legal aid applicant (form) .....	161, 165, 327
account in criminal trial .....	287–288
accounts enquiry.....	289
application for accreditation by legal firm or advocate .....	315
application for accreditation by legal practitioner .....	316
application for legal aid (LA1) .....	245
confirmation of client's election relating to leave to appeal against sentence and or conviction .....	46, 282–283
curators, appointment of .....	301
declaration of dispute .....	292
details of dispute regarding account (form) .....	293–294
expert witnesses .....	286
instruction to legal practitioner (LA2) .....	246–247
instruction to legal practitioner regarding co-accused (annexure to LA2) .....	328
means test (LA13) .....	280
practitioner's checklist when submitting accounts.....	290–291
refusal of legal aid .....	298, 326
refusal of legal aid assistance by accused .....	326
report in terms of s. 3B (2) of Legal Aid Act, No. 22 of 1969....	299–300
when exceeding means test in constitutional matters (LA13C) .....	281

FRAUD **see** ABUSE OF LEGAL AID

FULFILLED .....	11
-----------------	----

## G

GOOD STANDING .....	11
GRANTING OF LEGAL AID <b>see</b> AUTHORISATION OF LEGAL AID	
GRANTS	
means test .....	79
GUARDIANSHIP	
assignment by order of court .....	66

**H**

HAGUE CONVENTION CASES.....	61–62
abduction of children .....	68
processing of application for legal aid .....	164
rules for .....	62
tariffs .....	62
HIGH COURT .....	
divorces in.....	55
qualification for legal aid if charged in .....	39
responsibility for co-ordination of legal representation in .....	159
HIV TESTING .....	
compulsory and legal representation .....	42–43
HOUSEHOLDS.....	11
means test .....	75

**I**

IMPACT SERVICES.....	11
appeal against refusal .....	106
approval of matter.....	105–106
by whom can be delivered.....	103
class action.....	102
improvement of lives of group or significant segment of group.....	103
legal precedent .....	102
level of resources devoted to.....	103
strategy for.....	103
submission of proposals .....	103–105
tariff of fees for in civil matters.....	106, 248–263
IMPACT SERVICES MATTER .....	11
approval of .....	105–106
IMPACT SERVICES POLICY.....	11, 102–105
INDIGENCE.....	11
means test and .....	35–36, 72–77
INDIGENT PERSON .....	12
INSOLVENCY CASES .....	50

INSTITUTION OF ACTION .....	12
INSTRUCTIONS TO LEGAL PRACTITIONER .....	
acceptance of instruction and undertaking <i>probabilis causa</i> .....	247
appeal .....	47
co-accused (annexure to LA2) .....	328
form to complete (LA2) .....	246–247
National Operations Executive's discretion, exceptional instructions and restrictions .....	169–170
INTERDICT.....	12
INTERIM .....	12
INTERLOCUTORY APPLICATION .....	12

**J**

JUDICARE.....	12, 99, 107–125, 304
accounts, rendering of .....	181–182
accreditation .....	107–108
accreditation rules .....	110–117
advocates' accounts .....	112
assessment and taxation of accounts .....	184–186
black economic empowerment .....	106, 121–122
Constitutional Case Management Committee.....	123
cost not recoverable .....	185
cost recoverable .....	184–185
damages, legal practitioner's liability .....	123–124
disputes over legal practitioner's accounts.....	125
exclusion of private clients.....	143
exclusionary list of practitioners.....	117–118
fees where more than one litigant .....	125
format of accounts and information required.....	183
increased fees and disbursements.....	122–123
Judicare instructions, evaluation and allocation of .....	167–169
payment of interim fees and disbursement .....	181
payment of legal practitioner's account if in order .....	124
principles.....	107
procedures.....	181–195

recovery of cost .....	185
relationship between Legal Aid South Africa and subcontractors of legal practitioners .....	186–187
remuneration for services in civil matters, tariffs .....	271–279
reporting problems .....	124
requirements for payment .....	182–183
submission and enquiries .....	183–184
tariffs payable .....	122–123
taxation of accounts .....	186
JUDICARE ACCREDITATION PROGRAM .....	12
accreditation .....	109–110
objectives of .....	109
JUDICARE ACCREDITATION SYSTEM .....	107, 164
JUDICARE INSTRUCTIONS .....	110–111, 107
evaluation and allocation .....	167–169
JUSTICE CENTRE EXECUTIVE	
abuse of legal aid and .....	142
discretion to authorise legal aid .....	87
handling of applications .....	154
means test and discretion of .....	79
payments into Court and notification of .....	139
report by when granting legal aid .....	154
to be satisfied on balance of probabilities in criminal matters .....	42
verification of particulars of applicant .....	89
JUSTICE CENTRES .....	12, 25, 26–27, 99
governed by .....	31
Justice Centres with High Court unit .....	27
JUSTICIABLE .....	12

## L

LABOUR CASES .....	54
processing of application for legal aid .....	163–164
LABOUR TENANTS .....	51, 57–59
alternative dispute resolution .....	59–60
definition of .....	58

discretion to appoint outside attorney .....	59
granting of aid when unclear whether farm labourer or .....	59
legal practitioner, extension of mandate .....	59
payment of interim fees .....	60
rescission of judgment .....	59
LAND RESTITUTION .....	57
guideline for aid .....	57–58
LEAVE TO APPEAL <b>see also</b> APPEALS; APPEALS, CIVIL AND APPEALS, CRIMINAL .....	12
LEGAL AID	
administration of .....	27
administrative tribunals .....	53
applications, manner of receiving and processing .....	156–158
assistance .....	54
availability .....	31
children .....	81–82
civil cases under Legal Aid Act .....	82
contribution towards costs .....	121–122
criminal trials under s. 35(3)(g) of Constitution and s. 73 of Criminal Procedure Act .....	38–43
delivery system .....	99–106
direction for by court in criminal matters .....	187–188
how made available .....	35–36
not available for any notarial or conveyancing matters .....	52
partially subsidized where applicant exceeds means test .....	76–77
refusal, form to be completed .....	264, 309
report in terms of s. 3B (2) of Legal Aid Act, No. 22 of 1969 .....	265–266
rights in relation to costs .....	133–134
restriction on number of civil matters .....	51
residence of applicant and seat of court to more than one litigant .....	171
under Constitution .....	81–82
under Legal Aid Act .....	82
when state must provide legal representation .....	35–36
who entitled to under Constitution .....	36
LEGAL AID ACT, NO. 22 OF 1969 .....	185–193

## LEGAL AID ACCREDITATION AGREEMENT

for private practitioners ..... 277–288

## LEGAL AID SOUTH AFRICA

accreditation criteria ..... 302  
 benefit to ..... 284–285  
 constitution of ..... 204  
 contact details **see** CONTACT DETAILS  
 contribution toward costs ..... 121–122  
 delegation of powers ..... 135  
 duties relating to prescription of accounts ..... 194–195  
 duty to pay on termination ..... 96  
 electronic invoicing ..... 195  
 establishment of ..... 23, 197  
 finances of ..... 207  
 general discretionary powers of CEO ..... 135  
 governed by ..... 24  
 impact services strategy ..... 102  
 interim fees ..... 134  
 Justice Centres ..... 25, 28–29  
 legal service address ..... 24  
 meetings of ..... 206  
 mission ..... 30  
 objectives and powers ..... 23  
 officers and agents ..... 206  
 organisational structure ..... 24–29  
 outcomes ..... 30  
 place of business ..... 24  
 principles of authorisation of legal aid ..... 87–88  
 protection of interest in costs ..... 144  
 provision ..... 35  
 quorums and procedure ..... 206  
 recovery of costs ..... 206–207  
 regional offices ..... 24–25, 27  
 relationship with subcontractors of attorneys ..... 186  
 right to assessment and taxation ..... 186

rights relating to costs ..... 127  
 satellite offices ..... 25, 243–246  
 self-invoicing ..... 205  
 settlements, share of ..... 150–151  
 termination of legal aid ..... 95  
 LEGAL AID GUIDE .....  
 amendments to ..... 152–153  
 copies of ..... 179–180  
 LEGAL AID POLICY ..... 37  
 LEGAL AID RECIPIENT ..... 13  
 cost orders against ..... 149  
 termination of legal aid based on conduct or lack of  
 progress ..... 95–96  
 LEGAL AND APPLICANT ..... 12  
 LEGAL CAPACITY ..... 13  
 LEGAL FIRM  
 application for accreditation by (form) ..... 315  
 LEGAL PERSONALITY ..... 13  
 LEGAL PRACTITIONERS **see also** ACCREDITATION ..... 13  
 abuse of legal aid, duty and onus ..... 146  
 acceptance of instruction and undertaking *probabilis causa* ..... 181  
 accreditation agreement for private practitioners ..... 316–317  
 advocate's accounts to be submitted, Judicare system ..... 192  
 application for accreditation by (form) ..... 315  
 asylum seekers ..... 6, 39, 62–64  
 budgets in civil matters ..... 142–143  
 checklist when submitting accounts (form) ..... 304  
 complaints relating to legal aid abuse ..... 146–147  
 complete account on services and disbursement, Judicare  
 system ..... 191  
 conflict of interest ..... 207–208  
 damages, liability for ..... 127  
 directory of accreditation ..... 111  
 disputes over accounts ..... 129, 200



dissolution and change of name.....	196/197
duties relating to legal aid in civil cases under Legal Aid Act.....	85
duties relating to prescription of accounts .....	204
duties relating to recovery of costs .....	88–89
duties when accepting Judicare instructions .....	180–183
duty not to proceed, when .....	98
duty to ensure payments to Legal Aid South Africa .....	172
experience level of and civil tariffs.....	283–285
extension of brief .....	141–142
instruction to, Form LA2 .....	258
instruction to regarding co-accused (annexure to LA2).....	340
mandate, extension of .....	61
monitoring of performance.....	151–152, 122–123
payment of account in Judicare matters.....	205
protection of Legal Board's interest in costs.....	323
receipt of monies after legal aid instruction .....	148
report on outcome when rendering account in Judicare system.....	191–192
reporting in Judicare matters .....	127–128
single practitioner for more than one applicant .....	105
subcontractors of and relationship with Legal Aid South Africa .....	196
termination of legal aid and .....	95
withdrawal and exclusion from directory .....	121–124
withholding of payments in civil matters .....	200
LEGAL PRECEDENT .....	13
impact legal services and .....	106
LEGAL REPRESENTATION	
applicant already receiving.....	44
applicant entitled to other State funded representation.....	54
children and .....	67
choice of <b>see also</b> CHOICE OF LEGAL REPRESENTATIVE.....	104
compulsory HIV testing and.....	44–45
criminal trials and.....	38
LIABILITIES .....	13

LIABLE.....	13
LITIGANT.....	13
indigent only granted aid on prospect of success .....	85
LITIGATION.....	13

## M

MAGISTERIAL DISTRICTS	
justice centres and.....	329
MAGISTRATES' COURTS	
responsibility for co-ordination of legal representation .....	166
MAINTENANCE AND DOMESTIC VIOLENCE CASES .....	55
contribution to costs.....	58
custody or access to children .....	57–58
divorce court .....	57
extending original instruction .....	58
high court.....	57
limits on divorce assistance.....	57
when legal representation required for children .....	67–72
MAINTENANCE AND GRANTS	
means test .....	75
MATERIAL LOSS .....	13
MATRIMONIAL MATTERS	
processing of application for legal aid .....	157–162
MATTER .....	13
MATTER REFERENCE.....	13
MEANS TEST.....	14
application for legal aid and children .....	66–73
children's civil cases .....	65
criminal appeals.....	38, 45–49
criminal appeals, non-qualification .....	49
discretion of Justice Centre Executive and Regional Operations	
Executive .....	82
form to complete (LA13) .....	292



form to complete when exceeding test in constitutional matters (LA13C).....	293
groups or classes of applicants .....	79
households .....	78
income or assets of parents, spouses or other relatives .....	80
litigation between spouses .....	80
maintenance and grants .....	81
net assets .....	78–79
partially subsidised legal aid.....	79–80
property and money from deceased estate .....	81
single applicants .....	77
state grantees and pensioners .....	77
steps required for qualification for legal aid .....	75–77
trusts, assets from .....	81
MEDICAL COSTS .....	142
MEDICO-LEGAL SERVICES .....	185
MENTAL HEALTH CARE ACT USERS .....	72–73
MERIT REPORT <b>see also</b> REPORTING.....	14
MONEY CLAIMS	
children's civil cases .....	65

## N

NATIONAL OPERATIONS EXECUTIVE	
delegation of authority .....	140
discretion, exceptional instructions and restrictions .....	178–179
NEGOTIATIONS	
prior, excluded from legal aid tariffs.....	197
NET ASSETS .....	14
means test .....	75
NET MONTHLY INCOME .....	14
NON-COMPLIANCE.....	14
NON-GOVERNMENTAL ORGANISATIONS	
co-operation agreements and.....	131–135
failure to meet contractual obligations .....	133

NON-LITIGIOUS.....	14, 52–53
Judicare tariffs .....	122
legal aid is not available for any, matter .....	51
special or expert advice .....	57
when, legal aid is allowed.....	56–57
NOTARIAL MATTERS.....	52

## O

OBLIGATIONS .....	14
ON COMMISSION .....	14
ONUS.....	14
OPPOSING PARTIES	
when also on legal aid .....	137
ORAL ARGUMENT .....	14

## P

PARALEGAL .....	15
PARENTAL RESPONSIBILITIES AND RIGHTS	
agreement.....	65–66
termination, extension, suspension or restriction of .....	66–67
PARENTS	
income or assets of and means test.....	77–78
PARTIALLY SUBSIDISED LEGAL AID.....	76–77
PARTY .....	15
PARTY AND PARTY COSTS.....	15
PATERNITY CLAIMS .....	66
PAYMENTS	
dispute of cheque payment .....	189
dispute of electronic payment.....	189
dispute of payments differing by more than 5% .....	189–190
dispute of set-off payment .....	189
electronic invoicing .....	195
in full and final settlement .....	189
into court and notification of Justice Centre Executive.....	139

method of payments .....	188–189
of interim fees in labour tenants, PIE or ESTA matters.....	58
to subcontractors .....	186
withholding of legal practitioners' payments.....	190
PENAL JURISDICTION.....	15
PENDING .....	15
PENSIONERS .....	74
PERSON RECEIVING LEGAL AID APPLICATION .....	15
PERSONAL INJURY CLAIMS.....	52, 69
PETITION .....	15
refusal of leave to appeal and petition outside time period .....	160–161
refusal of leave to appeal and petition within time period .....	160
PHYSICALLY RESIDENT .....	15
PLAINTIFF .....	15
PLEA.....	15
POSTPONEMENTS	
avoiding of .....	142–143
PREJUDICE .....	16
PREPARATION	
tariff of fees and disbursements for in criminal trials .....	250–252, 259
PRESCRIPTION .....	16, 138
duties of Legal Aid South Africa and legal practitioners .....	194–195
effect of arbitration proceedings relating to accounts .....	194
of accounts .....	194
of claim .....	51
PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL	
OCCUPATION OF LAND ACT (PIE).....	52, 58–60
alternative dispute resolution.....	59–60
extension of mandate of legal practitioner.....	59
payment of interim fees .....	60
rescission of judgment.....	59
PRIMA FACIE .....	15
PRIVACY .....	132–133

PRIVILEGE .....	16, 137, 326
<i>PROBABILIS CAUSA</i>	
acceptance of instruction and undertaking of .....	259
PROCEDURE TO GRANT LEGAL AID .....	161–162
ability to afford legal representation .....	147
availability under Constitution or Legal Aid Act .....	157
consequences of court order .....	162
forwarding of court orders.....	162
indigency of applicant .....	161
report by Justice Centre Executive.....	161
review or appeal on court order.....	162
substantial injustice.....	161
PROCESSING OF LEGAL AID APPLICATIONS	
electronic capturing .....	160
guidelines for .....	161
manner of receiving and processing legal aid	
applications.....	158–164
registering .....	160
verification of details .....	160
PROOF OF QUALIFICATION	
documentary evidence .....	82
factors affecting qualification .....	83
high cost and risk matters.....	84
person without income.....	83
proof of income and assets .....	82–83
written disclosure of assets .....	83
PROSPECTS OF SUCCESS .....	85
authorisation of civil cases.....	89, 92
civil cases under Legal Aid Act.....	89
criminal matters and .....	86
insufficient and children's and civil cases.....	67
when legal aid made available .....	37
PUPIL ADVOCATE.....	16

**Q**

QUALIFICATION FOR LEGAL AID .....	75–83
based on limited income and assets .....	92–93
formal application for .....	85
indigence and means test .....	75
means test, steps for determining .....	75
proof of .....	82
QUANTITATIVE JURISDICTION .....	16
QUANTUM .....	16

**R**

REFUGEES	
children and legal aid .....	71
REFUSAL	
against refusal to approve co-operation agreement .....	134
REFUSAL OF LEGAL AID	
appeal against .....	94–95
for impact matter .....	106
form .....	311
in criminal cases .....	92
limitation of appeals .....	95
reasons for refusal .....	110
REGIONAL COURT .....	41
qualification for legal aid if charged in .....	41
REGIONAL OPERATIONS EXECUTIVE	
discretion to authorise legal aid .....	76
RELATIVES	
income or assets of and means test .....	80
REMEDY .....	16
REPORTING	
accounts .....	187
closing report or reporting on interim order .....	187
divorce reports .....	187
executing instructions and .....	186

Judicare matters .....	149
merit report under s. 3B of Legal Aid Act, criminal matters .....	164
merit report in civil cases and civil case continuations .....	169–170
progress reports .....	186–187
REPORTS AND EVALUATIONS FROM LEGAL AID SOUTH AFRICA	
ORDERED BY COURTS .....	86–89
approach by court .....	86
duties of private legal practitioner .....	88–89
limiting number of reports .....	87–88
recovery of costs ordered by court .....	88
RESCISSION .....	16
of judgment, when judgment already granted against labour tenant, ESTA or PIE occupier .....	60
RESIDENCE	
evidence on commission outside South Africa .....	39–40
exceptions to residence, citizenship requirements .....	39
factual enquiry into .....	39
requirements for asylum seekers .....	62
requirements relating to .....	39
RESPONDENT .....	16
RESTITUTION OF LAND RIGHTS ACT NO. 22 OF 1994 .....	59
REVIEW .....	17
ROAD ACCIDENT CLAIMS .....	54
RULE OF LAW .....	17

**S**

SALARIED LEGAL PRACITIONER .....	17
SALARIES	
co-operation agreements .....	131–133
SECURITY .....	17
exceptions from giving .....	145
no funds for .....	145
payment of before granting legal aid .....	145
under Magistrates' Court Act Rules .....	145

SELF-INVOICING.....	205
SENIOR COUNSEL .....	102
SERVING DOCUMENTS .....	184
SET OFF.....	17
SETTLEMENTS AND TENDERS.....	97, 101, 144
in civil matters.....	139, 144
Legal Aid South Africa's costs as part of.....	144
Legal Aid South Africa's share of .....	150–151
notification of Justice Centre Executive.....	159
SINGLE APPLICANTS .....	77
SMALL CLAIMS COURT .....	52
SPECIALIST OR EXPERT ADVICE <b>see also</b> EXPERTS	
non-litigious services and .....	58–59
SPOUSES .....	17, 80
income or assets of and means test.....	77–80
litigation between and legal aid .....	80
STAKEHOLDERS.....	17
STAMP DUTY.....	164
STANDARD OPERATING PROCEDURES .....	17
STATE GRANTEES .....	81
STATUTE LAW.....	17
STATUTORY .....	17
STATUTORY BODY.....	18
STATUTORY OFFENCES .....	18
qualification for legal aid if charged in district court and.....	43
SUBSIDISED .....	18
SUBSTANTIAL INJUSTICE .....	18
children's civil cases and .....	65
criminal appeals.....	45, 47, 187
legal aid .....	43, 161
legal aid and charges in district court .....	41–43
SUPERIOR COURT .....	18

SUSPENSION OF LEGAL AID .....	97, 135
SYSTEMIC ISSUES .....	18

## T

## TARIFFS

appearance in criminal trials.....	260–262, 271
bail applications and interlocutory applications in criminal matters .....	265, 271–272
classification of services, civil matters.....	276
civil matters.....	141, 144, 276
criminal appeals.....	126, 266–269
disbursements in civil matters .....	276–282
disbursements in criminal matters .....	260–270
equality court matters .....	64–65
experience level of legal practitioners, civil matters .....	283–285
fees and disbursements in civil matters .....	276–282
fees and disbursements in criminal matters .....	260–270
Hague Convention cases .....	63–64, 171
impact services, civil matters.....	11, 109–110, 141, 279–281, 290
increased trial day fees.....	264–265, 271
items excluded from legal aid .....	197
Judicare remuneration for services .....	264
perusal of docket and/or record, criminal matters .....	265
preparation in criminal trials.....	250–252, 259
transcript of evidence, criminal matters .....	265

## TAXATION

of accounts, Judicare system .....	194
TENDERS AND SETTLEMENTS.....	101
in civil matters.....	141
Legal Aid South Africa costs as part of .....	144
notification of Justice Centre Executive.....	145
TERMINATION OF LEGAL AID .....	95–100, 164–166
abuse of legal aid .....	98–100
accused failing to appear.....	97
because of conduct of legal aid recipient .....	95–96

by Legal Aid South Africa .....	95
categories of .....	95–97
dismissal or withdrawal of practitioner.....	97
lack of progress by legal practitioner or recipient .....	93–94, 97
limitation of costs .....	101
monitoring of continued qualification .....	101
monitoring of costs .....	102
tenders and settlements .....	101
when legal practitioner's duty not to proceed .....	98
withdrawal or termination of mandate of legal practitioner.....	97
THIRD PARTY .....	18
TRACING AGENTS AND OTHER CONSULTANTS .....	185
TRACING COSTS .....	198
TRANSCRIPT OF EVIDENCE	
tariffs of fees or disbursements in criminal matters .....	260–275
TRAVELLING AND SUBSISTENCE .....	198
TRUSTS	
assets from and means test .....	82
<b>U</b>	
UNENCUMBERED .....	18
UNREALISTIC EXPECTATIONS .....	54
URGENT DECISIONS.....	84
<b>V</b>	
VEXATIOUS .....	18
VULNERABLE .....	18
<b>W</b>	
WAIVER.....	19
WITHOUT PREJUDICE.....	19