27 June 2011

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

FOR INFORMATION
Judiciary:  The Chief Justice
           The President of the Supreme Court of Appeal
Judges President: South Gauteng High Court
                North Gauteng High Court
                North West High Court
                Limpopo High Court
                Free State High Court
                Northern Cape High Court
                Western Cape High Court
                Eastern Cape High Court, Grahamstown
                Eastern Cape High Court, Port Elizabeth
                Eastern Cape High Court, Mthatha
                Eastern Cape High Court, Bhisho
                KwaZulu-Natal High Court, Pietermaritzburg
                KwaZulu-Natal High Court, Durban
                Land Claims Court
                Labour Appeal Court
                Labour Court

The Magistrates Commission
Legal Practitioners: The Law Society of the Northern Provinces
                    The Law Society of the Cape
                    The Law Society of the Free State
                    The Law Society of KwaZulu-Natal
                    The Law Society of South Africa
                    National Association of Democratic Lawyers
                    Black Lawyers Association
                    General Council of the Bar of South Africa
                    Cape Bar Council
                    Eastern Cape Society of Advocates (Grahamstown)

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

Prosecution: The National Director of Public Prosecutions

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

Dept of Justice & Constitutional Development: Director-General
Registrar: Constitutional Court
Supreme Court of Appeal
South Gauteng High Court
North Gauteng High Court
North West High Court
Limpopo High Court
Free State High Court
Northern Cape High Court
Western Cape High Court
Eastern Cape HC, Grahamstown
Eastern Cape HC, Port Elizabeth
Eastern Cape HC, Mthatha
Eastern Cape HC, Bhisho
Dear Sir/Madam

CIRCULAR NUMBER 1 of 2011
AMENDMENTS TO THE LEGAL AID GUIDE 2009

Notice is hereby given that the board of Legal Aid South Africa has approved the following amendments to the 2009 Legal Aid Guide (11th edition). The contributions scheme set out below will come into operation on 1 July 2011. The striking through of words indicates the deletion of such words and the underlining of words indicates the insertion of new text.

1. CHAPTER 5

1.1 PARAGRAPH 5.1.1 page 71

5.1.1 MEANS TEST ENQUIRY — 2 STEPS

✓ These guidelines set out 2 steps for determining qualification for legal aid through the means test in criminal or civil matters, and a 3rd step. In criminal cases where the means test is exceeded by the applicant, then legal aid should be refused and the legal aid applicant should be advised of the right to appeal in accordance with Annexure L. A legal aid applicant must qualify both in respect of gross monthly income and net assets to pass the means test.

See Annexure L on page 264.

First:

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

See Annexure C on page 220.

- If the applicant is unemployed and has no income or assets, or receives only a State grant or old age pension from the South African Social Security Agency (SASSA), the
enquiry is completed.

- If the applicant is employed, or has an income and/or assets, then the process continues to the next step.

**Second:**

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

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

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

⇒ See Annexure G1 & G2 on page 251.

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

⇒ See 5.1.14 and 5.1.15 on page 77.

⇒ See Annexure L on page 264

**Third Appeal to CCMC:**

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

  * The income, expenditure, assets and liabilities of the legal aid applicant.
  * The nature and number of the charges involved.
* The number of accused involved.

* The court in which the proceedings are to take place.

* The anticipated duration and anticipated cost of the proceedings.

* Any factors relating to the complexity of the case and the personal circumstances of the accused reported to the CCMC.

- Under section 3(d) of the Act read with 5.1.8, the CCMC may fix conditions for the payment of a contribution to Legal Aid SA by the legal aid applicant, which should, where possible, be made an order of court.”

1.2 PARAGRAPH 5.1.8 page 75

5.1.8 PARTIALLY SUBSIDISED LEGAL AID

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

- Substantial injustice would result if the applicant is unable to afford the cost of his/her legal representation; and

- A person with authority to authorise legal aid exercises his/her/its discretion in favour of the applicant, despite the applicant exceeding the means test (see paragraphs 5.1.1, 5.1.14, 5.1.15 and 10.2.2(a)).

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

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

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

(a) An applicant who exceeds the means test is not as of right entitled to legal aid merely because he/she is willing to pay the applicable cost recovery in monthly contributions. Each case has to be assessed by CCMC on its own merits according to:

- The criteria relevant to determine whether the applicant will suffer substantial injustice if legal representation is not provided at state expense;

- Whether the applicant will be able to afford the cost of his/her own legal representation;
o Whether the applicant is able to adjust his/her standard of living to be able to afford the cost of his/her own legal representation.

(b) The contribution amount must be paid monthly on advance until the cost recovery amount is paid in full, cessation of the trial or if the accused is convicted and sentenced to direct imprisonment, where after no further payment will become due and payable.

(c) Where an applicant’s circumstances change subsequent to the granting of legal aid subject to the payment of a contribution, then the applicant may motivate to CCMC for an amendment to the contribution amount.

(d) If the accused fails to pay any contribution due, then legal aid will terminate and the assigned legal practitioner must advise the accused and the relevant judicial officer of the termination of legal aid either in writing or in court at the next appearance.

(e) If the assigned legal practitioner is instructed on judicare, then the judicare practitioner must take instruction from the client as to whether the client will privately fund the practitioner or terminates the practitioner’s mandate.

(f) Where a court in accordance with section 38 of the Act, read with 5.5.3(a), orders the provision of legal aid where an applicant exceeds the means test, then such court order must provide for a contribution in accordance with the provisions of this policy.

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

(g) In criminal matters the cost recovery as per Table A and monthly contributions guidelines as per Table B hereto, subject to the discretion of CCMC, may be applied to any application for legal aid where legal aid is granted to any person whose monthly income or net assets exceeds the means test:
<table>
<thead>
<tr>
<th>Gross Monthly Income less Income Tax</th>
<th>Cost Recovery Percentage of Anticipated Cost</th>
<th>Cost Recovery Amount Taken at Anticipated Cost with regard to the Duration of the Matter</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DC</td>
<td>RC</td>
</tr>
<tr>
<td></td>
<td>1 Trial Day</td>
<td>2-3 Trial Days</td>
</tr>
<tr>
<td>Up to R 8 1 000</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>R 8,001 - R 12,500</td>
<td>35%</td>
<td>25%</td>
</tr>
<tr>
<td>R 12,501 - R 20,000</td>
<td>75%</td>
<td>40%</td>
</tr>
<tr>
<td>R 20,001 - R 30,000</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>More than R 30,000</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gross Monthly Income less Income Tax</th>
<th>Cost Recovery Percentage of Anticipated Cost</th>
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</tr>
</thead>
<tbody>
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<td></td>
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<td>RC</td>
</tr>
<tr>
<td></td>
<td>1 Trial Day</td>
<td>5 Day Trial</td>
</tr>
<tr>
<td>Up to R 8 1 000</td>
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<td>0%</td>
</tr>
<tr>
<td>R 8,001 - R 12,500</td>
<td>35%</td>
<td>25%</td>
</tr>
<tr>
<td>R 12,501 - R 20,000</td>
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</tr>
<tr>
<td>R 20,001 - R 30,000</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>More than R 30,000</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Note 1: The cost recovery amount is based on the Judicare Criminal Tariffs. The grey shaded area indicates that the applicants do not qualify for legal aid assistance.
<table>
<thead>
<tr>
<th>Gross Monthly Income less Income Tax</th>
<th>Cost Recovery Percentage of Anticipated Cost</th>
<th>Rate of Monthly Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>DC</td>
<td>RC</td>
<td>HC</td>
</tr>
<tr>
<td>1 Up to R 8 000</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>2 R 8 001 - R 12 500</td>
<td>35%</td>
<td>25%</td>
</tr>
<tr>
<td>3 R 12 501 - R 20 000</td>
<td>75%</td>
<td>40%</td>
</tr>
<tr>
<td>4 R 20 001 - R 30 000</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>5 More than R 30 000</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>90%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Yours faithfully

Ms Vidhu Vedralankar
Chief Executive Officer
Legal Aid South Africa