



Legal Aid
South Africa

8 May 2015

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

National Office

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Braamfontein

2017

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FOR INFORMATION

See Annexure "A"

Dear Sir/Madam

CIRCULAR NUMBER 3 OF 2015

1. LEGAL AID SA ACT 39 OF 2014

By Proclamation No.R.7 of 2015 the Legal Aid SA Act 39 of 2014 was brought into operation with effect from 1 March 2015, which repealed the Legal Aid Act 25 of 1969 and the 1996 Amendment Act in their entirety.

Some of the consequences of the Legal Aid SA Act include the repeal of section 3B as well section 8A of the 1969 Act and the replacement of these aforesaid Sections with section 20 and 22 of the Legal Aid SA Act 39 of 2014.

Section 22 sets out a procedure to be followed by all presiding judicial officers before any court order is granted requiring the provision of legal representation at state expense in Criminal Matters and where legal aid has been refused. Section 20 sets out the requirement to file a notice that a litigant is being funded by Legal Aid SA as well as to prescribe the recovery procedure in respect of cost orders in favour of litigants funded by Legal Aid SA in any judicial proceedings. All addressees are therefore required to ensure that these new provisions of the Legal Aid SA Act are implemented and followed with immediate effect.

Your voice. For justice.



2. SECTION 22 OF LEGAL AID SA ACT 39 OF f 2014

The former Section 3B of the Legal Aid Act (22 of 1969) procedure, whereby courts could direct that legal aid be granted to an accused in a criminal matter, has been replaced by Section 22 of the Legal Aid SA Act (39 of 2014). Section 22, which is hereby brought to your attention, determines as follows:

“Provision of legal aid by direction of courts in criminal matters

22. (1) *A court in criminal proceedings may only direct that a person be provided with legal representation at state expense, if the court has—*

(a) taken 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) subject to subsection (3), referred the matter, together with any report the court may consider necessary, for the attention of Legal Aid South Africa, for evaluation and report by Legal Aid South Africa and Legal Aid South Africa has made a recommendation whether or not the person concerned qualifies for legal representation, as provided for in subsection (2)(c)(i).

(2) (a) If a court refers a matter in terms of subsection (1)(b), Legal Aid South Africa must, in accordance with the regulations made under section 23(1) and the Legal Aid Manual, evaluate and report on the matter.

(b) The report in question must be in writing and be submitted to the registrar or the clerk of the court, as the case may be, who must make a copy thereof available to the court and the person concerned.

(c) The report must include—

- (i) a recommendation whether or not 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 Legal Aid South Africa, should be taken into account.*

(3) A court may only refer a matter in terms of subsection (1)(b) if the person concerned—

- (a) (i) has applied to Legal Aid South Africa for legal representation at state expense;
 - (ii) has been refused legal representation at state expense by Legal Aid South Africa; and
 - (iii) has exhausted his or her internal right to appeal within the structures of Legal Aid South Africa against the refusal;
 - (b) has applied for legal representation and has not received any response to the application within a reasonable time; or
 - (c) has been refused legal representation at state expense by Legal Aid South Africa and the court is of the opinion that there are particular circumstances that need to be brought to the attention of Legal Aid South Africa by the court in a report referred to in subsection (1)(a)(ii).
- (4) (a) Any decision by Legal Aid South Africa in any criminal proceedings relating to—
- (i) the particular legal practitioner to be assigned to any person;
 - (ii) the fee to be paid by Legal Aid South Africa to a particular practitioner;
 - (iii) the number of legal practitioners to be assigned to a particular person or group of persons; or
 - (iv) the contribution, if any, to be paid to Legal Aid South Africa by the persons in question and when and the manner in which the fee is to be paid, is subject to review by the High Court at the instance of the person affected thereby.
- (b) Legal Aid South Africa may, in any review proceedings referred to in paragraph (a)(ii), not be required to pay more than the maximum amounts determined in the Legal Aid Manual in terms of section 24(1)(c).
- (5) Only a court in review proceedings may make an order relating to the matters referred to in subsection (4).
- (6) In determining whether any person is entitled to legal representation at state expense and before any court orders the provision of legal representation at state expense, the legal aid applicant bears the onus of showing, on a balance of probabilities, that he or she—
- (a) is unable to afford the cost of his or her own legal representation;
 - (b) has made a full disclosure of all relevant facts and documents pertaining to his or her inability to pay for his or her own legal representation;
 - (c) has a lifestyle that is consistent with his or her alleged inability to afford the cost of his or her own legal representation;
- and

(d) has cooperated fully with any investigation conducted by Legal Aid South Africa.

(7) No accused person may receive legal representation at state expense if that person has applied for the release of an amount for reasonable legal expenses in terms of section 44(1)(b) of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), and where the court has turned down the application due to a lack of a full disclosure as required in terms of section 44(2)(b) of that Act."

3. SECTION 20 OF LEGAL AID SA ACT 39 OF 2014

The former section 8A of the Legal Aid Act (22 of 1969) has been replaced with section 20 of the Legal Aid Act 39 of 2014 which sets out the current requirements for Recovery of Costs by Legal Aid SA. The relevant provisions of Section 20 determines as follows:

"Recovery of costs by Legal Aid South Africa

20. (1) Whenever in any judicial proceedings or any dispute in respect of which legal aid is rendered to a litigant or other person by Legal Aid South Africa, costs become payable to that litigant or other person in terms of a judgment of the court or a settlement or otherwise, it is, subject to the powers of the Board referred to in section 4 with regard to the fixing of conditions, deemed that the litigant or other person has ceded his or her rights to those costs to Legal Aid South Africa.

(2) A litigant or person referred to in subsection (1) or his or her legal representative or Legal Aid South Africa must, at any time before payment of the costs deemed in terms of subsection (1) to be ceded to Legal Aid South Africa, whether before or after those costs become payable, give the person by whom the costs are to be paid at his or her last known address and the registrar or clerk of the court concerned notice in writing that legal aid is being or has been rendered, and Legal Aid South Africa may proceed in its own name to have those costs taxed and to recover them, without being substituted on the record of the judicial proceedings concerned, if any, for the litigant in question.

(3) The costs referred to in subsection (1) must be calculated and the bill of costs concerned, if any, must be taxed or agreed as if the litigant or person to whom legal aid was rendered, had obtained the services of the legal representative acting on his or her behalf in the proceedings or dispute concerned, without the aid of Legal Aid South Africa."

An example of the relevant notice referred to in Section 20(2) is attached hereto for use by legal practitioners representing litigants who are being assisted by Legal Aid SA. It is recommended that such a notice should be served and filed immediately after legal aid has been granted or with the first pleading/notice/document that the practitioner serves and files after the granting of legal aid.

Yours faithfully



Ms Vidhu Vedalankar
Chief Executive Officer
Legal Aid South Africa

ANNEXURE "A"

FOR INFORMATION

- Judiciary: The Chief Justice
The President of the Supreme Court of Appeal
Judges President: South Gauteng High Court
North Gauteng High Court
North West High Court
Limpopo High Court
Free State High Court
Northern Cape High Court
Western Cape High Court
Eastern Cape High Court, Grahamstown
Eastern Cape High Court, Port Elizabeth
Eastern Cape High Court, Mthatha
Eastern Cape High Court, Bisho
KwaZulu-Natal High Court, Pietermaritzburg
KwaZulu-Natal High Court, Durban
Land Claims Court
Labour Appeal Court
Labour Court
- The Magistrates Commission
- Legal Practitioners: The Law Society of the Northern Provinces
The Law Society of the Cape
The Law Society of the Free State
The Law Society of KwaZulu-Natal
The Law Society of South Africa
National Association of Democratic Lawyers
Black Lawyers Association
General Council of the Bar of South Africa
Cape Bar Council
Eastern Cape Society of Advocates (Grahamstown)
Eastern Cape Society of Advocates (Port Elizabeth)
Northern Cape Society of Advocates
Society of Advocates of the Free State
Society of Advocates of Natal (Pietermaritzburg)
Society of Advocates of Natal (Durban)
Society of Advocates of Mpumalanga
Pretoria Society of Advocates
Society of Advocates of SA (Witwatersrand Division)
North-West Bar Association
Bisho Society of Advocates (Bisho City)
Bisho Society of Advocates (East London)

The Society of Advocates of Transkei
Thohoyandou Bar Council
National Forum of Advocates
Church Square Association of Advocates
Consilium Group of Advocates
National Bar Council of South Africa

Prosecution: The National Director of Public Prosecutions

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

Dept of Justice & Constitutional Development: Director-General

Registrar: Constitutional Court
Supreme Court of Appeal
South Gauteng High Court
North Gauteng High Court
North West High Court
Limpopo High Court
Free State High Court
Northern Cape High Court
Western Cape High Court
Eastern Cape HC, Grahamstown
Eastern Cape HC, Port Elizabeth
Eastern Cape HC, Mthatha
Eastern Cape HC, Bhisho
KwaZulu-Natal HC, P'mburg
KwaZulu-Natal HC, Durban
Land Claims Court
Labour Appeal Court
Labour Court

Media: De Rebus
Advocate

Other: Human Rights Commission
Judicial Inspectorate of Prisons
Public Protector

Commission on Gender Equality

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

HELD AT/

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF

HELD AT...../

IN THEHIGH COURT,

REPUBLIC OF SOUTH AFRICA /

IN THE SUPREME COURT OF APPEAL

REPUBLIC OF SOUTH AFRICA/

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO:

In the matter between:

Plaintiff/Applicant/Appellant

and

Defendant/Respondent

NOTICE IN TERMS OF SECTION 20(2) OF LEGAL AID SA ACT 39 OF 2014

TAKE NOTICE THAT the Plaintiff/Applicant/Appellant/Defendant/Respondent in the abovementioned matter has been granted Legal Aid in terms of the Legal Aid SA Act 39 of 2014

and that Section 20 of the Legal Aid SA Act is applicable and that it is deemed that the said person has ceded his/her rights to any costs that may become payable in terms of a judgment of this honourable court or any settlement that may be reached.

TAKE NOTICE FURTHER THAT any such costs must be calculated and the bill of costs, if any, must be taxed or agreed as if the said person had obtained the services of the legal representative acting on his/her behalf in these proceedings without the assistance/funding of Legal Aid South Africa.

DATED AT _____ this _____ day of _____ 2015.

**ATTORNEYS FOR PLAINTIFF/
APPLICANT/APPELLANT/
DEFENDANT/RESPONDENT**

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**TO: THE CLERK OF THE ABOVE HONOURABLE COURT/
THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

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**AND TO: ATTORNEYS FOR THE PLAINTIFF/
APPLICANT/APPELLANT/
DEFENDANT/RESPONDENT**

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