

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO. 12124/16

In the matter between:

LEGAL AID SOUTH AFRICA

Applicant

and

ANTHONY ROBIN BRINK

Respondent

APPLICANT'S REPLYING AFFIDAVIT

I, the undersigned,

THEMBILE VUYO MTATI

do hereby make oath and state that:

1.

- 1.1. I am an adult male attorney of the High Court of South Africa and employed as a Legal Executive of Legal Aid South Africa (the



applicant), at Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg. I am duly authorised to depose to this affidavit on behalf of the applicant.

- 1.2. The facts contained herein are within my personal knowledge unless otherwise stated or contextually indicated, and are true and correct.
 - 1.3. I shall for the sake of convenience and consistency use the same acronyms that I have used in my founding affidavit.
 - 1.4. I have read the answering affidavit of the respondent (Brink) dated 12 February 2017 and this is Legal Aid SA's response thereto.
2. I do not intend to deal *ad seriatim* with each and every paragraph and allegation made by the respondent. I also do not intend to deal with the argumentative and repetitive material including the scandalous, vexatious and irrelevant allegations and contentions made by the respondent. To the extent that I do not deal with the specific allegations made by the respondent, I do not necessarily accept that as correct and I deny such to the extent that they are inconsistent with what I have stated in my founding affidavit and also in this replying affidavit.

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3. It is apparent, in my submission, that the respondent's answering papers, read as a whole, are a clear demonstration of his propensity to be vexatious, scandalous and to abuse the process of the Courts. Evidently, the respondent has no *bona fide* defence to the application made by the applicant.

4. The respondent's answer, comprising massive documents, is replete with personal attacks and defamatory material against various officials of the applicant, various members of the judiciary and constitutional institutions. I submit in this regard that the answer provided by the respondent bolsters the applicant's case for respondent to be declared a vexatious litigant.

5. The respondent's answering affidavit, over and above the personal attacks, defamatory material, irrelevancies and argumentative material, also contains an impressible attempt by Brink to re-open and re-argue a claim that has already been dismissed by both the Labour Court and the Labour Appeal Court. What is deeply concerning is that Brink is also categorical that his continuing unwarranted, unreasonable and persistent conduct, whether against the applicant, through prior PAIA requests or through attacks on various institutions and members of the judiciary, is with the intention of resuscitating his failed claim against the applicant in the Labour Court.

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6. Given the above, the applicant will apply for the striking out of the whole of the respondent's answering affidavit.

7. I propose to set out herein below, by way of illustration, the paragraphs in Brink's answering affidavit in which some of the insulting, defamatory material, attacks and innuendo appear;

Unwarranted attacks against members of the judiciary and constitutional institutions

7.1. These unwarranted attacks against the Presiding Judge in the Labour Court appear at:

7.1.1. page 28, paragraph (c);

7.1.2. page 41, paragraph 104;

7.1.3. page 215, paragraphs 713 to 715;

7.1.4. pages 222 to 224, paragraphs 743 to 754;

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7.1.5. page 231, paragraphs 785 to 786.

7.2. Attacks against the Labour Appeal Court:

7.2.1. page 32, paragraphs 74 to 79;

7.2.2. page 41, paragraph 104;

7.2.3. page 65, paragraph 187;

7.2.4. page 161, paragraph 512;

7.2.5. pages 212 to 213, paragraphs 704 and 705;

7.2.6. page 232, paragraph 791;

7.2.7. pages 238 to 239, paragraphs 818 to 824;

7.2.8. page 261, paragraph 938.

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- 7.3. Unwarranted attacks against the Judicial Services Commission:
 - 7.3.1. page 28, paragraph (b);
 - 7.3.2. page 49 to page 50, paragraph 133;
 - 7.3.3. page 227, paragraphs 768 to 769.

- 7.4. Attacks on the Portfolio Committee on Justice:
 - 7.4.1. page 65, paragraph 186, read with;
 - 7.4.2. page 192, paragraph 649.

- 7.5. Attacks on the South African Human Rights Commission:
 - 7.5.1. page 193, para 654.

- 7.6. Attacks on the Judge President of the Gauteng Division:

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- 7.6.1. The attacks on the Judge President of the North Gauteng Division appear throughout Brink's answering papers, including the annexures. These attacks are clearly personal, derogatory, defamatory and made with the intention to harass and annoy not only the JP himself but also employees and staff of the applicant. This scandalous and vexatious material appears throughout Brink's answering papers.
- 7.6.2. Although Brink claims that his attacks on the JP are in his capacity as the Chairperson of the applicant and not as a sitting Judge, this is betrayed by what Brink states at page 238, paragraph 821 where he states as follows:

"821. Ad 77. The lying defamatory Memorandum was certainly not written by Wagley JP, Davies JA or Sutherland JA, all of whose judgments are written in fine, flawless, plain, and unpretentious English, in contradistinction to the haughtily magisterial, aggressive tone of the document in second language English with its grammatical imperfections – such as I notice listening on my car radio to Mlambo JP's



disposal of the costs question after President Zuma dropped his application to interdict the Public Protector's state capture report. (I don't mean to be rude; I wish my Zulu were as strong as his English.)"

- 7.6.3. I submit that the above is defamatory, insulting and injurious to the person and standing of the JP both in his personal capacity and his capacity as a judicial officer. It is also but just one of the many insults and derogatory and defamatory remarks contained throughout Brink's answering papers.
8. I have referred, and referenced the above passages and paragraphs in order to demonstrate the extent to which Brink has gone to insult and defame various officers and officials both within the applicant's office and outside it, including the judiciary, in order to make out a case for the striking out of his entire answering papers, including the annexures thereto.
9. I draw the Court's attention to the fact that Brink's answering papers contain not only substantially scandalous matters and allegations which are highly prejudicial to the Applicant, but also irrelevant and argumentative material. This is typified by what is contained, for example, from pages 67 onwards of



Brink's answering affidavit together with the annexures which include Brink's own self authored reports titled "*Special Report on Legal Aid SA*". In addition, Brink has included documents previously annexed to his own application before the Labour Court. The irrelevant material also includes Brink's attempt to make out a case, before this Court, for his appointment by the Applicant. Needless to state that the issue of his appointment or non-appointment was fully dealt with by the Labour Court.

10. I must also submit that the rest of the allegations raised by Brink in his answering papers are so intertwined to the scandalous and vexatious material referred to above, that they too can be regarded as prejudicial to the applicant and also fall to be struck out.
11. Taken as a whole, Brink's answering papers are not only prejudicial to the applicant but also to the persons and institutions against whom Brink has made scandalous and vexatious allegations. For this reason, I submit that the whole of Brink's answering papers fall to be struck out.

Application to Strike Out

12. The applicant will at the hearing of this application apply for the striking out of the whole of the answering affidavit on the grounds that:

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- 12.1. large portions of the answering affidavit constitute legal argument, which I do not intend addressing herein. Legal Aid SA's counsel will, to the extent that they are required to do so, address all legal argument at the hearing of this matter,
- 12.2. a further substantial portion of the answering affidavit, as explained above, constitute matters which are scandalous, vexatious, irrelevant, inadmissible evidence, argument, conclusions, suspicions, inferences and attacks on my and other persons and institutions, who are not party to these proceedings, credibility. This is clearly done in an attempt to cloud the issues at hand, to create an atmosphere in Brink's favour and, ultimately, to distract this Honourable Court from a proper investigation of Brink's conduct which Legal Aid SA complained of,
- 12.3. it is made out of massive documents and attachments (some of which were already attached to the founding affidavit), comprising irrelevant material , such as a repetition of the Brink's case that was before the Labour Court, it is vexatious, defamatory and insulting towards, amongst others, officials of public institutions, members of the judiciary including the Judge President of Gauteng High Courts, Labour Court judge, Cele J and Labour Appeal Court judge, Wagley JP, with no credible factual basis for such statements,

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- 12.4. Brink's offending statements appear at innumerable paragraphs throughout the entire answering affidavit. It is therefore impossible to strike out particular paragraphs. The entire answering affidavit is deeply offensive, typified by the derogatory remarks towards all and sundry. It is also prejudicial to a range of judicial officials and constitutional institutions. It can therefore not be allowed to stand and should be struck out in its entirety,
- 12.5. the answering affidavit is furthermore unnecessarily prolix with lots of repetitive allegations and little purpose will be served to deal with the allegations in the 961 paragraphs (excluding subparagraphs) *ad seriatim*. This manner of "pleading" seems to be a deliberate ploy employed by Brink, similar to his original statement of claim in the Labour Court which was, as he admits (ad paragraphs 669 and 670) unusually long and tactically contrived to draw Legal Aid SA "out in making its plea, to keep it talking for as long as possible, saying as much on paper as possible...hoping it might induce LASA to settle". This demonstrates that Brink does not hesitate to abuse the court process for his own ends.
13. Alternatively should this Honourable Court not be inclined to strike out the entire answering affidavit, Legal Aid SA will apply at the hearing of this application that the paragraphs or portions thereof as set out in "RA1"



annexed hereto be struck out for the reasons set out therein. Annexure "RA1" is not an exhaustive list of all the offending paragraphs which contain scandalous, vexatious and irrelevant matter. The applicant will therefore at the hearing of this application, to the extent necessary, identify further offending paragraphs or statements to this Honourable Court.

14. The aforesaid conduct of Brink is prejudicial to me, Legal Aid SA and others, in that:

14.1. the answering affidavit is worded in such a manner as to constitute abusive and defamatory statements as well as to serve no other purpose but to harass and annoy Legal Aid SA, its Board, its officials and all the other parties affected thereby,

14.2. it has resulted in Brink's answering affidavit being unnecessary prolix,

14.3. the answering affidavit, does not contribute in anyway to a determination of the matter,

14.4. Brink has attempted to create a negative perception of me and other parties in this Honourable Court's mind and sought to distract this



Honourable Court from the true issues at hand, being his vexatious, scandalous and frivolous behavior,

- 14.5. Brink's behavior has a potential to cause irreparable harm to the integrity and good name of all those he continually defame, and
- 14.6. considerable time and resources will go into answering all these irrelevant and/or vexatious and/or scandalous allegations.
15. However in the event that this Honourable Court does not strike out the entire answering affidavit, I will hereunder, only deal with those positive averments of fact set out in Brink's answering affidavit which calls for a response.
16. Without derogating from what I have stated above, I now turn to deal with some of the general accusations and themes contained in Brinks answering papers. Before doing so, however, I wish to bring to the attention of the Honourable Court about a complaint that I previously laid against Brink.

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Outcome of the complaint to the Society of Advocates of KwaZulu-Natal

17. I pause to bring under the Honourable Court's attention that I had, before institution of this application, lodged a complaint against Brink with the Society of Advocates of KwaZulu-Natal, stemming from his unfounded allegations towards judicial officers of which I have already made mention of in my founding affidavit.
18. After launching this application, and on 28 March 2017, Legal Aid SA received correspondence from the administrative secretary of the Society of Advocates of KwaZulu-Natal, incorrectly dated 23 March 2013, advising us that they have recommended that an application be launched to strike-off Brink from the roll of Advocates. I attach hereto marked "**RA2**" the said letter together with the relevant report of the complaints committee.

MTATI'S AUTHORITY TO PROSECUTE THE APPLICATION.

19. The Approval Framework to which Brink refers to is not applicable to this matter. The Approval Framework("Framework") , version 35 approved by the Board of Directors of Legal Aid SA on 12 March 2016 is the applicable Framework from which I derive my authority to prosecute this application.



20. Paragraph 10.1.3(ii) of the Framework provides that where there is litigation on behalf of Legal Aid SA which involves the prosecution or defence of a claim for R500 000 up to R5 million, the CEO has the final authority to approve.
21. Paragraph 10.1.3(iii) of the Framework provides that where there is litigation on behalf of Legal Aid SA which involves the prosecution or defence of a claim for R350 000 up to R500 000, the CLE has the final authority to approve.
22. Paragraph 10.1.3(iv) of the Framework provides that where there is litigation on behalf of Legal Aid SA which involves the prosecution or defence of a claim for R50 000 up to R350 000, the CSE(which is me) has the final authority to approve.
23. Paragraph 10.1.3 cited above must be read with note 15 of the Framework which states that –

“Notwithstanding anything contained in this paragraph 10.3, the CEO, CLE or CSE (which is me) are authorised to do whatsoever may be necessary to protect the Board and/or a client’s right, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on

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behalf the Legal Aid South Africa is to be conducted under the control of the Corporate Services Department.”

24. My core function as the then head of the Corporate Services Department and now Legal Executive, is to institute and defend all legal proceedings by or against Legal Aid SA. The responsibility to initiate the prosecution of this application therefore lies with me. The authority to finally approve the prosecution of claims where there is a monetary value attached to such claims lies with either me, the CLE or the CEO, as explained above. This is an application wherein no monetary relief is sought. The possible financial exposure for Legal Aid SA in this matter could therefore only be determined on the estimated legal fees that Legal Aid SA could be liable for.
25. I am further attaching the Approval Framework hereto marked as “**RA3**”.

MTATI’S ALLEGED INADMISSIBLE HEARSAY EVIDENCE

26. I deny that I have deposed to inadmissible hearsay evidence. I have under my control all documents, pleadings, and correspondence relating to Brink’s conduct as set out in and attached to the founding affidavit and which I have read.

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27. I have furthermore attached all the relevant documents to the founding affidavit and Brink did not object to the authenticity of such documents. In the event that this Honourable Court should find that some of the facts to which I have deposed to are indeed hearsay evidence it will be argued at the hearing of this application that such evidence should be admitted under the provisions of the Law of Evidence Amendment Act 45 of 1988.

THE SETTLEMENT OF THE PAIA APPLICATIONS IN THE ESHOWE MAGISTRATES' COURT

28. I reiterate that the settlement agreement entered into at Eshowe during February 2016 was made in good faith for the reasons already stated in the founding affidavit, and without admission of any wrong doing or conceding to the basis of Brink's claims.

29. Brink complains that I have failed to comply with the settlement agreement and thereby necessitated his further application to Eshowe Magistrates Court to enforce compliance with the settlement agreement and seeking ancillary relief as explained in my founding affidavit. In particular, Brink alleges that I have failed to provide him with the following documents or to deal with such documents in my section 23 affidavits:



- 29.1. Document which Brink referred to as **B16** to his consolidated list which he required “ *All and any communications, memoranda, minutes, reports, recommendations and the like – including to the Board – following LASA’s receipt of the SAHRC’s PAIA training workshop report noting LASA’s ‘challenges in complying with PAIA’; its ‘lack of application based knowledge’; ‘the fact that they had previously been misapplying the provisions of PAIA’*”
- 29.2. Document which Brink referred to as **B17** to his consolidated list which he required “*All and any records vouching that LASA proceeded to ‘review decisions which may not have had justification in terms of PAIA’, as ‘undertaken’ to the SAHRC.*”
- 29.3. Document which Brink referred to as **B18** to his consolidated list which he required “*All and any records vouching that LASA proceeded ‘to create guidelines within the organisation to ensure misapplication does not recur’, as ‘undertaken’ to the SAHRC.*”
- 29.4. Document which Brink referred to as **B31** to his consolidated list which he required “*The record of COO’s delegation as national deputy information officer*”
- 29.5. Document which Brink referred to as **H12** to his consolidated list which he required “*The minutes of all the LSTC meetings held in the*



period October 2009- February 2011 besides minutes of its March 2010 meeting”

- 29.6. Document which Brink referred to as **H31** to his consolidated list which he required “Email/ Letter to Bongani Mngadi informing that the KZN Senior Litigator posts have been cancelled(April /May 2010)
- 29.7. Document which Brink referred to as **H32** to his consolidated list which he required “*All Counsel’s fees notes for professional services rendered to Legal Aid SA in the handling of Brink’s first three records under PAIA in August and December 2010 and March 2011 and his involvement, if any, in the drafting of Mlambo JP’s Confidential Report to the Minister in March 2011 and the updated form to the Portfolio Committee in June 2011 to put down Brink complaints”*
- 29.8. Document which Brink referred to as **H48** to his consolidated list which he required “ *The decision to reduce the number of PA’s serving the backlog courts at Pietermaritzburg from two to one according to Nair’s emailed announcement to the ROE’s on 21 February 2011”*
30. I submit that the aforesaid documents which are alleged not to have been furnished or provided to Brink were in fact provided to him in the reply sent per courier on 15 April 2016 except one document which I had inadvertently missed being the minutes of August 2010. Brink was informed of this document immediately after establishing that it did not form part of the bundle sent to him.



31. I submit further that I furnished Brink with the document marked E15 which I had previously refused and included in the section 23 affidavit in terms of PAIA after Mr Ngcamu provided consent to furnish such information.
32. I re-iterate as previously mentioned in my founding affidavit that where I picked up an area of non-compliance or a human error, I personally volunteered that information. It is my submission that I have substantially complied with the settlement agreement agreed to between the parties.
33. I point out that the presiding officer in Eshowe never made a finding or ruling or order that my section 23 affidavits in terms of PAIA were defective. I submit that there, can therefore be no justification or basis for Brink's vexatious litigation.

BRINK REPORTING LEGAL AID SA TO VARIOUS ORGANISATIONS

34. I note that Brink does not dispute that he lodged queries and/or complaints to the various organisation which I have identified in my founding affidavit. Brink in fact identifies further organisations in his answering affidavit to which he made queries and/or complaints.



35. To the best of my knowledge it is only the South African Human Rights Commission, the Office of the Public Protector, and the Portfolio Committee on Justice who reacted to Brink's correspondence and sought clarification from Legal Aid SA on how we have dealt with Brink's allegations. Legal Aid SA has provided explanations and/or clarifications to these organisations as set out in my founding affidavit.
36. None of these organisations have made any negative findings against Legal Aid SA. It is only the South African Human Rights Commission who provided guidance to Legal Aid SA on the following:
- 36.1. On how to report to them in terms of section 32 of PAIA; that is, the inclusion in the report of matters received in a financial year but not yet finalised as at the end of the reporting year,
- 36.2. That we may not, as a Public Entity include appeal procedures in our PAIA Manual; and,
- 36.3. Provided us a questionnaire to complete in order to assess Legal Aid SA's level of compliance with PAIA. There was no further follow up after the completion of the questionnaire.
37. Furthermore, none of these organisations who sought clarification, notwithstanding receiving Brink's complaints and Legal Aid SA's responses,



passed any aspersions on the integrity or *bona fides* of Legal Aid SA as an organisation, its Board or any of its officials.

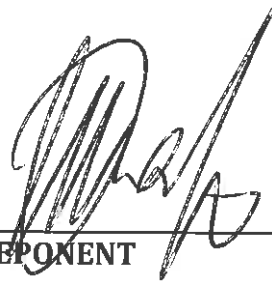
38. None of the other organisations mentioned in the founding and answering affidavits to whom Brink reported have sought any explanations from Legal Aid SA or contacted us.

THREAT TO RETURN TO THE LABOUR COURT

39. Brink makes its abundantly clear in his answering papers that his conduct throughout - whether through subsequent PAIA applications, the Courts and constitutional institutions - is still in pursuit of his appointment by the Applicant. As I have already indicated this issue was fully and finally determined by both the Labour Court and the Labour Appeal Court. Astonishingly, Brink is as brazen as to state that his current conduct is also with the intent of resuscitating his failed Labour Court and Labour Appeal Court.

WHEREFORE the applicant persists with the relief sought in the Notice of Motion.



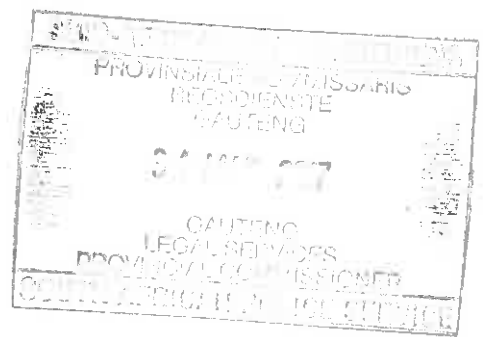


DEPONENT

I certify that the above-named Deponent appeared before me, and being asked by me, declared that he knows and understands the contents of this Affidavit, that he has no objection to taking this Oath and that he considers it to be binding on his/her conscience, and thereafter he uttered the following words: "I swear that the contents of this Affidavit are true, so help me God", and then he signed the sworn Affidavit before me at Johannesburg on this 31st day of MARCH 2017.



COMMISSIONER OF OATHS



EX OFFICIO :
FULL NAMES : Phathiswa Zitho
PHYSICAL ADDRESS : No. 16 Empire Road, Parktown
Johannesburg
DESIGNATION : Legal Admin officer

W
RA1

PARAGRAPHS TO BE STRUCK OUT OF ANSWERING AFFIDAVIT		
Para	Portion	Reason for strikeout
5	The words "miscreants", "gross lawlessness" and "crimes".	The use of the words "miscreants", "gross lawlessness" and "crimes" is suggesting that Mlambo JP, the CEO, the NOE, HRE acted in a dishonest, malicious, criminal or otherwise contemptible way, which is abusive and defamatory of the persons' concerned and who are not parties to the litigation and purely inserted with the intention to offend, harass and annoy them.
6	The words "corruption" and "lawlessness".	These words indicates a legal conclusion and no court or other relevant authority or tribunal has found the parties mentioned in the paragraph guilty of corruption or lawlessness. The words are abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
7	The words "perjured" and "perjuries".	These words indicates a legal conclusion and no court or other relevant authority or tribunal has found the parties mentioned in the paragraph guilty of perjury. The words are abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
9	The whole paragraph.	The contents of the paragraph are irrelevant and do not apply to the matter in hand and do not contribute one way or the other to a decision in the matter.
10	The words "corruption", "lawlessness" and "criminal cover".	These words indicates a legal conclusion and no court or other relevant authority or tribunal has found the parties mentioned in the paragraph guilty of "corruption", "lawlessness" and "criminal cover". The words are abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
33	Annexure "B2", "B6", "B8", "B10", "B18".	These documents are already attached to the founding affidavit.
45	The whole paragraph.	The contents of the paragraph are irrelevant and do not apply to the matter in hand and do not contribute one way or the other to a decision in the matter.
48-51	The whole paragraphs and Annexure "C".	The contents of the paragraphs and the CV, relating to the respondents research etc. are irrelevant and do not apply to the matter at hand and do not contribute one way or the other to a decision in the matter.
68	The whole paragraph.	The contents of the paragraph are speculative and argumentative.
74	The whole paragraph and annexure "E".	Annexure "E" is already attached to the founding affidavit and there is no evidence that this memo originated from Legal Aid SA and his contention that it did is pure speculation.

75	The words "...illustrating the level and scale of the ethical depravity and criminal corruption in LASA's top ranks."	This relates to the memo (Annexure E) and there is no evidence that this memo originated from Legal Aid SA or its top officials. Thus and unwarranted conclusion which is abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
114	The words "... impenetrably dense and incompetent"	Abusive and defamatory language purely inserted with the intention to offend, harass and annoy.
133	The whole paragraph.	Complaint to the JSC is irrelevant.
169-174	The whole paragraphs.	The contents of the paragraphs are argumentative, contains opinions, is repetitive, abusive, defamatory and irrelevant.
177-228	The whole paragraphs.	The contents of these paragraphs are aimed to attack the credibility of Thembile Mtati, the JP and others. As a general rule questions of credibility ought not to be raised in affidavit proceedings. It also raises issues already raised in the proceedings in the labour courts.
232 - 243	The whole paragraphs.	The issues were already raised in the Labour Court. Plus hearsay (his conversations with Skibi #238 & 241). Plus budget constraints reason for freezing the post again attacked (#242 (a) - (u) while the Labour Court already decided it was not a ruse.
244	The whole paragraph.	Speculation and argumentative about the reason why Skibi's transfer was cancelled.
254	The whole paragraph.	Inadmissible hearsay evidence.
257-295	The whole paragraphs.	The contents of these paragraphs deal with the appointment procedure for the Senior Litigator, the so called second round interview panel - and the lawfulness thereof. These issues were already raised in the Labour Court.
302	The last sentence.	It is argumentative and speculative.
303	The last sentence.	It is argumentative and speculative.
304	The words "rudely and dishonestly"	Abusive and defamatory language. There is nothing rude or dishonest in letter Brink quoted.
305	The last sentence.	It is argumentative and speculative.
319	The whole paragraph.	Abusive and defamatory language and conclusions.

322	The whole paragraph and annexure "v".	The contents of the paragraph are irrelevant and do not apply to the matter in hand and do not contribute one way or the other to a decision in the matter.
329	The words "dishonestly" and "deceptively misleading"	Abusive and defamatory language and conclusions.
351	The whole paragraph.	Abusive and defamatory language and conclusions.
354	The whole paragraph.	Inadmissible hearsay evidence.
356	The part in brackets.	It is argumentative and speculative.
342-397 413-415 417 428-434 and other paras where the same issues are raised.	All the paragraphs.	These paragraphs seems to be an attempt to demonstrate that the reason for the freezing of the Senior Litigator posts was due to budgetary constraints was a ruse. This issue was dealt with and decided upon by the Labour Court.
407	The whole paragraph.	It is argumentative and speculative.
410	Last sentence.	Abusive and defamatory language and conclusions.
416	The whole paragraph.	It is argumentative and speculative.
436	The last two sentences.	It is argumentative, speculative, irrelevant and casting aspirations on the integrity of the JP.
437	The last two sentences.	It is argumentative and speculative.
439 - 440	All these paragraphs.	These paragraphs again raised issues that was already put before the Labour Court.
455	The whole paragraph.	Argumentative and irrelevant.
467	The whole paragraph.	Argumentative and irrelevant.
482	The whole paragraph.	Argumentative and speculative.
494	The last two sentences.	Inadmissible hearsay evidence.
495	The whole paragraph.	Inadmissible hearsay evidence.
503	The last sentence.	It is argumentative, speculative, irrelevant and casting aspirations on the integrity of the JP.

528	The whole paragraph.	Inadmissible hearsay evidence.
534	The last sentence.	Inadmissible hearsay evidence.
577	The whole paragraph.	Irrelevant matter.
586	The whole paragraph.	It is argumentative and speculative.
711	Last sentence from "since,,"	Inadmissible hearsay evidence.
728-729	The whole paragraphs.	Evidence led at Labour Court. Trying to show Nair lied but this was not the finding of the Labour Court Judge.
745	"a sickening and disgraceful display of judicial indolence"	The words are abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
752 - 756	All these paragraphs in as far as it challenges or questions the Labour Court's findings.	The judgment and the findings of the judge still stands.
768-770 775-776	The whole of all these paragraphs.	Irrelevant and inadmissible hearsay evidence. The paragraphs are abusive and defamatory and purely inserted with the intention to offend, harass and annoy.
797-799 801-803	All these paragraphs in as far as it challenges or question again the testimony at the LC.	The judgment and the findings of the judge still stands.
800 and others	In as far as he states as a fact that the LC Judge found that Nair was "not generous with the truth"	The content is misleading, abusive and defamatory and purely inserted with the intention to offend, harass and annoy. The Judge never found as such.
808	The whole paragraph.	Inadmissible hearsay evidence.
812	The last sentence.	The sentence is abusive, and defamatory and purely inserted with the intention to offend, harass and annoy.

818	The whole paragraph.	Speculation and argumentative .
820	The last sentence.	Speculation on how the Judge in the urgent application would have reacted if she have seen the memo.
821 - 825	The whole paragraphs.	Speculative and argumentative .
841	The last sentence.	Inadmissible hearsay evidence.
843	The whole paragraph.	Inadmissible hearsay evidence.
876	The whole paragraph.	Legal argument

SOCIETY OF ADVOCATES OF KWAZULU-NATAL

3rd Floor, 6 Durban Club Place, Durban, 4001
Tel (031) 301 3099 Fax (031) 304 4415 Email kznbar@law.co.za

23 March 2013

Mr Solly Sekgota
Email: SollyS@legal-aid.co.za

Dear Sir

RE: COMPLAINT AGAINST ADVOCATE A R BRINK

I write to advise you that the report by the complaints committee dealing with your complaint against Advocate A R Brink was tabled before the Bar Council and was noted. A copy of the report is attached hereto.

The Bar Council has referred your complaint to the Litigation committee for a striking off application against Advocate A R Brink.

I trust you find the above in order.

Yours faithfully


KATE PENISTON
Administrative Secretary

cc: **Thembile Vuyo Mtati**
Legal Aid Board
ThembileM@legal-aid.co.za



Report of Complaints Committee 2

Complaint against Advocate A. R. Brink

1. **Membership**

According to the latest membership list, Brink is no longer a member of the Society. Brink is apparently presently a contracted additional Magistrate, stationed in Eshowe.

2. **The identity of the complainant**

An attorney employed as a corporate services executive by Legal Aid South Africa (henceforth 'LASA').

3. **The nature of the complaint**

The complainant has alleged that Brink's conduct is not befitting of an officer of the court, nor that of a Magistrate. The complaint is in excess of 500 pages in length. The complainant alleges



that Brink's language is 'unprofessional' and he requires sanctioning.

4. Summary of facts

4.1 Brink applied for a job at LASA as a senior litigator at the Pietermaritzburg Justice Centre and progressed to the second round of interviews. The second round of interviews did not proceed as a result of budgetary uncertainties, according to LASA. Brink, however, believed that he had not been successful in securing employment because of his controversial views on the effect of anti-retroviral drugs in treating AIDS (he is a well known, self taught, dissident in this field, believing that ARV's kill rather than cure). He consequently instituted litigation against LASA in the Labour Court alleging, *inter alia*, that he had been unfairly discriminated against in terms of the Employment Equity Act 55 of 1998.

4.2 The litigation was conducted in Brink's name, he being the Applicant. It appears that he drafted the

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papers. Brink testified at the hearing. At the hearing in the Labour Court, Brink was initially represented by counsel (Hunt) and an attorney, but at the beginning of the matter dismissed both of them and represented himself.

4.3 The matter served before Mr. Justice Cele (henceforth 'Cele J'). On 18 September 2014, Brink's application was dismissed by Cele J, with costs. On 27 November 2014, Cele J refused Brink's application for leave to appeal and to lead new evidence on appeal.

4.4 On 7 December 2013 (this should perhaps have been dated 2014), Brink petitioned the Judge President of the Labour Court. His petition was refused on 18 February 2015.

4.5 On 7 October 2015, Brink brought an urgent application in the High Court in Pietermaritzburg in an attempt to interdict the Taxing Master in the Labour Court from finalising the taxation of the costs he was ordered to pay by Cele J in the Labour Court. The

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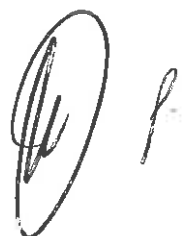
Order sought by Brink (who appears to have been represented on this occasion) was pending an application to declare that the dismissal of his petition to the Judge President was a nullity and that it be set aside (he claimed that the Registrar who signed the Order recording the dismissal of the petition was not a Registrar in Durban, that there was no evidence in his petition file that his petition had, in fact, been refused nor was there any evidence that the three Judges who considered it were in Durban on the date the Order issued). This application was dismissed on the day that it was first set down, with costs ordered against Brink on the attorney client scale.

5. **The specific complaints**

5.1 The conduct that the complainant refers to stems largely from allegations that Brink made in his **'Statement of Claim'** in the Labour Court. In that document Brink, **inter alia**, stated that:

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- 5.1.1 Mr. Justice Dunstan Mlambo, the Chairperson of LASA (henceforth 'the Judge'), and the CEO of LASA (henceforth 'the CEO) had been motivated by unlawful political prejudice, alternatively racial prejudice, directed at himself;
- 5.1.2 the Judge and the CEO had orchestrated a cover up in order to disguise the true reason why Brink was not appointed to the position in LASA;
- 5.1.3 the Judge had lied about the matter when reporting on the matter to the Minister of Justice and Constitutional Development in order to cover up his and the CEO's unfair discrimination against Brink;
- 5.1.4 the Judge lied to the chairperson of the Parliamentary Portfolio Committee when reporting to it on the matter and thereby misled, *inter alia*, parliament;

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5.1.5 the financial justification for not appointing him was a bogus reason concocted by the Judge and the CEO.

5.2 Under cross examination at the hearing, Brink was forced to retract all the allegations that he had made against the Judge and the CEO. He now indicated that he exonerated the Judge and the CEO from any accusations of dishonesty and discrimination. He, however, now stated that another person had concocted the plot against him.

5.3 Brink claimed his statements about the Judge and the CEO were based on '**misconceptions**'. He also stated that he had made the allegations against the Judge and the CEO '**inadvertently**'.

5.4 In his petition to the Judge President of the Labour Court Brink, notwithstanding his earlier retraction of all the allegations against the Judge and the CEO at the trial, stated that:

5.4.1 the matter continued to involve

'the personal and professional integrity of a sitting judge president, formerly of this court,

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and that of the the most senior management executives of a major public entity.'

This is clearly a continued reference to the Judge and the CEO.

5.4.2 as a consequence of

'multiple, objectively demonstrable lies'

there had been a perversion of separate Ministerial Parliamentary enquiries. This again refers to a proposition that he had allegedly previously distanced himself from.

5.4.3 the Judge had known that a

'new explanation'

that the Judge had advanced

'was false'

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and that the budgetary constraints reason advanced
by him

'was another lie'.

5.4.4 The Judge had participated in

**'a grossly irregular, prejudicial, and unlawful
recruitment process.'**

5.4.5 The Judge is an active political promoter of the
American and European medical industrial complex's
HIV-AIDS-ARV business model,

'under the mantle of human rights.'

5.4.6 Both the Judge and the CEO are partisans of
pharmaceutical interests and

'the chemical merchandise they promote'.

5.4.7 The Judge and the CEO concocted a false
explanation to cover the true reason for aborting
Brink's recruitment.



5.4.8 The Judge

'would later consciously and deliberately tell the same lies, and more lies of his own ... to the Minister of Justice and Constitutional Development, which lies he repeated some months later to the chairperson of the Portfolio Committee.'

5.4.9 Cele J, who heard the matter in the Labour Court, was guilty of

'gravely prejudicial misconduct'

that resulted in him thwarting a full and proper ventilation of the issues and had made several errors in law.

5.4.10 Cele J's judgment against him was a

'deplorably inattentive, glib, crude and perfunctory judgment...'

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law, where integrity is crucial is impermissible. Such allegations ought not to have been made without any evidence justifying them being made. They appear to have been gratuitously made in order to advance Brink's personal agenda of a conspiracy against him.

6.3 The fact that the allegations were withdrawn in the proceedings before Cele J does not stand to Brink's credit. Firstly, in the absence of evidence, they ought not have been made at all. Secondly, it does not appear to have been a true withdrawal, as in his petition he appears to have persisted in the scandalous allegations he had apparently withdrawn. He had had time to reflect on what he had said and pleaded and decided, in drawing his petition, to continue with allegations that he had admitted under oath were not true.

6.4 The statement that Brink had 'inadvertently' slandered the Judge in a most disgraceful way must be considered as a dishonest statement. There was nothing inadvertent about Brink's conduct: it was deliberate and formed part of his strategy.

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7. Finding

It is found that there is merit in the complaint.

8. Recommendation

Notwithstanding that Brink is not a member of the Society of Advocates, it is recommended that a striking off application be launched.

Complaints Committee 2

R. G. Mossop S.C.

M. Konigkramer

M. Manikam

17 February 2017.

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LEGAL AID SOUTH AFRICA : DELEGATION OF POWERS (Approval Framework)

Key to Levels

A:	Final approval
B:	Must agree
C:	Must be consulted (before)
D:	Must be informed (after)
E:	Originates

Key to Other

AC	Audit Committee
REMSEC	Remuneration Social and Ethics Committee
LSC	Legal Services Committee
LSTC	Legal Services Technical Committee
Board	Board of Directors (refer Note 29 & 30)
B/Exco	Board Executive Committee
M/Exco	Management Executive Committee
Bid	Bid Adjudication Committee
CCMC	Constitutional Case Management Committee
ADC	Asset Disposal Committee
EA	Executive Authority as defined by the PFMA

Key

CEO	=	Chief Executive Officer
COO	=	Chief Operations Officer
NOE	=	National Operations Executive
CLE	=	Chief Legal Executive
CFO	=	Chief Financial Officer
CSE	=	Corporate Services Executive
ROE	=	Regional Operations Executives
HRE	=	Human Resources Executive
EXEC	=	The executive responsible for the line function in question (Exec includes ROE but excludes JCE and Board Secretary)
ISE	=	Information Systems Executive
CE	=	Communications Executive
BS	=	Board Secretary
CLM	=	Corporate Legal Manager
ILA	=	Impact Litigation Attorney
JCE	=	Justice Centre Executive
CIO	=	Chief Information Officer being the Chief Executive Officer
DIO	=	Deputy Information Officer (includes the COO, CLE, NOE, CSE and ROE)
CRO	=	Chief Risk Officer

In the event of any conflict between this Delegation of Powers document and any other Legal Aid South Africa policy, this document will prevail.

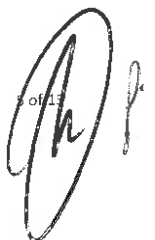
No	RESPONSIBILITY SUBJECT	NOTES SECTION	Board (29 & 30)	Man/ Exco	CEO	COO/ NOE/ CLE (31)	CFO	EXEC	OTHER	CHANGES 1-Mar-16
Key: A: Final Approval B: Must agree C: Must be consulted (before) D: Must be informed (after) E: Originates										
A	DELEGATION OF POWERS									
A1	Delegation of powers and assignment of duties or functions of the Board	Sec 14(1) and (2)	A		E					
B	POWERS, FUNCTIONS AND DUTIES OF BOARD									
B1	Determination of staff establishment and terms and conditions of employment including remuneration	Sec 4(1)(b) read with Sec 18	A		E				B/Minister of Justice and Correctional Services as well as the Minister of Finance	
B2	Purchase or alienation of immovable property	S 4(1)(c)(ii) & Note 50, 51 & 52	A		E				D/Minister of Justice and Correctional Services	
B3	Purchase of property after consent by Minister of Justice and Correctional Services in consultation with Minister of Finance	S 4(1)(c)(ii) & Note 50, 51 & 52	D		A	B	B	E	D/Minister of Justice and Correctional Services	
B4	All documentation pertaining to transactions, correspondence and agreements influencing the purchase, sale or development of land, including the landlord's consent and approval of licence applications or servitudes over immoveable property.	S 4(1)(c)(ii) & Note 50, 51 & 52	D		A	B	B	E		

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B5	Remuneration and allowances of Board members and alternates	Sec 4 (1)(h)	D			E/COO			A/Minister of Finance	
C APPOINTMENT OF BOARD MEMBERS										
C1	Invitation of nominations for appointment to serve as Board members	Sec 6(4)	C			E/COO			A/Minister of Justice and Correctional Services	
C2	Filling of any vacancy for appointment to serve as Board member	Sec 6(5)	C			E/COO			A/Minister of Justice and Correctional Services	
D REMOVAL OF BOARD MEMBERSHIP										
D1	Removal of a Board member on account of one or a number of reasons	S 10(2)(a) to (d) and (3)	C			E/COO			A/Minister of Justice and Correctional Services	
E REGULATIONS										
E1	Formulation and approval of regulations in terms of the Act	Sec 23(2)	B			E/CLE			A/Minister of Justice and Correctional Services	
F LEGAL AID MANUAL										
F1	Compilation and approval of Legal Aid Manual	Sec 24(1) and (2)	A			E/CLE			C/Minister of Justice and Correctional Services	
G AMENDMENTS TO THE ACT										
G1	Any amendments sought to be made to Legal Aid South Africa Act		B		C	E/CLE and CSE			A/Minister of Justice and Correctional Services	
1 STRATEGY AND PLANNING										
1.1	Strategic Plan	29	A	C	E				C/All Committees	
1.2	Business Plan/ Annual Performance Plan	35	A	C	B	E	E	E	C/All Committees	
2 BUDGET										
2.1	Within Treasury allocation and approved surplus	1 Sec53/PFMA	A	C	C	C	E	C	A/EA C/All Committees	
2.2	Budget Deficit and accumulation of surpluses	2 Sec 53(1), (2) & (3) of PFMA	B	C	C	C	E		A/ National Treasury	
2.3	Reallocation of budget - Operational Expenditure & Capital Expenditure (only within operational or capital) (Except Contingency)									
2.3.1	Reallocation of budget between line items within a cost centre subject to an aggregate of 8% of cost centre budget					C	D	E A	E/JCE	

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2.3.2	Reallocation of budget < R350 000 across cost centres subject to an aggregate of 1% of the total budget						A	E		
2.3.3	Reallocation of budget < R500 000 across cost centres subject to an aggregate of 4% of the total budget					A	C	E		
2.3.4	Reallocation of budget between cost centres subject to a maximum of 8% of total budget				A	B	C	E		
2.3.5	Reallocation of budget in excess of 8% between cost centres		A		B	C	C	C		
2.3.6	Approval and determination of judicare provisions and judicare contingent liability including updating of cost per case per court type.					A/NOE	C	E		
2.4	Transfers between operational expenditure and capital expenditure or vice versa									
2.4.1	Transfers < R750 000					A	C	E		
2.4.2	Transfers >R750 000 - ≤R2 000 000				A	C	C	E		
2.4.3	Transfers > R2 000 000		A		C	C	D	E		
3	EXPENDITURE									
3.1	Expenditure (Operating & Capital) including salaries, wages, allowances	24								
3.1.1	Expenditure within budget < R100 000	3							A/E (JCE/Managers)	
3.1.2	Expenditure within budget >R100 000 - R350 000	40						A/E		
3.1.3	Expenditure within budget >R350 000 - R1 million	13,16 & 40				A		E	D/AC A/BAC (above R500 000.00)	
3.1.4	Expenditure within budget > R1 million	13,16 & 40			A	D		E	A/BAC (above R500 000.00 but below R10 million) D/AC	
3.1.5	Expenditure > R10 million	13 & 16	A		B	D		E	B/BAC D/AC	
3.1.6	All statutory and employee benefit expenditure exceeding R350 000 are delegated to the CFO (e.g. UIF, pension contributions, Group Life Insurance etc)				D	D	A			
3.2	Disposal of assets – depreciated value									
3.2.1	≤ R1million	44							A/ADC	
3.2.2	> R1million	44	A		B	C		E		
3.3	Write off of bad debts in any financial year	41								
3.3.1	< R50,000	41	D				B	A/E		
3.3.2	R50,000 - R350 000		D		C	A	C	E		
3.3.3	>R350 000 - R1million		D		A	C	C	E		
3.3.4	> R1million		A	C		C	E	C	C/AC	
3.4	Approval of deviations from procurement process.	43								

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3.4.1	Procurement less than R30 000.00						A	E		
3.4.2	Procurement above R30 000.00 - 10 million				A	C		E		
3.4.3	Procurement above 10 million	45	D		B	C	E		A/Board Exco	
3.5	Applications for approval and condonement for non compliance with supply chain procurement to National Treasury.		D		A	C	E			
4	ACCOUNTING AND REPORTING									
4.1	Establishment of Finance and Audit related policy		A	C	C	C	C		B/AC	
4.2	Deviation in application of Finance and Audit related policy		A	C	C	C	C		B/AC	
4.3	Annual Report		A	C	C	C	C		B/AC	
5	INTERNAL CONTROLS									
5.1	Establishment of controls and changes thereto									
5.1.1	Approval Framework		A	C	B			E/CSE		
5.1.2	Policies of Legal Aid SA which are not specifically mentioned in the Approval Framework	42	A	C	B			E		
5.1.3	Procedure manual Including Standard Operating Procedures (SOPS)	42		A	B	C		C/E		
5.1.4	Approval of Corporate Governance Framework, including Code of Ethics		A	C	B	C		E/BS		
5.1.5	Reporting, and recovery of irregular, unauthorised, wasteful and fruitless expenditure in terms of regulation 9 of National Treasury Regulations		D		B	C/COO	C	E	A/EA D/AC	
5.1.6	Consideration of legal aid applications where the applicant, amongst others and without limitation but subject to the terms of reference of CCMC and Legal Aid Guide, exceeds the means test in Regional Court or High Court criminal matters and is also beyond the ROE's discretion, requires appointment of second or further legal practitioners, the approval of expert witnesses where the cost is above R 30 000, practitioner increased fees beyond the ROE's or NOE's authority as per this approval framework, and impact litigation funding requests.				D				A/CCMC	
5.2	Appointment of Internal auditors/ Consultants	14								
5.2.1	Terms of reference (3 year Rolling Plan)		A		C			E/IAE	B/AC	
5.2.2	Appointment/dismissal of internal auditors			C	A		C	E/ IAE	C/AC	
5.2.3	Appointment of consultants	46			A			E		

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6 BANKING										
6.1	Setting of overall policy on banking relationships and spread of banking services		A	C	C	C	E			
6.2	Change of main bankers		A	C	C	C	E	D	C/AC B/BAC	
6.3	Approval of signing procedures and signatures "A" and "B" signatories	49	D	C	A	C	E			
6.4	Periodic negotiation and acceptance of banking facilities		D	C	A	C	E			
7 AUDITORS										
7.1	Appointment and dismissal of agent of AG	4	D	D	D				D/AC E/AG A/AG	
7.2	Reports (non-routine audits)		D		E	C	C		A/AC	
7.3	Non-auditing consultancy fees	18	D		B		A	E	A/BAC	
7.4	Auditing fees		A	C	B	C	C		C/AC	
7.5	Interim and Final Audit Plans		C	C	B	C	C		C/AC	
8 HR MATTERS										
5 & 47										
8.1	Personnel Structure									
8.1.1	Approval and periodic revision of grading policy		A	C	C	C		E/HRE	C/REMSEC	
8.1.2	Establishment of new positions, regrading existing positions and abolition of posts at executive level & within budget (levels 14-16)	47	A	C	B	C		E C/HRE	C/REMSEC	
8.1.3	Establishment of new positions, regrading existing positions and abolition of posts at management level and within budget - Levels 11-13 & OSD-CM-1; OSD-LP- 9 & 10 and MR-5	47		C	A	B		E C/HRE		
8.1.4	Establishment of other new positions, regrading existing positions and abolition of posts within existing structure & within budget (levels 1-10) and OSD-SU-1 & 2 and OSD-LP1 to 8	47		D	B	A		E C/HRE		
8.2	Appointments	17; 21 & 47								
8.2.1	CEO (Level 16)	47	A		B/E					
8.2.2	COO or NOE or CLE (Level 15.5)		C		A/E					
8.2.3	Executive (other than the CEO, COO, CLE & NOE)		C B/Exco		A/E	B/E			C AuditComm (for IAE) C/HRE	
8.2.4	Senior Management and Senior Professional staff (levels 11-13, OSD-CM-1 and OSD-LP-9 & 10, OSD-MR-5)	17			B	A		E		

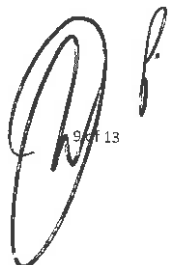
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8.2.5	OSD-SU-1 & 2 and OSD-LP-8	17				B		A/E&R OE	C/HRE	
8.2.6	Other permanent staff (below level 11 and OSD-LP3 to 7)							A incl JCE		
8.2.7	OSD-LP-1 and 2 including extension of contracts within the prescripts of the Attorneys Act							A incl JCE C/ROE		
8.2.8	Temporary staff - including OSD-CP- 1									
	I Up to 3 months (maternity leave 4 months)							A	C (HRE - to facilitate SAP)	
	II More than 3 months					A		E	C (HRE - to facilitate SAP)	
8.3	Remuneration: Fixed Packages									
8.3.1	Annual review and adjustments	53	A	C				E/HRE	C/REMSEC	
8.3.2	Interim adjustments (Professional, management and administrations)		A	C				E/HRE		
8.3.3	Annual Performance Bonus percentages applicable for all staff including modifiers.		A					E	C/REMSEC	
8.4	Changes to conditions of employment	47								
8.4.1	Changes to general terms and conditions of employment.		A	C	B	B		E/HRE	C/REMSEC B/Minister of Justice and Correctional Services and Minister of Finance	
8.4.2	Changes to the conditions of employment restricted to an office or a department of the national office.				B	A/COO/ NOE & CLE		B/HRE		
8.4.3	Changes to the conditions of employment restricted to a single employee.	48				B		A/HRE		
8.5	Code of Ethics									
8.5.1	Policy		A	C	C	C		E/HRE	C/REMSEC	
8.6	Disciplinary Proceedings (including performance, incapacity of any form and all forms of discipline)									
8.6.1	Appointment of a Chairperson, Investigating Officer and an Initiator.									
	I In the matter involving CEO		A							
	II In the matter involving COO, CLE & NOE		A		B/E					
	III In the matter involving all other staff				C	A		E		
8.6.2	Any dismissals, final written warning or suspensions, whether part of a disciplinary enquiry or otherwise									
	I In the matter involving CEO		A							
	II In the matter involving COO, CLE & NOE	33	A		B/E					
	III Executives other than the CEO, COO, CLE and NOE	33	C (B/Exco)		A/E	B/E			C AuditComm (for IAE)	
	IV In matters involving all other staff				D	A		E	C/HRE	

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8.6.3	Discipline (including performance incapacity of any form and all forms of discipline)									
	I CEO (level 16)		A/E						C/REMSEC	
	II COO/NOE and CLE	32 & 33	A		B/E				C/REMSEC	
	III Executives other than the CEO, COO CLE & NOE	32 & 33	C (B/Exco)		A/E	B/E				
	IV Senior Management and senior professional staff (levels 11 to 13, OSD-CM and OSD-LP-9 & 10, OSD-MR-5)	32			A	A		B/E	D/HRE	
	V OSD-SU-1 & 2 and OSD-LP-8	32				B		A/E ROE & JCE		
	VI Other permanent staff (below level 11 and OSD-LP-1 to 7)	32						A incl JCE	C/ROE D/HRE	
8.7	Incapacity Leave									
8.7.1	Maximum 30 days in any one sick leave cycle							E A/HRE		
8.7.2	For > 30 days but < 1 year in any one leave cycle					A		E/HRE		
8.7.3	For > 1 year in any one leave cycle				A			E/HRE		
9	PUBLIC RELATIONS									
9.1	All press releases and presentations	10			A			E/CE		
9.2	Advertising content					A		E/CE		
9.3	Annual report		A	C	B			E/BS & All Execs		
10	OPERATIONS									
10.1	Litigation on behalf of the Legal Aid South Africa & Board Resolution	15								
10.1.1	The authority to litigate on behalf of Legal Aid South Africa subject to paragraph 10.3.2 below.				A			A/CSE		
10.1.2	Where a matter, on behalf of Legal Aid South Africa, proceeds to the Supreme Court of Appeal or the Constitutional Court.		D		A	C/ COO/ CLE		E/CSE		
10.1.3	Litigation on behalf of Legal Aid South Africa where the matter:	23								
	I Involves the prosecution or defence of a claim for an amount >R5million.		A (B/Exco)		C			E/CSE		
	II Involves the prosecution or defence of a claim for >R500,000 and ≤ R5million.		D		A			E/CSE		
	III Involves the prosecution or defence of a claim for between R350 000,00 - R500 000,00					A		E/CSE		
	IV Involves the prosecution or defence of a claim for between R50 000 to R350 000,00							A/CSE		
	V Involves the prosecution or defence of a claim for ≤ R50,000.							C/CSE	A/CLM	
	VI Will be litigated under the name of Legal Aid South Africa under section 35 of the Constitution of the Republic of SA, 1996.	34	B (B/Exco)		B			E/ CLE	A/CCMC	

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10.1.4	Any settlement in respect of the capital sum at a value in the region of the initial claim, shall be approved by the same authority that approved the litigation subject to level of authority.									
	I Presentation of a report in terms of sec 22 of Legal Aid South Africa Act for all District and Regional Courts	Sec 22				D		B/ROE	A/JCE	
	II Presentation of a report in terms of sec 22 of Legal Aid South Africa Act in High Court matters	Sec 22				B		C/ROE	A/CCMC	
10.1.5	Authorisation for appointment of Senior Counsels				B	C/ COO/ NOE/ CLE		A/CSE		
10.2	Insurance									
10.2.1	Directors and Officers Liability	8	A	C		C		E		
10.2.2	Periodic review									
	I Professional negligence	8	D	A		C		E		
	II Other	8	D	A		C		E		
10.2.3	Implementation of new insurance programme	8						E	As per expenditure authority level	
10.3	Contracts	24 25 26 27 28							Authority as per 3.1	
10.3.1	Where the payments in terms of the proposed contract (other than a property lease) will extend beyond the MTEF.		A		B	E	C			
10.4	Travel, Accommodation and Subsistence									
10.4.1	Travel, accommodation and subsistence arrangements/claims, for official travel by an employee, member or invitee of the Board within South Africa at the cost of Legal Aid South Africa.	3 19						A		
10.4.2	Travel, accommodation and subsistence/claims for official travel by an employee, member or invitee of the Board external to South Africa.	20	A B/Exco							
10.4.3	Approval of business class travel for employees with disabilities or those with special need, where required.				A			E		
10.4.4	Approval of either (i) accommodation that exceeds the amount prescribed (ii) expenses related to alcoholic beverages in specific circumstances as provided for in National Treasury Instruction Note No.1 of 2014.						A	E		
10.4.5	Approval of a Class of Vehicle Hire higher than class B	31			A	A		E		
10.4.6	Approval of number of employees travelling by air to other centres to attend an official engagement on the same matter				A	A		E		

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11	LEGAL AND ADMINISTRATIVE MATTERS									
11.1	Destruction of Documents									
11.1.1	Destruction of documents converted to electronic images.							A/JCE		
11.1.2	Destruction of Documents not converted to electronic images (not to take place until 7 years after last payment/3 years after last action if no payment).						A/ CFO (for all financial records)	A		
11.1.3	Transfer of records to National Archives (board agendas, board minutes and annual reports).					A		E/BS		
11.2	Risk Management									
11.2.1	Approval of Legal Aid SA Compliance Universe		A	B				E	E/CRO (Co-ordination)	
11.2.2	Approval of Board Risk Registers		A	B				E	E/CRO (Co-ordination)	
11.2.3	Risk Appetite and Risk Tolerance Settings for the Top Ten Risks		A	B				E	E/CRO (Co-ordination)	
11.2.4	Risk Appetite and Risk Tolerance Settings for all other Board Risk Registers (Excluding Top Ten Risks)		D	A				E	E/CRO (Co-ordination)	
12	OTHER									
12.1	The approval of delegations and sub-delegations be it in terms of this approval framework or legislation to any other employee if the Executive will be absent from work or out of the country.									
12.1.1	In relation to COO,NOE & CLE				A					
12.1.2	In relation to other Executives				B	A				
12.2	Acceptance of grants and/or donations on behalf of Legal Aid South Africa.		D	C	A			E		
12.3	The CEO may further delegate any authority delegated to him/her.	30, 36, 37, 38, 39			A					



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Applicable provisions of the Legal Aid South Africa Act 39 of 2014										
Section										
14 (1)	Subject to the provisions of the Public Finance Management Act, the Board may, in writing, delegate any of its duties or functions imposed on or assigned to it, to any director, committee, employee or agent of Legal Aid South Africa.									
14 (2)	A delegation or assignment in terms of subsection (1)- (a) is subject to any conditions and directions as the Board may deem appropriate; and (b) does not divest the Board of the responsibility for the exercise of the power or the performance of the duty or function.									
4 (1)(b)	The Board may do all that is necessary or expedient to achieve the objects referred to in section 3, including the following: (b) Determine, in consultation with the Minister and the Minister of Finance, its own staff establishment and the terms and conditions of employment for its staff as provided for in section 18.									
4 (1)(b)(ii)	The Board may do all that is necessary or expedient to achieve the objects referred to in section 3, including the following: (b) Determine, in consultation with the Minister and the Minister of Finance, its own staff establishment and the terms and conditions of employment for its staff as provided for in section 18. (ii) employing paralegals, who are persons that are not legal practitioners but have knowledge and understanding of the law, its procedures and its social context acquired through training, education, work experience or a national registered qualification in paralegal practice.									
4 (1)(c)	Purchase or otherwise acquire, hold or alienate any - (i) movable property; or (ii) immovable property with approval of the Minister acting in consultation with the Minister of Finance.									
4(1)(h)	The Board may do all that is necessary or expedient to achieve the objects referred to in section 3, including the following: (h) Pay out of the funds of Legal Aid South Africa such remuneration and allowances to members of the Board, their alternates and any committee members appointed in accordance with section 13 who are not in the full-time service of the State, as may be determined by the Minister of Finance from time to time.									
6(4)	In the case of directors referred to in subsection (1)(b), the Board must, whenever necessary, invite nominations for the appointment of persons as directors in the manner determined by the Minister in consultation with the Board.									
6(5)	Any vacancy on the Board arising pursuant to section 10 must be filled in accordance with this section.									
10(2)(a)	The Minister may remove a director from office for— (a) failing to perform the duties of a director or to perform them diligently and efficiently									
10(2)(d)	The Minister may remove a director from office for — (d) engaging in any activity that is reasonably capable of undermining the integrity of Legal Aid South Africa.									
10(3)	Before removing a director from office in terms of subsection (2), the Minister must afford the person in question an opportunity to be heard.									
18	(1) The Board may, in consultation with the Minister and the Minister of Finance, appoint on such conditions and at such remuneration, employees referred to in sections 15 and 17 to assist in the performance of its functions. (2) The provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), relating to collective bargaining are applicable when the terms and conditions of employment are determined as provided for in subsection (1). (3) Any expenditure arising from the application of this section may not exceed the appropriated budget allocation to Legal Aid South Africa in terms of the Public Finance Management Act.									
23(2)	Any regulations made under subsection (1) must, before publication thereof in the Gazette, be tabled in Parliament by the Minister for approval.									
24(1) and (2)	(1) The Board must compile, amend and approve a Legal Aid Manual and must at least every second year review the Legal Aid Manual relating to— (a) the procedures in terms of which applications for legal aid are administered; (b) the systems and methods whereby legal aid is delivered; (c) the requirements and criteria for the accreditation of private legal practitioners who render legal services to legal aid recipients on the instructions of Legal Aid South Africa and the terms and conditions subject to which such instructions are allocated to accredited legal practitioners, including the fees and disbursements that are payable by Legal Aid South Africa to accredited legal practitioners, taking into consideration the salary scales applicable to the public service; and (d) the regulation of any other administrative matter which the Board deems necessary for the effective and efficient functioning of Legal Aid South Africa. (2) The Board must submit the Legal Aid Manual and any amendment thereof to the Minister who must— (a) table the Legal Aid Manual and any amendment thereof in Parliament; and (b) simultaneously give notice thereof by notice in the Gazette.									

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General Note										
Failure to comply with the provisions of this approval framework may lead to:										
	Disciplinary proceedings. In the event of very serious transgressions dismissal may result.									
	Consequences in terms of the Public Finance Management Act and the regulations thereunder, including both criminal and civil liability.									
	Personal liability in the event of the non compliance resulting in Legal Aid South Africa suffering damages.									
Notes										
1	Section 53(1) of the Public Finance Management Act No. 29 of 1999 (PFMA) provides that the accounting authority ... must submit to the executive authority a budget of estimated revenue and expenditure for that financial year to the executive authority for approval. Section 53(2) provides that such budget must be submitted through the accounting officer.									
2	Section 53(3) of PFMA provides that a public entity may not budget for a deficit and may further not accumulate surpluses unless the prior written approval of the National Treasury has been obtained.									
3	All Managers reporting directly to a member of M/Exco and who are responsible for the management of staff or resources including Justice Centre Executives, the Special Projects Manager, the Board Secretary, Corporate Admin Manager (Corporate Services) and all Finance Managers reporting directly to the CFO are delegated to approve expenditure up to R100 000 except in respect of capital expenditure. A member of M/Exco may delegate in writing to any other manager the power to approve expenditure below R20 000.									
4	This is initiated by the A-G. The AC must be consulted before, Board agrees with recommendation and Auditor General approves.									
5	Subject to Section 4(1)(b) and 18 of Legal Aid South Africa Act 39 of 2014. Where it is applicable, to CEO in terms of sections 15 and 16 of Legal Aid South Africa Act.									
6	See also Section 6 of the Legal Aid South Africa Act 39 of 2014.									
7	In conjunction with the Minister of the Public Service and Administration.									
8	Except that additions to the schedule of an existing policy or renewal of an existing policy, provided within budget, may be notified after the event.									
9	See also Section 4(1)(c) of Legal Aid South Africa Act 39 of 2014.									
10	The CEO may delegate the approval of press releases and presentations including media interviews not related to changes of policy to any Executive.									
11	All amounts set out in the Approval Framework are inclusive of VAT. Approval limits relate to the expenditure which may be authorised in any one financial year.									
12	EXEC includes Regional Operations Executive, but excludes Board Secretary and Justice Centre Executives.									
13	All expenditure is to be made in terms of the Supply Chain Management Policy. After approval or recommendation to Board by BAC, the CEO or delegated Executive as per 3.1 above may conclude a contract with the successful service provider. Approval of such contract shall have a corresponding meaning to consent or authorise termination if the service provider is in breach or for whatever legal basis is unable to perform in terms of the agreement. Payments for all expenditure approved by BAC, CEO or Board to be authorised by the Executive or Manager with the delegated authority in terms of paragraph 3.1 of this Approval Framework.									
14	The CEO is entitled to require the Internal Audit Department to initiate audits and/or investigations but is not entitled to terminate or curtail audits and/or investigations once approved by the Board, the Board Executive Committee or the Audit Committee.									
15	Notwithstanding anything contained in this paragraph 10.3 the CEO, CLE or CSE are authorised to do whatsoever may be necessary to protect the Board and/or a client's rights, prevent default judgment, avoid prescription or comply with any statute or Rule of Court pending any necessary decision by Board Exco. All litigation on behalf of the Legal Aid South Africa is to be conducted under the control of the Corporate Services Department.									
16	Where the expenditure relates to matters of audit, the Audit Committee must be informed of such expenditure.									
17	It is the responsibility of the line function Executive to ensure that the position is provided for in the budget and MTEF and that a vacancy exists in respect of the post concerned. The HRE to confirm budget and vacancy and EE statistics with regard to JC/region/dept.									
18	This relates to the performance of non-auditing consultancy work by any firm which is either the agent of the Auditor-General in respect of the external audit or an internal audit service provider.									
19	No employee may approve his/her own travel, subsistence and/or accommodation. No subordinate may approve an employee's travel, subsistence and/or accommodation. The CEO may expend funds on her/his travel, subsistence and/or accommodation within the budget allocated to the CEO in the annual budget approved by the Board and subject to the limitations prescribed by National Treasury Instruction 1 of 2013/2014.									



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20	When Board Exco are not available, international travel, accommodation and subsistence may be approved by the Chairperson and the CEO jointly subject to such being tabled at the next Board Exco meeting.									
21	All appointments are to be in accordance with the standard letter(s) of appointment to be found on the U Drive.									
22	Where the disposal of assets or the write off of bad debts is originated by the CFO he/she must act in conjunction with the CEO.									
23	In respect of Impact Services, amounts not greater than R500 000 for any one matter in any one financial year are committed by decision of the Legal Services Technical Committee and require the agreement of the CEO. The CEO, NOE and CLE may jointly commit to expenditure up to R500 000 in any one matter.									
24	<p>Certain agents (e.g. insurance brokers) receive an income in the form of commission. It is necessary to ensure that such commissions are disclosed. In considering whether one has the authority to approve a contract one must consider:</p> <p>(i) The amount to be paid by Legal Aid South Africa in any one financial year inclusive of VAT</p> <p>(ii). The expenditure meets all the requirements in terms of the supply chain management processes as set out in Legal Aid South Africa supply chain Management Policy and PFMA. This note shall be applicable to all the sub section 3.1.1 to 3.1.6. This must further be applicable to notes 25 to 28 below.</p> <p>(iii) The amount to be received by the agent as commission in any one financial year</p>									
25	The relevant official is permitted to approve a contract not greater than his/her authority level per each financial year including VAT and escalations. The escalations above the MTEF baseline in respect of the lease agreement shall be approved by the CFO. The relevant official who had approved the contract is permitted to enforce the penalty clause for poor performance.									
26	<p>Contracts below R100 000.00 per annum must be signed by Justice Centre Executive after drafting or vetting by Regional Legal Managers. JCE's and RLM's may consult Corporate Services for assistance for assurance purposes. The RLM shall be responsible for circulation of such contracts.</p> <p>All other contracts above R100 000.00 per annum must be drafted or vetted by Corporate Services before sign off.</p>									
27	The contracts of the Impact Litigation Unit (except for agency agreements and co-operation agreements which resides with Corporate Services) are to be prepared, vetted and circulated by Legal Development and signed as per the Approval Framework.									
28	<p>Where the payments in terms of the proposed contract are not more than 36 months and fall within the budget in respect of current financial year and/or the MTEF. An exception is made in respect of leases of immovable property where a maximum duration of 60 months is permitted and only the first 36 months fall within the budget in respect of current financial year and/or the MTEF.</p> <p>Where a contract continues over more than one financial year and where the payments vary during the duration of the contract, the aggregate expenditure in the financial year in which payments are highest will determine the authority level required for approval.</p> <p>In the case of contracts entailing payments to the service provider as well as to third parties by the service provider on behalf of Legal Aid SA, eg travel tender where the travel agent procures flights and accommodation etc for Legal Aid SA, the aggregate expenditure to the service provider and to all the third parties will determine the authority level required for approval.</p>									
29	<p>All authority as per this column is reserved for the Board, unless otherwise specified as delegated to Board Exco, It is further noted that as per Clause 3.1 of the approved Board Exco Charter - "The Exco is conferred with all the powers conferred upon the Board by the Legal Aid South Africa Act No. 39 of 2014 that may be delegated and the Exco shall be responsible for:</p> <ul style="list-style-type: none"> • ... • ... • decisions on any matter requiring decision by the Board between Board meetings in terms of s4(1)(i) read with s(13)(1) and s(14) of the Legal Aid South Africa Act 39 of 2014 									
30	Having noted the provisions of section 56 of the Public Finance Management Act 1 of 1999, the Board, in its capacity as the accounting authority in terms of section 49 of the Act, hereby delegates to the Chief Executive Officer of Legal Aid South Africa all of the powers entrusted or delegated to the accounting authority in terms of the Act including the Treasury Regulations as well as National Treasury Instructions and Directives under the Act, without limitations or conditions and with the power of substitution. In doing so the Board notes that it is not divested of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. The Board furthermore notes that it may confirm, vary or revoke any decision taken by the Chief Executive Officer as a result of this delegation, subject to any rights that may have become vested as a consequence of the decision.									
31	Delegation to the COO, NOE and CLE shall be in accordance with the functions each is responsible for ie all delegated authority to the COO will be for those functions and executives reporting to him/her, all delegated authority to the NOE shall be for those functions and executives reporting to him/her and all delegated authority to the CLE shall be for those functions assigned to him/her. It is noted that this delegation is not interchangeable, i.e. The COO shall not have authority to approve matters relating to functions that are the responsibility of the NOE or CLE and vice versa.									

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32		Matters of discipline in this regard exclude verbal and written warning.								
33		In matters, which in the view of the CEO, need urgent and immediate action and wherein any delay in actioning the disciplinary proceedings, will compromise the interest/s of Legal Aid South Africa, the CEO may act after consulting with the Chairperson of the Board. The matter to be reported to the Board Exco by e-mail as well as at its next meeting. An example will be, and without limitation, suspension of an Executive due to allegation of fraud.								
34		Board Exco must agree where matters involve policy implications.								
35		Board approval required with effect from 1 April 2012, before submission to the Executive Authority in terms of National Treasury Framework paragraph 4.2.								
36		In the absence of the Chief Executive Officer, the COO or the NOE or the CLE (or any other executive should the COO, NOE & CLE also be absent) shall act in her/his position and shall have such powers as have been delegated to the Chief Executive Officer in terms of law or delegated to her/him by the Board. An email or SMS by the Chief Executive Officer shall be sufficient proof confirming such delegation.								
37		The COO, NOE, CLE, CSE and ROEs are designated as Deputy Information Officers in terms of Section 17 of the Promotion of Access to Information Act 2 of 2000.								
38		The CEO shall establish Health and Safety Committees and appoint Chairpersons thereof in terms of section 17 of Occupational Health and Safety Act 85 of 1993.								
39		NOE, COO, CLE and CSE are delegated to appear in Court on behalf of Legal Aid South Africa in the event of a subpoena.								
40		If the costs of litigation proceedings on any matter in any financial year exceed 80% of the authority of the Manager/ Executive, authority to approve further expenditure shall escalate to the next level of authority in terms of the Approval Framework.								
41		For the purpose of this paragraph, the Executive from which the debt emanates shall have the authority to write off such debt to the total amount of R50 000 per financial year. Corporate Services Department shall certify that it is not economic to pursue debt recovery and recommend a write off. The authority in terms of this section shall be exercised with due regard and compliance with all the requirements in terms of the supply chain management processes as set out in Legal Aid South Africa Supply Chain Management Policy and PFMA. This note shall be applicable for the whole of section 3.3.								
42		All policies of Legal Aid South Africa must be vetted and signed off by CSE and CFO, to confirm legal and finance aspects respectively, before consideration and approval by the Board.								
43		In all the deviations, the Procurement Manager shall prepare a detailed report setting out clearly the reasons for non compliance and such reports shall be filed for record purposes. For purposes of clarity, no procurement shall take place before authorisation of deviation as per 3.4 above								
44		The authority to dispose any asset of Legal Aid South Africa shall be in accordance with the Disposal Policy read with sections 4(1) (c) and 14 of Legal Aid South Africa Act. The disposal shall further meet all the requirements in terms of the supply chain management processes as set out in Legal Aid South Africa's Supply Chain Management Policy and PFMA.								
45		Notwithstanding the overall delegation contained in note 30 above, all deviations relating to procurement above R10 million inclusive of VAT, shall be approved by Board Exco.								
46		The appointment of consultants must be considered after a gap analysis has confirmed the absence of requisite skills or resources within the organisation. Such appointments must also be justified with a business case for the approval of the CEO as delegated by the Board. The rates of remuneration of consultants must be in line with SAICA(South African Institute of Chartered Accountants, DPSA(Department of Public Service and Administration) or body regulating the profession of the consultant. The cost of hotel accommodation (dinner, breakfast and parking included) for consultants R1300 per night. The flights are restricted to economy class only and kilometres travelled to be re-imbursed as per Legal Aid SA Travel & Subsistence Policy (provided the claim for kilometres travelled may not exceed the AA rates).								
47		Subject to Section 4(1)(b) and 18 of Legal Aid South Africa Act 39 of 2014. Where it is applicable, to CEO in terms of sections 15 and 16 of Legal Aid South Africa Act.								
48		Subject to consultation with the relevant Executive of the employee concerned								
49		For the purpose of this paragraph, signature A relates to the authorisation and sign off by Finance(the CFO or the nominated Managers) and signature B relates to authorisation and sign off by the relevant Executive or the nominated Managers) to which the function resides. Neither signatory shall sign off and authorise without the knowledge of the other.								
50		For the purpose of the purchase and transfer of immovable property, all responsible Executives inclusive of Justice Centre Executives, shall inspect and sign-off the appropriateness of purchase or alienation of immovable property. The CSE shall coordinate and ensure that all measures necessary to purchase or alienate property are fulfilled up to registration stage.								
51		The Minister of Justice and Correctional Services had no objection to Legal Aid SA purchasing property in terms of section 4(1)(c) (ii) of Legal Aid South Africa Act 39 of 2014 as per his letter of 16 August 2015. The Minister of Finance approved the purchase of properties for office accommodation subject to availability of funds as per his letter dated 10 November 2015.								
52		All property purchases related expenditure is to be made in terms of the Supply Chain Management Policy. After approval or recommendation to Board/CEO by BAC, the CEO may conclude an Offer to Purchase with the seller. All related contracts and payments for all property related expenditure approved by BAC, CEO or Board to be authorised by the Executive or Manager with the delegated authority in terms of paragraph 3.1 of this Approval Framework.								
53		Provided that where Public Service Coordinating Bargaining Council (PSCBC) and Department of Public Service and Administration (DPSA) approve Cost Of Living Increase (COLI), implementation of such decision shall not as a prerequisite await Board authorisation. All other changes, including those approved by the DPSA are approved by the Board.								