



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA • P.O. Box 13106, The Tramshed, 0126 • Tel (012) 326 8014/ 8045, Fax (012) 326 8018

2 July 2018

Our ref: Raj Daya /Charmaine Kemp

Your ref:

Dear Sir/Madam

**REQUEST FOR COMMENT: TARIFFS IN TERMS OF SECTION 35(1) AND (2) OF THE
LEGAL PRACTICE ACT, 2014 (ACT NO. 28 OF 2014)**

1. In terms of section 35(1) and (2) of the Legal Practice Act, 2014 (Act No. 28 of 2014), fees in respect of litigious and non-litigious legal services rendered by legal practitioners, juristic entities, law clinics or Legal Aid South Africa must be in accordance with the tariffs made by the Rules Board.

A copy of section 35 of the Legal Practice Act, 2014 is attached as

ANNEXURE RB1

2. The Rules Board is in the process of creating the aforesaid tariffs in accordance with the mandate imposed by the Legal Practice Act, 2014. The Rules Board will for the first time develop non-litigious tariffs. The definition of non-litigious tariffs includes everything that is non litigious. The impact of the tariffs on the legal profession is profound hence the Board's implores you to provide your input and comments on the proposals for the tariff construction as stated below.

3. The complexity with drafting a tariff that caters for litigious and non-litigious work within the legal profession with *inter alia* varying levels of expertise; operating in urban, semi-urban and rural areas; divergent clientele (individuals to corporates) under a multitude of disciplines (criminal, civil litigation, commercial transactions etc.) cannot be understated.

4. The proposed tariff structure below has been created on the following basis:

(a) The assumption that the party and party tariff (Uniform Rule 70) allows for a 70% recovery rate (requests have been made to the LSSA for empirical data on the fees charged by attorneys;

(b) The calculation of the sum for each tier of experience in the proposed tariff is created by using the base fee of R1100 for each tier (as per the proposed tariff in Uniform Rule 69) and adjusting each tier by 30%; For ease of reference, the tariff proposed in Uniform Rule 69 is as follows:

ATTORNEY WITH RIGHT OF APPEARANCE						
ADVOCATE						
	0 – 3 YEARS	3 – 5 YEARS	5 – 10 YEARS	10 - 15 YEARS	15 – 20 YEARS	20 +YEARS
	R	R	R	R	R	R
Hourly rate	1 100	1 400	1 800	2 300	2 900	3 700

(c) The tariff (Legal Practice Act, 2014)(pertaining to the years of experience of the legal practitioner) is weighted at 50% and the remaining factors (importance, significance etc.) are weighted at 50%. The proposal for the tariff is as set out below:

LEGAL PRACTITIONER						
	1 – 3 YEARS	3 – 5 YEARS	5 – 10 YEARS	10 - 15 YEARS	15 – 20 YEARS	20 +YEARS
	R	R	R	R	R	R
Hourly rate	1 430	1 820	2 340	2 990	3 770	4 810

CRITERIA	PERCENTAGE
Importance, significance, complexity and expertise	1 - 25%
Volume of work required and time spent	1 - 15%
Financial implications of the matter	1 - 10%

5. Section 35(1) of the LPA provides that legal services rendered by Legal Aid South Africa must be in accordance with the tariffs made by the Rules Board. Section 24(1)(c) of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014) provides that the Board must compile a Legal Aid Manual, in terms of which *inter alia* it states the terms and conditions including the fees and disbursements that are payable to Legal Aid South Africa to accredited legal practitioners.

In this regard and to avoid confusion, the Committee proposed that the tariff in terms of the LPA should state that the tariff for Legal Aid South Africa matters shall be in accordance with the Legal Aid Manual in section 24 of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014). For ease of reference a copy of section 24 of the Legal Aid South Africa Act, 2014 is attached as

ANNEXURE RB2

As part of its consultative process in rule making and amendment, the Rules Board invites your comments on:

- (a) The proposed tariff, its structure and the fees permitted therein;
- (b) Proposals on an alternative tariff, including the benchmarking thereof (supported by the methodology substantiating the proposed tariffs); and
- (c) Whether there should be bands of tariffs (for example, R1100 – R1430 for 0-3 years category and so forth) for each tier and proposals for the bands supported by the methodology substantiating the proposed tariffs;
- (d) Any practical difficulties or any unintended consequences that may be envisaged with the proposed tariff.

The Rules Board will send out the final proposed tariff for further comment from role-players as the above tariff is a proposal for the tariff.

We urge you to restrict your comments to the tariff. The Board is not empowered to deal with any objections and/or issues you may have with section 35, whether the legal fraternity should or not be regulated in terms of the fees that may be charged for legal work etc. The Board is carrying out its mandate in terms of section 35(1) and (2) hence your input and comment in respect of this item of correspondence should address only the proposals for the tariff.

Your comments will be of value to the Rules Board and should be submitted to the Secretariat by not later than **13 August 2018**.

Comments may be sent via hand delivery, post, facsimile or email to:

Physical address: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria;

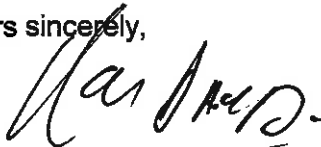
Postal address: P.O. Box 13106, The Tramshed, 0126;

Facsimile: (012) 326-8018

Email: Charmaine Kemp (ChKemp@justice.gov.za).

Further enquiries may be directed to 012 326 8014.

Yours sincerely,



Raj Daya

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- (ii) any university in the Republic if it is constituted and governed as part of the faculty of law at that university,
and is subject to the provisions of paragraphs (b) and (c).
- (b) A law clinic referred to in paragraph (a)—
 - (i) may only render legal services if those services are rendered by or under the supervision of attorneys; 5
 - (ii) may not make over to, share or divide any portion of its professional fee whether by way of partnership, commission, allowance or otherwise;
 - (iii) may not distribute any of its income or property to its members, governors or employees, except as reasonable compensation for services rendered; 10
 - (iv) may only engage candidate legal practitioners if it complies with the requirements determined by the Council in the rules; and
 - (v) may not render those legal services determined by the Council in the rules.
- (c) Legal services rendered by a law clinic referred to in paragraph (a)— 15
 - (i) must be accessible to the public; and
 - (ii) must, subject to section 92, be rendered to the recipient of those services free of charge, except that the law clinic may recover any amounts actually disbursed on behalf of the recipient of the services.
- (9) The Council must, within two years after the commencement of Chapter 2 of this Act, investigate and make recommendations to the Minister on— 20
 - (a) the creation of other forms of legal practice, including—
 - (i) limited liability legal practices;
 - (ii) multi-disciplinary practices; and
 - (b) the statutory recognition of paralegals,
 taking into account best international practices, the public interest and the interests of 25
the legal profession, with the view to legislative and other interventions in order to
improve access to the legal profession and access to justice generally.

Fees in respect legal services

- 35. (1) Until the investigation contemplated in subsection (4) has been completed and the recommendations contained therein have been implemented by the Minister, fees in respect of litigious and non-litigious legal services rendered by legal practitioners, juristic entities, law clinics or Legal Aid South Africa referred to in section 34 must be in accordance with the tariffs made by the Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985). 30
- (2) The Rules Board for Courts of Law must, when determining the tariffs as contemplated in subsection (1), take into account— 35
 - (a) the importance, significance, complexity and expertise of the legal services required;
 - (b) the seniority and experience of the legal practitioner concerned, as determined in this Act; 40
 - (c) the volume of work required and time spent in respect of the legal services rendered; and
 - (d) the financial implications of the matter at hand.
- (3) Despite any other law to the contrary, nothing in this section precludes any user of litigious or non-litigious legal services, on his or her own initiative, from agreeing with a legal practitioner in writing, to pay fees for the services in question in excess of or below any tariffs determined as contemplated in this section. 45
- (4) The South African Law Reform Commission must, within two years after the commencement of Chapter 2 of this Act, investigate and report back to the Minister with recommendations on the following: 50
 - (a) The manner in which to address the circumstances giving rise to legal fees that are unattainable for most people;
 - (b) legislative and other interventions in order to improve access to justice by the members of the public;

- (c) the desirability of establishing a mechanism which will be responsible for determining fees and tariffs payable to legal practitioners;
- (d) the composition of the mechanism contemplated in paragraph (c) and the processes it should follow in determining fees or tariffs;
- (e) the desirability of giving users of legal services the option of voluntarily agreeing to pay fees for legal services less or in excess of any amount that may be set by the mechanism contemplated in paragraph (c); and 5
- (f) the obligation by a legal practitioner to conclude a mandatory fee arrangement with a client when that client secures that legal practitioner's services.
- (5) In conducting the investigation referred to in subsection (4), the South African Law Reform Commission must take the following into consideration: 10
- (a) Best international practices;
- (b) the public interest;
- (c) the interests of the legal profession; and
- (d) the use of contingency fee agreements as provided for in the Contingency Fees Act, 1997 (Act No. 66 of 1997). 15
- (6) The Minister may by notice in the *Gazette* determine maximum tariffs payable to legal practitioners who are instructed by any State Department or Provincial or Local Government in any matter.
- (7) When any attorney or an advocate referred to in section 34(2)(b) first receives instructions from a client for the rendering of litigious or non-litigious legal services, or as soon as practically possible thereafter, that attorney or advocate must provide the client with a cost estimate notice, in writing, specifying all particulars relating to the envisaged costs of the legal services, including the following: 20
- (a) The likely financial implications including fees, charges, disbursements and other costs; 25
- (b) the attorney's or advocate's hourly fee rate and an explanation to the client of his or her right to negotiate the fees payable to the attorney or advocate;
- (c) an outline of the work to be done in respect of each stage of the litigation process, where applicable; 30
- (d) the likelihood of engaging an advocate, as well as an explanation of the different fees that can be charged by different advocates, depending on aspects such as seniority or expertise; and
- (e) if the matter involves litigation, the legal and financial consequences of the client's withdrawal from the litigation as well as the costs recovery regime. 35
- (8) Any attorney or an advocate referred to in section 34(2)(b) must, in addition to providing the client with a written cost estimate notice as contemplated in subsection (7), also verbally explain to the client every aspect contained in that notice, as well as any other relevant aspect relating to the costs of the legal services to be rendered.
- (9) A client must, in writing, agree to the envisaged legal services by that attorney or advocate referred to in section 34(2)(b) and the incurring of the estimated costs as set out in the notice contemplated in subsection (7). 40
- (10) Non-compliance by any attorney or an advocate referred to in section 34(2)(b) with the provisions of this section constitutes misconduct.
- (11) If any attorney or an advocate referred to in section 34(2)(b) does not comply with the provisions of this section, the client is not required to pay any legal costs to that attorney or advocate until the Council has reviewed the matter and made a determination regarding amounts to be paid. 45
- (12) The provisions of this section do not preclude the use of contingency fee agreements as provided for in the Contingency Fees Act, 1997 (Act No. 66 of 1997). 50

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.

Regulations

23. (1) The Minister must, after receipt of recommendations of the Board, make regulations relating to— 5
- (a) the types of matters, both civil and criminal, in respect of which Legal Aid South Africa—
 - (i) provides legal aid;
 - (ii) does not provide legal aid; and 10
 - (iii) provides limited legal aid and the circumstances in which it does so;
 - (b) the requirements or criteria that an applicant must comply with in order to qualify for legal aid, as well as the terms and conditions on which such legal aid is made available to the applicant;
 - (c) the policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid; and 15
 - (d) any matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) Any regulations made under subsection (1) must, before publication thereof in the *Gazette*, be tabled in Parliament by the Minister for approval. 20
- (3) The regulations made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.

Legal Aid Manual

24. (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— 25
- (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 30 35
 - (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 40
 - (b) simultaneously give notice thereof by notice in the *Gazette*.
- (3) The Legal Aid Manual and any amendment thereof takes effect 60 days after the publication of the notice referred to in subsection (2)(b) and is binding on all persons and organisations providing legal aid assistance in terms of this Act.
- (4) The Board must publish the Legal Aid Manual and any amendments thereof on its website and a copy thereof must be available for inspection at all offices of Legal Aid South Africa. 45

Amendment or repeal of laws

25. (1) The laws mentioned in the second column of the Schedule are amended or repealed to the extent indicated in the third column thereof. 50