



LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF SOCIAL DEVELOPMENT

LIMPOPO DEPARTMENT OF SOCIAL DEVELOPMENT

LITIGATION PROCEDURE MANUAL

ENQUIRIES: DEPARTMENT OF SOCIAL DEVELOPMENT

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PREAMBLE

WHEREAS the Department has inundated with lots of litigation cases against it on a daily basis;

AND WHEREAS the Limpopo Department of Social Development committed to the progressive realization of the Constitutional mandate, Public Finance Management Act's mandate in the provision of the social services;

NOW THEREFORE BE IT ENACTED by the Limpopo Department of Social Development the Procedure Manual as follows:

PART A

1. VISION, MISSION AND VALUES OF THE DEPARTMENT

VISION

Well cared for, socially developed, empowered and self-reliant people of Limpopo

MISSION

By ensuring the provision of comprehensive integrated, sustainable and quality social development services to the vulnerable individuals, households and communities in partnership with relevant stakeholders;

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VALUES

We adhere to the following values and ethics that uphold the Constitution of the Republic of South Africa through:

- Responsiveness
- Professionalism
- Honesty and Integrity
- Fairness and Equity
- Respect and Dignity
- Efficiency and Effectiveness
- Teamwork and Partnership
- Patriotism
- Openness and Transparency
- Innovation
- Quality

PART B

DEFINITIONS

Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

HOD: means Head of the Department of Social Development in Limpopo Province.

MEC: means Member of Executive Council for Department of Health and Social Development;

State Attorneys: means the office of the State Attorneys in terms of the Attorneys Act of 1979 as amended; with the offices at Pretoria, Johannesburg, Thohoyandou, [Polokwane];

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Summons: means a document issued by a Court of Law which direct a Defendant to comply with rules of law or to comply with claims made by a Plaintiff

Institutions: means but not limited to five district offices of the Department of Social Development, Polokwane Welfare Complex, Malamulele Secure Care Centre and/ or any other institution which is accountable to the Department.

Litigation/s: means an institution of a claim against the Department by a member of the public or a natural person/s;

Counsel: means an Advocate of the High Court of South Africa;

Legal Costs: means the fees paid either to attorney, counsel, expert witnesses as a result of the proceedings of the case at hand;

Garnish: means a Court order instructing the government to deduct a certain amount of money from a salary of an employee who failed to settle his or her debt within the prescribed period with the creditor/s;

1. PURPOSE OF THE PROCEDURE MANUAL

- 1.1 The purpose of this procedure manual is to develop the procedures to assist departmental legal services directorate in the management of the lawsuits as well as to efficiently supervise litigation matters on departmental behalf by the State Attorneys and Advocates appointed.
- 1.2 To assist Departmental Institutions on the handling of the litigation matters and/ or cases.

2. SCOPE OF APPLICATION

The policy shall apply to all employees within the Limpopo Department of Health and Social Development. This will include the third party appointed by the Department to do work on its behalf.

3. LEGISLATIVE FRAMEWORK

- (a) The Constitution of the Republic of South Africa, (Act 108 of 1996)
- (b) The Public Services Act, 1994 as amended;
- (c) Health Act, 2003;
- (d) Public Finance Management Act, 1999 and related prescripts;
- (e) Government Regulations and Policies;
- (f) Social Assistance Act (Act 13 of 2004 as amended);
- (g) Children's Act (No 74 of 1983 as amended by Child Care Amendment Act (38 of 2005);
- (h) State Attorneys Act (No 53 of 1979 as amended);
- (i) Older Persons Act (13 of 2006 as amended)
- (j) Non Profit Organizations Act (71 of 1997 as amended)
- (k) Child Justice Act (75 of 2008 as amended) and many more.

4. STEPS TO BE FOLLOWED

- (a) assignment of case
- (b) acknowledgement of receipt;
- (c) Preliminary report/ opinion;
- (d) Factual ;

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- (e) Quantum/ calculation of damages;
- (f) Additional investigation if any;
- (g) Production of documents;
- (h) Consultations
- (i) Budget of the legal unit/ services;
- (j) Recommendations
- (k) Report;
- (l) Trial if any;
- (m) Final Report to the Executing Authority/ HOD
- (n) Settlement, and
- (o) Approval if extra expenses will be incurred.

5. **RECEIPT OF CLAIM BY THE DISTRICT**

An officer must within three (03) days of receipt of any claim dispatch the claim received thereof.

6. **ASSIGNMENT OF CASES**

6.1 The office of the MEC/ Head of Department receiving the claim (documents) should refer such claim to Legal Services for further handling;

6.2 Senior Manager: Legal Services or delegated official will as soon as possible but not later than two (02) days from the date of receipt of a claim, assign an official to handle the matter;

6.3 The Senior Manager in Head of Department's office shall issue an assignment letter to the official with

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a list of officials to be copied with regard to the status of the report.

- 6.4 With regard to Summons or Applications, the official at Legal Services shall within the period of twenty four (24) hours give instruction to the State Attorneys.

7. ACKNOWLEDGEMENT OF THE MATTER

7.1 The officer receiving a claim at district level may acknowledge receipt of the claim and inform the claimant that the matter has been referred to Legal Services at Provincial Department.

7.2 A copy of an acknowledgement of receipt should be sent to the Senior Manager: Legal Services within five (05) days of the response.

8. PRELIMINARY REPORT

8.1. The official from institution where the incident occurred should within ten (10) days furnish the General Manager: Corporate Services with a preliminary report.

8.2. The office of the General Manager: Corporate Services shall if necessary forward the report to the office of the Senior Manager: Legal Services;

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- 8.3. The report must also be produced during meeting and/ or consultations with relevant directorates regarding the merits of the case;
- 8.4. The report must be objectively analyzed;
- 8.5. The report will assist the Department in deciding whether to settle or actively litigate or defend the matter.

9. **DRAFT FACTUAL BACKGROUND**

- 9.1 An official in charge of the institution or unit shall be required to draft a factual report which led to the claim.
- 9.2 The person who prepared such a report will be required to make it available to the office of the Senior Manager Legal Services within fourteen (14) days of the receipt of the claim. The report should be consisting of a brief of facts giving rise to the lawsuit;

10 **DAMAGES IF ANY**

- 10.1 The official at the institution/s must summarize and analyze damages (impact) and exposure to the Department if any;
- 10.2 The report must be done within ten (10) days of receipt of such claim/ demand; relevant officials who are well

conversant with the matter should be mentioned in the report to enable Legal Services to know who to contact at any given stage;

11. **DISCOVERY OF DOCUMENTS**

11.1 The institution/s must make sure that all relevant documentations are available when required; Prescripts relating to record management should be followed;

11.2 Courts require original documents and it is important that the institution/s must keep all the original documents safely;

11.3 All information and/ or documents relating to the matter at hand remain documents or information of the Department and no any other official/s is entitled to hold onto them as if he or she is the owner thereof.

12. **BUDGET OF THE CLAIM**

12.1 In terms of the Public Finance Management Act (PFMA), OF 1999 as amended and the Treasury Regulations therein, Departments are required to submit financial statements with regard to contingent liabilities. This enables the department to know the estimated amount of money or budget which it can settle either through court order or settlement between the Parties.

Legal Services together with State Attorneys in consultation with the CFO and Head of Department shall be able to determine the budget of the claim concerned.

13 RECOMMENDATION

The Head of Department together with Legal Services should determine the strategy to be used for successfully defending a claim against the Department or instituting a claim on behalf of the Department and provide the office of State Attorneys with such strategy. Such strategy may also be communicated to the office of the MEC of the Department.

14. REPORTS

Legal Services should request monthly reports from State Attorneys and forward same to the office of the Head of Department via the office of GM: Corporate Services. The report must clearly inform the Department with regards to merits of the case, any shortcomings if any and the recommendation/s.

15 TRIAL/ ARBITRATION

15.1 Before the trial of the case, Legal Services should not later than (30) thirty days of the hearing, request the State Attorneys or Counsel handling the matter to provide merit report;

15.2 Such a report shall consist of the following:

15.2.1 Assessment of the merits of the case;

15.2.2 The verdict/ finding value assuming full liability;

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15.2.3 List of possible witnesses;

15.2.4 Status of settlement negotiations, if any

16 FINAL REPORT

State Attorneys shall be required to provide the Department with a brief report soon as possible from the date of the completion of the case. This information shall be referred to the attention of the Head of Department by the Legal Services;

17 SETTLEMENT AUTHORITY

17.1. Legal Services has no authority to settle cases without prior written approval by the Head of Department. Only Head of Department or any delegated official has the power to settle all cases involving the Department.

17.2 Such settlement should be in writing.

18 EXTRA-ORDINARY EXPENSES

18.1 In case expert witness required to give evidence during tribunal, formal submission should be made to the office of the Head of Department for approval;

18.2 The Senior Manager: Legal Services must request the formal authority from the HOD via CFO regarding expert expenses and related expenses thereof.

19. CIVIL LITIGATIONS: DEFENDED AND UNDEFENDED MATTERS

19.1 LETTER OF DEMAND

- (a) Upon receipt of the letter of demand or letter of intent to sue from the third party, the Directorate or Institution/s receiving such letter should immediately forward it to Legal Services offices for attention and further handling. The letter should clearly give direction to the directorate. Legal Services shall give advice to the relevant Directorate;
- (b) The claim in the letter should be investigated and more information should be obtained as well as documentations thereof;
- (c) Legal Services shall acknowledge receipt of the letter of demand or notice of intention to institute Legal processes;
- (d) Sometimes it is advisable for Legal Services to refer the matter to State Attorneys further assistance.

19.2 SUMMONS

- 19.2.1 Civil Summons in respect of High Court, Magistrates' Court and Labour Court are to be served either in the offices of the State Attorneys in terms of the normal rules of Civil Procedure. After receiving such Summons, State

Attorneys shall refer to Legal Services of the Department for attention and further handling. State Attorneys shall also request the necessary instructions to defend the case. The Legal Services shall refer a copy of the summons to the office of the Head of Department and the relevant Directorate or Institution/s which is directly involved in the matter with a request that an approval be granted whether to defend the matter or settle. Legal Services will play a pivotal role in this regard in advising both the directorate and the HOD.

19.2.2 The directorate which is directly involved will have to compile the necessary information and/ or documents that might assist in defending the matter. The information submitted should include amongst others; accident report setting out the extent of the cause of the action and damages to the vehicle if is Motor Vehicle Accident, copies of all relevant documentations and so forth.

19.2.3 After perusal of the documents submitted by the relevant Directorate, the information shall be referred to State Attorneys instructing them to defend the matter and file such required documents within the required timeframes;

19.2.4 If Summons issued at the High Court, the office of the Head of Department should be approached with a view for the appointment of the Counsel who would assist the Department in defending the case. When such approval is obtained, State Attorneys will have to be instructed to appoint and brief counsel to handle the matter.

19.3 APPLICATION/S

Application/s proceedings could either be instituted for or against the Department in the High Court, Labour Court as well as the Magistrate Court. Every application should be as a matter of principle served at State Attorneys or main offices of the Department. After receiving same, State Attorneys shall refer the copy of the application to Legal Services requesting instructions to either oppose or settle the matter. Upon receipt of the said application, steps as set out above shall follow.

19.4 CONSULTATIONS

All consultations with every official of the Department with respect to any claim, which is instituted, for and against the Department shall be arranged through the Legal Services which shall in turn liaise with office of the State Attorney for further purpose. The following should be noted:

- (a) It is the responsibility of the affected directorate to see to it that officials concerned attend consultations as scheduled dates and times without fail;
- (b) The said consultations shall be held either at Legal Services offices, State Attorneys' offices, the Advocates' chambers or at any expert's offices,

- with the exception of the MEC and the HOD who may elect to hold consultations in their offices;
- (c) Arrangements for such consultations shall be made timeously and it is expected that every official who attended consultation should produce a document signed by State Attorney and or the Directorate that the consultation did take place and that he was in attendance on the said date.
- (d) It is the responsibilities of the relevant Directorate directly involved in the claim of whatever nature to see to it that officials who are to travel from various institutions to attend consultations are provided with adequate transport facilities to enable them to be in attendance;
- (e) Should an official failed to attend the consultation, the relevant Directorate shall take responsibilities for such non-attendance, as such failure to attend might hamper progress regarding the preparations for the hearing of the matter;
- (f) **NOTE:** Should the case be postponed with costs against the Department because of the unavailability of the official, the relevant Directorate will have to carry the responsibility regarding payment of the Legal costs;
- (g) Every official of the Department who has been called as a witness in a matter in which the Department has been sued or is suing a third party shall remain in attendance in Court until the matter is finalized;

- (h) The official of the Department is expected to cooperate with the Departmental Legal team at all times when the matter is before Court until it has been finalized

20. INFORMATION REQUIRED FROM OFFICIAL CONCERNED

- 20.1 Depending on the claim submitted, as soon as a claim received by the Department, it should be forwarded to the relevant Directorate which is directly involved in the matter for investigations, with a request that they should supply the Legal Services with the following information or documents:
- (a) Statement of the affected official/s;
 - (b) If involve police, whether a docket has been open, if so supply the directorate with a copy of the docket;
 - (c) A request for Legal representation in case of a criminal cases i.e. MVA, All relevant statement/s and/ or documents to support the case. etc.;
- 20.2 The abovementioned information will enable the Department to consider the claim and ascertain whether it is valid or not. If during investigation it reveals that the claim is invalid, Legal Services shall through HOD instruct State Attorneys to defend the matter.

This will enable the Department to settle some fake claims by members of the community.

21. CLAIMS AGAINST STATE OFFICIALS FOLLOWING LOSS OF TREASURY COVER: REFERENCE TO REGULATION 12 OF TREASURY REGULATIONS.

An official of the Department may during the normal course and scope of work commit an act or omission which could attract liability by the Department. This happens when a third party got injured either emotionally or physically as a result thereof. In case the above situation occurred the following should be followed:

- (a) Legal opinion to determine whether the treasury cover has been lost or not;
- (b) Legal opinion should be able determine if the employee lost the Treasury cover or not. Legal Services should also be required to provide for option/s to be followed if any;
- (c) It should also advice if loss should be recovered from employee or not;
- (d) State Attorney will be instructed to defend the Department in any case where the employee/s of the Department found to be wanting or at the wrong side of the law for

something happened while on duty or while executing his or her official responsibilities;

- (e) An official/s should be given an opportunity to make representations why loss should not be recovered from him or her in case it decided that loss suffered should be recovered from the employee/s;

22. LEGAL OPINION/S

It is the duty of the Legal Services to furnish the Department with written legal opinion/s as and when requested in order to meet the Department's strategic objectives. Therefore it is upon all Directorates within the Department to forward all requests for the drafting of legal opinion/s to Legal Services for the attention of and for further handling. The request for legal opinion should be in writing and must contain the following information:

- (a) Background information, which must be clear and concise;
- (b) Statement by the official/s concerned from the relevant Directorate;
- (c) Legal issues to be looked at and the implications thereof;

- (d) Whether the services of independent expert/s should be required;
- (e) Clear and concise instruction to legal services is a requirement;
- (f) Private matter/s should be disregarded/ referred back to official concerned; unless the issue in question is not clear;
- (g) Any other information which in the opinion of the sender will be of assistance should be submitted;
- (h) Upon receipt by the Legal Services, an acknowledgment receipt should within three (03) days be drafted and sent to the sender;
- (i) The timeframe for legal opinion is (07) seven days from the date of the receipt of the request unless the matter is so complex that it needs some form of expertise.

23. CRIMINAL MATTERS

23.1 The State employees who appear at criminal Courts after committing certain criminal offences whilst acting within the cause and scope of their employment will be represented by the State/ Department. State employees commit many of the offences by making use of State properties and

machineries e.g. state vehicles, assault others, issuing defamatory statement while on duty and or omitted to do what is required while in state property etc.

23.2 In this instances, it needs to be determined whether such official/s has lost treasury cover or not and if he/she does, then the official will pay for the costs of his legal representative out of his or her own pocket and the Department will not assist him or her financially;

23.3 Where the official/s acted within the course and scope of his or her employment on the alleged day and time and the incident resulted in the damages sustained by a third party, Legal Services shall if the matter warrants to be settled, advice the Department to settle same by offering the most reasonable amount in full and final settlement of the matter.

23.4 Where the State employee was acting within the course and scope of his or her employment on the date and time of the alleged incident and is due to appear at criminal / civil court/s, the Directorate concerned shall notify Legal Services in writing.

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23.5 Upon receipt of the notification, Legal Services shall within a period of forty eight hours (48) hours instruct State Attorneys to handle the matter for and on behalf of the employee concerned. The letter of instruction to State Attorneys must be accompanied by all relevant documents to assist in the process.

23.6 State Attorneys shall keep Legal Services abreast of any developments in the matter.

23.7 State Attorneys have discretion to appoint correspondent attorneys to represent such an employee;

24. GARNISHEE ORDERS AND EMOLUMENTS ATTACHMENT ORDERS.

PROCESSES:

24.1 Salary Section received the order [Court Order] from Sheriff of the Court;

24.2 Salary Section should notify the affected employee about the order before implementing it;

24.3 Salary section should issue within ten (10) days of the receipt of the order issue out

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an acknowledgement of receipt letter of the order to the attorneys of the Creditor (s);

24.4 Salary unit should within a period of ten (10) days refer the matter to Legal Services for verification and the authenticity of the court order/s in question;

2.4.5 Legal Services shall within a period of fourteen (14) after receipt of the referral advise the unit (Salary) whether to process garnish or not depending on the means of verification found;

24.6 Legal Services to issue out a communiqué to salary section to implement the garnishee order after verification.

25. ADMINISTRATION ORDERS

25.1 Administration order is when the estate of the employee is being administered by a neutral person or a company. The employee gave consent to the company or a firm of attorneys to administer the estate on his or her behalf;

25.2 There is no garnishee order to be implemented where employee is under administration order;

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25.3 Salary section should within a period of five (05) days notify the creditor (s) about the administration order status and provide the creditors with contact details of the said administrator(s). [PAJA compliant]

26. TRANSITIONAL ARRANGEMENTS

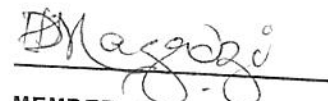
26.1 This Procedure Manual shall become effective on the date the Member of Executive Council approves it.

26.2 The Procedure Manual shall be reviewed after every two years of implementation

RECOMMENDED/ ~~NOT RECOMMENDED~~


HEAD OF DEPARTMENT

APPROVED/ ~~NOT APPROVED~~


MEMBER OF EXECUTIVE COUNCIL

2012/01/19
DATE