



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

POLICY

BRIEFING AND OUTSOURCING OF STATE LEGAL WORK

**POLICY DEVELOPED PURSUANT TO SECTION 3(4) OF STATE ATTORNEY
AMENDMENT ACT, 2014**

**INITIATED BY:
OFFICE OF THE SOLICITOR-GENERAL
DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT
JULY 2021**



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Table of Contents

POLICY	1
BRIEFING AND OUTSOURCING OF STATE LEGAL WORK	1
Table of Contents	2
CHAPTER 1: INTRODUCTION	4
1.1 DEFINITIONS	4
1.2 BACKGROUND	8
1.3 LEGISLATIVE MANDATE	10
1.4 SCOPE OF APPLICATION	10
CHAPTER 2: POLICY OBJECTIVES	11
CHAPTER 3: ROLE PALYERS	11
3.1 ACCOUNTING OFFICERS OR ACCOUNTING AUTHORITIES	11
3.2 SOLICITOR-GENERAL	12
3.3 STATE ATTORNEYS	12
3.4 CLIENT DEPARTMENTS	12
CHAPTER 4: BRIEFING MECHANISMS	13
CHAPTER 5: FEE GUIDELINES	14
5.6 INFORMATION TO BE DISCLOSED IN THE INVOICE	14
5.7 APPROVED FEE PARAMETERS	15
5.8 JUNIOR COUNSEL WORKING ALONG WITH SENIOR COUNSEL AND SENIOR JUNIOR COUNSEL	15
5.9 HOURLY RATE	15
5.10 CHARGES FOR CONSULTATION	16
5.11 CHARGES FOR PERUSAL OF DOCUMENTATION	16
5.12 CHARGES FOR DRAFTING DOCUMENTS	16
5.13 CHARGES FOR RESEARCHING THE LAW	17
5.14 CONSULTATIONS AND WORK DONE WHERE AN ATTORNEY IS NOT PRESENT AND OR WITHOUT INSTRUCTIONS FROM THE ATTORNEY	17
5.15 CHARGES FOR PREPARATION	18
5.16 EXPENDITURE INCURRED BY LEGAL PRACTITIONER	18
5.17 CHARGES FOR TRAVELLING	18
5.18 CHARGES FOR ATTENDING COURT WHERE A MATTER BECOMES SETTLED OR POSTPONED	19
5.19 CHARGES FOR A COLLAPSED FEE	19

5.20 RETAINER FEE.....20

5.21 CHARGES FOR APPEARANCES IN COURT IN UNOPPOSED MATTERS AND
POSTPONEMENTS20

5.22 CHARGES FOR APPEARANCES IN COURT IN OPPOSED MATTERS.....20

5.23 GENERAL PROVISIONS.....21

5.24 GUIDELINES ON RESOLUTION OF DISPUTES.....21

6. IMPLEMENTATION, MONITORING AND EVALUATION.....22

7. POLICY REVIEW.....22

8. CONCLUSION.....23

9. POLICY APPROVAL 23

CHAPTER 1: INTRODUCTION

1.1 DEFINITIONS

For purposes of this policy, unless the context indicates otherwise-

“Accounting Officer means an accounting officer as defined in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and section 60 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

“Accounting Authority” means an accounting authority as defined in Section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

“Advocate” means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, 2014 (Act No. 28 of 2014).

“Agreed Fees” means reasonable fees agreed to between the legal practitioner and the Office of the State Attorney.

“Attorney” means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, 2014 (Act No. 28 of 2014).

“Black” shall for the purposes of this policy mean black as defined in the B-BBEE Act.

“B-BBEE Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003), as amended.

“B-BBEE” means broad-based black economic empowerment, a national government policy that enables the participation of black people in the mainstream of the economy.

“Briefing” means the State Attorney process of appointing and briefing an advocate to handle a specific State legal work on behalf of an organ of State.

“Briefing Committee” means a panel established and consisting of attorneys within the Offices of the State Attorneys, who will decide on how briefs will be distributed and the fees thereof.

“Certification for payment/certify for payment” means an invoice that has been scrutinised, stamped and signed by the instructing attorney in the office of the State Attorney to be ready for payment.

“Collapsed fee” means compensation to a legal practitioner for the unexpired period for which the legal practitioner was retained.

“Constitution” means the Constitution of the Republic of South Africa of 1996.

“Court” means any court in the Republic as defined in section 166 of the Constitution of the Republic of South Africa 1996.

“Department or Client Department” in relation to an Organ of State, includes any such department, or institution in the national, provincial, local spheres of government and state-owned enterprises.

“Disciplinary body” means an investigating committee, disciplinary committee or an appeal tribunal, as the case may be.

“DOJ&CD” means the Department of Justice and Constitutional Development.

“Framework Contract” refers to the document whose express intent resonates with the transformation of the legal profession, which establishes the pre-approved list of legal practitioners (Law firms/Attorneys and Advocates) who will procure legal services for the State.

“Head of Legal Services/Head of Unit” means a person responsible for the overall provision of and who oversees the legal services in the Department.

“Head of Office” means the Head of Office and/or a person responsible for the overall management of the Office of the State Attorney.

“Historically Disadvantaged” (HD) or **“Historically Disadvantaged Individual”** (HDI) or **“Historically Disadvantaged Practitioner”** (HDP) means those persons or categories of persons who, due to the imbalances of the past were disadvantaged by unfair discrimination on the basis of race, gender and disability and includes juristic persons or associations owned or controlled by such persons.

“High Court” means the High Court of South Africa established by section 6 of the Superior Courts Act, 2013 (Act No.10 of 2013).

“Legal practitioner” means an advocate or attorney, including a candidate attorney as defined in the Legal Practice Act, 2014 (Act No.28 of 2014).

“Legal Practice Act” means the Legal Practice Act, 2014 (Act No.28 of 2014), as amended.

“Legal Practice Council” means the Legal Practice Council, which is a national, statutory body established in terms of section 4 of the LPA. The LPC and its provincial councils regulate the affairs of and exercise jurisdiction over all legal practitioners (attorneys and advocates) and candidate attorneys and pupils.

“Legal Services Sector Code” means the Legal Sector Code gazetted in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No.53 of 2003) as amended, which embraces the specific nature of the legal profession and the profession’s responsibility to address not only economic imbalances, but the wider social inequalities that beset our society.

“Magistrates Court” means a regional or a district court established in terms of the Magistrates Court Act, 1944 (Act No. 32 of 1944).

“Minister” means the Cabinet Minister responsible for the administration of justice.

“National Briefing Committee” means a committee established by the Office of the Solicitor-General comprising of the Solicitor-General, Heads of State Attorney Offices, Heads of other Branches within DOJCD, who will assess and monitor the briefing patterns issued across the country by Offices of State Attorney and State Departments.

“National Development Plan” means the National Development Plan which is a set of proposals devised by the government of South Africa aimed at eliminating poverty and reducing inequality by 2030.

“Organ of State” means an organ of state as defined in Section 239 of the Constitution of the Republic of South Africa, 1996.

“Outsourcing of State legal work” means the State Attorney process of appointing and instructing a private attorney or law firms to handle a specific State legal work on behalf of organs of State.

“Profiling” means a process where legal practitioners apply to be registered on a panel of legal professionals to receive instructions from the Office of the State Attorney and guarantee to execute the instruction in terms of the rules of profiling and management of the panel.

“Republic” means the Republic of South Africa.

“Section Head” means a person in charge of a section handling litigation matters and who directly supervises officials and the operations of the said sections, both in the Offices of the State Attorneys and Client Departments.

“Solicitor-General” means the incumbent appointed in terms of section 2 of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014).

“State” means the territorial entity that enjoys sovereignty and governed by the constitution; and

“State Attorney” means any person who is an attorney appointed in terms of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014).

1.2 BACKGROUND

- 1.2.1 There is an exigent need for the transformation of State Legal Services. The transformation of State Legal Services is seminal to redressing past imbalances, iniquities and inequalities that is pervasive relative to black and female legal practitioners in the Republic of South Africa.
- 1.2.2 Government's obligations arising from Constitutional, International and Regional instruments inform the overall transformation of society and this extends to the legal profession. The Constitution seeks to improve the quality of life of previously disadvantaged individuals and is the foundation upon which this policy framework for transformation of State Legal Services rests.
- 1.2.3 Government has the constitutional responsibility to ensure the achievement of equality as well as equity in the country and should therefore be at the forefront of ensuring transformation of the legal profession.
- 1.2.4 The *State Attorney Amendment Act, 2014 (Act No. 13 of 2014)* which creates the Office of the Solicitor General, came into effect on the 7th February 2020 and provides that the Solicitor General shall be the:
- (a) Executive officer of all offices of the State Attorney;
 - (b) Exercise control, direction and supervision over all offices of State Attorneys;
and
 - (c) In implementing the policy referred to in *section 3(4)*, issue directives and standards regarding the functions referred to in that section, which standards and directives must be observed by all persons appointed in the Offices of State Attorney.
- 1.2.5 *Section 3 of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014)*, read together with the *State Liability Amendment Act, 2011 (Act No. 14 of 2011)*, states that the functions of the State Attorney and of its branches shall be the performance in any court or in any part of the Republic of such work on behalf of Government as is **by law, practice or custom performed by attorneys.**

- 1.2.6 Consequently, amongst other statutory deliverables, this translates to Offices of State Attorney, under the auspices of the Office of the Solicitor-General, being responsible for coordination and management of all litigation in which the State is involved.
- 1.2.7 The process of managing litigation entails utilisation of both internal and external legal resources, including the management and distribution of briefs and outsourcing of state legal work.
- 1.2.8 The Offices of State Attorney accepts briefs from Client Departments on the written instructions of the Client Department. Where external legal resources are to be utilised, it is the responsibility of the State Attorney to agree on fees with Legal Practitioners.
- 1.2.9 If the matter is not dealt with internally by the Office of State Attorney, the State Attorney should, after consultation with Client department, brief the most suitable legal practitioner in compliance with the relevant transformation imperatives, taking into account skills transfer prerequisites or expertise related to the matter and any other relevant considerations.
- 1.2.10 *Section 217 of the Constitution of the Republic of South Africa, 1996 states:*
- “(1) When an organ of State in the national, provincial or local sphere of government, or any other institution identified in national legislation contracts for goods or services, it must do so in accordance with a system which is **fair, equitable, transparent, competitive and cost-effective.***
- (2) Subsection 1 does not prevent the organs of State or institution referred to in that subsection from implementing a procurement policy providing for –*
- (a) categories of preference in the allocation of contracts; and*
- (b) the protection or advancement of persons, or categories of persons, or categories of persons disadvantaged by unfair discrimination.”*
- 1.2.11 In briefing and outsourcing of legal work, this policy is applied in conjunction with the Framework Contract, which establishes the pre-approved list of legal practitioners (Law firms/Attorneys and Advocates) who will provide legal services on behalf of the State.

1.2.12 This policy seeks to eliminate any ambiguity related to who is legislatively mandated with dealing with litigation by or against the state. It also seeks to foster cohesion and stimulate equality among those in the legal profession, Client Departments and the Offices of the State Attorney.

1.3 LEGISLATIVE MANDATE

The provisions in this policy are based on the principles and values espoused in the:

- (a) Constitution of the Republic of South Africa, 1996.
- (b) Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- (c) Employment Equity Act, 1998 (Act No. 55 of 1998).
- (d) Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).
- (e) Legal Practice Act, 2014 (Act No. 28 of 2014).
- (f) Municipal Finance Management Act, 2003 (Act 56 of 2003).
- (g) Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (h) Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (i) Public Service Act, 1994 (Proclamation No. 103 of 1994).
- (j) State Attorney Amendment Act, 2014 (Act No. 13 of 2014), and
- (k) State Liability Amendment Act, 2011 (Act No. 14 of 2011).

1.4 SCOPE OF APPLICATION

The principles espoused in this policy apply to all offices of State Attorney and to Client Departments within the National, Provincial and to some extent, to Local spheres of Government, State Owned Enterprises (SOE's), Boards of State Entities and other State institutions.

CHAPTER 2: POLICY OBJECTIVES

The objectives of this policy are to:

- 2.1 Transform the legal sector in order to give effect to the objectives of the Constitution of promoting effective and sustainable economic participation in the economy of the country in general, and the legal profession in particular.
- 2.2 Enable a standardized practice on briefing and outsourcing of legal work by effecting empowerment mechanisms to historically disadvantaged practitioners, in particular women.
- 2.3 Ensure the fair distribution of legal work by implementing clear regulating systems and introducing targets addressing how briefs are to be issued by the Offices of the State Attorney.
- 2.4 Curtail the ever increasing and exorbitant legal costs of litigation by introducing the fee guidelines.
- 2.5 Outsource legal work to correspondent attorneys & private legal practitioners in the event of conflict of interest, capacity requirements, transformation and jurisdiction.
- 2.6 Promote the development of legal expertise in both the public and private sector by facilitating the enhancement of skills in multiple disciplines of law.
- 2.7 Ultimately promote uniformity and consistency across all Offices of the State Attorney which will in turn address complaints of subjectivity in the selection of Legal practitioners.

CHAPTER 3: ROLE PLAYERS

This Policy involves the following role-players:

3.1 ACCOUNTING OFFICERS OR ACCOUNTING AUTHORITIES

- 3.1.1 The *Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA)* and the *Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA)* provides for the designation of both Accounting Officers or Accounting Authorities and vests specific powers and responsibilities in such incumbents. These incumbents must be central figures, in

consultation with their Executing Authorities, in ensuring that their institution's litigation is managed in accordance with this policy.

3.2 SOLICITOR-GENERAL

3.2.1 The Solicitor-General has the primary responsibility for the co-ordination and management of all state litigation on behalf of Organs of State through the:

- (a) Provision of norms and standards for litigation; and
- (b) Provision of reporting protocols on the implementation of the said norms and standards.

3.2.2 This co-ordination occurs through the supervision and oversight by the Office of the Solicitor General, as the central authority for State legal services, over the operations and functioning of Offices of State Attorney.

3.3 STATE ATTORNEYS

3.3.1 State Attorneys are professional public sector legal practitioners reporting to the Office of the Solicitor-General whose function is to provide legal services to Client Departments.

3.3.2 The work of the Offices of State Attorney is regulated by the *Legal Practice Act, 2014 (Act No. 28 of 2014)* and the *State Attorney Amendment Act, 2014 (Act No. 13 of 2014)*.

3.4 CLIENT DEPARTMENTS

Client Departments are departments, institutions or sectors within Organs of State in the national, provincial, local sphere of government including state owned enterprises, whose litigation must be coordinated and managed through the Office of the Solicitor-General.

CHAPTER 4: BRIEFING MECHANISMS

4.1 BRIEFING LEGAL PRACTITIONERS IN ACCORDANCE WITH THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) LEGAL SECTOR CODE OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

The advancement of the Broad-Based Black Economic Empowerment and Legal Sector Code is central to the transformation of State Legal Services. It is intended to develop a framework that will empower previously disadvantaged individuals, and in particular women. This policy therefore seeks to encourage co-ordination with all spheres of government and is aligned with the principles underpinning the Legal Sector Code (LSC). In the event of conflict between the provisions of this policy and those of the Legal Sector Code in relation to legal practitioner's empowerment prerogatives, then the provisions of the Legal Sector Code shall prevail.

4.1.1 PROFILING OF LEGAL PRACTITIONERS

4.1.1.1 The profiling of Legal Practitioners is covered in the Standard Operating Procedures developed and updated from time to time by the Office of the Solicitor-General in line with government procurement policies.

4.1.1.2 Profiling of Legal Practitioners shall also take into account the database of legal practitioners generated through the Framework Agreement for State Legal Services.

4.1.1.3 In the event that the Legal practitioner is dissatisfied with the manner in which the specific profiling has been dealt with, such Legal practitioner may address and/or level a complaint with the Office of the Solicitor-General.

4.2 OUTSOURCING OF STATE LEGAL WORK

4.2.1 The Office of the State Attorneys shall outsource State Legal work to Legal practitioners, including the instruction of correspondent attorneys under the following circumstances:

4.2.1.1 Where the Office of the State Attorney does not have an office within the jurisdiction of the Court, the State Attorney shall appoint a private Legal practitioner to act as a correspondent attorney to receive, serve and file documents or court processes with the Court and the opposing party.

4.2.1.2 Where the Office of the State Attorney lacks capacity requirements or is conflicted in the matter and it will be in the interests of transformation.

CHAPTER 5: FEE GUIDELINES

5.1 There shall be a predetermined tariff payable to a Legal practitioner. Tariff variation or requests for increased fees shall only be approved by the Solicitor-General.

5.2 The National Briefing Committee (NBC) within the Office of the Solicitor-General will monitor the briefs allocated to Legal practitioners and the fees thereof.

5.3 Where a matter has been outsourced to a Legal practitioner, the Legal Practitioner must submit a written report within a period of two (2) months. In the event that the report is not submitted, then the Office of the State Attorney must within seven (7) days thereafter follow up with the said Legal practitioner.

5.4 Legal practitioner must submit an invoice for work done within one (1) month from the date of attendance of the said work. In the event that the invoice is not submitted within one (1) month, then the Office of the State Attorney must within seven (7) days thereafter follow up with the said Legal practitioner.

5.5 Legal practitioner's invoice will only be considered and paid within thirty (30) days of receipt, if it is in accordance with the prescribed form of invoices and applicable tariff and after receiving inputs from the Client Department.

5.6 INFORMATION TO BE DISCLOSED IN THE INVOICE

5.6.1 In the invoice, Legal practitioners shall be required to disclose the following information:

- (a) Invoice number, rate, and names of the parties, date and VAT number if applicable.
- (b) If the fees were calculated on a daily basis, the day in respect of which the fee is being charged, an indication of the nature of work performed during that day e.g. preparation for trial, reading of record, etc.
- (c) If fees are calculated on a time basis, the date on which the time was spent, the time of the day and an indication of the nature of work performed during the time in question e.g. on consultation, preparation, reading of records, etc.

(d) A day fee will be awarded for a maximum of ten (10) hours. In all other instances an hourly fee shall apply.

5.7 APPROVED FEE PARAMETERS

5.7.1 The fees including fee increases must be approved in line with the fee parameters endorsed by the special fee committee appointed by the Office Solicitor General.

5.7.2 The State Attorney must ensure that the invoice is paid within thirty (30) days from date of receipt, unless a dispute has been declared and/or has been referred to the relevant Fee Committee within the Legal Practice Council (LPC) for a ruling. Once the matter has been resolved and/or the Legal Practice Council has made a ruling, the thirty day (30) period shall be computed from the date of resolution of the dispute or the date of the ruling by the Legal Practice Council.

5.7.3 All disputes on fees must be escalated to the Head of Office of State Attorney to make a determination. If there has not been any resolution or the Legal Practitioner is dissatisfied with the determination by the Head of Office of State Attorney, the dispute shall be referred to the Office of the Solicitor General for a decision.

5.8 JUNIOR COUNSEL WORKING ALONG WITH SENIOR COUNSEL AND SENIOR JUNIOR COUNSEL

5.8.1 The junior and/or senior's counsel's fees must stand in some reasonable relation to the contribution they have actually made.

5.8.2 Where two or more Legal practitioners are briefed in a matter, each Legal practitioner should charge only for the time reasonably devoted to the brief.

5.8.3 The practice of Junior Counsel charging or pegging their fees at $\frac{2}{3}$ of Senior Counsel's tariff is deemed inimical to the transformation of State legal services and is therefore impermissible. Each Legal practitioner shall be paid at the rate agreed to, relative to that practitioner's seniority.

5.9 HOURLY RATE

The fee per hour is calculated as is or per each fifteen (15) minutes depending on the actual time spent on the case. The actual time spent must be clearly recorded.

5.10 CHARGES FOR CONSULTATION

The following particulars must appear from the invoice:

- (a) The date, time and duration of the consultation and the purpose of the consultation.
- (b) The name of the Attorney attending the consultation with the Legal practitioner must be stated, as well as the names of all persons present at the consultation.

5.11 CHARGES FOR PERUSAL OF DOCUMENTATION

5.11.1 The following particulars must appear from the invoice:

- (a) The specific documents perused must be stated.
- (b) The date and time spent on perusal.
- (c) Number of pages perused (is for the sake of certainty, perusal of 25 pages shall be charged at no more than an hour of the Legal Practitioner's rate).

5.11.2 Depending on the nature of the matter, further perusal of documents at a later stage will be allowed when there has been a lapse of a period of two months from the last perusal provided counsel and attorney have agreed in writing on such further perusal. If the documents are as such perused, perusal shall be allowed at half the amount that was allowed at the first perusal.

5.12 CHARGES FOR DRAFTING DOCUMENTS

5.12.1 The following particulars must appear from the invoice:

- (a) Date and time spent in drafting of the document must be stated.
- (b) Description of document drafted.
- (c) Background documentation considered.

5.12.2 Drafting of documents charged for every 10 pages or part thereof per hour will be regarded as a fair charge for drafting. The complexity of the matter may justify the drafting of fewer pages per hour.

5.13 CHARGES FOR RESEARCHING THE LAW

5.13.1 Only in exceptional cases will charges be allowed for researching the law.

5.13.2 Before any research of the law is undertaken, the Legal practitioner must liaise with the instructing Attorney and the Legal practitioner must specifically be briefed in writing to undertake same.

5.13.3 A full description in writing of the intended research will be required as well as an estimate of the time to be spent to do so.

5.13.4 The Legal practitioner is entitled to charge a reasonable fee for research if briefed for an opinion.

5.13.5 The Legal practitioner shall make available to the Office of the State Attorney all research material and/or reference to case law and/or legislation on request.

5.14 CONSULTATIONS AND WORK DONE WHERE AN ATTORNEY IS NOT PRESENT AND OR WITHOUT INSTRUCTIONS FROM THE ATTORNEY

5.14.1 The Legal Practitioner briefed by the State Attorney cannot consult with client without the instructing attorney's consent or presence.

5.14.2 It shall be unethical of a Legal Practitioner instructed by the Office of the State Attorney to canvass the Client Department to terminate the mandate of the State Attorney.

5.14.3 The instructing Attorney and the client department must agree in setting up consultations with the Legal Practitioner (Advocate) appointed by the State Attorney.

5.14.4 A client department is not allowed to instruct Legal practitioners directly without consulting with the Office of the State Attorney.

5.14.5 The instructing attorney shall not be allowed to certify for payment the invoice of the Legal practitioner under the following circumstances, where:

5.14.5.1 there is an ongoing dispute between the legal Practitioner and the instructing attorney regarding the invoice.

5.14.5.2 the dispute has been referred to the LPC for a ruling.

5.14.5.3 instructions were entrusted to the Legal Practitioner without following the briefing protocols envisaged in this policy.

5.15 CHARGES FOR PREPARATION

5.15.1 Ahead of trial proceedings, a preparation fee equal to no more than 5 hours will be allowed in non-complicated matters. In complicated matters, fees for preparation must be agreed between the legal practitioner and the instructing attorney.

5.15.2 Inclusive of the day fee payable, if during trial proceedings a consultation is necessary, the fee payable for such a consultation will not exceed a fee of more than 5 hours.

5.15.3 For the purpose of paragraph 5.15.1 and 5.15.2, non-complicated matter shall refer to all matters that have been set down for not more than 3 days on the continuous court roll and complicated matter shall be those matters that have been set down for more than three (3) days on the continuous court roll.

5.15.4 In Motion proceedings, a fee for preparation not in excess of 3 hours shall be allowed. In exceptional circumstances, the reasonable fee for preparation shall be as agreed between the Legal Practitioner and the Head of Office of State Attorney.

5.15.5 The Legal Practitioner is entitled to a fee for perusal, consultation and drafting of pleadings.

5.16 EXPENDITURE INCURRED BY LEGAL PRACTITIONER

5.16.1 Unless prior approval is obtained from the relevant Attorney, no disbursements shall be payable to the Legal practitioner.

5.16.2 Written approval must be obtained from the instructing attorney before any expenditure is incurred.

5.17 CHARGES FOR TRAVELLING

Travelling time shall be allowed only if negotiated beforehand and approved in writing by the instructing attorney.

5.18 CHARGES FOR ATTENDING COURT WHERE A MATTER BECOMES SETTLED OR POSTPONED

5.18.1 Where a matter is settled or postponed less than two days prior to the date of the trial, no more than a day fee shall be regarded as reasonable.

5.18.2 Where a matter is settled or postponed more than three days, but no more than seven (7) days prior to the date of the trial, no more than 2/3 (75%) of the day fee shall be regarded as reasonable.

5.18.3 Where the matter is settled or postponed or settled more than 8 days prior to the date of the trial, but less than 14 days prior to the date, no more than 1/3 (33,3%) of the day fee shall be regarded as reasonable.

5.18.4 Where the matter is postponed or settled more than 14 days prior to the date of the trial, no fees shall be payable.

5.18.5 Where a matter is set down for 2 days and becomes settled or postponed, the Legal practitioner shall be allowed a day fee.

5.18.6 Where a matter has been set down for 4 to 5 days and becomes settled or postponed, the Legal practitioner shall be allowed a 2 days' fee.

5.18.7 Where a matter has been set down for 10 days, and becomes settled or postponed, the Legal practitioner shall be allowed a 4 days' fee.

5.18.8 Settlement of matters shall be in accordance with the **Initiating, Opposing and Defending of matters policy**.

5.18.9 In all postponements, instances referred to above, payment to a Legal practitioner shall be conditional on any such postponement not being attributable to the Legal practitioner.

5.19 CHARGES FOR A COLLAPSED FEE

5.19.1 The instructing State Attorney, with the approval of the Head of Office must agree in writing to a collapsed fee arrangement before trial.

5.19.2 In determining a collapsed fee, the duration of the period for which the Legal practitioner was reserved, reasons and other relevant considerations shall be taken into account.

5.19.3 The Legal practitioner is not entitled to be paid for all the days in respect of which the case should have run, if the case "collapsed" for some or other reason or does not continue.

5.19.4 Where a matter collapses, the Legal Practitioner shall be compensated for the actual period for which services were rendered. Over and above compensation for the actual period for which services were rendered, the Legal Practitioner shall be paid twenty five percent (25%) calculated on the quantum of the unexpired period for which the Legal Practitioner' services were retained or contracted.

5.19.5 In all matters that have collapsed, payment to a legal practitioner of the twenty five percent (25%) reckoned to constitute the unexpired period for which the Legal Practitioner was retained or contracted for shall be conditional on any such collapse not being attributable to the Legal practitioner.

5.20 RETAINER FEE

Retention agreements between offices of State Attorney and Legal Practitioners shall not be permissible.

5.21 CHARGES FOR APPEARANCES IN COURT IN UNOPPOSED MATTERS AND POSTPONEMENTS

In respect of appearances in unopposed matters and postponements, the Legal practitioner is allowed to charge for the actual time spent in court.

5.22 CHARGES FOR APPEARANCES IN COURT IN OPPOSED MATTERS

5.22.1 In respect of appearances in opposed matters and a matter is postponed, the Legal practitioner is allowed to charge for the actual time spent in court. The Legal practitioner shall be entitled to charge the agreed day fee in instances where attendance is eight (8) hours or more.

5.22.2 Reasonable time spent before and after appearing in court for the day, will also be paid if it is properly motivated in writing and as directed by the court.

- 5.22.3 Where the Legal practitioner is briefed in an urgent Motion, the tariff of fees applicable in non-urgent matters shall be applied in determining fees due to the practitioner.
- 5.22.4 Fees due and tariffs applicable to Legal practitioners shall be uniform and binding to all Offices of State Attorneys, irrespective of the Court and/or jurisdiction in which the matter is heard.

5.23 GENERAL PROVISIONS

- 5.23.1 A Legal practitioner may only receive a brief if he or she is duly admitted and practising as such.
- 5.23.2. In order to render services for and on behalf of the State, the Legal practitioner should ensure that registration on the database of legal professionals is done.
- 5.23.3 In order to be briefed by the Office of the State Attorney, Legal practitioners must be enrolled and registered with the Legal Practice Council.

5.24 GUIDELINES ON RESOLUTION OF FEE DISPUTES

- 5.24.1 In the event that there is a fee dispute between a Legal practitioner and the State Attorney relating to fees, due and owing or a dispute relating to quantification and assessment of any such fees, then and in that event the 30 day payment period shall not be applicable. If and in that event, the 30 day period shall be computed from the date upon which the dispute has been resolved by and between the parties or from the day upon which the Fees Committee of the Legal Practice Council would have made a determination on the dispute.
- 5.24.2 Objectionable items in the invoice will first be discussed with the Legal practitioner. In the event that the matter is incapable of amicable resolution (between the Legal Practitioner and the Office of the State Attorney), the dispute shall be referred to the Office of the Solicitor General for a decision.
- 5.24.3 Without detracting from the provisions of clause (5.24.2) above, the Solicitor General may refer any dispute relating to fees to the Fees Committee of the Legal Practice Council for a ruling.

6. IMPLEMENTATION, MONITORING AND EVALUATION

- 6.1 It is recognized that the achievement of the objectives entailed in this policy is an on-going process, and that the successful application hereof depends on an effective monitoring and evaluation process on an on-going basis.
- 6.2 The Solicitor General must play a leading role in the implementation of this policy and, to this end, must:
 - 6.2.1 Ensure efficacy of the Briefing committees established in various Offices of the State Attorney.
 - 6.2.2 Ensure the National Briefing Committee (NABCOM) assess and monitor the briefing patterns.
 - 6.2.3 Ensure the fair distribution of briefs to legal practitioners and compliance by State Attorneys with targets set on briefing and outsourcing of State legal work.
 - 6.2.4 Provide clarity and guidelines to Departments on the proper interpretation, implementation and application of this policy.
 - 6.2.5 Fulfil a monitoring and coordinating function to all the stakeholders.
 - 6.2.6 The Solicitor-General shall, however, ensure that at all material times the norms and standards applicable within offices of State Attorneys and across organs of State in relation to briefing and briefing protocols resonate with the provisions of the Legal Practice Sector Code.

7. POLICY REVIEW

- 7.1 This policy must be reviewed after three (3) years or when required, after consultation with all stakeholders.
- 7.2 The statistics collected by the Solicitor-General must be analysed and form part of the process for reviewing this policy and its effectiveness.
- 7.3 The review process must also make recommendations for operational improvements within the office of the State Attorney and Client Departments in so far as the briefing and outsourcing of State Legal work is concerned and a recommendation to the organs of state in so far as the handling of their litigation is concerned.

8. CONCLUSION

In the event that the provisions of this policy are in conflict with the provision of the Legal Sector Code, the provisions of the Legal Sector Code shall prevail.

9. POLICY APPROVAL

Initiated by:	Approved By:	Date Approved
Office of the Solicitor-General	Signature:	
	Mr. R O Lamola, (MP) Minister of Justice and Correction Services	