



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

POLICY

INITIATING, DEFENDING AND OPPOSING OF MATTERS ON BEHALF OF THE STATE

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

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



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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).

“Action proceedings” means litigation commenced by the issuing of summons.

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

“Agency Fees” means fees and disbursements incurred by Offices of State Attorney in relation and pursuant to management and coordination of litigation and legal matters in which the State Departments are involved.

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

“Defending/Opposing” means to deny or resist any action proceedings or motion proceedings, as the case may be, in legal proceedings.

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

“Executive Authority” means the President, the Deputy President and the Cabinet ministers at national level, and the Premier and Members of the Executive Councils (MECs) at provincial level.

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

“Initiating” means to commence legal proceedings either by way of summons or application.

“Legal Official” means a legally qualified person in the employ of an organ of state or client department who is responsible for the handling of litigation for or brought against the State.

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

“Motion Proceedings” means litigation commenced by the issuing of an application.

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

“Section Head” means a person in charge of a section handling litigation matters, and who directly supervises officials and the operations of the said section, both in the State Attorney’s Office 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 Attorney” means any person who is an attorney appointed in terms of the State Attorney Amendment Act, 2014 (Act No. 13 of 2014).

“State Litigation” means work performed on behalf of Organs of State that requires the services of State Attorneys and Legal Officials.

1.2 BACKGROUND

1.2.1 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:

- (a) be the 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.

1.2.2 The intended outcome is to consolidate and streamline all State legal services under a single functionary who will be appointed as Head of State Legal Services to represent the State in all civil litigation matters.

1.2.3 *Section 3 (4) of the State Attorney Amendment Act* provides that:

“The Minister of Justice and Constitutional Development shall after consultation with the Solicitor General, who must consult with the State Attorneys, determine policy relating to the functions of the offices of State Attorney as set out in this section, which must include the following:

- (a) the coordination and management of all litigation in which the State is involved;
- (b) the briefing of advocates;
- (c) the outsourcing of legal work, including the instruction of correspondent attorneys;
- (d) initiating, defending and opposing of matters; and
- (e) implementing alternative dispute resolution mechanisms in the resolution of litigation against the State”.

1.3 OBJECTIVES

The objectives of this policy is to:

1.3.1 Provide norms and standards between attorneys and client departments on initiating, defending and/or opposing of matters on behalf of the Organs State.

1.3.2 Ensure uniform procedures in initiating and defending of matters on behalf of Organs of State.

1.3.3 Ensure compliance with the norms and standards in initiating and defending of matters on behalf of Organs of State.

1.3.4 Align and redefine, where necessary, the functions and processes in the initiating and defending of matters on behalf of Organs of State.

1.3.5 Assist in reducing the cost of litigation against and on behalf of Organs of State.

1.4 LEGISLATIVE MANDATE

This policy is based on the principles and values espoused in the:

- (a) Constitution of the Republic of South Africa, 1996.
- (b) Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).
- (c) Legal Practice Act, 2014 (Act No. 28 of 2014).
- (d) Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and the Rules, as amended.
- (e) Municipal Finance Management Act, 2003 (Act No. 56 of 2003).
- (f) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).
- (g) Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (h) Public Service Act, 1994 (Proclamation No. 103 of 1994).
- (i) State Attorney Amendment Act, 2014 (Act No. 13 of 2014).
- (j) State Liability Amendment Act, 2011 (Act No. 14 of 2011); and
- (k) Superior Courts Act, 2013 (Act No. 10 of 2013) and the Rules of the Constitutional Court, the Supreme Court of Appeal and the High Courts.

1.5 SCOPE OF APPLICATION

The principles espoused in this policy apply to all State Attorneys and Client Departments within the national, provincial, local spheres of Government and including State owned enterprises.

CHAPTER 2: ROLE PLAYERS

2.1 Solicitor-General

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

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

2.1.2 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 and the stakeholder link that the office plays with Organs in relation to consumption of State Legal Services.

2.2 Accounting Officers or Accounting Authorities and/or Executive Authority

2.2.1 The Public Finance Management Act (PFMA) and Municipal Finance Management Act (MFMA) provides for the designation of either 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.

2.2.2 Decisions on whether or not a matter must be initiated, defended or opposed must be the responsibility of the Accounting Officer or Accounting Authority and/or the Executive Authority. The Accounting Officer or Accounting Authority and/or the Executive Authority may delegate this decision making power.

2.3 State Attorneys

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. Their work is regulated by the Legal Practice Act and the State Attorney Amendment Act.

2.4 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 3: DEFENDING/OPPOSING OF MATTERS

3.1 Instructions

In non-urgent civil litigation matters initiated against an Organ of State, the Office of State Attorney or Client Department must immediately upon receipt of:

- 3.1.1 Action or Motion proceedings initiating litigation, forward a copy thereof to the Client Department via email, facsimile or by physical delivery where possible, within two (2) days of service of the process, accompanied by covering correspondence advising of the contact name and details of the Attorney who has been allocated to deal with the matter for the Client Department.
- 3.1.2 The correspondence to client departments should also request instructions, within five (5) days of receipt, to enable the Attorney to comply with the provisions of State Liability Act , and also indicate the date by which notice to defend/oppose and plea/opposing affidavit must be served and filed.
- 3.1.3 Written instructions from Client Department to the Attorney must be within five (5) days thereof and be accompanied by supporting documents where available.

Urgent civil litigation matters initiated against an Organ of State:

- 3.1.4 Where urgent Action or Motion proceedings are initiated, the time periods set out above can and must be truncated, in the discretion of the Attorney allocated to the matter, so as to deal with matter effectively and ensure the Client Department is serviced.
- 3.1.5 The Client Department must ensure that instructions are given to the State Attorney on an urgent basis.
- 3.1.6 Where the founding papers served in a matter are unduly bulky at least the Notice of Motion or Particulars of Claim, as the case may be, should be faxed or emailed to the Client Department immediately and the full set of papers should then be either be hand delivered to the Client Department or sent to it via courier services as deemed appropriate by the Attorney to ensure timeous delivery thereof.
- 3.1.7 In any other services to be rendered by an Attorney, which includes conveyancing, debt collection, criminal matters, labour, opinions, etc., the attorney must immediately after receipt of the instructions, address correspondence to the Client Department acknowledging receipt thereof.
- 3.1.8 Where service of process has been effected directly on the Client Department, the process outlined in 3.1.1 through to 3.1.6 shall, with necessary alterations, apply.

3.2 Correspondence

- 3.2.1 All correspondences between the Attorney and Client Department must be in writing, either by letter or e-mail. Telephone and verbal discussions on the matter must be subsequently confirmed in writing either by letter or e-mail.
- 3.2.2 All incoming and outgoing emails must be copied to the legal secretary and where an Attorney to whom a matter is allocated is away for an extended period of time, that attorney must activate the Outlook out of office assistant information.
- 3.2.3 After receipt of instructions and a consideration thereof, the Attorney must call for all necessary additional information regarding the matter. The correspondence (requesting the relevant information) must clearly list all the required information, e.g. statements, reports and documents so required and an indication of when such information should be furnished to the requestor.
- 3.2.4 The file must, depending on the urgency, be diarised for a period of no more than ten (10) days. After the expiry of the period aforesaid, further correspondence should be addressed to the Client Department informing them of steps taken in relation to the matter and clearly outlining whether a notice of intention to defend/oppose has been served and filed and when. In order to protect the interests of the State, the attorney should clearly and unequivocally inform the Client Department when either a plea (in the case of claims), answering or replying affidavit (in the case of motion proceedings) shall be required to be served and filed as well as outlining the consequences that might ensue in the case of non-adherence with the timelines.
- 3.2.5 In the event that the Client Department fails to respond after the second request has been sent, the Attorney must refer the matter to the Section Head or Supervisor (as the case might be) for intervention.
- 3.2.6 In the event that the intervention by the Section Head or Supervisor does not yield the desired results, then the State Attorney shall, after notifying the Head of Office of State Attorney, liaise with the Head of Legal Services for the relevant Organ of State or Client Department recording the issue of non-response or lack of cooperation by the Client Department. The escalation to the Head of Legal Services on the issue of non-responsiveness or lack of cooperation should be reduced to writing in a letter or email to be transmitted to the relevant Client Department for record purposes. Should escalation of the issue of non-responsiveness and/or lack of cooperation yield no results, then and in that event the matter shall be referred to the Office of the Solicitor-General for a decision and directions on the further handling of the matter.

3.3 Consultations

- 3.3.1 Any consultation that the State Attorney or Client Department deems necessary must be arranged by the State Attorney at an early stage of the matter, ideally shortly after receipt of instructions or so soon after additional relevant information that may have been requested in the matter is procured. To this end, Client Department shall be required to provide a memoranda of instructions and any relevant documents to State Attorneys. It is very important that after consultation, the Client Department be advised on the merits and demerits of their case.
- 3.3.2 At any stage of the proceedings, the Attorney must alert the Client Department to the Court's discretion in relation to the award of costs and the likely triggers of adverse costs orders.

3.4 Process to be followed where a matter is opposed or defended

If the instruction has been given to defend or oppose a matter, the following steps should be followed:

- 3.4.1 The notice of intention to defend or the notice to oppose, as the case may be, must be served and filed and thereafter any further exceptions, special pleas, interlocutory applications, requests for security, pleas, answering or replying affidavits and any relevant process must be served and filed in accordance with the Rules of Court. In order to ensure that a matter is trial ready, discovery notices and affidavits; expert notices and reports as well as pre-trial minutes and any court sanctioned step in the process must be filed timeously.
- 3.4.2 If the applicant or plaintiff does not take steps to proceed with the matter, the attorney must advise the Client Department on whether to proceed or leave the matter in abeyance and wait for the applicant or plaintiff to take the next step as dominus litis. In order to obviate overburdening the State Contingent Liability and to reduce incidences of dormant matters, however, it is incumbent that where a litigant against the State does not take any further action in relation to any matter for an inordinate period of time, the attorney that is seized with the matter shall at all material times have regard and be guided by any directives and standards in the handling of that matter as issued by the Office of the Solicitor-General.
- 3.4.3 The Attorney must, within five (5) days from receipt of the notice of set down or notice of enrolment, in writing inform the relevant legal official in the Client Department and where applicable, Advocate (if employed) of the date of the hearing of the application or trial (as the case may be).
- 3.4.4 In preparation for trial/hearing of matters, the Attorney must, where an Advocate is appointed, ensure that the Advocate has been requested to provide advice on evidence and to ascertain availability of that Advocate to conduct trial, ensure that witnesses are available or that they have been subpoenaed (if so required), that all applicable pre-trial Rules and Notices have been adhered to, served and filed and that all necessary documents are paginated and indexed.

- 3.4.5 Additionally, it is instructive that the Attorney must advise the Client Department of the names of all the witnesses who are required to be at court, as well as any relevant original documents that are required to be brought to court.
- 3.4.6 In order to ensure a seamless process in preparation of the hearing of any matter involving the State and to make a determination of whether there are any material changes to the merits or quantum position of the Client Department, it is mandatory that where applicable, consultations with Client Department witnesses should be timeously scheduled well in advance of the envisaged trial, but in any event not later than 10 days before the actual date of trial,.
- 3.4.7 Where the attorney is not self-handling the matter, both the attorney and legal official or a representative of the Client Department must attend court to observe the proceedings in order to get a better understanding of the performance of the witnesses and/or counsel as the case may be, as well as to gather further evidence if needs be, and generally for assisting the appointed Counsel.

3.5 Court orders and State Liability Act

- 3.5.1 Where a judgment or order has been granted against and on behalf of an Organ of State, the Attorney must immediately forward a copy of same to the Client Department. In claims sounding in money, compliance should be in accordance with the provisions of section 3 of the State Liability Act (as amended) or any applicable prescripts that might be in place at the time the Court Order is issued.
- 3.5.2 In terms of the State Liability Act, a final court order for a monetary amount must be forwarded to the Client Department at the earliest opportunity but in any event within seven (7) days from date of receipt by the Attorney of that order or judgment.
- 3.5.3 An order or judgment sounding in money becomes final once the time period for an appeal has expired and must be paid within thirty (30) days from the date of issue of that date, unless the terms of the Order or Judgment otherwise indicates. Unless where the order or judgment otherwise indicates, the thirty (30) day period shall also apply to compliance by the State with Orders or Judgments requiring specific performance.
- 3.5.4 If not paid within thirty (30) days, the judgment creditor can invoke certain steps set out in section 3(4) of the State Liability Act including sending a copy of the order to the State Attorney office.

3.5.5 As soon as any such notice of the Order is received, the matter must be taken up with the Accounting Officer of the Client Department to ensure the relevant Organ of State is made aware of the Order and of the consequences of non-compliance i.e. the attachment of state property in execution or contempt.

3.5.6 In the event that such notice relate to non-payment of legal costs, then and in that event the matter must be taken up with the Office of the Solicitor General.

3.6 Appeal Stage

3.6.1 If the order or judgment is unfavourable, the attorney must inform the Client Department in writing on the prospects of success on appeal.

3.6.2 In the event of the Client Department instructing the attorney to lodge an appeal against the judgment, then the attorney must attend to the prosecution of the appeal in terms of the relevant Court Rules.

3.6.3 Notwithstanding anything to the contrary, should the Attorney, exercising his best judgment, form a view that the matter is not appealable or that the appeal does not serve the best interests of the State, the Attorney should bring the matter to the attention of the Head of Office of State Attorney, who shall make a final determination in relation to the matter. If and in the event that the Head of Office is unable to make a final determination of the appealability or otherwise in relation to a matter or a point in the matter, the Head of Office shall seek the guidance and direction of the Solicitor-General in relation to the management of the matter.

3.6.4 Should the Solicitor-General form a view that the matter is either not appealable or that the appeal is not in the best interests of the State, the Solicitor-General shall cause written communication to be addressed to the Accounting Officer of the relevant Client Department, in which it is indicated the basis of non-appealability of the matter or a point in the matter are outlined.

3.7 Settlement

A settlement can be considered at any stage of a matter during the proceedings, but before judgement. This will include:

3.7.1 When the Attorney receives instructions from the Client Department with the letter of demand/statutory notice, for consideration and advice, the Attorney must consider the merits of the matter and if the Attorney is of the view that the Client Department does not have good prospects to successfully defend the matter, the Attorney must provide a written opinion with reasons to the Client Department to settle the matter prior to summons being issued.

- 3.7.2 In instances where the Attorney receives court process and instructions from a Client Department, the Attorney must consider the merits of the matter and if the latter is of the view that the Client Department does not have good prospects of success, then the Attorney must provide a written opinion to the Client Department advising on settlement of the matter before counsel is briefed.
- 3.7.3 Any instruction from the Client Department to settle a matter must be clear and in writing, duly signed by the Accounting Officer and/or person delegated to enter into a settlement agreement and/or commit the Client Department financially.
- 3.7.4 The Attorney must, on receipt of instructions to settle, communicate such to the opponent by way of correspondence sent on a “without prejudice” basis, setting out the full terms of the proposed offer of settlement.
- 3.7.5 If the offer is accepted, same should be in writing by the opponent or claimant and the Client Department should be advised accordingly.
- 3.7.6 The settlement agreement should be in writing and be signed by both parties and/or their legal representatives.
- 3.7.7 In litigation matters, the parties may elect to make the settlement an order of court or out of court settlement. In order to protect the interests of the State, all Settlement Agreements (including out of court settlements), should before payment is effected, be ratified by a court (where summons were issued) or by the Solicitor-General (where summons were not issued).
- 3.7.8 In the event that the parties fail to reach settlement, Client Departments must at all times be advised to consider the process of mediation as envisaged in the Court Annexed Mediation and State Attorney Mediation policy as additional means by which to try and settle a matter. The policy on Mediation and Alternative Dispute Resolution as envisaged in the State Attorneys Amendment Act shall guide both the Attorney and the Client Department on the process to be followed.
- 3.7.9 All matters where written instructions to settle have been received from the Client Department, must be checked by the Attorney and by the Section Head or Head of Office before the terms of the offer to settle are finalised. Notwithstanding anything to the contrary, all Offices of State Attorney shall always adhere to the standards and directives issued by the Solicitor-General in relation to protocols to be adhered to in all matters where State funds are committed in the settlement of matters.

CHAPTER 4: INITIATING

The Attorney must immediately upon receipt of instructions to institute a civil claim or an application:

- 4.1 Acknowledge receipt of instructions within 5 days, peruse initial documents and determine if a consultation is necessary.
- 4.2 During any such consultation, the Client Department shall provide a memoranda of instructions and any relevant documents to State Attorneys within 5 days, whereafter the attorney shall peruse and assess the merits and demerits of the case and prepare a memorandum of advice for the Client Department.
- 4.3 The memorandum of advice on merits must be prepared to confirm whether or not the attorney is of the view that the Client Department's case has reasonable prospects of success or not and if so, whether Action or Motion proceedings are appropriate and to advise the Client Department accordingly.

CHAPTER 5: ACTION PROCEEDINGS

5.1 Action Proceedings

- 5.1.1 In the event of the Client Department instructing for the initiation of Action proceedings, the Attorney must attend to the following:
 - (a) Prepare and send or issue a letter of demand where relevant.
 - (b) Draft and issue summons.
 - (c) Forward the summons to sheriff for service.
 - (d) Advise the Client Department on progress.
- 5.1.2 In the event the matter is not defended, the Attorney must attend to the following:
 - (a) Prepare an application for default judgment (original summons, return of service and affidavit in support of the application).
 - (b) Lodge the application with the Registrar or Clerk of the Court.
 - (c) Advise Client Department on progress.
- 5.1.3 After default judgment is granted, the Attorney must attend to the following:
 - (a) Prepare and issue a writ of execution.
 - (b) Forward issued writ to the sheriff for execution.
 - (c) Advise Client Department on progress.

5.1.4 Upon receipt of sheriff's report on attachment, the Attorney must attend to the following:

- (a) Instruct sheriff to remove, if judgment debtor has not made arrangements for payment within the prescribed time.
- (b) Prepare notice of advertisement (local newspaper).
- (c) Instruct the sheriff to sell.
- (d) Advise Client Department on progress.

5.1.5 Upon receipt of proceeds of sale, the Attorney must attend to the following:

- (a) Account to Client Department in respect of the proceeds and money received.
- (b) If the proceeds satisfy the judgment debt including costs, advise Client Department and close the file.

5.1.6 In the event of a *nulla bona* return from the sheriff, the Attorney must attend to the following:

Magistrate's Court Proceedings:

- (a) Consider Section 65 proceedings.
- (b) Prepare an application in terms of Section 65.
- (c) Adhere to the provisions of the Rule of Courts

High Court Proceedings

- (d) The process outlined in (a) and (b) above shall mutatis mutandis apply in relation to High Court proceedings, taking into account the Rules and Directives of the High Court.

In all instances,

- (e) the process should be served by the sheriff on the judgment debtor to appear in court.
- (f) On the date of the hearing, an inquiry must be conducted into the debtor's financial status.
- (g) Advise Client Department of the outcome including the emolument attachment order if granted.

5.1.7 In the event the matter is defended, the Attorney must attend to the following:

- (a) Upon receipt of notice of intention to defend, consider the need for summary judgment.
- (b) Advise Client Department of the notice and the need, where appropriate, to apply for summary judgment.

- (c) If summary judgment is not applicable, diarise the file for service of a plea.
- (d) If plea is not received, notice of bar must be served and filed.
- (e) If a plea is not received after notice of bar, then apply for default judgment

5.1.8 If a plea is received, the Attorney must attend to the following:

- (a) Consider replication and take instructions.
- (b) If necessary, serve and file replication.
- (c) Prepare discovery notices and affidavits, serve and file same.
- (d) Advise Client Department of progress.

5.1.9 If the other side has not served and filed a discovery affidavit, then the Attorney must attend to the following:

- (a) Notice to compel discovery, failing which to apply for the order to compel.
- (b) Non-compliance with the order to compel, apply for the striking out of the defendant's plea.
- (c) Apply for judgment.

5.1.10 Upon service of a discovery affidavit by the defendant, the attorney must attend to the following:

- (a) Apply and attend to pre-trial procedure.
- (b) Enrol the matter for trial.
- (c) Attend preparation for trial.
- (d) Attend and conduct trial.
- (e) Advise Client Department on the outcome and forward judgment.

5.2 Write-offs

5.2.1 If, after a successful judgement sounding in money has been ordered in favour of the State and the Attorney (after having considered all the steps taken to recover the judgment debt and/or legal costs in favour of the Client Department as set out above), is of the view that it will be uneconomical and/or cause undue hardship to the judgment debtor to pursue him/her or the claim further, then and in that event the Attorney must in writing advise the Client Department to consider writing-off the said judgment debt or cost, especially in case of the judgement debtor being a man of straw or an indigent litigant.

5.2.2 In the event that the Client Department agrees with the opinion of the State Attorney, it must furnish written instructions to the Attorney as to whether any such judgement debt and/or costs should be written off. Any debt write-off shall only be valid if ratified in writing by the Accounting Officer of that Client Department.

CHAPTER 6: MOTION PROCEEDINGS

6.1 Instructions to institute/launch motion proceedings

In the event that:

6.1.1 The Attorney is instructed to institute/launch an application, the Attorney must attend to the following:

- (a) Consult (if necessary) and ensure that instructions have been received on all relevant aspects of the matter.
- (b) Draft a notice of motion, founding affidavit, and confirmatory affidavits and attach annexures thereto (where applicable).
- (c) Attend to commissioning and issuing of the motion proceedings.
- (d) Arrange service on the respondent(s).
- (e) Advise Client Department on progress.

6.1.2 The Application is unopposed, the Attorney must attend to the following:

- (a) Apply for a date of hearing or apply for judgement via the Chamber book if applicable.
- (b) Paginate and index the court file (file original application and return of service).
- (c) Notify Client Department about date of hearing.
- (d) If necessary prepare heads, serve and file.
- (e) On the date of hearing attend court and obtain default order.
- (f) Give Client Department written feedback and advice on steps to enforce the order (where applicable).

6.1.3 The matter is opposed, the Attorney must attend to the following:

- (a) Consult with Client Department on the content of the opposing papers and take instructions to prepare answering/replying affidavit.
- (b) Prepare, serve and file answering affidavit/papers.
- (c) Attend to pagination and indexing the court file.
- (d) Apply for a date of hearing.
- (e) Prepare, serve and file heads of argument.
- (f) Attend court to argue the matter.

- (g) Advise Client Department of the outcome, including the enforcement of the order where applicable.

6.2 Urgent applications

In the event of urgent applications being served on the State, the Attorney must attend to the following:

- 6.2.1 Immediately upon receipt of the application contact the Client Department for urgent instructions.
- 6.2.2 Arrange for urgent consultations, if so required.
- 6.2.3 If needs be, brief counsel on urgent basis in consultation with Client Department.
- 6.2.4 Prepare, serve and file opposing papers.
- 6.2.5 Attend court and argue the application.
- 6.2.6 Advise Client Department of feedback/report.
- 6.2.7 Deviation from the procedure laid out above shall only be with the consent of the Solicitor-General.

CHAPTER 7: COSTS

- 7.1 With limited exceptions, it is trite law that costs follow the result (cause), which means that the party who wins is awarded the costs. This rule does not always apply in litigation pertaining to constitutional issues, where the courts often elect not to award costs to a successful party (particularly where the matter is against the state) if the litigation in question was in good faith and in pursuance of a constitutional goal. There are also instances in which a court will award punitive costs against a party to register its displeasure in respect of the conduct of that party in the conduct of a matter. Prior to the judgment being handed down, the Attorney must alert the Client Department to the Court's discretion in relation to the award of costs and the likely triggers of adverse costs orders.
- 7.2 Where a costs order is granted in favour of the Client Department, the attorney must take the following steps to recover the costs:
 - 7.2.1 Draw a Bill of Costs.
 - 7.2.2 Serve and file a notice of taxation.
 - 7.2.3 Consider objections (if any).
 - 7.2.4 On receipt of settlement proposal from the other side, the attorney must take instructions from Client Department.
 - 7.2.5 If acceptable to Client Department, to advise the other side or opponent.
 - 7.2.6 If no settlement, to attend to taxation.

- 7.2.7 On receipt of the allocateur to advise the other side or opponent to settle same.
- 7.2.8 If there is no settlement, follow the writ of attachment process/execution.
- 7.2.9 Advise Client Department of progress.
- 7.2.10 Subject to the provisions of the Public Finance Management Act, any costs recovered shall be utilised to defray expenses incurred in the prosecution and management of the matter by State Attorneys.
- 7.3 Where costs are awarded against the Organ of State, the Attorney must attend to the following:
 - 7.3.1 Receive and peruse notice of taxation.
 - 7.3.2 Consider raising any objections.
 - 7.3.3 File notice to oppose and objections.
 - 7.3.4 Propose settlement to the other side after receipt of instructions from Client Department.
 - 7.3.5 Where there is no settlement, attend to taxation.
 - 7.3.6 On receipt of allocator advise the Client Department, process payment and send proof thereof to the Client Department.
 - 7.3.7 As a general rule, a taxed bill costs must be paid within the timelines as prescribed by the Rules of Court.
 - 7.3.8 Costs settlement shall, notwithstanding anything to the contrary, conform with the standards and directives issued by the Solicitor-General.

7.4 Legal Fees (Agency fees)

In all instances where State Attorneys act on behalf of Organs of State or at the instance of the Solicitor-General (acting on behalf of a Client Department or Organ of State) where the exigencies so require, State Attorneys act as agents. Fees and disbursements incurred are, in line with agent-principal relationship, recoverable from the Client Department or Organ of State on whose behalf the services are rendered.

- 7.4.1 The payment of legal fees is the responsibility of the Client Department.
- 7.4.2 There, however, are four (4) possible methods of payment of legal fees which are as follows:
 - (a) Legal fees shall be paid by the Department of Justice and Constitutional Development (DOJCD) on behalf of the Client(s) and shall be reimbursed by the Client department(s) within thirty (30) days of receipt of invoice;
 - (b) The Client department(s) may select to pay legal fees directly from their accounts. Should the Client Department(s) select to pay legal fees

directly from its account, then, the Office of the State Attorney must check and verify the invoice and submit to the Client department(s) for payment. The Client department(s) shall pay within thirty (30) days of receipt of invoice;

- (c) Advanced payment to be made by the Client department(s) after having received estimated costs from the Office of the State Attorney. If the legal fees to be paid exceed the estimated costs, then the Client department(s) must pay the difference within thirty (30) days of receipt of the invoice.
- (d) A scheme of arrangement that empowers National Treasury to withhold the budget allocation item designated for litigation, management and coordination of legal matters and enables, upon certified invoices presented to National Treasury, direct payment (on behalf of the Client Department) of any such fees and disbursements incurred to the service provider.

7.4.3 In the event of any dispute and/or non-payment of the legal fees by the Client department(s), then the matter must be resolved by invoking the Intergovernmental Relations Framework Act.

CHAPTER 8: FILE MANAGEMENT

Integral to initiating and defending matters is the proper management of Attorney's files, hence it is critical to ensure that the following are adhered to at all times:

8.1 File Contents

- 8.1.1 The file contents must be kept in a chronological order, divided into correspondence, pleadings and documents and accounts clearly marked as such.
- 8.1.2 Should there be a need for a sub-file to be opened for any of the contents referred to above, such should be clearly marked and cross referenced to the main file.
- 8.1.3 All correspondence, pleadings and documents received via email must be printed and placed in the file accordingly.
- 8.1.4 Court orders or judgments must be filed with the pleadings, but flagged so as to facilitate easy reference for purposes of audit.
- 8.1.5 Introduction of electronic file management for Offices of the State Attorney shall (where applicable) be accompanied by a standard user-manual and shall

be adhered to in line with the standard operating procedures to be issued from time to time by the Solicitor-General

8.2 Notes

- 8.2.1 For proper record keeping, the Attorney must ensure that detailed notes and attendances are accurately recorded in the file.
- 8.2.2 The file notes are also important, among others, to confirm the Client's Department mandate, drafting of the bills of costs for taxation and the raising of objections.
- 8.2.3 A file note must record every attendance, including consultation, phone calls and court appearances. This can be either typed or hand written, dated and signed.
- 8.2.4 All-important pleading dates, trial dates, prescription dates as well as file pending dates must be recorded on the front file cover and appendices thereto.

8.3 Diaries

- 8.3.1 All Attorneys must at all times keep and maintain a diary in which they record all dates of consultations, trial dates and other important appointments and/or all attendances.
- 8.3.2 The Attorney must keep one or more of the following diary systems namely:
 - (a) Electronic/outlook
 - (b) Pocket diary
 - (c) Board diary
 - (d) Section Heads/Supervisors must over and above the mentioned diary systems, also keep and maintain a central diary to monitor and manage litigation in their respective sections.
- 8.3.3 The Attorney must also diarise all files for attention on a future date and then record the same date on the file cover.
- 8.3.4 Each day the attorney or his/her secretary must draw all the files diarised for that day.
- 8.3.5 No file may be filed away unless it has been diarised for a future date.
- 8.3.6 Introduction of a standardised electronic diary system for Offices of the State Attorney shall (where applicable) be adhered to in line with the standard operating procedures to be issued from time to time by the Solicitor-General

8.4 Updates to Client Departments

It is an ethical and professional duty of every Attorney to regularly, as and when the need arise account to the Client Department in respect of the conduct of the matters assigned to them and reply on client departments correspondence.

8.5 Closed Files

8.5.1 Attorneys should close files as soon as the matter is finalised and/or is dormant. Before the file is closed, the attorney must advise the Client Department to confirm such. For the purposes of this policy, dormant matter is a claim that a claimant is not prosecuting and there has been no progress on the matter for a period of a year.

8.5.2 Offices of State Attorney should adhere to norms and standards issued by the Solicitor-General relating to management of dormant matters.

8.5.3 All files earmarked for closure must first be submitted to a Supervisor and/or Section Head to confirm that there are no outstanding issues like payment of costs, recovery of debt and return of the original documents to the Client Department.

8.5.4 Before the file can be closed on the system, it must first be verified by accounts section for any outstanding payments and closed accordingly.

8.6 Register of files

8.6.1 The Attorney must maintain a register on computer, which reflects all matters allocated to his/her name and which must be updated as allocation and closure occurs.

8.6.2 The file registers must be updated regularly to reflect the current status of active matters.

8.7 General Supervision

All the work in the Offices of the State Attorney, including legal advice and opinions will be supervised by the respective managers and/or supervisors, with the oversight of Heads of Offices.

8.8 Consequent Management

8.8.1 In the event of contravention of this policy by any role player covered by the policy, consequent management must follow.

8.8.2 Interpretation of this policy shall take into account the directives and standards issued by the Solicitor-General envisaged in the State Attorneys Act, as amended.

CHAPTER 9: MONITORING, EVALUATION AND REVIEW

9.1 The achievement of the objectives entailed in this policy is an ongoing process, and the successful application thereof depends on an effective monitoring and evaluation process on an ongoing basis.

9.2 The Solicitor-General shall play a leading role in the implementation of this policy and, to this end, shall:

9.2.1 Provide clarity and guidelines to organs of State on the proper interpretation, implementation and application of this policy;

9.2.2 Fulfill a monitoring and coordinating function to all the stakeholders;

9.2.3 Develop strategies for intervention where challenges are encountered;

9.2.4 Foster ongoing interaction with stakeholders in respect of these objectives;

9.2.5 Collect statistics on matters initiated, defended and opposed on behalf and/or against the State and;

9.2.6 Provide feedback to all organs of State.

9.3 This policy shall be reviewed after three (3) years or when required, after consultation with all stakeholders.

9.4 The statistics collected by the Solicitor-General shall be analysed and form part of the process for reviewing this policy and its effectiveness.

9.5 The review process shall make recommendations for operational improvements within the offices of the State Attorney and Client Departments regarding the management of State litigation.

10. POLICY APPROVAL

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