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Effective date			
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Note	Legal Practice Council (the Council) reserves the right to amend the contents of these guidelines as and when required.		

## CHAPTER ONE: INTRODUCTION

### 1. Introduction

- 1.1 On 11 August 2023, the Minister of Justice and Correctional Services, in terms of section 94(1)(j), read with section 29, of the Legal Practice Act 28 of 2014 ('the LPA'), published the Regulations (Government Gazette 49104, Notice No. 3778) prescribing the requirements for community service, set out in Regulation 4A (rendering of community service by candidate legal practitioners) & Regulation 4B (rendering of community service by practising legal practitioners).
- 1.2 The Regulations came into operation on the date of publication in the Government Gazette.
- 1.3 On 16 September 2023, the Legal Practice Council ('the Council') resolved that guidelines be developed to be used by legal practitioners and candidate legal practitioners for community service as set out in the Regulations.



1.4 These guidelines and procedures are established by the Council for the information and assistance of practising legal practitioners and candidate legal practitioners who are required to complete community service in terms of section 29 of the LPA and the Regulations.

## **2. Scope of the application of the guidelines**

This policy is applicable to all candidate legal practitioners (candidate attorneys and pupils) and practising legal practitioners (attorneys and advocates).

## **3. Definitions**

Any definition that is contained in the LPA will be applicable to this policy and will have the same meaning, unless specifically indicated in this text.

“community service” means— (i) the provision of free legal services through structures as contemplated in section 29(2) of the LPA; and (ii) the provision of legal services at no fee or at a reduced fee to individuals, groups or organisations seeking to secure or protect civil rights, civil liberties or public rights or to charitable, religious, civic, community and educational organisations in matters, in furtherance of the organisational purposes, where the payment of standard legal fees would cause hardship;

‘practising legal practitioner’ means an advocate or attorney admitted, enrolled, and practising as a legal practitioner;

‘legal services’ shall include, but not be limited to, the delivery of advice, opinions, assistance in matters, research, drafting, court appearances etc. falling within the professional competence of a legal practitioner. The services must be legal in nature, and can be conducted in-person, telephonically or using a virtual platform.

‘Pro bono services’ means legal services of a quality equal to that afforded to paying clients, at no fee or expectation of compensation from the client, and principally to benefit poor, underprivileged, or marginalised persons or communities or the organisations that assist them, as defined in the Regulations;

‘the Regulations’ means the regulations published on 11 August 2023 which prescribe the requirements for community service in terms of section 29 of the LPA.

## **4. Legal Principles**

This policy document must be read subject to the following statutes and any other relevant legislation:

- 4.1 The Constitution of South Africa 1996.
- 4.2 The Legal Practice Act, 28 of 2014 and the regulations, rules and Code of Conduct promulgated in terms of the LPA.

## **CHAPTER TWO: COMMUNITY SERVICE AND PRO BONO LEGAL SERVICES**

### **5.1. Community Service**

- 5.1.1.1 Practising legal practitioners (both attorneys and advocates) are required to complete 40 hours of community service or pro bono legal services per year.
- 5.1.1.2 Candidate legal practitioners (both candidate attorneys and pupils) are required to complete 8 hours of community service or pro bono legal services per year.
- 5.1.2 In terms of the Regulations, community service means the provision of free legal services through one of the structures listed below, and the provision of legal services at no fee or at a reduced fee to individuals, groups or organisations seeking to secure or protect civil rights, civil liberties or public rights or to charitable, religious, civic, community and educational organisations in matters, in furtherance of the organisational purposes, where the payment of standard legal fees would cause hardship.
- 5.1.3. For purposes of section 29(2) of the LPA, community service may be completed through the following structures or in the provision of the following services. These include, but are not limited to:
  - 5.1.3.1 service in the State, approved by the Minister, in consultation with the Council;
  - 5.1.3.2 service at the South African Human Rights Commission;
  - 5.1.3.3 service, without any remuneration, as a judicial officer in the case of legal practitioners (including: judge, magistrate, acting prosecutor, acting family advocate, or as a commissioner in the Small Claims Courts etc),
  - 5.1.3.4 serving as a member of an LPC Investigating, Disciplinary or Appeals Committee, where no honorarium or remuneration is paid. The time taken preparing for the hearing and spent drafting the recommendations/orders will also be taken into account;
  - 5.1.3.5 upon request by a judge or a magistrate, to act as amicus curiae or friend of the court;

- 5.1.3.6 furnishing comments on draft bills or on draft amendments or preparing comments or opinions at the request of Council;
- 5.1.3.7 the provision of legal education and training for and on behalf of the Council, or on behalf of an academic institution or non-governmental organisation, including any lectures, training, mentoring, or educational programmes presented to candidate legal practitioners and legal practitioners;
- 5.1.3.8 the provision of legal services to Legal Aid South Africa, an accredited Law Clinic, or other community-based organisation as approved by Council;
- 5.1.3.9 the provision of legal services in Correctional Supervision and Parole Review Boards established in terms of the Correctional Services Act 111 of 1998;
- 5.1.3.10 the provision of legal services to Mental Health Care Users in terms of section 15 of the Mental Health Care Act 17 of 2002;
- 5.1.3.11 the provision of legal services to parties appearing in the Rental Housing Tribunal established in terms of the Rental Housing Act 50 of 1999;
- 5.1.3.12 any other legal service which the candidate legal practitioner or the legal practitioner may wish to perform, with the approval of the Council, at a recognised or other structure.

5.1.4 Organisations seeking to become recognised structures may apply for consideration as such from Council. Once approved as a recognised structure, legal practitioners and candidate legal practitioners will be entitled to complete their community service and pro bono hours through the structure. A list of recognised structures will be published on the Council's website from time to time.

5.1.5. To qualify as community service, the provision of legal services at a reduced fee should be at no more than 50% of the usual fee charged by that legal practitioner or candidate legal practitioner for that service.

5.1.6 Legal practitioners are entitled to enter into contingency fee arrangements in respect of community service work (at the reduced rate provided to clients), provided they comply with the Contingency Fees Act 66 of 1997, and section 92 of the LPA. However, if a legal practitioner ultimately receives payment pursuant to such an arrangement, such legal practitioner shall not be entitled to claim such hours as pro bono hours, and, to the extent such hours have already been claimed as such, they will be required to pro rate their pro bono hours going forward accordingly.

5.1.7 Legal practitioners performing community service shall keep adequate records of the work performed and their attendances, in the same manner as required for a paid brief, containing sufficient detail to submit to Council of their community service.

## 5.2 Pro Bono Legal Services

5.2.1 Community service also includes the provision of *pro bono* legal services. The purpose of such *pro bono* assistance is principally to benefit poor, underprivileged or marginalised persons or communities or the organisations that assist them. To qualify for *pro bono* services, the applicant:

- 5.2.1.1 must earn less than R8 200 per month after tax has been deducted; or
- 5.2.1.2 must have a household income (where persons living together share the household expenses) less than R9 000 per month after tax; and
- 5.2.1.3 if the applicant owns immovable property, then the total value of the immovable property and other assets must not be more than R711 700. The applicant must not own more than one home and must live in it; or
- 5.2.1.4 if the applicant does not own immovable property, then the value of his/her assets must not be more than R151 700.

5.2.2 The following is required when accepting a client on a *pro bono* basis:

- 5.2.2.1 The client must be engaged through a mandate letter, and the client must be given a copy of this letter for their records;
- 5.2.2.2 The client must be advised that the legal services rendered will be free of charge, except for disbursements. The legal practitioner may not charge for travelling, photocopying costs etc. and other such expenses;
- 5.2.2.3 The client must be advised that, even though they are receiving legal services on a *pro bono* basis, they have recourse to the LPC if the legal practitioner does not perform adequately.

5.2.3 Legal services rendered at no cost to the following individuals or organisations will count towards the required *pro bono* hours:

- 5.2.3.1 poor, underprivileged, or marginalised persons or communities;

- 5.2.3.2 legal services provided to clients, who have been referred to the legal practitioner by the Council's *pro bono* offices, an accredited law clinic, Legal Aid SA, Probono.org, community advice/paralegal office, or other recognised and accredited *pro bono* structure;
- 5.2.3.3 *In forma pauperis* instructions from a registrar of a Division of the High Court;

5.2.4 The Council may from time to time identify projects, programmes; and initiatives to be undertaken, which would count towards the pro bono hours for LPs.

5.2.5 The legal practitioner or candidate legal practitioner will still be entitled to claim disbursements (for example sheriff's costs, tracing agents' fees, adverse costs order, security requested by the court, transcript costs etc.), however this must be discussed with the client before the service is rendered. Disbursements in pro bono matters may not include advocate's fees (as the attorney must also engage an advocate on a pro bono basis).

5.2.6 Regarding cost orders, upon collection of the cost order in favour of a pro bono client, any disbursement actually paid by the client should be reimbursed to the client and any disbursement covered by the legal practitioner should be reimbursed to the legal practitioner. In the event that the legal practitioner elects to retain the funds (meaning any portion of a costs order other than the disbursements paid), no pro bono hours shall be claimed for any services rendered.

5.2.7 In assisting poor, underprivileged, and marginalised persons, and communities, it should be imperative that members of the public not be expected to travel long distances to access and consult with legal practitioners. Collaboration will be required between legal practitioners, institutions and service-providers operating in the remote rural areas. Where vulnerable communities are inaccessible NGO offices can be used as a base for the provision of services. Pro bono services may also be conducted telephonically or use a virtual platform to allow the service to be more accessible.

5.2.8 Legal practitioners should not take on pro bono work that is outside their area of expertise.

5.2.9 Pro bono service excludes pro amico work i.e., work for a client who is a friend or relative of the legal practitioner unless such person qualifies in terms of the means test.

- 5.2.10 The legal practitioner must perform in terms of an agreed upon mandate with a pro bono client and that mandate must be completed on a pro bono basis. However, a legal practitioner would not be required to extend the mandate beyond what had been agreed on a pro bono basis at the request of the client. Once briefed, the legal practitioner may withdraw from a pro bono brief only upon the same grounds that they may withdraw from a paid matter.
- 5.2.11 Legal practitioners performing pro bono legal services shall keep adequate records of the work performed, and their attendances, in the same manner as required for a paid brief, containing sufficient detail to submit to Council of their pro bono work.

### **CHAPTER THREE: CALCULATION OF COMMUNITY SERVICE AND PRO BONO HOURS**

- 6.1.1 Practising legal practitioners (both attorneys and advocates) are required to complete 40 hours of community service or pro bono legal service per calendar year (this means from 1 January to 31 December each year).
- 6.1.2 Candidate legal practitioners (both candidate attorneys and pupils) are required to complete 8 hours of community service or pro bono legal service per calendar year (this means from 1 January to 31 December each year).
- 6.2 The following hours may count towards community service and pro bono hours:
  - 6.2.1 Actual hours spent in consultations and meetings with the client,
  - 6.2.2 Drafting and research, which must be limited to 10 pro bono hours per year,
  - 6.2.3 Traveling to consultations or meetings, or to court, which must be limited to 5 pro bono hours per year;
  - 6.2.4 Where a legal practitioner is reserved for a day in court, such day shall equate to 8 hours. However, if the matter is postponed at the commencement of the hearing, the legal practitioner can claim 4 hours per matter. If the matter is postponed more than a week prior to the date on which the matter was to be heard, then the legal practitioner is not entitled to claim any hours. A legal practitioner shall further be entitled to claim pro bono hours for a day reserved in court if an opposed pro bono matter is postponed for reasons unrelated to the conduct of the instructing attorney or the relevant counsel.

- 6.3 A person who commences to serve as a candidate legal practitioner during the course of a calendar year must perform community service or pro bono legal services for a pro rata number of hours applicable annually.
- 6.4 A legal practitioner who commences practice as such during the course of a calendar year must perform community service or pro bono legal services for a pro rata number of hours applicable annually.
- 6.5 Any extra hours of community service or pro bono legal services rendered in a calendar year may be carried forward for the next calendar year. Any excess hours may only be transferred for a maximum of one calendar year.
  - 6.6.1 A candidate attorney who renders community service must be supervised by their principal or a person so directed by the principal, and a pupil who renders community service must be supervised by their engaging advocate or a person so directed by the training supervisor.
  - 6.6.2 The hours spent supervising the candidate legal practitioner's community service or pro bono hours will count towards no more than eight out of the 40 hours required for legal practitioners.
  - 6.7.1 If a legal firm or recognised structure has a community service or pro bono department, the Council may from time to time enter into arrangements with those firms or recognised structures for the delivery of community service and pro bono legal services.
  - 6.7.2 The aggregate of the community service or pro bono legal service hours rendered by a firm or recognised structure in that manner shall always equal or exceed the aggregate of the quotas of community service or pro bono legal services to be rendered by the individual legal practitioners of the firm or recognised structure.
  - 6.7.3 Each individual legal practitioner of the firm will be expected to report on the matters that they were involved in, and individually upload the confirmation and supporting documents accordingly.

## **CHAPTER FOUR: MONITORING AND CAPTURING OF COMMUNITY SERVICE AND PRO BONO HOURS**

- 7.1 Legal practitioners and candidate legal practitioners must document their community service activities, and provision of pro bono legal services, and submit a report and supporting certificates/documents. The period of community service and pro bono legal services will be from 1 January to 31 December of each year. Legal practitioners who have completed the required number of hours may report at any time during the year, but must report on or before 31 January of the following year. This will be used to verify compliance with the LPA and Regulations.
- 7.2 A candidate legal practitioner (candidate attorney and pupil) must, after completion of their period of practical vocational training or after completing the required number of community service or pro bono hours, submit to the Council one or more certificates, which substantially correspond to Annexure C to the Regulations, signed by their principal or training supervisor, as the case may be, confirming that such community service has been rendered. This must also be attached to the application for admission as a legal practitioner.
- 7.3 Once the required number of hours have been completed, legal practitioners and candidate legal practitioners will be required to visit [www.lpc.org.za](http://www.lpc.org.za) and go to the community service registration form. In order to report on the community service and pro bono legal services provided in that calendar year, the following information will be required, utilising a form which is substantially in the same form as Annexure C or D to the Regulations, whichever is applicable:
  - 7.3.1 all particulars of the legal practitioner or candidate legal practitioner (including member numbers or PVT contract registration number);
  - 7.3.2 a declaration providing full particulars of community service or pro bono legal services rendered during the calendar year in question, irrespective of whether the matter has been finalised;
  - 7.3.3 letters/certificates from clients/recipients of community service or pro bono legal services certifying that the work has been completed (together with the client mandate form and other supporting documents);
  - 7.3.4 where community service or pro bono legal services are rendered for the benefit of an individual, following a referral by an organisation, recognised structure or the LPC, the head of the organisation or their designate is authorised to sign the certificate/s or report and confirm that the requisite hours have been completed;



- 7.3.5 If the recipient of the community service is a group or organisation, a signature from anyone representing that entity will be acceptable;
- 7.3.6 Where law firms have aggregated their community service or pro bono legal service hours, each member of the firm will be required make their own submission with the declaration and supporting documentation;
- 7.4 The report or certificate of community service or pro bono legal services must accurately and honestly reflect:
  - 7.4.1 the dates of any particular attendance, including meetings, consultations, and court appearances;
  - 7.4.2 a description of the work performed, in sufficient factual detail, to establish if the work qualifies as community service or pro bono legal services as defined in these guidelines;
  - 7.4.3 the number of hours of pro bono service performed on each particular day;
- 7.5 The LPC, in accordance with these guidelines, shall keep a record of community service and pro bono legal services rendered by legal practitioners and candidate legal practitioners.
- 7.6 It is the responsibility of all legal practitioners and candidate legal practitioners to ensure that accurate reports and supporting documents are uploaded before 31 January of each year for the community service and pro bono work completed in the previous calendar year, to ensure compliance with the LPA, Regulations and Rules.

#### **CHAPTER FIVE: LEGAL PRACTITIONERS EXEMPT IN TERMS OF SECTION 29(3) OF THE LPA**

- 8.1 Subsection 29(3) of the LPA permits “[t]he Council ..., on application and on good cause shown” to “exempt any candidate legal practitioner or legal practitioner from performing community service ....”
- 8.2 The following legal practitioners and candidate legal practitioners shall be exempt from completing the prescribed community service or pro bono legal services and shall not be required to submit an application for exemption:

- 8.2.1 All practising legal practitioners and candidate legal practitioners who are employed full-time at a recognised and LPC-accredited law clinic;
- 8.2.2 Those legal practitioners and candidate legal practitioners who are employed full-time by institutions whose core mandate is to provide legal services to the indigent members of the public free of charge, including, but not limited to, Legal Aid SA, and pro bono organisations (other than pro bono departments operating within law firms);
- 8.2.3 Legal practitioners that are employed within the office of the State Attorney, at the National Prosecuting Authority (NPA), or the Human Rights Commission.
- 8.2.4 Legal practitioners who are 65 years of age and older. Legal practitioners will be required to complete a pro rata number of hours in the year in which they turn 65 years of age;
- 8.2.5 Legal practitioners who have practised for 40 years or more as such;
- 8.2.6 Any other legal practitioners or candidate legal practitioners who wish to be exempted from the community service requirement should submit an application with motivation and supporting documents, setting out the ground/s on which they should be exempted for consideration by Council as contemplated in section 29(3) of the LPA which empowers Council to grant an exemption "on good cause shown". The application may include factors such as ill-health, age, years of practice, suspension or interdicted from practising for a particular period. Each application will be considered on its own merits, and the decision of Council is final.

8.3 Legal practitioners and candidate legal practitioners who are exempted from performing community service or pro bono legal services shall not be exempt from the obligation to submit a report in the calendar year in question, which records the basis of their exemption.

#### **CHAPTER SIX: FAILURE TO COMPLY WITH THE REGULATIONS OR FAILURE TO ACT PROFESSIONALLY**

- 9.1 Professional standards, as provided for in the code of conduct and the rules, will be applicable to community service rendered by a legal practitioner and candidate legal practitioner and non-compliance with the provisions of these regulations must be dealt with by the Council in accordance with the disciplinary rules and procedures.



9.2 Section 29(1)(b) of the LPA states that continued enrolment as a legal practitioner is dependent on practising legal practitioners achieving the minimum period of recurring community service. The failure to complete the prescribed number of hours of community service or pro bono legal services without a satisfactory explanation for the failure will be regarded as unprofessional conduct. The legal practitioner will also not be considered to be in “good standing” if they have failed to meet their obligations under this section, regulations, and guidelines.

## **CHAPTER SEVEN: GENERAL**

10.1 These guidelines are subject to updates and amendments from time to time.

10.2 These guidelines shall be in effect from the date that they are approved by Council and published to the profession.

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CHAIRPERSON

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DATE