

LEGAL NOTICE No. XX

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED
LEGAL AID PROVIDERS, 2022

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LEGAL NOTICE No. 87

THE LEGAL AID ACT, 2016

(No. 6 of 2016)

IN EXERCISE of the powers conferred by section 61(2) of the Legal Aid Act, 2016, the National Legal Aid Service makes the following Code of Conduct—

THE LEGAL AID CODE OF CONDUCT FOR ACCREDITED
LEGAL AID PROVIDERS, 2022

PART I — PRELIMINARY

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| <p>1. This Code may be cited as the Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2019.</p> | Citation. |
| <p>2. The objectives of this Code are to—</p> <p>(a) set standards of conduct for accredited legal aid providers;</p> <p>(b) facilitate access to justice; and</p> <p>(c) promote integrity, respect, confidentiality, accountability, public responsibility and competence of accredited legal providers.</p> | Objectives of the Code. |
| <p>3. This Code shall apply to an accredited legal aid provider in addition to any other code of conduct prescribed by the regulatory body, the employer of an accredited legal aid provider or by the professional body that the accredited legal aid provider is a member.</p> | Application of the Code. |

PART II — DUTIES OF AN ACCREDITED LEGAL AID
PROVIDER

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| <p>4. (1) An accredited legal aid provider shall have sufficient experience, skill, knowledge and competence to provide quality representation to an aided person and shall exercise diligence in the provision of legal aid.</p> <p>(2) An accredited legal aid provider shall have knowledge of general legal principles and procedures, the substantive law and procedures for the legal services they provide.</p> <p>(3) An accredited legal aid provider shall not undertake a matter if the accredited legal aid provider is not competent to handle the matter.</p> <p>(4) If an accredited legal aid provider lacks the skills or competence to act in a matter in which they are instructed, the accredited legal aid provider shall—</p> <p>(a) decline to act;</p> <p>(b) if the accredited legal aid provider had commenced action, cease to act; or</p> <p>(c) obtain the consent, in writing, of the Service to retain, consult or collaborate with another accredited legal aid provider or expert who is competent and licensed to undertake that matter.</p> | Skill, competence and diligence. |
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- (5) An accredited legal aid provider shall—
- (a) investigate facts, identify issues, ascertain the objectives of a matter, consider possible options and advise an aided person on the appropriate course of action;
 - (b) implement the chosen course of action by applying appropriate skills, including —
 - (i) legal research;
 - (ii) analysis;
 - (iii) application of the law to the relevant facts;
 - (iv) legal writing;
 - (v) negotiation;
 - (vi) mediation or any other alternative dispute resolution; and
 - (vii) advocacy.
 - (c) advise, assist or represent an aided person in a diligent and cost-effective manner;
 - (d) communicate to an aided person at all relevant stages of the matter in a timely and effective manner;
 - (e) respond to a reasonable inquiry by the aided person in a timely and effective manner;
 - (f) ensure that all applicable deadlines are met;
 - (g) manage their own practice or services effectively;
 - (h) pursue appropriate training and development to maintain and enhance knowledge and skills;
 - (i) adapt to changing requirements, standards, techniques and practices;
 - (j) if the accredited legal aid provider is an advocate, comply with, in letter and spirit, all the requirements and standards of legal practice prescribed by the Law Society of Kenya and any other written law;
 - (k) comply with any relevant standards of practice prescribed by the respective professional or regulatory body; and
 - (l) maintain up-to-date records of the legal aid services.

5. (1) An accredited legal aid provider shall be honest and candid when conducting any matter on behalf of an aided person.

Honesty and good faith.

(2) An accredited legal aid provider shall not knowingly or recklessly give false information.

(3) An accredited legal aid provider shall not—

- (a) knowingly aid or encourage any dishonesty, fraud, crime or illegal conduct;

- (b) do or omit to do anything that the accredited legal aid provider knows will assist, encourage or facilitate any dishonesty, fraud, crime or illegal conduct by an aided person or any other person; or
- (c) advise an aided person or any other person on how to violate the law or avoid punishment.

6. (1) An accredited legal aid provider shall not discriminate directly or indirectly against any aided person on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Duty to act impartially, avoid discrimination or harassment.

(2) An accredited legal aid provider shall treat an aided person fairly and reasonably.

(3) An accredited legal aid provider shall not decline to act for an aided person on account of the nature of the claim or accusation, or due to the provider's personal views or convictions on the matter.

(4) An accredited legal aid provider shall not engage in sexual or other forms of harassment of an aided person, a colleague or a member of staff of the Service.

7. (1) An accredited legal aid provider shall —

Confidentiality.

- (a) take all necessary steps to ensure respect for an aided person's right to privacy under Article 31 (c) and (d) of the Constitution; and
- (b) comply with obligations relating access to information and the protection of the privacy of an aided person under the Access to Information Act, 2016.

No. 31 of 2016.

(2) Despite sub-paragraph (1), confidentiality shall not apply to information that gets into the public domain with the consent of the aided person.

(3) An accredited legal aid provider shall keep all information relating to an aided person and acquired in the course of the professional relationship confidential.

(4) An accredited legal aid provider shall not disclose the information relating to an aided person unless the disclosure is—

- (a) expressly or impliedly authorised by the aided person;
- (b) required by law or by an order of a court or tribunal; or
- (c) otherwise permitted by this Code.

(5) An accredited legal aid provider may disclose confidential information relating to an aided person to a relevant authority—

- (a) if the accredited legal aid provider believes, on reasonable grounds, that there is an imminent risk of death or serious bodily harm and that such disclosure is necessary to prevent the death or harm;

- (b) if the accredited legal aid provider believes, on reasonable grounds, that failure to disclose would be prejudicial to the mandate of the Service;
- (c) in order to defend an allegation that the accredited legal aid provider or their employee —
 - (i) has committed a criminal offence;
 - (ii) is liable with respect to a matter involving an aided person's affairs;
 - (iii) has committed an act of professional negligence; or
 - (iv) has engaged in an act of professional misconduct or conduct;
- (d) in order to enforce recovery of their fees from the Service; or
- (e) in order to secure legal advice from an advocate or another accredited legal aid provider about the proposed conduct of the matter in question.

(7) An aided person who voluntarily allows information to get into the public domain shall be presumed to have waived confidentiality in that regard.

(8) An accredited legal aid provider shall not issue statements to the media or address matters of public interest on behalf of the Service.

(9) The duty of confidentiality shall continue indefinitely despite the accredited legal aid provider ceasing to act for the aided person.

8. (1) An accredited legal aid provider shall not, except as permitted under this paragraph, act for an aided person if to do so would—

Duty to avoid conflict of interest.

- (a) give rise to a conflict of interest; or
- (b) compromise the independence of the accredited legal aid provider in relation to the matter in which the provider is engaged.

(2) Conflict of interest arises when the duty of an accredited legal aid provider to act in the best interest of an aided person conflicts with the interests of —

- (a) the accredited legal aid provider;
- (b) an existing or previous client of the accredited legal aid provider;
- (c) a partner or employee of the accredited legal aid provider;
- (d) another aided person; or
- (e) any third party whose relationship with the accredited legal aid provider or employee of the accredited legal aid provider would reasonably cause the aided person to believe that the legal aid lawyer may not act in that aided person's best interests.

(4) An accredited legal aid provider shall not act for an opposing party in a dispute in which the aided person is a party.

(5) An accredited legal aid provider shall not offer legal aid to more than one aided person in a matter.

(6) Subject to sub-paragraph (7), where an accredited legal aid provider provides legal aid to several aided persons, and a conflict of interest arises between the interests of the initial aided person and any other subsequent aided person, the accredited legal aid provider shall cease to act for all the aided persons and immediately notify the Service.

(7) An accredited legal aid provider may represent an aided person in a matter where there is a conflict of interest under sub paragraph (6) if—

- (a) the accredited legal aid provider obtains informed and voluntary consent of all the aided persons; and
- (b) the accredited legal aid provider reasonably believes that they are able to act for each aided person without having a material adverse effect on the representation of acting for or loyalty to the other aided person.

(8) A legal aid provider shall not act for an aided person if the legal aid provider has any form of relationship, including a family relationship, with the aided person or an opposing party which compromises, or which might reasonably be expected to compromise the independence of the accredited legal aid provider.

(9) An accredited legal aid provider shall not act for an aided person against the former client of the accredited legal aid provider—

- (a) in the same matter;
- (b) in any related matter; or
- (c) in any matter, if the accredited legal aid provider has relevant confidential information arising from acting for the former aided person that may prejudice the former client,

9. (1) An accredited legal aid provider shall not offer or accept any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation, whether direct or indirect, from an aided person in the course of performing their duty under the Act, other than fees payable to the accredited legal aid provider by the Service on account of a matter which the accredited legal aid provider is engaged in.

Duty not to offer or accept payment.

(2) An accredited legal aid provider shall declare to the Service any fee, commission, service, inducement, gratuity, gift, benefit or other form of compensation received from an aided person, whether directly or indirectly, in relation to a matter in which they are engaged under the Act,

(3) An accredited legal aid provider shall not personally guarantee or provide security or other financial arrangements for any indebtedness in respect of an aided person who is a borrower or lender.

(4) An accredited legal aid provider shall not, in respect of an aided person for whom they act in any criminal proceeding —

- (a) act as a surety for the aided person;
- (b) deposit in a court their own money or that of any firm or organisation in which the accredited legal aid provider is a partner or employee, to secure the aided person's release; or
- (c) deposit any valuable security in a court to secure the release of an aided person.

(5) An accredited legal aid provider may personally guarantee or provide security or other financial arrangement for any indebtedness in respect of an aided person who is a borrower or lender, if the aided person is related to the accredited legal aid provider and the aided person is represented by the accredited legal aid provider's associate, partner or employee.

10. (1) An accredited legal aid provider shall exercise such due care for an aided person's property as a careful and prudent owner would when dealing with their property.

Duty in relation to aided person's property.

(2) An accredited legal aid provider shall, if entrusted with the property of an aided person, comply with all relevant laws relating to the preservation of property that is entrusted to a person who has a fiduciary duty over property.

(3) An accredited legal aid provider shall promptly notify an aided person of the receipt of any money or other property of the aided person.

(4) An accredited legal aid provider shall clearly label and identify the aided person's property and place it in safe custody in a separate location from the property of the accredited legal aid provider.

(5) An accredited legal aid provider shall maintain such records as are necessary to identify an aided person's property that is in the custody of the accredited legal aid provider.

(6) An accredited legal aid provider shall account promptly for an aided person's property that is in the custody of the accredited legal aid provider and shall, upon request, deliver the property to the aided person at the conclusion of the matter that the accredited legal aid provider is engaged in.

11. (1) An accredited legal aid provider shall not deceive or knowingly mislead the court.

Duty to court, the legal profession and law enforcement agencies.

(2) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall discharge their duties in a way that is consistent with the proper and efficient administration of justice.

(3) An accredited legal aid provider shall maintain a relationship based on courtesy, mutual respect and professionalism with the members of the legal profession, the judiciary and law enforcement agencies.

PART III – MISCELLANEOUS

12. If an aided person intends to be represented by a person other than the appointed accredited legal aid provider, the accredited legal aid provider shall advise the aided person on the relevant procedure, including the applicable rules in that regard.

Change of representation.

13. (1) An accredited legal aid provider shall cease to act for an aided person if –

Termination of legal representation.

- (a) a conflict or a significant risk of conflict of interest, or breach of confidentiality arises;
- (b) a conflict or a significant risk of conflict arises between the interests of an aided person and the accredited legal aid provider's duty to the court;
- (c) the aided person withdraws instructions;
- (d) the accredited legal aid provider ceases to be accredited by the Service; or
- (e) continuing to act for the aided person would embarrass the accredited legal aid provider or the Service.

(2) An accredited legal aid provider may withdraw from acting for an aided person if –

- (a) the behaviour or conduct of the aided person towards the accredited legal aid provider, the accredited legal aid provider's partner, associate or employee, is violent, threatening, abusive or otherwise disrespectful;
- (b) the aided person deceives the accredited legal aid provider;
- (c) the aided person does not accept and act upon the advice of the accredited legal aid provider on any significant issue;
- (d) the aided person instructs the accredited legal aid provider to act contrary to any written law;
- (e) there is a breach of trust and confidence between the accredited legal aid provider and the aided person;
- (f) the accredited legal aid provider reasonably believes that he is not competent to continue to act in the matter;
- (g) the Service fails or neglects to pay to the accredited legal aid provider any sum due on account of the accredited legal aid provider's fees and disbursements;
- (h) there exists other substantial reason for withdrawal, with the approval of the Director or otherwise sanctioned by the professional code of conduct that binds the accredited legal aid provider; or
- (i) the accredited legal aid provider ceases to be accredited by the Service.

(3) If an accredited legal aid provider withdraws from acting for an aided person, the accredited legal aid provider shall –

- (a) in writing, notify the aided person and the Service; and
- (b) state the reasons for the withdrawal.

(4) A notice issued to the aided person under paragraph (3) shall not be required if the aided person voluntarily withdraws instructions and discharges the accredited legal aid provider from their duties under the Act.

14. (1) If an accredited legal aid provider believes that they are required by the Service to act in a way that —

Matters against public interest.

- (a) is improper, unethical or contrary to any written law;
- (b) is in breach of professional rules of conduct that binds the accredited legal aid provider;
- (c) involves or results in maladministration, fraud or misappropriation of public funds; or
- (d) is otherwise inconsistent with this Code or the aided person's services charter,

the accredited legal aid provider shall report the conduct to the Ethics and Anti-Corruption Commission established under the Ethics and Anti-Corruption Commission Act, 2011, with written notice to the Director, who shall take appropriate administrative action in that regard.

No. 22 of 2011

(2) An accredited legal aid provider may rely on the grounds mentioned in sub paragraph (1) to withdraw from acting for an aided person.

15. An accredited legal aid provider may decline to take instructions to act for an aided person if the accredited legal aid provider is of the view that accepting such instructions would result in an excessive caseload and inadequacy in representation.

Excessive caseload.

16. (1) Subject to the provisions of this Code and any other rules of professional conduct, an accredited legal aid provider shall not do anything that is likely to bring the Service into disrepute in the course of performing their duties under the Act.

Standards of conduct.

(2) An accredited legal aid provider shall not misuse his position or information acquired in the course of providing legal aid to further the accredited legal aid provider's own interest or the interests of others.

17. (1) An aided person who is dissatisfied with the conduct of an accredited legal aid provider under this Code may file a complaint against the accredited legal aid provider to the Director.

Complaints.

(2) The Director shall, upon receiving a complaint under sub paragraph (1), investigate the complaint and make recommendations to the Board.

(3) On receipt of the recommendations from the Director, the Board may —

- (a) direct that the accredited legal aid provider be retained in the Register;
- (b) direct that the accredited legal aid provider's accreditation be suspended on such terms as the Board may direct; or
- (c) direct that the accreditation of the accredited legal aid provider be cancelled and their name struck off the Register.

18. The Legal Aid Code of Conduct for Accredited Legal Aid Providers, 2021 is hereby revoked.

Revocation.
L.N. 186/2021.

Made on the 4th May, 2022.

FLORA BIDALI,
Secretary and Chief Executive Officer,
National Legal Aid Services.