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MEMORANDUM

PROFESSIONAL FEES, TARIFFS AND ALLOWANCES

Assessment of fees payable to a legal practitioner

1. It shall be competent for a Committee appointed by the Legal Practice Council as a Fee Dispute Resolution Committee in terms of the Legal Practice Act 28 of 2014 (including the Code of Conduct, the Rules and the Regulations) and/or as a Contingency Fee Tribunal in terms of section 5 of the Contingency Fees Act 66 of 1997 (the CFA) - ("an FDR"), at the request of any person who has locus standi to do so, to assess the fees and reasonable disbursements payable to a legal practitioner in respect of the performance of work in his or her capacity as a practitioner, provided that an FDR shall, save where empowered to do so in terms of section 5(2) of the CFA, not assess fees or disbursements:

- 1.1 in instances where a state official is empowered to do so; or
- 1.2 where the work concerned is already covered by a statutory tariff; or
- 1.3 unless the party requesting the assessment pays to the FDR, in advance, a fee of 5% of the amount, which is to be subject to the assessment, provided that the FDR shall have the discretion to:
 - 1.3.1 waive that fee for good cause (particularly in the case of proof to its satisfaction that this would cause genuine financial hardship to the requesting party), and/or;

1.3.2 to cause an effective recoupment of that fee by reducing the assessed fee by that amount in cases where they deem this to be appropriate.

2. With a view to affording the legal practitioner concerned reasonable and adequate remuneration for the services rendered by him or her, a FDR shall, on every assessment, allow all such fees and disbursements as appear to it to have been reasonable for the performance of the work concerned and in so doing shall have regard to the following factors, none of which is determinative and all of which are simply guides to a fair calculation:

2.1. the terms upon which the mandate was accepted by the legal practitioner

2.2. the amount and importance of the work done;

2.3. the complexity of the matter and/or the difficulty or novelty of the work or the questions raised;

2.4. the skills, labour, specialised knowledge and responsibility on the part of the legal practitioner;

2.5. the number and importance of the documents prepared or perused, without necessarily having regard to length;

2.6. the place where and circumstances in which the services or any part thereof were rendered;

2.7. the time and/or disbursements expended by the legal practitioner – if any, in pursuance of the mandate;

2.8. where money or property is involved, its amount or value;

2.9. the importance of the matter to the client;

2.10. the quality of the work done;

2.11. the experience or seniority of the legal practitioner;

2.12. whether the fees and disbursements have been incurred or increased through over-caution, negligence or mistake on the part of the legal practitioner;

2.13. the customary charges by legal practitioners of comparable standing for similar services;

2.14. generally, the application of the principle of proportionality which requires a weighing up of all the relevant factors to determine whether, in each case, the fee claimed is reasonably proportionate to the work reasonably required and expected of a competent practitioner. This principle will not apply in respect of any statutorily prescribed minimum fee but will apply in respect of the determination of reasonableness where there is a statutorily prescribed cap on fees.

2.15. An onus shall rest on the legal practitioner to justify the reasonableness of fees charged and that work charged for was done and was reasonably necessary to do or was done at the request of the instructing person.

2.16. In the case of a dispute of an Advocate's fee the FDR shall comprise not less than two counsel and one attorney, and in the case of a dispute of an Attorney's fee the FDR shall comprise not less than two attorneys and one Advocate, and their decision shall comprise an administrative decision which is final

and binding and not subject to any appeal but is subject to review on grounds recognised by the Promotion of Administrative Justice Act 3 of 2000.

2.17. The procedure shall comprise the following: a written request/complaint, a written answer, and a written reply, with each addressing the factors set out in paragraph 2 hereof, and the decision shall be given according to those documents, save that in the event of a genuine and bona fide dispute of fact the FDR shall have a discretion (at the request of a party or of its own accord) to refer the matter to the hearing of oral evidence by the FDR. Any such referral to oral evidence shall be conducted in an inquisitorial manner by the FDR as if it were a small claims court sitting under the Small Claims Court Act 61 of 1984 (*mutatis mutandis*).