

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. 4197

14 December 2023

**OFFICE OF THE LEGAL SERVICES OMBUD: CONCEPT FOR LEGAL SERVICES
OMBUD RULES**

**(Made under the authority of section 95(2) and hereby published for comment in terms
of section 95(4) of Legal Practice Act 28 of 2014 as amended)**

**Note further that these Rules repeal and replace the Rules published on 14 April 2022
under Government Gazette Notice No.: 46242**

Any person who has comments in respect of the Rules made herein may make representation
to the Ombud by no later than **31 January 2024** to the following addresses:

Postal Address: **PO BOX 1202
PRETORIA
0001**

By Hand: **Spooral Park Building
2007 Lenchen Avenue South
Centurion
Pretoria**

By Email: **OLSOenquiries@justice.gov.za**

1. DEFINITIONS

In these rules unless the context indicates otherwise—

'candidate legal practitioner' means candidate legal practitioner as defined in the Act;

'complaint' means a complaint made or referred to the Ombud in terms of section 48 of the Act.

'complainant' means any person who or entity which lodges a complaint with the Ombud in terms of section 48 of the Act;

'complaint statement' means a written statement, signed by the complainant, in which the complaint is set out in clear and concise terms and states the material facts on which the complaint is based.

'Council' means the South African Legal Practice Council established in terms of section 4 of the Act.

'day' means any day that excludes a Saturday, Sunday, or public holidays.

'disciplinary body' means a disciplinary body as defined in the Act;

'dispute' means a dispute as referred to in section 48 of the Act.

'dispute resolution' means to endeavour to resolve a dispute or rectify any act or omission by means of mediation, conciliation, negotiation, the giving of advice or any other means considered expedient by the Ombud

'inquiry' means the process of obtaining information and documentation as set out in section 48(2) of the Act and in terms of these rules

'investigation' means an investigation as referred to in sections 14(2) and 48(1)(a) of the Act and in terms of these rules

'legal practitioner' means a legal practitioner as defined in the Act;

'Minister' means the Minister as defined in the Act.

'monitoring' means monitoring in terms of section 42 of the Act;

'Ombud' means the Legal Services Ombud as defined in the Act and includes any person designated by the Ombud;

'referral' means submitting to the bodies or authorities as referred to in section 48, any aspect of a complaint which has a bearing on such entity.

'respondent' means a person or an entity against whom a complaint has been lodged with the Ombud.

'the Act' means the Legal Practice Act, 2014 (Act No 28 of 2014)

2. PURPOSE OF RULES

- a. The purpose of these Rules is to regulate the procedure for the execution by the Ombud of its mandate and functions in terms of the Act.

3. LODGING AND PROCESSING OF COMPLAINTS

- a. Every complaint shall be on Form 1 in Annexure 1 to these rules.
- b. The complaint shall be submitted to the Ombud in the following manner:
 - i By hand delivery during office hours to any of the offices of the Ombud; or
 - ii By emailing it to OLSOenquiries@justice.gov.za; or
 - iii By registered post.
- c. The Ombud shall acknowledge receipt of the complaint in writing within 10 days of receipt of the complaint.
- d. The Ombud shall within 30 days after the allocation of the complaint to a designated official first assess the complaint in terms of section 48 (1)(a) to determine whether the complaint falls within its mandate, provided that all the information required for assessment is available.

- e. The Ombud shall, within 10 days after the assessment referred to in rule 3 (d), inform the complainant in writing of the outcome of the assessment.
- f. If the Ombud is unable to comply with the timeframes set out in (d) and (e) above, the complainant shall be informed of the delay and indicate the period in which the Ombud shall comply.

4. REFERRALS IN TERMS OF SECTION 48 OF THE ACT

- a. If the Ombud determines that a referral is necessary, the Ombud shall:
 - i Within 10 days of referral notify the person or persons whom in the opinion of the Ombud need to be informed;
 - ii Notwithstanding the referral, the Ombud shall determine the status of the complaint.

5. NOTICE TO RELEVANT PARTIES OF DECISION BY OMBUD TO INVESTIGATE

- a. The Ombud shall notify all relevant parties of the decision to investigate within 10 days of such decision.
- b. Should the Ombud become aware of the potential involvement of additional relevant parties to the complaint, the Ombud shall notify the parties within 10 days of becoming aware of such relevant party.
- c. The Ombud shall endeavour to finalise the investigation within a reasonable time.

6. REQUEST FOR INFORMATION AND PRODUCTION OF DOCUMENTS

- a. The Ombud may request information either by way of a summons referred to in Rule 8 or by letter, within the discretion of the Ombud.
- b. Where information or production of document is requested by letter such letter shall stipulate the time within which a person is required to give such information or produce such document.
- c. Should a party fail to comply with a request in terms of Rule 6 (b), the Ombud shall be entitled to issue a Summons to ensure compliance.

7. SUMMONS

- a. Upon scrutinising the complaint and establishing the need for further investigations, the Ombud may in terms of section 48 (2) summons any person who may be able to furnish any information on the subject of the investigation.
- b. The summons shall be in accordance with Form 2.
- c. The summons shall be signed by the Ombud or a person designated by him.

8. SERVICE OF SUMMONS

- a. Service of summons may be effected in the following manner:
 - i Delivery by hand at the address for service given in the summons; or
 - ii electronically; or
 - iii by sheriff of the court.
- b. All process which is served by hand or by the sheriff shall be deemed to be properly effected if served in one of the following manners:
 - i By delivering a copy thereof to the said person personally; or
 - ii At the residence or place of business of the said person to some person apparently not less than 16 years of age and apparently residing or employed there; or
 - iii At the place of employment of the said person or to some person apparently not less than 16 years of age and apparently in authority over the person to be served or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at his place of employment; or
 - iv In the case of a corporation or company at its local office or principal place of business to a responsible employee thereof or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business; or
 - v By delivering a copy thereof to any agent who is duly authorized in writing to accept service on behalf of the person upon whom service is to be effected;
 - vi In the case of a local authority or statutory body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such,

by service on the chair person or secretary or similar officer thereof in any manner hereinbefore prescribed.

- c. The person serving shall, on demand by the person upon or against whom summons is served, exhibit to that person the original of the process, except where summons is served electronically.
- d. Service shall be effected as near as possible between the hours of 7:00 and 19:00 to the said person or to his duly authorised agent.
- e. Notices or other documents shall not be served on a Sunday or public holiday
- f. Service on a person called to an inquiry shall be effected at a reasonable time before attendance is required in any manner hereinbefore prescribed.

9. SUBSTITUTED SERVICES

- a. In the event of service as per rule 8 above not being possible for any reason whatsoever, service shall be effected by;
 - i. advertisement in a publication circulating in the area in which the person resides; and
 - ii. such publication shall be in English and,
 - iii. where appropriate, in the language dominant in the area in which the person resides; and
- b. Proof of publication shall be a copy of the whole page containing the advertisement or cutting thereof indicating the paper and date of publication.

10. FAILURE TO COMPLY WITH SUMMONS AND/OR PARTICIPATE IN INQUIRY

- a. If a person who has been summoned person who has been summonsed fails to appear or fails to co-operate with the investigation as specified in Section 93(5) of the Act, the Ombud may:
 - i. make an application to the High Court to obtain an order to secure the persons attendance, which order shall be served by the sheriff and that should the person fail to appear on the specified date, that the sheriff be authorised to arrest and detain the person in custody until such time as the persons evidence is obtained.
 - ii. report the non-compliance with summons or failure to participate in inquiry to the South African Police Services as this is a criminal offence.

11. LEGAL REPRESENTATION AT INQUIRY

- a. A person who has been summonsed may be assisted by a legal representative during the inquiry.
- b. The Ombud may exercise discretion to allow legal representation after considering:
 - i. The nature of the investigation;
 - ii. The complexity of the subject matter and examination;
 - iii. The public interest;
 - iv. The ability of the person to deal with the examination.
- c. A person who has been summonsed is entitled to witness fees as per the Tariff of allowances for a witness for the State in criminal proceedings in a Magistrates Court.

12. PROCEDURE BEFORE COMMENCEMENT OF INQUIRY

- a. The Ombud shall explain to a person who has been summonsed before the inquiry:
 - i. The purpose of the inquiry;
 - ii. The inquisitorial nature of the inquiry;
 - iii. The procedure that will be followed;
 - iv. The confidentiality of the inquiry, unless waived in writing;
 - v. That there is no privilege against self-incrimination.

13. PROCEDURE DURING INQUIRY

- a. The Ombud may receive evidence under oath or affirmation from a person who has been summonsed as per Section 48(2)(b).
- b. Evidence shall be taken orally or by the production of documents, articles or objects.
- c. The Ombud may examine or retain relevant books, documents, or objects which shall be returned at the conclusion of the investigation.

14. MEDIATION, CONCILIATION AND NEGOTIATION

- a. The Ombud may endeavour to resolve disputes between parties by:
 - i. Acting as a mediator; or
 - ii. Acting as a conciliator; or
 - iii. Negotiate a settlement.
- b. In mediating the dispute, the Ombud shall facilitate discussions between the parties to enable the parties to arrive at a mutually suitable resolution of the dispute.

- c. In conciliating the dispute, the Ombud shall guide and advise the parties to enable the parties to arrive at a mutually suitable resolution of the dispute.
- d. In negotiating a settlement, the Ombud shall recommend proposals to settle the dispute
- e. The Ombud or the parties may propose, either in writing or orally, that the dispute be attempted to be resolved by mediation, conciliation or negotiation, either at the commencement or during an investigation.
- f. Should the parties agree to attempt to resolve the dispute as referred to in rule 14 (e) above, the agreement shall be reduced to writing and signed by the parties and confirmed by the Ombud.
- g. Pending mediation, conciliation or negotiation between the parties, the investigation shall be suspended, provided that should the dispute not be resolved or should any party withdraw from the dispute resolution process, the investigation shall resume and continue or the Ombud may deal with the matter by any other means that may be expedient in the circumstances.
- h. The parties may, at the discretion of the Ombud, be allowed legal representation during the processes of mediation, conciliation and negotiation, provided that the legal representative may render advice to the party being represented but shall not be permitted to participate in the process.

15. SETTLEMENT

- a. If a settlement is reached between the parties at any stage of the investigation, whether through mediation, conciliation, or negotiation or otherwise: -
 - i The terms of the agreement shall be reduced to writing, and such agreement shall be signed by the parties;
 - ii The agreement shall be concluded and signed under the supervision and direction of the Ombud
 - iii The original signed agreement shall be kept by the Ombud.

16. REPORTING OF FINDINGS

- a. Upon conclusion of the investigation, the Ombud shall prepare a report, recommendation, findings or point of view.

- b. The Ombud shall within 30 days after the compilation of the report, recommendation, finding or point of view make it known to all relevant.

17. ESTABLISHMENT AND MAINTENANCE OF LAY PERSONS' DATABASE

- a. The Ombud shall establish and maintain the lay persons' database.
- b. The Ombud shall develop a criteria for the recruitment of lay persons.
- c. The Ombud may, in maintaining the lay person list:
 - i. Withdraw the appointment of a lay person if:
 - 1. The Ombud becomes aware that the person no longer meets the criteria set by the Ombud; or
 - 2. A concern is raised by the Council regarding the conduct of such a lay person.

18. MONITORING OF DISCIPLINARY PROCESSES IN TERMS OF 42 OF THE ACT

- a. The Ombud may monitor any disciplinary processes by the Council:
 - i. On receipt of a complaint; or
 - ii. On own initiative.
- b. The Ombud shall inform the Council in writing within a 20 days of its decision to monitor the disciplinary process.
- c. The Ombud may, in writing request the Council for: -
 - i. copies of all relevant records and documents related to its disciplinary proceedings;
 - ii. hearing dates of any disciplinary proceedings.
- d. The Ombud shall be entitled to conduct an investigation arising out of the monitoring process.
- e. In the event of failure to comply with (b) above, the Ombud may bring an application to the High Court for the appropriate relief.

19. MONITORING OF INVESTIGATIONS CONDUCTED BY THE COUNCIL

- a. The Ombud may monitor the following processes by any Investigating Committee of the Council:
 - i. the procedures followed by Investigating Committees;

- ii that parties' rights are protected during the investigation;
- iii the adequacy and fairness of the investigative process.

20. MONITORING OF CONDUCT OF DISCIPLINARY COMMITTEES AND APPEALS TRIBUNALS DURING HEARINGS

- a. The Ombud may monitor the conduct of Disciplinary Committees during disciplinary hearings, which may include, but is not limited to, the following:
 - i disciplinary and appeal tribunal hearings;
 - ii the procedures followed during hearings;
 - iii the rights of the parties being upheld;
 - iv compliance with legal and procedural requirements;
 - v compliance of the Appeal Tribunal's composition with requirements of Section 41(2)(b)(ii).

21. GENERAL PROVISIONS

- a. Recording of Inquiry and Investigations
 - i All inquiries shall be mechanically recorded provided that where the circumstances require it, recordings may be manual.
- b. Language medium during Inquiry and Investigations
 - i The language of communication whether orally or in writing by the Ombud shall be in English
 - ii A person who is unable to communicate in English and who requires the services of a South African official language practitioner shall inform the Ombud in writing 15 days prior to an inquiry in which event the Ombud shall provide an accredited South African official language practitioner for the inquiry at its own cost.
 - iii A party requiring the services of an interpreter for a non-South African Official language shall notify the Ombud within a 30 days prior to an inquiry in which event the party must obtain the services of an accredited non-South African Official language practitioner and shall bear the cost thereof.
 - iv Should the party requiring the services of a non-South African Official language practitioner not be able to procure such practitioner within 5 days before the inquiry, such party shall give written notice to the Ombud.

c. Confidentiality –

- i All proceedings during an investigation shall be confidential and shall not be disclosed except with the written consent of the parties making the disclosure or where such disclosure is required by law.

22. FINANCIAL REPORTING (ANNUAL REPORT)

a. Medium Term Strategic Framework

- i The financial year of the Office of the Ombud shall start from 1 April in any year to 31 March in the following year as prescribed in section 51 of the Act.
- ii The organisational performance shall be driven by the five-year strategic plan, the outlined mandate of the Ombud and strategic priorities. This will then inform the Annual Performance Plan (APP).
- iii The Annual Performance Plan shall form the basis for the annual reports of accounting officers in terms of section 40(1)(d) and (e) of the PFMA.
- iv The Director (CEO) of the Ombud shall establish procedures for quarterly reporting to the Director General of the Department of Justice and Constitutional Development.
- v The performance reporting shall be monitored, evaluated and corrective measures shall be put in place to mitigate risks on a monthly basis.

b. Medium Term Expenditure Framework

- i The Office of the Ombud as an entity funded by National Treasury shall comply with the requirements of the PFMA and Treasury directives
- ii The Director (CEO) shall keep full and proper records of the financial affairs of the Ombud Office for auditing purposes and proper accounting.
- iii The Director (CEO) of the Office of the Ombud shall maintain effective, efficient and transparent systems of financial and risk management and internal controls
- iv The Director (CEO) of the Office of the Ombud shall be responsible for the management of the office, including safeguarding and the maintenance of assets and management of the office's liabilities

- v The Director (CEO) shall prepare financial statements for each financial year in accordance with generally recognised accounting practice (GRAAP). The financial statements will be submitted within six (6) months after the end of the financial year.

- vi The annual report and financial statements will present the state of affairs of the Ombud, its financial results, its organisational performance against objectives in the annual performance plan and its financial position as at the given financial year.

- vii The annual report and financial statements will include:
 - 1. Any material losses through criminal conduct, irregular expenditure, fruitless and wasteful expenditure that occurred during the financial year
 - 2. Any criminal, disciplinary steps taken as a consequence of such losses or irregular expenditure, fruitless and wasteful expenditure;
 - 3. Any losses recovered or written off
 - 4. Any financial assistance received from the Department and commitments made by the state on its behalf; and
 - 5. Any other matters that may be prescribed including the financial statements of any subsidiaries.



OFFICE OF THE LEGAL SERVICES OMBUD
 Spooral Park Building, 2007 Lenchen Ave
 South, Centurion Central, Centurion, 0046
 Tel: 010 023 5507/5509
 Cell: Cape Town Office: 076 235 8908, PTA
 Office: 076 235 9887
 Website: Legal Services Ombud
 Enquiries and submission of Complaint
 Form: OLSOenquiries@justice.gov.za

FORM 1
COMPLAINT LODGING FORM

UPON RECEIPT OF YOUR COMPLAINT, AN ACKNOWLEDGMENT NOTICE WILL BE SENT TO YOU ACCOMPANIED BY OUR REFERENCE NUMBER. IN ANY FUTURE CORRESPONDENCE WITH OUR OFFICE, PLEASE QUOTE OUR REFERENCE NUMBER.

THE COMPLETED FORM CAN BE E-MAILED, POSTED OR HAND DELIVERED TO THE DETAILS PROVIDED ABOVE.

PART A. DETAILS OF THE COMPLAINANT	
TITLE:	
NAME:	
SURNAME:	
CONTACT DETAILS:	CELL NO:
	E-MAIL ADDRESS:
	ALTERNATIVE NUMBER:
GENDER:	
PROVINCE:	
PART B. ADDRESS OF THE COMPLAINANT	
POSTAL ADDRESS:	
PHYSICAL ADDRESS:	

PART C. DETAILS OF THE REPRESENTATIVE <i>(Where the complaint is lodged by somebody else on behalf of another person)</i>		
NAME:		
SURNAME:		
RELATIONSHIP WITH COMPLAINANT:		
CELL NO:		
EMAIL ADDRESS:		
ALTERNATIVE NUMBER:		
PART D. DETAILS OF PERSON AGAINST WHOM COMPLAINT IS BEING LODGED (IF KNOWN)		
NAME:		
SURNAME:		
CELL PHONE:		
EMAIL ADDRESS:		
ALTERNATIVE NUMBER:		
LAW FIRM NAME OR EMPLOYER:		
PROVINCE:		
WORK ADDRESS:		
HAVE YOU LODGED A COMPLAINT WITH ANY OTHER PROFESSIONAL BODY BEFORE? (X)	YES	NO
IF YES, WHAT IS THE NAME OF THE PROFESSIONAL BODY?		
WHAT WAS THE OUTCOME OF THEIR INVESTIGATION?		

PART E. DETAILS OF COMPLAINT: (*Additional pages to be attached in the event that the space provided below is not sufficient*)

DATE:

SIGNATURE:

Amended: 19 September 2023



Summons no:
Case reference number:

Summons to Appear before the Legal Services Ombud.

In the matter between:

XXX Complainant

And

XXX Respondent

To:

Name (Legal Practitioner/ Recipient):

Physical / Postal Address:

.....

Fax:

Email Address:

You are hereby required to appear before the Legal Services Ombud (or the person delegated) **in terms of section 48 of the Legal Practice Act, 2014** at (*full address*)..... on..... 20XX to assist the Office of the LSO in an investigation arising out a complaint lodged by the abovementioned complainant.

You are also required to bring and produce the documents specified hereunder:

- (a)
- (b)
- (c) Any other document which might be of assistance to the investigation.

Please take note of the following:

1. You have the right to legal representation
2. You are entitled to witness fees as per Section 48(5)(b) of the Legal Practice Act, 2014
3. You are entitled to claim privilege, however, there is no privilege against self-incrimination
4. Should you fail to comply in terms of Section 48(2) read together with Section 93 (5) of the Legal Practice Act, 2014 you will be committing a criminal offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Name of Delegated Official

Dated at on this day of.....

Signed.....
OLSO STAMP