# CLASA CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR LEGAL COUNSEL IN SOUTH AFRICA

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<tbody>
<tr>
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<td></td>
<td>Pages</td>
<td>12</td>
</tr>
</tbody>
</table>
## INDEX

1. GLOSSARY AND TERMS OF REFERENCE .............................................. 3  
2. INTRODUCTION ........................................................................... 5  
3. PURPOSE AND OBJECTIVES OF THIS CODE ................................. 5  
4. APPLICATION ............................................................................ 6  
5. ETHICAL DUTIES AND STANDARDS OF CONDUCT ...................... 6  
6. ENFORCEMENT AND COMPLIANCE WITH THE CODE ................. 10  
7. CLASA DISCIPLINARY POLICY AND PROCEDURE ...................... 11
1. GLOSSARY AND TERMS OF REFERENCE

This document must be read in conjunction with the CLASA Constitution and the Code.

Unless otherwise stated, or the context indicates to the contrary, terms, words and expressions defined and used under the CLASA Constitution and Code and used in this document shall have the same meanings and descriptions when used in this document as have been ascribed to them under the CLASA Constitution and the Code.

**Appeal Committee** – means a committee which will consist of at least 5 (five) Members of the CLASA Board and an independent Chairman convened in accordance with clause 7 of the CLASA Disciplinary Procedure.

**CLASA** – means the Corporate Lawyers Association of South Africa, an Association formed under the common law *universitas* concept and which represents Legal Counsel and the Legal Counsel profession in South Africa.

**CLASA Disciplinary Committee** – means the disciplinary committee convened in accordance with Clause 4 of the CLASA Disciplinary Policy and Procedure.

**Client** – means the person, entity or Employer who/which makes use of the expertise and skill of a Legal Counsel.

**Code** – means the CLASA Code of Ethics and Standards of Professional Conduct.

**Constitution** – means the CLASA Constitution.

**Conflict of interest** – means a situation occurring when an individual or organisation, and in particular, a Legal Counsel, is involved in multiple interests which are in conflict with each other and/or those of the Client or the Employer who he/she represents, one of which could possibly corrupt his/her decision making powers or ability to make an honest and ethical decision.

**Designated CLASA professional** – means a Member of CLASA who has undertaken the SAQA accredited CLASA battery of assessments and has met the CLASA standards and requirements which have been set for the Legal Counsel profession in South Africa and who are permitted to refer to themselves as “certified CLASA Legal Counsel / Senior Legal Counsel / General Counsel”, as the case may be, and use the designations: “Legal Counsel – CLA(SA); Senior Legal Counsel – CLA(SA); General Counsel – CLA(SA)”, as the case may be.

**Disciplinary hearing** - means the CLASA Disciplinary hearing held in accordance with the CLASA Disciplinary Policy and Procedure.

**Disciplinary procedure** - means the CLASA Disciplinary procedure set out under the CLASA Disciplinary Policy and Procedure.
Employer – means the person or entity who/which employs and makes use of the expertise and skill of a Legal Counsel.

Ethical conduct – means acting in an honest, fair and circumspect manner which is transparent, analytical and essentially free of conflict and which complies with the general rule of law.

Financial Interest – means an interest of a pecuniary nature including an interest in, or rights and obligations to acquire such an interest in, equity or other security or debenture, loan or other debt instrument of an entity, which Legal Counsel may have in a matter in respect of which he/she is advising on.

Independence – means: a) independence of mind - the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with Integrity and exercise Objectivity; and b) independence in appearance - the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that an entity or a member of that entity has not been compromised.

Integrity – is an attitude of mind whereby one commits to certain standards of conduct and moral behaviour in a consistent manner and following this means taking an honest, fair, ethical and transparent approach to everything one does. It is essentially about doing the right thing, with due regard for the avoidance of conflicts between any personal Financial Interest and one’s responsibilities to one’s employer or client.

Investigation Panel – means a panel of experts approved by the Board, based on their relevant expertise, in order to establish whether the alleged misconduct and/or breach of the Code has prima facie been committed, as per the CLASA Disciplinary Policy and Procedure.

Legal Counsel – means a qualified lawyer who is employed by a Client or Employer for the purpose of providing that Client or Employer with a dedicated source of Legal Services and Advice in exchange for a salary or remuneration, and phrases and names such as “legal advisor”, “general counsel”, “in-house counsel” and “corporate counsel” attract the same meaning.

Legal Counsel profession – means the profession made up of Legal Counsel who are employed by a Client or Employer for the purposes of providing that Client or Employer with a dedicated source of Legal Services and Advice.

Legal profession – means the profession made up of persons holding a legal qualification and having specific legal skill and expertise, including, without detracting from the generality thereof qualified lawyers, admitted attorneys, Legal Counsel, advocates, state advocates, public prosecutors, magistrates, legal advisors and/or legal compliance officers, who provide Legal Services and Advice to the public and/or the private sector.

Legal Services and Advice – means the services provided to a Client or Employer by Legal Counsel.

Member – means a CLASA Member.
2. INTRODUCTION

2.1 CLASA represents the Legal Counsel profession in South Africa.

2.2 Ethical conduct is an expected standard for the Legal profession. All persons operating within the Legal profession, including the Legal Counsel profession and the parties making up the Legal Counsel profession, are expected, without exception, to act in a professional, ethical and law abiding manner, free from Conflict of interest and personal interest.

2.3 CLASA as an Association adheres to consistently high standards of legal and business Integrity and ethics and expects the same ethical standards and commitments from its Members and from the Legal Counsel professionals it represents.

2.4 It is therefore imperative that CLASA ensures that the Legal Counsel profession, and more importantly, its Members, are provided with a set of ethical guidelines which should be reflected in the Legal Services and Advice which they provide to their respective Clients and Employers.

2.5 This Code therefore seeks to establish and set out the CLASA Code of Ethics and Standards of Professional Conduct which will apply to its Members and to the Legal Counsel profession in general, which it represents.

3. PURPOSE AND OBJECTIVES OF THIS CODE

3.1 The purpose of this Code is to set out:

3.1.1 the CLASA code of ethics and standards of professional conduct which are expected to be complied with by its Members;

3.1.2 how CLASA will enforce and monitor compliance with the Code;

3.1.3 how CLASA will deal with any non-compliance of the Code by a Member.

3.2 The objective of this Code is to:

3.2.1 define and promote acceptable ethical behaviour for the Member based on appropriate values;

3.2.2 promote desired standards of conduct for the Member and for the Legal Counsel profession as a whole;

3.2.3 develop and maintain a high standard of professionalism for the Member and the Legal Counsel profession;

3.2.4 provide a benchmark of expected behaviour and conduct for the Member and the Legal Counsel profession;
3.2.5 provide norms and standards for the Member so that they may evaluate their own practices and behaviours when providing Legal Services and Advice;

3.2.6 provide guidance to the Member so that the Member may provide Legal Services and Advice to his/her Client or Employer and where applicable, the public, with Integrity, sincerity and in accordance with the accepted standards as laid down by CLASA, the Legal profession and the Client or Employer;

3.2.7 ensure that the Member respects the interests of their Clients and Employers, the public, CLASA and the Legal profession in general;

3.2.8 promote Client and Employer confidence in the Members employed by them and in the Legal Counsel profession;

3.2.9 promote the public’s confidence in the Member and the Legal Counsel profession and protect the interests of the public;

3.2.10 provide policy directives on how CLASA will enforce and monitor compliance with the Code and how it will effectively and fairly deal with any non-compliance by a Member with the Code, in a consistent and fair manner.

4. APPLICATION

4.1 This Code will apply without exception to:

4.1.1 CLASA;

4.1.2 Each Member.

4.2 CLASA and its Members are therefore expected to adopt and promote this Code which is vital to the credibility and good reputation of CLASA, the Members and the Legal Counsel profession.

5. ETHICAL DUTIES AND STANDARDS OF CONDUCT

5.1 The Legal Counsel profession, and in particular the Member, must at all times in the provision of Legal Advice and Services conduct their occupation in line with the general rules and guidelines stipulated below:

5.1.1 The member must at all times act ethically, and in discharge of this duty should follow the below-mentioned standards of conduct:

5.1.1.1 act in a fair, honest and transparent manner, with dignity and Integrity;

5.1.1.2 always remain impartial and objective and avoid any subordination or undue influence of one’s judgement by others;
5.1.3 give effect to legal and moral values and requirements and treat any lacunae or gap in a law, regulation, standard or code in an ethical and responsible manner;

5.1.4 respect and promote the Integrity of CLASA, its Members and the Legal Counsel profession, and not bring them into disrepute at any time;

5.1.5 not engage in any act of dishonesty, corruption or bribery;

5.1.6 disclose to the relevant parties any personal, business and/or Financial Interest in his/her Client, Employer or their business or in any stakeholder to avoid any perceived, real or potential Conflict of interest at all times;

5.1.7 not knowingly misrepresent or permit misrepresentation of one’s qualifications or competency or those of others;

5.1.8 provide opinions, decisions, and/or Legal Service and Advice and recommendations that are honest, objective and based on facts.

5.1.2 The Member must at all times when acting for or providing Legal Services and Advice to its Client or Employer, act in a manner that is free from Conflict of interest, Financial Interest and self-interest and in discharge of this duty should follow the below-mentioned standards of conduct:

5.1.2.1 be and appear to be free of any undue influence or self-interest whether direct or indirect which may be regarded as being incompatible with one’s Integrity or Objectivity;

5.1.2.2 constantly assess each particular situation for possible Conflicts of interest and/or Financial Interest and be alert to the possibility of any Conflict of interest;

5.1.2.3 consider the facts and circumstances before deciding whether or not one’s Integrity and Objectivity would be impaired by accepting an engagement, consideration or offer;

5.1.2.4 immediately declare any conflict of interest or Financial Interest in a matter and recuse oneself from the situation, especially where it involves any consideration, deliberation or decision and/or ensure that one at all times acts in an appropriate manner so as to eliminate the conflict;

5.1.2.5 be aware of and discourage potential relationships which could give rise to the possibility of a Conflict of interest situation and which could potentially or actually adversely influence, impair or threaten one’s Integrity, judgement and/or impartiality;

5.1.2.6 ensure that the correct balance as between one’s loyalty to one’s Client or Employer and the required professional and legal standards are achieved and realised at all times without them compromising or conflicting with each other;
5.1.2.7 not accept any gift, benefit, consideration or compensation that may be perceived as compromising one’s independence of judgement;

5.1.2.8 not personally, or through any other person, improperly seek to obtain work by way of commission or otherwise or make or offer to make payment for a client or prospective client for obtaining such work.

5.1.3 The Member must at all times act in a professional manner and in discharge of this duty should follow the below-mentioned standards of conduct:

5.1.3.1 act with the required degree of skill, care and diligence which is expected from any Legal Counsel professional;

5.1.3.2 liaise in an open and transparent manner with Clients, Employers and stakeholders and do not intentionally mislead one’s Client, Employer or any stakeholder;

5.1.3.3 ensure that one is provided with a thorough brief and that one makes objective and impartial decisions based on thorough research and an assessment of the facts and the context of the situation;

5.1.3.4 exercise independent and professional judgement in all dealings with Clients, Employers and stakeholders;

5.1.3.5 execute one’s job functions with professionalism, good attitude and values, due care and diligence;

5.1.3.6 adhere to acceptable practices and high quality standards when carrying out one’s work;

5.1.3.7 continuously improve one’s skills and mentor and guide new entrants in one’s field of expertise;

5.1.3.8 act with intellectual Objectivity and Integrity whatever the circumstances or influences which the Member may be subject to when acting;

5.1.3.9 maintain and improve one’s professional skills, expertise and competence on an ongoing basis through the attendance of workshops, courses, training, reading and networking and attaining the required Continuous Professional Development (CPD) points prescribed by CLASA as per the CLASA CPD Policy;

5.1.3.10 keep abreast of legal developments, applicable laws, regulations, legal theory and the common law, particularly those which apply to his/her Client, Employer and/or the industry within which one operates;

5.1.3.11 conduct oneself professionally and responsibly recognising the interests of one’s Client, Employer and stakeholders, which interests may not necessarily be the same and encourage similar behaviour in others;
5.1.3.12 comply with and observe both the spirit and the letter of the law, especially those relevant to the industry where one operates, including internal non-binding codes, principles, and standards of conduct;

5.1.3.13 not misrepresent one’s competence, including one’s qualifications and credentials, capabilities, characteristics, and experience;

5.1.3.14 observe and protect confidentiality and where applicable, privacy of all and any information made available and received during the course of performing one’s duties, unless legal obligation to disclose same exists or arises;

5.1.3.15 not perform work or conduct oneself in any manner that will compromise the standard of the Legal profession, the Legal Counsel profession or CLASA;

5.1.3.16 generally act in a manner consistent with the good reputation of the Legal profession and refrain from conduct which may harm the public, the Legal profession, the Legal Counsel profession or CLASA or which may bring the Legal Counsel profession, the Legal profession or CLASA into disrepute.

5.1.4 The Member must at all times respect the objectives, values and mission of CLASA and ensure that one maintains good relations with CLASA and in discharge of this duty should follow the below-mentioned standards of conduct:

5.1.4.1 familiarise oneself and comply with the CLASA Constitution, the Code and any other applicable CLASA policies, procedures, guidelines and codes which may apply to the Member from time to time;

5.1.4.2 comply with the CLASA CPD policy and related procedures;

5.1.4.3 ensure that the annual CLASA subscription and membership fee levied by CLASA is paid on receipt of invoice;

5.1.4.4 ensure that all amounts in respect of CLASA courses and workshops and other CLASA events which are due to CLASA are paid on receipt of invoice;

5.1.4.5 inform the CLASA CEO in writing immediately should any proceedings be brought against the Member which could damage CLASA or the dignity of the Legal Counsel profession and/or the Legal profession;

5.1.4.6 submit in writing any information requested by CLASA with reference to any improper conduct by the Member or any other Member;

5.1.4.7 inform CLASA immediately should the Member or its Client or Employer decide to resign from CLASA, or should the Member move position or take up employment with another Client, Employer or person.
5.1.5 The Member must at all times respect the Legal profession in general and in discharge of this duty should follow the below-mentioned standards of conduct:

5.1.5.1 treat other persons who make up the Legal profession with respect and dignity;

5.1.5.2 refrain from deprecating and/or maligning other persons who make up the Legal profession, save for when a complaint may be merited; in such case refer the complaint to the professional body who represents and governs that person, making use of its laid down disciplinary and/or complaints procedure.

6. ENFORCEMENT AND COMPLIANCE WITH THE CODE

6.1 CLASA, its Disciplinary Committee, Investigations Panel, Appeal Committee and the Member all have a duty to familiarise themselves with CLASA’s Constitution, the Code and the CLASA Disciplinary Procedure.

6.2 All Members have a duty to comply with the Code, read together with the CLASA Constitution and the CLASA Disciplinary Procedure.

6.3 Whilst CLASA will not actively police compliance with the Code, it will use its best endeavours to ensure that both the spirit and the letter of the Code are followed by the Members.

6.4 The application and purpose of the Code is to ensure that the Member conducts him/herself in a manner befitting of the Legal Counsel profession and the Legal profession.

6.5 Where CLASA is of the view that a Member is not complying with the Code, it will have the right to investigate the matter further and where it has substantial grounds indicating that the Member under investigation has not complied with the Code, it will have the right to take the necessary disciplinary action against such Member in accordance with the Disciplinary Procedure.

6.6 Where CLASA receives a complaint about a Member which complaint concerns any breach or non-compliance with the Code, CLASA will then be obliged to investigate the complaint and if necessary, take the required disciplinary action against such Member in accordance with the Disciplinary Procedure.

6.7 Where CLASA receives a complaint as detailed in clauses 6.5 and 6.6 above and the CLASA Disciplinary Committee and Investigations Panel is of the view that the matter should rather be dealt with by the Client and/or Employer then CLASA will have the right to refer such matter to the legal department of the Client and/or Employer for their further attention and/or action.

6.8 Disciplinary action against any Member must be procedurally and substantively fair.

6.9 In the case of any breach of the Code, CLASA will ensure that it is consistent in its application of discipline and will to this extent ensure that Members are not treated differently based on any arbitrary or unjustifiable grounds.
6.10 All Disciplinary proceedings and records must be kept confidential.

7. **CLASA DISCIPLINARY POLICY AND PROCEDURE**

7.1 The procedure which CLASA will follow in the event of an allegation that a Member is not complying with this Code is set out under the CLASA Disciplinary Policy and Procedure. This Code should therefore be read together with the CLASA Disciplinary Policy and Procedure.

APPROVED BY THE BOARD MEMBERS AND CLASA MEMBERS AT THE CLASA AGM HELD ON

_________________________________________ 2015 AT ______________________
The Member, by appending his/her signature hereto, undertakes to abide by this **CODE OF ETHICS AND PROFESSIONAL CONDUCT**.

**Acknowledgement and Signature**

I, ______________________________ agree to abide by this **CODE OF ETHICS AND PROFESSIONAL CONDUCT** and acknowledge that my failure to do so could disqualify me from continued membership of CLASA and/or the right to a CLASA designation that may have been awarded to me.

Signed at __________________________ on the ___ day of _________________ 2015.

Signature: __________________________

Witness: ___________________________