

1. INTRODUCTION

The issue of handling litigation matters at Sundays River Valley Municipality (SRVM) has been a serious challenge which led to the poor coordination of the function which proved to be very costly to the financial viability of the municipality, through payment of unnecessary legal costs. This situation has been exacerbated by a lack of a competent person to handle legal matters and advise Accounting Officer as well as advising municipal Council on ALL legal matters from within the municipality.

With the help and advise from COGTA as well as the Sarah Baartman District Municipality (SBDM), SRVM has decided to propose for the organogram to be influenced to provide for a position for a Legal Services person to effectively deal with legal matters and also to develop a Litigation Policy for proper coordination of this function.

With that background and context, the SRVM has agreed to close this policy gap by developing this policy and taking cue from the Provincial Litigation Management Policy as well as Litigation Management Framework developed by COGTA.

2. PREAMBLE

This SRVM Litigation Management Policy must be aligned to the litigation management framework developed by the Department of Justice and Constitutional Development as well as the Provincial litigation management strategy and must address poor coordination that will result in reducing legal costs and and the number of legal cases against the municipality.

This policy must provide a framework to manage litigation cases against the municipality both from internal point of view as well as directly interacting with external stakeholders to streamline this function in the best financial interest of the municipality. The policy must outline what needs to be done, by whom, when and how it should be done with a view to meet the strict timelines provided by the rules of the Court, ensuring that the Accounting Officer receive proper legal advice to act timeously and promptly in compliance with Court Orders to avoid contempt of court proceedings and attachment of the municipal assets, through unnecessary and costly procrastination.

3. PURPOSE

The purpose of this manual is to provide for a proper policy and legal framework to improve coordination of this important function.

Secondly, the policy aims to deal with ALL litigation matters in a well- coordinated fashion to reduce unnecessary legal costs and introduce proper mechanism to monitor the execution of this critical function.

Lastly, to provide a proper mechanism and a system to deal with external litigants to reducing the quantum of costs as well as the number of litigation/ legal cases.

4. DEFINITIONS

Terms and definitions that will be used throughout the manual that need clarification for the reader, this can also include any keywords, technical terms and abbreviations that may be used in this document. Definitions in this manual, unless the context otherwise indicates.

Words/Terms	Definition (with examples if required)
Accounting Officer	Means an accounting officer as defined in the Public Finance Management Act, 1999 (Act No.1 of 1999)
Executive Authority	Means the member of the Executive Council responsible for the department of Cooperative Governance and Traditional Affairs
Legal Processes	Means any civil law suit or criminal prosecution instituted for or against an Organ of State
Legal Services	Means any form of legal advice, or drafting of document, or representation of any person that requires the expertise of a person trained in the practice of law
Legal Practitioner	Means an attorney or advocate

State Attorney	Means any person who is an Attorney in the office of the State Attorney created in terms of State Attorney Act, 1957 (Act No.56 of 1957)
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5. PROBLEM STATEMENT

The municipality has a serious challenge on the management of litigation due to a lack of a policy framework and poor coordination of litigation cases that arise against the municipality, and this is aggravated by a lack of Standard Operating Procedures (SOP) to deal therewith.

6. APPLICATION AND SCOPE

This policy is applicable to ALL employees of the municipality without exception and will be observed by everyone in dealing with ALL legal and litigation matters.

7. LEGISLATIVE FRAMEWORK

- Constitution of the Republic of South Africa, 1996
- Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000)
- Promotion of Access to the Information Act, 2000 (Act No 2 of 2000)
- Promotion of Equity and Prevention of Unfair Discrimination Act (Act No 4 of 2000)
- Public Finance Management Act (Act 1 of 1999 as amended) and Treasury regulations
- Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005)
- State Liability Act, 1957 (Act 20 of 1957) as amended
- State Attorneys Act, 1957 (Act 56 of 1957) as amended
- Institution of legal proceedings against certain organs of State, 2002 (Act No. 40 of 2002)

8. ROLES AND RESPONSIBILITIES

Corporate Services Department is responsible for implementation of this Policy and will ensure that processes are followed accurately and will directly report to the Accounting Officer (Municipal Manager). The Director: Corporate Services is entrusted at this point in time, to ensure implementation as the custodian of this policy.

The roles and responsibilities of those involved in the process are outlined in table 1 below

Table 1: Roles and responsibilities

Role player	Responsibilities
Director: Corporate Services	<ul style="list-style-type: none">✓ Develop this Litigation Management Policy for SRVM with assistance from COGTA and SBDM.✓ On the date of receipt immediately initiate contact with the relevant stakeholders to get facts on the legal matter received and advise the Accounting Office immediately.✓ Receive instructions from the Accounting Officer and facilitate interaction with external legal firms (Attorneys of Record).✓ Ensure that the relevant persons attend consultation with the appointed Attorney and deposed to affidavits where required.✓ Liaise with the appointed Attorneys for process updates and a full report/ Court Judgements to be submitted to SRVM to be recorded in the SRVM Litigation Register✓ In instances where judgement has been taken against the municipality, advise the Accounting Officer accordingly for a clear way forward on the

	<p>strength of a proper legal advice or solicited legal opinion.</p> <ul style="list-style-type: none"> ✓ Monitor compliance with court orders by the municipality and ensure that court orders are complied with. ✓ Conduct litigation trend analysis and propose mitigating measures with relevant line departments and provide a report to the Municipal Manager in this regard. ✓ Develop action plans to mitigate incidents of litigation guided by a report on litigation trend analysis; ✓ Attend Legal Advisors Forum on behalf of SRVM or his Delegate as and when scheduled.
Relevant Line Departments	<ul style="list-style-type: none"> ✓ Refer all Legal/Litigation matters to the Director: Corporate Services or his Delegate ✓ Provide the required information by Corporate Services. ✓ Avail themselves for consultation and provide further clarity on the legal matter at hand.
Accounting Officer	<ul style="list-style-type: none"> ✓ Provide instructions to initiate, oppose or defend an action or application as / whatever the case may be. ✓ Provide instructions on Alternative Dispute Resolution or settlements outside court. ✓ Ensure compliance with court orders. ✓ Gives instructions on whether or not to note an appeal in appropriate circumstances.

	<ul style="list-style-type: none"> ✓ Receive reports from Director: Corporate Services with details on cost implications and provide a trend analysis report; ✓ Advise on remedial action.
Office of the Mayor	<ul style="list-style-type: none"> ✓ In instances where court papers are served directly to the Mayor's office, immediately sent them to Corporate Services for processing. ✓ Ensure that the Mayor depose to an affidavit where it is required.
Attorneys of Record	<ul style="list-style-type: none"> ✓ Litigate on behalf of the municipality and/or defend any litigation matter against the municipality on referral; ✓ Receives instruction from the Accounting Officer to pursue any matter referred to them by the Accounting Officer; ✓ Provide Legal Advice on any matter referred to them by the Accounting Officer; ✓ To represent the municipality in any legal matter instituted against the municipality, as directed by the Accounting Officer;

9. DESCRIPTION OF PROCEDURES AND PROCESSES

The Court process against the municipality is received from the appointed Attorneys and directly served to Corporate Services.

The process commences as soon as the court process is received from the appointed Attorneys or directly served to the municipality through Corporate Services.

The sequence of steps involved in the process is as follows:

9.1 Receipt of the court process or initiation of litigation by the SRVM

Corporate Services receives court process from the appointed Attorneys of Record or is instructed by the Municipal Manager to initiate litigation.

(i) Registration of the court process/ instructions

The process or instructions received are recorded in the litigation register in a manner that is prescribed by the Policy and allocated to a firm of attorneys for advice and appropriate action.

(ii) Analysis and processing of the court process or instructions

The appointed municipal Attorneys of Record determines the nature of the court process or instructions as the case may be, within one (1) day.

- Request relevant information from the relevant line department or affected municipal officials, where necessary. The requested information must be provided to Corporate Services not later than 2 days
- Prepares a legal advice to the municipal manager on the court process and request instructions in a manner that is prescribed by the municipality's approved Litigation Management Policy. The Municipal Manager must give instructions not later than 2 days after having received the court process and the legal advice.
- Give instructions to the appointed Attorneys (Attorneys of Record) in the prescribed letter of instructions issued by the appointed Attorneys.

The process for giving instructions to the appointed Attorneys must not exceed 5 days. All relevant role players must strive for a shorter period in most instances the process can be finished within 3 days.

9.2 Attending to consultation and court attendance

- On receipt of instructions, the appointed firms of Attorneys (Attorneys of Record) arrange further consultation to ensure filing of pleadings (opposing papers, founding papers etc.) and may require officials from the relevant line department of affected officials.
- In appropriate circumstances, the appointed Attorney/s may request the presence of the Municipal Manager or his delegate. The dates of consultation and venues are done in consultation with Corporate Services. It must be noted that these consultations are necessary and must be done within the stipulated time frames as may be prescribed by the relevant court rules. All persons who are required to attend consultations must make them a priority because failure to file court papers has adverse consequences like punitive costs orders and default judgments or the unnecessary attachment of municipal assets.
- In application proceedings, the municipal manager or any relevant official may be requested to sign a prepared affidavit before the commissioner of oath for filing. It is necessary that an affidavit must be made before the commissioner of oath on the date of its receipt or within the period prescribed by the municipal Attorneys of Record.
- In action proceedings, that is, where summons has been issued, or where there is a need to adduce oral evidence, relevant persons may be required to be witnesses on that date of trial / hearing. Attendance of court as a witness is compulsory and must be prioritized at all times.

9.3 Finalization of litigation matter and compliance with court orders

- The appointed firm of Attorneys (Attorneys of Record) informs the municipal manager about the outcome of the matter. If judgment is

granted in favour of SRVM the matter is regarded as finalized unless the other party notes an appeal.

- In instances where the judgment is granted against the municipality, the appointed firm of Attorneys (or Attorneys of Record) will be required to inform the municipal manager within 7 days after the judgment has been delivered.
- Corporate Services must, **within 2 days of receipt of a court judgment** advise the Municipal Manager about its implications and facilitate compliance therewith, unless the SRVM decides to appeal or takes the matter for a review.
- Court Orders against SRVM must be **satisfied within 30 days of the date of the order** or within the time period agreed upon by the parties or as stipulated in the Court Order.
- In instances where judgment cannot be satisfied within the 30 days or agreed period, the matter may, be referred to the municipal Attorneys of Record for advice and appropriate action

9.4 Noting an appeal or taking the matter for a review

It must be noted that the period within which to appeal the decision of the Court is regulated by the rules of the relevant Court. For example, in terms of the High Court rules, rule 49 provides that an application for leave to appeal shall be made within 15 days after the date of the order appealed against. In the circumstances process to deal with appeals or reviews must be done in following manner:

- Director: Corporate Services must, **within 2 days**, after receiving the outcomes of the matter advise the Municipal Manager as to whether or not the matter must be appealed against or be taken for a review.
- The Municipal Manager must, within 2 days, after receiving an order that is against Sundays River Valley Municipality decide whether or not to appeal the order and give Corporate Services instructions in this regard.

- Corporate Services, must on the same date after receiving instructions from the Municipal Manager, give instructions to the Attorneys of Record (or appointed firm of Attorneys) to note an appeal or take the matter for a review.

10. Litigation Trend Analysis

- Director: Corporate Services must identify litigation trends monthly and present a draft trend analysis report to the municipal manager for follow up action.
- Director: Corporate Services together with the concerned line department must develop measures and action plans to mitigate incidents of litigation in the municipality with a view to reducing litigation costs.
- The trend analysis report must be presented to the Municipal Manager quarterly by Director: Corporate Services for appropriate and timely remedial action and to avoid and eliminate the attachment of municipal property and assets by commission or omission;

11. BUSINESS RULES

- (i) All instructions to initiate litigation, defend, oppose, appeal or take a matter for a review must be in writing and done **ONLY through the office of the Municipal Manager as the Accounting Officer for SRVM;**
- (ii) **Only the Municipal Manager with approval from the municipal Council** must issue instructions on litigation matters;
- (iii) Instructions to the appointed Attorneys can **only be issued by the office of the Municipal Manager;**
- (iv) Matters related to **litigation takes priority;**
- (v) Judgments against the municipality must be satisfied within the time frames stipulated in order **to avoid contempt of court proceedings, warrant of arrests or attachment of the municipal property;**

- (vi) Sundays River Valley Municipality must instruct the appointed Attorneys to oppose or defend the matter **within 5 days from the date of receipt of such a legal matter or court process.**

12. EXCEPTION TO NORMAL PROCESS WORK FLOW

While it is assumed that the processing of litigation matters within the municipality flow from the process outlined at item 7 of this document, the following exceptions may apply:

- ✓ The issuing of an urgent application may require the Municipal Manager to issue instructions on the date of receipt of the court process or a period that is shorter than the 5 days that is envisaged at item 8 in the business rules.
- ✓ In truly exceptional circumstances, the municipality may, in accordance with the rules where permitted, apply to court for condonation of late filing of a court process. The municipality must strive to avoid such application because in appropriate circumstances the court may refuse to grant such applications.

13. MONITORING OF COMPLIANCE WITH THE MANUAL

The Municipal Manager (or Director Corporate Services as delegated) must monitor implementation and compliance of this policy and reports must be submitted to Council for trend analysis and remedial actions.

14. COMMUNICATION OF THIS POLICY


This Policy will be communicated by means of intranet, circulars and advocacy sessions to all employees of the municipality to ensure awareness and will popularise through internal workshops.

15. APPROVAL OF THIS POLICY

The Policy will be submitted to Council for adoption and approval and will come into effect thereafter.

16. REVIEW OF THE LITIGATION MANAGEMENT POLICY

This policy will be reviewed after a period of three years and when there are compelling developments in the legal framework regulating management of litigation in the municipal space.



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S H R N E
MAYOR

08 JULY 2022

CERTIFICATION OF DUE PROCESS:

Prepared by: _____
Name Signature Date

Certified by: _____
Name Signature Date

Approval of
this Policy: _____
Delegated Authority Date

Approval date		Commencement date		Review date	
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REVISION HISTORY

Revision Ref No.	Approved/ Rescinded	Date	Authority	Resolution Number or Minutes Reference
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