



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 273

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Government Notices

MINISTRY OF JUSTICE

No. 106 1991

SPECIFIED OFFENCES FOR THE PURPOSES OF SECTION 9 OF THE LEGAL AID ACT, 1990

Under the powers vested in me by subsection (1) of section 9 of the Legal Aid Act, 1990 (Act 29 of 1990), I hereby specify the offences set out in the Schedule for the purposes of subsection (1) of that section.

DR. E.N. TJIRIANGE
MINISTER OF JUSTICE

Windhoek, 25 September 1991

SCHEDULE

Specified offences

Abduction.
Arson.
Bestiality.
Bigamy.
Forgery or uttering a forged document knowing it to have been forged.

Incest.
Indecent assault.
Perjury.
Public violence.
Rape.
Sedition.
Sodomy.
Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

MINISTRY OF JUSTICE

No. 107

1991

REGULATIONS UNDER THE LEGAL AID ACT, 1990

The Minister of Justice has under section 24 of the Legal Aid Act, 1990 (Act 29 of 1990) made the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, words and phrases shall have the meaning assigned thereto in the Act, and -

“dependant” means minor child, including a stepchild, legally adopted child or child born out of a marriage under customary law, or any such child who is not a minor, but who is not selfsupporting by reason of any permanent physical or mental disability and includes, in the case of a person who is a breadwinner, his or her spouse;

“the Act” means the Legal Aid Act, 1990 (Act 29 of 1990);

“tribunal” means any board, council, body or other authority referred to in section 22(1) of the Act.

Eligibility for legal aid

2. (1) Subject to the provisions of subregulation (3), a person shall qualify for legal aid if his or her remuneration, as determined in accordance with the provisions of subregulation (2), does not exceed the appropriate amount specified below -

- (a) a person without any dependants, R500;
- (b) a person with one dependant, R650;
- (c) a person with two dependants, R800;
- (d) a person with three dependants, R950;
- (e) a person with four or more dependants, R1 100.

(2) For the purposes of subregulation (1) "remuneration" means the balance of the applicant's monthly income, from whatever source (including any salary, wage, bonus, pension, allowance or amount received in respect of the applicant's maintenance), after deduction of any commitment paid or payable in respect of -

(a) a compulsory contribution to a pension fund;

(b) employees' tax in terms of section 80 of the Income Tax Act, 1981 (Act 24 of 1981); and

(c) the maintenance of any other person pursuant to a court order.

(3) The income of an applicant's spouse shall not be taken into account for the purposes of determining the applicant's remuneration in terms of this regulation.

(4) The provisions of this regulation shall not apply in respect of a person who is entitled to legal aid by virtue of a legal aid certificate issued under section 8(2) or 14 of the Act or a special legal aid certificate issued under section 12(1) of the Act.

Application for legal aid

3. (1) Subject to the provisions of subregulation (4) an application for legal aid shall be in the form as set out in Form 1 of Annexure "E", which shall be delivered to the Director, or if the applicant is resident in a district or area in respect of which the Minister has under section 7 of the Act established a legal aid committee or designated an officer in the Ministry of Justice, to such legal aid committee or the officer so designated.

(2) The Director, or a legal aid committee or an officer referred to in subregulation (1), may require any applicant for legal aid to attend an oral interview for the purpose of -

(a) clarifying any information contained in the applicant's application form; or

(b) obtaining any further information which the Director or such legal aid committee or officer deems to be relevant in relation to the applicant's application.

(3) Where an application has been delivered to a legal aid committee or an officer referred to in subregulation (1), the legal aid committee or officer concerned shall cause such application to be transmitted to the Director as soon as possible, together with any recommendations which the legal aid committee or officer concerned may wish to make.

(4) If, in the opinion of the Director, compliance with subregulation (1) would cause difficulty or undue delay, the Director may accept, or authorise any legal aid committee or officer referred to in subregulation (1) to accept, an application presented in any form which the Director deems sufficient in the circumstances.

Contribution to costs of legal aid

4. (1) Where the Director has under section 15(1) of the Act required that a contribution be made towards the costs of legal aid, the amount of such contribution shall, unless the Director in any particular case specifies another amount, be

determined in accordance with the contribution table set out in Annexure "A".

(2) Any contribution required to be made towards the costs of legal aid shall be paid to the Director within 14 days from the date on which the Director notifies the person concerned that he or she is required to make such a contribution, or within such further period as the Director may allow.

Practitioners' fees

5. A practitioner to whom the Director has allocated a matter under section 6 or 12 of the Act shall be entitled to the appropriate fees set out in Annexure "B" for the services rendered by such practitioner.

Notice of grant of legal aid

6. Whenever the Director or any practitioner represents a legal-aided person in any civil matter or any proceedings before a tribunal, the Director or such practitioner shall file with the court or tribunal where such matter is pending and the opposing party, if any, a notice in the form as set out in Annexure "C".

Notice of termination of legal aid

7. Whenever the Director terminates the legal aid granted to a person in any matter or proceedings referred to in regulation 6, the Director or any practitioner to whom such matter was allocated by the Director shall file with the court or tribunal, as the case may be, and the opposing party, if any, a notice in the form as set out in Annexure "D".

Prescribed forms

8. (1) Any recommendation for legal aid in terms of any provision of the Act shall be in the form as set out in Form 2 of Annexure "E".

(2) A legal aid certificate referred to in -

(a) section 8(2) of the Act shall be issued in the form as set out in Form 3 of Annexure "E"; and

(b) section 14 of the Act shall be issued in the form set out in Form 4 of Annexure "E".

(3) A special legal aid certificate referred to in section 12(1) of the Act shall be issued in the form as set out in Form 5 Annexure "E".

ANNEXURE A
CONTRIBUTION TABLE

(Regulation 4)

For the purposes of this table a person's remuneration shall be determined in accordance with the provisions of regulation 2.

1. In the case of a person without any dependant:

Remuneration	Contribution
R	R
0 - 200	20
201 - 250	50
251 - 300	60
301 - 350	70
351 - 400	80
401 - 450	90
451 - 500	100

2. In the case of a person with dependants:

1 Dependant	2 Dependants	3 Dependants	Contribution
Remuneration	Remuneration	Remuneration	R
R	R	R	R
0 - 350	0 - 500	0 - 650	20
351 - 400	501 - 550	651 - 700	50
401 - 450	551 - 600	701 - 750	60
451 - 500	601 - 650	751 - 800	70
501 - 550	651 - 700	801 - 850	80
551 - 600	701 - 750	851 - 900	90
601 - 650	751 - 800	901 - 950	100

4 Dependants or more

Remuneration	Contribution
R	R
0 - 800	20
801 - 850	50
851 - 900	60
901 - 950	70
951 - 1000	80
1001 - 1050	90
1051 - 1100	100

ANNEXURE B
PRACTITIONERS' FEES

(Regulation 5)

A. CRIMINAL CASES IN THE HIGH COURT AND SUPREME COURT

1. Fees payable to advocates:

(1) Appearance at trial in the High Court:

An advocate shall in respect of all services rendered be paid an amount equal to 75% of the fee taxed by the Registrar of the High Court so as to allow a fair and reasonable fee for the services rendered.

(2) Appeals:

(a) Application for leave to appeal to the full court of the High Court or to the Supreme Court -

- (i) R200 per application; and
- (ii) expenses relating to drawing up of application:
 - (aa) Typing: R2.50 per page;
 - (bb) Copies: R0.30 per page.

(b) Petition to the Chief Justice for leave to appeal to the Supreme Court -

- (i) R200 per petition; and
- (ii) expenses relating to drawing up of petition -
 - (aa) Typing: R2.50 per page;
 - (bb) Copies: R0.30 per page.

(c) Appearance before a full bench of the High Court or in the Supreme Court -

- (i) appeal against sentence only: R400 for each appellant;
- (ii) appeal against conviction and sentence: R600 for each appellant;
- (iii) drawing up of heads of argument: R300;
- (iv) preparation -

- (aa) where the record does not exceed 200 pages: R200;
- (bb) where the record exceeds 200 pages: R200 plus an additional amount of R1 per page exceeding 200 pages; and
- (v) expenses relating to the drawing up of heads of argument:
 - (aa) Typing: R2.50 per page;
 - (bb) Copies: R0.30 per page.

(3) Allowances and incidental expenses:

- (a) Subsistence allowance: R24 per day and defrayment by Government of cost of hotel accommodation only, if applicable.
- (b) Transport allowance: an allowance as from time to time prescribed by the Public Service Commission for the use of private motor transport on official duty shall be paid to an advocate for travelling to and from the court in which the hearing takes place and to and from any place visited for the purpose of preparing or conducting the case.
- (c) Any other out-of-pocket expenses actually and reasonably incurred.

2. Fees payable to attorneys:

An attorney conducting any criminal case in the High Court or Supreme Court shall be paid an amount equal to 50% of the statutory tariff prescribed for High Court (civil) and for Supreme Court (civil).

B. CRIMINAL CASES IN LOWER COURTS
(Regional and Magistrate's Courts)

1. Fees payable to advocates:

(1) Appearance at trial in lower court:

An advocate shall be paid in respect of all services rendered an amount equal to 75% of the fee taxed by the Control Magistrate of the lower court in which the hearing takes place, so as to allow a fair and reasonable fee for the services rendered.

(2) Appeals from lower court to the High Court:

Appearance in the High Court -

- (a) appeal against sentence only: R350 for each appellant;
- (b) appeal against conviction and sentence: R500 for each appellant;
- (c) drawing up of heads of argument: R250;

(d) preparation -

- (i) where the record does not exceed 200 pages: R200;
- (ii) where the record exceeds 200 pages: R200 plus an additional amount of R1 per page exceeding 200 pages; and

(e) expenses relating to the drawing up of heads of argument:

- (i) Typing: R2.50 per page;
- (ii) Copies: R0.30 per page.

(3) Allowances and incidental expenses:

- (a) Subsistence allowance: R24 per day and defrayment by Government of cost of hotel accommodation only, if applicable.
- (b) Transport allowance: an allowance as from time to time prescribed by the Public Service Commission for the use of private motor transport on official duty shall be paid to an advocate for travelling to and from the court in which the hearing takes place and to and from any place visited for preparing or conducting the case.
- (c) Any other out-of-pocket expenses actually and reasonably incurred.

2. Fees payable to attorneys:

- (1) An attorney shall be paid a fee of R400 for appearing at a trial in a lower court.
- (2) The fee referred to in subparagraph (1) is an all inclusive fee for conducting the case, irrespective of the duration thereof or the number of legal-aided persons represented, and shall also include any costs and disbursements incurred by the attorney in conducting the case.
- (3) The Director may in exceptional circumstances pay an additional amount of not more than R150 to such an attorney.

C. CIVIL MATTERS

In lower courts, the High Court and Supreme Court:

1. Fees payable to advocates:

An advocate conducting any civil matter shall be paid an amount equal to 75% of the fee taxed -

- (a) in the case of a lower court matter, by the Control Magistrate of the lower court concerned;

- (b) in the case of a High Court matter, by the Registrar of the High Court;
 - (c) in the case of a Supreme Court matter, by the Registrar of the Supreme Court,
- so as to allow a fair and reasonable fee for the services rendered.

2. Fees payable to attorneys:

An attorney conducting any civil appeal or any other civil matter in the High Court or the Supreme Court or any civil case in a lower court, shall be paid an amount equal to 50% of the taxed costs, as between party and party, in accordance with the tariff of fees for attorneys prescribed by the rules of the relevant court.

D. PROCEEDINGS BEFORE A TRIBUNAL

1. Fees payable to advocates:

An advocate shall be paid an all inclusive fee of R500, including any costs and disbursements incurred: Provided that should it be necessary for such advocate to travel to the seat of the tribunal in which the hearing takes place, a transport allowance determined by the chairman of the said tribunal shall be paid to the advocate for travelling to and from the seat of the tribunal and to and from any place visited for preparing or conducting the proceedings.

2. Fees payable to attorneys:

An attorney shall be paid an all inclusive fee of R350, including any costs and disbursements incurred.

ANNEXURE C

NOTICE OF GRANT OF LEGAL AID

(Regulation 6)

In the Supreme Court/High Court of Namibia/Magistrate's Court of the District of

..... /Tribunal of *

.....

versus

.....

Take notice that legal aid has been granted to
(name of legal-aided person) under the Legal Aid Act, 1990, for the purposes of
the said civil proceedings, with effect from (date).

.....
DIRECTOR OF LEGAL AID/PRACTITIONER*

*Delete words not applicable.

ANNEXURE D

NOTICE OF TERMINATION OF LEGAL AID

(Regulation 7)

In the Supreme Court/High Court of Namibia/Magistrate's Court of the District of

..... /Tribunal of *

.....

versus

Take notice that legal aid which was granted to
(name of legal-aided person) for the purposes of the said civil proceedings has been
terminated under section 20 of the Legal Aid Act, 1990, with effect from

..... (date).

.....
DIRECTOR OF LEGAL AID/PRACTITIONER*

*Delete words not applicable.

FORM 1

ANNEXURE E

APPLICATION FOR LEGAL AID

(Section 10(3); 11(1); 13(1) or 22(1) of the Legal Aid Act, 1990 (Act 29 of 1990))

1. Surname of applicant

First names

Date of birth Identity number

2. Residential address

.....

3. Marital status If married, state whether marriage is in or out of community of property

4. Particulars of dependants:

Full names	Age	Relationship
.....
.....
.....

5. Name and address of employer:

.....

6. Occupation:

7. Gross income before any deduction in respect of any contribution to a pension fund or income tax: R

8. (a) Amount of monthly contribution to a pension fund: R

(b) Name of pension fund:

(c) Is membership to such pension fund compulsory in terms of the applicant's conditions of service?

9. Amount of employees' tax deductible from applicant's salary: R

10. (a) Is the applicant subject to any court order to pay any amount in respect of the maintenance of any other person?

(b) If yes, give the name and address of each person in respect of whom the order is effective and the amount payable in each case:

Name	Address	Amount
.....
.....
.....

11. Particulars of immovable property owned by the applicant:

Description	Unencumbered value
.....
.....
.....

12. Particulars of movable property of the applicant (excluding any household furniture and any tools or implements used by the applicant) for the purpose of his or her trade:

Description	Estimated unencumbered value
.....
.....
.....
.....
.....
.....
.....

13. Particulars of outstanding claims, bills, investments, bonds or other securities in favour of applicant, moneys in a savings or other account with a bank or other financial institution:

Name and address of debtor or institution	Particulars	Amount R
.....
.....
.....
.....
.....
.....
.....

14. Give particulars of the applicant's legal problem and the nature of legal aid required:

.....

.....

.....

.....

.....

.....

.....

15. Has the applicant been refused a legal aid certificate or a special legal aid certificate for the purposes of this matter?

16. Give details of any legal aid previously granted to the applicant in any other matter:

17. Is the applicant covered by any insurance in respect of this matter? If so, give details:

I, (name of applicant) -

- (a) understand that if legal aid is granted that I may be required to make a contribution to the costs of legal aid;
- (b) undertake to supply such further and additional information as may be required by the Director of Legal Aid in connection with my case, to attend at any legal aid office if and when required, and to supply such evidence of my means as may be required.
- (c) undertake to inform the Director of Legal Aid immediately should the circumstances of my means change for the better at any time during the course of the proceedings for which I was granted legal aid; and
- (d) declare that all particulars contained in this application are to the best of my knowledge, true and correct.

.....
Signature of applicant

Date:

.....
(FOR DIRECTOR'S USE ONLY)

Legal aid refused/granted subject to a contribution of R

ANNEXURE E

FORM 2

RECOMMENDATION FOR LEGAL AID

(Section 8(1) or 9(1) of the Legal Aid Act, 1990 (Act 29 of 1990))

Criminal Case No.

In the Magistrate's Court of the District of

THE STATE

versus

To: The Director of Legal Aid
Ministry of Justice

I declare that the Court is of the opinion that

(name of accused), who is charged with the offence of,
has insufficient means to enable him/her* to engage a practitioner to represent
him/her*.

The accused -

*(a) has been committed for trial before the High Court;

*(b) is due to be tried by (court);

*(c) is due to appear at a preparatory examination in the (court).

I recommend in terms of section 8(1)/9(1)(a)/9(1)(b)* that legal aid be granted to
the accused for the purposes of the trial/preparatory examination.*

The accused has been released on bail/is in custody at prison.*

.....
MAGISTRATE

Date:

*Delete words/paragraphs not applicable

ANNEXURE E

FORM 3

LEGAL AID CERTIFICATE

(Section 8(2) of the
Legal Aid Act, 1990 (Act 29 of 1990))

Criminal Case No.

In the High Court of Namibia.

THE STATE

versus

.....
To: The Director of Legal Aid
Ministry of Justice

..... (name of accused) who is due to be
tried for the offence of by this Court, is not legally represented.

I am of the opinion that there is sufficient reason why the accused should be granted
legal aid and therefore issue this certificate under section 8(2) of the Legal Aid Act,
1990.

The accused has been released on bail/is in custody at the prison*.

.....
JUDGE

Date:

*Delete words/paragraphs not applicable.

ANNEXURE E

FORM 4

LEGAL AID CERTIFICATE

(Section 14 of the
Legal Aid Act, 1990 (Act 29 of 1990))

Criminal Case/Civil Case* No.

In the Supreme Court/High Court* of Namibia.

.....
versus
.....

To: The Director of Legal Aid
Ministry of Justice

..... (name of party to appeal) who is a
party to an appeal to be heard by this Court, is not legally represented.

I am of the opinion that a legal question of public importance is likely to arise in the
appeal and therefore issue this certificate under section 14 of the Legal Aid Act,
1990.

The accused has been released on bail/is in custody at the prison*.

.....
JUDGE

Date:

*Delete words/paragraphs not applicable.

FORM 5

ANNEXURE E
SPECIAL LEGAL AID CERTIFICATE

(Section 12 of the Legal Aid
Act, 1990 (Act 29 of 1990))

Civil Case No.

In Supreme Court/High Court of Namibia/Magistrate Court of the District
of

versus

To: The Director of Legal Aid
Ministry of Justice

..... (name),
who is a party in civil proceedings before this Court in which the State is a party, is
not legally represented.

I am of the opinion that it is in the interest of justice that he/she* should be
represented by a practitioner other than the Director of Legal Aid, and that he/she*
has insufficient means to enable him/her* to engage a practitioner to represent
him/her* and therefore issue this certificate under section 12(1) of the Legal Aid
Act, 1990.

I hereby -

(a) under section 12(3) of the Legal Aid Act, 1990, designate
..... (name/s of practitioner/s) with his/her/their*
consent, to represent the said person;

(b) under section 12(4) of the said Act order the said person to contribute the amount of R to the costs of the legal aid afforded to him/her.**

.....
JUDGE/MAGISTRATE*

Date:

*Delete words/paragraphs not applicable.