

Namibia

Legal Aid Act, 1990

General Regulations, 1991

Government Notice 107 of 1991

Legislation as at 15 November 2017

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General Regulations, 1991
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Republic of Namibia
Annotated Statutes

Legal Aid Act, 1990

General Regulations, 1991

Government Notice 107 of 1991

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1. Definitions

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 self-supporting 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 word “self-supporting” should be hyphenated.]

“**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.

2. Eligibility for legal aid

(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.

3. Application for legal aid

- (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.

4. Contribution to costs of legal aid

- (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.

5. Practitioners’ fees

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.

6. Notice of grant of legal aid

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".

7. Notice of termination of legal aid

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".

8. Prescribed forms

- (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 (Regulation 4)

CONTRIBUTION TABLE

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	
Remuneration	Remuneration	Remuneration	Contribution
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 (Regulation 5)

PRACTITIONERS' FEES

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 bearing 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.

ANNEXURES C - E

FORMS

[Editorial note: The forms have not been reproduced.]