



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 6774

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No. 303 Legal Aid Regulations: Legal Aid Act, 1990 1

Government Notice

MINISTRY OF JUSTICE

No. 303

2018

LEGAL AID REGULATIONS: LEGAL AID ACT, 1990

Under section 24 of the Legal Aid Act, 1990 (Act No. 29 of 1990), I -

- (a) have made the regulations set out in the Schedule and the said regulations come into operation on 1 April 2019; and
- (b) repeal the Regulations under the Legal Aid Act, 1990 (Act No. 29 of 1990) published under Government Notice No. 107 of 8 October 1991.

S. E. SHANGHALA
MINISTER OF JUSTICE

SCHEDULE

Definitions

1. In these regulations a word or an expression to which a meaning has been given in the Act has that meaning, and unless the context otherwise indicates -

“dependant” means minor child, including a stepchild, legally adopted child, child born of a marriage under customary law, and a child born outside marriage 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 Act” means the Legal Aid Act, 1990 (Act No. 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) A person may qualify for legal aid if his or her monthly income, as determined in accordance with the provisions of subregulation (3), does not exceed the amount of N\$3 500 but subject to the provisions of subregulation (2).

(2) The Director may use his or her discretion to grant legal aid where the amount mentioned in subregulation (1) is exceeded by an amount of not more than N\$1 000 and it is in the interest of justice that the application be granted.

(3) For the purpose of subregulation (1) “income” means the balance of the applicant’s income, from whatever source including any salary, wage, bonus, pension, allowance, value of livestock owned by the applicant or any money received in respect of the applicant’s maintenance, and further includes the value of any movable or immovable property including livestock the applicant owns, and may sell in order to raise funds for his or her case at any period.

(4) For purposes of subregulation (3), income as well as the value of movable and immovable property that the applicant may sell to raise funds for his or her case excludes the items stated in section 16 of the Act and further excludes any amount deducted for any commitment in respect of -

- (a) a compulsory contribution to a pension fund;
- (b) employee’s tax in terms of section 80 of the Income Tax Act, 1981 (Act No. 24 of 1981);
- (c) the maintenance of any other person pursuant to a court order or evidence is produced to the satisfaction of the Director that some form of maintenance is in fact being provided in kind or cash; and
- (d) any financial obligation arising from a bond towards the purchase of a dwelling house.

(5) The income of an applicant’s spouse may not be taken into account for the purpose of determining the applicant’s income in terms of this regulation except where the applicant is married in community of property.

Application for legal aid

3. (1) An application for legal aid subject to the provisions of regulation 4, must be in the form set out in Form 1 of Annexure A, and must be delivered to the Director or to a designated officer at the nearest Magistrates’ Court.

(2) The Director may require a legal aid applicant to attend an oral interview for the purpose of -

- (a) clarifying any information contained in the application; or

- (b) obtaining any further information which the Director considers to be relevant in relation to the application.

(3) Where an application has been delivered to a designated officer at the Magistrates' Court, the designated officer must transmit such application to the Director as soon as possible.

Contribution to costs of legal aid

4. (1) Every applicant who is granted legal aid must pay a contribution of N\$350.

(2) The Director may waive the contribution referred to in subregulation (1) where the applicant shows that he or she is unable to pay the contribution.

(3) The contribution required to be made towards the costs of legal aid must be paid to the Director within 14 working 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.

(4) The Director may not issue instructions to a legal practitioner or legal aid counsel to represent a person who has been granted legal aid until such a person has paid his or her contribution, except where a matter is already before court.

(5) The contribution must be paid into the State Revenue Fund and is not refundable, except in a case in which no legal assistance was rendered.

Legal practitioners' fees

5. A practitioner to whom the Director has allocated a matter under section 6 or 12 of the Act is entitled to the appropriate fees set out in Annexure "B" for the services rendered by such practitioner as long as the invoice is accompanied by a detailed report on the status of the legal aid matter being claimed for by such practitioner.

Notice of grant of legal aid

6. When the Director, legal aid counsel, legal assistant or a practitioner represents a legally-aided person in any civil or criminal matter before a court or any proceeding before a tribunal, he or she must file with the court or tribunal where such matter is pending and with the opposing party, a notice in the form set out in Form 2 of Annexure A.

Notice of termination of legal aid

7. If the Director terminates the legal aid granted to a person in any matter or proceedings referred to in regulation 6, the Director, legal aid counsel, legal aid assistant or practitioner to whom such matter was allocated to by the Director must file with the court or tribunal and with the opposing party, a notice in the form set out in Form 3 of Annexure A.

Prescribed forms

8. (1) A recommendation for legal aid in terms of any provision of the Act must be in the form set out in Form 4 of Annexure A.

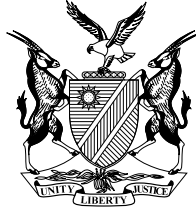
(2) A legal aid certificate referred to in section 14 of the Act must be issued in the form set out in Form 5 of Annexure A.

(3) A special legal aid certificate referred to in section 12(1) of the Act must be issued in the form set out in Form 6 of Annexure A.

ANNEXURE "A"

FORMS

FORM 1



APPLICATION FOR LEGAL AID
 (Sections 10(3), 11(1) or 22(1) of Act)
 (Regulation 3)

1. Surname of applicant _____
 First Names _____
 Date of birth _____ Identity number _____
2. Residential address _____
 P.O. Box _____ Tel. No _____
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 deduction in respect of any contribution to a pension fund or tax:
 N\$ _____

8. (a) Amount of monthly contributing to a pension fund: _____
- (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 employee's tax deductible from applicant's salary N\$ _____

10. (a) Is the applicant subject to any court order to 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):

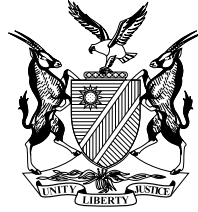
Description	Estimated unencumbered value
_____	_____
_____	_____
_____	_____
_____	_____

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
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

FORM 2



NOTICE OF GRANT OF LEGAL AID
(Regulation 6)

In the Supreme Court/High Court of Namibia/Magistrates' Court of the District of

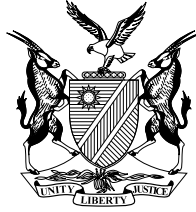
_____ **Tribunal of** _____ *

versus

Take notice that legal aid has been granted to _____
(name of legal-aided person) under the Legal Aid Act, 1990 (Act No. 29 of 1990), for the purposes of
the said civil/criminal proceedings, with effect from _____ (date).

DIRECTOR OF LEGAL AID / LEGAL AID COUNSEL / LEGAL ASSISTANTS / PRACTITIONER*

***Delete words not applicable**



NOTICE OF TERMINATION OF LEGAL AID
(Regulation 7)

In the Supreme Court/High Court of Namibia/Magistrates' Court of the District of

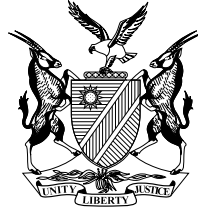
_____ **Tribunal of** _____ *

versus

Take notice that legal aid which was granted to _____
(name of legal-aided person) for the purposes of the said civil/criminal proceedings has been
terminated under section 20 of the Legal Aid Act, 1990 (Act No. 29 of 1990), with effect from
_____ (date).

DIRECTOR OF LEGAL AID / PRACTITIONER*

***Delete words not applicable**



RECOMMENDATION FOR LEGAL AID
(Section 8(1) or 9(1) of Act)
(Regulation 8(1))

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);

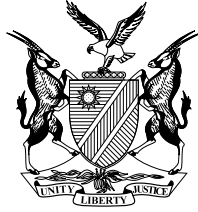
I recommend in terms of section 8(1) / 9(1)(a) / 9(1)(b) * that legal aid be granted to the accused for the purposes of the trial/preparatory examination. *

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

MAGISTRATE _____

Date: _____

***Delete words/paragraphs not applicable**



LEGAL AID CERTIFICATE
 (Section 14 of Act)
 (Regulation 8(2))

Criminal Case/Civil Case* No. _____

In the Supreme Court/High Court* of Namibia _____

_____ **versus** _____

To: The Director of Legal Aid
 Ministry of Justice

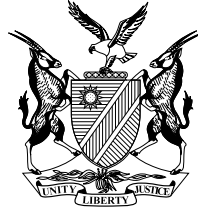
_____ (name of party to appeal) who is a party to an appeal to be heard by this Court, is not legally represented. I am of the opinion that a legal question of public importance is likely to arise in the appeal and therefore issue this certificate under section 14 of the Legal Aid Act, 1990 (Act No. 29 of 1990).

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

JUDGE _____

Date: _____

*Delete words/paragraphs not applicable



SPECIAL LEGAL AID CERTIFICATE

(Section 12 of Act)

(Regulation 8(3))

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 and 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 Directorate 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 (Act No. 29 of 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
N\$ _____ to the costs of the legal aid afforded to him/her. **

JUDGE/MAGISTRATE*

Date _____

***Delete words/paragraphs not applicable**

ANNEXURE “B”**FEES****FEES PAYABLE TO LEGAL PRACTITIONERS
(Regulation 5)****CRIMINAL CASES IN THE HIGH COURT AND SUPREME COURT****Appearance at criminal trial in the High Court**

1. A practitioner may in respect of all services rendered be remunerated in accordance with the scale of fees as follows:

- (a) An all-inclusive first full day fee of N\$5 000.
- (b) An all-inclusive second and subsequent full day(s) fee of N\$2 500.
- (c) Same tariff as in paragraphs (a) and (b) above will apply in respect of bail applications.
- (d) Postponement for any reason, during pre-trial stage N\$300 per hour.

No reservation fees

2. A legal practitioner may claim one full day fee where he or she actually appears before a court and the matter is postponed without any proceedings being held or after proceedings have been held. No fee is payable for non-appearance.

Allowance and incidental expenses

3. (1) A daily subsistence allowance of N\$1 000 maximum, including accommodation payable on submission of proof of payment.

- (2) Transport allowance: N\$4 per kilometre.
- (3) No payment may be claimed for travelling time.

Appeals

4. (1) Where a legal practitioner takes a matter on appeal to the High Court the following fees may be claimed by such legal practitioner:

- (a) All-inclusive N\$7 500 per appeal where the legal practitioner represented the appellant in the *court a quo*.

- (b) All-inclusive N\$7 500 per appeal plus N\$7-50 per page for perusal of the record where the legal practitioner did not represent the appellant in the *court a quo*.
- (2) Where a legal practitioner applies for leave to appeal to the Supreme Court the following fees may be claimed by such legal practitioner:
- (a) All-inclusive N\$2 500 per application where the practitioner represented the appellant in the *court a quo*.
- (b) All-inclusive N\$2 500 per application plus N\$7-50 per page for perusal of the record where the legal practitioner did not represent the appellant in the *court a quo*.
- (3) Where a legal practitioner petitions to the Supreme Court the following fees may be claimed by such legal practitioner:
- (a) All-inclusive N\$2 500 per application where the practitioner represented the appellant in the *court a quo*.
- (b) All-inclusive N\$2 500 per application plus N\$7-50 per page for perusal of the record where the legal practitioner did not represent the appellant in the *court a quo*.
- (4) Where a legal practitioner takes a matter on appeal to the Supreme Court the following fees may be claimed by such legal practitioner:
- (a) All-inclusive N\$10 000 per appeal where the practitioner represented the appellant in the *court a quo*.
- (b) All-inclusive N\$10 000 per appeal plus N\$7-50 per page for perusal of the record where the legal practitioner did not represent the appellant in the *court a quo*.

Criminal cases in lower courts

5. (1) Where a legal practitioner appears at trial in a Regional Court the following fees may be claimed by such legal practitioner:
- (a) An all-inclusive first full day fee of N\$4 000.
- (b) An all-inclusive second and subsequent full day fee of N\$1 700.
- (c) Same tariff as in paragraphs (a) and (b) above will apply in respect of bail applications.
- (2) Where a legal practitioner appears at trial in a District Court the following fees may be claimed by such legal practitioner:
- (a) An all-inclusive first full day fee of N\$2 500.
- (b) An all-inclusive second and subsequent full day fee of N\$1 200.
- (c) Same fees as in paragraphs (a) and (b) above will apply in respect of bail applications.
- (3) Where a legal practitioner postpones a case the following fees may be claimed by such legal practitioner:
- (a) Postponement by actual appearance N\$250.

(b) Postponement by telephone or any other communication N\$150.

(4) A legal practitioner may claim the following fees for plea proceedings including sections 112 and 119 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977):

(a) For a section 112 plea: an all-inclusive fee of N\$2 500.

(b) For a section 119 plea: an all-inclusive fee of N\$500.

Civil matters in High Court and Supreme Court

6. (1) A legal practitioner conducting a case on the instructions of the Director of Legal Aid in the High Court or Supreme Court may claim fees as set out in the High Court Rules or the Supreme Court Rules as the case may be.

(2) An instructed legal practitioner conducting a civil matter may be paid an amount equal to 75% of the amount on the invoice.

Civil matters in lower court

7. A legal practitioner conducting a case on the instructions of the Director of Legal Aid in a lower court may claim fees as set out in the Magistrates' Court Rules.

Proceedings before Tribunal

8. A legal practitioner may claim fees equivalent to the fees payable to a legal practitioner conducting a trial in the Magistrates' Court.
