

# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$9.60

WINDHOEK - 31 December 2018

No. 6818

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## Government Notice

### MINISTRY OF JUSTICE

No. 374

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;
- (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 with effect from 1 April 2019; and
- (c) withdraw Government Notice No. 303 of 23 November 2018.

**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\$3500 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\$1000 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 immovable or movable 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 must be in the form as set out in Form 1 of Annexure A, subject to the provisions of regulation (4), 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 as 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 as set out in Form 3 of Annexure A.

**Prescribed forms**

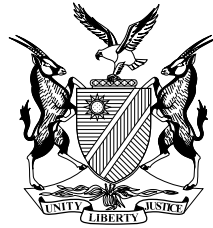
**8.** (1) A recommendation for legal aid in terms of any provision of the Act must be in the form as set out in Form 4 of Annexure A.

(2) A legal aid certificate referred to in section 14 of the Act must be issued in the form as 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 as set out in Form 6 of Annexure A.

**ANNEXURE "A"**  
**FORMS**

FORM 1



**APPLICATION FOR LEGAL AID**  
(Section 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 condition 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 |
|---|-------------|--------|
| _____                                     | _____       | _____  |
| _____                                     | _____       | _____  |
| _____                                     | _____       | _____  |
| _____                                     | _____       | _____  |



- (d) declare that all particulars contained in this application are to the best of my knowledge, true and correct.

\_\_\_\_\_  
Signature of applicant

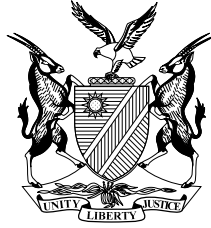
Date \_\_\_\_\_

\_\_\_\_\_  
(FOR THE DIRECTOR'S USE ONLY)

Legal aid refused/granted subject to a contribution of N\$ \_\_\_\_\_



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** \_\_\_\_\_ \*

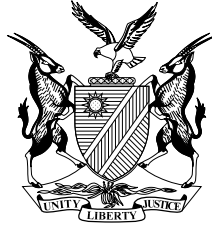
Versus

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 proceedings, with effect from \_\_\_\_\_ (date).

DIRECTOR OF LEGAL AID/ LEGAL AID COUNSEL / LEGAL AISSTANTS / PRACTITIONER\*

**\*Delete words not applicable**

FORM 3



**NOTICE OF TERMINATION OF LEGAL AID**  
(Regulation 7)

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

\_\_\_\_\_ /Tribunal of \_\_\_\_\_ \*

\_\_\_\_\_

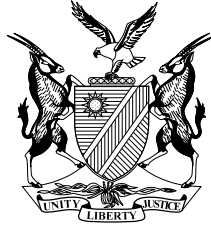
versus

\_\_\_\_\_

Take notice that legal aid which was granted to \_\_\_\_\_  
(name of legal-aided person) for the purposes of the said civil 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**



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

**Criminal Case No.** \_\_\_\_\_

**In the Magistrate's Court of the District of** \_\_\_\_\_

**THE STATE**

**versus**

To: The Director of Legal Aid \_\_\_\_\_

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)

**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.

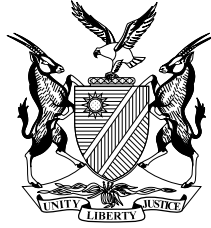
**The accused has been released on bail/ is in custody at the** \_\_\_\_\_ **prison\***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**JUDGE** \_\_\_\_\_

**Date:** \_\_\_\_\_

**\*Delete words/paragraphs not applicable**



**SPECIAL LEGAL AID CERTIFICATE**  
(Section 12 of Act)

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.

I hereby \_\_\_\_\_

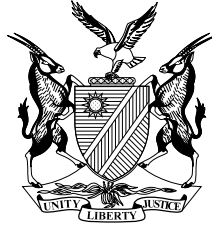
(a) under section 12(3) of the Legal Aid Act, 1990, designate \_\_\_\_\_  
(name/s of practitioner/s) with his/her/their\* consent, to represent the said person;

(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 PAYABLE TO LEGAL PRACTITIONERS  
(Regulation 5)****No reservation fees**

1. 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**

2. (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.

**Appearance at criminal trial in the High Court**

3. 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/days fee of N\$2 500.

(c) Same tariff as in paragraphs (a) and (b) will apply in respect of bail applications.

(d) Postponement for any reason, during pre-trial stage N\$300 per hour.

**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) 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) 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 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 or Supreme Court**

6. (1) A legal practitioner conducting a case on the instructions of the Director 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 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.

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