

Namibia

Legal Aid Act, 1990

Legal Aid Regulations, 2018

Government Notice 374 of 2018

Legislation as at 31 December 2018

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Republic of Namibia
Annotated Statutes

Legal Aid Act, 1990

Legal Aid Regulations, 2018

Government Notice 374 of 2018

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Commenced on 1 April 2019

[This is the version of this document as it was from 31 December 2018 to 29 April 2019.]

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

1. Definitions

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.

2. Eligibility for legal aid

- (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.

3. Application for legal aid

- (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.

4. Contribution to costs of legal aid

- (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.

5. Legal practitioners' fees

A practitioner to whom the Director has allocated a matter under section [6](#) or [12](#) of the Act is be 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.

6. Notice of grant of legal aid

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.

7. Notice of termination of legal aid

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.

8. Prescribed forms

- (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

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

Annexure B (Regulation 5)

FEES PAYABLE TO LEGAL PRACTITIONERS

1. No reservation fees

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.

2. Allowance and incidental expenses

- (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.

3. Appearance at criminal trial in the High Court

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.

4. Appeals

- (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*.

5. Criminal cases in lower courts

- (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.
- 6. Civil matters in High Court or Supreme Court**
- (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.
- 7. Civil matters in lower court**
- 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.
- 8. Proceedings before Tribunal**
- A legal practitioner may claim fees equivalent to the fees payable to a legal practitioner conducting a trial in the Magistrates Court.