

# LEGAL AID BOARD



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JUSTICE FOR ALL

Our Ref: (P.J. Brits)  
Your Ref.:

5 June 2002

## FOR ACTION

Principals at Justice Centres. Legal Aid officers at magistrates' courts and all legal practitioners who provide Judicare services to the Legal Aid Board.

## FOR INFORMATION

The Chief Justice, Judges President. The National Director of Public Prosecutions. Registrars, Directors of Public Prosecution and Bars of the Cape of Good Hope Provincial Division, Eastern Cape Division. South Eastern Cape Local Division, Northern Cape Division. Free State Provincial Division. Kwa-Zulu Natal Provincial Division. Durban and Coast Local Division. Transvaal Provincial Division. Witwatersrand Local Division: Bophuthatswana Division. Ciskei Division. Transkei Division and Venda Division. General Council of the Bar of South Africa, the Law Society of South Africa, the Law Societies of the Cape of Good Hope, Kwa-Zulu Natal, Free State and Northern Provinces, National Association of Democratic Lawyers, Black Lawyers' Association, Association of Independent Advocates of South Africa, Criminal Law Bar of South Africa, The Magistrates' Commission, Department of Justice, Department of Land Affairs, Department of Arts and Culture, the Editor of De Rebus and the Editor of Advocate.

Dear Sir/Madam

### CIRCULAR NO. 2 OF 2002

Annexures E.1 to E.4 and F.1 to F.5 of the 2002 Legal Aid Guide are hereby amended with effect from 1 July 2002 by the substitution therefore of the annexures hereto.

Yours faithfully

A.B. ALLY  
CHIEF EXECUTIVE OFFICER

Matters	Appeals to the High Court from the Magistrates' Court	Appeals to the Supreme Court of Appeal or full bench of the High Court
custody prior to conviction.	R 40,00	R 40,00
1.15 Necessary traveling costs.	180c per kilometer excluding VAT where applicable for a total distance traveled in excess of 234 kilometers or economy class airfare whichever is the lesser.	180c per kilometer excluding VAT where applicable for a total distance traveled in excess of 234 kilometers or economy class airfare whichever is the lesser.
1.16 Necessary accommodation and subsistence expenses. Such must be supported by relevant vouchers and tax invoices. Accommodation and subsistence are not permitted where the practitioner practices less than 117 kilometers from the court, which is to hear the matter.	Not more than R420,00 per night excluding VAT	Not more than R420,00 per night excluding VAT.
1.17 Other disbursements.	As authorised by the Chief Executive Officer in writing in advance.	As authorised by the Chief Executive Officer in writing in advance.
1.18 VAT on fees and disbursements in respect of those legal practitioners registered for VAT.	14%	14%

2. The Chief Executive Officer has a general discretion to agree to special fees in circumstances, which justify deviation from the above tariff.

## ANNEXURE E.3

### TARIFFS IN RESPECT OF CRIMINAL TRIALS

1. For appearing before any court when a postponement is granted at the request of the State, a fee of R100,00 excluding VAT shall be allowed.
2. For appearing before court and any other professional services incidental thereto on any trial day a legal practitioner shall be entitled to the following fees:

District Magistrates' Court	R650,00 excluding VAT.
Regional Magistrates' Court	R770,00 excluding VAT.
High Court	R870,00 excluding VAT.
3. In the event of the duration of a trial day not amounting in aggregate to 4 hours the trial day fee set out above shall be reduced pro rata provided that in respect of any trial day a minimum of R100,00 excluding VAT shall be allowed.
4. No additional fees will be permitted in respect of any trial day lasting in excess of four hours or in respect of any preparation, consultation, waiting time, perusal or any other attendance whatsoever. The fees set out in paragraph 2 above are all inclusive fees and save as set out below, no additional fees will be permitted. No additional fees will be permitted in respect of a legal practitioner who represents more than one accused.
5. Only in very exceptional circumstances will any increased fees be permitted. In the event of increased fees being authorised, such shall not exceed R2160,00 per trial day excluding VAT. In considering whether or not to grant increased fees, the CEO of the Board shall take no account *per se* of the number of charges faced by the accused or the number of accused in the matter. In highly rare and very exceptional circumstances, the CEO of the Board may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial at 60% of the fees allowed to the first legal practitioner. In no circumstances will a third legal practitioner be permitted in respect of any accused or group of co-accused who are represented by a single legal team.
6. In matters that were part heard as at 1 November 1999 and in which increased fees had been allowed prior to 1 November 1999 the CEO shall enjoy a discretion, to be exercised after consideration of written representations, to permit the matter to continue at the increased fees authorised prior to 1 November 1999 where it would be in the interest of the administration of justice and of the Board to do so.

7. A legal practitioner submitting an account to the Legal Aid Board may be required to attach to such account a certificate by the presiding judicial officer or his/her registrar (if any) verifying the appearances and times set out in the legal practitioner's account. The said certificate is currently required in respect of all criminal trials in the High Court but is not currently required in respect of criminal trials in the magistrates' courts.
8. It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that the Board is placed in possession of all documentation that will enable it to pay the legal practitioner's account. Provided this requirement is fully and properly complied with, the Legal Aid Board will attempt in respect of High Court Criminal trials to dispatch a cheque in payment of the said account within 30 days of receipt thereof or, in the event of electronic bank transfers being implemented by the Board, to instruct its bankers to effect payment.
9. Bail and other interlocutory applications, subject to the submission by the practitioner of written representations:
- District and District and Regional Courts:**  
Bail application if done other than on day of postponement or trial day.
- |  |   |
|--|---|
| 9.1 As to why it was necessary, if applicable, to bring the application on a date prior to the next scheduled hearing;                 | All-inclusive fee for all attendances.<br>Unopposed: R160,00  |
| 9.2 As to why, if the bail application was unsuccessful, the practitioner believed that such enjoyed a reasonable prospect of success; | Opposed: R380,00  |
| 9.3 As to why, in the case of interlocutory applications other than bail applications, such application was necessary;                 | <b>High Court:</b> Bail application if done other than on day of postponement or trial day.<br>All-inclusive fee for all attendances. |
| and further subject to not more than one bail application per accused per case.  | Unopposed: R270,00<br>Opposed: R540,00  |
10. After the case has been finalised the legal practitioner must report to the Chief Executive Officer in writing setting out the following information:

- 10.1 The case number.
- 10.2 The court where the matter was heard.
- 10.3 The outcome of the matter.
- 10.4 The duration of the hearing.
- 10.5 Any other material information.
11. After the case has been finalised and whenever a legal practitioner accounts to the Board in respect of a criminal trial the account shall be submitted in the format set out and with all the requested information and certification provided for in Annexure K.
12. A legal practitioner who is appointed on a legal aid basis to represent an accused at a criminal trial after the accused has pleaded and after evidence has been led and if such legal practitioner was not present when such evidence was led, shall be entitled to apply to the trial court for the provision to such legal practitioner at the expense of the Department of Justice of a copy of a transcript of the evidence led in his/her absence and, if such application is granted, to peruse such transcript. The following fees exclusive of VAT will be allowable in the above mentioned circumstances:
  - 12.1 Application for a transcript of the evidence R40,00
  - 12.2 Perusal of the record 50c per page

## ANNEXURE E.4

### TARIFF OF FEES IN TERMS OF THE CRIMINAL LAW AMENDMENT ACT, 1997 (ACT 105 OF 1997)

1. The fees allowable to legal practitioners in respect of legal services that are rendered pursuant to the provisions of the Criminal Law Amendment Act, 1997 shall be as follows:

1.1 Consultation with legal aid applicant, subject to a maximum of four hours.	R110, 00 per hour
1.2 Any document necessarily perused.	50c. per page
1.3 Drafting of written arguments, subject to a maximum of 100 folios, including all typing, copies and service.	1100c per folio
1.4 Appearing before court to submit oral argument, where requested by the court and authorised by the designated legal administration officer.	R540, 00

2. The above fees are exclusive of VAT. Necessary travel and accommodation will be allowed at normal legal aid rates. The CEO has a discretion to allow increased fees in matters of exceptional complexity. Any request for increased fees must be fully motivated and must be submitted to the CEO in writing.

## ANNEXURE F.1

### TARIFFS OF FEES PAYABLE IN RESPECT OF CIVIL MATTERS AND DISBURSEMENTS GENERALLY

- A. With effect from 1 January 1995 attorneys shall be remunerated in accordance with the provisions and tariffs as set out in the eighth edition of the Guide of January 1996 as amplified by any new tariffs authorised by the Minister of Justice or circulated by the CEO with the consent of the Board from time to time.
- B. With effect from 1 January 1996 attorneys shall be remunerated in accordance with the provisions and tariffs as set out in the ninth edition of the Guide of January 1995 as amplified by any new tariffs authorised by the Minister of Justice or circulated by the CEO with the consent of the Board from time to time.
- C. With effect from 1 November 1999 legal practitioners will be remunerated in accordance with the tariffs set out in circulars 4 and 5 of 1999.
- D. With effect from 1 April 2001 legal practitioners will be remunerated in accordance with Annexures E.1. to E.5 of the tenth edition of the Guide of May 2002.
- E. With effect from 1 July 2002 Legal Practitioners shall be remunerated in accordance with Circular 2 of 2002.
- F. All sums referred to are amounts exclusive of VAT.
- G. Under no circumstances will any collapse/reservation/cancellation/waiting time fees be paid by the Board to any legal practitioner in respect of any criminal matters, criminal appeals, civil matters, matters in terms of the Criminal Law Amendment Act, 1997 or any other matters whatsoever. The Board will pay legal practitioners in accordance with its tariffs strictly according to services rendered and in so far as the applicable tariff makes provision for the service rendered.

## ANNEXURE F.2

### TARIFFS IN RESPECT OF CIVIL MATTERS

1. In respect of taking instructions and submitting a report on the merits of the matter to the head office of the Legal Aid Board a legal practitioner shall be entitled to a fee of R120,00 excluding VAT.
2. After having been authorised to proceed with a matter on a legal aid basis and in respect of the drawing and settling of all pleadings, in respect of motions (other than interlocutory motions) the drawing and settling of all affidavits, the issue of process and all correspondence, attendances, perusals and consultations relevant thereto, including the conclusion of any settlement agreement and the taking of any judgement by default or consent but excluding necessary disbursements in respect of revenue stamps and sheriff's fees:

In a Magistrates' Court or any other Lower Court:

R480,00 excluding VAT.

In any Division of the High Court or in the Land Claims Court or the Labour Court:

R710,00 excluding VAT.

3. In respect of all pre-trial consultations, correspondence, attendances and other necessary pre-trial work but excluding any disbursements authorised by the Legal Aid Board in respect of the fees of experts:

In the Magistrates' Court and any other Lower Court:

R480,00 excluding VAT.

In any Division of the High Court or in the Land Claims Court or in the Labour Court:

R710,00 excluding VAT.

4. On trial or opposed motion (other than an interlocutory motion) including any correspondence, consultations, attendances, perusals and all other work conducted after the commencement of the trial:

In the Magistrates' Court or any other Lower Court:

R710,00 per trial day excluding VAT.

In any Division of the High Court or in the Land Claims Court or in the Labour Court:

R900,00 excluding VAT per trial day.

5. On appeal to a Division of the High Court or to the Labour Appeal Court or to the Constitutional Court or to the Supreme of Appeal:

R1190,00 excluding VAT.

6. The fees set out in this Annexure F.2 are all inclusive fees and no other fees by any attorney or advocate in respect of any work performed on or after 1 November 2001 pursuant to any legal aid instruction issued at any time whatsoever will be allowed.



7. Only in very exceptional circumstances will any increased fees be permitted and then only in respect of the trial day/appeal fees set out in paragraphs 4 and 5 above. In the event of increased fees being authorised, such shall not exceed R2160,00 per trial day/appeal excluding VAT. In considering whether to grant increased fees, the CEO shall take no account per se of the number of claims dealt with in the matter or the number of litigants involved in the matter. In highly rare and very exceptional circumstances, the Chief Executive Officer of the Legal Aid Board may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial/on appeal at 60% of the trial day fees/appeal fees allowed to the first legal practitioner. In no circumstances will a third legal practitioner be permitted in respect of any litigant or group of litigants who are represented by a single legal team.
8. In the event of the duration of a trial day not amounting in aggregate to four hours the trial day fees set out above shall be reduced pro rata provided that in respect of any trial day a minimum of R110,00 excluding VAT shall be allowed.
9. No additional fees will be permitted in respect of any trial day lasting in excess of four hours or in respect of any intra trial preparation, consultation, waiting time, perusal or any other attendance whatsoever. The fees set out in this Annexure F.2 are all-inclusive fees and save as provided for in paragraph 7 above no additional fees will be permitted. No additional fees will be permitted in respect of a legal practitioner who represents more than one litigant in any particular matter.
10. Uniform Rule 43 applications including any disbursements in respect of correspondents and counsel.

Undefended R410,00 excluding VAT  
Defended R560,00 excluding VAT

## ANNEXURE F.3

### DISBURSEMENTS

The following disbursements shall be allowed over and above the fees set out in Annexures E.2, E.3, E.4, F.2, F.4 and F.5.

- 1.1 The fees of any expert authorised by the Legal Aid Board at the rate so authorised and to the extent of any maximum authorised.
- 1.2 Necessary revenue stamps.
- 1.3 Necessary sheriff's fees or like process (edictal citation). Necessary advertisement costs pursuant to the grant of a substituted service order.
- 1.4 Necessary travel outside of any magisterial district in which the legal practitioner concerned has an office: 180c per kilometre excluding VAT or economy class air fare, whichever is the lesser.
- 1.5 Where it is necessary for a legal practitioner to hire accommodation for himself/herself at the seat of a court more than 117 kilometres from his/her offices/chambers the Board shall, subject to the submission of supporting vouchers, reimburse such legal practitioner in respect of accommodation and subsistence at the actual cost thereof not exceeding R420,00 (excluding VAT) per night.
- 1.6 The CEO, if it appears to him/her to be in the interests of the administration of justice and the Board, be entitled to authorise the reimbursement of necessary travel within a particular magisterial district by legal practitioners practising in that magisterial district at 180c per kilometre excluding VAT or economy class air fare, whichever is the lesser.
- 1.7 Save as set out above, no other disbursements, including, but not by way of limitation, counsel's fees and correspondent's fees shall be paid to any legal practitioner without the prior written consent of the CEO of the Board or any Principal Attorney, Legal Administration Officer, Senior Legal Administration Officer or Principal Legal Administration Officer delegated by the CEO of the Board to make such decision on his/her behalf.

## ANNEXURE F.4

### TARIFF OF FEES APPLICABLE TO DOMESTIC VIOLENCE AND MAINTENANCE MATTERS

1. Consultation to advise the legal aid recipient of his/her rights, the nature of the proceedings and to assist in the completion of forms.	R40-00 excluding VAT per completed 15 minutes subject to a maximum of R160-00 excluding VAT.
2. Opposed proceedings in which the opposite party is represented by a legal practitioner:	
2.1 For appearing before court when a postponement is granted at the request of the opposing party.	R100-00 excluding VAT.
2.2 For appearing before court and all other professional services incidental thereto.	R650-00 excluding VAT per trial day subject to a minimum of R100-00 excluding VAT.
3. In the event of the duration of a trial day not amounting in aggregate to four hours the maximum trial day fee set out above shall be reduced pro rata.	

## ANNEXURE F.5

### TARIFF OF FEES APPLICABLE TO ASYLUM MATTERS, HAGUE CONVENTION MATTERS AND OTHER MISCELLANEOUS MATTERS

<b>1. ASYLUM MATTERS:</b>	
1.1 Assisting and/or advising an applicant with/on an application for asylum in terms of Section 21 of the Refugees Act No 130 of 1998 ("the Refugees Act").	R40,00 excluding VAT per completed 15 minutes subject to a maximum of R160,00 excluding VAT.
1.2 For appearing before a Refugee Status Determination Officer at a hearing in terms of Section 24 of the Refugees Act.	R650,00 excluding VAT per hearing day subject to a minimum of R100,00 excluding VAT.
1.3 For appearing before a Standing Committee in respect of a Review in terms of Section 25 of the Refugees Act.	R650,00 excluding VAT per hearing day subject to a minimum of R100,00 excluding VAT.
1.4 For appearing before an Appeals Board in respect of an Appeal in terms of Section 26 of the Refugees Act.	R640,00 excluding VAT per hearing day subject to a minimum of R100,00 excluding VAT.

- 1.5 In event of the duration of a hearing before a Refugee Status Determination Officer, or before a Standing Committee or before an Appeals Board not amounting in aggregate to four hours the maximum hearing day fee set out above shall be reduced *pro rata*.

#### 2. HAGUE CONVENTION MATTERS:

- 2.1 The fees payable to legal practitioners in terms of Paragraphs 1 to 9 of Annexure F.2 to this Guide shall apply *mutatis mutandis* to matters in terms of the Hague Convention on the Civil Aspects of International Child Abduction Act No. 72 of 1996 and the schedule thereto ("the Hague Convention").
- 2.2 The disbursements payable to legal practitioners in terms of Annexure F.3 to this Guide shall apply *mutatis mutandis* to matters in terms the Hague Convention.

**3. MISCELLANEOUS MATTERS:**

- 3.1 The Board shall be entitled by resolution to alter and/or amend the tariffs set out in Annexures E.1 to E.4 and F.1 to F.5 to this Guide.
- 3.2 Such amendment shall be incorporated in a circular under the signature of the CEO and shall be distributed, *inter alia*, to the Law Societies of the Northern Provinces, the Cape of Good Hope, the Free State and Kwa-Zulu/Natal, the General Council of the Bar of South Africa, the Criminal Law Bar of South Africa and the Association of Independent Advocates of South Africa.
- 3.3 Such amendments shall come into operation on a date not earlier than the date on which the circular in question was received by the professional bodies listed in paragraph 3.2 above.