

## Annexure E

**TARIFF OF FEES AND DISBURSEMENTS IN CRIMINAL MATTERS - 2012**

The fees and disbursements contained in this Annexure come into effect from 1 April 2012.

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.	<b>Criminal trials – Appearance <sup>1</sup></b>				
1.1 (a)	For appearing before any court when a postponement is granted at the request of the State	R174.00 Per postponement	R174.00 Per postponement	R174.00 Per postponement	Not applicable(NA)
1.1(b)	A telephone attendance to postpone a matter but this is not allowed for a practitioner's first appearance for client. This is only permitted where client is not in custody and the matter has not been set down for trial	R63.00	R63.00	R63.00	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.1 (c)	<p>For appearing before the High Court (HC) where a matter has been set down for trial on a running roll and the matter is postponed at the request of the State to a date beyond the dates covered by the running roll on which the matter was initially set down (will only be paid once per matter and will not be paid in addition to a trial day fee)</p> <p>Where the matter is postponed to a date within the running roll period, then the postponement fee as per clause 1.1(a) will be payable, but only if the trial day fee or any portion of the trial day fee is not claimed.</p>	NA	NA	R2,100.00	NA
1.2	<p>For appearing before court and any other incidental professional services (excluding permitted preparation on any trial day). This includes appearing before a judicial officer in pre-trial conferences, identity parades and inspections conducted by the Court.</p>	R1,126.00 Per trial day	R1,339.00 Per trial day	R 2,100.00 Per trial day	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
1.3 (a)	If the duration of a trial day does not total in aggregate to 4 hours, the trial day fee set out above shall be reduced pro rata. The minimum fee permitted in respect of any trial day shall be:	R174.00 Per day	R174.00 Per day	R174.00 Per day	NA
1.3 (b)	If a matter is finalised by means of a formal withdrawal (which must be in writing as opposed to matters which are merely struck off the roll), guilty plea, diversion or plea bargain, a finalisation fee, inclusive of all necessary consultations and preparations will be paid, irrespective of when such consultations or preparation took place. No additional preparation fees will be paid in respect of the trial. This will not preclude claims for postponements and court appearances before or after the date in respect of which the finalisation fee is claimed (eg. For sentencing).	R1,126.00	R1,339.00	R2,100.00	NA
<b>2</b>	<b>Preparation fees <sup>2</sup></b>				
2.1	Practitioners may claim preparation and consultation fees from the date of instruction by Legal Aid South Africa.	R157.00 Per hour	R220.00 Per hour	R278.00 Per hour	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	<p>Preparation before the start of the trial is required (eg in the High Court up to 8 hours preparation should routinely be done prior to the date of the commencement of the trial).</p> <p>Necessary travelling and accommodation disbursements (as per Paragraph 7 below) outside of the magisterial district in which the practitioner practises will be paid if required to execute such preparation.</p> <p>In all matters actual preparation and necessary consultations prior to and during the trial shall be allowed and remunerated as follows:</p> <p>DC – Not more than 2 hours for the first accused and additional preparation and consultation time of not more than 1 hour per co-accused represented subject to a maximum of 8 hours per District Court matter</p> <p>RC – Not more than 4 hours for the first accused and additional preparation and consultation time of not more than 2 hours per co-accused represented subject to a maximum of 16 hours per</p>				

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	<p>Regional Court matter.</p> <p>HC- A minimum of 8 hours for the first accused for the first week of trial or part thereof, and then an additional 8 hours per week or part thereof for the remaining period of the trial. Where the practitioner represents additional co-accused, then additional actual preparation and consultation time of not more than 4 hours per co-accused represented subject to a maximum of 32 hours per week will be allowed.</p>				
2.2	<p>In respect of trials where a practitioner for valid reasons requires additional preparation and consultation time beyond what is allowed in 2.1 above, a written motivation for increased preparation and consultation time must be submitted to the ROE/NOE.</p>	R158.00 Per hour	R220.00 Per hour	R278.00 Per hour	NA
3.	<b>Increased trial day fees</b> <sup>3</sup>				
3.1	<p>Only in very exceptional circumstances will any increased fees be permitted. If increased trial day fees are authorised by the ROE/NOE, these shall not exceed:</p>	NA	R2,913.00 Per trial day	R3,668.00 Per trial day	NA

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
3.2	<p>In very exceptional circumstances, the NOE may authorise the instruction of a second legal practitioner to assist the legal practitioner who appears at the trial at not more than 60% of the fees allowed to the first legal practitioner.</p> <p>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.</p>	NA	R1,746.00 Per trial day (Maximum)	R2,199.00 Per trial day (Maximum)	NA
<b>4.</b>	<b>Bail applications and interlocutory applications <sup>4</sup></b>				
4.1	A legal practitioner shall be remunerated for bail and other interlocutory applications not otherwise provided for at the rates set out herein as if such bail or interlocutory application formed part of the trial of the accused.	R1,126.00 Per trial day	R1,339.00 Per trial day	R2,100.00	NA

<b>Number</b>	<b>Matter</b>	<b>District Magistrate's Court</b>	<b>Regional Magistrate's Court</b>	<b>High Court</b>	<b>Supreme Court of Appeal</b>
<b>5.</b>	<b>Criminal trials – General<sup>5</sup></b>				
5.1	Application for a transcript of the evidence	R128.00 Per application	R128.00 Per application	R128.00 Per application	NA
5.2	Necessary perusal of a docket and/or record:	R3.16 Per page	R3.16 Per page	R3.16 Per page	NA
5.3	Preparation of heads of argument at the request of the court. Proof of the court's request must accompany the account. A folio consists of 100 words.	NA	R15.28 Per folio	R23.00 Per folio	NA
<b>6.</b>	<b>Criminal appeals<sup>6</sup></b>				
6.1	Written report on the merits of a matter when required.	R348.00 Per report	R348.00 Per report	R348.00 Per report	R348.00 Per report
6.1(a)	For appearing before any trial court when a postponement is granted at the request of the State or at the instance of the presiding Judicial Officer before hearing an application for leave to appeal:	R174.00 Per postponement	R174.00 Per postponement	R174.00 Per postponement	NA
6.2	Application to the court a quo for leave to appeal (where done by a practitioner who appeared at trial)	R381.00 Per application	R507.00 Per application	R610.00 Per application	NA

<b>Number</b>	<b>Matter</b>	<b>District Magistrate's Court</b>	<b>Regional Magistrate's Court</b>	<b>High Court</b>	<b>Supreme Court of Appeal</b>
6.3	Drafting petition for leave to appeal to the HC or application to the SCA including all typing and attendances relevant thereto	NA	NA	R882.00 Per petition	R1,323.00 Per application
6.4	Drafting of documents not otherwise provided for, including all typing and relevant attendances	NA	NA	R28.00 per page Up to a max of R550.00	R43.00 per page Up to a max of R 730.00
6.5	Application for a copy of a record under Rule 66(9) of the Magistrate's Court, Rule 49A of the Uniform Rules, Rule 52 of Uniform Rules including all typing and attendances relevant thereto.	R174.00 Per application	R174.00 Per application	R174.00 Per application	R174.00 Per application
6.6	Necessary perusal of any record for purposes of application for leave to appeal, provided the legal practitioner attending to the application for leave to appeal is not the legal practitioner who represented the accused on trial or where the client indicated that he/she did not require leave to appeal but subsequently requested an application for leave to appeal and a period of longer than 3 months has expired since sentence.	R3.16 Per page	R3.16 Per page	R3.16 Per page	NA



<b>Number</b>	<b>Matter</b>	<b>District Magistrate's Court</b>	<b>Regional Magistrate's Court</b>	<b>High Court</b>	<b>Supreme Court of Appeal</b>
6.7	Heads of argument including perusal of record to prepare heads of argument, all typing and relevant attendances	NA	NA	R1,828.00 Per set of Heads	R1,828.00 Per set of Heads
6.8	On appearing before the trial court to argue application for leave to appeal including the final report to the LAB and the report back to the legal aid applicant (where done by practitioner other than the practitioner who appeared at the trial) This fee includes any consultations, perusal, drafting or attendance on that day and any other application made on that day	R823.00	R1,076.00	R1,218.00	NA
6.9	On appearing before a superior court to argue appeal and including the noting of judgement, the final report to the LAB and the report back to the legal aid applicant  This fee includes any consultations or perusal on that day and any application made on that day	NA	NA	R1,828.00	R4,264.00
6.10	Any necessary consultation with an accused or a witness whose evidence is yet to be led.	R253.00 Per consultation	R253.00 Per consultation	R253.00 Per consultation	R253.00 Per consultation

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	Not more than one consultation per accused or per witness.				
7.	<b>Disbursements</b> <sup>8</sup>				
	These disbursements shall be allowed over and above the fees set out above				
7.1	The fees of any expert authorised by the LAB	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised	At the rate and to the maximum authorised
7.2	Necessary revenue stamps	As required by the prosecution	As required by the prosecution	As required by the prosecution	As required by the prosecution
7.2 (a)	Necessary copies of documents such as charge sheets, petitions and heads of argument.	R1.89 Per page	R1.89 Per page	R1.89 Per page	R1.89 Per page
7.3	Necessary travel <u>within or outside</u> of any magisterial district in which the legal practitioner has an office <u>provided that the distance of a single trip is more than 30km.</u>	R3.05 Per km	R3.05 Per km	R3.05 Per km	R3.05 Per km
7.4	Necessary air travel	NA	NA	Economy class	Economy class
7.5	Where it is necessary for a legal practitioner to hire accommodation at the court venue, the LAB will pay the legal practitioner an allowance in respect of accommodation	R708.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the	R708.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the	R708.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the	R708.00 Per night provided that the court venue is situated more than 130km from the offices/chambers of the

Number	Matter	District Magistrate's Court	Regional Magistrate's Court	High Court	Supreme Court of Appeal
	<b>NB</b> – Where the actual expenditure exceeds the allowance in paragraphs 7.5 and 7.6 but is still within the LAB Travel Policy, the practitioner may choose between requesting the LAB to book and pay for his /her expenses or pay on his /her own accommodation and then claim a refund from the LAB	legal practitioner	legal practitioner	legal practitioner	the legal practitioner
7.6	Where it is necessary for a legal practitioner to attend at a court venue away from his/her chambers/offices the LAB shall pay the legal practitioner a subsistence allowance	R212.00 Per day provided that the court venue is situated is more than 130km from the offices/chambers of the legal practitioner	R212.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R212.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner	R 212.00 Per day provided that the court venue is situated more than 130km from the offices/chambers of the legal practitioner
7.7	Toll roads to the extent that these were reasonably necessary	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses	Actual out of pocket expenses

## 2010 CRIMINAL TARIFFS: NOTES

### 1. Criminal Trials – Appearance fees

- 1.1. No additional fees will be permitted in respect of any trial day lasting in excess of 4 hours or for any waiting time or any other attendance whatsoever.
- 1.2. A trial day means a day on which evidence is led and/or the court hears argument pursuant to the hearing or submission of evidence and/or hands down judgement after the hearing of evidence for an aggregate time of not less than 4 hours. Where a trial is less than 4 hours duration the trial day fee is reduced pro rata.

## **2. Preparation fees**

- 2.1. In all trials where the legal practitioner requires consultation/preparation fees beyond what is stipulated in clause 2.1 of the tariffs, the legal practitioner must submit a detailed written motivation to the ROE/NOE responsible detailing the preparation required, including preparation per co-accused, perusal of documents, necessary consultations and the anticipated duration of these.
- 2.2. ROEs must consult their delegations to determine what preparation fees they may authorise and which must be referred to the NOE.

## **3. Increased trial day fees**

- 3.1. In no circumstances will a third legal practitioner be permitted for any accused or group of co-accused who are represented by a single legal team.
- 3.2. ROEs must consult their delegations to determine what increased trial day fees they may authorise and which must be referred to the NOE.
- 3.3. The NOE shall ensure that at each ordinary meeting of the Board particulars of any increased fees authorised and particulars of any increased fees paid since its last such report are tabled for the information of members of the Board.

## **4. Bail applications**

- 4.1. Not more than one bail application shall be conducted on a legal aid basis under any one case number without the prior written consent of the applicable JCE, which should only be granted in response to a detailed motivation in writing for any second or subsequent bail application.
- 4.2. Upon accounting to Legal Aid SA the legal practitioner shall indicate whether a bail application was launched and shall report on the result of this bail application.
- 4.3. If an accused on legal aid is granted bail in excess of R6,088.00 and the bail is paid by the accused (irrespective of whose name appears on the bail receipt), the legal practitioner acting on behalf of the accused shall immediately report this fact in writing to the applicable JCE. The applicable JCE shall give directions as to whether the matter is to be:
  - 4.3.1. Continued on legal aid; or
  - 4.3.2. Referred back for reconsideration of whether the accused qualifies for legal aid; or
  - 4.3.3. No longer conducted on a legal aid basis.
- 4.4. Bail appeals, like other appeals, will be dealt with by separate legal aid instructions and subject to the tariffs set out for Criminal Appeals.

4.5. Bail appeals will be remunerated at the tariff applicable to criminal appeals generally.

## **5. Criminal trials - General**

5.1. The fees set out above are all inclusive fees and no additional fees will be permitted.

5.2. A legal practitioner submitting an account to Legal Aid SA may be required to attach to the 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. This certificate is currently required for all criminal trials in the High Court but is not currently required for criminal trials in the magistrate's courts. For criminal trials in the magistrate's courts in which a fee is claimed for any appearance on or after 1 September 2003 the legal practitioner claiming these fees must submit a copy of the charge sheet and its annexures to Legal Aid SA with his/her account.

5.3. 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 the legal practitioner was not present when such evidence was led, is entitled to apply to the trial court for the provision to the legal practitioner at the expense of the Department of Justice a copy of the transcript of the evidence led in his/her absence, and if this application is granted, to peruse the transcript. Except in the above circumstances, the perusal of a record, other than as part of the Preparation Fees allowed under Item 2 of the above tariff, shall only be allowed with the prior written consent of the ROE/NOE.

5.4. Where in excess of 2 hours preparation is permitted for any criminal trial, this preparation time shall include all necessary perusal of documents and no separate fee per page shall be paid for the perusal of any document.

## **6. Criminal appeals**

6.1. The fees set out in Items 6.7, 6.8 and 6.9 shall be increased by 25% for each additional accused being represented to a maximum of an additional 150% for all accused.

6.2. Applications for bail pending appeal will be remunerated in accordance with the tariff applicable to bail applications for awaiting trial accused. Applications for bail pending appeal are not permitted on a legal aid basis if the accused was in custody before conviction.

6.3. The ROEs have a general discretion to agree special and/or increased fees in circumstances which justify deviation from the above tariff. Any request for increased fees must be fully motivated and must be submitted to the JCE in writing.

## **7. Disbursements**

- 7.1. 7.1 Except as set out above no legal practitioner shall be entitled to recover any allowance or disbursement in respect of travel, accommodation, subsistence or any other incidental expenses from Legal Aid SA.
- 7.2. 7.2 Except in the case of economy class air fares and toll roads (where vouchers must be produced and where the legal practitioner is reimbursed according to actual out of pocket expenditure) the allowances set out above are payable irrespective of the actual expenditure (either greater or lesser) incurred by the legal practitioner.
- 7.3. 7.3 Legal Aid SA may, but is not obliged to, itself book and pay for air travel and/or accommodation and/or meals. In the event of Legal Aid SA booking and paying for meals and/or accommodation the allowances for accommodation and/or subsistence, as the case may be, will not be paid.
- 7.4. 7.4 Except 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 JCE or any admitted legal practitioner in the employ of Legal Aid SA delegated by the JCE to make this decision on his/her behalf.
- 7.5. 7.5 The subsistence allowance under item 7.6 of the tariffs may be paid to a practitioner, irrespective of whether this allowance is claimed in conjunction with a claim for accommodation, on condition that the claim complies with the requirements stipulated in these tariffs.

## 8. General

- 8.1. After the case has been finalised, the legal practitioner must report to the applicable JCE in writing setting out:
  - 8.1.1. The case number
  - 8.1.2. The court where the matter was heard
  - 8.1.3. The outcome of the matter
  - 8.1.4. The duration of the hearing
  - 8.1.5. Any other material information
- 8.2. All sums referred to are amounts exclusive of VAT.
- 8.3. Under no circumstances will any collapse/reservation/cancellation/waiting/travelling fees be paid by Legal Aid SA to any legal practitioner for any criminal matters, criminal appeals or any other matters whatsoever. Legal Aid SA will pay legal practitioners in accordance with its tariffs strictly according to services rendered and to the extent that the applicable tariff makes provision for the service rendered.
- 8.4. It shall be the responsibility of the legal practitioner upon submitting his/her account to ensure that Legal Aid SA 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, Legal Aid SA will dispatch a cheque in payment of this account within 30 days of receipt thereof

or, will instruct its bankers to effect payment by electronic transfer or, in the event of Legal Aid SA being unable or unwilling to effect payment, advise the legal practitioner in writing of the reason for non-payment.

- 8.5. The ROE/NOE has a general discretion to approve a fee that is not otherwise provided for in this tariff where it is deemed necessary to protect the interest of a client, but not beyond the rates for similar type work prescribed in this tariff.