

CAYMAN ISLANDS



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THE POOR PERSONS (LEGAL AID) LAW, 1975

THE LEGAL AID RULES, 1997

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THE POOR PERSONS (LEGAL AID) LAW, 1975

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These Rules are made by the Chief Justice of the Cayman Islands pursuant to Section 6 of The Poor Persons (Legal Aid) Law, 1975 with the approval of the Governor in Council.

PART I - General

1. These Rules may be cited as the Legal Aid Rules, 1997.

Citation

2. (1) In these Rules, unless the context otherwise requires-

Interpretation and
definitions

"assisted person" means a person to whom a certificate has been issued, whether before or after the commencement date;

"contribution" includes an indemnity;

"proceeding" means both criminal and civil proceedings; and

"the Law" means the Poor Persons (Legal Aid) Law.

(2) In Part II of these Rules "mention" means an appearance before the Court by any person solely for the purpose of being further remanded.

3. (1) These Rules shall come into operation on the 1st day of April 1997, referred to in these Rules as the "commencement date".

Commencement and
transitional provisions

(2) These Rules shall apply to-

- (a) every application for legal aid made on or after the commencement date; and
- (b) all work done after the commencement date in respect of any certificate issued prior to the commencement date.

(3) The duties imposed upon attorneys by these Rules shall apply with effect from the commencement date in respect of every assisted person whether his certificate was issued before or after the commencement date.

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(4) Any certificate issued prior to the commencement date may be revoked or varied in accordance with these Rules.

Revocation

4. The Legal Aid Rules 1976 are revoked.

Forms

5. The Chief Justice may, by Practice Direction, establish forms to be used for the purposes of these Regulations.

Duty of attorneys and
choice of attorney

6. (1) Before agreeing to act for any person, it shall be the duty of every attorney to consider whether such person may be eligible for legal aid and, if so, to advise him to make an application for the grant of legal aid.

(2) An attorney shall not agree to act in consideration of any fee or accept any fee from a person who appears to be eligible for legal aid unless-

- (a) the attorney has first given such person written advice to the effect that he appears to be eligible for legal aid and such person has made an informed decision not to apply for legal aid; or
- (b) such person has applied for legal aid and his application has been rejected.

(3) An attorney shall not seek or accept any fee from any person (including the assisted person) in respect of the proceedings to which a certificate relates.

(4) It shall be the duty of every attorney to keep accurate records of-

- (a) the advice given;
- (b) the work done;
- (c) the time spent; and
- (d) the disbursements incurred in the course of conducting any criminal or civil proceedings on behalf of an assisted person.

(5) The Clerk of the Court shall keep a roster of Attorneys-at-Law who-

- (a) have intimated to him their readiness to accept briefs under the Law; and
- (b) are approved by the Chief Justice as suitable persons to hold such briefs,

and shall offer such briefs in rotation to those practitioners who appear upon the said roster.

(6) An assisted person may only instruct the Attorney-at-Law named in his certificate, but that if that Attorney is unable to take any step in the matter to

which he has been assigned, he may request another attorney on the roster to do so on his behalf.

(7) An attorney who agrees to act pursuant to a legal aid certificate shall have a duty to represent the assisted person until the matter is completed or the certificate is discharged.

PART II - Legal Aid in Criminal Cases

7. (1) Subject to paragraph (2), every application for legal aid by a person charged with a scheduled offence shall be supported by a statement of means and such documents as the Court may require for the purpose of verifying the statement of means.

Application for legal aid
in respect of criminal
charges

(2) If the court considers that the interests of justice require that a person charged with a scheduled offence must be legally represented, it may grant a criminal legal aid certificate of its own motion, for which purpose it shall conduct such enquiries (if necessary with the assistance of a probation officer) as it thinks fit.

8. (1) In determining in accordance with Section 3 of the Law whether the applicant who has been charged with a scheduled offence has the means to instruct an attorney to advise and represent him, the Court shall have regard to-

Grant of certificate in
criminal cases

- (a) the amount of the applicant's disposable capital;
- (b) the amount of the applicant's disposable income;
- (c) the applicant's ability to obtain employment; and
- (d) the likely cost of the proceedings.

(2) In determining the amount of an applicant's disposable capital the value of his sole or main residence shall be disregarded.

(3) Fees to be paid in respect of an assisted person shall not include fees for an appearance before the Court only for mention nor, without prior leave of the Court, for the services of an expert witness.

(4) In the event that-

- (a) an assisted person is charged with both scheduled offence(s) and non-scheduled offence(s); and
- (b) the Court orders the offences to be tried together,

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the certificate shall authorise the assisted person to be represented in respect of all the offences.

(5) An assisted person who is convicted of a scheduled offence may be ordered to pay a contribution towards the cost of his representation and such contribution shall constitute a debt payable to the Government.

Applicants jointly charged

9. Wherever an applicant is jointly charged, the Court shall consider whether he can properly be represented by the same attorney as his co-defendants.

Revocation and amendment of criminal legal aid certificates

10. (1) A certificate may be revoked upon the application of an assisted person to whom it was granted.

(2) An assisted person may apply to vary his certificate for the purpose of-

- (a) enabling him to change his attorney; or
- (b) in the event that he is jointly represented with a co-defendant, enabling him to be separately represented;

(3) The Court may, of its own motion, revoke or vary a certificate if it is satisfied that-

- (a) the assisted person's application materially misrepresented his financial means; or
- (b) the assisted person's financial means have materially improved since the grant of his certificate.

PART III - Legal Aid in Civil Cases

Application for legal Aid in civil proceedings

11. (1) Every application for a certificate by a person who desires to take or defend proceedings in the Grand Court shall be supported by the following documents-

- (a) a statement of means and such documents as the Court may require for the purpose of verifying its contents;
- (b) in the case of an intended plaintiff, a statement of the facts giving rise to his claim or the basis upon which he claims to be entitled to relief;
- (c) in the case of an applicant who is the defendant or respondent in any proceedings-
 - (i) a copy of the originating process; and
 - (ii) a statement of the facts giving rise to a defence or the basis upon which he opposes the relief sought against him; and
- (d) a copy of any attorney's opinion on the merits of his case.

12.. (1) A certificate shall be granted, either conditionally or unconditionally, if the Court is satisfied that the applicant appears to have a reasonable prospect of succeeding on the merits of the case.

Grant of certificate in
civil proceedings

(2) In determining whether the applicant has the means to instruct an attorney to advise and represent him in any civil proceedings the Court shall have regard to-

- (a) the amount of the applicant's disposable capital;
- (b) the amount of the applicant's disposable income;
- (c) the applicant's ability to obtain employment;
- (d) the nature and complexity of the proceedings or intended proceedings; and
- (e) the likely cost of the proceedings.

(3) In determining the amount of an applicant's disposable capital, the value of his sole or main residence shall be disregarded.

(4) A certificate may be granted subject to the following conditions-

- (a) the assisted person shall pay into Court a sum of money as a contribution towards the cost of his representation;
- (b) the assisted person shall be limited to taking certain steps in the proceeding; or
- (c) the assisted person's attorney shall deliver to the Court a written opinion as to the merits of his case.

(5) In addition to any condition imposed pursuant to paragraph (4) of this rule, every certificate shall be deemed to be subject to the following limitations and conditions-

- (a) an assisted person may only commence proceedings against the persons named in the certificate; and
- (b) an assisted person may only assert or defend or respond to the claims and causes of action described in the certificate.

(6) If, upon conclusion of the proceeding, the assisted person succeeds in obtaining-

- (a) an order for ancillary relief pursuant to Section 21 of the Matrimonial Causes Law 1976 which includes an order for the transfer of any property, the variation of any settlement or the payment of periodical payments or a lump sum; or
- (b) a declaration under Section 16 of the Married Women's Property Law Cap. 94 as to the beneficial ownership of any property; or

- (c) a money judgement; or
- (d) an order for the recovery of any land or other property,

the Court may order the assisted person to pay a contribution or an additional contribution towards the cost of his representation and such contribution shall constitute a debt payable to the Government.

Revocation and
amendment of
certificates

13. (1) A certificate shall be revoked upon the application of the assisted person to whom it was granted provided that he has fully complied with any condition requiring him to make a contribution towards the cost of his representation.

(2) A certificate may be varied on the application of an assisted person for the purpose of-

- (a) enabling him to take a further step or steps in the proceedings;
- (b) enabling him to add or substitute a party;
- (c) enabling him to add or substitute a cause of action;
- (d) enabling him to take steps to enforce any judgement or order given or made in the proceedings; or
- (e) authorising him to change his attorneys.

(3) The Court may of its own motion, revoke or vary a certificate if it is satisfied that-

- (a) the assisted person's application materially misrepresented his financial means;
- (b) the assisted person's financial means have materially improved since the grant of his certificate; or
- (c) the assisted person is conducting or threatening to conduct the proceedings in a manner which is unreasonable and oppressive.

Duty of attorneys in civil
proceedings

14. (1) When acting for an assisted person, it shall be the duty of an attorney to give his client written advice upon the merits of his case.

(2) If an assisted person receives a written offer of settlement from any opposing party, it shall be the duty of his attorney to give him written advice upon the merits of the offer and in evaluating the merits of the offer the attorney shall not take account of the fact that the assisted person has the benefit of a certificate.

(3) If an attorney acting for an assisted person forms the opinion that his client has acted unreasonably in refusing to accept an offer of settlement, it shall be his duty to inform the Court of this fact.

(4) If judgement is entered or a final order is made in favour of an assisted person and an opposing party commences an appeal against him, it shall be the duty of his attorney to give him written advice upon the merits of the appeal within 14 days from the date upon which the grounds of appeal are served.

15. (1) It shall be the duty of an attorney acting for an assisted person to give notice of the grant of legal aid to all the other parties to the proceeding. Party and party costs

(2) No order for costs against an assisted person in favour of an unassisted party to any proceedings and no order for security for costs against an assisted person may be made in respect of any sum granted by way of legal aid.

(3) Where an order for costs is made in favour of an assisted person against an unassisted party to any proceedings, the amount recovered shall be applied-

- (a) first, in reimbursing the Government in respect of the remuneration, costs and expenses paid to the assisted person's attorney; and
- (b) second, in reimbursing the assisted person in respect of his contributions.

(4) It shall be the duty of an assisted person's attorney to safeguard the interests of the Government on any inter partes taxation pursuant to an order for costs made in favour of the assisted person where that person may himself have no interest in the result of the taxation.

(5) The Government shall be entitled to enforce any order for costs made in favour of an assisted person.

PART IV - Remuneration and Taxation

16. (1) An attorney shall be entitled to remuneration at the rate of \$100 per hour for work done on the instructions of an assisted person, provided that- Amount of remuneration

- (a) the work done was authorised by the certificate;
- (b) the work was reasonably necessary;
- (c) the work was competently executed; and
- (d) the attorney has complied with his duties under Rules 6 and 14.

(2) An attorney shall be entitled to reimbursement in respect of the following costs and expenses-

- (a) fixed fees and ad valorem fees payable pursuant to the Grand Court Fees Rules 1995, the Summary Court Rules 1995 or the Grand Court (Matrimonial Causes) Fees Rules 1995 and any court fees paid prior to the 1st June 1995 pursuant to the Judicature Law (Revised);
- (b) fees paid for the service of documents, provided that the amount recoverable shall not exceed that prescribed by paragraph 1 of Schedule 3 of the Grand Court Fees Rules 1995; and
- (c) photocopying and printing charges, charges incurred in respect of international telephone calls and facsimile transmissions and any costs or expenses which the certificate specifically authorises him to incur, provided that such costs and expenses have been reasonably and properly incurred.

Bills of costs and
taxation

17. (1) Upon conclusion of the proceeding, the attorney of an assisted person shall prepare a bill of costs and present it for taxation to the Clerk of the Court.

(2) A bill of costs shall be supported by-

- (a) copies of timesheets or other written evidence of the time spent; and
- (b) copies of invoices, receipts, paid cheques or other written evidence of the costs and expenses incurred.

(3) In addition to the documents referred to in paragraph (2) of this rule, the Clerk of the Court may require the attorney to produce the whole or part of his files relating to the proceeding in respect of which the bill of costs is presented.

(4) Upon taxation of an attorney's bill of costs, the Clerk of the Court shall-

- (a) disallow the fee claimed for any item of work which is not authorised by the certificate;
- (b) disallow reimbursement of any authorised costs or expenses;
- (c) reduce the amount of the fee claimed for any item of work upon which he considers that the attorney has spent an unnecessary amount of time;
- (d) disallow the fee claimed for any item of work which he considers to have been done unnecessarily or incompetently performed;
- (e) disallow reimbursement of any authorised costs and expenses which he considers to have been unreasonably or improperly incurred; and

(f) disallow the whole or part of the amount claimed if he is satisfied that the attorney is in breach of any of the duties specified in Rules 6 or 14.

(6) Having taxed an attorney's bill of costs, the Clerk of the Court shall issue a certificate of legal aid taxation.

(7) If the whole or part of an assisted person's contribution has been paid into Court, the Clerk of the Court shall order that amount to be paid out to the attorney and the certificate of taxation shall specify the balance, if any, payable by the Treasury.

(8) The Clerk of the Court shall send the certificate of legal aid taxation to the attorney whose duty it shall be to give a copy of it to the assisted person.

(9) It shall be the responsibility of the attorney to present the certificate of legal aid taxation to the Treasury for payment.

18. (1) If an attorney is dissatisfied with the amount allowed to him on taxation by the Clerk of the Court, he may apply, within 7 days of the issue of the certificate of legal aid taxation, for his bill of costs to be re-taxed by a Judge. Re-taxation by a Judge

(2) If an assisted person who is required to pay a contribution of at least three quarters of the cost of his representation, is dissatisfied with the amount allowed to his attorney on taxation by the Clerk of the Court, he may apply within 7 days of the date upon which the certificate of legal aid taxation is served on him, for his attorney's bill of costs to be re-taxed by a Judge.

(3) Paragraph (2) shall not apply to an assisted person who has been convicted of a scheduled offence and ordered to pay a contribution towards the cost of his representation pursuant to Rule 8(5).

(4) If the Financial Secretary is dissatisfied with the amount allowed on any taxation by the Clerk of the Court, he may apply within 7 days of the date upon which the certificate of legal aid taxation is presented to him for payment, for the attorney's bill of costs to be re-taxed by a Judge.

(5) When an application is made for a bill of costs to be re-taxed, the certificate of legal aid taxation issued by the Clerk of the Court shall be revoked automatically and shall not be payable by the Government.

(6) An application for re-taxation of a bill of costs shall be in writing and shall specify those items of the bill about which the applicant is dissatisfied.

(7) The Judge shall re-tax the entire bill of costs, without regard to the decision of the Clerk of the Court.

(8) The Judge may require the attorney to produce the whole or part of his files relating to the proceeding or any part thereof.

(9) Having conducted an initial review of the bill of costs, the Judge shall invite the attorney, the assisted person or the Financial Secretary (or his representative) as the case may be, to attend before him in Chambers for the purpose of addressing him upon those items of the bill of costs about which the applicant is dissatisfied and any other items about which the Judge is not satisfied.

(10) When re-taxing a bill of costs the Judge shall act in an administrative capacity and his certificate of legal aid taxation shall be final and conclusive.

Made by the Chief Justice, with the approval of the Governor in Council, on the 4th day of February, 1997.

G.E. Harre

Chief Justice.

C.H. Parsons

Clerk of the Executive Council.