

1956/186



## THE OFFENDERS LEGAL AID REGULATIONS 1956

C. W. M. NORRIE, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 6th day of November 1956

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Offenders Legal Aid Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

### REGULATIONS

#### *Preliminary*

1. (1) These regulations may be cited as the Offenders Legal Aid Regulations 1956.

(2) These regulations shall come into force on the seventh day after the date of their notification in the *Gazette*.

2. In these regulations, unless the context otherwise requires,—

“The Act” means the Offenders Legal Aid Act 1954:

“Magistrate’s Court” includes a Children’s Court:

“Practitioner” means a barrister or a solicitor of the Supreme Court.

#### *List of Practitioners*

3. (1) The Secretary of every District Law Society shall from time to time forward to the Registrar of the Supreme Court in the town where the Secretary has his office the name and address of every practitioner who in the opinion of the Society is a fit and proper person to be assigned and is willing to accept assignment in accordance with these regulations, and the Registrar shall keep a list of such practitioners.

(2) The Registrar shall from time to time, on the request in writing of the District Law Society, remove any name from the list.

(3) A Judge of the Supreme Court may at any time direct that any name be removed from or added to the list.

(4) The Registrar shall send a copy of the list of practitioners to every Registrar of the Supreme Court, and every Registrar of a Magistrate’s Court, within the Law Society district, and shall notify those Registrars of any addition to or removal from the list.

*Application for Legal Aid*

4. (1) An application for the grant of legal aid shall be made in writing, unless the Court otherwise allows.

(2) Any written application shall specify—

(a) The occupation and the wages, salary, and income of the applicant:

(b) Particulars of any money or other property owned by the applicant:

(c) Particulars of any dependants of the applicant:

(d) Any other relevant facts relating to the financial circumstances of the applicant.

*Hearing of Application*

5. (1) The power conferred by the Act or these regulations on the Supreme Court or the Court of Appeal may be exercised either by the Court at the hearing or at any other time by a Judge of the Court.

(2) The power conferred by the Act or these regulations on a Magistrate's Court may be exercised either by the Court at the hearing or at any other time by a Magistrate.

(3) Any application for the grant of legal aid may be heard wholly in private.

(4) An inquiry into the means of the applicant shall in any case be heard in private.

*Grant of Legal Aid by Magistrate's Court in Respect of Supreme Court Proceedings*

6. Where a Magistrate's Court commits any person to the Supreme Court for trial or sentence, or where any person appeals to the Supreme Court against a conviction or sentence of a Magistrate's Court, the Magistrate's Court may direct that legal aid be granted in respect of the proceedings in the Supreme Court.

*Persons Jointly Charged*

7. Unless for special reasons the Court directs otherwise, where legal aid is granted to two or more persons who are jointly charged, only one practitioner shall be assigned and one set of fees allowed.

*Assignment of Practitioner*

8. (1) Where a Court has directed that legal aid be granted to any person, the Registrar of the Court giving the direction, or the Registrar of the Court in which the proceeding is to be determined, shall, subject to any direction of the Court, assign a practitioner from the list kept pursuant to regulation 3 hereof or, if there is no such list or if none of the practitioners named therein is willing or reasonably available to act, some other practitioner who is willing to act:

Provided that in respect of a charge of murder or treason any practitioner whom the accused person desires to defend him, and who is willing to act, may be assigned, whether or not his name appears on the list.

(2) Except in respect of a charge of murder or treason, no more than one counsel shall be assigned in any case, unless because of the complexity of the proceedings the Court thinks fit to direct otherwise.

(3) At the request of the assigned practitioner, the Registrar may at any stage of the proceedings assign any other practitioner in his place.

#### *Record of Result of Applications*

9. The Registrar of any Court in which an application for the grant of legal aid is heard shall keep a record of the result of the application.

#### *Cancellation of Legal Aid*

10. (1) If at any time after the grant of legal aid it appears to a Court that the applicant has sufficient means to enable him to obtain legal assistance, the Court may direct that no legal aid or, as the case may require, no further legal aid shall be afforded under these regulations to that applicant.

(2) On the communication to any practitioner of a direction under subclause (1) of this regulation, he shall not be entitled to payment under these regulations for anything done after the communication.

#### *Practitioners not to Receive other Remuneration*

11. (1) No practitioner assigned under these regulations shall, except under these regulations, receive directly or indirectly from any person any fee or remuneration, or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to the assignment:

Provided that a Judge or a Magistrate, as the case may require, may upon application in writing signed by the practitioner and upon the full disclosure of all facts connected therewith allow such fee or remuneration as he may specify instead of or in addition to any fee prescribed by these regulations.

(2) The name of any practitioner receiving any fee or remuneration in breach of this regulation shall be removed from any list of practitioners kept pursuant to regulation 3 hereof:

Provided that a Judge may at any time direct the restoration of the name of the practitioner to a list.

#### *Fees and Expenses of Assigned Practitioners*

12. (1) The fees and expenses payable to assigned practitioners shall be in accordance with the Schedule hereto.

(2) Subject to the provisions of subclause (4) of this regulation, in any case where no fee is prescribed in the Schedule hereto for the business, matter, or proceeding, the fee payable for that business, matter, or proceeding shall be at such rate, based upon the rates payable under the Schedule hereto, as a Registrar of the Supreme Court certifies as being fair and reasonable.

(3) Subject to the provisions of subclause (4) of this regulation, in any case where the service actually performed does not justify the payment of the full fees prescribed by these regulations, or where the work occasioned in any transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a number or series of transactions

or proceedings that are similar or that arise out of the same set of circumstances, the fees allowable shall be such as a Registrar of the Supreme Court certifies as being fair and reasonable.

(4) The powers of the Registrar of the Supreme Court under this regulation may be exercised by the Registrars of the Magistrates' Courts at Auckland, Wellington, Christchurch, and Dunedin.

(5) The Minister of Justice, in any case in which he considers that exceptional circumstances render such a course desirable, may authorise any of the scales set out herein to be exceeded in any particular case.

#### *Disbursements*

13. Payment may be made of all disbursements reasonably and properly incurred for the purposes of the proceedings in respect of which legal aid was granted.

#### *Payment of Witnesses*

14. Subject to any direction of the Court, a witness for any person to whom legal aid has been granted may, if a Crown Solicitor certifies that the attendance of the witness was reasonably necessary, be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees Regulations 1954.\*

#### *Claim for Fees, Expenses, or Disbursements*

15. (1) Any person having a claim for fees, expenses, or disbursements under these regulations shall set out full particulars thereof in a voucher to be prepared and signed by him, and shall forward the voucher to the Registrar of the Court in which the proceedings were held:

Provided that any amount payable to a witness in respect of his appearance in the Supreme Court may be paid by the Registrar from an Imprest Account.

(2) Except where a Judge or Magistrate has given a direction pursuant to the proviso to subclause (1) of regulation 11 hereof, every claim for payment of practitioners' fees under these regulations shall contain a certificate by the claimant that he has not received from any person, either directly or indirectly, any fee or remuneration, and an undertaking that, except under these regulations, he will not receive any such fee or remuneration or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to his assignment.

(3) Subject to the provisions of subclause (5) of this regulation, the Registrar of the Court shall certify that the services have been duly performed in accordance with an assignment, and shall then, if he is not a Registrar of the Supreme Court, forward the voucher to such a Registrar.

(4) Subject to the provisions of subclause (5) of this regulation, the Registrar of the Supreme Court shall certify the voucher as follows:

(a) If any scale prescribed by these regulations applies, that the amounts claimed are fair and reasonable and do not exceed the appropriate scale to which he shall refer:

(b) If no scale prescribed by these regulations applies, that the amounts claimed are fair and reasonable and are in his opinion in accordance with subclause (2) of regulation 12 hereof.

(5) The functions of the Registrar of the Supreme Court under this regulation may be exercised by the Registrars of the Magistrates' Courts at Auckland, Wellington, Christchurch, and Dunedin.

*Revocation*

16. The Poor Prisoners' Defence Regulations 1934\* are hereby revoked.

\*Gazette, 19 April 1934, Vol. I, p. 1139

SCHEDULE

FEES AND EXPENSES OF ASSIGNED PRACTITIONERS

PART I—FEES IN PROCEEDINGS IN COURT OF APPEAL

A. *Under the Criminal Appeal Act 1945*

	£	s.	d.
1. Preparation on appeal against conviction, appeal against conviction and sentence, or reference of an application for the exercise of the mercy of the Crown .....	10	10	0
And, where the conviction was one of murder or treason, for each half-day necessarily occupied after the first day .....	5	5	0
2. Appearance on appeal against conviction, appeal against conviction and sentence, or reference of an application for the exercise of the mercy of the Crown: For each half-day occupied .....	7	7	0
3. Preparation on application for leave to appeal against sentence and on appeal against sentence, where argument of question of law is not involved: A fair and reasonable sum, not exceeding in each case .....	4	4	0
4. Preparation on application for leave to appeal against sentence and on appeal against sentence, where argument of question of law is involved: A fair and reasonable sum, not exceeding in each case .....	6	6	0
5. Appearance on application for leave to appeal against sentence or on appeal against sentence: A fair and reasonable sum, not exceeding in each case .....	7	7	0

B. *Under the Crimes Act 1908*

1. Preparation on case stated for opinion of Court of Appeal under section 442 or section 443 (5) of the Crimes Act 1908 .....	10	10	0
And, where the charge was one of murder or treason, for each half-day necessarily occupied after the first day .....	5	5	0
2. Appearance in respect of any such case stated: For each half-day occupied .....	7	7	0
3. In proceedings under section 443 (6) of the Crimes Act 1908 on notice of motion to the Court to pass a proper sentence:			
(a) Preparation .....	6	6	0
(b) Appearance: For each half-day occupied .....	7	7	0

SCHEDULE—*continued*

## PART II—FEES IN PROCEEDINGS IN SUPREME COURT

<i>A. Trials</i>		£	s.	d.
1. In proceedings on trials of indictable offences, other than trials for murder or treason:				
(a) Preparing defence, including all matters and proceedings connected with or incidental to the trial	.....	5	5	0
(b) Appearance—				
(i) For each half-day occupied	.....	5	5	0
(ii) Where accused pleads guilty on arraignment	.....	2	2	0
2. In proceedings on trials for murder or treason:				
(a) Preparing defence, including all matters and proceedings connected with or incidental to the trial: For each half-day necessarily occupied (but with a maximum fee as for five days)	.....	7	7	0
(b) Appearance: For each half-day occupied	.....	7	7	0
3. Where sentence is not pronounced on the same day as the verdict, and appearance on such sentence necessitates a further attendance	.....	2	2	0

*B. Sentence Only*

1. Where assignment is in respect of sentence only	.....	2	2	0
2. Where assignment is in respect of sentence after committal under section 24 (3) of Criminal Justice Act 1954	.....	3	3	0

*C. Appeals and other Proceedings*

1. In appeals (other than appeals against sentence only), and in other proceedings relating to a conviction by a Magistrate's Court:				
(a) Preparation, including all matters and proceedings connected with or incidental to the proceedings	.....	4	4	0
(b) Appearance: For each half-day occupied	.....	5	5	0
2. On appeal to Supreme Court against sentence only, for preparation and appearance on the appeal, including all matters and proceedings connected with or incidental to the appeal	.....	4	4	0

## PART III—FEES IN PROCEEDINGS IN MAGISTRATE'S COURT

1. For preparation and conduct of proceedings, including all matters and proceedings connected with or incidental to the proceedings	.....	5	5	0
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Provided that where there are two or more informations arising out of the same circumstances, an additional fee not exceeding 10s. 6d. in respect of each information after the first may be certified for.

2. In respect of the preliminary hearing of an indictable offence, the same amount for appearance shall be paid as if the preliminary hearing were a trial before the Supreme Court; and, in the case of a charge of murder or treason, the same amount for preparation.

SCHEDULE—*continued*

## PART IV—SECOND COUNSEL

Where second counsel is assigned, the fees payable to second counsel shall, if second counsel is from the same office as first counsel, be at the rates above prescribed, reduced by half. If second counsel is from another office the fees payable shall be at rates not exceeding two-thirds of the rates above prescribed.

## PART V—TRAVELLING EXPENSES AND ALLOWANCES

1. Where a practitioner is required in pursuance of an assignment to travel more than two miles from the place where he carries on business, travelling expenses and a travelling allowance will be allowed as follows:

- (a) The cost of travelling by public conveyance, subject to production of receipts for fares over 10s.:

Provided that receipts need not be produced for fares where the fares are readily ascertainable:

- (b) A travelling allowance of £2 2s. for each day of 24 hours; and for any portion of a day a sum equal to one twenty-fourth of the full daily rate for each hour or fraction thereof:

Provided that where the practitioner is not absent overnight from his usual place of business, his actual and reasonable expenses shall be paid instead of the travelling allowance:

Provided also that where a fare paid for travelling includes the cost of a sleeping berth on a train or a ship, the period of absence for the purposes of this paragraph shall not include the time spent on the train or ship.

2. Where the practitioner is occupied during ordinary office hours in travelling to and from the Court he may claim and may be paid, in addition to travelling expenses and the travelling allowance under clause 1 of this Part, a special allowance of £3 3s. for each half-day necessarily so occupied:

Provided that the special allowance shall be paid only instead of and not in addition to any payment for preparation under these regulations in respect of the same time when so occupied in travelling.

T. J. SHERRARD,  
Clerk of the Executive Council.

## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations are made under the Offenders Legal Aid Act 1954, which empowers Courts, in proper cases, to grant legal aid to persons charged with or convicted of offences. The regulations prescribe the manner in which applications for legal aid are to be made and dealt with, provide for the assignment of counsel, and prescribe scales of fees and expenses to be paid to counsel and to witnesses. They are in substitution for the Poor Prisoners' Defence Regulations 1934.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 8 November 1956.

These regulations are administered in the Department of Justice.