

# Orissa State Bar Council Legal Aid Rules, 1986

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### Rule ORISSA-STATE-BAR-COUNCIL-LEGAL-AID-RULES-1986 of 1986

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Orissa State Bar Council Legal Aid Rules, 1986

#### 1.

(a)These rules shall be called the Orissa State Bar Council Legal Aid Rules, 1986.(b)These Rules shall come into force at once in whole of Orissa.

#### 2. Definitions.

- In these rules unless the context otherwise requires for -(a)"Act" means the Advocates Act, 1961;(b)"Advocate" means an Advocate who is enrolled as such by the Orissa State Bar Council under the provisions of the Act whose name is maintained on the Roll of State Bar Council;(c)"Aided person" means a person to whom legal aid or advice has been sanctioned, and who is receiving or has received legal aid or advice;(d)"The Council" means the Orissa State Bar Council;(e)"Court" includes all Courts and tribunals and other authority before which legal advocates are entitled to appear, act and plead;(f)"Legal Aid" shall includes representation by an Advocate and all such other assistance that may be necessary from time to time;(g)"Legal Advice" includes oral or written advice on the liberty, right, title or interest of a person;(h)"Financial Year" means the period from 1st April, of one year to 31st March, of the next succeeding year;(i)"Prescribed Year" means the period from 1st April of one year to 31st March of the next succeeding year;(j)"Rules" means the Orissa State Bar Council Legal Aid Rules, 1986.(k)"Secretary" means the Secretary of Orissa State Bar Council.

Chapter - II Constitution and Function of the Orissa State Bar Council

#### 3. Legal Aid Committee.

(1)The Council shall constitute a Legal Aid Committee consisting of 9 members from amongst its members.(2)The Chairman of the Council shall be the Ex-officio Chairman of the Legal Aid

Committee.(3)The Members of the Legal Aid Committee shall elect one of its Members as Vice-Chairman and the Secretary of the Bar Council shall be the Secretary of the Committee.(4)Term of Office of the Legal Aid Committee shall be Co-extensive with the term of the Bar Council. Five of them shall form the quorum.(5)Each Member of the Committee shall have the vote and in case of difference of opinion among them the opinion of the majority shall prevail. In case of equality of votes on any question the Chairman of the Members presiding shall in addition have the right to exercise a casting vote.(6)The Legal Aid Committee shall function, notwithstanding any vacancy in its body and notwithstanding any defect in the election or continuance of any of its members, and no act or proceedings of the Committee shall be included merely by reason of the existence of a vacancy of vacancies in the body or any defect in the election or continuance of any of its members.

#### **4. Function.**

- The function of the Legal Aid Committee shall be as follows :(1)To formulate policies for implementing the legal aid and advice to be given to the person eligible under these rules and to see that the policies formulated or prescribed are properly implemented by the District and Tahasil Legal Aid Bodies, and also to exercise effective supervision and control over these bodies.(2)To arrange Legal Aid workshops for lawyers, and to arrange training programmes for lawyers, para-legal workers and law students periodically.(3)To prepare Legal Aid literature for the purpose of spreading legal consciousness among the poorest sections.(4)To prepare Legal Aid literature for the purpose of spreading legal consciousness among the poorest sections of the community in different legal languages and to arrange for reaching those to the people in the slums villages and other appropriate place.(5)To arrange for the protection of the poor and illiterate relating to their legal rights in all cases of aggression either in hands of Govt, or that of individuals individually or collectively.(6)To arrange for prosecutions and/or defence in respect of public interest litigants affecting large number of persons.(7)To take appropriate legal aid/or other effective measures to locate and assist bonded labourers.(8)To take all other necessary steps to make the legal aid in the poorer sections of the people effective and meaningful and to see that the same are made available to them at the appropriate time so that they gain confidence in respect of the legal aid programme.

#### **5. Meetings.**

- All meetings of the Legal Aid Committee shall be called by the Secretary of the Committee giving at least ten clear days notice and in case of necessary.emergency meeting may be covered at shorter notice according to the necessity on the direction by the Chairman of the Committee.

#### **6. Function of the Secretary.**

- The Secretary of the Committee shall convene all meetings of the Committees according to the directions of the Chairman of the Committee and shall take all appropriate steps to implement the decisions of the Committee according to the directions of the Chairman.

## 7. Funds.

- Funds of the Bar Council Legal Aid Committee shall comprise of:(a)Funds provided by the Council in its budget annually and credited to the Legal Aid Funds may be provided by the Bar Council in terms of Section 6 (2)(b) of the Advocates Act, 1961, and credited to the fund to be known as "Orissa State Bar Council Legal Aid Fund".(b)Funds provided annually by the Bar Council, of India Trust, if any its annual budget and credited to the Legal Aid Fund.(c)Grants that may be provided by the Govt, of India and/or the Orissa State Government.(d)Financial assistance, grants, donations, gifts or benefactions received from Corporations, Bodies, Individuals, charitable institutions, Bar Associations and other bodies for the purpose of Legal Aid.(e)Amounts received by the Legal Aid Committee from any other source whatsoever by way of fees, costs, decretal dues or otherwise on the applications or in connections of Legal Aid Cases.(f)All sums recovered from the persons receiving Legal Aid or on their behalf or from their opponents or from the Court by virtue of any decree or order or agreement or otherwise.(g)Any amount received by way of interest from investment if any.

Chapter - III Persons Entitled to Have Legal Aid and Advice

## 8.

(1)Legal Aid may be given to a person applying for Legal Aid in the form and manner prescribed for the purpose of asserting denying or disputing a claim or a charge a right to any movable or immovable property or for instituting or defending a suit, Legal proceedings, Civil or Criminal or any appeal or revision arising therefrom or from any interlocutory orders in such cases, within the jurisdiction of the State Bar Council, and whose financial means and position is, in the opinion of a Legal Aid Committee or the Subcommittee thereof absolutely in sufficient to defray the expenses of the litigation or part thereof to meet, bear and pay the costs of engaging an Advocate, Solicitor, Pleader, or legal practitioner as the case may be. He must state in his applications that he has not applied to or obtained from any other Legal Aid Committee or any other Authority. Legal Aid in respect of the same cause of action. He shall also state in his application as to whether he applied previously and whether such applications was refused by any such Committee or Authority.(2)An application for Legal Aid may be refused if the applicant or his or her spouse or children has or have approximate annual income, exceeding Rs. 6,000/- per annum and if it appears to the appropriate Legal Aid Committee to the Sub-Committee thereof that the applicant concerned can afford to proceed without Legal Aid and if it appears to such Committee or Sub-Committee that having regard to the circumstances of the cases it is not a fit and proper case for Legal Aid or it is, in its opinion unreasonable to render Legal Aid.(3)An applicant may also be refused Legal Aid unless in the opinion of the Legal Committee or appropriate sub-Committee thereof he or she has a prima facie case in his/her favour and has reasonable grounds for instituting prosecuting or defending or being a party to a suit Legal Proceeding, Civil or Criminal, establishing or defending his Constitutional and/or fundamental rights, appeal or revision arising therefrom.(4)An applicant may also be refused Legal Aid unless he gives an undertaking to the effect that he will take all necessary and reasonable steps in time in connection with the proceeding for which legal aid in his favour is to be granted and that on successful completion of the litigation in his favour he will reimburse the legal aid committee concerned of all the expenses incurred in his favour.(5)Legal Aid sanctioned may be subsequently withdrawn if these are adequate reasons for so after giving the recipient adequate

opportunity of hearing in the matter.

## **9.**

Any person having annual income between Rs. 6,000/- to Rs. 12,000/- may be entitled to have legal advice in respect of their cases, from an Advocate on the panel of Advocates prepared for the purpose. (2) In filing his application for legal advice he must furnish all particulars about his income and the details of case, including details of case or cases pending either filed by him or against him. (3) In granting necessary advice the Legal Aid Committee concerned may be entitled to realise minimum costs necessary for preparing typing etc. or necessary papers. (4) If an applicant wants to have written opinion on particular point or on a question of law involved in his case he will be entitled to have such opinion only on payment of the prescribed fee. Application for Legal Aid and Advice

## **10.**

(a) All applications for legal aid and advice shall be made to the Legal Aid Committee or Sub-Committee or centre as the case may be and contain such particular as may be specified in the form and in the manner prescribed, all proceedings for legal aid shall be presented or filed during such hours as may be notified by such committees and to the person or authority appointed in this behalf. (b) All such applications for legal aid or advice shall be scrutinized by the Legal Aid Committee or Sub-Committee or centre as the case may be in accordance with the regulations made thereof by the State Legal Aid Board. After obtaining the opinion of the concerned District Legal Aid Committee. The applications shall be placed before State Legal Aid Board for consideration and sanction.

## **11.**

The District Legal Aid Committee, the Legal Aid Sub-committee or the Legal Aid Centre, as the case may be shall set up at least one Bureau for consideration of matters requiring grant of Legal Advice to the person whose applications are sanctioned by the Committee or such Sub-Committee and it will be its duty to give either oral or written advice in respect of matters placed before as expeditiously as possible.

## **12.**

The District Legal Aid Committee, the Legal Aid Sub-Committee and the Legal Aid Centre, whenever it is set up shall maintain proper registers and appropriate records showing the applications received and orders passed thereon and also maintain proper records of documents received in connection with each seeking legal aid. It shall be the duty of such committee to maintain proper registers of cases, for which legal aid and advice are granted, and process and result of such cases, and submit quarterly reports to the State Legal Aid Boards.

**13.**

The Legal Aid Committee at all levels shall maintain proper accounts of income and expenditure and maintain proper vouchers for all expenses incurred. All sums received by them shall be deposited in appropriate accounts with scheduled banks and payments shall ordinarily be made by cheques. Chapter - IV

**14.**

It shall be the duty of every advocate of at least five years standing to do at least six cases annually free of his professional charges. No such Advocate shall be entitled to refuse to do such cases when so asked for by the Legal Aid Committee. Explanation - Doing a case will mean (1) drafting, fixing and hearing of an injunction application, (2) drafting filing and registration of plaint, (3) drafting and filing of written statement, (4) drafting, filing and admission of appeal, (5) Drafting filing and admission of revision application, (6) arguing an appeal, (7) arguing revision and so on and each such act by an Advocate will constitute doing a case. Note : In allotting the case which are to be conducted by an Advocate free of his professional charges the nature of practice, viz. whether a particular Advocate practice in Criminal, Civil, Taxation or Constitutional law matters shall be taken into account and the case that may be allotted to him shall ordinarily be at a place where he normally practices, and cases should be allotted to Advocates by rotation according to the list which should be maintained in alphabetical order.

**15.**

(i) An Advocate who agrees to appear in Legal Aid cases and whose name is included in the panel of Advocates maintained by the State Legal Aid Boards and District Legal Aid Committee shall furnish his correct address and telephone number, if any, to such legal Aid Committee and to the Legal Aid Sub-Committee, and also to be parties for whom he appears in a particular case, it will be his duty to inform the Legal Aid Committee concerned his change of address and telephone number, if any. (ii) Appropriate Legal Aid Committee shall prepare two separate panel, one of Senior Advocates who will appear only for a particular hearing and the other with names of such junior Advocates who will not act and plead for the whole case which will be referred to them. (For this purpose those Advocates who has a length of practice for more than 20 years and are willing to act as Senior Advocate will be recorded as such)

**16.**

An Advocate who undertakes to render Legal Aid with or without remuneration shall not be entitled to receive any fees from the person in whose favour legal aid is granted or from any one on behalf of such persons. He will, however be entitled to receive such fees on honorarium as may be given to him by the concerned Legal Aid Committee according to the scale prescribed.

## **17.**

It shall be the duty of the Advocate who will be in charge of a Legal Aid Case or proceeding, to keep the person for whom he appears in such cases properly informed about the day to day proceedings, to maintain proper registers of such cases and to discharge his duty properly. He shall also keep the Legal Aid Committee or the Sub-Committee as the case may be informed from time to time in such manner as may be prescribed about the progress of the case allotted to him. He will however, be entitled to receive incidental charges for writing letters maintenance of registers etc. according to prescribed scale.

## **18. Miscellaneous.**

- The Legal Aid that may be granted shall consist of representation by an Advocate, and of such assistance as is usually given by them to other litigants in respect of steps preliminary or incidental to any legal proceeding and also for instituting, prosecuting, or defending any suit, proceeding, case, appeal or revision therefrom or, in respect of any interlocutory application or appeal or revision therefrom in any Court of law or Tribunal or before any revenue basis of contributions made by the persons for whom legal aid is granted, as may be decided by the appropriate Legal Aid Committee.

## **19. Relationship between Advocate and the client.**

- The fact that the services of an Advocate, are given by way of legal aid shall not affect the relationship or right of such Advocate, Pleader or Legal Practitioner between him and his client or any right or privilege arising from such relationship.

## **20. Secrecy.**

- No information furnished for purpose of receiving legal aid to the Bar Council, Legal Aid Committee or any Sub-Committee or Legal Aid Centre or to any Officer or person on their behalf in respect of the case of a person seeking legal aid shall be disclosed to any person or authority except for the purpose of due performance of the functions connected with the case or cases in question except with the consent of the person applying for or receiving legal aid.

## **21. Appeal.**

- In case where applications for legal aid are refused or granting of further legal aid is withdrawn by the Legal Aid Committee and in similar other situations the person aggrieved may appeal, if the decision is of a Sub-Committee to the District Legal Aid Committee and if the decision of the District Legal Aid Committee to the State Legal Aid Board within 15 days from the date of the receipt of the communication of such order to him and the District Legal Aid Committee or the State Legal Aid Board as the case may be shall dispose of such appeals as expeditiously as possible after giving the person concerned a hearing and the decision of the appellate body in that respect shall be final.

## **22. Association of law students with legal aid scheme.**

- It shall be within the jurisdiction of the State Legal Aid Board and also of the District Legal Aid Committee to consider whether the services of the final year law students should be associated profitable with the Legal Aid work and if so desired, they shall be entitled to formulate appropriate scheme for associating specified number of qualified student with the Legal Aid Scheme.

## **23. Extension of legal aid programme to districts and Tahasils.**

- Before introducing or extending the provisions of the Legal Aid Scheme to any revenue District of part thereof the State Bar Council shall take into consideration the resources it will be in a position to collect either in terms of money or in terms of free services of the Advocates and if the Bar Council is of the opinion that a District Legal Aid Committee will be in a position to take up at least 24 cases annually and will be able to render legal advice in similar number of cases annually, only in what event a District Legal Aid Committee in charge of one or more Revenue Districts shall be set up. The State Bar Council and also the Legal Aid Board shall endeavour to extend the Legal Aid Schemes up to the Taluk/Sub-Divisional Legal on the basis of phased programmes and on being sure that scheme once extended to a particular District or part thereof will work properly and efficiently.

## **24. Framing of necessary rules and regulations.**

- State Bar Council Legal Aid Committee shall frame all necessary rules and regulations, including rules regarding.(a)Constitution formation, reconstitution, and/or selection of members of different Committee mentioned in these rules.(b)Filling up of vacancies in such Committee.(c)Regarding elections of Chairman, Executive Chairman, Secretary, Treasurer and other Office bearers wherever and whenever necessary.(d)Providing for appointment of necessary staff and to fix salary, allowances, honorarium in respect of such members of staff.(e)Providing for fees or honorarium to be paid to Advocates and other Lawyers doing legal aid cases.(f)Providing for necessary form for appeals against decision of Legal Aid Bodies refusing to grant or deciding to grant aid advice as the case may be in the limited form, and to prescribe period of limitation and speedy decision of such appeal.(g)Providing for running the Legal Aid Office and for maintainable of discipline and prescribing duties in respect of staff.(h)To frame all necessary rules, regulations to carry out the total legal aid scheme and programmes for organizing training camps, workshops, etc. wherever and whenever necessary.(i)Prescribing necessary forums regarding applications for grant of legal aid and all other matters connected therewith forums for preferring appeals, registers for maintaining records accounts and all other forms that may be necessary to run the legal aid schemes envisaged by these rules.(2)In finalising such rule or in making any amendments thereof State Bar Council Legal Aid Committee shall be consulted and opinion, if any, expressed by such Committee shall be considered.

## **of Fees/honorarium to Advocates/lawyers Appearing in Legal Aid Cases**

Until amended all fees/honorarium to Advocate/Lawyers in the penal shall be paid in terms of schedule hereunder)

- 1. An Advocate who is required to attend the Office of the Legal Aid Committee after Court hours and do the work of the Committee on working days will be paid such fees as may be fixed by the Committee from time to time.**
- 2. An Advocate whose name is on the junior panel drawn by the State Bar Council Legal Aid Committees and who is assigned Legal Aid brief and who works an Advocate on record till the State of admission either in a suit, complaint, revision or appeal shall be Rs. 125/- consolidated.**
- 3. If a junior advocate in the panel aforesaid works after the admission stage, and looks after the whole proceedings (suit, complaint, revision or appeal) and appears at the final hearing of the case, he will get Rs. 125/- consolidated. But the Chairman of the State Bar Council Legal Aid Committee will be entitled to pay him upto Rs. 250/- in his opinion, the quantum of work put in and the total period taken for the case mentioned herein above so requires, he will be entitled to pay the Advocate concerned such amount for reasons to be recorded in writing by him.**
- 4. An Advocate or lawyer doing a Legal Aid case, namely takes Legal Advice from the Legal Aides person draws up plaint or petition files the same in Court he will get Rs. 50/-**
- 5. Senior Advocates whose names are included in the Senior Advocates panel shall be expected to do the hearing at the final stages free of professional charge. In special cases, however, the Legal Aid Committee concerned shall be entailed to engage a Senior Advocate on payment of such minimum as may be decided upon by the Committee.**