

CONSOLIDATED TO 1 DECEMBER 2014

LAWS OF SEYCHELLES

LEGAL AID ACT

CHAPTER 110

LEGAL AID ACT

[1st February, 1986]

Act 21 of 1985

ARRANGEMENT OF SECTIONS

LEGAL AID ACT

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LEGAL AID CERTIFICATE: Rule 10(5)

Short title

1. This Act may be cited as the Legal Aid Act.

Interpretation

2. In this Act-

"civil proceeding" means a proceeding before any court in the exercise of its jurisdiction, both original and appellate, in civil matters;

"disposable capital or disposable income" means the capital or income computed in accordance with rules made under this Act;

"Fund" means the Legal Aid Fund established under section 10;

"Judge" means a judge of the Supreme Court;

"Registrar" means the Registrar of the Supreme Court.

Civil proceedings

3. (1) Subject to this Act, legal aid shall be available to any person-

(a) in any civil proceeding, not being a civil proceeding exempted by rules made under this Act; and

(b) in taking any steps to assert or dispute a claim which may give rise to a civil proceeding for which legal aid shall be available under paragraph (a) but where the question of instituting, defending or being a party to such civil proceeding has not yet arisen.

- (2) Legal Aid shall consist of -

(a) in relation to subsection (1)(a), representation by legal practitioner including such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to a civil proceeding or in arriving or giving effect to a settlement to bring an end to such proceeding;

(b) in relation to subsection (1)(b), the assistance of the legal practitioner in advising on the steps necessary to assert or dispute the claim.

Financial limitation

4. (1) For the purpose of section 3, legal aid shall be granted to any person whose disposable income does not exceed the level of subsistence declared for the time being under section 23 of the Social Security Act.

Provided that where the value of his disposable capital exceeds the amount fixed by rules made under this Act, he may be refused legal aid if it appears that he is capable of prosecuting or defending the civil proceeding or taking steps to assert or dispute the claim without legal aid under this Act.

(2) Subject to section 5, a person who is granted legal aid under subsection (1) shall not be liable to pay any contributions to the Fund and may be exempted from paying any fees of court.

(3) For the purposes of section 3, legal aid may, subject to subsection (4), be granted to any person whose disposable income or disposable capital exceeds the amount specified in subsection (1).

(4) A person granted legal aid under subsection (3) shall make such contributions to the Fund as he may, having regard to the expenses likely to be incurred by the Fund in granting legal aid to him, be required to make.

Costs

5. (1) Where any person who has been granted legal aid under section 4(1) in a civil proceeding is awarded costs in that proceeding, the court awarding the costs may, of its own motion or on application, direct that the costs when recovered shall be paid to the Fund.

(2) Where any person who has been granted legal aid under section 4(1) in a civil proceeding is ordered by court to pay the costs of any other party to that proceeding, not being a party who has been granted legal aid under this Act, such costs shall be paid from the Fund.

Criminal proceedings

6. (1) Subject to this Act, legal aid shall be available to any person charged with an offence and shall relate to proceedings in any court in the exercise of original or appellate jurisdiction in criminal matters in respect of that offence.

(2) For the purposes of subsection (1), legal aid shall consist of representation by a legal practitioner in the preparation and conduct of the defence in respect of the offence and, in relation to proceedings by way of appeal, in the preparation and conduct of the appeal.

Financial circumstances

7. Where the financial circumstances of a person charged with an offence are such that he is unable without undue hardship to himself or his dependants to meet the expenses of proceedings in relation to that offence-

(a) he shall, where the offence is murder or any other capital offence, be granted legal aid;

(b) he may, in any other case, having regard to the gravity of the offence or other exceptional circumstances, be granted legal aid.

Application

8. (1) An application for legal aid shall be made to a Judge by or on behalf of the person seeking legal aid.

(2) Rules made under this Act may provide for matters in relation to an application under subsection (1).

Certificate

9. (1) Where a Judge to whom an application is made under section 8 is satisfied that a person seeking legal aid is qualified to receive legal aid under this Act, he shall grant him a certificate.

(2) Where a Judge refuses to grant a certificate in respect of any proceedings before the Court of Appeal, a Justice of Appeal may, on a consideration of the facts placed before him, grant such certificate.

(3) A certificate granted under this section shall be authority -

(a) for the person to whom it is granted, to receive legal aid; and

(b) for the Registrar, to meet out of the moneys of the Fund the expenses of legal aid.

Fund

10. (1) There shall be a fund to be called the Legal Aid Fund.

(2) The Fund shall consist of -

(a) moneys provided by Government;

(b) moneys paid by way of contributions and costs under this Act.

(3) Moneys of the Fund shall be applied in meeting the expenses of legal aid under this Act or in making any payments authorised by this Act.

(4) The Registrar shall keep proper accounts of the Fund and shall before the 30th January each year prepare, in respect of the immediately preceding year, a statement of accounts.

(5) The accounts and the statement of accounts of the Fund shall be audited by the Auditor-General.

Rules

11. (1) The Chief Justice may make rules for carrying into effect the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), rules may provide for -

(a) the procedure for making and determining applications for legal aid;

(b) manner of computation of disposable income and disposable capital;

(c) the civil proceedings to be exempted from the application of this Act;

(d) the preparation of lists of legal practitioners to be assigned for legal aid and the

manner in which they are to be assigned;

(e) the fees to be paid to legal practitioners assigned for legal aid;

(f) the contributions payable to the Fund;

(g) matters which by this Act are required or permitted to be prescribed.

Offences

12. (1) If any person applying for or receiving legal aid under this Act -

(a) knowingly makes a false statement in any application made under section 8; or

(b) knowingly makes a false statement before a judge or the Registrar in connection with such application,

he is guilty of an offence and liable on conviction to a fine of R.2,000.

(2) A court in convicting a person for an offence under subsection (1) may, in addition to any penalty imposed under that subsection, direct such person to pay any expenses incurred by the Fund in granting legal aid to him to the Fund.

Application of this Act

13. Notwithstanding anything in any other written law, this Act of this Act shall apply to or in respect of the provision of legal aid for the purposes stated in this Act.

LAWS OF SEYCHELLES

LEGAL AID ACT

CHAPTER 110

SUBSIDIARY LEGISLATION: SECTION 11: LEGAL AID RULES

[3rd March, 1986]

S.I. 22 of 1986
S.I. 39 of 1990
S.I. 32 of 2001
S.I. 22 of 2012
S.I. 48 of 2014

Citation

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

Exempted civil proceedings

2. Civil proceedings in respect of the following matters are exempted from the application of the Act -

- (a) defamation;
- (b) breach of promise of marriage.

Disposable capital

3. For the purpose of the Act, the disposable capital of a person capital means the aggregate value of the capital assets owned by him in the month preceding the month in which the application for legal aid is made, reduced by -

- (a) the value of his dwelling house and household furniture;
- (b) the value of his tools of trade; and
- (c) the value of any other assets which may be exempted by the judge in the computation of the disposable capital.

Disposable income

4. For the purposes of this Act, the disposable income of a person means the aggregate income of that person for the month preceding the month in which the application for legal aid is made, reduced by the following payments (if any) made by him in that month -

- (a) tax on income or profits;
- (b) rent;
- (c) contributions under the Social Security Act;
- (d) life insurance premiums;
- (e) repayment of capital of and interest on loans;
- (f) maintenance of dependants;
- (g) payment in respect of any court order; and
- (h) any other disbursement which may be allowed by the judge.

Assets and income of spouse

5. In computing the disposable capital or disposable income of a person, the judge may take into consideration the assets and the income of that person's spouse.

Financial limits

6. Legal aid may be refused under section 4(1) of the Act if the disposable capital of the person seeking legal aid exceeds R.1500 in value.

Application for legal aid

7. (1) An application for legal aid may be made in writing or orally by or on behalf of the person seeking legal aid.

(2) An application for legal aid shall contain the following particulars -

- (a) the name and address of the person seeking legal aid;
- (b) whether the person is single, married, a widow or a widower;
- (c) the person's occupation;
- (d) the income of the person and that of the person's spouse, for the month preceding the month in which the application is made;
- (e) particulars of payments listed under rule 4;
- (f) name, age and relationship of the person's dependents;
- (g) list of the person's assets and those of the person's spouse and their value;
- (h) where the person is under 18 years in age, whether the person's parents or guardian would be willing to provide or could provide the person legal aid at their expense;
- (i) nature of the matter for which legal aid is sought;
- (j) particulars of previous legal aid granted, if any.

Oral application

8. (1) A person making an application for legal aid orally may do so by furnishing to the Registrar the particulars required to be contained in the application by rule 7.

(2) Where the application is made orally, the Registrar shall record the particulars furnished under sub-rule (1) and obtain the signature of the person making the application.

Duties of the Registrar

9. (1) The Registrar may require a person applying for legal aid to furnish documentary evidence in support of the particulars contained in his application. This may take the form of a report from the SPPF District Branch Office in the case of unemployed or self-employed applicants or a statement of wages from the applicant's employers.

(2) Where the application conforms to rule 7 or rule 8 and after obtaining documentary evidence

(if any) under sub-rule (1), the Registrar shall submit the application to a judge.

Powers of judge

10. (1) An application for legal aid shall be considered by a judge in Chambers.

(2) A judge may require the person seeking legal aid to appear before him and furnish such other information as he may require in connection with the application.

(3) A judge may call for and receive any report from any person concerning the means of the person seeking legal aid:

Provided that where such report discloses matters adverse to the application, he shall give the person seeking legal aid an opportunity of contradicting such report.

(4) Where a judge is satisfied that the person seeking legal aid is eligible for such aid under the Act he shall grant that person a certificate.

(5) A certificate granted under sub-rule (4) shall be in the Form in the Schedule.

(6) Where a judge is not satisfied that the person seeking legal aid is eligible for such aid under the Act, he shall refuse the application and state the reasons in writing for the refusal.

(7) Where a certificate is granted under sub-rule (4) to any person, the judge shall, having regard to any representations made by that person, assign out of the list prepared under rule 12 a legal practitioner whose services that person shall be entitled to.

(8) Where a certificate is granted to a person in the circumstances set out in section 4(3) of the Act, the judge shall determine the amount of contribution payable to the Fund by that person.

Records of applications

11. The Registrar shall keep a record of-

- (a) each application for legal aid made under the Act;
- (b) the determination of the judge on that application;
- (c) the nature of the proceedings in respect of which the application is made;
- (d) the number of the certificate;
- (e) the name of the legal practitioner assigned and the fees paid to him;
- (f) any contributions recovered in respect of the certificate;
- (g) any moneys by way of costs paid to or paid out of the fund in respect of the certificate.

List of legal practitioners

12. (1) The Registrar shall keep a list of legal practitioners who shall be requested in order of rotation to provide their services for persons seeking legal aid under the Act.

(2) The name of any legal practitioner may be removed from the list prepared under sub-rule (1) by the direction of the Chief Justice.

(3) The list kept under sub-rule (1) shall be available for inspection by any person to whom a certificate has been granted under this Act.

Fees

13. (1) The fees payable out of the Fund to any legal practitioner assigned under rule 10(7) shall be-

(a) for steps preliminary to institution of civil proceedings-

(i) in the Supreme court - SCR.750.00;

(ii) in the Magistrates' Court - SCR.500.00;

(b) for conduct of proceeding upon filing of claim or defence until determination of the suit including all interlocutory proceedings or post judgment proceedings in civil proceedings -

(i) in the Supreme Court - SCR.5000.00;

(ii) in the Magistrates' Court - SCR.3500.00;

(c) For the conduct of an appeal-

(i) from a Magistrates Court, Tribunal or other such subordinate body -
SCR5,000.00

(ii) from the Supreme Court - SCR7,500.00

(d) for the defence of any person in a criminal proceedings including all interlocutory proceedings

(i) for a person charged with murder, piracy, or other offence(s) whose maximum punishment is life imprisonment - SCR20,000.00

(ii) where an attorney acts for more than one person on one indictment in (i) above he shall be entitled to an additional sum for such additional accused person or persons - SCR7,500.00

(iii) for a person charged with any other offence(s) before the Supreme Court -
SCR7,500.00

(iv) for additional persons charged on the same indictment, represented by the same attorney - SCR5,000.00

(v) for a person charged with a criminal offence(s) before a magistrates court - SCR5,000.00

(vi) for additional persons charged on the same charge sheet as in (v) above before a magistrates court - SCR2,500.00

(1A) A legal practitioner who makes displacement to Praslin in respect of legally assisted cases may claim for reimbursement of expenses necessarily and reasonably incurred in respect of representing legally assisted clients on Praslin for the following –

(a) transportation;

(b) meals; and

(c) any other expenses which are justified in particular circumstances.

Subrule (1A) inserted by SI 48 of 2014 with effect from 14 July 2014.

(1B) Every claim for reimbursement of expenses incurred under subrule (1A) shall be supported by a receipt to satisfy the clerk that the expenses has been incurred.

Subrule (1B) inserted by SI 48 of 2014 with effect from 14 July 2014.

(2) The fees payable out of the funds to any Legal Practitioner assigned shall be at the full and final determination of a civil or criminal proceedings.

(3) In exceptional cases with the consent of the Chief Justice the trial judge or magistrate may adjust the fees to take into account such exceptional or extra ordinary circumstances compelling the adjustment of the fees. Delay, repetitive appearances, or other such similar circumstances in the conduct and disposal of the matter at hand shall not amount to exceptional circumstances.

Subrule (4) repealed by SI 48 of 2014 with effect from 14 July 2014.

Schedule - Legal Aid Certificate

LEGAL AID ACT

(Cap 110)

LEGAL AID CERTIFICATE: RULE 10(5)

Upon considering the application made by of for legal aid under the Act, I certify that is entitled to legal aid under the Act.

Legal aid is granted for the purpose of legal practitioners is assigned to provide legal aid under this certificate.

Dated this day of 19

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JUDGE
