

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

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CHAPTER IX

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE**

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Ordinances
1 of 2001.
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An ordinance to make provision in criminal cases for the granting of legal aid to persons of insufficient means, to enable the cost of such legal aid to be defrayed out of official sources and for purposes connected therewith.

[1 June 2001]

PART I—PRELIMINARY

Short title.

1. This ordinance may be cited as the Legal Aid (Criminal Proceedings) Ordinance.

Interpretation.

2. In this ordinance, unless the context otherwise requires,—

“certificate” means a certificate for legal aid;

“indictable offence” means an offence triable on information by the Supreme Court.

PART II—LEGAL AID IN CRIMINAL PROCEEDINGS

Legal aid for persons
committed for trial.

3.—(1) Any person committed for trial for an indictable offence shall be entitled to legal aid in the preparation and conduct of his or her defence at the trial and shall have counsel assigned for that purpose if a certificate is granted in respect of that person under this section.

(2) A certificate may, subject to the provisions of subsection (3), be granted in respect of any person

(a) by the committing magistrate, upon the person being committed for trial; or

(b) by the Chief Justice, at any time after reading the record of the preliminary inquiry (whether or not an application has previously been made to the committing magistrate).

(3) A certificate shall not be granted under this section in respect of any person unless it appears to the committing magistrate or the Chief Justice that his or her means are insufficient otherwise to obtain legal representation.

Legal aid on appeal.

4. The Chief Justice or the Court of Appeal may at any time assign counsel to an appellant in any appeal, or proceedings preliminary or incidental to an appeal, in which, in the opinion of the Chief Justice or the Court of Appeal, it appears desirable in the interests of justice that the appellant should be legally represented and that he or she has insufficient means otherwise to obtain legal representation.

Legal aid in
Magistrate’s Court.

5. Any person who appears or is brought before an examining magistrate or the Magistrate’s Court charged with an

indictable offence or an offence which is punishable on summary conviction with imprisonment, other than imprisonment in default only of payment of a fine, may apply to the magistrate or Court, as the case may be, for legal aid in the preparation and conduct of his or her defence before that magistrate or Court and, if on such application the magistrate or Court is satisfied that the applicant has insufficient means otherwise to obtain legal representation, the magistrate or Court shall grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

6.—(1) Any person who has been convicted by the Magistrate's Court of an offence which is punishable with imprisonment other than imprisonment in default only of payment of a fine and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such Court for legal aid for the preparation and conduct of such appeal and, if on such application the Court is satisfied that the applicant has insufficient means to enable him or her to obtain legal representation for the purpose aforesaid, the Court shall grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

Legal aid for appellants in certain cases.

(2) Any person who has been convicted by the Magistrate's Court of any offence other than an offence mentioned in subsection (1) and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such Court for legal aid for the preparation and conduct of such appeal, and if on such application the Court is satisfied that the applicant has insufficient means to enable him or her to obtain legal representation for the purpose aforesaid and that by reason of exceptional circumstances it is desirable in the interests of justice that he or she should have such legal aid, the Court may grant in respect of the applicant a certificate which shall entitle him or her to have counsel assigned for that purpose.

(3) Where, on an application made under subsection (1) or subsection (2), the Court has refused to grant such certificate, the applicant may apply to the Chief Justice and the Chief Justice shall have the like power, exercisable on the like grounds, of granting a certificate as the Supreme Court or the Magistrate's Court.

(4) The provisions of this section shall apply *mutatis mutandis* to any applicant or respondent in any proceedings by way of mandamus, habeas corpus or case stated or to any appellant or respondent in any criminal case or matter or to any person brought before the Magistrate's Court on

extradition proceedings.

Application by letter.

7.—(1) An application for legal aid under section 5 or 6 may be made by letter and may be so made by any person arrested or summoned for an offence, as well as by a person charged with an offence before the Magistrate's Court or examining magistrate.

(2) A letter applying for legal aid by virtue of this section shall be addressed to the Registrar of the Magistrate's Court and shall contain particulars of the offence charged and the grounds of the application.

(3) Where an application is made by virtue of this section, any magistrate shall have the like power, exercisable on the like grounds, of granting a certificate as the Magistrate's Court or examining magistrate would have if the applicant had been charged with an offence before them.

(4) The refusal of a certificate on an application made by letter shall not prevent the applicant being granted a certificate at the hearing.

Duty to give information.

8.—(1) Before a person is granted legal aid under any of the sections contained in this Part, he or she may be required to furnish a written statement in the prescribed form set out in the schedule about matters relevant for determining whether his or her means are insufficient otherwise to obtain legal representation.

(2) A person who, in furnishing a written statement in accordance with the provisions of subsection (1) or in applying for legal aid in accordance with the provisions of this Part, knowingly makes any false statement or false representation is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one hundred days.

Counsel.

9.—(1) Subject to this section, a list of barristers willing to act for persons receiving legal aid under this Part shall be prepared and maintained in accordance with the directions of the Chief Justice.

[(2) Every barrister named in the list referred to in subsection (1) shall be classified according to his or her experience and skill, as senior counsel, intermediate counsel or junior counsel, for the purpose of this ordinance and any rules made thereunder.]

(Replaced by Ordinance No. 11 of 2002)

(3) The Chief Justice may at any time approve and direct the inclusion on the list of such further counsel [and the classification of counsel as referred to in subsection (2),] as he or she may think fit.

(Amended by Ordinance No. 11 of 2002)

(4) The name of any legal practitioner may be removed from the list for good and sufficient cause on the direction of the Chief Justice.

(5) Counsel shall be assigned to any person applying for legal aid under this Part in such manner as the Chief Justice may direct and shall be remunerated from official sources in accordance with such scale as may be prescribed by rules made by the Governor.

10. Where counsel has been assigned to any person under the provisions of section 3 or section 6, that person shall be entitled to receive without charge

Copies of record of preliminary inquiry etc.

- (a) if he or she has been committed for trial, a copy of the record of the preliminary inquiry; or
- (b) if he or she is appealing against conviction or sentence by the Magistrate's Court, a copy of the notes of the proceedings at the trial before that Court, and, in either case, a copy of any documents which were exhibits in such proceedings.

11. The Chief Justice may make such rules as appear to him or her necessary or desirable for giving effect to this Part.

Rules.

PART III—GENERAL

12. Legal aid shall consist of representation by counsel assigned by the Registrar, including all such advice and assistance as is usually given by counsel in the steps preliminary or incidental to any criminal proceedings against the applicant to which Part II applies.

Nature of legal aid.

13. The fact that the services of counsel are provided by way of legal aid shall not affect the relationship between, or the rights of, barrister and client or any privilege arising out of such relationship.

Relationship etc. of barrister and client not affected.

14. Counsel assigned to represent a person with respect to any criminal proceedings to which Part II applies shall not accept payment or any other advantage or benefit by way of remuneration for the legal services rendered by him or her other than the fees and expenses authorised to be paid by the provisions of this ordinance and rules made thereunder.

Counsel not to accept remuneration other than as authorised.

15. Any sum received by a person to whom legal aid has been granted by way of costs or compensation against the prosecution or the police shall be applied in the first place towards reimbursement of the costs of legal aid provided from official sources.

Costs or compensation applied towards reimbursement of legal aid.

[SCHEDULE

(section 8(1))

Declaration of assets, liabilities and income relevant to application for grant of legal aid in criminal proceedings

A Statement of assets

- 1. Bank accounts—give particulars and total credit value in \$NZ
 -
 -
 - \$NZ.....
 - 2. Building societies and other financial institutions of any kind—give details and state present cash value
 -
 -
 - \$NZ.....
 - 3. Cash in any currency wherever held—give particulars and total current value in \$NZ
 -
 -
 - \$NZ.....
 - 4. Interests in land beyond Islands—give particulars and nett market value after repayment of mortgage(s), other charges and costs
 -
 -
 - \$NZ.....
 - 5. Other assets, excluding personal clothing, family and household belongings, and tools or vehicles of trade—give particulars and present sale value
 -
 -
 - \$NZ.....
- Total value \$NZ**

B. Statement of liabilities and expenses

1. Debts charged upon any asset listed above—
give particulars and present loan balance
.....
.....
..... \$NZ.....
 2. Cost of living in the Islands or elsewhere
estimated per month including support of spouse
or dependant children if appropriate—give
particulars of dependants
.....
.....
..... \$NZ.....
 3. Unsecured debts of any kind, including tax, duty
and fines—give particulars and specify date for
repayment by instalments or as lump sum
.....
.....
..... \$NZ.....
- Total monthly payments** \$NZ

C Statement of income

1. Income from employment—state whether gross
or tax-paid—give amount of tax
.....
.....
..... \$NZ.....
2. Other benefits from employment—describe
benefit and give cash value per month,
e.g. house, car etc.
.....
.....
..... \$NZ.....
3. Self-earned income—give particulars of work
and total earnings by calculating monthly
average over past twelve months, state whether
gross or after payment of expenses caused by the
production of income and payment of tax
.....
.....
..... \$NZ.....

4. Other sources of income, including rent received, interest from mortgages or other loans, an interest in any trust or partnership, dividends from shares, stock or other investment of any kind—state whether tax-paid

.....
.....
..... \$NZ.....

Total monthly income \$NZ

Note: I understand that I must disclose my assets, property and sources of income both within the Islands and elsewhere, including any money or property which may be held by another person or body on my behalf or as trustee or nominee for my benefit.

I,
(full name)

of
(place of residence)

hereby make this declaration in support of my application for Legal Aid under the Legal Aid (Criminal Proceedings) Ordinance and do solemnly and sincerely declare that to the best of my knowledge and belief the foregoing is a true and correct statement of my financial means. I acknowledge that I am aware that if it should contain any false statement or representation knowingly made I would be guilty of an offence punishable on conviction by imprisonment for a term not exceeding one hundred days.

Dated the day of 20

.....
Applicant

.....
Witness to signature of applicant
(Registrar/Deputy Registrar)]

(Schedule repealed and replaced by Ordinance No. 7 of 2003)

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE
LEGAL AID (CRIMINAL PROCEEDINGS) RULES**

**Rules made by the Chief Justice in exercise of the power
conferred by section 11 of the Legal Aid (Criminal
Proceedings) Ordinance**

[1 June 2001]

1. These rules may be cited as the Legal Aid (Criminal Proceedings) Rules.

Short title.

2.—(1) Lists shall be kept containing the names of legal practitioners who are willing to be assigned in pursuance of certificates for legal aid granted under Part II of the ordinance in accordance with the following provisions

Lists of counsel willing to be assigned.

- (a) the Registrar of the Supreme Court shall keep a list of legal practitioners who are willing to appear as counsel in trials in the Supreme Court for the purposes of section 3 of the ordinance and who are willing to appear as counsel in appeals to the Supreme Court and the Court of Appeal for the purposes of sections 4 and 6 of the ordinance;
- (b) the Registrar of the Magistrate's Court shall keep a list of legal practitioners who are willing to appear as counsel in committal proceedings in the Magistrate's Court for the purposes of section 5 of the ordinance.

(2) The name of any legal practitioner shall be removed from all or any of such lists either on the application of the legal practitioner or for good and sufficient cause by direction of the Chief Justice.

3. Lists of all applications for a certificate for legal aid under Part II of the ordinance shall be kept by the Registrar of the Supreme Court and the Magistrate's Court respectively and there shall be entered in such lists the following particulars

Lists of applications for legal aid certificates.

- i. the name of the applicant;
- ii. the name and subject of the proceedings in respect of which legal aid is applied for; and
- iii. the date and result of the application.

4. The Chief Justice, Court or Magistrate granting a certificate for legal aid shall, as soon as may be after granting a certificate and after taking into consideration any representations made by the person in respect of whom it is granted, forward the certificate to the Registrar who shall assign to him or her from one of the lists referred to in rule

Assignment of counsel.

2 as may be relevant counsel to whose services that person shall be entitled.

Form and disposal of.

5. (1) A certificate for legal aid under Part II of the ordinance shall be in the form set out in the Schedule to these rules with such adaptations or amendments as may be necessary.

(2) Whenever a certificate for legal aid is granted by a committing magistrate under section 3 of the ordinance or by the Magistrate's Court under section 6 of the ordinance, the Registrar of the Magistrate's Court shall, as soon as may be, send the certificate to the Supreme Court together with the name of the counsel assigned.

SCHEDULE

(Rule 5(1))

Legal Aid Certificate under Part II of the Legal Aid (Criminal Proceedings) Ordinance 2001

I, Chief Justice/Magistrate,
having considered the application ofand
being satisfied that he/she has insufficient means to obtain legal
representation, do hereby grant him/her this Certificate for Legal Aid

Dated this day of 20.....

.....
Chief Justice/Magistrate
Supreme/Magistrate’s Court
Pitcairn, Henderson, Ducie and
Oeno Islands

**LEGAL AID (CRIMINAL PROCEEDINGS)
ORDINANCE
LEGAL AID (FEES AND EXPENSES) RULES**

**Rules made by the Governor in exercise of the power
conferred by section 9(5) of the Legal Aid (Criminal
Proceedings) Ordinance to provide for the remuneration
of assigned counsel**

[1 June 2001]

- Short title. **1.** These rules may be cited as the Legal Aid (Fees and Expenses) Rules.
- Interpretation. **2.** In these rules unless the context otherwise requires—
“counsel” means a barrister or solicitor entitled to appear and act as an advocate before the Supreme Court, the Court of Appeal or the Magistrate’s Court;
“taxing officer” means the Registrar of the Supreme Court, the Registrar of the Court of Appeal or the Registrar of the Magistrate’s Court, as the case may be.
- Taxation of fees. **3.** Subject to the other provisions of these rules, the fees to be allowed for counsel assigned after the commencement of these rules under any of sections 3, 4, 5 and 6 of the ordinance shall be taxed in accordance with or within the limits set out in the Schedule.
- Factors relevant to taxation. **4.** In taxing the sums payable to counsel under these rules, the taxing officer shall take into account all the relevant circumstances, including the nature, importance, complexity and difficulty of the work and the time involved and including time lost as a result of any adjournment, other than an adjournment for the convenience of counsel.
- Assignment to more than one person. **5.** Where counsel has been assigned to two or more persons whose cases are heard together, the taxing officer shall allow the full sum payable to counsel in respect of the person to whom the highest fees would have been allowed if the cases had been heard separately and shall allow such amount as appears proper for the second and each other of those persons not exceeding for the second person 40% and for each other person 20% of the amount allowed for the first.
- Queen’s Counsel. **6.—**(1) The fees payable to counsel under these rules may, in the case of Queen’s Counsel, be increased by one half.
(2) Subject to any direction of the Chief Justice in any case, every such assignment shall be to Queen’s Counsel alone without junior counsel.

7.—(1) In addition to the fees payable under these rules, there shall be allowed to counsel all disbursements reasonably and necessarily made by him or her in connection with the defence or the appeal as the case may be.

Disbursements.

(2) Notwithstanding subrule (1), counsel shall not, except in case of dire necessity, make disbursements in excess of \$NZ 100 without the previous approval in writing of the taxing officer.

8. Notwithstanding rule 3, the judge or magistrate presiding in the Court of Appeal, the Supreme Court or the Magistrate's Court, as the case may be, may at the conclusion of a case, on application, certify that the case was one of exceptional difficulty or complexity, and in that event the taxing officer shall allow such fees as appear to him to represent reasonable remuneration for the work done by counsel but so that such fees shall not be more than twice the fees prescribed in the Schedule.

Exceptional cases.

9. Counsel aggrieved by a decision of the taxing officer may within 30 days apply to the Supreme Court for a review of the decision and the determination of the Chief Justice thereon shall be final.

Appeals.

*Legal Aid (Fees and Expenses) Rules***SCHEDULE**

[(Rule 3)]

Fee No.	Hourly Rate	Fee
1. On assignment (inclusive of taking instructions)		
(a) in the Magistrate's Court	senior	[\$225]
(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
2. For any necessary attendance upon the defendant/appellant		
(a) for the first hour or part thereof	senior	[\$225]
(b) for each subsequent hour or part thereof	intermediate junior	[\$179] [\$141]
3. For attending any Chambers hearing or pre-trial conference in the Magistrate's or Supreme Court or Court of Appeal	senior intermediate junior	[\$225] [\$179] [\$141]
4. For appearing in the Magistrate's or Supreme Court or Court of Appeal per half day	senior intermediate junior	[\$900] [\$716] [\$564]
5. Preparation time for and including any Chambers hearing, pre-trial conference, contested bail application, plea of guilty, committal proceeding, sentencing, appeal or trial		
(a) in the Magistrate's Court	senior	[\$225]
(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
6. For instruction of other counsel (flat fee)		
(a) in the Magistrate's Court	senior	[\$225]
(b) in the Supreme Court or the Court of Appeal	intermediate junior	[\$179] [\$141]
7. Travel and lost time	senior intermediate junior	[\$163] [\$129] [\$101]
[7A. Preparation for any appeal or application for leave to appeal to the Privy Council (per hour)	senior intermediate junior	[\$225] [\$179] [\$141]
7B. For appearing in the Privy Council (fee per half day)	senior intermediate junior	[\$900] [\$716] [\$564]
7C. For time spent in relation to Privy Council appearances: such amount approved in advance by the taxing officer.]		

(Inserted by Rules 04.09.04)**(Amended by Rules dated 04.01.05 and by Rules dated
15.09.06)**

8. Special circumstances

In any case where, on the written application of counsel, the taxing officer is satisfied that an above-scale payment is justified or appropriate, he or she may approve the application in such terms as considered fair and reasonable or he or she may refer the matter to the Chief Justice for directions or determination.]

(Replaced by Amendment Rules 2003)