

Chapter 8

Guidance Notes to Counsel Handling Criminal Cases

1. Purpose

- 1.1 These guidance notes are intended to provide guidance on the salient points that you, as counsel, should pay attention to when advising the Director of Legal Aid (“the Director”) on the merits of a case or when acting on behalf of an aided person as assigned counsel.

2. Advice on Merits

- 2.1 You may be asked by the Director to give an opinion concerning the merits of an application for criminal legal aid and to advise on any question of law arising out of an application. You may also be asked to attend a Section 26A review hearing.
- 2.2 The fees payable shall be such sum as assessed under the Legal Aid in Criminal Cases Rules, Cap. 221.

3. Assignment under a Legal Aid Certificate

- 3.1 The Legal Aid Certificate (“the Certificate”) provides the authority for the Director to pay counsel and solicitors for acting for an aided person. Counsel should check the terms of the Certificate. If the Certificate is limited, payment will not be made for work done outside the scope of the Certificate.

4. Release from Court

- 4.1 You should seek approval from the Director before making an application to the Court to be released from all or part of a day’s hearing.

5. Conferences with Aided Persons

- 5.1 When assigned to conduct the defence for an aided person, you should hold at least one conference with the aided person before the Pre-trial Review and if there is no Pre-trial Review, before the day of the trial.

6. Application for Certificate of Exceptional Length and/or Complexity

- 6.1 Counsel seeking a certificate under Rule 21(2) or 21(3) of the Legal Aid in Criminal Cases Rules, Cap. 221 must comply with Practice Direction 13.1 which provides that the application should be made by letter to the trial judge or Court of Appeal, as the case may be, with a copy to the Director who may, within 7 days, make written representations in support of, or in opposition to, the granting of the certificate. You should notify the Director of any intended application as soon as possible.

7. Duty to Report to Director of Legal Aid

- 7.1 You must immediately notify the director upon becoming aware of the following proceedings being brought against you:
- (a) any professional disciplinary proceedings; and/or
 - (b) any criminal charges which involve dishonesty or which may bring the profession into disrepute. In case of doubt the offence should be reported.
- In addition you must inform the director of the outcome of such proceedings.

8. Transcripts

- 8.1 Your attention is drawn to Rules 13 and 63 of the Criminal Appeal Rules and Rule 20 of the Legal Aid in Criminal Cases Rules, Cap. 221, which provide for the release of transcripts by the Court free of charge for legal aid cases.

9. Duties of assigned counsel upon conclusion of assignment

9.1 *Application for costs*

- 9.1.1 You should consider making an application for costs at the end of the trial or hearing where circumstances warrant such an application to be made (Attorney General's Reference (No.1) of 1994).

9.2 *Application for a certificate under Section 32 of the Hong Kong Court of Final Appeal Ordinance*

- 9.2.1 In the event that an appeal is dismissed and you consider that "a point of law of great and general importance" is involved in the decision, you should make an application for a certificate in accordance with Section 32(2) and Practice Direction 2.2 or 4.3 as

the case may be. Should the Court decline to grant a certificate and in your opinion, this is a suitable case to apply to the Court of Final Appeal, the aided person should be advised to apply for legal aid.

9.2.2 In the event that an appeal is dismissed and you consider that “substantial and grave injustice” has been done in the case, the aided person should be advised to apply for legal aid to appeal to the Court of Final Appeal.

9.3 *Case Report and assessment of counsel's fees*

9.3.1 You should complete the Case Report Form and return it within 7 days of the conclusion of the case. When completing the Case Report Form, you should bear in mind Rule 9(a) of the Legal Aid In Criminal Cases Rules, Cap.221 requiring you to give a certificate to the Director as to whether or not in your opinion the aided person has reasonable grounds for an appeal against his conviction and/or sentence, and if so, settling those grounds.

9.3.2 When submitting the Fees Report Form you should forward the trial/appeal bundle, copy proofs of evidence, preparatory written work and where available notes of proceedings together with the Brief and any connected papers to enable the Director to determine the fees payable to you in accordance with the Legal Aid in Criminal Cases Rules, Cap.221.

10. **Protection of Personal Data**

10.1 Your attention is drawn to the Personal Data (Privacy) Ordinance, Cap. 486 (“PDPO”), in particular, “Principle 4 of Schedule I – Security of Personal Data”.

10.2 Pursuant to Part V of the PDPO, your opinions and comments concerning the applicant or the aided person and the merits of the case may be disclosed to the applicant or the aided person.