

Chapter 7 Guidance Notes to Solicitors Handling Criminal Cases

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1. The Legal Aid Certificate

1.1 Please read carefully the Legal Aid Certificate which governs your assignment as Solicitor for the legally aided client. The Director of Legal Aid will not be liable for any legal costs which are incurred for work done outside the scope of the Certificate.

2. Acknowledgment of Assignment

2.1 You should acknowledge within 7 days receipt of your assignment to the Director.

3. Obtaining instructions from the client and holding conference

3.1 You are required to obtain instructions from the client and to deliver the same to Counsel well before a conference is held with Counsel at your earliest convenience. You are also requested to arrange at least one conference with the client and his Counsel, and to complete preparation including negotiation with the Prosecution, all before the day of the Pre-trial Review and the trial and the appeal, as the case may be.

3.2 You are also requested to report to this Department not later than two weeks before the Pre-trial Review as to whether a statement has been taken from the client, witnesses interviewed and Counsel briefed, and conference with Counsel held.

4. Client failing to turn up and report on progress of the case

4.1 Please inform this Department immediately to discharge legal aid if the client fails to give instructions or, if on bail, unreasonably fails to attend to give instructions, or otherwise acts in a manner that adversely affects the proper discharge of your duties in the conduct and preparation of his defence.

4.2 You should report to the Director at regular intervals on the progress of the case.

5. Section 65B Notice and Section 65C Notice as per Sections 65B & 65C of the Criminal Procedure Ordinance

5.1 You are requested to act promptly upon receipt of a notice to admit agreed witness statements and/or notice to admit agreed fact, as per Sections 65B & 65C respectively of the Criminal Procedure Ordinance, so that the written agreement could be produced to the Court not later than the 1st day of the hearing, if not at the Pre-trial Review.



6. Identification Parade of Police Officers for Voire Dire Proceedings

6.1 If the defence case in the Voire Dire Proceedings is that of misconduct on the part of police officers practised on the defendant, and the defendant does not know the identity of the police officers involved, you are requested to take the following steps :-

- 6.1.1 to remind the defence Counsel of the necessity to hold an identification parade of police officers for the defendant in order to identify the said police officers; and
- 6.1.2 to arrange to have the said identification parade conducted at a mutually convenient place and day in the presence of the defence Counsel, without wasting the Court's time fixed for the hearing. An example of such a day would be 9:00 a.m. on the first day of the trial.

7. Engaging the Service of Interpreters/Translators

7.1 You are required to seek the prior approval of the Director before you engage an interpreter for statement-taking, holding conference, court attendance, or you engage a translator for obtaining written translation.

7.2 A list of non-government interpreters/translators registered with the Registrar of the High Court will be provided upon request to enable you to make appointment with the interpreter/translator directly. However, the fee note of the interpreter/translator should be delivered to us for our assessment and direct settlement. You are required to **certify** in writing the accuracy of the contents of each fee note before you deliver the same to us for settlement. It is therefore very important that you keep an accurate record of the actual number of working hours of the interpreters and the actual number of words produced in the translation, as the case may be.

7.3 The work of an interpreter is paid at government rate per working hour.

7.4 The work of a translator is paid at government rate per 100 words.

Computation of the working hours of an interpreter :

7.5 For a court hearing day which starts at 10:00 a.m. and breaks at 12:30p.m. for lunch and resumes at 2:30 p.m. for hearing in the afternoon and adjourns at 4:15 p.m., a breakdown of the working hours should be given in the following manner :

Morning session : from 10:00 a.m. to 12:30 p.m.

Actual working hours : 2 1/2 hours

Afternoon session : from 2:30 p.m. to 4:15 p.m.

Actual working hours : 1 hour 45 minutes

Total actual working hours for the day : 4 hours 15 minutes





8. Expert's Fees

- 8.1** Before incurring any expert's fees, you must seek the prior approval of the Director both as to the engagement of the particular expert concerned and as to the hourly rates and subject to a maximum agreed by the expert and the Director. You should advise the expert (including medical expert) that he is engaged on the basis that his fees are subject to the assessment of the Director, on the basis of work actually and reasonably incurred, and if the maximum is likely to be exceeded, further approval of the Director has to be sought beforehand.
- 8.2** A list of experts normally engaged by the Director will be provided upon request to enable you to engage the expert directly. However, the fee note of the expert should be delivered to us for our assessment and direct settlement. You are required to certify in writing the accuracy of the contents of each fee note before you deliver the same to us for settlement. It is therefore very important that you keep an accurate record of the work done, and the date and actual number of hours spent by the expert in Court or otherwise.
- 8.3** You have to notify the expert in advance that we do not pay "unused" court attendance appointment if you are in a position to cancel the appointment the day before. Therefore, you are required to keep a close watch of the progress of the trial in order to operate this system effectively. Expert's time must not be wasted as a result of poor case management. A demand note for a full-day attendance in Court instead of for one session (a.m. or p.m.) requires an explanation from you as an assigned solicitor.
- 8.4** In the case of a legally aided client who pays a legal aid contribution, you should explain to him that expert's fees are to be deducted from his legal aid contribution unless the Court awards costs in his favour upon the conclusion of the case.

9. Unusual and Excessive Expense

- 9.1** Approval from the Director must be sought before incurring any unusual expense whether or not such expenditure is made at the request of your legally aided client or Counsel, e.g. extensive photocopying, or excessive photocopying charges, engaging overseas witness, etc.

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

- 10.1** Counsel or solicitor seeking a Certificate under Rule 21(2) or 21(3) of the Legal Aid in Criminal Cases Rules, Cap. 221 has to comply with the relevant Practice Directions which provide, inter alia, that the application may 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 a Certificate. In addition, you should notify the Legal Aid Counsel in charge of the case verbally immediately thereafter to enable him to draw out a reply within the said 7 days.



11. Duty of assigned Solicitor/Counsel upon conclusion of a legal aid assignment

11.1 You are reminded of the following Judgments relating to order for costs :-

11.1.1 **R. v. LAI Shun-tak.** Mag. App. No. 607 of 1985 where it was decided that a successful accused or appellant is entitled to his costs unless it is shown that his acquittal or successful appeal is as a result of a legal technicality or that by his own actions he has brought the prosecution on himself.

11.1.2 In the **Attorney General's Reference (No. 1) of 1994**, the Court of Appeal held that, inter alia, where the accused has made a contribution under rule 16 or has incurred any expenses, e.g. private representation at any stage of the proceedings (including magistrates' Court), the Court may in its discretion award costs under the Section in favour of a legally aided accused.

11.2 Your attention is drawn to the obligations imposed upon you by **Rule 9 of the Legal Aid in Criminal Cases Rules, Cap. 221** and the **Practice Direction on Criminal Appeals to the Court of Appeal dated 31st December 1998**.

11.3 A copy of "Notice to Defendant as to Right of Appeal" is enclosed in our letter of assignment. You are required to serve it on your client immediately after his conviction/sentence regardless whether there are any arguable grounds for the appeal.

11.4 Report of Case and Assessment of Solicitor's Costs

11.4.1 A copy of Case Report Form and Fees Report Form are enclosed in our letter of assignment. You are required to complete the said forms and return them to the Director within 7 days upon the conclusion of the case.

11.4.2 The Solicitor's costs payable to you will be determined at the conclusion of the case in accordance with Legal Aid in Criminal Cases Rules, Cap. 221. Please indicate briefly in your Fees Report Form the work done and the time spent distinguishing the time spent in Court from time spent in preparation.

11.4.3 You are required to forward copy proofs of evidence, preparatory written work and where available notes of proceedings at the end of the trial to assist the Director in assessing your fees and the merits of any proposed appeal against conviction and/or sentence.

12. Protection of Personal Data

12.1 Your attention is drawn to the Personal Data (Privacy) Ordinance, Cap. 486, in particular, "Principle 4 of Schedule 1 - Security of Personal Data" thereof.

12.2 Pursuant to Part V of the Personal Data (Privacy) Ordinance, your opinions on the legally aided client or the merits of his case, and those of your instructed Counsel and Experts, given to the Director, may be disclosed to the legally aided client.

12.3 Likewise you are required to draw the attention of Counsel and experts to Part V aforesaid in your instructions to Counsel and experts.