

LEGAL NOTICE NO.

LEGAL AID (FUND) REGULATIONS, 2024

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IN EXERCISE of the powers conferred by section 86 of the Legal Aid Act, the Cabinet Secretary makes the following Regulations—

PART I—PRELIMINARY

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| Citation | 1. These Regulations may be cited as the Legal Aid (Fund) Regulations, 2024. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires—
“Act” means the Legal Aid Act, 2016;
“Administrator” means the person designated as such under regulation 5 of these Regulations;
“Board” means the Board of the Service established under section 9 of the Act;
“Director” means the Director of the Service appointed under section 24 of the Act;
“Fund” means the Legal Aid Fund established under section 29 of the Act; and
“pro bono” means legal aid work provided to vulnerable or underprivileged persons, carried out at either a low professional cost or no charge at all. |

Application of the Regulations.

- 3.** These Regulations shall apply to—
- (a) aided persons; and
 - (b) accredited legal aid providers in Kenya.

Object of the Regulations.

- 4.** The object of these Regulation is to give full effect of Part V of the Act by—
- (a) providing for application, eligibility and accreditation procedures;
 - (b) providing for additional sources of funds;
 - (c) providing for accountability in the management of the Fund;
 - (d) promoting equal protection of all persons before the law by bringing into effect the legal aid Fund;
 - (e) encouraging the provision of legal aid throughout the Kenya; and
 - (f) ensuring adherence to the principles of public finance set out in Article 201 of the Constitution in the management of the Fund.

Additional sources of the Fund

- 5.** In addition to the sources of the Fund set out under section 29 (2) of the Act, the other sources for the Fund are—
- (a) accreditation fees;
 - (b) charges and fees collected by the Board;
 - (c) voluntary contributions from a lawful source;
 - (d) money awarded by the court to the Service by way of costs or damages in any suit; and
 - (e) the proceeds of any investment, project or undertaking in which the Service has an interest.

PART II—ELIGIBILITY, APPLICATION AND ACCREDITATION PROCEDURES

- Eligibility criteria
- 6.** (1) The criteria of eligibility set out in Part II of the Legal Aid (General) Regulations, 2022 shall apply to persons applying to be considered for legal aid.
- (2) The criteria referred to under sub regulation (1) shall be reviewed regularly.
- Application procedures
- 7.** (1) An application for legal aid shall be made in accordance with Part VII of the Act.
- (2) The Service shall consider and determine an application within 48 hours from the date of application.
- (3) Upon determination of an application the Service shall notify an applicant of the approval or denial based on evaluation of the application.
- Direction by court for grant of legal aid
- 8.** (1) Where in the opinion of the court substantial injustice would otherwise result to an accused person in a criminal matter and the person has the right to have an advocate assigned to him pursuant to Article 50(2) (h) of the Constitution, the court may direct the Service to assign a lawyer under the legal aid scheme.
- (2) For the purposes of paragraph (1), it is immaterial that the person had applied and been denied legal aid or has been sentenced, remanded in custody or is otherwise detained or imprisoned.
- Accreditation of legal aid providers
- 9.** (1) An application for accreditation as a legal aid provider shall be in accordance with Part VIII of the Act.
- (2) A person or organization shall not provide legal aid services or qualify for any remuneration under the Fund unless the person or organization is accredited to provide legal aid services for the period in question or is specifically authorized by the Service.

(3) An accredited legal aid provider shall be deemed to have consented to the scale of fees determined by the Service from time to time pursuant to section 75 of the Act.

PART III—UTILIZATION OF THE FUND

Utilization of the Fund

10. The Fund shall be applied to defray expenses stipulated under section 30 of the Act and—

- (a) for payment of salaries, allowances and other charges in respect of the members of the Board and staff of the Service;
- (b) the payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Service;
- (c) the proper maintenance of the buildings and grounds of the Service;
- (d) the maintenance, repair and replacement of the equipment and other property of the Service;
- (e) the funding of training, research and development activities of the Service;
- (f) the creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Service may think fit; and
- (g) any other expenditure necessary for the purposes of this Act.

Scale of fees for legal aid providers

11. An accredited legal aid provider shall be remunerated in accordance with the scale of fees set out in the Schedule.

Standing Committee on Legal Aid

12. (1) There shall be a standing committee on Legal Aid within the Service whose functions shall be to—

- (a) facilitate consultations between the Service and professional bodies for purposes of regularly recommending the scale of fees payable to legal aid providers;

- (b) co-ordinate tracking of legal aid cases and provide feedback to the service;
 - (c) facilitate public awareness on legal aid;
 - (d) advise and recommend to the Board measures for promoting legal aid in Kenya; and
 - (e) undertake any other function assigned to it by the Board.
- (2) The committee may co-opt on *ad hoc* basis additional members from—
- (a) the Law Society of Kenya;
 - (b) the Paralegal Society of Kenya;
 - (c) a public benefit organization or faith based organization providing legal aid;
 - (d) a government agency accredited as a legal aid provider;
 - (e) a university of other institution operating legal aid clinics; or
 - (f) the National Council on Administration of Justice.

Case management

- 13.** The Service shall maintain an electronic database of all legal aid cases capable of generating information relating to—
- (a) case intake, assessment of cases and assignment to a legal aid provider;
 - (b) resource allocation including legal aid resources, legal aid provider's time and support staff, personnel and technology;
 - (c) the number of persons being legally aided by region;
 - (d) number of cases handled under pro bono programme as a component of legal aid;
 - (e) scheduling of court proceedings including hearing dates;
 - (f) the number of times a legal provider appears in court on behalf of an aided person;
 - (g) collaboration and communication between all parties involved;
 - (h) case resolution and closure including cases resolved through alternative dispute resolution;

(i) Collaborations with other non profit legal aid organizations and community resources;

Reimbursement of costs

14. Where an accredited legal aid provider pays disbursements relating to a matter pursuant to section 63 of the Act, the amount to be reimbursed by the Service to the legal aid provider shall be the expenses incurred in the course of representing a client including filing fees, expert witness fees and travel expenses.

Administration of pro bono programme

15. (1) Pursuant to Article 50(2) (h) of the Constitution, the Civil Procedure Rules, Orders 33 and 44 , the Service shall collaborate with the judiciary to facilitate and promote the application of pauper briefs and pro bono services as components of legal aid.

(2) The standing Committee on legal Aid shall recommend measures for transitioning court-based pro bono programs into the Service.

Alternative dispute resolution

16. (1) The Service shall promote resolution of disputes out the traditional court systems including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.

(2) The Service may issue guidelines for traditional dispute resolution mechanisms, not inconsistent with Article 159(3) providing for—

- (a) the role community elders in traditional dispute resolution;
- (b) the involvement of communities in promoting communal responsibility and support;
- (c) focus on restitution and compensation as part of the resolution process;

- (d) promotion of customary laws and cultural norms through symbolic acts signifying apologies, forgiveness and closure of cases;
- (e) focus on restoring relationships and maintaining harmony within the community; and
- (f) promotion of flexibility and adaptability.

Payment system

- 17.** (1) Financial records relating to the Fund shall be maintained in manual and electronic form.
- (2) The administrator shall develop mechanisms to ensure that financial records are safeguarded, accurate, reliable and free from fraud.
- (3) All payments shall be made securely, promptly and without unreasonable delay.

PART IV—MANAGEMENT AND ADMINISTRATION OF THE FUND

Oversight role of the Board

- 18.** The Board of the Service established under section 9 of the Act, shall oversee the administration and management of the Fund including—
- (a) providing strategic leadership and oversight of the Fund;
 - (b) evaluating the functioning of the Fund;
 - (c) managing and overseeing the resources and assets of the Fund;
 - (d) approving judicious investment of the finances of the Fund;
 - (e) approving annual budget of the Fund; and
 - (f) carrying out other duties which may be necessary or appropriate for the proper functioning of the Fund.

Director to be administrator of the Fund

- 19.** (1) The Director shall be the administrator and the accounting officer of the Fund and shall monitor, evaluate and oversee the management of fund, including—

- (a) promoting and enforcing transparency, effective management and accountability with regard to the use of the finances;
 - (b) ensuring that accounting standards are applied;
 - (c) implementing financial policies in relation to the finances;
 - (d) ensuring proper management and control of, and accounting for, the finances in order to promote the efficient and effective use of budgetary resources;
 - (e) preparing annual estimates of expenditures;
 - (f) acting as custodian of the entity's assets except as may be provided by other legislation or the Constitution;
 - (g) monitoring the management of the finances and financial performance;
 - (h) reporting regularly on the implementation of the budget; and
 - (i) taking such other action, not inconsistent with the Constitution, as will further the implementation of these regulations.
- (2) The administrator may in writing authorize a member of staff of the Service to be an alternate authority to spend the money (AIE) in accordance with the purposes specified in legislation without an appropriation.

Responsibility of the administrator to prepare financial statements

- 20.** (1) The administrator shall prepare financial statements for the Fund for each financial year in a form prescribed by the Accounting Standards Board.
- (2) In preparing a financial statement for the fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the fund.
- (3) Not later than three months after the end of each financial year, the administrator of the Fund shall submit the financial statements prepared under this regulation to the Auditor-General.
- (3) The administrator shall submit a copy of the report to the Cabinet Secretary.

Quarterly reporting
by the administrator

21. The administrator of the Fund shall prepare quarterly financial statements for the Fund in a form prescribed by the Accounting Standards Board.

Expenditure on the
Fund.

22. (1) There shall be paid out of the Fund the expenses stipulated in section 30 of the Act.

(2) The expenditure incurred on the Fund shall be on the basis of annual work programs and cost estimates which shall be prepared by the Administrator and approved by the Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programs and cost estimate, shall be referred to the Board for approval.

Record of
disbursements to be
kept.

23. (1) The Administrator of the Fund shall cause to be maintained an accurate record of all disbursements from the Fund Account for financing approved projects shall be kept and updated every month by the Secretariat of the Fund.

(2) The administrator of the Fund shall submit to the Board, quarterly and annual reports on all projects approved and financed from the Fund.

Bank account of the
Fund

24. (1) The Administrator of the Fund shall on the directions of the Board and with the authority of the National Treasury open and maintain a bank account in the name of the Service.

(2) All money received by Service shall be paid into its bank account or accounts, and this shall be done promptly in accordance with this the Public Finance Management Act and any requirements that may be prescribed.

(3) The Fund account shall be operated by the administrator of the Fund and two other persons designated by the Board from among the employees of the Service.

(4) Separate ledger accounts shall be maintained for each bank account held.

(5) The Head of Finance shall obtain from the banks monthly bank statements which shall, where applicable, be accompanied by withdrawal instructions and debit and credit advice.

(6) The Head of Finance shall reconcile each bank account monthly and submit to the administrator detailed information on the reconciled accounts.

(7) The administrator for the Fund shall not cause a bank account to be overdrawn beyond the limit authorized by the National Treasury or the Board.

(8) All signatories in respect of cheques, or electronic payments and Fund transfers authorized and any changes thereto shall be designated by the administrator.

(9) The names, designation and specimen signatures and any changes thereto shall be communicated to the bank in writing by the administrator.

(10) The Head of Finance shall be responsible for the safe custody of the cheques and counterfoils as evidence of payment.

Submission of list of
banks to the
National Treasury

25. (1) The administrator shall, by the 30th September of each year, provide the National Treasury with an up-to-date list of all bank accounts held by, or for the purposes of, the Fund.

(2) The list referred to under sub regulation (1) shall include the following information—

- (a) the name of the bank where the account is held;
- (b) the name of the bank account;
- (c) the type of bank account;
- (d) the signatories of the bank account;
- (e) the date on which the bank account was opened;

- (f) the bank account number;
- (g) the purpose for the bank account, if different from the main operational bank account of the government entity; and
- (h) the bank account balances as at the 30th June of each year.

Control systems

- 26.** (1) The administrator shall ensure that proper control systems exist for safe keeping of assets and that —
- (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
 - (b) movement and conditions of assets can be tracked; and
 - (c) stock levels are at an optimum and economical level.
- (2) The administrator shall put in place proper processes and procedures, both electronic and manual, for the effective, efficient, economical and transparent use of the Fund's assets.
- (3) The administrator shall be responsible for the proper custody, care and use of inventories under the control of the Judiciary.
- (4) The administrator shall report annually to the Service any disposal an asset.

Payments from
the fund

- 27.** (1) Payment from the Fund shall only be made on the basis of duly certified supporting vouchers and other documents indicating the nature and purpose for the payment in accordance with the procedure and policies governing payment as may be contained in manuals, circulars, guidelines or directions as may be issued by the Service.
- (2) All forms of payments shall be designated and any changes in signatories shall be authorized by the administrator.
- (3) Advance payments shall not be made to any supplier unless provided for in the contractual terms and conditions contained in a valid contract signed between the Service and the supplier.
- (4) Advance payments shall not exceed twenty percent of the contract price and shall be supported by a bank guarantee.

Investments of the funds **28.** The Service may with the consent of the Cabinet Secretary to the National Treasury invest any of the surplus funds in Government securities.

SCHEDULE

SCALE OF FEES FOR LEGAL AID PROVIDERS

Reg. 11

Interpretation

“junior advocate” means an advocate in independent practice for less than 10 years; and

“senior advocate” means an advocate in independent practice for 10 years or more.

Category of Legal Aid Provider	Services	Court station	Basic rate (Kshs)	Negotiated rates S 75 (3)
Accredited junior advocate	Legal advice, legal representation, assistance in resolving disputes by alternative dispute resolution/drafting of relevant documents and effecting service incidental to any legal proceedings/reaching or giving effect to any out-of-court settlement, creating awareness through the provision of legal information and law-	Supreme Court	40,000	50,000
		Court of Appeal	35,000	45,000
		High Court or other Superior Court	32,000	42,000
		Subordinate Court	30,000	40,000
Accredited senior advocate	related education, and recommending law reform and undertaking advocacy work on behalf of the community.	Supreme Court	45,000	60,000
		Court of Appeal	40,000	50,000
		High Court or other Superior Court	35,000	45,000
		Subordinate Court	32,000	40,000
Accredited firm of advocates with a senior advocate		Supreme Court	45,000	60,000
		Court of Appeal	40,000	50,000
		High Court or other Superior Court	35,000	45,000
		Subordinate Court	32,000	40,000
Accredited university or other institution operating legal aid clinic	Assistance in resolving disputes by alternative dispute resolution/ effecting service incidental		30,000	40,000

Accredited public benefit organization or faith based organization	to any legal proceedings/reaching or giving effect to any out-of-court settlement, creating awareness through the provision of legal information and law-related education, and recommending law reform and undertaking advocacy work on behalf of the community.		30,000	40,000
Accredited government agency			30,000	40,000
Accredited paralegal			20,000	30,000

{NOTE: These are indicative figures, the NLAS is requested to guide}

Notes:

1. The basic fee shall be a lump sum figure for all services provided by a legal aid provider.
2. Only an advocate may represent an aided person in court.
3. Pursuant to Section 75(3) of the Act, the Service may, in exceptional circumstances, enter into an agreement with a legal aid provider to provide services under this Act on such terms as may be agreed between the legal aid provider and the Service. Such terms shall not exceed the rates specified under the fifth column.
4. Despite these Regulations and pursuant to section 75(4) of the Act, the scale of fees shall be less than the legal fee applicable to persons not aided by the Service.