

L.N. 109 of 2016

Legal Aid in Criminal Cases (Amendment) Rules 2016

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Legal Aid in Criminal Cases (Amendment) Rules 2016

(Made by the Criminal Procedure Rules Committee under section 9A of the Criminal Procedure Ordinance (Cap. 221) with the approval of the Legislative Council)

1. Commencement

These Rules come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Legal Aid in Criminal Cases Rules amended

The Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) are amended as set out in rules 3 to 14.

3. Rule 2 amended (interpretation)

Rule 2(3)(b)(iii), after “items 1”—

Add

“, 5A”.

4. Rule 3 amended (panels of counsel and solicitors)

Rule 3(6), after “item”—

Add

“5A, 5B, 5C, 5D,”.

5. Rule 6 amended (consideration of application for legal aid)

Rule 6—

Repeal

“in the case of a capital charge”.

6. Rule 7 amended (grant of legal aid certificate)

Rule 7(1)(b)—

Repeal

everything after “assign” and before “as the Director”

Substitute

“1 solicitor or counsel, or 1 solicitor and 1 counsel, or 1 solicitor and 2 counsel (one of whom may be leading counsel),”.

7. Rule 8 amended (refusal to grant legal aid)

Rule 8(3)—

Repeal

everything after “assign” and before “as the Director”

Substitute

“1 solicitor or counsel, or 1 solicitor and 1 counsel, or 1 solicitor and 2 counsel (one of whom may be leading counsel),”.

8. Rule 10 amended (legal aid for appellants)

Rule 10—

Repeal

“in the case of an appellant convicted of a capital charge”.

9. Rule 11 amended (grant of appeal aid certificate)

Rule 11(1)(b)—

Repeal

everything after “assign” and before “to represent him”

Substitute

“1 solicitor or counsel, or 1 solicitor and 1 counsel, or 1 solicitor and 2 counsel (one of whom may be leading counsel), as the Director thinks fit,”.

10. Rule 12 amended (refusal to grant legal aid to appeal)

Rule 12(3)—

Repeal

everything after “assign” and before “to represent the appellant”

Substitute

“1 solicitor or counsel, or 1 solicitor and 1 counsel, or 1 solicitor and 2 counsel (one of whom may be leading counsel), as the Director thinks fit,”.

11. Rule 13 amended (legal aid in capital cases)

(1) Rule 13, heading—

Repeal

“capital”

Substitute

“certain”.

(2) Rule 13(2)—

Repeal

“by the court or a judge thereof, and the court or judge, if it or he thinks fit,”

Substitute

“by the Court or a judge of the Court; and, if the Court or the judge thinks fit, the Court or the judge”.

- (3) Rule 13(3)—

Repeal

everything after “assign” and before “to represent the accused person”

Substitute

“1 solicitor or counsel, or 1 solicitor and 1 counsel, or 1 solicitor and 2 counsel (one of whom may be leading counsel), as the Court, the judge or the Director thinks fit,”.

12. Rule 21 amended (solicitor and counsel fees)

- (1) Rule 21(8), after “5(a) and (b)(i) and (ii),”—

Add

“5A(a)(i) and (ii), 5B(a)(i) and (ii), 5C(a)(i) and (ii), 5D(a)(i) and (ii),”.

- (2) Rule 21(8)(a)(i)—

Repeal

“\$670”

Substitute

“\$840”.

- (3) Rule 21(8)(a)(ii)—

Repeal

“\$1,250”

Substitute

“\$1,760”.

- (4) Rule 21(8)(a)(iii)—

Repeal

“\$1,040”

Substitute

“\$1,560”.

- (5) Rule 21(8)(b)(i)—

Repeal

everything after “instructing solicitor,”

Substitute

“\$1,000 per hour in the case of item 1(a) and (b)(i) and (ii) or 2(a) and (b)(i) and (ii) in that Table;”.

- (6) After rule 21(8)(b)(i)—

Add

“(ia) for a solicitor with higher rights of audience acting as an advocate as well as an instructing solicitor, \$2,150 per hour in the case of item 5A(a)(i) and (ii) or 5B(a)(i) and (ii) in that Table; and”.

- (7) Rule 21(8)(b)(ii)—

Repeal

“\$1,270”

Substitute

“\$1,910”.

- (8) Rule 21(8)(c)(i)—

Repeal

everything after “instructing solicitor,”

Substitute

“\$1,360 per hour in the case of item 3(a) and (b)(i) and (ii) or 4(a) and (b)(i) and (ii) in that Table;”.

- (9) After rule 21(8)(c)(i)—

Add

“(ia) for a solicitor with higher rights of audience acting as an advocate as well as an instructing solicitor, \$2,150 per hour in the case of item 5C(a)(i) and (ii) or 5D(a)(i) and (ii) in that Table; and”.

- (10) Rule 21(8)(c)(ii)—

Repeal

“\$1,270”

Substitute

“\$1,910”.

13. Rule 22 added

After rule 21—

Add

“22. Transitional provision—Legal Aid in Criminal Cases (Amendment) Rules 2016

- (1) In this rule—

amending Rules (《修訂規則》) means the Legal Aid in Criminal Cases (Amendment) Rules 2016;

commencement date (生效日期) means the date on which the amending Rules come into operation.

- (2) If a solicitor or counsel is assigned to an aided person under these rules before the commencement date, these rules as in force immediately before the commencement date continue to apply to the solicitor

or counsel in respect of the assignment as if the amending Rules had not been made.”.

14. Schedule amended (solicitor and counsel fees)

- (1) The Schedule, Part 1, after section 3(e)—

Add

- “(ea) item 5A(b)(i) and (ii) and (c);
- (eb) item 5B(b)(i) and (ii) and (c);
- (ec) item 5C(b)(i) and (ii) and (c);
- (ed) item 5D(b)(i) and (ii) and (c);”.

- (2) The Schedule, Part 2, item 1(a)—

Repeal

“\$800”

Substitute

“\$1,000”.

- (3) The Schedule, Part 2, item 1(b)(i)—

Repeal

“\$3,230”

Substitute

“\$4,040”.

- (4) The Schedule, Part 2, item 1(b)(ii)—

Repeal

“\$3,230”

Substitute

“\$4,040”.

- (5) The Schedule, Part 2, item 1(c)—

Repeal

“\$800”

Substitute

“\$1,000”.

- (6) The Schedule, Part 2, item 1(d)—

Repeal

“\$6,480”

Substitute

“\$8,100”.

- (7) The Schedule, Part 2, item 2(a)—

Repeal

“\$800”

Substitute

“\$1,000”.

- (8) The Schedule, Part 2, item 2(b)(i)—

Repeal

“\$3,230”

Substitute

“\$4,040”.

- (9) The Schedule, Part 2, item 2(b)(ii)—

Repeal

“\$3,230”

Substitute

“\$4,040”.

- (10) The Schedule, Part 2, item 2(c)—

Repeal

“\$800”

Substitute

“\$1,000”.

- (11) The Schedule, Part 2, item 2(d)—

Repeal

“\$6,480”

Substitute

“\$8,100”.

- (12) The Schedule, Part 2, item 3(a)—

Repeal

“\$1,090”

Substitute

“\$1,360”.

- (13) The Schedule, Part 2, item 3(b)(i)—

Repeal

“\$4,390”

Substitute

“\$5,490”.

- (14) The Schedule, Part 2, item 3(b)(ii)—

Repeal

“\$4,390”

Substitute

“\$5,490”.

- (15) The Schedule, Part 2, item 3(c)—

Repeal

“\$1,090”

Substitute

“\$1,360”.

- (16) The Schedule, Part 2, item 3(d)—

Repeal

“\$8,780”

Substitute

“\$10,980”.

- (17) The Schedule, Part 2, item 4(a)—

Repeal

“\$1,090”

Substitute

“\$1,360”.

- (18) The Schedule, Part 2, item 4(b)(i)—

Repeal

“\$4,390”

Substitute

“\$5,490”.

- (19) The Schedule, Part 2, item 4(b)(ii)—

Repeal

“\$4,390”

Substitute

“\$5,490”.

- (20) The Schedule, Part 2, item 4(c)—

Repeal

“\$1,090”

Substitute

“\$1,360”.

(21) The Schedule, Part 2, item 4(d)—

Repeal

“\$8,780”

Substitute

“\$10,980”.

(22) The Schedule, Part 2, item 5(a)—

Repeal

“\$670”

Substitute

“\$840”.

(23) The Schedule, Part 2, item 5(b)(i)—

Repeal

“\$2,740”

Substitute

“\$3,430”.

(24) The Schedule, Part 2, item 5(b)(ii)—

Repeal

“\$2,740”

Substitute

“\$3,430”.

(25) The Schedule, Part 2, item 5(c)—

Repeal

“\$670”

Substitute

“\$840”.

(26) The Schedule, Part 2, item 5(d)—

Repeal

“\$5,490”

Substitute

“\$6,860”.

(27) The Schedule, Part 2, after item 5—

Add

- “5A. Solicitor with higher rights of audience assigned under a legal aid certificate to act as an advocate as well as an instructing solicitor in respect of proceedings in the Court of First Instance
- (a) (i) A fee not exceeding \$21,240 for preparation (other than the work described in paragraph (c)) that appears to the Director to be reasonable and proper.
- (ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$8,600 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.

- (b) Irrespective of the duration of the hearing on any day—
 - (i) a fee not exceeding \$21,240 for attendance at the Court of First Instance for the trial, plea or sentence that appears to the Director to be reasonable and proper; and
 - (ii) additionally, if the trial, plea or sentence is not concluded on the day on which it started, a fee not exceeding \$23,540 for every subsequent day that appears to the Director to be reasonable and proper.

- (c) A fee for attendance at the Court of First Instance (other than for the trial, plea or sentence) at a rate that appears to the Director to be reasonable and proper.
- 5B. Solicitor with higher rights of audience assigned under an appeal aid certificate to act as an advocate as well as an instructing solicitor in respect of an appeal from a magistrate to the Court of First Instance

 - (a) (i) A fee not exceeding \$21,240 for preparation (other than the work described in paragraph (c)) that appears to the Director to be reasonable and proper.

(ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$8,600 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.

- (b) Irrespective of the duration of the appeal hearing on any day—
 - (i) a fee not exceeding \$21,240 for attendance at the Court of First Instance for the appeal hearing that appears to the Director to be reasonable and proper; and
 - (ii) additionally, if the appeal hearing is not concluded on the day on which it started, a fee not exceeding \$23,540 for every subsequent day that appears to the Director to be reasonable and proper.

- (c) A fee for attendance at the Court of First Instance (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.

- 5C. Solicitor with higher rights of audience assigned under an appeal aid certificate to act as an advocate as well as an instructing solicitor in respect of an appeal from the Court of First Instance to the Court of Appeal
 - (a)
 - (i) A fee not exceeding \$28,320 for preparation (other than the work described in paragraph (c)) that appears to the Director to be reasonable and proper.
 - (ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$8,600 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.

- (b) Irrespective of the duration of the appeal hearing on any day—
 - (i) a fee not exceeding \$28,320 for attendance at the Court of Appeal for the appeal hearing that appears to the Director to be reasonable and proper; and
 - (ii) additionally, if the appeal hearing is not concluded on the day on which it started, a fee not exceeding \$31,400 for every subsequent day that appears to the Director to be reasonable and proper.

- (c) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.
- 5D. Solicitor with higher rights of audience assigned under an appeal aid certificate to act as an advocate as well as an instructing solicitor in respect of an appeal from the District Court to the Court of Appeal
 - (a)
 - (i) A fee not exceeding \$22,640 for preparation (other than the work described in paragraph (c)) that appears to the Director to be reasonable and proper.
 - (ii) Additionally, if more than 8 hours are required for the preparation, a fee at a rate not exceeding \$8,600 per unit for every additional 4-hour unit (or part of it) that appears to the Director to be reasonable and proper.

- (b) Irrespective of the duration of the appeal hearing on any day—
 - (i) a fee not exceeding \$22,640 for attendance at the Court of Appeal for the appeal hearing that appears to the Director to be reasonable and proper; and
 - (ii) additionally, if the appeal hearing is not concluded on the day on which it started, a fee not exceeding \$25,100 for every subsequent day that appears to the Director to be reasonable and proper.

(c) A fee for attendance at the Court of Appeal (other than for the appeal hearing) at a rate that appears to the Director to be reasonable and proper.”.

(28) The Schedule, Part 2, item 6(a)(i)—

Repeal

“\$10,095”

Substitute

“\$14,130”.

(29) The Schedule, Part 2, item 6(a)(ii)—

Repeal

“\$5,030”

Substitute

“\$7,040”.

(30) The Schedule, Part 2, item 6(b)(i)—

Repeal

“\$10,095”

Substitute

“\$14,130”.

(31) The Schedule, Part 2, item 6(b)(ii)—

Repeal

“\$11,190”

Substitute

“\$15,670”.

(32) The Schedule, Part 2, item 7(a)(i)—

Repeal

“\$12,260”

Substitute

“\$18,390”.

(33) The Schedule, Part 2, item 7(a)(ii)—

Repeal

“\$5,140”

Substitute

“\$7,710”.

(34) The Schedule, Part 2, item 7(b)—

Repeal

“\$12,260”

Substitute

“\$18,390”.

(35) The Schedule, Part 2, item 8(a)(i)—

Repeal

“\$12,260”

Substitute

“\$18,390”.

(36) The Schedule, Part 2, item 8(a)(ii)—

Repeal

“\$5,140”

Substitute

“\$7,710”.

(37) The Schedule, Part 2, item 8(b)—

Repeal

“\$12,260”

Substitute

“\$18,390”.

- (38) The Schedule, Part 2, item 9(a)(i)—

Repeal

“\$16,350”

Substitute

“\$24,530”.

- (39) The Schedule, Part 2, item 9(a)(ii)—

Repeal

“\$5,140”

Substitute

“\$7,710”.

- (40) The Schedule, Part 2, item 9(b)—

Repeal

“\$16,350”

Substitute

“\$24,530”.

- (41) The Schedule, Part 2, item 10(a)(i)—

Repeal

“\$13,070”

Substitute

“\$19,610”.

- (42) The Schedule, Part 2, item 10(a)(ii)—

Repeal

“\$5,140”

Substitute

“\$7,710”.

- (43) The Schedule, Part 2, item 10(b)—

Repeal

“\$13,070”

Substitute

“\$19,610”.

- (44) The Schedule, Part 2, item 11(a)(i)—

Repeal

“\$8,160”

Substitute

“\$12,240”.

- (45) The Schedule, Part 2, item 11(a)(ii)—

Repeal

“\$4,210”

Substitute

“\$6,320”.

- (46) The Schedule, Part 2, item 11(b)—

Repeal

“\$8,160”

Substitute

“\$12,240”.

- (47) The Schedule, Part 2, item 13—

Repeal

“\$1,270”

Substitute

“\$1,910”.

- (48) The Schedule, Part 2, item 14—

Repeal

“\$1,040”

Substitute

“\$1,560”.

- (49) The Schedule, Part 2, item 17(a)—

Repeal

“\$9,800”

Substitute

“\$14,700”.

- (50) The Schedule, Part 2, item 18(a)—

Repeal

“\$2,640”

Substitute

“\$3,300”.

- (51) The Schedule, Part 2, item 18(b)—

Repeal

“\$2,170”

Substitute

“\$2,710”.

- (52) The Schedule, Part 2, item 19(a)—

Repeal

“\$9,800”

Substitute

“\$14,700”.

(53) The Schedule, Part 2, item 19(b)—

Repeal

“\$4,890”

Substitute

“\$7,340”.

(54) The Schedule, Part 2, item 20—

Repeal

“\$3,240”

Substitute

“\$4,860”.

Made this 4th day of May 2016.

The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court

The Hon. Mr. Justice LUNN, V.P.

The Hon. Mrs. Justice BARNES

Andy HO
Senior Deputy Registrar,
High Court

Ms. Charlotte DRAYCOTT, S.C.

Kenneth NG

Edmond LEE

Ms. Juliana OY CHAN

Explanatory Note

Solicitors or counsel assigned under the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (*principal Rules*) to represent legally aided persons are remunerated according to the Table of Fees in the Schedule to the principal Rules. The Director of Legal Aid—

- (a) may re-determine the fees in certain circumstances under rule 21(8) of the principal Rules; and
 - (b) may increase the fees in certain circumstances in accordance with section 3 of Part 1 of the Schedule to the principal Rules.
2. Rules 12 and 14 respectively amend rule 21(8) of, and the Schedule to, the principal Rules—
 - (a) to adjust the fees payable under rule 21(8) and the Table of Fees; and
 - (b) to allow fees to be paid under rule 21(8) and the Schedule to solicitors with higher rights of audience acting as an advocate as well as an instructing solicitor in respect of proceedings and appeals in the High Court.
3. Rules 6, 7, 9, 10 and 11(2) respectively amend rules 7(1)(b), 8(3), 11(1)(b), 12(3) and 13(2) of the principal Rules to improve the presentation of those provisions.
4. Rules 5, 8 and 11(1) respectively amend rules 6, 10 and 13 of the principal Rules to remove obsolete references to capital charges and cases.

5. Rules 3, 4 and 11(3) respectively contain consequential amendments to rules 2(3)(b)(iii), 3(6) and 13(3) of the principal Rules.
6. Rule 13 provides for transitional arrangements.