

THE LAW SOCIETY OF THE CAPE OF GOOD HOPE

GUIDELINE FOR TAXING COMMITTEES FOR THE ASSESSMENT OF NON-LITIGIOUS FEES

Applicable from 1 September 2007

1. APPLICATION OF THE GUIDELINE GENERALLY

- 1.1 Council and members of the assessment committees have concluded that ideally members should be remunerated at a rate determined by the principles enunciated in Rule 17.2 applied to the time which could reasonably be expended in accepting and completing a particular mandate.
- 1.2 Committees required to assess bills of cost should accordingly be placed in a position to -
 - 1.2.1 establish in respect of each service performed a time-related 'rate for the job'; and
 - 1.2.2 assess the time that could reasonably have been devoted to such job.and in making these assessments the committees must have due regard to the factors set out in paragraph 1.6.2.
- 1.3 Council recommends that members, notwithstanding the fact that they may intend submitting a 'lump sum' account to the client, keep a contemporaneous note of the services rendered and, in particular, of the time involved, in the performance of their services.

When submitting their initial accounts for taxation, members should specify all time-periods, numbers of folios (a folio consists of 100 words) and details of the work performed, in respect of every item of the account, to enable the Committee to make its assessment.
- 1.4 Members should bear in mind that the fees reflected hereafter *include* the cost of drawing and attending taxation of bills submitted to Council for taxation. Please note that the fees in this guideline are exclusive of VAT.

- 1.5 The client, or other party liable for payment of the costs, is entitled to information to reasonably know that a fee is fair and reasonable;
- where it appears to the Society that a member may not have furnished sufficient information, the Society may call upon the member to do so and failure on the part of the member may be treated as unprofessional conduct;
 - on taxation, the taxing committee may, if it is satisfied that the member had timeously furnished sufficient information, direct that the client or other party concerned, bear the member's cost of drawing the Bill and attending taxation in the event of the fee being upheld or vice versa;
 - members are in all cases limited to the fee as originally proposed, invoiced or debited, which may be reduced on taxation if the Taxing Committee so deems fit but which may not be increased on taxation; provided, however, that if the Taxing Committee is satisfied that the member had timeously furnished sufficient information as above required and unless the bill is assessed in an amount substantially less than the fee originally proposed by the member, the Committee may increase its assessment by an amount of 5% of the fee so allowed for the purpose of compensating the member for the cost of drawing the bill and attending taxation;
 - in the event of the fee being reduced on taxation the matter may be referred by the taxing committee to the disciplinary committee for investigation of possible dishonest, unworthy or unprofessional conduct;
provisions of this paragraph shall *mutatis mutandis* apply in respect of fees and taxation of bills between attorney and client regarding litigious matters.

1.6.1 In assessing a fair and reasonable fee the responsible committee, while not obliged to, will invariably apply the guideline applicable to Research, Appearances, Consultations, Drafting Written Opinions and Attendances, which is considered by the various Committees to reflect a reasonable parameter of charges, but which is in no way binding either on the lower or upper scale.

1.6.2 With a view to affording the practitioner reasonable and adequate remuneration for the services rendered by him, the committee, as the case may be, shall, on every assessment, allow all such fees and disbursements as appear to it to have been reasonable for the performance of the work concerned, and in so doing shall take cognisance of the following –

1.6.2.1 the amount and importance of the work done;

- 1.6.2.2 the complexity of the matter or the difficulty or novelty of the work or the questions raised;
- 1.6.2.3 the skill labour, specialised knowledge and responsibility involved on the part of the practitioner
- 1.6.2.4 the number and importance of the documents prepared or perused, without necessarily having regard to length;
- 1.6.2.5 the place where and circumstances in which the services or any part thereof were rendered;
- 1.6.2.6 the time expended by the practitioner;
- 1.6.2.7 where money or property is involved, its amount or value;
- 1.6.2.8 the importance of the matter to the client;
- 1.6.2.9 the quality of the work done;
- 1.6.2.10 the experience or seniority of the practitioner;
- 1.6.2.11 any tariff of fees approved by the Society or any competent authority for the sole purpose of serving as a guide to practitioners;
- 1.6.2.12 any tariff of fees prescribed by the Council in accordance with the provisions of section 69(d) of the Act;
- 1.6.2.13 and whether the fees and disbursements have been incurred or increased through overcaution, negligence or mistake on the part of the practitioner;
- 1.6.2.14 any material change in the purchasing power of money since the promulgation of the applicable tariff of fees framed in terms of sub-rules 17.2.11 or 17.2.12.
- 1.6.2.15 any other factor which is deemed relevant”.**

- 1.7 When called upon to do so, practitioners are obliged to attend the assessment of bills relating to matters that they have handled or to send a professional member of the firm who has **real** knowledge of the matter and is in a position to assist the panel.
- 1.8 Where a practitioner does not attend a taxation when called upon to do so or where he does not send a member or candidate attorney from his firm who has any real knowledge of the matter, the Committee may refuse to tax the Bill.
- 1.9 Members wishing to have their disbursements assessed must attach their vouchers.
- 1.10 The Society will only accept bills submitted by members and not by drawers of bills of costs/professional cost consultants. When a member submits a Bill, which has in fact been drawn by a cost consultant, the member must endorse to Bill to the effect that it has been prepared in accordance with his instructions and that he accepts responsibility for it.

A member may be accompanied by a cost consultant at the assessment of a Bill of Costs. The cost consultant may, however only address the Committee to the extent permitted by the presiding chairman having regard to the nature and complexity of the matter.

Whenever a detailed account is submitted for taxation, members are required to -

- (a) submit **five** copies of the detailed bill of costs to the Society in Cape Town. Cape Town practitioners should submit the record file to the Society as well; in the case of practitioners in Port Elizabeth, Grahamstown, Kimberley and East London, the practitioner should retain the file until it is requested by the local assessment committee;
- (b) number every item in the bill;
- (c) specify all time-periods, numbers of folios (a folio consists of 100 words) or details of the work performed, in respect of every item on the account;
- (d) ensure that the file is in date order;

- (e) ensure that any drafts etc are clearly marked 'First Draft', 'Second Draft' and so forth;
- (f) ensure that amounts for fees and disbursements are totalled at the end of the Bill;
- (g) furnish copies of all previous accounts rendered in respect of services described in the bill;
- (h) submit a one page (two and a half folios) memorandum of the work done;
- (i) identify the person who has done the work and his/her seniority;
- (j) indicate whether the bill has been paid.

The Taxation Committees have requested that the Society return for re-drafting any bills which do not comply with these requirements.

1.10.1 **Research**

If the Committee considers that research was necessarily undertaken, it may in its discretion allow an appropriate fee.

1.10.2 **Appearances, Consultations, Attendances, Drafting-time, Perusals, Travelling Time and Waiting Time**

Formal attendances	From 20,00 to 60,00
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Attendances, other than formal, per 1/4 hour or part thereof	From 80,00 to 450,00
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Candidate Attorneys: Attendances other than formal, per ¼ hour or part thereof	From 60,00 to 120,00
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When travelling or waiting time is involved, the Committee will allow such reasonable fees as it considers fit.

1.10.3 **Drafting**

Drafting shall be assessed on a time basis. Only if the Committee deems a time-based rate to be inappropriate, should it apply a folio-based rate.

If a folio-based rate is applied, then the following rate shall apply -

Per folio (100 words)	From 50,00 to 500,00
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1.10.4 **Perusing and Considering**

Perusal and Considering shall be assessed on a time basis. Only if the Committee deems a time-based rate to be inappropriate, should it apply a folio-based rate.

If a folio-based rate is applied, then the following rate shall apply -

Per folio (100 words)	From 20,00 to 60,00
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1.10.5 **Correspondence**

Formal letter - per folio (100 words) (including first copy)	80,00
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1.10.6 **Telephone Calls**

Formal	50,00
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Other than formal - per <u>6 minutes</u> or part thereof	From 50,00 to 180,00
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1.10.7 **Photocopying/Printing**

Per Page	2,00
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1.10.8 **Telefax and E-Mail Transmissions; Scanning and Digital Photography**

5,00 per page for sending and receiving plus the reasonable disbursement.

1.10.9 Travelling

Per kilometre

4,50

Where air travel is cheaper, the cost thereof shall be allowed.

1.11 Council has decided that the foregoing guideline should, in the absence of an agreement with the client to the contrary, be applied to all work of a general nature, such as -

1.11.1 Deeds of Sale

1.11.2 Sale of Shares Agreements

1.11.3 Leases

1.11.4 Applications to statutory bodies and local authorities

1.11.5 Criminal Work

1.11.6 Trust Deeds

1.11.7 Labour and Industrial Law Work, where appropriate

1.11.8 Arbitration matters

The Council of the Society or any committee appointed by Council for that purpose, shall be empowered to assess fees and disbursements due to a practitioner in respect of any arbitration proceedings, irrespective of when such proceedings took place, unless the arbitrator's award expressly provides otherwise. This rule shall operate retrospectively.

2. 'LUMP SUM' CHARGES

Certain work does not fall to be dealt with under Item 1.10 and other work may lend itself to a 'lump sum' charge. Although guidelines are furnished in regard to such work the Assessment Committees will, whenever appropriate, adopt the approach set forth in 1.1 for the purpose of assessing bills of costs.

2.1.1 **Registration of Companies**

A fee for taking instructions, drafting, preparing, collating company documents, including Application for issue of Certificate to Commence Business, exclusive of disbursements and fee of Pretoria attorneys.

Where appropriate, a separate consultation fee in accordance with the guideline under 1.10.2 may be charged.

2.1.1.1 if Schedule B is not adopted 5 000,00

2.1.1.2 if Schedule B is adopted 3 000,00

2.1.2 In respect of so-called pre-packaged companies, the following considerations will apply -

2.1.2.1 Where the company was previously incorporated by the practitioner himself, the guidelines laid down in 2.1.1 shall apply

2.1.2.2 Where the company was previously acquired by the practitioner from some other person, or where the company is specifically acquired by the practitioner at the clients' request, the practitioner shall be allowed a reasonable remuneration in respect of the price paid for such acquisition, and necessary attendances in regard thereto.

2.1.2.3 In all cases the practitioner shall be allowed a reasonable remuneration for his attendances in adapting the company to the clients' requirements, if applicable, and procuring effective transfer to the client. In respect of so-called pre-packaged Close Corporations, the proviso of 2.1.1 shall apply mutatis mutandis.

2.2 **Registration of Close Corporations**

Where appropriate, a separate consultation fee in accordance with the guideline under 1.10.2 may be charged together with -

2.2.1 a fee for taking instructions, drafting, preparing and collating all documents and attending to registration, if the Association Agreement is not required
750,00

2.2.2 Where the Association Agreement is required, members will, in addition to the fee allowable under 2.2.1 above, be permitted to charge a fee for drafting the Agreement, in accordance with Item 1.10.3 above.

2.3 **Administration of Trusts, Deceased Estates & Curatorships**

Where a member is administrator or co-administrator or acts for administrator -

2.3.1 In appropriate cases, an acceptance fee not exceeding 1% on the value of trust property received.

2.3.2 A fee of 7% of the income collected, but subject to negotiation in specific cases.

2.3.3 In appropriate cases, an annual charge on capital assets of the trust, calculated at a rate between 0,25% and 0,75% on the value of capital assets.

2.3.4 A reasonable collection fee not exceeding 1,5% on capital distributed or such other fees or remuneration as may be prescribed from time to time by the Master of the Supreme Court as remuneration of a Curator on termination of his Curatorship, or as prescribed in the trust instrument.

Where a member is the executor or the acts for the executor

2.3.5 Minimum fee, irrespective of value as determined by the Master 750,00

2.3.6 Members should note that the fee, in the absence of a special agreement with the executor, shall not exceed the statutory fee charged by executors.

2.3.7 If the member is a co-executor or acts for the executor, other than in circumstances where a special agreement has been made, the fee should not exceed the full executor's remuneration.

2.3.8 If a member acts for the executor, whether he had agreed a special fee or not, and his mandate is terminated by the executor before the administration of the estate is completed, he shall be entitled to such proportion of the agreed or statutory fee as the work which he completed prior to termination of his mandate bears to the entire task.

2.4 Distributions

2.4.1 Attendances, instructions and arranging 400,00

2.4.2 Making Distribution

A fee not exceeding 12,5% on amounts paid in.

2.4.3 For each letter and enclosed cheque sent, provided distributions are not made more frequently than once per quarter 30,00

2.5 Collections

2.5.1 Rentals

A fee equivalent to 5%-7% of gross rental.

2.5.2 **Purchase price of Immovable Property payable in instalments in terms of the Alienation of Land Act No 68 of 1981 or in circumstances where the Act does not apply:**

A fee equivalent to 5% - 7% of each instalment.

2.5.3 Collecting current interest on Bonds

A fee equivalent to 5%-7% of each payment.

2.5.4 Debts

Refer to Rule 12 of the Society's Rules which reads as follows:

12. COLLECTION COMMISSION

12.1 *A practising member to whom a liquidated monetary claim is handed for collection by reason of default on the part of the debtor-*

12.1.1 *may raise reasonable collection charges in addition to any other professional fees and collection commission to which he may be entitled;*

12.1.2 *may charge collection commission on the amount collected for each payment or instalment, provided that, where the practising member recovers commission from the debtor, either in terms of any law or in terms of contractual obligation, he shall credit his client therewith, to the extent of but not exceeding the commission debited to his client therewith, to the extent of but not exceeding the commission debited to his client in terms thereof.*

12.2 *For the purpose of this Rule the words "amount collected" include any payment made by or on behalf of any debtor direct to the client whether in cash or in kind, or by way of novation or set off, after the account is handed to the practising member for collection.*

12.3 *(deleted)*

12.4 *In the case of the final recovery or repossession of movables in terms of hire purchase agreements, suspensive sale agreements, leases or agreements of a like nature, an attorney may, in addition to any professional fees, charge a collection commission upon the value of the goods so repossessed or recovered, which value shall be:*

12.4.1 *the value fixed upon the movables by the Court in arriving at a final judgment, failing which*

12.4.2 *the value fixed upon the movables by a sworn appraiser; provided -*

12.4.2.1 *where the total unpaid amounts owing under the agreement are less than the value of the movables then the collection commission shall be calculated upon such total unpaid amounts, and not upon the value of the movables;*

12.4.2.2 *where no value has been fixed upon the movables in terms of either subparagraphs 12.4.1 or 12.4.2 above, then the collection commission shall be calculated upon the total unpaid amounts owing under the agreement.”*

The Council has issued the following guidelines on collection charges:

1. COLLECTION FEES

1.1 In respect of the original member taking instructions prior to judgment, as well as each successive member before judgment, fees of -

- (i) R 50,00 for claims up to R 1 500,00.
- (ii) R 100,00 for claims from R 1 500 to R 5 000.
- (iii) R 200,00 for claims from R 5 000 to R 10 000.
- (iv) R 300,00 for claims above R 10 000.

1.2 In respect of each further member taking instructions after judgment -

- (i) R 50,00 for claims up to R1 500.
- (ii) R 100,00 for claims above R1 500.

1.3 R 30,00 in respect of each necessary letter or telegram sent or received as also for each necessary attendance (substantive).

1.4 R 50,00 per every 15 minutes or part thereof in respect of each necessary consultation with a debtor (substantive).

1.5 R 50,00 per 10 minutes or part thereof in respect of each necessary telephone call (substantive).

2. COLLECTION COMMISSION

10% of the amount collected subject to a maximum of R1 000,00 per payment or collection (where appropriate).

2.6 **Insolvencies**

Proving claims against insolvent estates, estates administered under the Agricultural Credit Act, or Companies in Liquidation or under Judicial Management:

2.6.1 A fee for taking instructions, drawing Affidavit and Power of Attorney and Resolution if any From 75,00 to 600,00

2.6.2 A fee for attending meeting of creditors:
As per item 1.6

2.7 **Power of Attorney**

2.7.1 **Special Power of Attorney**

As per item 1.6

2.7.2 **General Power of Attorney**

A fee for taking instructions, drafting and preparing Power of Attorney

From 30,00 to 100,00

GENERAL NOTE

Work should be charged out at the tariff applicable at the time each item of work was done.

No fees shall be recoverable for the preparation, drawing of a bill of costs or attendance of a taxation, other than provided for herein.