

HIGH COURT ACT
(Cap. 04:02)

RULES OF THE HIGH COURT (AMENDMENT) RULES, 2004
(Published on 12th November, 2004)

ARRANGEMENT OF ORDER OF RULES

ORDER

1. Citation
2. Amendment of Cap. 04:02 (Sub. Leg.)

IN EXERCISE of the powers conferred on the Chief Justice by section 28 of the High Court Act, the following Rules are hereby made —

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| 1. These Rules may be cited as the Rules of the High Court (Amendment) Rules, 2004. | Citation |
| 2. The Rules of the High Court (hereinafter referred to as “the Rules”) are amended by substituting, for Order 74 thereof, the following new Order — | Amendment of Cap. 04:02 (Sub. Leg.) |

“ORDER 74

TAXATION AND TARIFF OF FEES OF ATTORNEYS

1. It shall be competent for the taxing master to tax all bills of costs for services actually rendered by an attorney in his capacity as such, whether in connection with litigation or not; in the latter event, the taxing master shall nevertheless be guided as far as possible by the scale of fees fixed by the appended tariff:

Provided that the taxing master shall not tax costs in instances where some other official is empowered to do so.

2. At the taxing of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising upon such taxing.

3. With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence, and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges or expenses, as appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party, but except as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expense.

4. The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat:

Provided that such notice shall not be necessary —

- (i) if the party against whom costs have been awarded has not appeared at the hearing either in person or by his legal representative;
- (ii) if the person liable to pay the costs has consented in writing to taxation in his absence; and
- (iii) for the taxation of writ and post-writ bills.

5. The taxing master shall be entitled in his discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

6. (1) In order to diminish as much as possible the costs arising from the copying of documents to accompany the briefs of counsel, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(2) No fees shall be allowed by the taxing master as between party and party for the copying of any document not used at the hearing unless the court otherwise directs.

7. Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, hire purchase agreements or any documents.

8. Where in the opinion of the taxing master more than one attorney has been necessarily engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

9. (1) In criminal matters an attorney's remuneration shall be specially agreed in advance in a gross sum or on the basis of a reasonable charge.

(2) Where the agreement is for remuneration in a gross sum, the gross sum shall cover all services of the attorney until the issues in the case are determined irrespective of the length of the case or the complexity of the issues.

(3) Where the agreement is for remuneration by way of reasonable charge, the client may demand a detailed bill of charges and expenses and if the client disputes the reasonableness of the charges and expenses he may, by notice of motion (which must state the grounds of objection) apply to a judge in chambers to determine the dispute and the judge may proceed summarily in the matter and may make such order (including an order as to costs of the motion) as he considers just.

(4) Where on the authority of the client an advocate is instructed to conduct the case, the charges of the attorney for work done by him shall, as far as practicable, be in accordance with the tariffs laid down in civil matters; and the attorney shall, on request, provide the client with a bill of charges; such bill shall be taxable by the taxing master as if it were a bill of costs in a civil matter.

10. The Taxing Master may grant a party wasted costs occasioned by the failure of the taxing party or his or her attorney or both to appear at a taxation or by the withdrawal by the taxing party of his or her bill of costs.

11. A folio shall contain 300 words or part thereof, four figures are to be counted as a word.

TARIFF OF FEES OF ATTORNEYS

In connection with a bill of costs for services rendered by an attorney, such an attorney shall be entitled to charge, in accordance with the hourly rates at section "I" of this tariff, for time taken, where there is no fixed rate for such a service.

A – TAKING INSTRUCTIONS

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| 1. To institute or defend any proceeding.... | Time taken by attorney |
| 2. For advice on evidence or on commission..... | Time taken by attorney |
| 3. For case on opinion, or for advocate's guidance in preparing pleadings, including exceptions..... | Time taken by attorney |
| 4. For statement of witness..... | Time taken by attorney |
| 5. To set down cause, issue subpoena or any other simple instructions..... | Time taken by attorney |
| 6. To draft a petition or affidavit..... | Time taken by attorney |
| 7. To note an appeal..... | Time taken by attorney |
| 8. To prosecute or defend an appeal (exclusive of the perusal of the record)... | Time taken by attorney |

B – ATTENDANCE AND PERUSAL

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| 1. (a) Any summons, petition, affidavit, pleading, advocate's advice and drafts, report, and important notice or document, per folio for the first 10 folios..... | P10.00 |
| and thereafter per folio.....
(up to a maximum of P2500.00 for all folios.) | P5.00 |
| (b) Any letter, record, stock sheets in voluntary surrenders, judgments or any other material documents not elsewhere specified, per folio for the first 10 folios..... | P10.00 |
| and thereafter per folio.....
(up to a maximum of P2500.00 for all folios) | P5.00 |

2. Attending the receipt of and considering any plan or exhibit or other material document in respect of which the basis of remuneration set out in item 1 of this section can not be applied — per folio for the first 10 folios.....	P10.00
and thereafter per folio (up to a maximum of P2500.00 for all folios.)	P5.00
3. Making searches in offices of record (per half hour or part thereof).....	P150.00
4. Sorting out, arranging and paginating papers for pleading, advice on evidence or brief on trial or appeal (per half hour).....	Time taken by attorney
5. Attending to give or take discovery (per half hour).....	Time taken by attorney
6. Attending on client to obtain particulars of his claim and to settle same.....	Time taken by attorney
7. Attending on bespeak and thereafter procure transcription of shorthand note, etc.....	Time taken by attorney
8. Other attendances including telephone calls (per half hour).....	Time taken by attorney

C — ATTENDANCE (FORMAL)

1. To serve or deliver any necessary documents or letter or despatch any telegram.....	P30.00
2. To sue out any process or file document	P15.00
3. To set down causes for trial.....	P15.00
4. To search for any return.....	P15.00
5. On receipt, perusing and considering of notice of intention to defend — per folio.....	P15.00
6. On advocate, e.g. with folio.....	Time taken by attorney
7. On signature of powers of attorney to sue or defend.....	P30.00
8. Other formal attendances, including telephone calls.....	Time taken by attorney

D — DRAFTING AND DRAWING

1. Drafting, instructions for case on opinion, for advocates' guidance in preparing pleadings (including further particulars and requests for same) including exceptions..... Time taken by attorney
 2. Drafting instructions to advocate for advice on evidence, for brief on trial or on commission..... Time taken by attorney
 3. Drafting instructions to advocate for argument in respect of all classes of pleading, provided that a fee for drafting instructions on motion, petition, exception or appeal, shall only be allowed at the discretion of the taxing master..... Time taken by attorney
 4. Drafting statements of witnesses..... Time taken by attorney
 5. Drawing subpoenas, powers of attorney to sue or defend and formal notices (per folio)..... P50.00
 6. Drafting a petition, affidavit, any notice, except formal notice, summons, further particulars requested and furnished for trial, writs of execution, arrest or attachment and any other important document not otherwise provided for..... Time taken by attorney
 7. Letter or telegram (per folio)..... P50.00
 - and thereafter per folio..... P50.00
 - Copy to keep per folio P2.00
 8. Drawing index to brief..... P50.00
 9. Drawing short brief..... Time taken by attorney
- NOTE 1:** In computing the number of folios of any document referred to in paragraphs 1, 2, 3, 4 and 6 of this section, the taxing master shall deduct, but treat as annexures where relevant, any portions consisting of quotations from other documents and papers.
- NOTE 2:** The charges allowed in this section for drafting and drawing do not, except in the case of items 5, 7, 9, and 10, include making the first fair copy which shall be charged for under item 1 of section F.
10. Research, preparation and drafting of heads of argument..... Time taken by attorney

E – APPEARANCE, CONFERENCE AND INSPECTION

1. Attendance by attorney when an advocate is employed in court or before a judge, a commissioner, or referee or at an inspection directed by the court:
 To note judgment only..... Time taken by attorney
 Otherwise, per hour

2. Appearance by attorney without an advocate before a judge on request by the judge, or before a commissioner or referee, per hour..... Time taken by attorney

3. (1) Appearance by an attorney as counsel in court, or before a judge, an arbitrator, commissioner or referee or at an inspection directed by the court:
 Maximum fees..... As for advocates

 Provided that an attorney shall not be allowed fees both as an attorney and as counsel in respect of the same service.

 (2) Any conference or consultation with advocate with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions, affidavits, testimony and on any other matter which the taxing officer may consider necessary:
 Per half hour..... Time taken by attorney

4. (1) Any conference or consultation with client, witness or opposite party, and any other conference or consultation which the taxing officer may consider necessary:
 Per half hour..... Time taken by attorney

 (2) Attending conference in terms of Order 42:
 Per half hour..... Time taken by attorney

5. Any inspection *in situ* or otherwise per hour..... Time taken by attorney

The above rates of remuneration shall not be applicable in respect of time spent in travelling, but the taxing master shall in respect of time necessarily so spent, allow additional remuneration not exceeding P21.00 *per diem*, and shall also allow the reasonable costs of necessary conveyance.

6. Evidence: Such just and reasonable charges and expenses as may, in the opinion of the taxing master, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation provided that the qualifying expenses of a witness shall not be allowed without an order of court or the consent of all interested parties.

Time spent travelling and waiting is to be at the particular attorney's hourly rate, but no travel expenses allowable within Gaborone or to file at the high court unless a special trip was made.

F – MISCELLANEOUS

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| 1. Briefing and copying; for making copies for the court, for counsel or for attorney, or for service or for any other necessary purpose, the charge shall be per folio | 10 thebe |
| (including the first copy of any document drafted in respect of which a charge is recoverable under items 2, 3, 4, 5, 7, and 9 of section D of this tariff) and for further copies up to 20, per folio and for still further copies, per folio..... | P2.00 |
| For making copies of the record in a civil appeal from the magistrates' courts the charge shall be per folio of the first copy, and per folio of all other copies... | P2.00 |
| 2. Drawing up insolvency schedules, including petition, affidavit and relative attendance <i>ad jurat</i> | Time taken by attorney |
| 3. For giving a verbal or written opinion (as between attorney and client)..... | Time taken by attorney |
| 4. General:
Inclusive fee for consultations and discussions with client or advocate not otherwise provided or specially charged..... | Time taken by attorney |

G – BILL OF COSTS

In connection with a bill of costs for services rendered by an attorney, such attorney shall be entitled to charge:

1. For drawing the bill of costs, making the necessary copies and attending settlement, five percent of the first P10,000.00 or a portion thereof, two and a half percent of the second P10,000.00 or a portion thereof, and one per cent on the amount in excess of P20,000.00 of the amount of the attorney's fees, either as charged in the bill if not taxed, or as allowed on taxation.

2. And in addition thereto, if recourse is had to taxation, for arranging and attending taxation and obtaining consents to taxation, five percent of the first P10,000.00 or portion thereof, and two and a half per cent of the second P10,000.00 or portion thereof, and one and a half percent on the amount in excess of P20,000.00 of the fees allowed on taxation.

The fee under each item of this section shall be calculated on the same amount.

H – NOTARIAL CHARGES

1. In an undefended civil cause, an attorney may, without tendering any bill of costs for taxation, recover from the party against whom an order for costs has been made, a sum not exceeding P1000.00 as costs in that cause:.....

Provided that —

- (i) the costs claimed do not exceed P1000.00;
- (ii) the said party does not apply to the master to have the bill taxed;
or
- (iii) the court does not otherwise direct.

I – HOURLY RATES (PARTY AND PARTY SCALE)

Pupil attorney	P250.00 per hour
0 – 2 years experience	P250.00 – P400.00 per hour
2 – 5 years experience	P400.00 – P500.00 per hour
5 – 10 years experience	P500.00 – P700.00 per hour
10 – 15 years experience	P700.00 – P850.00 per hour
Over 15 years experience	P850.00 – P1000.00 per hour.”

MADE this 30th day of October, 2004.

J.M. NGANUNU,
Chief Justice.