

**ORDER FOR IMPLEMENTATION
AND USE OF LEGAL AID FUND
(amended as of September 29, 2020)**

1. Purpose.

Consistent with Article II, Section 14, of the Constitution, wherein the Government of the Republic of the Marshall Islands recognizes the right of the people to legal services and the obligation to take every step reasonable and necessary to provide such services, the Nitijela has appropriated to the Judiciary the Legal Aid Fund (“the Fund”) to complement existing and available institutions for delivery of legal aid service in the Republic of the Marshall Islands. The Fund is to provide a further means by which the people of the Republic (who, for one reason or another, are unable to utilize any of the existing institutions for legal aid delivery, and/or are otherwise unable to afford the cost of legal representation) may secure legal representation in the enforcement and/or protection of their rights.

The following has been formulated to provide a means whereby the meager resources of the Republic may be utilized to the greatest extent possible to benefit the greatest segment of the public that requires legal aid.

The Nitijela intends that the Fund be utilized for the benefit of those who cannot afford the cost of legal representation. Assigned Counsel shall provide quality representation in all legal proceeding involving their clients, free from political influence.

It is the civic responsibility of attorneys and trial assistants and their duty as officers of the Court to provide legal representation to people of the Marshall Islands. In the event that the litigants are unable to pay for these services, it is the duty of all attorneys and trial assistants licensed to practice in the RMI courts to provide these services *pro bono* or at a rate less than their normal charges. At the present time the Nitijela has appropriated a certain sum to be allocated for such services and to be approved for such services by Order of the High Court. The Court shall make every attempt to provide the funds available to all attorneys and legal assistants within the amount appropriated by the Nitijela. The Court acknowledges that it cannot order the Nitijela to appropriate any further funds now or in the future.

2. Eligibility.

(a) An applicant for legal aid or payment out of the Fund must be a legal resident of the Republic of the Marshall Islands, and the claim or defense must directly impact the applicant. Any pleadings and other papers filed by the applicant must be filed in a case before the High Court or the Supreme Court.

(b) If the applicant represents a group or an organization, or if the applicant is a corporation, partnership, or any other form of business association, then all members of the group or organization, and all the members or beneficial owners of such corporation, partnership or other form of business association, as the case may be, must be legal residents of the Republic.

3. Procedure.

An application for legal aid or payment out of the Fund for the purposes of legal representation in respect of a particular case or litigation, must be in writing and addressed to the High Court, Majuro, through the Chief Clerk of the Courts, setting forth:

(a) The full name, age, occupation, gross annual income, local address, nationality or citizenship, and residency status of the applicant;

(b) A brief but clear statement of the nature of the case or litigation in respect of which legal aid or payment out of the Fund is being claimed or sought;

(c) A statement of the reason why the applicant did not or could not seek assistance from, or avail himself or herself of, the services of either the Office of the Public Defender or the Micronesian Legal Services Corporation, from whom the High Court may require written confirmation as to why the office cannot accept the applicant as a client; and

(d) Any other information that the applicant considers relevant.

(e) The application is to be on the form distributed by the Chief Clerk of the Courts.

(f) The Court shall consider the following criteria in determining eligibility for utilization of the Fund;

(1)

| Persons in family/household | Gross annual family/household income |
|-----------------------------|--------------------------------------|
| 1 | \$ 8,828 |
| 2 | 11,948 |
| 3 | 15,068 |
| 4 | 18,188 |
| 5 | 21,308 |
| 6 | 24,428 |

| | |
|--|--------|
| 7 | 27,548 |
| 8 | 30,668 |
| For families/households with more than 8 persons, add \$3,900 for each additional person. | |

(2) If the case is likely to result in a money recovery then the counsel is encouraged to enter into a contingent fee arrangement with the client. If at the outset counsel agrees to look for payment from the Fund, then counsel is limited to charging the client at the hourly rate set forth herein with the same maximum set forth herein.

(g) The Chief Clerk of the Courts shall review the application and make a recommendation to the Chief Justice of the High Court, either approving or denying the request for counsel, with his or her recommendation.

4. Duty/function of Judge in relation to application for legal aid.

(a) As soon as practicable after receipt by the Chief Justice of the High Court of an application such as is referred to in paragraph 3, the Chief Justice shall set a date for hearing in relation to that application, if the Chief Justice deems a hearing necessary.

(b) During such hearing, the applicant may, by himself or herself or through counsel, advance or proffer any argument in support of the application for legal aid.

(c) The Chief Justice shall, after said hearing or without one, make a determination as to whether or not the applicant deserves legal aid or a payment out of the Fund for the purpose of legal representation in respect of the particular case or litigation.

(d) In arriving at a determination whether or not to grant an application for legal aid in respect of a particular case or litigation, the Chief Justice shall take into account the purpose and rationale for use of the Fund as outlined in paragraph 1 above, the items or particulars of information furnished by applicant pursuant to paragraph 3 above, and any other factor which, in the opinion of the Chief Justice ought, in the public interest, to be taken into account.

5. Duty of Attorney in Seeking Reimbursement for Fees from the Fund, and Duties of Chief Justice in Approving Fees.

(a) The Attorney shall keep accurate and detailed records of all time spent and expenses incurred on the preparation and trial of the case. The record must disclose the date, hours and specific reasons and work performed. *See e.g., Timeslips; RTG Bills; etc.* While the work must consist always of quality representation, the time spent must be reasonable and proper in relation to the case.

(b) The maximum hourly rate shall be \$75.00 per hour.

The maximum allowed in any one case shall be the following:

(1) In all Probate Cases — \$750.00

(2) In Land Cases — \$7,500.00

(3) In Criminal Cases — \$5,000.00

(4) In Other Cases — \$3,000.00

(c) Upon application by counsel, the High Court may, in its discretion, disburse funds to pay or reimburse counsel for reasonable expenses incurred within the Republic with respect to the assigned case. The Fund will not cover counsel's travel to or outside of the Republic, but can be disbursed to cover travel between Majuro and Ebeye and the outer islands.

Payment of legal fees and expenses may be made upon monthly invoices approved by the Chief Justice of the High Court for work before either the High Court or the Supreme Court. If Counsel fails to provide a monthly invoice, within 30 days after the end of the month, the Court may deny the payment request. In approving the fees the Court shall have the discretion to deny part of the fee request if it determines the time is unreasonable or not warranted under the circumstances, or if it determines that funds will not be available for pending cases remaining.

6. Duty of Applicant/Client to Reimburse Costs and Fees.

In the event that the applicant/client recovers a money judgment, including land use payments made over time, then the applicant/client must reimburse to the Fund attorney fees and costs paid out of the Fund as the Court may order, but in no event more than 25% of the amount recovered. The Court has the discretion to allow partial repayment to the Fund in the event of unusual circumstances that would work an undue hardship on the client. A hearing must be set and the reasons set forth in the Court Order for such repayment.

7. Selection of Appointed Counsel.

The Court may, from time to time, appoint one or more attorneys to represent applicants under the Fund ("Legal Aid Fund Counsel"). Additionally, the Court shall maintain an alphabetical list of all attorneys and trial assistants licensed to practice before the RMI courts and on active status, other than attorneys and trial assistants working full time for the National Government or a local government.

Upon the application of the client for the appointment of counsel the court shall either appoint a Legal Aid Fund Counsel or select a name on the list in making an appointment.

Among counsel chosen from the alphabetical list, the court shall attempt to equalize the cases by the number assigned as well as category (i.e., land, probate, etc.), so that the cases are equally assigned to counsel. The court has the discretion to bypass and skip over the next name if it is of the opinion that a more qualified counsel is needed in that particular case.

An attorney or trial assistant shall be excused from appointments in a financial year commencing October 1 by paying into the Fund through the Chief Clerk of the Court \$1,500.00 by September 30 of the previous financial year or whenever an inactive attorney or trial assistant returns to active status.

Except as otherwise provided in this section, if an attorney or trial assistant, who has not paid the annual fee to be excused from appointment, refuses to accept an appointment or fails to diligently prosecute legal aid cases as determined by the Chief Justice of the High Court, then in the attorney or trial assistant must pay the annual fee to be excused from appointments in the current financial year and thereafter. Failure to do so shall be deemed to be in a violation of Rule 7 of the Rules for Admission to and for the Practice of Law in the Republic.

In the event of a conflict or other unusual circumstance justifying not accepting the case, the attorney shall set forth in a declaration the reasons for declining. The court shall issue an Order either refusing or granting the request and set forth the reason for making the Order.

8. This Order shall come into effect on October 1, 2020, and shall remain in full force and effect until and unless it is superseded in all or in part by an Act of the Nitijela or a subsequent order by the undersigned.

ENTERED: September 29, 2020



Daniel N. Cadra
Chief Justice, Supreme Court
Republic of the Marshall Islands

CONCURRED: September 29, 2020



Carl B. Ingram
Chief Justice, High Court
Republic of the Marshall Islands