

Criminal Procedure (Simplification) Project – Legal aid proceedings steps for testing at Manukau and Tauranga District Courts

Note: The steps for the criminal simplification test cases differ from the Legal Aid Criminal Proceedings Steps from the issuing of the Case Management Memorandum (CMM) – see Step 3.

Cases excluded from the Manukau and Tauranga test courts

- ◆ Guilty plea entered during administrative appearances
- ◆ Indictably laid charges
- ◆ Trial by Jury elected
- ◆ Defendant Self-Represented
- ◆ Non-police Prosecutions, with the exception of IRD prosecutions in Manukau
- ◆ Criminal Procedure (Mentally Impaired Persons) Act
- ◆ Intellectual Disability (Compulsory Care and Rehabilitation) Act

For these cases, please refer to the appropriate Legal Aid Criminal Proceedings Steps

Summary Jurisdiction		
		February 2010
Step 1: Guilty Pleas (including sentencing) during administrative appearances		
Activity	Fixed fees/ Guideline Hours	Tasks normally covered by flat fee or by guideline hours
Guilty plea/sentencing (both same day – no stand down) OR Charges withdrawn	Flat fee of \$220 including any disbursements	For <ul style="list-style-type: none"> • Taking initial instructions, attending the client • Receiving and reviewing disclosure • Identifying legal and factual issues • Engaging in charge resolution/negotiation
Guilty plea/sentencing (both same day – after stand down for pre-sentencing reports/inquiries obtained)	Flat fee of \$269 including any disbursements	<ul style="list-style-type: none"> • Attending Registrar's/Judge's List Court • Entering plea • Obtaining pre-sentencing reports • Preparation and delivering sentencing submissions
Guilty Plea/Sentencing (sentencing on another day – after pre-sentencing reports/inquiries obtained)	Flat fee of \$293 including any disbursements	<ul style="list-style-type: none"> • Receiving sentence • Reporting to client • Reporting to and invoicing Legal Aid
Section 38 – Forensic Report	up to 2 hours	For <ul style="list-style-type: none"> • Liaising, obtaining and reviewing section 38 Forensic Report
Expert witness/reports	up to 2 hours	For: <ul style="list-style-type: none"> • Locating expert witness • Liaising • Psychiatric reports • Reviewing reports <p>*Expert witness fee subject to approval of amendment</p>

Summary Jurisdiction

February 2010

Step 1: Guilty Pleas (including sentencing) during administrative appearances

Activity	Fixed fees/ Guideline Hours	Tasks normally covered by flat fee or by guideline hours
Restorative Justice Report	up to 2 hours	For <ul style="list-style-type: none"> Obtaining Restorative Justice Report – in preparation for sentencing
Written sentencing submissions	up to 3 hours	For <ul style="list-style-type: none"> Preparing sentencing submissions under Sentencing Practice Note 2003 or, providing written submissions in support of an application made, for example section 106, special reasons or substitution of community based sentences under the Land Transport Act.

Step 2: Applications for Bail, Name Suppression, Media Coverage

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Unopposed application for Bail, Name Suppression (excluding electronic bail monitoring application)	up to 2 hours (for each hearing)	For: <ul style="list-style-type: none"> Taking instructions, attending the client Receiving and reviewing disclosure Identifying legal and factual issues Preparing application for, or opposition to, order(s) Liaising with family, whānau – for bail applications Receiving decision Reporting to client Reporting to and invoicing Legal Aid
Opposed application for Bail, Name Suppression (excluding electronic bail monitoring application)	up to 4 hours (for each hearing)	
Electronic bail monitoring (unopposed and opposed)	up to 4 hours (for each hearing)	
Opposed application for Media Coverage (for all applications)	up to 4 hours (for each hearing)	
Unopposed variation	up to 1 hours (for each hearing)	
Opposed variation	up to 2 hours (for each hearing)	
Hearing	Actual hours	

Summary Jurisdiction and the Criminal procedure (simplification) project

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Step 3: Review stage

Activity	Flat fee	Tasks normally covered by flat fee or by guideline hours
Case Management Memorandum (CMM) Case Management Discussions Case Review Date CMM List Event Judicial Intervention Hearing	Flat fee of \$400 including any disbursements	For: <ul style="list-style-type: none"> • Taking instructions, attending the client • Initial CMM discussions with client and prosecution • Preparation and on-time filing of CMM (compulsory) • Preparation for CMM list event and/or judicial intervention hearing as applicable • Attendance at case review date, CMM list event and/or judicial intervention hearing as applicable • Charges withdrawn, if this occurs as part of the CMM list event or judicial intervention • Entering plea
Sentencing (no stand down)	Flat fee of \$58 including any disbursements	In addition to the Flat fee for CMM
Sentencing (after stand down for pre-sentencing reports/inquiries obtained)	Flat fee of \$107 including any disbursements	In addition to the Flat fee for CMM
Sentencing (sentencing on another day – after pre-sentencing reports/inquiries obtained)	Flat fee of \$133 including any disbursements	In addition to the Flat fee for CMM
Section 38 – Forensic Report	up to 2 hours	For: <ul style="list-style-type: none"> • Liaising, obtaining and reviewing section 38 Forensic Report
Expert witness/reports	up to 2 hours	For: <ul style="list-style-type: none"> • Locating expert witness • Liaising • Psychiatric reports • Reviewing reports *Expert witness fee subject to approval of amendment
Restorative Justice Report	up to 2 hours	For: <ul style="list-style-type: none"> • Obtaining Restorative Justice Report – in preparation for sentencing

Summary Jurisdiction and the Criminal procedure (simplification) project

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Step 3: Review stage

Activity	Flat fee	Tasks normally covered by flat fee or by guideline hours
Written sentencing submissions	up to 3 hours	For: <ul style="list-style-type: none">• Preparing sentencing submissions under Sentencing Practice Note 2003 or, providing written submissions in support of an application made, for example section 106, special reasons or substitution of community based sentences under the Land Transport Act.

Documentation Requirements

Case Management Memorandum – copy of date stamped front page

Note

- The \$400 payment for Step 3 is a flat fee and only payable for the completion of all activities that is the CMM, case review event, and/or judicial intervention hearing
- Part-payments will not be made if the CMM is not completed and filed on the due date.

Summary Jurisdiction

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Step 4: Disclosure – Criminal Disclosure Act 2008

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Disclosure by defendant	up to 1 hours	For preparation of disclosure package, including: <ul style="list-style-type: none">• Notice of alibi – s22• Evidence of expert witness - s23• Service on prosecutor• Associated correspondence
Non-party disclosure	up to 3 hours	For: <ul style="list-style-type: none">• Application for non-party disclosure hearing – s24
	Actual hours	For: <ul style="list-style-type: none">• Attending non-party disclosure hearing(s)

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Step 5: Defended Hearing

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Preparation for hearing (including 'same day' sentencing)	up to 3 hours	For: <ul style="list-style-type: none"> • Taking instructions, attending the client • Receiving and reviewing disclosure • Identifying legal and factual issues • Preparing for hearing – cross examination, briefing witnesses, submissions • Preparing written submissions • Preparing and delivering sentencing submissions • Receiving verdict/sentence • Reporting to client • Reporting to and invoicing Legal Aid
Expert witness/reports	up to 2 hours	For: <ul style="list-style-type: none"> • Locating expert witness • Briefing expert witness • Liaising • Psychiatric reports • Reviewing reports <p>*Expert witness fee subject to approval of amendment</p>
Hearing (including 'same day' sentencing)	Actual hours	For: <ul style="list-style-type: none"> • Attending hearing – including waiting time (see Granting Notes)
Preparation for sentencing (when matter adjourned to another day for sentence)	up to 2 hours	For: <ul style="list-style-type: none"> • Preparing for sentencing hearing • Obtaining pre-sentencing reports • Preparing and delivering sentencing submissions • Receiving sentence • Reporting to client • Reporting to and invoicing Legal Aid
Section 38 – Forensic Report	up to 2 hours	For: <ul style="list-style-type: none"> • Liaising, obtaining and reviewing section 38 Forensic Report
Restorative Justice Report	up to 2 hours	For: <ul style="list-style-type: none"> • Obtaining Restorative Justice Report – in preparation for sentencing

Summary Jurisdiction

February 2010

Step 5: Defended Hearing continued

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Written sentencing submissions	up to 3 hours	For: <ul style="list-style-type: none"> Preparing sentencing submissions under Sentencing Practice Note 2003 or, providing written submissions in support of an application made, for example section 106, special reasons or substitution of community based sentences under the Land Transport Act.
Sentencing hearing (when matter adjourned to another day for sentence)	Actual hours	For: <ul style="list-style-type: none"> Attending hearing – including waiting time (see Granting Notes)

If a guilty plea is entered at or before the hearing, then only the following guideline hours may be claimed:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Guilty Plea entered before Hearing	up to 3 hours plus the Fee for the appropriate Guilty Plea /Sentencing option - Step 1	For <ul style="list-style-type: none"> Preparing for defended hearing Obtaining pre-sentencing reports Preparing and delivering sentencing submissions Receiving sentence Reporting to client Note this can only be claimed if a guilty plea is entered at or before the hearing Reporting to and invoicing Legal Aid

Granting Notes

Documentation Requirements

- Application for Criminal Legal Aid (*LA form 1*) [s14 Legal Services Act 2011]
- Criminal Legal Aid Amendment to Grant (*LA form 2*) [s28 Legal Services Act 2011] – if the time required for the step is expected to exceed the guideline hours stated
- Criminal Legal Aid Guilty Plea Tax Invoice (*LA form 3*)
- Criminal Legal Aid Tax Invoice (*LA form 4*) – including a report on proceedings and sentencing outcome

Claims

- Fixed fees are GST inclusive.

Waiting Time

Claims for waiting time are accepted as part of claims for actual appearances in hearings before a judge. Waiting time begins when the provider is required to be in the courtroom.

To support claims for approval and payment of waiting time, the following information is required:

- a summary of both the waiting time and hearing time on the day of appearance – date and times, and
- an explanation of the circumstances, if more than one hour's waiting time is claimed for an appearance or appearances on a particular day. An explanation of the circumstances must include:
 - confirmation that the provider was unable to undertake any other work while waiting
 - confirmation that the provider made enquiries to the Court about the delay
 - reasons for the delay.

Disclosure by prosecutor

Where the steps refer to 'Receiving and reviewing disclosure' this includes any or all of the following tasks:

- Request further initial disclosure from prosecution (after commencement of proceedings)
- Receiving and reviewing further initial disclosure
- Receiving and reviewing full disclosure (after not guilty plea, election, or first appearance)
- Requesting additional disclosure
- Interlocutory applications under the Criminal Disclosure Act 2008:
 - Application for address of witness or informant
 - Application for disclosure of information – s30
 - Application for order setting conditions for viewing exhibit – s31
 - Application for timetabling order – s32

Remuneration for disclosure by the prosecutor is included within the relevant steps. However, if providers are required to attend hearings in connection with interlocutory applications, they may claim actual hearing time.