



## **COST ESTIMATE NOTICE**

(in terms of s35(7) of the Legal Practice Act 28 of 2014 (LPA))

### **1. The estimated<sup>1</sup> likely financial implications of the envisaged costs of the legal service requested<sup>2</sup> (s 35(7)(a))**

- 1.1 Magistrates Court Action/Application: Unopposed: R 5 000.00; Opposed: R 15 000.00 – R 45 000.00. The Magistrates Court tariff can be found at: [http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399\\_rg10349\\_gon33-RulesBoard.pdf](http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399_rg10349_gon33-RulesBoard.pdf) ;
- 1.2 High Court Action/Application: Unopposed: R 10 000.00; Opposed: R 75 000.00 upwards. The High Court tariff can be found at: [http://www.justice.gov.za/legislation/notices/2013/20131011-gg36913-rg10032\\_gon759-rules.pdf](http://www.justice.gov.za/legislation/notices/2013/20131011-gg36913-rg10032_gon759-rules.pdf);
- 1.3 Divorce: Unopposed, no children: R 6 500.00; Unopposed, with children: R 7 000.00; Opposed: R 20 000.00 upwards;
- 1.4 Non-litigious matters: according to the tariff to be found at: <http://capelawsoc.law.za/wp-content/uploads/2016/01/Non-Litigious-Guideline-as-amended-Jul-2012.pdf> ;
- 1.5 Drafting of Contracts: R 3 500.00 to 15 000.00 depending on length, complexity and number of amendments;
- 1.6 Simple will: R 1 000.00 maximum;
- 1.7 Administration of a deceased estate: 3.5% of the gross value of the estate;
- 1.8 You are referred also to clause 3 of our mandate agreement that you would have received.
- 1.9 Other legal service cost estimates are available on request.

### **2. Our Hourly Fee Rate and an Explanation of your Right to Negotiate the Fees Payable to us (s35(7)(b))**

Darrolls Attorneys' hourly fee rate is **R 1 300.00** (ie R 350.00 per 15 minutes). In terms of section 35(3) of the LPA you are entitled, on your own initiative, to agree with Darrolls Attorneys in writing to pay fees for the services in question in excess of or below any tariffs determined by the Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act 107 of 1985. Such agreement may determine a fixed fee or a contingency fee as provided for in the Contingency Fees Act 66 of 1997 either in addition to, or instead of, an hourly fee rate.

### **3. An Outline of the Work to be Done in Respect of Each Stage of the Litigation Process (where applicable) (s35(7)(c))**

- 3.1 **Letter of demand:** The plaintiff sends a letter to the defendant to comply with his demand by a certain date failing which s/he will take legal action. Work to be done:
  - 3.1.1 take instructions and decide –
    - is there a valid cause of action (delict? contract? Divorce? Claim based on liquid document? Also whether you have 'legal standing' ie a direct and substantial interest in the matter as well as legal capacity, ie whether you can sue or be sued, meaning not a minor,

<sup>1</sup> Figures given are estimates, not quotes;

<sup>2</sup> Figures given include: counsel's fees, Sheriff's fees, interactions with the Family Advocate and other disbursements.

## **ATTORNEY - NOTARY - CONVEYANCER**

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a person married in community of property, mentally disabled, a prodigal, an insolvent, a fugitive from justice, an alien enemy, a diplomat, etc);

- is there jurisdiction (ie does the court have legal authority to hear the case) ?
- Should the litigation be by way of action or application? If a real dispute regarding the facts is anticipated, the matter should proceed by way of an action with witnesses. If not, then an application on affidavit will suffice.

3.1.2 draft the letter of demand; post by registered post; await the deadline, and advise you accordingly.

If the defendant complies with the demand, we: • check that payment has been received in the trust account; • draw the bill for work done; • transfer the funds received less the fees due to the client; • send the final communication to the client. That will finalise the matter. If he does not, then the litigation continues.

- 3.2 Summons / Notice of Motion - work to be done: • scrutinise all relevant documents; • draft particulars of claim/ founding & supporting affidavits; • complete and prepare copies for issue and service; • identify the relevant court with jurisdiction and attend on the court for issue; • identify relevant sheriff with jurisdiction and attend on the sheriff for service; • in the event of non-service, advise client and if instructed, request tracing agents to trace; • in the event of service, advise client and await notice to defend;
- 3.3 Notice to defend/oppose: • if no notice forthcoming, prepare application for default judgement in duplicate plus necessary documents and lodge with the court; • if notice received await plea/answering affidavit;
- 3.4 Plea/answering affidavit: • if no plea/answering affidavit received, contact defendant's attorneys requesting plea/answering affidavit; • if plea/answering affidavit is still not forthcoming, issue notice of bar; • if plea/answering affidavit is still not forthcoming, apply for default judgement; • if plea/answering affidavit received, scrutinise plea/answering affidavit and draft, prepare and deliver replication/replying affidavit.
- 3.5 Notice of Set Down: draft, prepare and deliver;
- 3.6 Prehearing procedures: discovery; notices to inspect, specify, produce and admit; Medical examinations; request for further particulars; subpoenas of witnesses; special evidence - expert, photographs etc, on commission, interrogatories, on affidavit; pre-trial conference: rule 37 minute; indexing and agitating the court file;
- 3.7 The hearing itself: attending in support of counsel's opening address, hearing/reading of evidence, argument, inspections on site (*in loco*);
- 3.8 Judgement: attending, drawing up a bill of costs, preparing and delivering the notice of intention to tax; scrutinising list of objections; delivering notice of taxation date; attending taxation; taking further steps to recover costs;
- 3.9 Depending on the development of the case, certain other procedures may be required such as: exception; application to strike out; application to set aside an irregular step; amendment of pleadings; summary judgement application; settlement procedures provisional sentence; interim relief; interdicts; etc. The work to be done in respect of these stages in the litigation process will be communicated to you if and when it becomes apparent that it will be necessary to carry out such work.

**4. The Likelihood of Engaging an Advocate and an Explanation of the Different Fees Chargeable by Different Advocates, Depending on Aspects such as Seniority or Expertise (where applicable) (s35(7)(d))**

Should the seriousness of the case warrant it and subject to the client's discretion, an advocate subject to the discipline of the Cape Bar Council may be used in the litigation process to carry out one or more of the following procedures:

- 4.1 to give legal advice orally or in a written opinion;
- 4.2 to prepare any documents required for use in any court or arbitral or other adjudicative proceedings;
- 4.3 to prepare written argument and heads of argument;
- 4.4 to argue an application or appeal;
- 4.5 to move an unopposed matter;
- 4.6 to appear in a trial or in an arbitration or in any other decision-making forum;
- 4.7 to negotiate on behalf of a client;
- 4.8 to settle the matter, whether on trial or otherwise, after obtaining client's instructions;
- 4.9 to argue a matter on taxation before a taxing master;
- 4.10 to make representations to the National Prosecution Authority about whether or not to charge a person with a criminal offence;
- 4.11 to undertake a criminal prosecution on behalf of a private prosecutor;
- 4.12 to preside as an arbitrator or as presiding officer in any other adversarial proceedings ought to conduct any inquisitorial proceedings;
- 4.13 to act as an expert, a referee, mediator or facilitator;
- 4.14 to conduct an investigation and furnish a report with recommendations as to facts found and future action;
- 4.15 to act as a curator *ad litem*;
- 4.16 to make representations to a statutory or voluntary body or any state official.

The different fees that can be charged by advocates depend on factors such as seniority and/or expertise. Three broad classes of advocates can be distinguished:

- "Junior junior" advocates - these are advocates who have anything up to about 10 years experience and whose charges range from R 600.00 to R 1 200 per hour;
- Junior advocates - these are advocates who have from 10 to about 20-30 years experience and whose charges range from R 1 200.00 to R 2 500.00 per hour;
- Senior advocates (Silks) - these are advocates who generally have at least 25 years experience and who have 'taken silk', ie who have been granted the status of senior counsel. Their charges range from R 2 000.00 per hour upwards.

**5. If your Matter involves Litigation, the Legal and Financial Consequences if you Withdraw from the Litigation (s35(7)(e))**

- 5.1 Legal Consequences: if the other side decides to approach the court for a judgement, it will probably find against you, with all that that will mean. If they decide to let sleeping dogs lie, you may be free to carry on with the case later, depending how much time has passed.
- 5.2 Financial Consequences: if the other side decide to obtain a judgement against you and the judgement sounds in money, you will be legally obliged to pay that amount. You may also be liable for a major proportion of the costs and disbursements of the other side, as well as all your own. If you do not or cannot pay,
- 5.2.1 a warrant of execution may be served on you, whereupon your goods may be attached and after due public notice, sold in execution; and/or
- 5.2.2 you may be brought before an enquiry into your personal finances and, on the basis of that enquiry, ordered to pay a certain amount every month.

**6. How Costs are Recovered (s35(7)(e))**

- 6.1 Recovery of costs if you win: Other than in 'small claims' cases (where only the costs of a sheriff can be recovered), the losing party in court proceedings will normally be ordered to pay a proportion of the costs and disbursements of the other side, as assessed in a 'taxation' by a court official called the taxing master. Although a successful party will normally be awarded payment of its costs, according to the court or arbitrator's full discretion and other matters that will be taken into account, there is no guarantee that a successful party will receive any specific proportion of its costs, and in most instances there will be a shortfall between the successful party's liability for costs and disbursements to its lawyers and the costs recoverable from the losing party.
- 6.2 Payment of our legal fees is not conditional on recovery of costs from an opponent or third party. You will remain liable for these costs, including for any shortfall between the costs paid by another party and your actual costs. If an opponent or third party is ordered to meet all or some of your costs but fails to do so, you will remain liable to us for those costs. The court or an arbitrator has power to order a losing party to pay interest at a rate equal to the repo rate + 3.5% on the costs.
- 6.3 Payment of costs if you lose, in whole or in part: if you are unsuccessful, have all or part of your case struck out or you discontinue all or part of your case, you are likely to be ordered to pay a proportion of the other party's costs. Those costs will be assessed by the court or arbitrator in the absence of agreement. If you are ordered to pay your opponent's costs you will also be liable for your own costs, in addition to any damages awarded against you.

I am of course available for any further information you may require.

Best wishes

A handwritten signature in black ink that reads "Roland Darroll". The signature is written in a cursive style with a horizontal line underneath it.

Roland Darroll,  
Darrolls Attorneys

I the client, or on its behalf, acknowledge that every aspect contained in the above notice has been verbally explained to me in compliance with section 35(8) of the Legal Practice Act 28 of 2014 and confirm agreement with the above.

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Name:

Date: ..... 201...