

**SUPREME COURT (FEES AND COSTS) RULES 1971**

As amended by the Supreme Court (Fees and Costs) Rules 1971, Amendment No. 1 (W.S.R. 1976/18).

HIS HIGHNESS, MALIETOA TANUMAFILI II, HEAD OF STATE

At the Government House at Apia this 18th day of May 1971

PURSUANT to the Judicature Ordinance 1961, the Head of State, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee constituted by and under section 40 thereof, hereby makes the following Rules.

**ANALYSIS**

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| 1. Title                                   | 5. Costs                                   |
| 2. Commencement                            | 6. Remuneration and allowance of assessors |
| 3. Fees                                    | 7. Witnesses' expenses                     |
| 4. Court may dispense with payment of fees | 8. Revocation Schedules                    |

**RULES**

**1. Title**—These rules may be cited as the Supreme Court (Fees and Costs) Rules 1971.

These Rules were notified in the *Western Samoa Gazette* on 19 May 1971.

**2. Commencement**—These rules shall come into force on the day on which they are made, and shall apply to,—

- (a) Any proceedings commenced on or after that day; and

(b) Any steps taken on or after that day in respect of any proceedings commenced before that day.

**3. Fees—**(1) Fees under Part II of the Judicature Ordinance 1961, whether for civil or criminal proceedings, shall be payable according to the scale of fees set out in the First Schedule hereto.

(2) All such fees, except such as may be payable in respect of keeping possession, or for storing, removing or selling goods seized under a warrant or writ, shall be paid in the first instance by the party on whose behalf any proceedings are taken.

(3) No Judge or officer of the Court shall do any act for which a fee is payable unless the fee is first paid; but no such act, if done, shall be invalid by reason only of the non-payment of the fee:

Provided that in any civil proceedings in which the State or any officer of the State on its behalf is a party no fee need be prepaid by the State or its officer, but such fee may nevertheless be recoverable from the opposite party with costs, if judgment is given against that party:

Provided also that no fee shall be received or demanded from any constable or from any duly appointed officer of the State or of any local authority or other statutory public body in respect of proceedings instituted by him in the execution of his duty.

(4) In default of the payment of any fee by the person by whom it is payable in the first instance, the amount thereof shall be recoverable in the same manner as a fine or as a debt due to the State.

(5) A table of all fees payable shall be kept in each office of the Court, and shall be made available for inspection on request.

(6) All fees payable pursuant to this rule shall be payable in the first instance to the Registrar of the Court where such proceedings are filed or determined and shall forthwith be paid by the Registrar into the Public Account:

Provided that fees in respect of keeping possession, and of storing, removing and selling goods seized under a warrant or writ shall be paid to the bailiff or person charged with the execution of the warrant or writ, and shall be paid by him to the Registrar and by the Registrar to any person entitled thereto and if none into the Public Account.

Cf. 1969, No. 2, ss. 126—9

**4. Court may dispense with payment of fees—**Where it appears to the satisfaction of the Court or a Judge that any party is unable or ought not to be called upon to pay any fees mentioned in the First Schedule hereto, or any part thereof, the Court or a Judge may dispense with the payment thereof, or any part thereof, subject to such terms as it or he thinks fit.

Cf. Code of Civil Procedure, r. 582 (N.Z.); S.R. 1959/18, r. 70 (N.Z.)

**5. Costs—**(1) Costs when allowed shall be regulated and paid according to the scale of costs set out in the Second Schedule hereto, but the Court may, in giving a judgment or making any order, fix a sum or sums as the costs of the action or of the application, as the case may be, in full of all costs, notwithstanding that such sum is greater or smaller than the sum set out in the said scale.

(2) In case of there being any doubt as to what costs should be allowed pursuant to the said scale in any particular matter arising in the course of any proceedings, the Court, in its discretion, having regard to the said scale, shall fix such sum for costs to be paid by any party as it thinks fit.

Cf. Code of Civil Procedure, r. 568 (N.Z.)

**[6. Remuneration and allowances of assessors]**—The remuneration payable to an assessor in the trial of any matter shall be \$8 a day, or part of a day, in addition to travelling expenses actually incurred and paid.]

Cf. S. R. 1959/18, r. 163 (N.Z.)

This rule was substituted for the original rule 6 by rule 3 of W.S.R. 1976/18.

**7. Witnesses' expenses**—The expenses of a witness at a criminal trial, shall be such as the Judge thinks fit, not exceeding \$3 a day, in addition to travelling expenses actually incurred and paid.

Cf. S.R. 1959/18, r. 164 (N.Z.)

**8. Revocation**—The Rules of the High Court of Western Samoa 1959 (N.Z.) are hereby revoked as part of the law of Western Samoa.

SCHEDULES

FIRST SCHEDULE

Rule 3

FEE PAYABLE TO THE REGISTRAR OF THE SUPREME COURT

A. Civil Proceedings

1. Filing any statement of claim and issuing summons (including hearing)	\$16.00
2. Filing any originating application to the Court or to a Judge in Chambers or to a Registrar, and whether commenced by way of motion, petition, or otherwise, unless otherwise provided for (including hearing)	\$3.00
3. Filing any interlocutory application, whether by way of motion, petition, or otherwise (including hearing)	\$3.00
4. Filing application for extraordinary remedy or any other application or document not otherwise provided for (including hearing)	\$7.00
5. (a) Sealing order on writ of arrest, attachment, mandamus, prohibition, injunction or certiorari	\$3.00
(b) Sealing every duplicate or certified copy of any such order	\$1.00
6. (a) Sealing any rule or order not otherwise provided for	\$3.00
(b) Sealing every duplicate or certified copy thereof	\$1.00
7. Sealing memorial or certificate of judgment	\$3.00
8. (a) Sealing any writ of sale, writ of possession, or writ in an action for an extraordinary remedy, or any writ not otherwise provided for	\$4.00
(b) Executing any such writ	The actual expenses incurred by the Executing Officer
9. (a) Sealing commission, letters of request, or order to examine witness	\$4.00
(b) Sealing or certifying every duplicate thereof	\$2.00

10. (a) Sealing any document not otherwise provided for	\$2.00
(b) Sealing or certifying every duplicate thereof	\$1.00
11. (a) Filing notice of motion of appeal from the Magistrates' Court	\$2.00
(b) Filing case on appeal	\$0.50
(c) Setting down case on appeal or on removal from the Magistrates' Court	\$1.50
(d) Hearing case on appeal or removed—	\$5.00
For the first day or part thereof	\$2.00
For each succeeding day or part thereof	\$1.50
(e) Sealing any order	\$1.00
Sealing any duplicate thereof	
(f) Filing application for dismissal of appeal for non-prosecution	\$2.00
(g) Sealing order dismissing appeal for non-prosecution and duplicates	\$3.00
12. Filing notice of motion for probate or letters of administration	\$2.00
13. (a) Sealing probate or letters of administration, or resealing pursuant to [section 39 of the Administration Act 1975] —	
In an estate not exceeding \$200	\$1.50
In an estate exceeding \$200 but not exceeding \$1,000	\$2.50
In an estate exceeding \$1,000 but not exceeding \$2,000	\$6.00
In an estate exceeding \$2,000 but not exceeding \$6,000	\$10.00
And for each \$2,000 or part thereof in excess of \$6,000	\$2.00
(The sealing fee is to be calculated upon the net value of the estate).	
(b) Sealing probate pursuant to leave reserved, or letters of administration <i>de bonis non</i> , or on any grant made subsequent to the original grant of probate or letters of administration; or such less sum as was paid upon the sealing of the grant in the first instance	\$6.00
(c) Sealing exemplification of probate or letters of administration.	\$4.00
In para. (a), s. 39 of the Administration Act 1975, being the corresponding enactment in force, has been substituted for s. 50 of the Administration Act 1952 (N.Z.).	
14. Taxation on each bill of costs including certificate of Registrar	\$2.00
15. (a) Filing any petition or application under Part III of the Mental Health Ordinance 1961	\$4.00
(b) Sealing and issuing original of any order thereon	\$2.00
(c) Sealing each duplicate of any such order	\$1.00
16. (a) Attendance before Registrar or referee or Registrar and accountant on inquiry or reference, or examination of witnesses before any officer or person under order of the Court—	
For the first day or part thereof	\$5.00
For each subsequent day or part thereof	\$2.50

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<p>for \$2.00 \$1.00 \$2.00 \$0.50 \$1.50 \$5.00 \$2.00 \$1.50 \$1.00 \$2.00 \$3.00 \$2.00 \$1.50 \$2.50 \$6.00 \$10.00 \$2.00 \$6.00 \$4.00 \$2.00 \$0.00 \$0.00 \$0.00</p>	<p>(b) Certificate or report on such inquiry or reference or examination 17. (a) Original copy of any document or notes of evidence per folio of 72 words (b) Duplicate copy of any document or notes of evidence per folio of 72 words 18. (a) Search in each Court book or of one or more documents in the same matter (b) General search in Court books or documents in 2 or more matters 19. Affixing the seal of the Court to any document other than a Court document 20. (a) Drawing inventory (b) If the inventory exceeds 3 folios, for every folio after the third 21. Drawing or settling any conditions of sale 22. (a) Drawing advertisement for sale, if required, and inserting advertisement (b) Advertising sale (c) For each man left in possession (d) If board and lodging not supplied 23. Auctioneer's or Registrar's commission: For every sale by auction under execution or other process against any goods, land or estate— (a) Where the proceeds of sale do not exceed \$1,000.00, at the rate of (b) Where the proceeds of sale exceed \$1,000.00, the abovementioned percentage on the first \$1,000.00, and on the excess over \$1,000.00, at the rate of 24. Executing transfer or conveyance 25. Poundage on the sum levied, or for which the person shall be taken in execution— (a) Where the sum does not exceed \$1,000.00, at the rate of (b) Where the sum exceeds \$1,000.00, the abovementioned percentage on the first \$1,000.00, and on the excess over \$1,000.00, at the rate of In the case of execution against any goods, land, or estate, the poundage is to be calculated on the amount levied under the writ, excluding the fees and expenses of and incidental to the issue and execution of the writ. Where the property is subject to a mortgage or other security, the value of the security shall not be included in computing the poundage.</p>	<p>\$4.00 \$0.10 \$0.05 \$0.50 \$1.00 \$0.50 \$2.00 \$0.20 \$7.00 \$2.00 The amount actually paid The amount actually paid, but not exceeding \$4.00 for each day or portion of a day Actual and reasonable expenses in the discretion of the Registrar 5 percent 2½ percent \$5.00 5 percent 2½ percent</p>
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26. Poundage on writs of possession—
- (a) On delivery of goods and chattels: of the total market value thereof—
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|---|---------|
| For every \$1.00 or part thereof up to and including \$1,000.00 | \$0.02½ |
| For every \$1.00 or part thereof in excess of \$1,000.00        | \$0.01  |
- (b) On delivery of land: Of the capital value thereof, as determined by the Government valuation, less the amount owing under any registered mortgage over the land—
- |   |         |
|---|---------|
| For every \$1.00 or part thereof up to and including \$1,000.00 | \$0.05  |
| For every \$1.00 or part thereof in excess of \$1,000.00        | \$0.02½ |

Provided that the total poundage on delivery of goods and chattels or on delivery of land shall not be less than \$20 nor more than \$200 in respect of any one writ:

Provided also that where, under a writ of possession, possession of land is given to a mortgagee thereof, or to an immediate purchaser from any such mortgagee, the poundage shall not be less than \$20 nor more than \$40 in respect of any one writ:

Provided further that, notwithstanding anything hereinbefore contained, application may be made to a Judge of the Supreme Court to fix a fee less than any of the amounts above prescribed for poundage, and such lesser fee may be fixed if, in the opinion of the Judge, having regard to the circumstances of the particular case, it is fair and equitable so to do.

*B. Criminal Proceedings*

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|---|--------|
| 27. Conviction or order when drawn up in proper form  | \$1.00 |
| 28. (a) Sealing and issue of every warrant of commitment for default in payment of fine   | \$1.50 |
| (b) Execution of every such warrant   | \$0.50 |
| 29. (a) Recognisance, with or without sureties  | \$1.00 |
| (b) Every enlargement or renewal of a recognisance  | \$1.00 |
| 30. Filing any application by a disqualified person for removal of disqualification under the Road Traffic Ordinance 1960, including all documents filed, hearing, and sealing order (if any) and one duplicate | \$5.00 |

SECOND SCHEDULE

Rule 5 (1)

SCALE OF SOLICITOR'S COSTS

	Amount not exceed- ing \$2,000	Amount not exceed- ing \$5,000	Amount exceeding \$5,000
1. (a) Issue and service of summons, and filing			

	statement of claim, when only one defendant	\$10.00	\$20.00	\$30.00
	(b) For each additional defendant	\$2.00	\$2.00	\$2.00
0.02½	2. On judgment by default without motion	\$4.00	\$6.00	\$8.00
0.01	3. On judgment by confession without motion	\$4.00	\$6.00	\$8.00
	4. Payment into Court	\$4.00	\$4.00	\$4.00
	5. On a discontinuance or a dismissal of action	\$4.00	\$4.00	\$4.00
0.05	6. When an application to enter judgment is necessary in cases 2, 3, 4 and 5: the costs of the application as allowed			
0.02½	7. Preparing and filing statement of defence	\$10.00	\$20.00	\$30.00
	8. Preparing for trial to either party in addition to costs under Nos. 1 or 7 (These costs, or a portion of them, may be allowed in addition to Nos. 2, 3, 4 and 5 if necessarily incurred) Provided that extra costs may be allowed, if certified for, having regard to the importance of the case and the time reasonably spent in preparation, but so that the total fee for preparation shall not exceed 3 times the amount in the appropriate scale	\$40.00	\$60.000	\$90.00
	9. Trial or hearing of an action:	8%	8% up to \$2,000 and 3% on excess	8% up to \$2,000 and 3% on excess
	Provided that if the trial is limited to the quantum of damages only, the scale shall, unless the Court otherwise directs, be two-thirds of the amount shown			
	10. Extra counsel, if certified for, each per day, not exceeding	\$8.50	\$25.00	\$40.00
	11. Second and each succeeding day of hearing, if certified for, not exceeding	\$20.00	\$40.00	\$60.00

12. New trials and rehearings, two-thirds of the rates under Nos. 9, 10 and 11			
13. (a) Charging order nisi	\$10.00	\$10.00	\$10.00
(b) Charging order absolute without motion	\$8.00	\$8.00	\$8.00
(c) Charging order absolute on motion	\$12.00	\$12.00	\$12.00
14. (a) Writ of sale against goods or chattels	\$12.00	\$12.00	\$12.00
(b) Writ of sale against land	\$20.00	\$20.00	\$20.00
15. Condition of sale, when required: as allowed by Registrar			
16. Commission or order to examine witnesses in Western Samoa, up to examination	\$12.00	\$20.00	\$30.00
17. Examination before examiner: as fixed by Registrar			
18. Order and commission for examination of witnesses out of Western Samoa	\$16.00	\$30.00	\$40.00
19. Interrogatories: copies and service	\$12.00	\$20.00	\$30.00
20. Answers to interrogatories	\$12.00	\$20.00	\$30.00
21. (a) Affidavit of discovery: as may be certified for, \$10.00 to \$60.00			
(b) Production and inspection of documents: as may be certified for, \$5 to \$40.00			
22. Preparing and settling special case	\$12.00	\$20.00	\$30.00
23. (a) Argument of special case of question of law stated for the opinion of the Court, not exceeding	\$50.00	\$75.00	\$125.00
(b) Second and each succeeding day, if certified for, not exceeding	\$20.00	\$40.00	\$60.00
24. Motions and other applications in Court not specially provided for, or filing any application for extraordinary remedy: \$10.00 to \$200.00 as certified for or ordered			
25. Extra counsel may be certified for under Nos. 23 and 24, at each per day, not exceeding	\$16.00	\$25.00	\$40.00



26. Motions and other applications in Chambers: \$10.00 to \$60.00 as certified for or ordered but the Court may direct costs to be as in an ordinary action or taxed and paid as between solicitor and client
27. Taking accounts, making inquiries, and other proceedings before Registrar: per hour, not exceeding \$10.00
28. Appeals from inferior Courts (not otherwise provided for): an allowance not exceeding \$30.00 may be made for every day \$30.00
29. In addition to the foregoing items, all disbursements for—
  - (a) Fees of Court
  - (b) Witnesses' and interpreters' fees, allowances and travelling expenses actually paid by the party in accordance with any enactment or order of the Court:
  - (c) Agency charges (including those incurred in preparing for trial) if specially allowed:
  - (d) Other necessary payments.
30. The foregoing costs are to be calculated on the amount recovered for the plaintiff if he succeeds, and on the amount claimed in the action if the defendant succeeds. Where relief other than a sum of money is claimed, either alone or in addition to a sum of money, the Court on giving judgment shall fix under what head costs shall be allowed. If judgment is entered before trial, without application to the Court, the Registrar shall fix the head.
31. The total cost of an action exclusive of disbursements shall not exceed \$1,000.00 unless the Court certifies for the whole costs of the action. This shall not limit the power of the Court, the Registrar shall fix the head.

MALIETOA TANUMAFILI II,  
Head of State

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