

DRAWING BILLS OF COST

1. Firstly, the right to draw/tax the bill must be established by way of either a court order, a settlement with an undertaking to pay costs, a withdrawal and consent to pay costs, or a request by a client to draw a bill of costs for professional services rendered.
2. Then the scope of the bill must be determined according to the nature of the order / settlement giving rise to the right to draw the bill. Costs may be of an attorney and client nature (a family of costs to which different principles are applied in decreasing order of generosity), or of a party and party nature. Further, costs could be limited in their scope due to them being wasted costs, costs of the day, merits only, reserved, costs in the cause, no order as to costs.
3. The form the bill is required to take has been established in *City Deep Ltd v Johannesburg City Council* 1973 (2) SA 109 (w) and *Le Chasseur Boere (Edms) Bpk v Maine Chance Farms (Pty) Ltd* 1978 (3) SA 358 (C). Basically, each item in the bill must be individually numbered and dated, must state the subject matter in clear terms and must contain a fee and/or disbursement. The bill should contain a heading which records the correct Court, case number/s and parties, as well as the nature of the costs awarded and the party to whom costs are payable. The items in the bill follow a chronological date sequence starting at the earliest date, and this information is presented in columns from left to right, namely: item number, date, description, fee, disbursement, taxed off.
4. Useful tips:
 - (i) Refer to the parties in the bill by the names given to them in the heading i.e.: Plaintiff / Defendant, Applicant / Respondent ect.
 - (ii) Make sure that the costs awarded are not limited by nature e.g.: wasted costs, reserved costs, High Court Rule 43 application (pre 1.11.2017).

(iii) Make sure that the court has awarded costs for experts (reports and joint minutes / consultations / qualifying reservation or attending fees, costs of 2 or more counsel (and the scales on which they are awarded i.e.: A,B, or C).

(iv) Be aware of interim cost awards not yet ripe for taxation such as costs in the cause.

(v) In the Magistrates court some items are date specific such as counsels fees on scale A and counsels fees on applications. Further, in the Magistrates Court generally only 1 bill can be drawn at the very end of the matter.

(vi) Were settlement negotiations instituted, by whom and were they abortive? (If by the successful party but were abortive they are not party and party costs).

(vii) Were costs occasioned through overcaution, negligence, mistake. (in which case they cannot be recovered).

(viii) Who did the work claimed for in the High Court (attorney, candidate attorney, or secretary / messenger), as costs are limited to "legal costs" in the High Court.

(ix) What was charged to the client? Are you attempting to recover more as between party and party than you billed your own client?

(x) Have you applied the correct tariffs to the correct dates, and made provisions for changes in VAT?

(xi) Who is drawing the bill? Has the required certificate been attached in terms of Rule 70 E 3 (a) in High court matters?

(xii) Have you attached all relevant tax invoices and court orders to the bill?

5. How to use the tariffs:

High Court - The High Court party and party tariff of costs is contained in Rule 70 of the Supreme court act no 59 of 1959. The act allows for the following:

1. Attendances – These are time based items which include work done at consultations / appearances at court / conferences / inspections and the like. Time is calculated in 15 minutes (or part thereof) time slots. So, for 20 minutes the rate allowed would be 15 minutes x 2. Attendances can be undertaken by either an attorney or a candidate attorney. Different rates are allowed depending on which did the work.
2. Drawing – When documents are created by the attorney or candidate attorney, they are charged for based on the length of the document. Length is measured in pages, calculated on a formula of 250 words per page. Thus, a document 4 physical / literal pages in length that contains 540 words is only two pages (word count pages) in length as $540 \text{ words} \div 250 = 2$. Different rates (amounts) are allowed per page depending on the nature of the document prepared. Documents of a formal nature are charged out at a lower rate, whilst important documents are allowed at a higher rate. The same rates are allowed whether the work was done by an attorney or candidate attorney.
3. Perusing – This is where documents are read by the attorney or candidate attorney. Similarly, as with drawing, perusing is charged for based on the length of the document. Length is measured in pages based on the same formula of 250 words per page. There is however no differentiation between formal and important documents, and the same rates are allowed whether the work was done by an attorney or candidate attorney.
4. Telephone calls – Are allowed at the actual cost thereof (a disbursement) plus a fee for every 5 minutes or part thereof spent on the call. Thus a 6 minute call would be allowed at the rate per 5 minutes x 2. Different rates are allowed depending on whether the work was done by an attorney or candidate attorney.

5. Disbursements – These are monies paid out by the attorney on behalf of the client for example to sheriff's / advocates / experts etc. and are recorded on the date payment was made.

Magistrate Court

Drawing bills of cost in the Magistrates Court requires a basic understanding of magistrate's court Rule 33, together with annexure 2 (table A parts 1 – 5) to the Magistrates Court Rules.

The tariff under Table A is broken down into 4 parts. Part I general provisions, Part II undefended actions (where no appearance to defend is filed to a summons), Part III defended actions (and interpleader proceedings), Part IV other matters (which deals with applications).

When preparing a bill for say a defended action, the tariff can be broken down into 5 components, namely: taking instructions - to undertake a particular activity, attending fees – to actually complete the task undertaken, drawing fees - to prepare the required document/s, perusing fees - to read the required documents, and paying disbursements (monies paid by the attorney to other parties on clients behalf).

Some tasks are captured as a globular fee, others on a time basis , and still others based on the length of the document per folio (a folio is 100 words or part thereof).

Turning now to each of the components in turn:

1. Taking instructions :-

- a) To sue, to defend, to counterclaim, to defend a counterclaim - is a globular fee as stated at part III item 1,

- b) To make or oppose an application - is a globular fee at part IV item 1(a),
- c) To bring an exception or application where Counsel is employed - is a globular fee at part IV item 6,
- d) To liquidate a close corporation - is a globular fee at part IV item 1(b),

2. Drawing fees :-

- a) Drawing fees that are an all-inclusive globular amount include summons (Part III item 2), particulars of claim (Part III item 2 a), appearance to defend (Part III item 3), Notice of bar - Rule 12(2) and 21 B(2) notices (Part III item 4), plea (Part III item 5), counterclaim (Part III item 6), reply (Part III item 7), notice of trial or reinstatement (Part III item 12),
- b) Drawing fees that are measured by length in folios would be all documents not listed at (a) above and, would include but not be limited to requests for further particulars, statements , affidavits, formal notices, and discovery affidavits. These are all drawn in accordance with Part I item 8 (see part III at item 8) of the tariff,
- c) Letters / faxes / emails drawn are dealt with at Part III item 18(a) item of the tariff. They are not specified individually but as a globular number (recorded in folios),

3. Perusal fees:-

- a) Perusal of all documents of whatever nature (except Correspondence) is dealt with at Table A Part 1 General provisions items 10(a)+(b) and 11(a),

- b) Letters / faxes / emails perused are dealt with at item 18(b) of Part III of the tariff. They are not specified individually but as a globular number (recorded as items not folios)

4. Attending fees:-

Attendances can be of a globular, time based, or formal nature.

Globular would include preparing for trial (without counsel) Part III item 13, preparing for argument on opposed application Part IV item 4 (a), preparing for trial where an application has been referred to oral evidence or trial Part IV item 4 (b), refresher fee Part III item 23,

Time based would include telephonic consultations Part III item 21, consultations Part III item 22, consultations (with Counsel) Part IV item 20(a)+(b), consultations on settlement in opposed applications Part IV item 5, consultations on settlement negotiations in an action (no Counsel) Part III item 14, Consultations on inspection Part III item 9, consultations to record statements Part III item 11, attending pretrial conferences Part III item 16, travel time to/from court Part III item 25, attending at court waiting for a court to be allocated Part III item 24, attending at court during a trial / inspection / postponement / examination / commission (without Counsel) Part III item 15(a) (with Counsel) Part III item 15 (b), attending at court to hear reserved judgement Part III item 17, attending at court on hearing of application (no Counsel) Part IV item 3(a) (with Counsel) Part IV item 3(b).

Formal attendances would include formal telephone calls (Part III item 20), and formal attendances not otherwise provided for (Part III item 19),

5. Disbursements:- that are paid on behalf of client could include those payable to Counsel (Part IV item 21 to 26), tracing agents (Part I item 16), Sheriffs (Table C), experts / others (a reasonable fee as

there is no tariff), travel expenses as per Rule 33(9) (Part III item 26)