

# MAHARASHTRA POLLUTION CONTROL BOARD

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BO/P&L Div/B- 7023

Date: 13/12/2011

## Standing Order

Sub. :- Revision of professional charges scheme for appointment of Advocates for defending Board's interest in various Courts of Law.

Ref. :- Resolution passed in 155<sup>th</sup> Meeting of the Board held on 24.10.11 and 25.10.11 respectively.

The Board is implementing various Environmental Rules & Regulations in the State of Maharashtra. In order to implement the provisions of the various Acts & Rules, the Board is launching prosecution against the defaulting industries in various courts of law all over the State of Maharashtra. The NGOs as well as Individuals have filed various Writ petitions/ Public Interest litigations on various environmental issues before the Hon'ble Supreme Court of India as well as High Court of Judicature at Bombay (Mumbai, Aurangabad & Nagpur Benches) as well as other Benches of High Court having Jurisdiction against the orders passed by the National Appellate Authority, Tribunal and now against the orders, which will be passed by the Green Tribunal. The various types of cases spread all over the Maharashtra and it is not physically possible for the Policy & Law Division to attend such cases in various courts on every dates. Therefore, the Board has taken the assistance of Sr.Counsels/Special Counsels/local Advocates/Public Prosecutors for defending such cases. Now, the Law Officers are permitted to appear before the Green Tribunals, having well conversant with the various Environmental Laws and the facts of the Appeals. The Law Officers will attend such cases when required.

The Board, accordingly, in its 61<sup>st</sup> meeting held on 13/6/1983, 94<sup>th</sup> meeting held on 11/6/1992 and 118<sup>th</sup> meeting of the Board held on 20/11/1997 respectively had approved scheme/s for the payment of professional charges to Advocates.

defending the Board's interest in various courts of law. The revision of the scheme has been done lastly in the year 1997.

The scheme which was approved in the 118<sup>th</sup> meeting of the Board held on 20/11/1997 is only for Supreme Court matters, High Court matters & Trial Court matters (Criminal & Civil Court). The said scheme does not make any distribution between the appearance in the Trial Courts and Appellate Court / Forum as well as other Special Forums like Human Rights Commission, Consumer Forum, District & Sessions Courts/Civil Courts, Lok Aayukata and now National Green Tribunal Bench equivalent to the High Court etc. Hence, there has been ambiguity in the earlier scheme. Therefore, at Lower Courts and Appellate Courts equal amount of fees was being sanctioned.

The Board in its 118<sup>th</sup> meeting resolved that "the Board has authorized the Chairman/Member Secretary to decide fees structure/payment of additional professional charges in important cases. In case of any ambiguity, Chairman & Member Secretary was further authorized to decide and finalize the payment of professional charges to the Advocates."

A table indicating the existing & revised professional charges scheme is as under:

#### I. SUPREME COURT MATTERS

The Member Secretary of the Board has been empowered to appoint the Advocate/s on record and also Senior Counsels/Special Counsels in important matters as and when required, as decided by the Policy and Law Division/ Advocate on record.

#### Amendment Done :

In the present scheme regarding professional charges fees of Sr.Counsel / Advocates appearing before the Supreme Court of India, New Delhi is fixed up as per the Schedule of Fees submitted by him at the time of appointment, unless revision in such fees sought by him. Whenever, Sr.Counsel / Advocates were appointed, the Board takes into consideration their schedule of fees and accordingly, appoints them, hence, the Board has no discretion in deciding the fees of Sr.Counsel/ Advocates except selecting Sr.Counsel / Advocates as required in the case. Therefore, it has been decided to make the payment of the fees to be paid to the Sr. Counsels /



Advocates as per the schedule of fees submitted by them with the approval of the Member Secretary.

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	Drafting/filing of Affidavit including conference with officers of the Board, appearance before the court inclusive clerkage incidental expenses, court fees etc. till the matter is admitted or rejected.	<p>The fees for Advocate on Record in the Supreme Court of India are paid as per the Schedule of Fees submitted by him at the time of appointment, unless the schedule of fees changed by him.</p> <p>The fees of Sr.Counsel or Special Counsel appointed before the Hon'ble Supreme Court of India are decided at the time of the appointment in particular matter in consultation with the Policy and Law Division and as per the selection of the Sr.Counsel/Special Counsel by the Policy &amp; Law Divn. as may be required from the issues involved in the matter.</p>	<p><b><u>Advocate on Record (Fees)</u></b></p> <p>The drafting and filing of Affidavit/ Petition/ Application/Rejoinders/ Conference of Sr.Counsel and appearance of Advocate on record, fees will be decided as per schedule of fees submitted by him to the Board with the advance approval of the Member Secretary in consultation with the Policy and Law Division at the time of appointment itself and accordingly, the payment will be made.</p> <p>Generally, the fees of each Advocate on record is fixed up as per the Schedule of Fees submitted by him at the time of appointment, unless revision in such fees sought by him.</p> <p>In case of any changes, necessary approval will be taken from the Member Secretary of the Board. The miscellaneous expenditure such as Typing, Photocopying, Clerkage, Conference Room, the charges for certified copies of the Judgment &amp; Orders etc. will be paid as per the actuals on the basis of the bills/receipts submitted by the Advocate on record.</p> <p><b><u>Sr.Counsel's Fees</u></b></p> <p>The fees of Sr Counsel with settlement of draft Affidavit/ Petition/ Application/Rejoinders as well as Conference and appearance for each date will be decided on the basis of schedule of fees submitted by him at the time of</p>

			<p>appointment. In case of any revision, the necessary approval will be taken from the Member Secretary of the Board.</p> <p>Generally, the fees of Sr.Counsel are fixed up as per the Schedule of Fees submitted by him at the time of appointment, unless revision in such fees sought by him. Whenever, Sr.Counsel is appointed, the Board takes into consideration his schedule of fees and accordingly, appoints him with the approval of the Member secretary of the Board.</p>
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**II. HIGH COURT MATTERS (Mumbai, A'bad & Nagpur Bench). (Appellate Side & Original Side)**

**A Panel Advocates-** The Advocates having not less than 15 years practice in the High Court with wide experience in the matters involving constitutional law/ environmental legislation/criminal law shall be eligible for being appointed as A panel Advocate on the original side and Appellate side of the High Court. The Advocate already appointed by the Central Govt. / State Govt. may be considered as 'A' panel Advocate.

**Amendment Done**

In the present scheme, since no separate drafting charges are paid alongwith conferences, which are included in their lump sum fees. Hence, the Sr. Advocates are reluctant to prepare Affidavits and therefore, all the Affidavits are prepared by the Policy and Law Division. Now, the fees of 'A' Panel Advocates and 'B' Panel Advocates have been considerably increased after lapse of 13 years time, when, the scheme for engagement of 'A' & 'B' Panel Advocates approved by the Board in 1997. It is, therefore, resolved to double the existing fees i.e. Rs.20,000/- upto admission without any Rule disposal of the case and Rs.20,000/- after disposal of the case after issuance of Rule or after admission.

**B Panel Advocates-** The Advocates having not less than 7 years practice in the High Court matters involving constitutional law/ environmental legislation/criminal law



shall be eligible for being appointed as B panel Advocate on the original side and Appellate side of the High Court.

### Amendment Done

It is, therefore, resolved to double the existing fees i.e. Rs.10,000/- upto admission without any Rule disposal of the case and Rs.10,000/- after disposal of the case after issuance of Rule or after admission, on the lines of 'A' Panel Advocates on account of lapse of 13 years time in respect of existing fees structure.

In High Court matters also, whenever, the matters are heavy or become serious, the Board appoints Sr. Counsel on case to case basis. In case of the appointment of Sr. Counsel, the established practice is that the schedule of fees taken from 2-3 Sr. Counsels declared by the High Court / Supreme Court and the Board select the Sr. Counsel suitable to the case. Most of times, the Sr. Counsel is selected or continued by the Board on the basis of its past experience and in that case, the Board is not calling schedule of fees from 2-3 Sr. Counsels, but, continues earlier Sr. Counsel/s.

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	Drafting of Petition, Appeal, Revision, drafting of Affidavit, conference with the officers of the Board and appearance before the court till the matter is admitted or rejected.	<p><u>'A' Panel Advocate</u></p> <p>Fee for 'A' Panel Advocate- Rs. 10,000/- till admission of the petition &amp; Rs. 10,000/- after disposal of the case. ( 'A' panel Advocate will be paid Rs. 20,000/-)</p> <p><u>'B' Panel Advocate</u></p> <p>Fee for 'B' Panel Advocate- Rs. 5,000/- till admission of the petition/Appeal &amp; Rs. 5,000/- after disposal of the case. ( 'B' panel Advocate will be paid Rs. 10,000/-)</p>	<p><u>'A' Panel Advocate</u></p> <p>It is necessary to increase above fees double the existing fees i.e. Rs.20, 000/- upto admission without any Rule being issued by the Hon'ble High Court. petition &amp; Rs. 20,000/- after disposal of the case. i.e 'A' panel will be paid total amount of Rs.40,000/- for each case.</p> <p><u>'B' Panel Advocate</u></p> <p>It is necessary to increase above fees double the existing fees i.e. Rs.10,000/- upto admission without any Rule being issued by the Hon'ble High court, &amp; Rs. 10,000/- after disposal of the case. i.e</p>

			'B' panel well be paid total amount of Rs.20,000/- for each case.
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### III. Trial Court Matters

The Board has also filed criminal applications against the defaulting industries under the provisions of Water (Prevention & Control of Pollution ) Act 1974, Air (Prevention & Control of pollution) Act 1981 and Environment (protection) Act 1986 and Rules made thereunder before the Metropolitan Magistrate/Chief Judicial Magistrate/Judicial Magistrate First Class. Similarly civil suits also filed against the Board either for recovery or grant of temporary injunction etc. and another miscellaneous matter filed before the quasi judicial forum/Human Right Commission/ State Consumer Forum/ Labour Court. The following scheme is approved.

#### Amendment Done

Presently, the fees of the Advocates for filing of the cases and conducting such cases has been increased considerably and therefore, nowadays, Good Advocates are reluctant to take the brief or cases of MPCB. In some of the cases, the earlier Advocates given up their briefs back to the Board and therefore, it is resolved to make revision in their fees, in order to increase the success rate of the cases filed by the Board.

Earlier, the Law Officers of the Board were allowed to enroll as Special Counsels on behalf of the Bar Council of Maharashtra and therefore, the cases in and around Mumbai were being attended by them and conducted by them. At that time, the filing of cases before Lower Courts was much more and very less petitions were being filed before the Hon'ble High Courts / Supreme Court of India as well as the Appellate Tribunals under the Environment Protection Laws. However after 1995, the Board has taken policy decision to exhaust the remedy of issuance of Directions under various Environmental Laws more than filing of Prosecutions and Cases under various Environmental Laws. Nowadays, very few cases are being filed under various Environmental Laws by the Board and more directions are being issued to secure the compliance of various consent conditions. Similarly, Public Interest Litigations have been increased and therefore, the Policy and Law Division has to concentrate more on the office work and briefing of the 'A' and 'B' Panel Advocates. Otherwise also as per the recent amendment to the Maharashtra Bar Council Rules,



the Law Officers are not allowed to appear before the Judicial Forums and therefore, they are not allowed to appear.

However, recently under Green Tribunals Act, 2010, now all the Law Officers of various State Pollution Control Boards are stated to be allowed to appear before the Green Tribunal/s on account of they are well acquainted with various Environmental Laws and facts of the cases. Henceforth, the Law Officers from Policy and Law Division will appear before such Green Tribunal/s as and when required. The following revision is approved in the fees of the Advocates appearing before the Trial Court, by increasing existing lumpsum fees of Rs.6,000/- to that of Rs.15,000/-, however, the payment of this fee will be made as per prevailing practice of making payment in 4 stages as under :-

**b) Criminal cases filed before the JMFC/ CJM/ Metropolitan Magistrate**

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	For drafting & filing of cr. Complaint/ vakalatnama & reply in a case filed against the Board.	25% of lump sum amount of Rs. 6000/-	25% of lump sum amount of Rs. 15,000/-
2.	Evidence before Charge	25% of lump sum amount of Rs. 6000/-	25% of lump sum amount of Rs. 15,000/-
3.	For final argumen/ hearing	25% of lump sum amount of Rs. 6000/-	25% of lump sum amount of Rs. 15,000/-
4.	After certified copy of the order is received by the Board.	25% of lump sum amount of Rs. 6000/-	25% of lump sum amount of Rs. 15,000/-

**c) Civil Suits filed before the Civil Judge Junior Division/ Sr. Division**

**Amendment Done :**

Earlier scheme was not clear about the making payment of fees for Civil Suits, but the Board was paying Rs.6000/- which was applicable to the Criminal Cases. Since, the stages of civil cases are different than that of criminal cases and it is necessary to revise the fee structure for civil cases also, therefore it has been decided to increase the existing fees to that of Rs.15,000/- for Panel Advocates as under

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	For drafting, filling affidavit, application for interim stay, supporting/opposing	Rs. 6000/-(all inclusive)	Rs.15,000/- (all inclusive) paid as under :

	application of interim stay including hearing & argument till final disposal of cases.		<ol style="list-style-type: none"> <li>1. At the time of drafting of plaint/application &amp; filing thereof on behalf of the Board or filing reply / Affidavit at the time of first appearance = 25% of lump sum amount of Rs. 15,000/-</li> <li>2. After framing of the issues = 25% of lump sum amount of Rs. 15,000/-</li> <li>3. After examination of witnesses and concluding the evidence on behalf of the Board = 25% of lump sum amount of Rs. 15,000/-</li> <li>4. After Judgment &amp; Order submitted to the Board = 25% of lump sum amount of Rs. 15,000/-</li> </ol>
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**d). Cr. Revision/ Appeals filed before the Dist. /Session Judge**

**Amendment Done:** The existing scheme does not make it clear at what stages the payment of fees to be made and the said fee structure has become outdated and on account of a lot of increase in the fees of the Advocates, it is therefore decided to increase the existing fees to that of Rs.18,000/- instead of existing Rs.6,500/- as under :

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	For drafting, filing written submission till final disposal of the matter.	Rs. 4000/- & 2500/-	<ol style="list-style-type: none"> <li>1. After filing of Appeal / Revision on behalf of the Board before the District and Sessions Judge or after filing of the Reply / Written Statement to the Revision / Appeal filed against the Board = 30% of Rs.18,000/- to be paid.</li> <li>2. After final arguments = 30% of Rs.18,000/- to be paid</li> <li>3. After receipt of Judgment &amp; Final Order by the Board =40% of Rs.18,000/- to be paid</li> </ol>



**IV. Appeals/ Matters filed before Human Right Commission / State Consumer Forum/Quasi Judicial Forum/ Labour Court /Motor Accident Tribunal**

**Amendment Done** : Since, earlier existing scheme does not make any specific provision for such cases, the fees paid at the Lower Courts was being paid to the Panel Advocate appointed in such cases. Now, it is proposed that in respect of all such Special Forums, the separate fee structure will have to be prescribed. Accordingly, for the forums in the State, it is resolved to pay lumpsum Rs.18,000/-in the following stages.

Sr. No.	Particulars/nature of work	Existing fee	Revised fee
1.	For drafting, filing written submission till final disposal of the matter.	Rs. 6000/- (all inclusive in only quasi judicial forum and labour court matters).  Professional charges fee yet not to be fixed for remaining matter.	1. After filing of the first Reply to the main petition = 30% of Rs.18,000/- 2. After final argument = 30% of Rs.18,000/- 3. After receipt of Judgment & Final Order by the Board =40% of Rs.18,000/- to be paid

**V. Matters filed before the National Green Tribunal/National Consumer Forum/ National Human Right Commission**

Recently, various matters/Appeals filed by the project proponent/affected person/s on various environmental issues before the National Green Tribunal/National Consumer Forum/ National Human Right Commission.

Instead of filing of petition before Hon'ble High Court, most of the issues have been entrusted to National Green Tribunal, which is equivalent to the Hon'ble High Court and therefore, whatever professional charges are being paid to the 'A' Panel Advocates at High Courts, shall also be paid to the Advocates appointed on behalf of the Board in the National Green Tribunal Benches.

**Amendment Done** : Presently, the scheme is silent about the payment of fees, but the board is paying Rs.10,000/- lump sum. In view of the Appeals at National level, it is resolved to make increase upto Rs.40,000/- being paid to the 'A' Panel Advocate at the following stages.

Sr. No.	Particulars / nature of work	Existing Fees	Revised Fees
1.	Drafting/filing of written submission including conference with officers of the Board, appearance before the court inclusive clerkage, incidental expenses, court fees etc. till the Appeal is disposed off.	Professional charges fee yet not to be fixed, but paying the fees	1.After filing of Vakalatnama = 25% of Rs.40,000/- 2.After filing of the reply = 25% of Rs.40,000/- 3.After final argument = 25% of Rs. 40,000/- 4.After receipt of Judgment & Final Order by the Board =25% of Rs.40,000/- to be paid

Item Note regarding revision of the professional charges was kept in the 155<sup>th</sup> Board meeting held on 24.10.11 and 25.10.11 respectively and after due deliberations, it was unanimously decided to approve Revised Scheme for engagement of the services of approved Panel Advocate/s with effect from 1.1.2012. It was also resolved that the Professional Charges after approval as per the Scheme adopted by the MPCB pertaining to Lower Court, will be paid from the Regional Officers Account. The Regional Officer/s with the approval of Member Secretary and in consultation with the Policy & Law Division can engage the Advocate/s in Lower Courts. The remaining appointments and payments will be made as proposed in the Scheme.

The above scheme has been approved by the Board and its implementation will be started from 1.1.2012. All the officers are requested to take into consideration above amendment and to follow the above scheme scrupulously w.e.f. 1.1.2012.



(Milind Mhaiskar)  
Member Secretary

Copy submitted to : Hon'ble Chairman, MPCB, Mumbai – for kind perusal