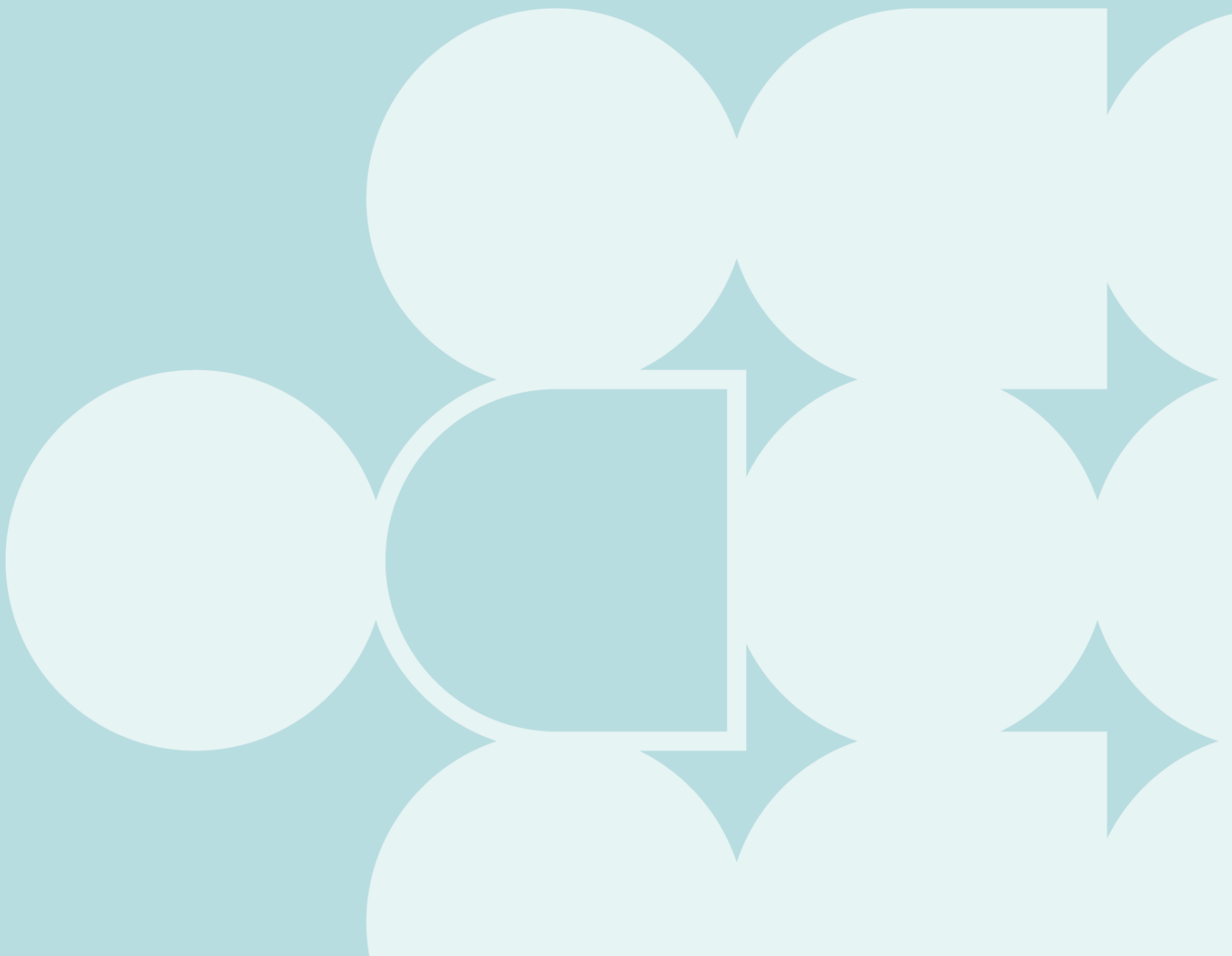




**Child Welfare  
Tribunal**

# **Guide on fees in the dialogue process**

*Oslo, 22 March 2023*



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## 1. Introduction

As a rule, the lawyers' fees in child welfare cases before the Child Welfare Tribunal are a set fee based on the duration of the tribunal hearing, cf. the Legal Aid Act Section 17 third paragraph number 2 and the Set Fees Regulations Section 6. However, the lawyers' legal aid in connection with dialogue processes is stipulated on the basis of time spent, and the fees are paid after each meeting.

It may be difficult to determine legal fees in a dialogue process. The purpose of this guide is to ensure high quality and uniform practice in the stipulation of legal fees.

## 2. Stipulation of fees for preparing for and attending dialogue meetings

Lawyers shall be remunerated for reasonable and necessary legal aid provided to clients in connection with dialogue meetings and preparations for such meetings, cf. the Legal Aid Act Section 17 third paragraph number 2 and the Fee Regulations Section 7.

A statement detailing the work must be submitted to the tribunal after each dialogue meeting.

The lawyer must provide adequate information about the time spent. It cannot be demanded that a timesheet be submitted with the statement detailing the work, but a timesheet will be a good way of substantiating and verifying fee claims, see the Norwegian Supreme Court's decision HR-2021-1758-U. If no itemised timesheet is submitted, the lawyer must by other means provide sufficient information about the time spent to allow the tribunal to conduct a concrete assessment to determine whether the work was reasonable and necessary.

### **Preparations for the initial dialogue meeting**

The role of lawyers in a dialogue meeting differs greatly from their role in a tribunal hearing. The lawyers are not present to argue the case, but rather to support and assist their client during the process. The extent of billable work in preparation for a dialogue meeting will be limited compared with ordinary tribunal hearings.

In order for lawyers to be able to assist and advise their client, they must have familiarised themselves with the child welfare service's application and pertaining appendices, as well as submitted a statement of defence stating whether the private party has consented to the dialogue process. It is also important that the lawyers take the time to ensure that their client understands what it entails to have the case dealt with through a dialogue process.

The Child Welfare Tribunal must ensure that lawyers are paid for all reasonable and necessary work undertaken. In connection with the first dialogue meeting, it is usual, as a rule, to pay for time needed for, among other things:

- familiarising oneself with the case documents to be able to support the client during the dialogue process
- contact with the client to prepare a statement of defence, provide information about the dialogue process and prepare the client
- planning meeting
- attending the dialogue meeting
- necessary follow-up work

If the case is forwarded for a tribunal hearing after the first dialogue meeting, the writing of the statement of defence will be covered by the set fee based on the duration of the tribunal hearing, cf. the Legal Aid Act Section 17 third paragraph number 2 and the Set Fees Regulations Section 6.

What constitutes reasonable and necessary legal aid must be decided on a case-by-case basis through a concrete overall assessment. As a point of departure, it can be assumed that a lawyer will normally spend 8–15 hours on case preparations before the initial meeting in the dialogue process. The time spent attending the meeting comes in addition to this. In cases where the recipient of legal aid is a child who is a party to the case, more assistance will often be required. Additional assistance may also be required when the parties to the case do not speak Norwegian or have limited knowledge of the Norwegian system. Other circumstances could be the scope of the case, if the dialogue process concerns more than one child, etc.

The Norwegian Civil Affairs Authority's decision REHJ-2021-2213 stipulated a reduction in fees from 25 to 12 hours.

### **Lawyers' legal aid during temporary arrangements and in preparation for another dialogue meeting**

The legal fees for work in the time between dialogue meetings will vary. The preparations for another dialogue meeting will usually take 5–10 hours. Any work done by the lawyer in connection with temporary arrangements will come in addition to this.

Fees must be determined through a concrete assessment on a case-by-case basis. It is usual, as a rule, to pay for time needed for, among other things:

- contact with the client during the temporary arrangement period for clarification and assistance
- reviewing case documents for updates and reading new documents in the case
- contact with the client to prepare the client for another meeting
- attending the dialogue meeting
- necessary follow-up work

It is important that the tribunal allows the lawyer to engage in close follow-up of the temporary arrangement where necessary.

## **3. Cases closed without a tribunal hearing**

When a case is closed during the dialogue process without a tribunal hearing being held, lawyers shall be paid for all reasonable and necessary work carried out in connection with the case on the basis of time spent, cf. the Legal Aid Act Section 17 third paragraph number 2 and the Fee Regulations Section 7.

The cut-off point for what work falls within the scope of free legal representation follows from the Norwegian Civil Affairs Authority's circular SRF-1/2017 on free legal aid, section 2.6.3, which reads as follows:

‘When the child welfare service brings a case before the county social welfare board, preparations are deemed to have started when the party to the case has been informed that the child welfare service has decided to bring the case before the board. When a

private party brings a case before the county social welfare board, for example an application for return of care and control of a child, the preparations are deemed to have started when the party has filed the claim. In practice, work on filing/drawing up the application is also deemed to constitute necessary preparations. The child welfare service is then obliged to prepare a case for the county social welfare board, cf. the Child Welfare Act Section 7-10 second paragraph.'

#### **4. Combination of dialogue meeting and tribunal hearing**

From dialogue meeting to tribunal hearing

A statement detailing the lawyer's work in connection with the dialogue process must be submitted as soon as possible after the decision has been made to consider the case in an ordinary tribunal hearing. Ideally, an itemised timesheet in which all work related to the dialogue process can be identified should be enclosed. Work not related to the dialogue process should not be included in this statement. Such work will be covered at the fixed rate after the tribunal hearing.

When a case is concluded by a decision made following a tribunal hearing, a statement detailing the work is submitted in the ordinary manner. The lawyer will then be paid for the case at the set fee, alternatively on the basis of time spent if the conditions for expanding free legal representation are met, cf. the Set Fees Regulations Section 6 second paragraph.

From tribunal hearing to dialogue meeting

If the tribunal decides that the case will be dealt with through the dialogue process after the tribunal hearing has started, the lawyer's fees will be stipulated as a set fee calculated on the basis of the duration of the tribunal hearing.

Fees for the dialogue process will be stipulated on the basis of time spent, see section 2.

#### **5. Postponed or cancelled dialogue meetings**

The Fee Regulations Section 11 first paragraph on the stipulation of fees in the event that a tribunal hearing, in the Regulations still referred to as a 'county social welfare board meeting', is postponed or cancelled, does not apply to dialogue meetings.

This follows from the Norwegian Civil Affairs Authority's practice, see decisions REHJ-2021-3060 and REHJ-2021-2685.

The wording of Section 11 first paragraph must be understood to mean that the provision is only intended to apply to ordinary tribunal hearings. The consideration underlying this provision is to compensate for meetings of a certain duration, including tribunal hearings, that do not take place. Dialogue meetings are different in nature and of shorter duration than ordinary tribunal hearings.

#### **6. Dialogue processes over an extended period of time**

When a dialogue process continues for an extended period of time, the lawyer will consequently have to wait a long time to be paid for work that is not related to the dialogue process. The

provision on payment in advance set out in the Fee Regulations Section 6 third and fourth paragraphs does not apply to cases where fees are paid in accordance with the Set Fees Regulations. Reference is made to circular G-13/05 and the Supreme Court's decision HR-2006-1838-U. Lawyers should therefore limit their work not related to the dialogue process to the extent that it is responsible to do so.

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