

# Rules Relating to the Payment of Expenses to Witnesses in Criminal Courts (1951)

RAJASTHAN

India

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### Rule

### **RULES-RELATING-TO-THE-PAYMENT-OF-EXPENSES-TO-WITNESSES of 1951**

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Rules Relating to the Payment of Expenses to Witnesses in Criminal Courts (1951)Published vide Notification No. F.21(250) Jd./49, dated 6.1.1951 (published in Rajasthan Gazette, part 4B, dated 24.2.1951).In exercise of the powers conferred by section 544 of the Code of Criminal Procedure, 1898, as adapted to Rajasthan, the Government of Rajasthan is pleased to make the following rules relating to the payment of expenses to witnesses in Criminal Courts :-

#### **1. Cases in which Government is to pay the expenses**

- The Criminal Courts are authorised to pay at the rates specified below the expenses of complainants or witnesses:-(1)In case in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate or any other public officer or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service;(2)In all cases entered in column 5 of Schedule II appended to the Code of Criminal procedure as not bailable;(3)In all cases which are cognizable by the Police; and(4)In all cases in which they are compelled by the Magistrate, of his own motion, to attend under section 540 of the Code of Criminal Procedure;[Provided that in case falling under clause (2) or clause (3) which are not covered by clause (1) payment of expenses by the Government shall be ordered only in exceptional circumstances and for reasons to be recorded in writing.] [Added by Notification No. F.21(250) Jud/49, dated 8.12.1951 (Published in Rajasthan Gazette, Part 4-B, dated 15.12.1951).]

## **2. Expenses of witnesses in Summons Cases**

- No payment shall be made by the Government to witnesses summoned at the instance of the complainant under Section 244 of the Code of Criminal Procedure, unless the prosecution appears to the Magistrate to be in furtherance of the interest of public justice; but under this section the Magistrate may require the complainant to pay their expenses.

## **3. Expenses of witnesses in Criminal Cases**

- The expenses of witnesses shall like ordinary contingent expenditure be met by the Court out of its permanent advance, the expenditure of this account being recouped when necessary from the appropriate grant.

## **4. Rates of expenses**

- [(1) Diet allowance to a witnesses shall be paid at a rate of twenty rupees per day.] [Substituted by Notification No. 47(51) Jud/75, dated 3.2.1998 (Published in Rajasthan Gazette, Extraordinary, Part 4(Ga)(I), dt. 13.2.1998, page 165).](2)Diet money shall be paid for the days of actual detention as well as for the time occupied in the journeys to and from the court. The number of days which should be allowed for the journey to and from will be determined by the Officer ordering payment in each case.(3)[ Travelling expenses shall be given at the following rates :-] [Substituted by Notification No. F. 21(250) Jud/49, dated 13.6.1956 (Published in Rajasthan Gazette, Part 4-C, dated 11.10.1956).](a)When the journey is by road and performed in a hired conveyance or his own conveyance the actual expenses incurred up to a maximum limit of four annas a mile or in the case of witnesses of superior ranks, upto six annas a mile. To towns where licensed hackney carriages ply for hire, the actual cost of hiring a vehicle suited to the rank of a witness may be allowed, if in the opinion of the Court, the use of such vehicle was necessary;(aa)[ When the journey is performed on foot, road mileage at /1/- per mile.] [Inserted by *ibid.*](b)Where the journey is wholly or partly by rail -(i)generally, railway fare by the lowest class.(ii)[ for witnesses of higher rank, second or first class railway fare according to circumstances.] [Substituted by Notification No. F. 21(200), Jud/49, dated 9.7.1950 (Published in Rajasthan Gazette, Part 1V-C, dated 23.7.1955).]Note 1. Expenses of minor's attendant - When a minor or tender age is required to attend Court at witness and such witness cannot safely travel alone, the attendant who accompanies the minor may also be paid expenses at the ordinary rates prescribed for witnesses.Note 2. Discretion of Courts - These rules intentionally allow the Criminal courts a discretion as to the payment of witnesses. The circumstances of cases differ, and there are many criminal proceedings in which the prosecution is not called for on public grounds. It is not in every case that the State has undertaken and is bound to provide the cost of the prosecution. In many instances moreover, witnesses live at such a short distance from the Court that their being a summoned to give evidence cannot be considered to entitle them to remuneration. At the same time, doubtful cases should be interpreted liberally, and in no case should it happen that complainants and witnesses who have been put to trouble and inconvenience in the prosecution of offenders, should be denied their legitimate expenses.

## **5. Payment should be made personally by the Court and without delay**

- It is the duty of the Magistrate to ascertain in each case how far the witness has to travel to and from the Court and how many days it takes the witness to travel to the court to give evidence and to return to his home. Every endeavour should be made to avoid delay in payment of the expenses of witnesses. As soon as the evidence of the prosecution witnesses in cases launched by the State has been recorded, the Magistrate should have the memorandum of costs of witnesses made out and forwarded to the Nazir from whom he should receive and personally disburse the amount to the witnesses before leaving the Court.

## **6. Expenses of Government Servants**

(1) An officer of the Government who is summoned to give evidence of facts which have come to his knowledge or of matters with which he has had to deal in his public capacity in a criminal case (including a case before a Court Martial) is entitled to draw travelling allowance from Government. Accordingly, the Courts should not grant to Government Officer exception two cases maintenance below fees or expenses which may, have been deposited in such cases for their travelling and halting or subsistence allowances. The amount should be credited to Government under the head 'XXI Administration of Justice-Miscellaneous Fees and Fines'. In the case of employees of the Central Government or a State Railway or an other Commercial Department of Government, however, sums deposited for diet money will be credited in the Treasury to the credit of the Government concerned i.e. Central Railway, or any other commercial Department of Government, as the case may be. Exception - (i) When a Government servant is summoned to give evidence at a Court situate not more than 5 miles from his headquarters or to give evidence of facts which came to his knowledge in his private capacity and is, therefore, not entitled to any travelling allowance under the ordinary rules from Government, the Court may, if it considers necessary, pay him the actual travelling expenses incurred. Exception - (ii) When the salary of the Government servant summoned does not exceed Rs. 35/- per mensem such official may receive his expenses from the Court. (2) The practice of requiring the parties to pay the subsistence allowance of a Government servant at the rate of pay of official concerned is illegal. A Government servant is entitled only to his subsistence allowance at the rate prescribed above for other witnesses. (3) Court Certificate - In all cases in which an officer of Government is summoned to give evidence, the Court should give him a certificate in the following form (A) specifying the dates on which the officer was required to attend and the amount, if any, paid by the Court. The Certificate will (1) be attached by the officer concerned to any travelling allowance bill which he may submit under the rules quoted above. A copy of the certificate should invariably be endorsed to the Head of the Department concerned for his information. A Form of certificate to be given by the Court to an officer of Government summoned to give evidence at a Court. In the Court of the.....in the.....District.

**1. Certified that.....was summoned to give evidence in this Court in his public/private capacity in the case of.....and was required to attend for a period of days, that is, from the.....to the.....**

\*Here enter the name and official designation of the officer.\*He was paid the following amounts in accordance with the rules of the Court. \*To be cut out when nothing is paid.

**2. The amount of.....as his diet-money has been /will be deposited in the local treasury/Sub Treasury.....on (date).....**

\* Paragraph two is only required in the following cases, namely:-Note 1. In cases in which Government servants have to give evidence at a Court situate not more than 5 miles from their headquarters or in their private capacity, actual travelling expenses incurred by them may when the court considers it necessary, be paid to them.Note 2. A Government servant whose salary does not exceed Rs. 10/- per mensem may receive his expenses from the Court.

**7. Expenses of persons subject to Military Travelling Allowance Rules**

- Individuals subject to the military travelling allowance rules when they are detailed or summoned either as witnesses or accused to attend a Civil Court in a criminal case, are entitled to payment of travelling expenses by the Court only when they are not entitled to free conveyance at the expense of the Army under paragraph 201-11 of Passage Regulations, India, which is reproduced as under:-Paragraph 201-II - Witnesses attending Civil Court-An individual detailed or summoned either as a witness or as an accused to attend a Civil Court in a Criminal case involving the interests of the State, provided that in the case of a witness the facts as to which he is to give evidence have come to his knowledge in the discharge of his public duties, will be entitled to free conveyance. When such conveyance is provided, a witness may not accept any payment on account of travelling or subsistence allowance from the Court. Any fees which may be deposited in the court for the travelling and subsistence allowance of the witness must be credited to Government. If the Court in which he gives evidence is situated within 5 miles (or 10 miles in the case of a mounted officer of his headquarter and no travelling allowance is, therefore, admissible for the journey, he may, if he be not in receipt of permanent travelling allowance, accept such payment of actual travelling expenses, as the Court may make.Note 1. An individual summoned to give evidence while on leave is entitled to conveyance as if he were on duty from and to the place at which he is summoned.Note 2. When a witness attends a Civil Court in his private capacity, he is only entitled to such travelling and subsistence allowance as are admissible in accordance with the rules of the Court. If the Court pays him any sum as subsistence allowance or compensation, apart from travelling expenses, he must credit that sum to Government before drawing full pay for the days or days of absence. An individual ordinarily eligible to travel on warrant will be entitled to receive advance of travelling expenses for both the forward and return journeys which will be refunded as soon as such charges are paid to him by the court.

**8. Expenses of a Civil Surgeon**

(1)The attendance of the [Principal Medical Officer or District Medical and Health Officer] [Substituted by Notification No F.21(250) jud/49, dated 8.12.1957 (Published in Rajasthan Gazette Part 4-B, dated 15.12.1957).] at the Criminal Courts of the station for the purpose of giving evidence,

is one of his ordinary official duties and he is not entitled to claim nor are the Court authorised to grant, a fee for this duty. When a [Principal Medical and Health Officer] [Substituted by Notification No F.21(250) jud/49, dated 8.12.1957 (Published in Rajasthan Gazette Part 4-B, dated 15.12.1957).] is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under the ordinary rules relating to such allowance.(2)[Civil Assistance Surgeons Class I and Civil Assistant Surgeons Class II] [Substituted by Notification No F.21(250) jud/49, dated 8.12.1957 (Published in Rajasthan Gazette Part 4-B, dated 15.12.1957).] should when summoned to attend a Court in their official capacity be paid the actual expenses incurred by them on account of carriage hire, when their attendance in Court entails such expenditure.

## **9. Experts**

- In regard to witnesses summoned as "Experts", a fee, having reasonable relation to the loss of income, inconvenience and trouble occasioned should be fixed. But it must be remembered that a witness ought not to be classed as "Expert" merely on the strength of cross examination. The nature, of the evidence is to be determined by these facts to which a witness testified in examination-in-chief. If there are facts relating to circumstances observed by a person in his or her ordinary capacity, the evidence given in ordinary evidence if there are conclusions drawn by professional witnesses from hypothetical facts not within their special knowledge, or if the conclusions are based on a professional examination, the evidence given is expert evidence. The line taken in Cross-examination to test the accuracy of conclusions drawn from facts observed has nothing to do with the nature of the evidence given.

**9A. [ These Rules shall also extend to the Abu, Ajmer and Sunel areas; and the corresponding rules in force in the said areas shall stand superseded.]**  
**[Inserted by. Notification No. 4608/F, 3(6)LJ/B/57, dated 17.10.1957 (Published in Rajasthan Gazette, Part 4-C, dated 31.10.1957.)]**