

The Appointment of State Defence Counsel Rules, 1974

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The Appointment of State Defence Counsel Rules, 1974 Published vide Notification No. S.R.O. 612/74, dated the 18th July, 1974 Published vide Orissa-Gazette, Part 3 of 1974 Notification No. S.R.O. 612/74, dated the 18th July, 1974 - In exercise Of the powers conferred by Sub-section (2) of Section 304 of the Criminal Procedure Code, 1973 (Act 2 of 1974) the High Court of Orissa, with the previous approval of the State Government, do hereby make the following rules, namely :

1.

These rules may be called "the Appointment of State Defence Counsel [* * *] [Deleted vide Orissa Gazette, Part III-A, No. 34/ 1982.] Rules, 1974",

2.

They shall extend throughout the State.

3.

These rules shall come into force at once.

4. [State Defence Counsel. [Substituted by vide Orissa Gazette, Part III-A, No. 34/1982.]

- "State Defence Counsel" means a Counsel appointed by a Court of Session or by a Court of Magistrate for defence, at the expenses of the State, of an accused who is not represented by a Pleader and who has not sufficient means to engage a Pleader in sessions trial or in any other criminal trial, as the case may be.]

5. [Panel of Defence Counsels. [Substituted by vide Orissa Gazette, Part III-A, No. 34/1982.]

- The Sessions Judge shall prepare a panel of legal practitioners with their consent for each place of sitting of the Court of Session and for each Magisterial station in his Sessions Division, keeping in view the need of such station, for being appointed as State Defence Counsel every calendar year.]

6. [Qualification. [Substituted vide Orissa Gazette, Part III-A, No. 6/1980.]

- [(1)] A person shall be eligible to be included in the panel [for appointment as State Defence Counsel in Sessions Cases] [Inserted by vide Orissa Gazette, Part III-A, No. 34/1982.] only if-(a)he has been in practice as a lawyer for not less than 7 years; or(b)he had been a member of Judicial Service of the State for not less than 7 years :Provided that in computing the period of service as aforesaid, the period of practice as a lawyer shall be taken into account.](2)[A person shall be eligible for inclusion in the panel of State Defence Counsel in Magisterial Courts only, if-(a)he has been in practice as a lawyer for not less than 5 years or;(b)he had been a member of Judicial service of the State for not less than 5 years.]

7.

Court of Session [or a Criminal Court] [Inserted by vide Orissa Gazette, Part III-A, No. 34/1982.] shall not, so long as a panel of lawyers is available, appoint an outsider as State Defence Counsel-Resignation - (i) Any person in the panel may tender his resignation in writing to the Sessions Judge.Filling up vacancy - (ii) Any vacancy in the panel caused by resignation or otherwise may be filled up by the Sessions Judge.Penalty for negligence or refusal to accept any engagement- (iii) If . any person after having agreed to serve in a panel neglects or refuses to accept an engagement without any reasonable cause his name will be struck off the panel.Removal from panel -(iv) If any counsel after accepting any engagement neglects or refuses to discharge his duties properly, his name may be struck off the panel.

8. [Time for appointment. [Substituted vide Orissa Gazette, Part III-A, No. 34/1982.]

- The appointment of State Defence Counsel shall be made sufficiently ahead of the commencement of the trial. The concerned Magistrates shall make the appointment from out of the panel prepared by the Sessions Judge under Rule 5 for that station.] [Inserted by vide Orissa Gazette, Part III-A, No. 34/1982.]

9. Supply of brief.

- The State Defence Counsel shall be furnished with a brief of the case free of cost seven days before the commencement of the trial. If after appointment of State Defence Counsel, the accused appoints another Counsel, the appointment of State Defence Counsel shall cease and the brief prepared for

the State Defence Counsel shall be made available to the counsel privately engaged by the accused.

10. Grant of free copies.

- No fees are to be required or paid for searching for or copying papers wanted by the State Defence Counsel for the purposes of defending the accused in the case.

11. [Fees of Defence Counsel. [Substituted vide Orissa Gazette, Part III-A, No. 34/1982.]

- The daily fees of the State Defence Counsel in sessions, and criminal cases shall be the same as that of a Public Prosecutor or Assistant Public Prosecutor, as the case may be, as fixed by the State Government from time to time.]

12. Fees when employed outside headquarters.

- The fees of the State Defence Counsel, when employed outside their usual headquarters shall be double the usual daily fees at the headquarters.

13. Fees during halt on holidays.

- The daily fees at the headquarters shall ordinarily be allowed to the State Defence Counsel for the days of necessary halt at intervening holidays, during the absence from headquarters.

14. [[Substituted vide Correction Slip No, 10/14.10,1992.]

The State Defence Counsel shall not be entitled to any fee on dates when cases are adjourned without hearing but half fee may be admissible when he attends the Court to hear the Judgement pronounced or for all unexpected adjournments of a case and for putting appearance in interlocutory matters including hearing of bail applications.]

15. Travelling allowance.

- The State Defence Counsel shall be entitled to travelling allowance at the rate admissible to public prosecutors.

16. Separate Defence Counsel for separate accused when necessary.

- If a State Defence Counsel has to be engaged for several accused persons and their respective defences are such that it appears to be undesirable to entrust the defence of all the accused persons to a single counsel as many pleaders may be appointed for the defence, as the necessity, of the case seems to require :Provided that a single defence counsel shall be appointed for more than one accused unless there is conflict of interest.