

Bihar Law Officers (Engagement) Rules, 2017

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Rule BIHAR-LAW-OFFICERS-ENGAGEMENT-RULES-2017 of 2017

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Bihar Law Officers (Engagement) Rules, 2017Published vide Notification No. C/EH-07/17-6537, dated 30.10.2017No. C/EH-07/17-6537. - In exercise of powers under Article 309 of the Constitution of India, the Governor of Bihar hereby makes the following Rules to provide for system of engagement of Law Officers for the State of Bihar for the Patna High Court, the Supreme Court of India, other Courts of Law, Tribunals, etc. in a transparent, fair and objective manner and to regulate their engagement, remuneration, duties and other terms and conditions and for matters connected therewith and incidental thereto:-

1. Short title and commencement.

(1)These Rules may be called the Bihar Law Officers (Engagement) Rules, 2017.(2)They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

- In these rules, unless the context otherwise requires:-(a)"Advocate" means an advocate as defined under the Advocates Act, 1961;(b)"Advocate General" means a person appointed under Article 165 of the Constitution of India as Advocate General for the state of Bihar and includes any person appointed to act temporarily as such;(c)"Advocate on Record" means an Advocate on Record as per the applicable Rules of the Patna High Court and the Supreme Court of India,(d)"Assistant Counsel" means an Advocate not being a Law Officer but engaged to provide assistance to Law Officer under Rule 9 of these Rules;(e)"Category" means the category of post of Law Officers specified in Rule 3 of these Rules and includes such other categories of Law Officers, as may be determined by the Government from time to time;(f)"Engaging Authority" means the Government;(g)"Government" means the Government of the State of Bihar;(h)"Government Counsel" means an Advocate engaged under Rule 5(4) of these Rules;(i)"Law Officers" means an Advocate engaged under these Rules as a Law officer in the Office of the Advocate General by the Government and includes a special Public

Prosecutor or a Special Counsel;(j)"Public Prosecutor" means an Advocate appointed under section 24 of the Code of Criminal Procedure, 1973 to be a Public Prosecutor for the Patna High Court or for the Sessions Division and includes Additional Public Prosecutor, Additional Public Prosecutor (Senior Panel) and Special Public Prosecutor;(k)"Selection Committee" means a committee constituted under Rule 5 of these Rules;(l)"Search Committee" means a Committee constituted under Rule 4 of these Rules;(m)"Special Public Prosecutor" or "Special Counsel" means an Advocate or a Senior Advocate engaged under Rule 11 of these Rules.(n)"Research Counsel" means an Advocate engaged under Rule 14 of these Rules.

3. Categories of Law Officer.

(1)The following Categories of Law Officers may be engaged for the Patna High Court, namely:-(a)the Additional Advocate General,(b)the Government Advocate,(c)the Government Pleader,(d)the Standing Counsel,(e)the Public Prosecutor,(f)the Additional Public Prosecutor(g)the Additional Public Prosecutor (Senior Panel)(2)The following Categories of Law Officers may be engaged for the Supreme Court of India, namely:-(a)the Standing Counsel,(b)the Additional Standing Counsel.(3)The following Categories of Law Officers may be engaged for the Civil Courts of Bihar, namely:-(a)the Public Prosecutor,(b)the Government Pleader,(c)the Additional Public Prosecutor,(d)the Additional Government Pleader.(4)The above categories of Law Officers and the number of Law Officers to be engaged under each categories shall be fixed and/or modified, from time to time as required, by the Government based on an assessment made by the Government in consultation with the Advocate General.(5)The Government while making assessment under sub-Rule(4) above may take into consideration of various aspect, namely, the workload of legal cases involving the Government, the total number of Courts (sanctioned and working), the nature of work involved, specialization in subject matters and any other relevant material or aspect, as it deems fit.(6)The Government shall be the Engaging Authority for the Law Officers belonging to the various categories of posts under these Rules and the Law Officers so engaged shall hold such posts during the pleasure of the Government.

4. Search Committee.

(1)There shall be a Search Committee for searching the names of and preparing the panel of Advocates for making recommendation to the Selection Committee for engagement of different categories of Law Officers in the Patna High Court and in the Supreme Court of India. This Committee shall consist of the following, namely:-

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| (a) The Advocate General, Bihar | Chairman; |
| (b) The Principal Secretary, General Administration Department | Member; |
| (c) The Principal Secretary, Home (Police) Department | Member. |

(2)The Search Committee shall prepare a panel of names of Advocates , not more than upto twice the number as determined under Rule 3(5) of these Rules, on the basis of the eligibility criteria set out under these Rules and their experience, integrity, reliability, reputation, merit and suitability and submits its recommendation to the Selection Committee through the Law Department for

engagement of such Advocates as Law Officers in the Patna High Court and the Supreme Court of India.(3)The Search Committee shall formulate its own procedure for seeking willingness and preparation of the panel of the names of the advocates for engagement as Law Officers in the Patna High Court and the Supreme Court of India.

5. Selection Committee and Engagement.

(1)The Selection Committee shall consist of the following, namely:-

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| (a) The Minister-in-Charge, Law Department | Chairman, |
| (b) The Advocate General | Member, |
| (c) The Legal Remembrancer and Secretary, LawDepartment | Member Secretary |

(2)The Selection Committee, on receipt of the recommendation made by the Search Committee under Rule 4(2) of these Rules, shall recommend to the Government for engagement of such Advocates as Law Officers in Patna High Court and the Supreme Court of India on the basis of the eligibility criteria set out under these Rules and their experience, integrity, reliability, reputation, merit and suitability.(3)On the recommendations made by the Selection Committee under sub-Rule (2), the Government shall, by order, make the engagement of Law Officers to the various categories of posts in Patna High Court and the Supreme Court of India and shall issue order(s) of engagement of Law Officers including such terms and conditions as may be determined by the Government in this regard from time to time.(4)The Government Counsel for Tribunals, other adjudicatory bodies constituted by or under any law or any other Court of law of the State, except the Civil Courts, or in case so specially required for any particular Department of the Government shall also be engaged by following the provisions of and on the basis of eligibility and criterion under these Rules by the Government and such Counsels shall discharge the duties similar to those of the Law Officers under these Rules.(5)(i)For engagement of Law Officers for Civil Courts of Bihar as mentioned in Rule3(3) of these Rules and Search Committee shall consist of the following namely:-(a)For Public Prosecutor-The District Magistrate and the Superintendent of Police of the concerned District.(b)For Government Pleaders-The District Magistrate and the Additional Collector of the concerned District.(c)For Additional Public Prosecutor-The District Magistrate, the Superintendent of Police and the Public Prosecutor of the concerned District.(d)For Additional Government Pleader-The District Magistrate, the Additional Collector and the Government Pleader of the concerned District.(ii)The Search Committee constituted under Rule 5(i) in consultation with the District and Sessions Judge for the concerned district shall prepare a list of names of Advocates on the basis of the eligibility criteria set out under these Rules and their experience, integrity, reliability, reputation, merit and suitability and submit it to the Legal Remembrancer and Secretary, Law Department.(iii)The list so forwarded by the District Collector shall be placed before the Selection Committee constituted under Rule 5(i) of these Rules and based on the eligibility and qualifications as provided under these Rules and also their experience, integrity, reliability, reputation, merit and suitability the Selection Committee shall prepare a panel of names of Advocates for engagement by the Government on the categories of posts mentioned in Rule 3 (3) of these Rules. On such recommendations made by the Selection Committee, the Government shall, by order, make engagement of Law Officers to the various categories of Posts in the Civil Courts of

Bihar. Provided that the engagement of Public Prosecutor and Additional Public Prosecutor in the Patna High Court and the Civil Courts of State shall be made as per the provisions as contained in Section-24(3) of the Code of Criminal Procedure, 1973. Provided further that in respect of such selection, the provisions of sub-section(6) of section 24 of the Code of Criminal Procedure, 1973 as substituted by Bihar Act 16 of 1984 shall be applicable. (6) The Search Committee while making recommendation of the names of the Advocates for their engagement on various categories of posts shall have regard to the facts that the list of the Advocates so recommended contains proper representation of all sections of the society. (7) The Search Committee of the district shall recommend the names of the Advocates, upto twice of the number of vacancy of the Law Officers as determined under Rule 3(5) of these Rules.

6. Eligibility.

(1) In order to be eligible to be engaged as a Law Officer, an Advocate shall be:-(a) a citizen of India and registered with a Bar Council constituted under the Advocates Act, 1961; and (b) a designated senior Advocate or an Advocate on record, who has been practicing in the Patna High Court or Supreme Court of India or an Advocate who has been practicing in the Civil Courts of Bihar; (c) possesses the following standing in number of years of practice against the respective categories and being an income tax assessee for at least three financial years from the financial year in which engagement is to be made:-(i) For an Additional Advocate General for the Patna High Court he has been in practice as an Advocate for not less than 20 years or a designated Senior Advocate of the Patna High Court; (ii) For a Standing Counsel for the Supreme Court of India he has been in practice as an Advocate for not less than 20 years in the Supreme Court of India; (iii) For a Government Advocate for the Patna High Court or for an Additional Standing Counsel for the Supreme Court of India he has been in practice as an Advocate for not less than 15 years in the Patna High Court or in the Supreme Court of India respectively for that Court for which the engagement is to be made; (iv) For a Standing Counsel for the Patna High Court he has been in practice as an Advocate for not less than 10 years in the Patna High Court; (v) For a Government Pleader for the Patna High Court or for the Civil Courts of Bihar he has been in practice as an Advocate for not less than 10 years in the Patna High Court or in the Civil Courts of Bihar respectively for that Court for which the engagement is to be made; (vi) For a Public Prosecutor for the Patna High Court or for the Civil Courts of Bihar he has been in practice for not less than 10 years in the Patna High Court or in the Civil Courts of Bihar respectively for that Court for which the engagement is to be made; (vii) For an Additional Public Prosecutor for Patna High Court or for the Civil Courts of Bihar he has been in practice as an Advocate for not less than 7 years in the Patna High Court or in the Civil Courts of Bihar respectively for that Court for which the engagement is to be made; (viii) For an Additional Government Pleader for the Civil Courts of Bihar he has been in practice as an Advocate for not less than 7 years in the Civil Courts of Bihar.

7. Disqualification for engagement.

- An Advocate or a senior Advocate shall be disqualified from being engaged or to continue as Law Officer under these Rules in the following circumstances:-(1) a Law Officer who accepts brief from any private person in a criminal case in any Court; (2) a law Officer may accept a brief from any

private person for a civil case in any court provided that such acceptance does not interfere with the discharge of his duties as a Law Officer and relates solely to dispute involving private parties and not involving the Government or its officials;(3)an Officer shall not appear for or give Legal Advice to private person or matter in which the interest of the person are likely to be adverse to that of the Government or its Officials;(4)a Law Officers shall not accept a brief from any person, whether a petitioner or Respondent, in proceedings initiated in an Election Petition in connection with an Election to a Local Authority or the State Legislature or the Parliament;(5)a person, who is a member of the parliament or a Legislature of the State, a municipal Corporation, a Municipal Council, a Panchayat or any other Local Authority, shall not, as long as he hold that office, be eligible for engagement;(6)a Law Officer shall not give legal advice to or accept a brief from or appear in any Court of Law on behalf of any instrumentality of the State, constituted by or under any statute or otherwise, including various Universities, Boards, Corporations, Authorities etc, where such advice, acceptance or appearance is in conflict with the interest of the Government or its Officials, either directly or indirectly;(7)a Law Officer shall not continues to give legal advice to or to retain brief from or appear in any Court of Law on behalf of any person, body, association, company etc which effects the interest of the Government or its Officials, either directly or indirectly, after being engaged under these Rules;(8)If the Law Officer ceases to be an Advocate or is convicted by a Court of Law for an offence involving moral turpitude.

8. Duties of Law Officers.

- It shall be duties of a Law Officer:-(a)to give advice to the Government upon such matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government or the Advocate General;(b)to appear without fail on behalf of the Government and its Officials and either prosecute or defend all proceedings, as that case may be, before the Patna High Court or the Supreme Court or any other High Court or any other Courts of Law as allotted or as directed by the Advocate General, in which the Government is concerned as a party or is otherwise interested;(c)to discharge such other functions as are conferred on a Law Officer by or under the Constitution of India or any other Law for the time being in force.

9. Assistance to Law Officers.

- (i) An Advocate on Record who have been in practice for not less than 3 years shall be engaged for the Patna High Court and the Supreme Court of India or for any other Courts of Law, in such number and on such fee, as may be decided by the Government on the recommendation of the Advocate General for being attached with the Law Officers, except Government Pleader, Assistant Government Pleader, Public Prosecutor and Additional Public Prosecutor, for assisting them in performing their duties as Law Officers under Rule 8 (b) of these Rules;Provided that the Advocate General may, in his discretion in exceptional case, also recommend to the Government while making the above recommendation, to relax both or either of the above two requirements, for an Advocate who is found by him to be very competent and deserving to be engaged as Assisting Counsel.(ii)Assisting Counsel engaged under Sub-Rule (i) above shall not appear or argue on behalf of the Government independently in any proceeding after completion of pleadings or during course of final arguments therein before any of the Courts mentioned under the said Sub-rule(i).

10. Disengagement of Law Officer.

- The Law Officers engaged and holding the various categories of posts under these Rules or an Advocate engaged under these Rules at the pleasure of the Government shall be disengaged at any time by the Government in consultation with the Advocate General if found to be not eligible as under Rule 6 or having found to have incurred disqualification as under Rule 7 or on failure to perform the duties as under Rule 8 or on account of breach of Rule 9(ii) of these Rules. The Law Officer may disengage himself after giving one month notice to the Advocate General in this regard.

11. Review of performance.

- (i) The works of the Law Officers, except those engaged under Rule 5(5) of these Rules, shall be assessed every year by the Advocate General and such assessment shall be sent to the Government for appraisal of their performance of duties and the Government shall disengage such Law Officers, in consultation with the Advocate General, whose performance has not been satisfactory on account of their failure to perform the duties as under Rule 8 or on account of breach of Rule 9(ii) of these Rules. (ii) The work of the Law officers engaged under Rule 5(5) of these Rules shall be assessed every year by the District and Sessions Judge and the District Magistrate of the concerned District and such assessment shall be sent to the Government for appraisal of their performance of duties and the Government may disengage such Law Officers, in consultation of the Advocate General, whose performance has not been satisfactory on account of their failure to perform the duties as under Rule 8 of these Rules.

12. Retainer, Fee and other Allowance.

- For performance of the duties as mentioned in Rule 8 a Law Officer shall be paid fee including retainer fee, and such other allowances as may be determined by the Government from time to time.

13. Special Engagement.

- Notwithstanding anything contained in these Rules the Advocate General shall have the discretion to engage for the Patna High Court and the Supreme Court of India, on such terms and fee as may be fixed, in consultation with the Administrative Department and the Law Department, an Advocate for the Government as a special Public Prosecutor or a Special Counsel who is not a Law Officer under these Rules, in case(s) involving important issue(s) for the Government, specially revenue or in public interest.

14. Research Counsel.

- Notwithstanding anything contained in these Rules the Advocate General shall have the discretion to engage upto a maximum of five in numbers for not more than the period of three years and on such terms and consolidated fee per month as may be fixed in consultation with the Law Department, Advocates for carrying out a specialized nature of the legal work for the

Government, such as legislative drafting, techno legal vetting, comprehensive research for case(s) involving important issues for the Government, specially constitutional, taxation, revenue and criminal.

15. Saving and overriding effect.

- (i) These Rules shall be supplemental to the provisions contained in different statutes regarding engagement of Law Officers.(ii)Anything contrary to these Rules made or issued by the Government in connection with the matters provided for herein prior to coming force of these Rules or anything contained in the Legal Remembrancer Rules, 1946 shall not have any effect and shall not stand saved from the date of coming in force of these Rules.