Jammu and Kashmir Legal Services Authorities Act, 1997

JAMMU & KASHMIR India

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Act 33 of 1997

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Jammu and Kashmir Legal Services Authorities Act, 1997(Act No. 33 of 1997)[Dated 8th October 1997]Government of Jammu and Kashmir Civil Secretariat Law Department The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 8th October, 1997 and is hereby published for general information: An Act to constitute legal services authorities to provide free and competent legal services to the weaker section of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Look Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows:-

Chapter 1 Preliminary

1. Short title and commencement.

- This Act may be called the Jammu and Kashmir Legal Services Authorities Act, 1997.(2)It extends to the whole of the State of Jammu and Kashmir.(3)It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"case" includes a suit or any proceeding before a court;(b)"court" means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi judicial functions;(c)"legal service" includes the rendering of any service in the conduct of any case

1

or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter; (d)"High Court Legal Services Committee" means the High Court Legal Services Committee constituted under section 6; (e)"legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter; (f)"Lok Adalat" means a Lok Adalat organized under Chapter V; (g)"notification" means a notification published in the Government Gazette; (h)"prescribed" means prescribed by rules made under this Act; (i)"regulations" means regulation made under this Act; (j)"Scheme" means any scheme framed by the State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act; (k)"State Authority" means the State Legal Services Authority constituted under section 3; (l)"Tehsil Legal Services Committee" means a Tahsil Legal Services Committee constituted under section 10.

Chapter II State Legal Services Authority

3. Constitution of State Legal Service Authority.

(1) The Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to the State Authority under this Act.(2)The State Authority shall consist of -(a)the Chief Justice of the High Court who shall be the Patron-in-Chief; (b) a serving or retired Judge of the High Court, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the Executive Chairman; and(c)such number of other members, possessing such experience and qualifications as may be prescribed by the Government, to be nominated by the Government in consultation with the Chief Justice of the High Court.(3)[The Government may, in consultation with Chief Justice of the High Court, appoint a person belonging to the Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Legal Services Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by the Government or as may be assigned to him by the Executive Chairman of the State Authority.] [Substituted by Act No. 8 of 2016, dated 21.10.2015.](4) The State Authority may appoint such number of officers and other employees as may be prescribed by the Government, in consultation with the Chief Justice of the High Court for the efficient discharge of its functions under this Act.(5)The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Government in consultation with the Chief Justice of the High Court.(6)The administrative expenses of the State Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State. (7) All orders and decisions of the State Authority shall be authenticated by the Member-Secretary or any other officer of the State Authority duly authorized by the Executive Chairman of the State Authority.(8)No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the State Authority.

4. Functions of the State Authority.

- The State Authority shall, subject to the general directions of the Government, perform all or any of the following functions, namely:-(a)lay down policies and principles for making legal services available under the provisions of this Act; (b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act; (c) utilise the funds at its disposal and make appropriate allocations of funds to the District Authorities; (d)take necessary steps by way of social justice, litigation with regard to consumer protection, environment protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills ;(e)organise legal aid camps especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their right it as well as encouraging the settlement of disputes through Lok Adalats; (f)encourage the settlement of disputes by way of negotiations, arbitration and conciliation; (g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor; (h)monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act; (i) provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act;(j)develop, in consultation with the State Bar Council, programmes for clinical legal education and promote guidance and supervise the establishment and working of legal services clinics in universities and other institutions; (k) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures ;(l)make special effects to enlist the supports of voluntary social welfare institutions working at the grass root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; (m)co-ordinate and monitor the functioning of State Authority, High Court Legal Services Committee, District Authorities, Tehsil Legal Services Committees and other voluntary social welfare institutions and other legal services organisations and give general directions for the proper implementation of the legal services programmes; (n) give legal services to persons who satisfy the criteria laid down under this Act; (o) conduct Lok Adalat; and (p) perform such other functions as the State Authority may fix by regulations.

5. State Authority to Act in co-ordination with other agencies and be subject to direction given by the Government.

- In the discharge of its functions under this Act, the State Authority shall, wherever appropriate, act in co-ordination with other Governmental agencies, non-governmental voluntary social welfare institution universities and others engaged in the work of promoting the cause of legal services to the poor and shall be guided by the directions as the Government may give to it in writing.

6. High Court Legal Services Committee.

(1)The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for the High Court, for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority.(2)The Committee shall consist of-(a)sitting Judge of the High Court who shall be the Chairman; and(b)such number of other members possessing, such experience and qualification as may be determined by regulations made by the State Authority, to be nominated by the Chief Justice of the High Court.(3)The Chief Justice of the High Court shall appoint a Secretary to the Committee possessing such experience and qualification as may be prescribed by the Government.(4)The terms of office and other conditions relating thereto, of the members and Secretary of the Committee than be such as may be determined by regulation made by the State Authority.(5)The Committee may appoint such number of officers and other employees as may be prescribed by the Government in Constitution with the Chief Justice of the High Court for the efficient discharge of its functions.(6)The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Government in consultation with the Chief Justice of the High Court.

7. District Legal Services Authority.

(1) The Government shall in consultation with the Chief Justice of the High Court constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on or assigned to, the District Authority under this Act.(2)The District Authority shall consist of-(a)the District-Judge who shall be its Chairman; and(b)such number of other members possessing such experience and qualifications, as may be prescribed by Government to be nominated by the Government in consultation with the Chief Justice of the High Court.(3) The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman.(4)The terms of office and other conditions relating thereto, of members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court. (5) The District Authority may appoint such number of officers and other employees as may be prescribed by the Government in consultation with Chief Justice of the High Court for the efficient discharge of its functions.(6)The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other employees conditions of service as may be prescribed by the Government in consultation with the Chief Justice of the High Court. (7) The administrative expenses of every District Authority including the salaries, allowances and pensions payable to the Secretary, officers and other of the District Authority shall be defrayed out of the Consolidated Fund of the State.(8)All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorizes by the Chairman of that Authority.(9)No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the District

Authority.

8. Function of District Authority.

(1)It shall be the duty of the District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time, by the State Authority.(2)Without prejudice to the generality of the functions referred to in sub-section (1), the District Authority may perform all or any of the following functions, namely:-(a)co-ordinate the activities of Tehsil Legal Services Committee and other legal services in the District;(b)organize Lok Adalats with in the District; and(c)perform such other functions as the State Authority may fix by regulations.

9. District Authority to act in co-ordination with other agencies be subject to direction given by the State Authority.

- In the discharge of its functions under this Act, the District Authority shall, wherever appropriate, act in co-ordination with other governmental and nongovernmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the State Authority may give to it in writing.

10. Tehsil Legal Services Committee.

(1)The State Authority may constitute a Committee to be called the Tehsil Legal Services Committee for each Tehsil or for group of Tehsil.(2)The Committee shall consist of-(a)the Senior Subordinate Judge operating within the jurisdiction of the Committee who shall be ex-officio Chairman; and(b)such number of other members, possessing such experience and qualifications, as may be prescribed by the Government, to be nominated, by the Government in consultation with the Chief Justice of the High Court.(3)The Committee may appoint such number of officers and other employees as may be prescribed by Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions.(4)The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by Government in consultation with the Chief Justice of the High Court.(5)The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority.

11. Functions of Tehsil Legal Services Committee.

- The Tehsil Legal Services Committee may perform' all or any of the following functions, namely :-(a)co-ordinate the activities of legal services in the Tehsil; (b)organise Lok Adalats within the Tehsil; and(c)perform such other functions as the District Authority may assign to it.

Chapter III

. Entitlement to Legal Services

12. Criteria for giving regal services.

- Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is-(a)member of a Scheduled Caste or Scheduled Tribe; (b)a victim of trafficking in human being or beggar as refractile to in Article 23 of the Constitution; (c)a woman or a child; (d)a mentally ill or otherwise disabled person; (e)a person under circumstances of under served want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or(f)an industrial workman; or(g)in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 or in a psychiatric hospital or psychiatric nursing home within the meaning of clause(g)of section 2 of the Mental Health Act, 1987; or(h)in respect of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Government, if the case is before the Supreme Court.

13. Entitlement to legal services.

(1)Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal service provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.(2)An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason disbelieve such affidavit.

Chapter IV Grants

14. Grants by the Government.

- The Government shall, after due appropriation made by law in this behalf, pay to the State Authority, by way of grants, such sums of money as the Government may think fit for being utilized for the purposes of this Act.

15. State Legal Aid Fund.

(1)The State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto,-(a)all grants or donations that may be made to the State Authority by the Government or by any person for the purposes of this Act; (b)all sums of money paid to it or any grant made by the Central Authority constituted under the Legal Services Authorities Act, 1987 (Central); (c)any other amount received by the State Authority under the orders of any court or from

any other source.(2)The State Legal Aid Fund shall be applied for meetings-(a)the cost of functions referred to in section 4;(b)the cost of legal services rendered by the High Court Legal Services Committee;(c)any other expenses which are required to be met by the State Authority.

16. District Legal Aid Fund.

(1)Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto,-(a)all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act; (b)any grants or donations that may be made to the District Authority by any person with the prior approval of the State Authority, for the purposes of this Act; (c)any other amount received by the District Authority under the orders of any court or from any other source. (2) A District Legal Aid Fund shall be applied for meetings,-(a)the cost of functions referred to in sections 8 and 11; (b)any other expenses which are required to be met by the District Authority.

17. Accounts and audit.

(1) The State Authority or the District Authority (hereinafter referred to in this section as the `Authority') and as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance sheet in such manner as may be prescribed.(2)The accounts of the Authorities shall be audited by the Comptroller and Auditor General of India in such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Comptroller and Auditor General of India.(3)The Comptroller and Auditor General of India and any other person appointed by him in connection with the auditing of the accounts of an Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General of India has in connection with such auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the officers or the Authorities under this Act.(4)The accounts of the Authorities, as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually by the Authorities to the Government.(5)The Government shall cause the accounts and audit report received by it under sub-section (4) to be laid, as soon as may be after they are received, before the State Legislature.

Chapter V Lok Adalats

18. Organization of Lok Adalats.

(1) The State Authority or District Authority or the High Court Legal Services Committee, or as the case may be, Tehsil Legal Services Committee may organize Lok Adalats as such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.(2) Every Lok Adalat organised

for an area shall consist of such number of-(a)serving or retired judicial officers; and(b)other persons, of the area as may be specified by the State Authority or the District Authority or the High Court Legal Services Committee, or as the case may be, the Tehsil Legal Services Committee, organising such Lok Adalats.(3)The experience and qualification of persons referred to in clause (b) of sub-section (2) for Lok Adalats shall be such as may be prescribed by the Government in consultation with the Chief Justice of the High Court.(4)Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of-(i)any case pending before; or(ii)any matter which is falling within the jurisdiction of and is not brought before, any court for which the Lok Adalat is organised: Provided that the Lok Adalat shall have no jurisdiction in respect of any case of matter relating to an offence not compoundable under any Law.

19. Cognizance of cases by Lok Adalats.

(1) Wherein any case referred to in clause (1) of sub-section (4) of section 18,-(i)(a) the parties thereof agree; or(b)one of the parties thereof makes an application to the Court for referring the case to the Lok Adalat for settlement and if such court prima facie satisfied that there are chances of such settlement; or(ii)the court is satisfied that the matter as an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties. (2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (I) of section 18 may, on receipt of an application from anyone of the parties to any matter referred to in clause (ii) of sub-section (4) of section 18 that such matter needs to be determined by a Lok Adalat refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.(3)Where any case is referred to the Lok Adalat under subsection (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. (4) Every Lok Adalat shall, while determining any reference before it under this Act, with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.(5)Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it, to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.(6)Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.(7)Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

20. Award of Lok Adalat.

(1)Every award of the Lok Adalat shall be deemed to be a decree of a civil or, as the case may be an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 19, the Court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, Samvat 1977.(2)Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

21. Powers of Lok Adalats.

(1)The Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, Samvat 1977, while trying a suit in respect of the following matters, namely:-(a)the summoning and enforcing the attendance of any witness and examining him on oath; (b)the discovery and production of any document; (c)the reception of evidence on affidavits; (d)the requisitioning of any public record or document or copy of such record or document from any court or office; and(e)such other matters as may be prescribed.(2)Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.(3)All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Ranbir Penal Code, Samvat 1989 and every Lok Adalat shall be deemed to be a civil court for the purpose of section 195 and Chapter XXXV of the Code of Criminal Procedure, Samvat 1989.

Chapter VI Miscellaneous

22. Members and staff of Authorities and Lok Adalats to be public servants.

- The members including Member-Secretary or, as the case may be, Secretary of the State Authority, the District Authorities, the High Court Legal Services Committee, Tehsil Legal Services Committees and officers and other employees of such Authorities, Committees and the members of the Lok Adalats shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

23. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against-(a)the Government ;(b)Patron-in-Chief Executive Chairman, Member, Member- Secretary or officers or other employees of the State Authority;(c)Chairman, Secretary, Members or officers or other employees of the High Court Legal Services Committees, Tehsil Legal Services Committees or the District Authority; or(d)any other person authorised by the Patron-In-Chief Executive Chairman,

Chairman, Member, Member-Secretary referred to in sub-clause (b) and (c), for anything which is in good faith done or intended to be done under the provisions of this Act or any rule or regulation made thereunder.

24. Act to have overriding effect.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

25. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Government Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act come, into force.(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature.

26. Power of the Government to make rules.

(1) The Government in consultation with the Chief Justice of the High Court may, by notification make rules to carry out the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a)the number, experience and qualifications of other members of the State Authority under clause (c) of sub-section (2) of section 3; (b) the powers and functions of the Member-Secretary of the State Authority under sub-section (3) of section 3;(c)the terms of office and other conditions relating thereto of members and Member-Secretary of the State Authority under sub-section (4) of section 3; (d) the number of officers and other employees of State Authority under sub-section (5) of section 3; (e) the conditions of service and the salary and allowances of officers and other employees of the State Authority under sub-section (6) of sections 3; (f) the experience and qualifications of Secretary of the High Court Legal Services Committees under sub-section (3) of section 6;(g)the number of officer and other employees of High Court Legal Services Committee under sub-section (5) of section 6 and the conditions of service and salary and allowances payable to them under sub-section (6) of that section; (h) the number, experience and qualifications of members of the District Authority under clause (b) of section (2) of section 7; (i)the number of officers and other employees of the District Authority under sub-section (5) of section 7 ;(j)the conditions of service and salary and allowances of the officers and other employees of the District Authority under sub-section (6) of section 7; (k) the number, experience and qualifications of members of the Tehsil Legal Services Committee under clause (b) of sub-section (2) of section 10 ;(1) the number of officers and other employees of the tahsil Legal Services Committee under sub-section (3) of section 10; (m) the conditions of service and salary and allowances of the officers and other employees of the Tehsil Legal Services Committee under sub-section (4) of section 10 ;(n)the upper limit of annual income of a person entitling him to legal services under clause (h) of

section 12;(0)the experience and qualifications of other persons of the Lok Adalats referred to in sub-section (3) of section 12;(p)any other matter which is to be or may be prescribed.

27. Power to make regulations.

(1)The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-(a)the other functions to be performed by the State Authority under clause (p) section 4;(b)the powers and functions of the High Court Legal Services Committee under sub-section (1) of section 6;(c)the number, experience and qualifications of members of the High Court Legal Services Committee under clause be of sub-section (2) of section 6;(d)the terms of office and other conditions relating thereto of the members and Secretary of the High Court Legal Services Committee under sub-section (4) of section 6;(e)the terms of office and other conditions relating there to of the members and Secretary of the District Authority under sub-section (4) of section 7;(f)the number, experience and qualifications of members of the High Court Legal Services Committee under clause (b) of sub-section (2) of section 6;(g)other functions to be performed by the District Authority under clause (e) of sub-section (2) of section 8.

28. Laying of rules and regulations.

- Every rule made under this Act by the Government and every regulation made by the State Authority thereunder shall be laid, as soon as may be, after it is made, before the State Legislature.(Sd.)......................Deputy Legal Remembrancer, Law Department.