

THE ORISSA LAW OFFICERS RULES, 1971

Part-I

GENERAL

1. Short title, extent and application. - (1) These rules may be called "The Orissa Law Officers' Rules, 1971."

(2) They shall extend to the whole of the State of Orissa.

(3) They shall apply to the following Law Officers, namely :

(a) Government Pleader and Public Prosecutor;

(b) Associate Lawyer, Special Counsel, Junior Counsel and State Defence Counsel.

2. Commencement. - These rules shall come into force from the date of their publication in the *Official Gazette*.

Note - The Rules came into force with effect from 1.4.1971.

3. Definitions. - In these rules, unless the context otherwise requires-

(a) **Public Prosecutor** - "Public Prosecutor" means any person appointed under sub-section (1) of section 492 of the Code of Criminal Procedure, 1898.

(b) **Government Pleader** - "Government Pleader" means a person appointed by the State Government as such;

(c) **Associate Lawyer** - "Associate Lawyer" means a person acting under the direction of the Government Pleader or the Public Prosecutor;

(d) **Special Counsel** - "Special Counsel" means any advocate specially appointed as Government Pleader or Public Prosecutor in any case or for any specified class of cases;

(e) **Junior Counsel** - "Junior Counsel" means an Advocate engaged in a particular case, with the sanction of the State Government to assist a Law Officer; .

(f) **State Defence Counsel** - "State Defence Counsel" means any Advocate appointed for the defence at the expense of the State;

(g) **Daily fee** - "Daily fee" shall mean the fee payable for the day irrespective of the number of cases.

4. General - (1) Government Pleader and Public Prosecutor-There shall be a Government Pleader and Public Prosecutor for each district. The State Government may appoint a Government Pleader and Public Prosecutor for any Sub-division and/or local area within a district in addition to the Government Pleader and Public Prosecutor for the district. The Headquarters of the Government Pleader and Public Prosecutor for the district shall be District Headquarters. The Headquarters of the Government Pleader and Public Prosecutor for the Sub-division shall be the Sub-divisional Headquarters and the headquarters of the Government Pleader and Public Prosecutor for any other local area within the district shall be at such place as may be determined by the State Government.

(2) The Government Pleader and Public Prosecutor for the district shall ordinarily work as such and conduct cases at the District Headquarters and in all Courts in the district within the local limits of which there is no other Public Prosecutor. The Government Pleader and Public Prosecutor at the Sub-divisional Headquarters or for any other local area shall work as such in all matters and conduct cases within the Sub-division or the local area for which he has been appointed subject to any direction which the District Government Pleader and Public Prosecutor or the State Government may issue in the matter.

Part-II

APPOINTMENT

5. Procedure of appointment. - (1) In appointing a Law Officer, the District Magistrate shall draw up in consultation with the District and Sessions Judge a panel of five names arranged in order of merit from amongst the legal practitioners of the district who are willing to act as such and submit the same with his recommendations through the concerned Revenue Divisional Commissioner, to the Legal Remembrance for the orders of the State Government.

(2) The District Magistrate shall, while making recommendation to the State Government for appointment of Law Officers, furnish the following particulars, namely :

(i) Qualification;

(ii) Age;

(iii) Number of years of practice at the Bar;

(iv) Field of Specialisation;

(v) Reliability;

(vi) Efficiency; and

(vii) An appraisal by the District and Sessions Judge of the nature and quality of advocacy, general repute and personality.

(3) Two months prior to the expiry of the term of a Law Officer, the District Magistrate shall, after consultation with the District and Sessions Judge, submit the panel of names as aforesaid through the Commissioner to the Legal Remembrancer for the orders of the State Government.

(4) In case of any contingency arising due to temporary absence or vacancy in the office of the Law Officer for any reason whatsoever, subject to the provisions contained in Section 492 (2) of the Criminal Procedure Code, 1898, the State Government may appoint a Law Officer temporarily till the return of the existing incumbent or the vacancy is filled up, as the case may be.

6. Term of office. - The Law Officer shall ordinarily hold office for a term of three years, subject to any other direction by the State Government. He shall be eligible for reappointment on the expiry of such term.

7. Leave of absence. - (1) A Law Officer requiring any leave of absence shall keep the District Magistrate concerned informed in advance of the duration of this leave absence and his leave address, and make such alternative arrangements as may be considered satisfactory by the District Magistrate for conducting cases and sending opinions without delay or inconvenience to the authorities.

(2) In the case where a Law Officer is absent from duty for a period exceeding 15 days at a time or where his total absence from duty would exceed 30 days in a year, he shall not be entitled to any retainer fee for the period of absence.

8. Junior counsel. - (1) The Law Officer may engage Junior Counsels in appropriate cases conducted by him with the prior sanction of the State Government.

(2) Engagement of Junior Counsel may be sanctioned by the State Government in cases involving very complicated and difficult points of law and facts and requiring enormous labour and study of voluminous records.

9. Special Counsel. - In appropriate cases, the State Government may appoint a Special Counsel and sanction payment of such fee and travelling allowance in respect of that Special Counsel, as they deem fit.

10. Procedure for appointment of Special Counsel and Junior Counsel. - If in any case, it is considered desirable to engage a Junior Counsel or a Special Counsel, the Law Officer or the Government officer concerned should forthwith communicate with the Legal Remembrancer and inform him of the nature of the case, evidence to be adduced, the date and place of hearing or trial, probable duration of hearing or trial, and forward at least the names of two suitable Advocates for engagement and the rate of fees proposed to be paid.

11. State Defence Counsel. - In all cases tried before a Court of Sessions in which any person is liable to be sentenced to death, the accused shall be informed by the committing Magistrate at the time of committal that unless he intends to make his own arrangements for legal assistance, the Court of Sessions shall engage a legal practitioner at Government expense to appear before it on his behalf. If it is ascertained that he does not intend to engage a legal practitioner at his own expense, a qualified legal practitioner shall be engaged by the Court of Sessions concerned to undertake the defence and he shall be paid fees at the rate of Rs. 30 per day. The fees of the said defence counsel in any other case shall be Rs. 30 per day unless otherwise directed by the State Government.

12. Associate Lawyer. - (1) When the normal amount of work is more than a Law Officer can perform, a panel of lawyers may be formed for the conduct of Government cases. The Law Officer shall furnish to the District Magistrate a list of names of double the number of lawyers which he proposes for the panel for the approval of the State Government.

(2) The District Magistrate shall forward the list alongwith his recommendation after consultation with the District and Sessions Judge, to the State Government for approval. The list when approved by the State Government shall remain effective only during the term of office

of the Law Officer who furnishes the same and two months thereafter. Such lawyers may appear [at such stations in the District where there are no Associate Lawyers or the existing Associate Lawyers are pre-engaged] in criminal cases under the direction of the Government Pleader and Public Prosecutor. Civil matters may also be entrusted by the Government Pleader and Public Prosecutor but cases of important nature or those involving heavy financial implications to the Government should be conducted by the Government Pleader himself [or by any such Associate Lawyer of the District as nominated by him.] It must be clearly understood that the transfer of work to an Associate Lawyer shall in no case absolve the Law Officer of his responsibility for the proper conduct of Government cases.

(3) Every Law Officer who has Associate Lawyers under him shall submit a report to the Legal Remembrancer on the 1st January of each year stating the general nature of the duties he has instructed to such Associate Lawyers and whether the latter have given him the requisite assistance during the past year. This shall not, however, prevent a Law Officer from immediately reporting any refusal or neglect on the part of an Associate Lawyer to carry out his duties properly, and any such refusal or neglect will render such Associate Lawyer liable to have his name struck off the list.

Part-III

DUTIES OF LAW OFFICERS

13. Duties of Law Officers. - It is the duty of a Law Officer-

(a) to appear on behalf of Government in any suit, appeal or other civil proceedings; and to appear in any suit or civil proceeding which involves interests of the Government wherein any Government Officer or any other person is a party when so directed by the Legal Remembrancer;

(b) to advise the Government, the Board of Revenue, the Heads of Departments, the District Collectors and other District Officers, not only in respect of any proceedings, whether civil or criminal, which he has to conduct on behalf of the Government or on behalf of any Government Officer, but also on all legal matters concerning Government business of any kind which may be referred to him;

(c) to receive processes issued by a Civil Court against the State Government;

(d) to conduct the prosecution in every trial before the Court of Session. For that purpose he shall, at the earliest, examine the record and see that any defect, such as the omission to summon a necessary witness is, if possible, remedied before the date fixed for trial in the Court of Session

(e) to appear for the prosecution at the hearing before the Sessions Court of any appeal against any conviction or application for revision of a sentence, or order (not being one of discharge or acquittal) against which no appeal lies, when notice of such appeal is given to the Officer appointed by the State Government under Section 422 of the Code of Criminal Procedure, 1898 (Act 5 of 1898) or when he is directed by the Sessions Judge or the District Magistrate to so appear;

- (f) when so required by the Legal Remembrancer to conduct prosecution in any trial before a Magistrate;
- (g) to defend public Officers against criminal prosecutions, when so directed by the Legal Remembrancer;
- (h) to appear, when so directed by a District Judge, in support of an order imposing a fine on or directing the arrest of a witness under the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and appealed against to the District Court;
- (i) to appear, when so directed by any Court in any proceeding under Section 476 or 478 of the Code of Criminal Procedure, 1898 (Act 5 of 1898);
- (j) to appear, when so directed by the District Collector, in applications made under Section 10 of the Guardians and Wards Act, 1890 (Act 8 of 1890);
- (k) to advise Government as to the expediency of appealing against any adverse judgement or order of the Court, in a case in which he had appeared;
- (l) to appear in and inquire into applications by parties to sue in *forma pauperis* or to prefer pauper appeals;
- (m) to report to the District Collector the result of civil suits, appeals and other civil proceedings conducted by him in any Court;
- (n) in criminal cases, where the accused person is a Government servant, to intimate the Head of the Department to whom the said Government servant is subordinate about the final order passed by the Court immediately after the said order is passed;
- (o) to assist the Advocate-General or the Government Advocate or the Standing Counsel in the High Court whenever required by any of them in respect of any case which he has conducted in the lower Court;
- (p) to appear on behalf of the State Government in all revenue cases and in appeals arising therefrom;
- (q) to perform on behalf of other State Governments such duties of a legal character as they may be directed to perform by the State Government;
- (r) to ensure that there is no delay on his part either in giving opinions on matters referred to him or in sending to the State Government or to any Officer of the State Government the drafts of pleadings and counter-affidavits prepared by him for approval;
- (s) to submit statements and returns as required under the rules for the time being in force;

- (t) to maintain registers and accounts as required under the rules for the time being in force;
- (u) to take back from the Court all exhibits filed on behalf of Government and forward the same to the Collector or other Officer concerned;
- (v) to prepare and revise tenders, conveyances, leases, security and indemnity bonds, contracts, etc., for the several Departments of the State Government and to draw up complaints, written statements, memoranda of appeal, petitions and affidavits in civil suits and appeals in which the State Government is concerned;
- (w) to appear in appeals preferred against Municipal assessment of Government buildings and in cases referred to the Court by the Collector under Section 18 of the Land Acquisition Act of 1894.
- (x) to give advice on the notices under Section 80 of the Code of Civil Procedure, 1908 (5 of 1908);
- (y) to maintain accounts of all receipts and disbursements in connection with his duties in the form of a day-book, with such subsidiary ledgers as would make it possible to ascertain without difficulty the whole of the charges connected with each case.

14. Limitations of the officer. - A Law Officer shall not-

- (a) hold any brief against Government, or advise, appear or act in any case against Government or give advice to private parties in cases in which he is likely to be called upon to advise Government or any Government Officer ;
- (b) act or appear on behalf of a plaintiff in any suit in which the plaintiff has applied for permission to sue in *forma pauperis* until the application for permission to sue in *forma pauperis* has been decided by the Court ;
- (c) undertake the defence of any person or appear against the Government in any criminal proceeding except in the criminal cases outside his jurisdiction where the Legal Remembrancer may grant him permission to appear against Government on the specific condition that the work relating to the Government cases in the Courts in the district which may be within his jurisdiction does not suffer;
- (d) appear for the defence in cases in which he might have accepted briefs prior to his appointment unless permission is obtained from the Collector;
- (e) accept any engagement or fee from private parties in which he appears on behalf of the Government;
- (f) communicate directly or indirectly to any person any document or information which has come to his possession in the course of his duties, unless permission is obtained from the Legal Remembrancer.

15. Duties of Associate Lawyers. - An Associate Lawyer shall conduct such cases and perform such duties only as are entrusted to him by a Law Officer.

Part-IV

FEES

16. Remuneration payable to Law Officers. - [The retainer fees per month of the Government Pleaders and Public Prosecutor for the district shall be as follows:-

Name of the district (1)	Retainer fee (2)
[Cuttack district	Rs.500
Other district	Rs.400]

(2) The retainer fee of all other Government Pleaders and Public Prosecutors shall be Rs.100 per month.

17. Fees in civil cases. - (1) In contested cases, a Law Officer shall be entitled to get fees ad valorem allowed by the High Court General Rules and Circular Orders (Civil), Vol-I or any higher sum if assessed in the decree.

(2) When civil cases are decided *ex parte* or on consent of both parties, withdrawn, compromised, decided on admission or dismissed for default, the fees payable to the Law Officer shall be one-half of the fees payable in contested cases.

(3) When, however, civil cases are decreed *ex parte*, withdrawn, compromised or decreed on consent after the actual hearing has commenced, the fees payable to the Law Officer shall be one-half of the fees payable in contested cases.

18. Fees for opposing pauper applications. - [A Law Officer shall be entitled to a fee of Rs. 50/- only if he appears to oppose a pauper application made under Order XXXIII, Rule 2 of the Code of Civil Procedure, Act 5 of 1908.]

19. Fees in analogous cases. - (1) Notwithstanding anything contained in these rules, where two or more civil suits or appeals involving common questions of law or fact are heard together and disposed of in common, a Law Officer shall be paid his fees as awarded in the decree of the Court. When no such fees are awarded or assessed in the decree, the fees shall be calculated according to Rule 17 on the case of the highest value and a quarter of fees for each of the other cases had such cases been heard and disposed of separately.

(2) In uncontested analogous cases, a Law Officer shall be paid his fees as awarded in the decree of the Court. When no such fees are awarded or assessed in the decree, the fees shall be calculated according to Rule 17 on the case of the highest value and one-eighth of the fees for each of the other cases, had such cases been heard and disposed of separately.

20. Execution cases and Miscellaneous cases:- The fees payable in Execution Cases, Miscellaneous Cases as well as Miscellaneous Appeals shall be a lump sum of Rs.32 for each contested case and lump sum of Rs.16 for each uncontested case. If the above fees are considered inadequate in view of special circumstances, the law Officer should refer the matter to the Legal

Remembrancer thought the District Magistrate. The Legal Remembrancer is authorised to sanction fees according to the following maxim:-

Rs. 150 for a case in the Court of District Judge and Subordinate Judge and Rs.50 in the Court of Munsif

21. Fees for appearance before the Board of Revenue or the Revenue Divisional Commissioner. - For appearance before the Board of Revenue or the Revenue Divisional Commissioner, a Law Officer may be allowed daily fees at the rates admissible for conducting criminal cases at Headquarters or outside, as the case may be, subject to half-fee restriction.

22. Fees for drafting documents. - A Law Officer, who is asked to do any conveyancing work, shall be paid such fees not exceeding Rs.100/- for each case as the Legal Remembrancer may sanction.

23. Fees payable to a Junior Counsel. - (1) Fees payable to a Junior Counsel engaged in a civil case with the prior permission of the State Government shall be one-fourth of the fees paid to the Law Officer subject to a minimum of Rs. 30/- :

Provided that such Junior Counsel was on record at least from the date of settlement of issue in a suit or from the date fixed for the appearance of the respondent in an appeal.

(2) A Junior Counsel engaged in a criminal case may be allowed daily fees at the rate of Rs. 30/- in each case.

24. Fees in criminal cases. – (1) The fees payable to Public Prosecution for the Districts shall be as follows:-

[Name of the district	Daily fee at headquarter
[Cuttack district	Rs.85
Other districts	Rs.75

25. Daily fee in criminal cases- The daily fee in Courts other than Sessions Courts, shall ordinarily be reduced by half, when the Government Pleader/Associate Lawyers/Lawyer instructed by Government Pleader, is occupied in a Court for less than 3 hours in a day.

26. Fees not admissible in criminal cases - A Law Officer shall not be entitled to any fee when he puts in formal appearance in Court or when the 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.

27. Fee for work outside headquarters. - Fees of Law Officers when employed outside headquarters shall be double the usual daily fees at headquarters.

28. Daily fees for intervening holidays during absence from headquarters. - Daily fees admissible at headquarters shall ordinarily be allowed for the days of necessary halt on intervening holidays during the absence from headquarters.

29. Special fees. - (1) In cases of unusual importance or difficulty, or in which marked industry or ability has been displayed or in special circumstances, the State Government may sanction the payment of such special or enhanced fees as they deem fit.

(2) Application for special or enhanced fees shall be made with as little delay as possible and shall be accompanied by a certificate (in original) of the dates of attendance in Court and a copy of the judgement or order in the proceeding.

30. Apportionment of fees between outgoing and incoming Law Officers if both happen to deal with the same case in stages. - If the outgoing and the incoming Law Officers happen to conduct the same case at different stages, the fees payable to the Law Officers under the rules shall be determined in accordance with the Principles specified below :

(a) Where the Government are $\frac{1}{4}$ th of the total fees opposite parties/respondents, the Ex-Law Officer should get

Where his successor or any $\frac{3}{4}$ th of the total fees other Advocate who actually argued the case in the Court should get

(b) Where the Government are $\frac{1}{3}$ rd of the total fees appellants/petitioners, the Ex-Law Officer should get

and his successor would get the $\frac{2}{3}$ rd of the total fees remainder.

31. Travelling allowance. - All Law Officers shall be entitled to travelling allowance under the Orissa Travelling Allowance Rules as a First Class Officer drawing a monthly salary of Rs. 1,000.

32. Bills of Law Officers. - (1) The Law Officers shall draw their bills showing particulars of the cases in respect of which the fees are due to them and the bills shall be paid at the Treasury after they have been passed by the District Magistrate, as correct.

(2) The Law Officers shall, while claiming their fees, quote the relevant rule under which the fees claimed are admissible and attach a certificate to each bill certifying that the claim preferred in that bill has not been preferred earlier.

(3) The orders sanctioning payment of fees to Law Officers shall contain a certificate in the manner specified below :

"The fee sanctioned above is in accordance with the scale prescribed under the Orissa Law Officers' Rules, 1971, and no departure from the rules is involved".

(4) No countersignature of the Legal Remembrancer is necessary for bills prepared in accordance with the rules or on the basis of sanction orders Issued by the State Government. But copies of Government orders sanctioning the special or enhanced fees shall always be enclosed with the bill.

(5) The Law Officers should obtain from the Courts concerned certificates of attendance showing the time when the case was taken up and when it ended and the work done on each day.

(6) When a fee is claimed for an unexpected adjournment of a case, the Law Officer should obtain from the Court a certificate in the manner specified below :

"Certified that it was not possible for..... to ascertain by enquiry from the Court in advance whether the case would not be taken up on the date fixed."

Note - The certificate should be obtained from the Court at the time the case is adjourned or as soon after as possible.

(7) Bills in connection with civil cases should be submitted as soon as possible after each case is decided. Bills in respect of daily fees earned in any month should be submitted in the next following month, whether the case to which they relate has been decided or not.

(8) A Public Prosecutor and his Associate Lawyers or any two Associate Lawyers with the Public Prosecutor shall not, without the special sanction of the Legal Remembrancer, both be allowed to charge fees for appearance in the same Court, [in the same case] on the same day. Whenever any such double fee is charged for the same day, a full note of the fact, which should be attested by the Presiding Officer of the Court, shall be attached to the bill to enable the Legal Remembrancer to decide whether the charge is justified.

33. Bills of State Defence Counsel. - Bills in respect of fees payable to State Defence Counsel in sessions cases shall be prepared, signed and cashed from the Treasury by the Sessions Judges concerned. Such bills need not be submitted to the Legal Remembrance for countersignature. Any other State Defence Counsel shall submit and draw his bill in the same manner as other Law Officers.

Part-V

MISCELLANEOUS

34. Control over Law Officers. - Administrative control and supervision shall, subject to the overall control of the State Government, be exercised by the District Magistrates and Collectors in the districts in respect of the Law Officers within their respective jurisdiction.

35. Transfer of records. - On the expiry of the term of the office, whether by efflux of time or otherwise, of a Government Pleader and Public Prosecutor, he shall prepare a list of cases, references and official correspondence pending with him and handover all the records concerned to the Law Officer succeeding him and obtain a receipt for the same and report the fact to the District Magistrate and the Legal Remembrancer.

36. Supersession. - On the commencement of these rules, the rules contained in the Bihar and Orissa Practice and Procedure Manual, 1930, or any other rules, notifications or orders in force immediately before such commencement shall, in so far as they relate to any matter, provision for which is made under these rules, stand superseded :

Provided that such supersession shall not affect anything duly done or suffered or any dues payable under the rules, notifications or orders so superseded :

Provided further that any action taken or thing done under the rules, notifications or orders so superseded and in force immediately before the commencement of these rules, shall in so far as it is not inconsistent with the provisions of these rules, be deemed to have been taken or done under these rules and shall continue in force until it is superseded by any action taken or thing done under these rules.