

**GOVERNMENT OF MIZORAM
LAW & JUDICIAL DEPARTMENT
SECRETARIATE BUILDING, MIZORAM NEW CAPITAL COMPLEX
KHATLA, AIZAWL MIZORAM – 796001**

OFFICE MEMORANDUM

Dated Aizawl, the 15th March, 2023

Subject: Procedure for handling litigation and matters connected therewith.

No. G.11021/8/2017 - LJA : In supersession of all earlier Office Memorandums issued by Law & Judicial Department in regard to handling of litigation and matters connected therewith, the following instructions are hereby issued for information and strict compliance of all Departments:-

I. GOVERNMENT LITIGATION IN THE DISTRICT COURT AND HIGH COURT

- 1) When a petition is instituted against the Government of Mizoram in the Supreme Court of India, upon receipt of Notice, Para – Wise Comments (PWCs) should be prepared immediately.
- 2) The PWCs should be duly and appropriately in response to the averments made in the plaint/petition .
 - All facts and figures are to be incorporated in the comment.
 - Supporting documents should be arranged in chronological order.
 - PWCs should be precise and to the point.
 - Supporting documents should be legible or typed copy.

- Supporting documents written in local language should be translated into English before endorsing it to Law & Judicial Department.
 - Any of the paras may be admitted, partially admitted, denied or partially denied according to the facts.
- 3) Draft PWCs along with legible enclosures should be sent to the Law & Judicial Department at the earliest keeping in view the limited time for filling Written Statement/affidavit – in – opposition.
 - 4) Vetted PWCs returned to the Department should thereafter to be sent to the concerned Government Counsels.
 - 5) The Nodal Officer and Dealing Assistant of Court cases should apply their mind and exercise due diligence while preparing PWCs.
 - 6) While the concerned Department shall respond to each and every averment, allegations in full details with facts and figures, the Public Prosecutors and Government Advocates are expected to incorporate all necessary legal points to the PWCs before submission to the courts.
 - 7) Very often, Misc. Applications such as applications for deferring payment of court fees, interim injunction/stay order, condonation of delay, etc. are filed by the Plaintiff/Petitioner along with the Plaint/Petition. In such instances, Written Objections/Affidavit needs to be filed for which appropriate comments should also be supplied to the concerned Government counsel within time on the basis of the facts supplied by the Department in the form of PWCs.
 - 8) Officials to adduce evidence on behalf of the state in the Trial Court should be well versed with the facts of the case.

II. GOVERNMENT LITIGATION BEFORE THE SUPREME COURT/TRIBUNAL ETC.

- 1) When a petition is instituted against the Government of Mizoram in the Supreme Court of India, upon receipt of Notice, Para – Wise Comments (PWCs) should be prepared immediately.
- 2) The PWCs should be duly and appropriately in response to the averments made in the petition .
- 3) - Draft-PWCs along with legible enclosures should be sent to the Law & Judicial Department at the earliest for vetting.
- 4) Vetted PWCs returned to the Department should thereafter to be sent to the office of the Standing Counsel for the State of Mizoram in the Supreme Court
- 5) Every Affidavit has to be printed on super quality white A4 size paper(29.7 cm x 21 cm) having not less than 75 GSM with printing on both sides of the paper with Font - Times New Roman, Font size – 14, in one and half line spacing with margin of 4 cm on left & right and 2 cm on top & bottom, shall be used in the pleadings, petitions, affidavits or other documents to be filed.
- 6) There should be signature and stamp/seal of the concerned person on the Affidavit.
- 7) Affidavit has to be notarized from the notary of the territory where the Deponent makes his/her signature.
- 8) There is no requirement of "Non- Judicial Paper" in the Court proceedings in relation to the Affidavit unless it is specifically requested by the Hon'ble Supreme Court.
- 9) In respect of Orders received from the Supreme Court of India through the Office of the Standing Counsel or directly from the the Registry of the Supreme Court of India, Compliance Report has to be filed as

affidavit which should reflect how the directions in the Orders are complied with or implemented by the State Government. Compliance Affidavit are to be directly sent to the Office of the Standing Counsel with an intimation to the Law & Judicial Department.

- 10) Affidavit-in-Oppositions/Compliance Affidavit are to be filed through the Standing Counsel for the State of Mizoram. For this purpose, PWCs or reports, as the case may be, should be executed by Competent Official. Therefore, such PWCSs or reports are to be sent to the Standing Counsel, simultaneously authorizing the Resident Commissioner, Mizoram House, Delhi to sign Affidavit and Vakalatnama on behalf of the State unless Secretary/Chief Secretary is specifically directed by the Supreme Court to sign the Affidavit
- 11) Upon receipt of Order/Judgment passed by the Supreme Court, the concerned Department is to vigorously pursue the matter and comply with the directions given in such Order/Judgment. Such directions are mandatory and should be complied with as expeditiously as possible since court cases are time bound and failure to comply can attract imposition of fines and Contempt of Court
- 12) Every substantial action taken by each concerned Departments e.g, sending relevant reply/report/PWCS/affidavits thereof shall be invariably intimated to Law & Judicial Department with copies of relevant correspondences thereof.

III. LITIGATION WHERE MORE THAN ONE DEPARTMENTS ARE ARRAYED AS RESPONDENTS

- 1) In a litigation wherein more than one Department are arrayed as defendants/respondents, the main defendant/respondent Department shall co-ordinate with other Departments and formulate the stand of the State Government to avoid contradictory stand being taken by the

different defendants/respondent Departments and to respond to all or any of the averments made against the State Government in a manner that is agreeable to all the defendants/respondent Departments.

- 2) If there can be no consensus amongst the Departments, the matter shall be referred to the Chief Secretary, Government of Mizoram whose decision shall be final
- 3) Only such mutually agreed upon PWCs shall be forwarded to Law & Judicial Department for vetting.

IV. PROCEDURE FOR DEALING WITH JUDGMENT & ORDER

To address the confusion that is often faced by Departments as to the steps to be taken after a Court delivers Judgment/Interlocutory/Interim order in a case, the following instructions should be followed:-

- 1) As soon as Judgment/Order/Interlocutory/Interim order is delivered, in any case, the Govt. Advocate concerned shall without fail in each case, within three days from receipt of the said Judgment/Order/Orders furnish copies of the same to the concerned Department with written advice whether the case is fit for appeal/review/revision or not. Copy of the same shall also be given to Law & Judicial Department. The Govt. Advocate shall exercise due diligence with regard to the receipt of a Judgment & Order of the Court and forwarding the same thereof to the concerned Department. If the Govt. Advocate has not received a copy of a Judgment & Order within three days from delivering of Judgment and Order he shall make an application to the Court of issuance of the same. The Govt. Advocate shall, within three days of receipt of the Judgment & Order of the court, forward the same to the concerned Department and the concerned Nodal Officer shall provide acknowledgement of receipt thereof by assigning signature and seal. Non – receipt of Judgment & Order of the Court by the Department within one week shall be dealt with seriously by the government.

- 2) The Department concerned shall immediately and diligently appraise the Judgment/Order/Interlocutory/Interim order in light of the advice tendered by the Govt. Advocate, and take a final decision whether to file to an appeal/review/revision or otherwise. However, in the event of conflicting opinion between the Govt. Advocate and the concerned Department, the matter shall be referred to Law and Judicial Department whose decision whether appeal etc is to be preferred or not against that particular Judgment/Order/Interlocutory/Interim order shall be final.

a) In this regard, if it is decided that appeal/review/revision, etc. as the case may be, be not filed, the Nodal Department concerned shall ensure compliance of the Judgment/Order and mitigate all avenues for drawing a contempt of court proceeding. However, if it is decided that appeal etc. be preferred, then, step are to be taken diligently so that the appeal etc. is filed within the relevant period of limitation.

b) PPs/GAs are to go through the Judgment diligently and offer comments as to whether the particular Judgment is a fit case for appeal or not, and if so, the same shall immediately be communicated to the concerned Department highlighting to the ground for appeals without fail, with a copy to the Law & Judicial Department.

c) If the Government decided to appeal the Judgment/Order of the lower courts, the Department shall communicate to the Sr. GA/PP for appeal who will take further necessary action, like obtaining certified copy of Judgment & Other relevant documents from the Trial Court and then prefer an appeal.

V. JUDGMENT & ORDER IN SERVICE MATTERS

Whenever there is a Judgment & Order detriment to the interest of the Governments on service matters, the concerned Department shall

consult the Law & Judicial Department & the Department of Personnel & Administrative Reform (DP & AR) on the question of filing an appeal against such Judgment & Order, well in time, that is before the time limit for filing an appeal. Judgment & Order contrary to service rules or its interpretation thereof, or having recurring implications upon the cadres, or huge financial repercussions shall not be implemented by the concerned Department without first consulting the Government in the Law & Judicial Department and DP & AR.

VI. DEFENCE OF GOVERNMENT SERVANT IN CONTEMPT CASES

- 1) In pursuance of the principles laid down by the Hon'ble Supreme Court in Civil Appeal No. 85588-89 of 1997 in the case of Commissioner, Agra & others vs Rohtas Singh & others reported in AIR 1998, SC: 685, it is open for the State to nominate its advocates to appear for its officials in contempt proceedings. The State is, therefore entitled to authorized a Law Officer to appear in cases where contempt consists of disobedience of an order of the court by an official or employee of the State.
- 2) Such Govt. Servant may, if so desire or where the matter of the case so necessitates, engage an advocate of his choice to represent him/her in contempt cases with prior approval/consultation with Law & Judicial Department.
- 3) The Department which has to substantially defend the case shall be liable to pay the fees of the Advocates for their appearances in contempt cases even for all other alleged contemnors in the case.
- 4) That a uniform lump sum rate of Rs. 20,000/- or as may be determined by the Government from time to time for each case shall be paid to those Advocates (Government Advocates or private advocates) appearing in contempt cases irrespective of the number of officials involved/represented in the concerned cases by the Advocates. If,

however, the amount ~~is~~ found unacceptable by private advocates, the quantum may be increased in consultation with the Law & Judicial Department and Finance Department as may be deemed necessary on case basis.

VII. FILING OF PARA-WISE COMMENTS/AFFIDAVIT/REPLY ETC IN ALL CASE:

In view of the objectives imbibed in the State Litigation Policy of Mizoram, 2023 and with the objective of effectively monitoring the Government's action or inaction before Court/Tribunal and to avoid any untoward incidence that would prejudicially effect the interest of the State as a whole, attention is drawn on the matters relating to the above subject for necessary action and compliance as detailed below:

- 1) Prompt action should be invariably taken by each concerned Department whenever any correspondence regarding Court cases or cases before Tribunal etc. is received by the Department either from the Resident Commissioner, New Delhi or Office of the Standing Counsel, Mizoram or Law & Judicial Department or from the concerned Govt. Advocate or adjusting Institutions itself.
- 2) Nodal Officers in charge of Court cases in each Department should vigorously pursue the matter to effectively address on time each and every requirement emanating from the order of the Court/Tribunal concerned.
- 3) At the time of filing PWCs and before filing of Written Statement/written Argument/Affidavit – in – Opposition, the Department shall conduct a meeting with the Government Advocate for briefing in each case and a record of the meeting shall be maintained with signatures appended by the Government Advocate and the Nodal Officer.

- 4) Every substantial action taken by each concerned Departments e.g, filing/sending relevant reply/report/PWCS/affidavits thereof shall be invariably intimated to Law & Judicial Department with copies of relevant correspondence thereof.

VIII. NOTICE UNDER SECTION 80 OF THE CODE OF CIVIL PROCEDURE, 1908:

- 1) On receipt of Notice under section 80 of the Code of Civil Procedure, 1908, the Nodal Officer of the concerned Department shall take immediate steps as duty bound to find out ways and means of all possible solution of the matter in question so as to avoid litigation.
- 2) Upon examination of the claim in the Notice, the concerned Department shall take a decision without any delay. If, it is decided that the claim is genuine and requires to be admitted, the concerned Department shall take action to settle the claim forthwith and if is decided to contest the claim or admit the claim in part, no reply shall be sent without consulting the Law & Judicial Department.

IX. ENGAGEMENT OF ADVOCATE OTHER THAN GOVERNMENT ADVOCATES IN ANY COURT

On certain occasions some Departments need to engage an Advocate outside the panel of advocates engaged by the Government of Mizoram in the Law & Judicial Department to appear on behalf of such Departments in respect of a specific case. In such cases, it is hereby clarified that such Departments are obligated to obtain prior approval of the Law & Judicial Department for such engagement. It is also hereby made clear that such engagement shall be made sparingly and only on unavoidable circumstance.

X. MISCELLANEOUS

- 1) All Departments shall conduct a monthly review of court cases in their respective Departments.
- 2) All Departments shall appoint a Nodal Officer for court cases by designation at the Directorate & Secretariat level to oversee the dealings of the court cases of their respective Departments. In case a Nodal Officer is transferred to another Department, the Department shall immediately appoint Nodal Officer for court cases.
- 3) Any outcome in a case to the detriment of the interest of the state which is attributable to non-compliance of the Mizoram State Litigation Policy, 2023 and this Office Memorandum or any other Order/Oms issued by the Law and Judicial Department shall be viewed seriously by the Government and any glaring negligence of officials and Government Counsels concerned in this regard shall be appropriately dealt with.
- 4) Any order/direction received from the Courts or Tribunals by the Departments shall be dealt with immediately and treated as URGENT. If any query/doubt arises in connection with any court cases, the concerned Departments shall consult Law & Judicial Department at the earliest.
- 5) It is responsibility of the Administrative Department to ensure that timely action is taken in adhering to Court's order.

- 6) All Departments shall maintain a register as per Form – A and all PP's/GAs etc. shall maintain a register as per Form – B for tracking and monitoring of actions taken in court cases in all Courts and Tribunals etc.

Sd/-HELEN DAWNGLIANI

Secretary to the Govt. of Mizoram
Law & Judicial Department

Memo No. G.11021/8/2017 – LJA

: **Dated Aizawl, the 15th March, 2023**

Copy to :

1. Secretary to Governor, Mizoram
2. All P.S to Minister/Minister of State, Mizoram
3. Sr. PPS to Chief Secretary, Govt. of Mizoram.
4. All Principal Secretaries/Commissioners/Secretaries, Govt. of Mizoram
5. All Administrative Departments, Govt. of Mizoram
6. Guard File.


(MELODY LALROCHAMPUII PACHUAU)

Joint Secretary to the Govt. of Mizoram
Law & Judicial Department

FORM - A

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REGISTER FORMAT FOR TRACKING AND MONITORING OF COURT CASES AT SUPREME COURT FOR NODAL OFFICERS

Case no. :	
Name of parties:	
Name of court:	
Subject matter:	
Date when copy of petition/order/judgment is received:	
Whether the main respondent Department Co-ordinate with the other Department to formulate the stand of the State Government in a case where different Departments are arrayed as respondent:	YES/NO
Date of completion of parawise comment/compliance affidavit preparation:	
Date on which parawise comment/compliance affidavit is sent to Law & Judicial Department for vetting :	
Date when vetted parawise comment/compliance affidavit is received from Law & Judicial Department :	

Date when vetted/compliance affidavit is sent to Standing Counsel :			
Stage/Status of the case :	Sl. No.		DATE
Date of Judgment & Order :			
Steps taken to comply with the Judgment & Order & date when compliance affidavit is submitted to avoid any personal appearance of Government Officials :			
Remarks, if any?			

FORM - A

(29)

REGISTER FORMAT FOR TRACKING & MONITORING OF COURT CASES AT HIGH COURT FOR NODAL OFFICERS

Case no. :	
Name of parties :	
Name of Prosecutor/Govt. Advocate :	
Name of court :	
Subject matter :	
Date of receipt of Petition/Order/Judgment :	
Whether the main respondent Department Co-ordinate with the other Department to formulate the stand of the State Government in a case where different Departments are arrayed as respondent.	YES/NO
Date of completion of parawise comment preparation :	
Date on which parawise comment is sent to Law & Judicial Department for vetting :	
Date when vetted parawise comment is received from Law & Judicial Department :	
Date when parawise comment is sent to Govt. Advocate :	

	Sl. No.		DATE
Stage/Status of the case :			
Date of Judgment & Order.:			
Date when the Judgment & Order has been discussed with the Govt. Advocate on whether to file an Appeal/Review/Revision or otherwise :			
Date of consultation with Law & Judicial Department in case of conflicting opinion :			
If no appeal is preferred, steps taken to comply with the Judgment & Order to avoid contempt proceedings :			
Whether Appeal/Revision/Review has been filed against the Judgment & Order: If yes, details, if any?			
Outcome of Appeal/Revision/Review:			
Remarks, if any?			

FORM - A

(31)

REGISTER FORMAT FOR TRACKING & MONITORING OF COURT CASES AT DISTRICT COURT FOR NODAL OFFICERS

Case no. :	
Name of parties :	
Name of Prosecutor/Govt. Advocate:	
Name of court :	
Subject matter :	
Whether Legal Notice u/s 80 of Code of Civil Procedure, 1908 was received? - If Yes, whether reply has been sent? - If No, whether steps have been taken to find a solution, so as to avoid litigation?	
Date of receipt of plaint/petition copies :	
Whether the main respondent Department Co-ordinate with the other Department to formulate the stand of the State Government in a case where different Departments are arrayed as respondent:	YES/NO
Date of completion of parawise comment preparation by the defendant Department :	

Date on which parawise comment is sent to Law & Judicial Department for vetting :			
Date of receipt of vetted parawise comment from Law & Judicial Department :			
Date when parawise comment is sent to Govt. Advocate :			
Stage/Status of the Case :	Sl. No.		DATE
Date of Judgment & Order :			
Date when the Judgment & Order has been discussed with the Govt. Advocate on whether to file an appeal/review/revision or otherwise :			
Date of consultation with Law & Judicial Department in case of conflicting opinion :			
If the department prefers not to appeal steps taken to comply with the Judgment & Order :			
Whether an appeal/revision/review is preferred against the Judgment & Order\ - If yes, details, if any?			

Outcome of the Appeal/Revision/Review :	
Remarks, If any?	

[illegible]

Date of Judgment & Order:	
Won :	
Lost :	
Whether appeal has been filed against the judgment & order: If yes, details, if any?	
Outcome of the Appeal/Revision/Review :	
Remarks, if any?	