

S.O. Slip no. V

Date: 29/11/2012

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Procedure to be followed,  
for engaging services of  
Special Counsel, A-Panel  
Counsel in Civil Cases

**Government of Maharashtra**  
**Law and Judiciary Department**  
**Circular No. 9739-2011/E-Branch**  
**Mantralaya, Mumbai 400 032**  
**Dated 13<sup>th</sup> October, 2011**

**C I R C U L A R**

By Rule 14(3)(a) of the Rules for the Conduct of Legal Affairs of Government, 1984, the duty is imposed on the R.L.A. to appoint Special Counsel or Special PP in any civil or criminal case, in which the State or its officers are either parties or in anyway concerned. The procedure for appointment of Special Counsel is prescribed in Rule 18 of the said Rules. The Rule 18 of the said Rules is reproduced as follows:

**"18(1)** *Save as otherwise provided in these Rules, no Special Counsel on behalf of the State or its officers shall be engaged in any civil case in the High Court and subordinate courts in this State or in other states and any civil and criminal cases in Supreme Court without the sanction of the R.L.A.*

**18(2)** Procedure for engagement

(a) *In cases where the engagement of the Special Counsel on behalf of the State and its officers for the conduct of the case is considered necessary by the Collector or Government officer concerned, he shall send his proposal to that effect well in advance of the date fixed for hearing of the case to the R.L.A., through the administrative department concerned stating fully the following points :*

- (i) *the nature of the case;*
- (ii) *the evidence to be brought forward;*
- (iii) *the reasons for justifying the engagement of the Special Counsel*
- (iv) *the circumstances on account of which the Government Pleader, concerned, cannot be entrusted with the case;*
- (v) *the date and place of hearing of the case;*

- (vi) *the approximate number of days of hearing the case is likely to take;*
  - (vii) *which other counsel, if any, is proposed to be engaged;*
  - (viii) *at what rate it is proposed to remunerate the counsel, if appointed and whether the said counsel has shown willingness to accept the brief.*
- (b) *The law officer concerned may send his proposal in the above manner to the R.L.A. directly.*
  - (c) *If the case within the jurisdiction of the Joint Secretary to Government, Law & Judiciary Department at Nagpur or Aurangabad, as the case may be, the proposals in the Clauses (a) & (b) shall be sent to the R.L.A. through them.*
  - (d) *If there is no sufficient time for such communication to be made before the date fixed or likely to be fixed for hearing of the case, the court may be moved to adjourn the case or to fix a date in the first instance at the sufficient interval of time, to enable the Government officer or the Law Officer concerned to obtain sanction for the engagement of the Special Counsel.*
  - (e) *If the R.L.A. thinks that the case is a fit one for the engagement of the Special Counsel, he shall either on receipt of the proposal under Clause (a) to (d) or suo motto, issue orders for the engagement of the Special Counsel on such terms as he may deem fit.*

The Government in Law & Judiciary Department has also prepared a Panel of Special Counsels on the Original & Appellate Side of the High Court at Bombay. As per sub-rule 2, 3 & 4 of Rule 28 of the Rules, norms for entrusting cases to such panel counsels and fees for appearance are also laid down.

The Government in Law & Judiciary Department has also prepared panel of A-Panel Counsels and allotment of work to such A-Panel Counsels at Original Side and Appellate Side at Mumbai is entrusted to the Ld. Advocate General, State of Maharashtra and at High Court Bench at Nagpur and Aurangabad it is done by the concerned Government Pleader at Nagpur and Aurangabad, as the case may be.

Though the precise procedure is prescribed in the above stated Rules for engaging services of Special Counsel as per Rule 18 or services of Special Counsel from the panel of Special Counsels or services of A-Panel Counsel, it is observed that the officers concerned

and administrative departments in Mantralaya are not strictly observing the procedure laid down in above stated Rules for engaging the services of Special Counsel as per Rule 18 of the Rules or appointment of Special Counsel from the panel of the Special Counsels or for engaging services of A-Panel Counsels. It is also observed that while moving the proposal for appointment of Special Counsel as per Rule 18 of the Rules, officers and administrative departments are not stating full information prescribed by the sub-clauses (i) to (viii) of Clause (a) of sub-rule 2 of Rule 18 and are making cryptic proposals for appointment of Special Counsel. Such proposals are also not made in advance and are made at the 11<sup>th</sup> hour. It is also observed that sometimes departments are engaging services of Special Counsel without making reference to R.L.A. and also without settling their fees in advance, giving rise to disputes about fees, due to which inconvenience is caused to this Department and also to the office of the Government Pleader, concerned, for conducting the case. Similar practice is also followed by the concerned officers and departments in engaging services of Counsel from the panel of Special Counsels.

If administrative department, concerned, or officer, concerned with the case feels that for certain bonafide reasons, the case is required to be conducted through the A-Panel Counsel instead of Assistant Government Pleader or Government Pleader appointed, then in such cases, it is expected that the concerned administrative department / officer shall approach to the Ld. Advocate General in cases pending before the Hon'ble High Court at Bombay and to the concerned Government Pleader, in cases which are pending at High Court Bench at Nagpur or Aurangabad for services of A-Panel Counsels.

Considering all these aspects, all the Collectors / Officers concerned, Mantralayeen Departments and Law Officers are hereby informed that, while making proposals for engaging services of Special Counsel, make proposals as prescribed in sub-rule (2)(a) Clause (i) to (viii) (b) (c) (d) of reproduced Rules in this Circular.

For engaging services of A-Panel Counsel, officers concerned or administrative department concerned, may approach to the Ld. Advocate General in cases pending before (Bombay) Mumbai High Court. If services of A-Panel Counsels are required to conduct cases before High Court Bench at Nagpur or Aurangabad, then proposal to Government Pleader of High Court Bench at Nagpur & Aurangabad, as the case may be moved.

Same procedure, as prescribed in rule 18, shall be observed for engaging services of Special Counsel before the MAT, Mumbai and Benches at Nagpur and Aurangabad.

If procedure as narrated above is not observed by the concerned officers / Administrative Departments, for engaging services of Special Counsels or A-Panel Counsels,

and due to such failure, appropriate decision about engaging services of Special Counsel/ A-Panel Counsels could not be taken in advance resulting in adverse effect over the case, it will be the sole responsibility of concerned officer / Department.

This Circular may be brought to the notice of all sub-ordinate officers by the administrative departments.

This Government Circular is available on Government of Maharashtra's site [www.maharashtra.gov.in](http://www.maharashtra.gov.in) on computer code No.20111010145652001.

By order and in the name of the Governor of Maharashtra,

  
(V.L. Achliya)

Principal Secretary & R.L.A.

1. The Senior P.A. to Chief Secretary, Government of Maharashtra
2. All the Departments of Mantralaya.
3. The Advocate General, Government of Maharashtra, Mumbai
4. The Joint Secretary, Law & Judiciary Department, A, E, M Branch-Mumbai; Nagpur & Aurangabad.
5. All the Government Pleaders, High Court; (O.S.), (A.S.), Writ Cell Bombay and Benches at Nagpur & Aurangabad.
6. The C.P.O., Mumbai Nagpur and Aurangabad.
7. All the District Government Pleaders & Public Prosecutors.
8. Select File.