

different stations as may appear necessary according to the number of original processes to be served.

40. The number of peons at the District headquarter or at any sub-division, shall be reduced whenever the average number of processes for each peon falls short of the prescribe minimum by more than ten per centum; provided that if sufficient cause appears for lowering the minimum the Chief Judicial Magistrate may report the matter for the orders to the High Court. It is likewise competent to the Chief Judicial Magistrate to authorise an increase in the number of peons when the average number of processes increased by the same percentage.

### 3. THE INDIAN OATHS ACT X OF 1873

41. The following forms of oaths and affirmations are prescribed by the High Court under Section 7 Act X of 1873.

#### For Witnesses Oath :

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

So help me God.

#### Affirmation

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

#### For Interpreters Oath :

I swear that I will well and truly interpret, translate and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, and explain.

So help me God.

#### Affirmation

I solemnly declare that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, or explain.

42. Christian witnesses, interpreters to whom oaths are administered, are to be sworn upon the New Testament.

43. In other cases the oaths are to be administered upon such symbol, or accompanied by such act, as many be usual or customary or as such witness, or interpreter may acknowledge to be binding on his conscience.

## CRIMINAL RULES AND ORDERS OF THE GAUHATI HIGH COURT

### VOLUME I

### PART B

### INSTRUCTION ISSUED BY THE HIGH COURT

### CHAPTER I

### COURT HOURS, CAUSE LISTS, PETITIONS, ETC.

#### 1. GENERAL

1. (1) The ordinary hours of sitting for all Courts shall be from 10-30 a.m. to 4 p.m.

(2) There shall ordinarily be an interval (not exceeding half an hour) at 1-30 p.m.

(3) Courts may close at 1-30 p.m. on Saturdays.

If the state of the work permits, and if the second Saturday of each month is not observed as holiday in the State.

(4) No Court shall proceed with the hearing of a case between 12-30 p.m. to 1-30 p.m. on Friday if any party in such hearing, being a Muslim, Prays for adjournment to enable him to attend the Jumma Prayers during those hours. Muslim employees of the Court and officers will also be permitted to absent themselves during the aforesaid hours and other Muslims having business at the offices should not be called upon to attend during those hours.

2. All Judicial Officers shall sit daily and punctually at the hour prescribed by the above rule i. e., at 10-30 a.m. unless prevented by circumstances which are to be recorded in the Court's Diary [Form No. (R) (I)].

3. The Judicial work of the day shall be taken up punctually at the hour appointed for the sitting of the Court and shall have precedence over all other work. As a rule, the Presiding Officers of Courts should not permit their administrative or other work to interfere with the strict observance of this rule.

4. The hearing of a case taken up before the closing hour of the Court may be continued for a short period after that hour if the Presiding Officer thinks it necessary in the public interest, but no new case should be taken up after the hour that the Court is timed to rise.

Provided that the hearing of case shall not ordinarily continue after 5 p.m. save that a Presiding Officer may, in cases of urgent necessity, for reasons to be recorded by him in the order-sheet and in his diary, continue his sitting beyond that hour.

5. The Diary in the prescribed form shall be maintained by every Criminal Court in the following manner—

- (i) Each case fixed for any day shall be entered in advance immediately upon a date or adjourned date being fixed, each such entry showing the purpose for which it is set down on each date.
- (ii) Progress made in each case shall be shown briefly under each date as also the reason for adjournment.
- (iii) The number of witnesses examined in each case shall be noted.
- (iv) A running total in red ink shall be inserted from day to day with the object of showing the total number of witnesses examined during each quarter of the year, a new serial number for them being started at the beginning of the each quarter.
- (v) An Officer who on any day performs other duties in addition to his judicial work, shall note in the diary for that day how his time has been distributed between different classes of work, fractions below one quarter of an hour being disregarded.

6. The Presiding Officer of the Court shall insert in the Diary with his own hand (i) the hour of his arrival in office, (ii) the hour at which he taken seat for judicial work, (iii) the hours between which administrative or other work is done, and (iv) the hour of rising.

7. Judicial work shall ordinarily be done in public Court houses and not in the private chamber or residence of the Judicial Officers.

8. Without the consent of parties and in the absence of urgent necessity no criminal enquiry or trial shall ordinarily be held on a Sunday or gazetted holiday, but if in the opinion of the Presiding Judge or Magistrate the observance of such Sunday or holiday would seriously interfere with the trial of any case in progress at the time, such Judge or Magistrate may, after regarding his reasons in the order-sheet, without the consent of the parties continue to hold the enquiry or trial on those days.

9. In order that District and Sessions Judges may be enabled

to take advantage as fully as possible of the Civil Court vacation the High Court will be prepared to approve of the grant of vacation leave to them on the following conditions—

- (i) Every District and Sessions Judge, before applying for such leave, must arrange with the District and Sessions Judge of another district that the latter shall undertake the disposal of any criminal business requiring attention which may arise in his district during the vacation.
- (ii) One District and Sessions Judge may be appointed in such cases to be Additional Sessions Judge of one or more Sessions Divisions in addition to his own.
- (iii) A Sessions Judge so appointed, may, under Section 9, Clause 4 of the Code of Criminal Procedure, sit for the disposal of cases arising within any of the Sessions Divisions of which he is in-charge, at such place or places in either or all of such Divisions as the State Government may direct. It will be left to his discretion to dispose of applications and appeals at any prescribed place either within or without the Sessions Divisions to which they relate according to the necessities of the case.

## II. CAUSE LISTS

10. For the information of the parties, their pleaders and the public a Daily Cause List in the prescribed Form No. (M) I shall be prepared and posted in some conspicuous part of every Court-room not later than 2 p.m. on the working day preceding that to which the list relates. Cases, appeals and applications for revision shall be shown in the order in which they appear in the Diary.

At the close of the day, entries should be made in the Daily Cause List showing in addition (a) the results of all cases disposed of, (b) the dates or adjourned dates fixed during the day of cases not disposed of, and (c) any order requiring specific action.

**Note 1**— Lists shall be prepared in official language of the Court and shall remain posted for three days.

**Note 2**— Lists should be published on a wooden board preferably protected by glass or wire netting and under lock and key.

**Note 3**— Lists shall bear the dated signature of the Presiding Officer of the Court whose duty it is to see that the Lists are posted not later than the hours fixed in the rules and that entries are properly and correctly made.

**Note 4**— Where difficulty is experienced in maintaining the lists as laid down above a register in the same form may be maintained in which the necessary

entries shall be made from day to day, signed and dated by the Presiding Officers of the Courts as indicated above. The register shall be laid at some conspicuous place in the Court-room every day at specified hours for inspection by parties and pleaders.

### III. PETITIONS

11. All petitions, memoranda of appeals, affidavits and papers of similar character presented to the Court, shall as far as possible, be—

- (1) typewritten or written fairly and, legibly on foolscap water-marked paper, known as "Pie" or "cartridge" or "demy" paper (obtainable from the Treasury and sold by all licensed stamp vendors) one side of the paper only being used and a quarter margin together with at least one and a half inches of blank space being left at the top and bottom of each sheet. Any petition, memorandum of appeal and affidavit, or any other paper of a similar character which is not clearly and legibly written shall be immediately returned to the pleader or party filing it;
- (2) dated and signed by the person presenting and where necessary by such other person as may by law, be required to sign them;
- (3) signed by the scribe or the typist who shall state the capacity in which he writes or types them and if he is licensed clerk of a legal practitioner his license number also.

**Note**—Pleaders shall be responsible for the form and handwriting used in every paper and shall satisfy themselves that the provisions of this rule have been complied with before filing and shall sign them in token of the fact.

12. (1) Applications in regard to distinct subject matters shall be made in separate petitions.

(2) A petition must not contain more than one prayer or one series of connected prayers relating to the same subject matter, or of alternative prayers of the same kind.

(3) A petition shall, in addition to the particulars required by law, also state the Act and section or rule or other authority under which it is presented.

13. No Court shall receive any petition not connected with any criminal enquiry or trial or authorised by the Code.

## CHAPTER II

### MISCELLANEOUS INSTRUCTIONS

#### 1. COMMUNICATION WITH THE HIGH COURT

1. (i) All communications intended for the High Court should be addressed to the Registrar, High Court.

(ii) All envelopes addressed to the High Court should bear the despatch numbers of their content and as far as possible the number of enclosures to each letter e.g. "No.2764S and two enclosures."

(iii) Omission to state numbers outside the cover is one which gives rise to difficulties in tracing its contents, if the cover happens to arrive without them. Space is provided on all official envelopes for such numbers and all senders of communications to the High Court should see that the space is invariably filled up on the envelop and not on the economy slip which is liable to get detached enroute.

2. The pages and paragraphs of annual inspection and other reports and similar lengthy communications submitted to the High Court should invariably be numbered.

3. When a Criminal Court has occasion to correspond with a Court in foreign territory, such correspondence should be addressed through the State Government.

#### 2. DRESS OF JUDICIAL OFFICERS

When Presiding over Sessions Court, Judicial Officers shall wear the following dress :

- (i) A gown of any black material other than silk of the type like that of the gown of the Attorney General of India;
- (ii) A black coat of any pattern or black chapkan or achkan;
- (iii) Bands and when wearing a black coat with open collar, stand up, winged white collar;
- (iv) If coat is left unbuttoned, a Black waist coat Lady Judicial officers will put on a white dress normally worn, with a white shirt of long sleeves of tennis collar. In addition they will wear a gown and band.

#### 3. RESIDENCE OF GAZETTED OFFICERS

4. No Gazetted Officer of the Judicial service shall be permitted to reside elsewhere then at the headquarters of the station to which he is for the time being posted, except with the special sanction of the High Court, granted in exceptional cases, and upon

consideration of circumstances brought to notice by the District Judge under whom the officer, whose exemption, from the rule is recommended, is serving at the time.

**Note-** Presiding Officers may, in special circumstances grant permission to a ministerial officer to reside elsewhere than at the headquarters of the station provided that the work which he has to do does not in any way suffer. In granting permission regard should be had to the nature of his duties and the department in which the ministerial officer is serving.

#### 4. JUDICIAL OFFICERS AND THE PUBLIC

5. (1) The attention of all Judicial Officers is invited to "The Government servants conduct Rules" regulating the conduct of public servants in respect to lending and borrowing money, receipt of complimentary of valedictory addresses and the like.

(2) As to gifts, the rule is that subject to the provisions of any general or special order of the State Government, any Government servant may accept from any one a complimentary present of flowers or similar articles of trifling value but all Government servants shall use their best endeavours to discourage the tender of such gifts.

6. All Judicial Officers should avoid as far as possible, becoming the guest of or entertaining these private individuals or Government servants who are or may be interested in civil or criminal cases or in matters, which may eventually come before them for decision. Any possible imputation of suspicion or bias or prejudice will thus be avoided.

#### 5. CASUAL LEAVE

7. (1) Applications for casual leave, and for leave of absence during gazetted holidays should be made by Sessions Judges and Additional Sessions Judges to the High Court. Applications from Additional Sessions Judges should however be submitted through the Sessions Judge concerned.

(2) Casual leave may not be combined with any other kind of leave and may not extend to more than fifteen days in any one calendar year. If casual leave is taken in extension of Gazetted holidays, these holidays will be counted as a part of the leave.

(3) Casual leave must not be combined with vacation and not more than fifteen consecutive days shall be allowed at a time. High Court may in exceptional cases allow a departure from this rule or part thereof recording reasons for such relaxation.

8. If any reply regarding an application for casual leave is required to be sent by telegram it must be at the expense of the officer concerned. Messages in such cases should always be prepared.

#### 6. THE INDIAN STAMP ACT

[“9. (1) Applications by Sessions Judges, [“and Additional Sessions Judges”]<sup>2</sup> for casual leave and for leave of absence during the Gazetted holidays should be made to the High Court.

(2) Applications by [\*\*\*]<sup>3</sup> Assistant Sessions Judges, Chief Judicial Magistrates and Additional Chief Judicial Magistrates for casual leave and for leave of absence during Gazetted holidays should be made to the Sessions Judges who should dispose of the same in accordance with the said Rules and maintain a Register of such leave in the prescribed form. The applications of Additional Chief Judicial Magistrates should be made through the Chief Judicial Magistrates concerned.

(3) Applications by the Sub-Divisional Judicial Magistrates for casual leave and for leave of absence during Gazetted holidays should be made to the Chief Judicial Magistrates who should dispose of the same in accordance with the rules and maintain a Register of such leave in prescribed form.

(4) Applications by Judicial Magistrates in the District Headquarters for casual leave and for leave of absence during Gazetted holidays should be made to the Chief Judicial Magistrates who should dispose of the same in accordance with the rules and maintain a register in the prescribed form.

(5) Applications by Judicial Magistrates in Sub-Divisional Headquarters for casual leave and for leave of absence during Gazetted holidays should be made to the Sub-Divisional Judicial Magistrates who should dispose of the same with information to the Chief Judicial Magistrate and the Sessions Judge of the District and shall maintain a register in the prescribed form”]<sup>1</sup>.

1. Substituted Rules “9” of CH-II, Part-B *vide* Notification No. HC. XI-2/84/9088/RC. Dated the 13th December, 1993 (with immediate effect). [C.S.No.-2 and 5].

2. Added in Rule 9(1) “and Additional Sessions judges” *vide* Notification No. HC.XI-2/84/9088/RC. Dated the 13th December, 1993. [C.S.No. 5].

3. Deleted the words “Additional Sessions judges” in Rule 9(2), by *Ibid*.

**Note-** See Correction Slip No. 5. (Next page)



IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA : MANIPUR : TRIPURA :  
MIZORAM & ARUNACHAL PRADESH).

#### CORRECTION SLIP NO. 5

Rule — 9 of Chapter-II, Part-B of the Criminal Rules & Orders Volume-I is further amended (earlier amendment was made *vide* Correction Slip No. 2) as follows—

- (i) In Rule-9(1) after the words "Sessions Judges" "and Additional Sessions Judges" will be added.
- (ii) In Rule-9(2) the words "Additional Sessions Judges" will be deleted.

### CHAPTER III INSPECTION

#### 1. INSPECTION OF MAGISTRATES' COURTS BY SESSIONS JUDGE

1. Sessions Judges are authorised and expected to inspect the Courts of Magistrates Subordinate to them in the District.

2. (1) When convenient, as for instance, during any vacations not availed of, or at the time of inspecting outlying Munsiffs, the Sessions Judge should visit the Courts of Judicial Magistrates. His inspection of these Courts should be of a general character and directed rather to Judicial than to executive matter. He should sit with the Judicial Magistrates concerned, advise them in matters of procedure, and consider generally their conduct of the proceedings before them. He should also examine some of their records and scrutinise the orders passed by them at various stages of trials, *e.g.* orders admitting to bail, for the issue of summones to, and warrants for the arrest of witnesses, for adjournments, and so forth.

(2) As the Courts of Judicial Magistrates are inspected by Chief Judicial Magistrate. Officers whose attention is directed in the main to such details as the maintenance of the registers, and the state of the officers visited, the Sessions Judge should not occupy himself with those matters.

(3) While the Courts are anxious to encourage inspections of the above nature, whenever possible, it is to be understood that they should not be permitted to prejudice the proper discharge of a Sessions Judge's more important duties and should therefore be carried out only when that officer can find time for them without detriment to his other work. The Sessions Judge should send one copy of his report on the inspection of such Criminal Court to the Chief Judicial Magistrate concerned for his information and another to the High Court with information that a copy has been sent to the District Magistrate.

The High Court may then communicate any orders considered necessary on such report direct to the Chief Judicial Magistrate and forward a copy to the Sessions Judge. Any important matters arising out of such report may be communicated to Government by the High Court.

#### 2. INSPECTION BY SESSIONS JUDGES AND ADDITIONAL JUDGES OF THEIR OWN COURTS

3. It is desirable that every Sessions Judge and Additional Sessions Judge, should inspect the offices of his own Court once a year, or if this be not possible, an inspection be made by some Gazetted officer deputed by Sessions Judge, an inspection by the Sessions Judge or Additional Sessions Judge, must however be made at least once in every two years. The Sessions Judge or Additional Sessions Judge should deal finally with any points that arise, unless their nature and importance is such that in his opinion they should be referred to the High Court and in any case a copy of the report of inspection should be sent to the High Court.

#### 3. SESSIONS JUDGES AND CHIEF JUDICIAL MAGISTRATE NOT TO ISSUE CIRCULAR ORDERS

4. Sessions Judges should not, without permission previously obtained from the High Court, issue general instructions or Circular Orders of any kind for the guidance of Judicial Magistrates.

5. A Chief Judicial Magistrates or a Sub-divisional Officer is not entitled to issue general directions in the form of rules or Circular Orders on Judicial matters to the Judicial Officers subordinate to him. If there be any matter connected with the Administration of Criminal Justice in his district which, in his opinion, requires the issue of a general rule or order for the information and guidance of the Courts over which he exercises control he should

always submit a memorandum on the subject together with a draft rule or order for the confirmation and approval of the High Court without which it should in no case be issued.

**Note-** Rules 4 and 5 of the Chapter are not to be evaded or defeated by the issue of such order under the guise of "Standing Orders."

6. Whenever there is any doubt or difficulty in interpreting a rule or circular order or any instruction of the High Court or when any matter of importance nor provided for in the rules has to be determined, reference should be made to the High Court with a memorandum on the subject and a statement of the points which require elucidation. Such reference when made by Subordinate Judicial Officers should ordinarily be sent through the Chief Judicial Magistrate who shall forward the same to the High Court with his remarks thereon. The High Court in their administrative capacity, however, have always declined to express their opinion on matters more suited to judicial determination.

## CHAPTER IV LEGAL PRACTITIONERS

### 1. VAKALATNAMAS

1. All pleaders, as defined in Section 4 (r) of the Code of Criminal Procedure (Except Senior Advocates instructed by Pleadings), appearing on behalf of either the prosecution or the defence in all classes of cases, including Appeals and Revisional or Miscellaneous Applications, in all Criminal Courts, shall file vakalat-namas provided that these not be necessary in the case of-

- (a) Public Prosecutors appearing on behalf of the Government;
- (b) Pleadings appointed by the Court in any case to defend persons who are too poor to engage counsel for themselves;
- (c) Pleadings appearing as *amicus curiae*.

2. (1) More than one pleader may appear by a single Vakalatnama, provided-

- (i) the name of each such pleader appears in the Vakalatnama, and he signs in acceptance, and
- (ii) in the case of pleaders appearing subsequently the permission of the Presiding Officer of the Court is obtained.

(3) No pleader who appeared in a case or proceeding in a lower Court shall be required to file a fresh Vakalatnama the appellate or revisional stage of the same case, provided he files a declaration that he did so appear.

3. No fresh Vakalatnama shall be demanded in the Court of Session, at the trial of criminal case, from a pleader who appeared by a Vakalatnama as the case may be, during enquiry before the lower Court, provided he filed in the Court of Session a declaration to that effect.

### 2. DRESS

Advocates when appearing in Subordinate Courts, may wear Advocate's gown.

4. The following distinctive dress shall be worn by legal practitioners of the subordinate Courts when appearing in Court-

- (1) By Pleadings- (a) A black or white Chapkan, achkan or buttoned-up long coat with trousers to

match and a black gown of the cut and shape of a B. A. gown; or

- (b) If western style dress is worn, then a black coat with dark or white trousers and a black or dark coloured plain tie and the gown.

**Note 1-** "White" in sub-rule (1)(a) comprises any plain dull colour like pale cream, natural, tussore, etc.

**Note 2-** (a) The wearing of the gown is compulsory in all Courts of Sessions;

- (b) The privilege extends to all pleaders authorised to practise under Section 7 of the Legal Practitioners Act, 1879.

When wearing the chapkan or achkan in sub-rule (1)(a).

**Note 3-** The wearing of a head dress, a turban or pugree for pleaders and a shamla for Mukhtars when appearing in Indian dress, is optional.

(2) Pleders have the option of wearing or not wearing their gowns when appearing before Magistrates or other Executive Officer discharging civil and revenue duties, who are not themselves required to wearing gowns.

## CRIMINAL RULES AND ORDERS VOL. II

### FORMS

#### I-ACCOUNT FORMS

#### FORM No. (A) 1

(a) Occasional Form

#### CHALLAN

Paty I - To be filled in at Court by the payer

Name of person or persons on whose behalf the money is tendered.	Name of person or persons to whose credit the amount is to be placed in the Court's book	No. of suit or date of decree or order (if any) under which the amount is tendered	Particulars of receipt	Amount tendered	Remarks (if any)
1	2	3	4	5	6

Signature of Chief Ministerial Officer.

Signature of person tendering the money.

To,

The Cashier of the Court.

Received and credit the above sum of tendered to you before the closing of the Court tod-ay.

Signature of the Presiding Magistrate.