

NATIONAL LEGAL SERVICES AUTHORITY

“GUIDELINES FOR FUNCTIONING OF MONITORING AND MENTORING COMMITTEES AT DISTRICT LEVEL”

It is trite that those who cannot afford a lawyer on their own, due to economic and social marginalisation are also entitled to the same quality of legal representation in their matters as those who can. Professional competence, client centered advocacy, court-craft and a responsive attitude are some of the well-acknowledged norms to define quality. Additionally, lawyers empanelled with the Legal Services Institutions, have to be especially sensitive and empathetic towards the issues of the marginalized. It is also well-acknowledged that quality can be enhanced by periodic capacity building and mentoring, and can also be measured and evaluated. Such evaluation and continuous monitoring is especially required at district level and more so, where the number of legal aid cases is substantial.

It is therefore felt desirable that some broad uniform guidelines be framed at the initial stage, for constitution and functioning of the monitoring committees in DLSAs which have 100 or more pending legal aided cases. While adopting the said guidelines, the DLSAs may if required, make such suitable modifications as found necessary in the context of the local conditions and circumstances. For monitoring of the panel lawyers attached with the other DLSAs, HCLSCs, SLSAs and TLSCs, the concerned State Legal Services Authorities and High Court Legal Services Committees may prescribe a suitable framework.

Regulation 10 of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 provides for the Legal Services Authorities to establish Monitoring and Mentoring Committees (hereinafter referred to as the Committee) at each level. The primary functions of these Committees are to guide the panel lawyers in conducting their cases on behalf of the Legal Services

Institutions and also to monitor their performance. The Committee at the District level comprises of the following:

- (i) Secretary of the Legal Services Institutions;
- (ii) One serving judicial officer from the State Higher Judicial Service;
- (iii) One retired judicial officer or one Advocate of fifteen years' standing or more. [Reg. 10 (4)]

Following mechanism is suggested for setting up and effective functioning of the said Committees in Districts having 100 or more legal aided cases:

1. All such DLSAs should immediately nominate one Senior Judicial Officer of the State Higher Judicial Service and appoint one retired Judicial Officer or an Advocate of 15 years standing or more as members apart from the DLSA Secretary;
2. The activities of monitoring and mentoring both require continuous supervision and evaluation and therefore, the honorarium payable to the retired Judicial Officer or the Advocate member should be fixed by SLSA with the approval of Hon'ble Executive Chairman preferably, on monthly payment basis. He/she shall have the primary responsibility of monitoring day to day progress of the cases and performance of the panel lawyers.
3. On a case being marked to panel lawyer, the DLSA is required to inform not only the lawyer and the concerned party, but also the aforesaid Committee. The Committee should through any of its Members, make efforts to interact with the concerned Advocate at the earliest opportunity and discuss with him, the best legal course to be adopted in the case.
4. Members of the Committee and especially, the retired Judicial Officer or lawyer member shall guide the panel lawyers in complicated case.
5. In suitable cases, the Committee shall recommend to the DLSA to provide research assistance to the panel lawyers through law students, PLVs or students attached to law school clinics.

6. The Committee shall on a continuous basis, assess the training needs of panel lawyers and advise the DLSA about the general and specific training programmes to be conducted for panel lawyers.
7. The Committee shall maintain a case wise register for monitoring of legal aided cases. Day to day progress of all the legal aided cases along with the observations of the Committee shall be entered in the register.

Monitoring of Performance of Panel Lawyers

8. In order to provide quality legal services consistently and to win the trust of the litigants, it is important that the panel lawyers adhere to good lawyering principles and their performance is regularly monitored on the basis of established performance para-meters. The Committee shall therefore keep a general watch over the performance of Panel Lawyers and the progress of legal aided cases. In case of complaints of inefficiency or malpractices against any particular panel lawyer, his performance and behaviour shall be closely monitored.

Some of the performance standards and suggested methods of their monitoring are discussed below:

- (i) Quick Response: The panel lawyer should respond quickly to the assignment of a case to him and should fix a meeting with the litigant as early as possible. The initial interaction shall preferably be conducted within 24 hours of intimation of assignment of case to him. If he is unable to hold this interaction, he must communicate with the litigant over phone and fix an appointment for comprehensive briefing about the case of litigant. Such meeting shall be conducted earliest in case of urgency and in any case not later than 7 days of assignment of the case. If the counsel is not available for a longer period, he shall inform the litigant accordingly as well as the DLSA concerned to take remedial

action in this regard, if so required. The counsel shall upload the information regarding the first briefing with litigant on the NALSA portal or at the Front office.

- Performance of the counsel on this count can be assessed through feedback given by the litigants in this regard as well as from the information furnished by the counsel on NALSA portal or at the Front Office.

(ii) Effective interview: The panel lawyer should have the requisite skills of gathering all the necessary information from the litigant as would be required for the prosecution or defence of the case. He should at all times, be courteous towards the client and should treat the legal aid client in the same manner as he does to his private clients. He shall also communicate with the litigant with patience, compassion, tolerance and an attitude of respect. He is totally prohibited from asking any fees or any other charges from the legal aid client. Rather he shall inform the litigant that lawyer's fee and typing and incidental expenses related to pursuing the case would be borne by the DLSA. It is reiterated that legal aid beneficiaries are to be dealt with in such manner as he must not feel that he is getting any service in charity rather he must perceive that the legal system is taking care of his interest efficiently.

- Performance of the counsel on this count can be assessed through feedback given by the litigants in this regard.

(iii) Professional Competence: The panel lawyer should keep himself abreast of all latest developments in law and should have the necessary competence to apply the correct law to the facts as disclosed by the client. He should be able to prepare the pleadings and develop the client's case in such a manner as to serve the best interests of the client. However, he should guard against committing any illegality in this

process. While preparing the pleadings, he should inform the litigant about the facts pleaded and left out, in vernacular. The case should be filed earliest possible and any inevitable delay in doing so should be communicated to the litigant as well as DLSA concerned. During arguments on point of charge, miscellaneous applications or at final stage etc. as well as cross-examination, he is expected to remain fully prepared and sincere in his work.

- Performance of the counsel can be assessed by random checking of pleadings, cross examination of the witnesses, arguments advanced before the Court as reflected in miscellaneous orders/judgment in the concerned cases or by randomly observing the Lawyer's performance in the court or through interaction with the Presiding Officer of the court.
- (iv) Attending Capacity Building Programmes: The panel lawyer should punctually attend all capacity building programmes to which he is nominated by the concerned legal service authority.
- Performance can be assessed through the data maintained by the concerned legal service authority in respect of training conducted and attended by the lawyers.
- (v) Seeking guidelines from Monitoring and Mentoring Committee: The panel lawyer should be open to seek advice from the Committee of the DLSA/SLSA in case of any difficulty in handling the case at any stage or in complicated issues. He should also be open to the said committee monitoring his performance and should promptly submit copies of pleadings and other documents drafted and filed by him on behalf of the litigant.

- Performance can be assessed from the data related to attendance of the meetings of Committee whenever the lawyer has been asked to be present.
- (vi) Punctuality: The panel lawyer should be punctual in attending court hearings and should not seek an adjournment unless it is absolutely necessary.
- Litigant feedback or perusal of record of Court proceedings can help in assessing as to how many times and how frequent he seeks adjournment in his legal aid cases.
- (vii) Behaviour in the Court: The panel lawyer should conduct himself in the most professional manner as an Officer of the Court. He should always be courteous and respectful towards the Court. He shall always keep in mind that he shall be bound by the code of conduct prescribed for lawyers under the Advocates Act and by the Bar Council of India and of the State.
- Performance of the counsel can be assessed by feedback given by the Courts in informal meetings or by litigants or by actual observance of his performance in the Court.
- (viii) Prompt Reporting: the panel lawyer should promptly report the proceedings of the day and next date fixed in the legal aid cases at the front office and to the client. He should reveal to the litigant all the proceedings or orders which a litigant is supposed to know, even if the order is passed against the litigant. Simultaneously, he should guide the litigant about the next course of action for challenging the order or its execution, as the case may be. He shall also post the update of cases regularly on NALSA portal.

- The concerned DLSA or the committee can assess the lawyer through the record submitted or the information uploaded on the NALSA portal by the lawyer or through feedback given by the litigant in this regard.
- (ix) For Jail Visiting Advocates: The advocate should perform the duty assigned to him by the concerned legal service authority which may include interaction with inmates regarding their cases, informing the inmates about their rights, drafting desired applications/appeals on their behalf. If any irregularity in respect of rights of the prisoners is brought into notice of the lawyer, he may inform the DLSA Secretary to take up the issue with the appropriate authority. He should be aware of the jail manual and various judgments of the Hon'ble Supreme Courts and High Courts relating to jail inmates.
- Performance can be assessed from the report from the jail about visiting times of the counsel and the feedback given by the jail inmates during visits of Secretary, DLSA to the jails. As well as from the report given by the counsel about work done during the jail visits.
- (x) Participating in Legal Services Clinics, Front Office: The panel lawyer should always be ready to provide his services for legal services clinics. He should orient himself about the local issues/problems of the area in which such clinic is situated. He must also update himself about the law and latest developments regarding the topic for which any awareness programme has been organised by the legal services authority. But he shall keep it in mind that he shall not give false hope or wrong advice to the persons approaching the clinic or front office. If he does not have appropriate knowledge or confidence to suggest solution for any legal issue put forward to him, then he should ask the person to come on any

other pre-fixed day and in the meantime, he shall apprise himself about the related law through self-reading, consultation with Secretary DLSA or Mentoring Committee or otherwise. He should deal with every person with the same traits as he would be following as mentioned above. He should maintain full coordination with Para-legal volunteers attached with clinic or front office and would also act as their mentor too. Wherever he is supposed to draft applications, notices or petitions in urgent matters, he shall be willing to do so. He shall also maintain the record, as directed by the concerned DLSA, of the visitors as well as the advice given to them in brief.

- Performance of lawyer can be assessed through the feedback given by the persons approaching clinic or front office about the punctuality, promptness, general impression about the sincerity etc. His work can also be randomly checked by the Secretary, DLSA by visiting the clinic/front office intermittently.

9. The Retired Judicial Officer or Advocate member of the Committee may observe actual performance of the Advocates in the Courts on random basis and make notes of his observations.
10. The Committee may randomly call for copies of the pleadings filed by the panel lawyers in legal aided cases and may also inspect the court records of the legal aided cases to apprise itself regarding punctuality and performance of the panel lawyer assigned to that particular case.
11. The Committee members may randomly seek feedback from the litigants who have been provided legal aid. Such feedback may also be obtained from litigants who are lodged in prisons either by personal visit to the prison or through video-conferencing.

12. The Committee may develop suitable questionnaire for the parties who have been assigned panel lawyers and obtain their feedback from time to time. The Secretary, DLSA and the sitting Judicial Officer member of the monitoring committee may have interaction with the presiding officers of the courts in the district to obtain their opinion about the performance of panel lawyers appearing in their Courts.

(a) Suggestive Questionnaire for Legal Aided Parties.

Following questions may be included in the questionnaire for the parties to obtain their perceptions about the quality of legal aid provided to them:

- (i) Whether lawyer had promptly interacted with the party after assignment of the case?
- (ii) Whether sufficient hearing was given to the parties?
- (iii) Whether the party was satisfied with the interaction and conduct of lawyer?
- (iv) Whether the lawyer had regularly interacted with the party regarding preparation of different stages of the trial?
- (v) Whether in their opinion the lawyer was well-prepared for the case?
- (vi) Whether the lawyer had taken the stand as proposed by the parties or in the party's best interest?
- (vii) Whether the lawyer argued the case for mitigation of sentence or damages or costs as the case may be, with relevant facts?

QUESTIONNAIRE FOR THE PRESIDING OFFICERS FOR THE COURTS MAY INCLUDE:

- (i) Whether the panel lawyers punctually appear in the Court?
- (ii) Whether he/she seeks unnecessary adjournments?
- (iii) Whether he/she cross-examines the other sides of the witnesses effectively?

- (iv) Whether he/she comes well-prepared according to the stage of the case?
- (v) Whether he was assertive in putting forward the party's stand?
- (vi) Whether he follows the Code of Conduct and ethics prescribed for Lawyers

13. On collecting the relevant information about the performance of the lawyers on a random basis, the Committee in its meetings may make suitable recommendations to the DLSA in respect of any particular panel lawyer. The recommendation may include:

- (i) Re-empanelment at the time of constitution of a new panel.
- (ii) Providing of further training/mentoring in case.
- (iii) Withdrawal of the particular case from him/her.
- (iv) Temporary withdrawal of work.
- (v) De-panelment, especially in case of complaints about integrity.