

SINDH JUDICIAL ACADEMY

Guidelines for the Commissioners appointed for Recording Evidence

On appointment as Commissioner under section 75 read with Order XXVI, Rules 1 & 2 of the Code of Civil Procedure, 1908 (the Code) following procedure may be followed by the Commissioner for recording evidence of witnesses:

- i. On receipt of order from the court, the Commissioner may fix date, time and place of recording evidence in consultation with the parties within three days from the date of court order (if possible).
- ii. Visit on the fixed date, time and place under written intimation to the parties and their advocates. To facilitate the parties; Learned Commissioner may contact parties through their phone numbers and email which may be obtained by getting copies of *vakalatnamas* from the court file.
- iii. The Commissioner may, on the first date, plan a schedule of recording evidence in consultation with the parties and their advocates. On the first date the Commissioner may advise or rather direct to the parties to bring original documents on the date of recording evidence that they intend to produce.
- iv. The date so fixed for recording evidence should be within 15 days (if possible) from the date of the order so that the very purpose of appointing commissioner may be fulfilled.
- v. For clarity, the evidence may also be recorded in Urdu language electronically in addition to Court language i.e. English. In case a witness is unable to reach at the place of recording evidence; the Commissioner may record his evidence through electronic devices/facilities without his physical presence. **‘Zoom’** facility may be used as it provides audio video recording facility as well.
- vi. In most cases court in its order fix place, date and time of first meeting, in such circumstances the Commissioner may commence proceeding in terms of Order XXVI, Rule 18(1) and in case of absence of parties the Commissioner may

- proceed in their absence as provided under rule 18(2); however, attempt may be made to ensure parties presences.
- vii. The Commissioner may exercise the powers of the Code relating to the summoning, attendance an examination of witnesses as provided under Rule 17 of Order XXVI of the Code.
 - viii. Once witnesses' evidence is completed, it shall be read over to him in presence of advocates representing to the parties and thereafter witness signature/thumb impression will be obtained on it.
 - ix. The Commissioner may attempt to record evidence on the fixed date and in case it is not completed on the fixed date due to any reason; next date may not be more than 03 days.
 - x. To facilitate the parties, the Commissioner may fix time after 02:00 pm so that advocates for the parties may participate comfortably.
 - xi. The Commissioner while recording evidence of the witnesses may record their demeanor/behavior, if so needed.
 - xii. The Commissioner may apply to any court (other than High Court) for the issue of any process for the appearance of a witness as provided under Rule 17(2) of Order XXVI of the Code.
 - xiii. The Commissioner may fix cost of official witnesses, if any, and impose penalties upon the witnesses as provided under Rule 17 of Order XXVI of the Code.
 - xiv. The Commissioner may examine any witness whom the parties produce and any other person whom the Commissioner thinks proper to call upon to give evidence in the manner as provided under Order XXVI, Rule 16 of the Code. However, if the court has appointed him for recording evidence of a particular witness, the Commissioner will have limited scope of work and he will not record evidence of any other witness except one who has been named in the court order.

- xv. In case of any technical or procedural difficulty which may cause unnecessary adjournment, the Commissioner may inform to the court under intimation to the parties so that the issue may be resolved by the court as to avoid delay.
- xvi. 50% of the fee may be paid in advance to the Commissioner whereas remaining fee is paid after submission of final report.
- xvii. Nazir normally coordinate for collecting and payment of fee.
- xviii. The parties are always directed to deposit Commissioner's fee with the Nazir of the Court immediately after appointment of a Commissioner and office of the Nazir is always directed to issue letter of request to the Commissioner along with attested copy of Court order.
- xix. Evidence (Examination-in-chief, Cross-examination and Exhibits) may be submitted along with report on or before the date fixed by the Court however in case the evidence is not recorded completed within time prescribed in order; the Commissioner shall file application and seek extension of time from the court.

General instructions

- xx. It is advisable to prepare an index of complete record reflecting therein detail of each document annexed with the report.
- xxi. Commissioner to ensure any of the parties do not put leading questions during course of examination-in-chief, however questions of introductory nature and about admitted facts may be put to witness in any form. Further the Commissioner may also restrain advocates from asking scandalous questions.
- xxii. Commissioner may ensure that original documents have been produced, exhibited and signed by him.
- xxiii. Commissioner may record objection of the advocate with clarity and disputed questions may be articulated with its answer in the same way as deposed by the witness.

- xxiv. Commissioner may be gentle and accommodated with the parties and at the same time parties may also be humble to the Commissioner as he acts as civil court while recording evidence. However, being accommodated does not mean to adjourn case on the request of the parties.

Essential reading

1. Sections 75 to 78 of the Code of Civil Procedure, 1908
2. Order XXVI, Rules 1 to 8 and Rules 15 to 19 of the Code of Civil Procedure, 1908
3. Rules 120 to 133 of the Sindh Civil Court Rules
4. Rules 538, 539 and 540 of the Sindh Chief Court Rules
5. Case law
 - (Syed Farrukh Mazhar Versus SGS Headquarters and others (PLD 2018 Sindh 327),
 - (Pakistan Railway Employees Cooperative Housing Society Ltd. Through General Secretary Versus Haji Ghulam Haider and 3 others (2018 CLC 45 Balochistan),
 - (Shagufta Noor versus Mest. Ishrat Jehan and another (2012 CLC 1902 Sindh),
 - Messrs Venus Pakistan Private Limited through Authorized representative, Karachi versus Messrs Supreme Fuels GmbH & CO. and Another (2019 MLD 84 Sindh),
 - SGS SA through authorized Attorney and 3 others Versus Syed Farukh Mazhar (2020 CLC 928 Sindh),
 - Muhammad Abid Versus Mst. Nasreen Yousuf and Another 2002 CLC 655 [Lahore],
 - Iqbal M. Hamzah Versus Gillette Pajkistan LTd. 2011 YLR 277 [Karachi],
 - Syed Farukh Mazhar Versus SGS Headquarters and other PLD 2018 Sindh 327,
 - Mts. Badar Rahim versus Hammad Asif Dossani and another 2009 CLC 459 [Karachi]