VOLUME 1

SINDH JUDICIAL ACADEMY

GUIDE ON THE SUPPLY OF DOCUMENTS

FOR COURT OF MAGISTRATE

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MESSAGE OF THE DIRECTOR GENERAL

Criminal Trials remain a problematic area for newly appointed Judges, Prosecutors and practicing Advocates, meaning they more than often find themselves seeking assistance from their seniors. To no discredit to the acumen of the seniors in our Legal Fraternity, a codified and complete guide has been lacking, one which could potentially serve as a ready reckoner, regardless of the time or place.

As such, it was felt necessary to develop such a guide for Judges, Prosecutors and practicing Advocates to seek assistance from. A series of real-life documents have also prepared and added to further clarify this step in the Criminal Trial process. While designing and developing guides the Criminal Trial process was divided into following six parts:

i) Supply of documents and provision of Legal Aid
ii) Framing of Charge
iii) Recording Prosecution evidence
iv) Recording statement of Accused
v) Recording defence evidence
vi) Closing arguments and Judgment writing

The guide in hand focuses on the first step to be observed by the trial court. Relevant Law, Case Law and the exact role of all actors in Court has all been defined in this guide. This guide will serve as a useful material for all justice sector stakeholders including Law Students who would be able to understand Court Practices and Procedures at their own leisure. This guide shall also be helpful for trainers and academics to be used as supporting material.

I appreciate the efforts of Mr. Justice Syed Ali Aslam Jafri, former Judge High Court of Sindh, Mr. Muhmmad Shahid Shafiq, Senior Faculty Member and his research team comprising of Barrister Syed Shahbal Ali and Mr. Ahsan Shahid for developing this guide. It is expected that remaining guides will also be launched shortly.

Justice Muhammad Ali Mazhar
Judge High Court of Sindh,

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PREFACE

It is indisputable that adequate training of judges, as well as other law professionals, is necessary to ensure that all fundamental rights are effectively protected and implemented at the provincial and national level.

In modern times and particularly in view of COVID-19, training challenges for Judicial Officers seem to have rather increased than decreased. As such, significant efforts have been made, starting with development of this guide under the able leadership of the Honorable Mr. Justice Mazhar, Acting Director General, Sindh Judicial Academy to ensure adequate and effective training of Judicial Officers.

The ultimate goal of these educational resources and activities is to strengthen the legal fraternity and judiciary through correct legal procedures.

Although this training material has been developed for the "Court of Magistrate", it shall support all law professional's, be they Judges, Prosecutors and Lawyers; and enable them to apply the legal principles and norms in the exercise of their judicial and professional Court related cases. The guide provides basic information on the steps involved in a Criminal case and the jurisprudence of Courts. This guide addresses a specific step of court related procedure.

This is a first in the series of such guides, a first of its kind in the field of legal education which will empower and equip the judges, prosecutors and lawyers on all the steps and relevant documents, sections and case law with a view to assisting them in the identification of judicial, legal and ethical challenges in their daily work, and resolving them in line with the relevant rules and standards of conduct. This in turn will further help us to enhance the trust and confidence of our citizens and litigants.

This guide specially aims to assist judges in imparting their duties and functions efficiently. It is based on a training methodology encouraging participants to play an active role, contributing to their professional expertise.

OBJECTIVES OF THE SESSIONS

1. Establish the role of a Judge, Prosecutor and advocate on the first date of appearance of accused in court.
2. Recongise the appropriate case diary and order to be passed when supplying documents to accused and providing legal aid if so needed.
3. Be aware of the relevant law and case law on the subject.

SESSION PLAN

Session Plan				
Training Program	Trial in Magisterial Courts			
Topic	Supply of documents to the accused			
Learning Outcomes	That participant will be able to: • Know how to provide documents before commencement of trial • Assist court and the accused about the process of providing free legal aid to deserving litigants.			
Trainer	Judge/Senior Advocate			
Time	90 minutes			
Start 15 minutes	• Introduction and pre-assessment • Link to learner's previous interest/experience • Discuss briefly Learning outcomes • Discuss Structure of the Session			
20 minutes	**Sub-topics**	**Methodology**	**Summary/Assessment**	**Resources**
	Relevant law and case law	Pre-assessment & Presentation	Outcome of Pre-assessment and	Pre-assessment

	on subject / topic		explanation of relevant provision of law	form & PowerPoint
05 minutes	How to prepare receipt?	Presentation	Exercises	PowerPoint
10 minutes	How to write case diary?	Presentation	Exercise	PowerPoint
20 minutes	Purpose and Procedure of providing legal aid	Presentation	Exercises	PowerPoint
10 minutes	Trial Court Procedure	Practical	Mock Trial	Courtroom Participants
10 minutes End	Conclusion Outcomes and summary- review your learning outcomes. Feedback – obtain feedback from participants. Future – what will be the content of the next training session? [Framing of Charge]			
Comments				

SESSION 1: SUPPLY OF STATEMENTS AND DOCUMENTS

Time: 90 Minutes

Sub-Topics:

i) Relevant law and case law on subject
ii) How to prepare receipt?
iii) How to write case diary?
iv) Procedure of providing legal aid

Relevant Provisions of Law:

i) Sections 161, 164, 204 & 241-A the Code of Criminal Procedure, 1898

Relevant Case Laws:

i) Soobo versus The State (2016 P Cr. L J 290 Sindh)

ii) Abdul Jabbar versus The State (2011 YLR 2169 Quetta)

iii) Sikander Ali Lashari versus The State and another (2016 YLR 62 Sindh)

iv) Nadeem Ahmed Khan & others versus The State (2007 P Cr. L J 233 Karachi)

v) Muhammad Riaz & others versus The State (PLD 2003 Lahore 290)

vi) Hakam Deen versus The State through Advocate-General and 15 others (2005 YLR 2032 Supreme Court Azad Jammu and Kashmir)

vii) Muhammad Tariq & others versus The State (2017 YLR 1999 Lahore Multan Bench)

PowerPoint Presentation:

PPT **(P/1)** relevant to the above-mentioned topic is made part of this manual

Exercise(s):

Two exercises **(E/1 & E/2)** are part of this manual

Mock Script:

- A script **(S/1)** is attached and made part of this manual
- Mock trial shall be conducted as per the script

Reading Material:

The presenter/speaker identified material **(M/1)** to be shared with the trainees. It is considered as a part of this training. This includes relevant law and headnotes of case law.

Teaching Methodology:

It states the details of daily sessions plan section: however, PowerPoint presentation will be used to address the trainees and exercises followed by mock trial technique will also be used.

Note: As essentially required, the trainer is expected to use the material and exercises as suggested here, however, he may add latest case law and laws introduced or amended on the subject.

PRE-ASSESSMENT

Session's Name: Supply of Documents in Magisterial Trial

Time: 10 minutes

After introductory remarks, provide this assessment as to know existing knowledge of trainees.

Name: _____ Date: _____

Q.1. On 1st date of hearing, Court of Magistrate observes proceeding as provided under section ……...

A. 265-A Cr.P.C.
B. 265-C Cr.P.C.
C. 265-D Cr.P.C.
D. 241-A Cr.P.C.

Q.2. It is the duty of …… to provide copies of case papers to accused.

A. Station House Officer
B. Investigation Officer
C. Prosecutor
D. Judge/Magistrate

Q.3. Section 241-A Cr.P.C refers to:

A. Statements of witnesses recorded under section 161 Cr.P.C.
B. Memo of inspection of place of incident
C. Statements of witnesses recorded under section 164 Cr.P.C.
D. All of the above

Q.4. Document and copies are to be supplied to the accused at least ……... before the date of commencement of trial.

A. Three days
B. Seven days
C. Thirty days
D. On the day of recording evidence

Q.5. D.L.E.C. stands for-

A. District Logistic Enforcement Committee
B. District Legal Empowerment Committee
C. District Law Enforcement Commissioner
D. None of the above

Q.6. D.L.E.C. is headed by-

A. Magistrate
B. Assistant Sessions Judge
C. Addl. District & Sessions Judge
D. District & Sessions Judge

Q.7. D.L.E.C. may pay fee to an Advocate to the extent of-

A. Rs. 10,000/-
B. Rs. 20,000/-
C. Rs. 30,000/-
D. No limit of payment

TRUE OR FALSE

Q.8. Accused privately obtained copies of documents and therefore there is no need to supply him set of documents.

True ☐ False ☐

Q.9. Some Evidence collected through modern devices is available in USB which must be given to accused at the time of supplying documents.

True ☐ False ☐

Q.10. Statement of witnesses recorded under Section 161 Cr.P.C. who were not listed in challan sheet should be provided to the accused.

True ☐ False ☐

Q.11. Accused after receiving documents should sign receipt being acknowledgement.

True ☐ False ☐

Q.12. An adult accused booked in an offence punishable up to 7 years cannot request the court for free legal aid.

True ☐ False ☐

Q.13. A newly enrolled advocate may be appointed as Advocate for the accused on state expenses for pauper accused.

True ☐ False ☐

Q.14. Juvenile can request the court for free legal aid.

True ☐ False ☐

Q.15. A victim below the age of 18 may request the court for free legal aid.
True ☐ False ☐

Handout M/1

RELEVANT LAW

The Code of Criminal Procedure, 1898

In a Magisterial Court, before commencement of trial, statement of witnesses and documents relating to evidence collected against accused are provided to him/her in a manner as provided under section 241-A Cr.P.C. which reads as under:

Supply of statements and documents to the accused:

(1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164, and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial:

Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest such part of the statement shall be excluded from copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing, the complainant shall;

(a) State in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and

(b) Within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the compliant and any other document which it has filed with his complaint as the number of the accused.

Provided that the provisions of this sub-section shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

The Juvenile Justice System Act, 2018

Section 3. Legal assistance. - (1) Every juvenile or a child who is victim of an offence shall have the right of legal assistance at expense of the State.

(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.

(3) A legal practitioner appointed by the Government or by the Juvenile Court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar.

The Pakistan Bar Council Free Legal Aid Rules, 1999

7. Pakistan Bar Council District Free Legal Aid Committee:

(a) In each District of a Province there shall be constituted a District Committee to be known as the Pakistan Bar Council District Free Legal Aid Committee for the District concerned and consisting of:

(i) Not more than one member of the Provincial Bar Council from the District concerned to be nominated by the Provincial Bar Council.

(ii) President and Secretary of the District Bar Association, respectively, by virtue of office.

(b) The District Committee shall provide free legal aid to a deserving person or a litigant in any Court or Tribunal or before any authority or court functioning at the District level.

(c) The term of office of each member of the Committee shall be co-extensive with the term of office of such member by virtue of which he is on the Committee and in case of fresh elections for the said post or in case of resignation from the said post or from the Membership of the Committee or in case the Member is unable to or incapable of performing his duties of such office or membership of the Committee, the seat shall be

deemed to have fallen vacant and the vacancy shall be filled in by reference to the relevant provisions of Para 7(a) above.

(d) The Member of Provincial Bar Council of the District concerned as nominated, shall be the Chairman of the District Committee whereas the Secretary of the concerned District Bar Association shall be the Secretary of the District Committee. In case of non-availability of Member of the Provincial Bar Council from the District concerned, the President of the District Bar Association will act as Chairman of the Committee.

Explanation

(i) For Karachi, all the Districts of Karachi Division shall be deemed to be one District for the purposes of these Rules and the President and Secretary of Karachi Bar Association shall be the Member and the Secretary of the District Committee for Karachi.

(ii) If there are more than one Secretary of any District Bar Association, the Senior Secretary shall be deemed to be the Secretary for the purpose of these Rules.

(e) The decision of the Committee shall be taken by majority and one third of the members of the Committee shall form the quorum. In case of urgency, the Chairman of District Committee will, however, be authorized to take a decision on receipt of an application subject to approval of the Committee in its next meeting.

8. Application for Free Legal Aid and their disposal:

(a) Any person desirous of free legal aid shall submit an application on the prescribed form to the appropriate Committee or Chairman/Member of the appropriate Committee so authorized and such application shall be supported by an affidavit of the applicant and accompanied by the judgments/orders and other necessary documents providing him cause of action for or against the suit, appeal or proceedings in a court of law.

(b) The application shall be decided by the respective or its Chairman/Member in the manner stated herein above as soon as possible and each Committee or its Chairman/Member shall be free to grant free legal aid as provided in the schedule hereto or a part thereof.

(c) The free legal aid for professional fees will only be granted in case no Advocate is available to take up or conduct the case free of charge.

(d) Each Committee shall maintain the following panels of lawyers practicing within the area of its operation.

(i) Lawyers voluntarily prepared to take up/conduct cases without charging any fee.

(ii) Lawyers prepared to take up/conduct cases on charging the fee or part thereof as set out in the schedule.

(iii) The above panels may be sub-divided category-wise according to choose of advocate concerned in respect of type of cases he would like to handle.

(e) A Committee may request any advocate to conduct one case in a year free of charge.

(f) Each Member of Pakistan Bar Council and Provincial Bar Councils may conduct at least one case in a year that may be assigned to him by a Free Legal Aid Committee.

District Legal Empowerment Committee (Constitution & Functions) Rules, 2011

7. Procedure for Grant of Legal Aid. – (i) Any deserving litigant shall submit requests in writing on a plain paper addressed to the Chairperson or in a manner prescribed by the Committee. The application must clearly contain the request for payment as prescribed by Rule 5.

(ii) to plead his case before the Court. The applications must be accompanied by National Identity Card or any other document of identity.

(ii) The Superintendent District Jail may also forward applications of the under trial or convicted prisoners, or any person confined in jail in relation to civil proceedings after necessary verification that the applicant is a deserving litigant.

(iii) The Committee may also consider cases referred by any Court for provision of legal aid to the person whose case is pending before such Court.

(iv) Office of the Chairperson shall register the applications in the relevant register with brief particulars and by assigning Diary No. The applications so registered shall be placed before the Chairperson who if thinks appropriate may refer the same to any other person for verification and report qua financial position of the applicant.

(v) The application shall be examined by the Committee in its monthly or special meeting, as the case may be, which shall determine the eligibility or otherwise of

applicant for grant of legal aid, the manner, nature and extent of such aid: Provided that a person shall not be entitled to legal aid, for whom an advocate or public prosecutor or government pleader has already been appointed in the same case, under any other law for the time being in force.

(vi) The decision of the Committee shall be final; however, this shall not debar the applicant litigant to apply again after furnishing sufficient proof that his financial condition has been weakened to bear the expenses of litigation.

Handout M/1

RELEVANT CASE LAW

On the point of supplying documents, the Honourable Supreme Court and the superior courts have guided from time to time and case law is discussed hereunder:

1. It is settled a principle of law that the accused has a right to obtain the copies of section 161, Cr.P.C. statements, and such right is enshrined in section 265-C, Cr.P.C. The purpose of providing these statements is to enable the accused to contradict the witness(es) with his/their statement(s). There is also no cavil to the fact that provisions of section 537, Cr.P.C. are mandatory in nature and High Court cannot interfere without coming to the conclusion that there has been substantial error or failure of justice, due to any irregularity, during course of the trial. If, it is assumed, for the sake of argument, that copies of the statements under section 161, Cr.P.C. were not provided to the appellants, even then we have to determine whether any failure of justice has occasioned and whether any prejudice has been caused to the accused/appellants ***Soobo Vs. The State* (2016 P Cr. L J 290 Sindh**

2. The object of section 265-C of the Cr.P.C. appears to be to meet the vacuum created by the abolition of commitment proceedings and to make available to the accused all the available evidence, which the prosecution have for the unfolding of the true case before the Court. The purpose is that the accused can know before he is sent up to stand trial in a charge punishable with death or imprisonment for life as to what evidence he would have to meet at the trial in order to take up a proper defence plea. The interval of seven days emerged under section 265-C of the Cr.P.C. is also significant, because it is meant to give the accused sufficient time to study the allegations against him and to prepare his plea in defence. ***Abdul Jabbar Vs. The State (2011 YLR 2169 Quetta)***

3. The learned trial court is directed to supply the copies of CD and USB to the applicant in compliance of provisions of section 265-C Criminal Procedure Code. ***Sikander Ali Lashari Vs. The State and another (2016 YLR 62 Sindh)***

4. It is simpliciter revealed from section 265-C of Cr.P.C., that an accused must be supplied the copies of all documents prior to commencement of the trial and framing the charge. The proposition would not change even if the accused has himself conceded to the omission to apply with the provision of section 265-C vitiates the whole trial. ***Nadeem Ahmed Khan & others Vs. The State (2007 P Cr. L J 233 Karachi)***

5. The statements recorded under section 161 of the Cr.P.C. are not privileged even if recorded in the body of the case diaries. Those are public documents within the meaning of Article 49 of the Qannun-e-Shahadat, 1984 and are per se relevant under its Article 49. Moreover, the privilege stated in section 172 of the Cr.P.C. is not of absolute nature. In nutshell, we hold that statements of all witnesses recorded under section 161 of the Cr.P.C. by an Investigating Officer shall be made available to an accused person as of right in seven days before the commencement of the trial. Resultantly this petition is accepted, order dated 25-4-2002 passed by the trial Court is set aside with a direction to the trial Court to supply to the petitioners copies of statements of all witnesses, whether cited or not, as envisaged by section 265-C(1), Cr.P.C.. ***Muhammad Riaz & others Vs. The State (PLD 2003 Lahore 290)***

6. The Lahore High Court in the case reported as Ajeet Sindh v. The State (PLD 1982 Lahore 10), relying upon the cases reported as V.M. Abdul Rehman v. King Emperor AIR (1927 PC 44) and Emperor v. Mustaffa Joosb (AIR 1947 Bom. 325) has gone to the extent of saying that "prejudice to the accused is to be inferred from every breach of the provisions of law given for the protection or benefit of the accused. The provisions would not change even if the accused had himself consented to such breach. On otherwise principles omission to comply with the provisions of section 265-C must be treated to have vitiated the conviction where the procedure adopted is illegal, the consent or waiver on the part of the accused cannot cure the defect under section 537,

Cr. P.C even through no prejudice is caused to him. ***Hakam Deen Vs. The State through Advocate-General and 15 others (2005 YLR 2032 Supreme Court Azad Jammu and Kashmir***

7. It is a statutory right of an accused under Section 265-C to be provided the statements of all witnesses recorded under sections 161 and 164, Cr.P.C and omission to comply with the said provisions of law, would vitiate the whole trial and that being so because the accused without having recourse to the record, would not be in a position to set up his defense. ***Muhammad Tariq & others Vs. The State (2017 YLR 1999 Lahore Multan Bench)***

EXERCISE I

GIVEN: An accused who is booked in a case of theft and is produced by jail authorities before your court to face trial. It is first date of hearing.

REQUIRED:

1. You are a judge in the court. What would be the process to be observed on the first date and what type of questions would be made by you? Explain in detail.
2. Write Dairy.

ANSWER:

1. A set of documents viz., the statements of all witnesses recorded under sections 161 and 164 Cr.P.C. and the inspection note recorded by an investigation officer on his first visit to the place of occurrence will be provided by the prosecutor to the court for the accused and the court in compliance of section 241-A Cr.P.C. shall supply a set of documents to the accused against a receipt. The court shall mark the receipt as **Ex. 1.** It shall be signed by the Judge and the accused. Format of receipt can be seen as appendix 'B'. At the same time, it will be ensured that the accused has engaged an Advocate, otherwise the court shall take appropriate action to this regard.
2. Case diary may be seen at Appendix **'A'**

EXERCISE II

GIVEN: An accused who is booked in a case of theft informs the judge that he is poor and cannot afford to engage an advocate to lead his case.

REQUIRED: What type of questions will you ask to accused and what procedure will you follow in order to ensure legal aid is provided to the accused?

ANSWER: The accused will be assisted and provided a specimen of an application for legal aid by the prosecutor. Copy of the application may be seen at **appendix 'C'** The Judge will provide information about District Legal Empowerment Committee (DLEC) to the accused according to which District & Sessions Judge has authority to provide service of an advocate to a deserving litigant. An order will be passed whereby the application will be forwarded to District and Sessions Judge signed by the Judge. Draft order of trial court may be seen at **Appendix 'D'.**

The District Legal Empowerment Committee is headed by District & Sessions Judge and therefore the application will be forwarded to his office. The draft order approving the appointment of an advocate for the pauper accused is attached herewith as **Appendix 'E'**.

Relevant rules may be seen and downloaded from the website of Law and Justice Commission of Pakistan.

CASE DIARY

Appendix 'A'

16-03-2020

Case called. Accused is present on bail. Learned DDP is present. Matter was fixed for supplying copies which are provided to the accused in compliance of Section 241-ACr.P.C. and acknowledgement of receipt is marked as Ex.1. Accused could not engage advocate and he submitted an application for appointment of advocate on State expense on the ground of his poor financial condition. The application is forwarded to the Hon'ble District & Sessions Judge who is also Chairman of District Legal Empowerment Committee for consideration. Office is directed to keep in contact with the office of Hon'ble Chairman so that appointment of advocate may be made timely. File of absconding accused is separated. Case is adjourned to 30-03-2020 for framing charge or otherwise. Accused to attend court on the next date of hearing.

-sd-

(Judge)

RECEIPT FOR COPY SUPPLY

The court of magistrate while supplying documents to the accused in compliance of section 241-A Cr.P.C. prepares a receipt which may be seen here:

Appendix 'B'

Exhibit. No.1

IN THE COURT OF II JUDICIAL MAGISTRATE, MALIR KARACHI

Criminal Case No. 73 of 2020

The State Versus

Inayatullah & others

RECEIPT OF SUPPLY OF COPIES

Following copies were supplied in above mentioned case:

1) Statements recorded under sections 161 & 164 Cr.P.C.
2) Inspection Report/Memo of place of incident
3) Piece of evidence recorded through Audio / Video devices.

-sd-

(Signature of Accused)

-sd-

(Judge)

Dated:

APPLICATION FOR APPOINTMENT OF ADVOCATE FOR UNPRIVILEGED ACCUSED

It normally happens that the accused does not have legal support because of his poor financial conditions, and, therefore it is the prime duty of the court to provide him/her with free legal aid. Following is the format of the application. The Urdu version of application can also be seen hereunder:

Appendix 'C'

IN THE COURT OF II JUDICIAL MAGISTRATE, MALIR KARACHI

Criminal Case No.73 of 2020

The State Versus Inayatullah & others

Application for Legal Aid

It is respectfully submitted that I am accused in the above case. The complainant has filed false case against me. I am working as a labourer with poor financial conditions and unable to pay professional fee of an advocate.

It is therefore, requested to Hon'ble Chairman, District Legal Empowerment Committee to appoint an advocate of experience, in proceeding a criminal trial, for him/her and the State may pay his/her professional fee. Copy of CNIC is attached for kind perusal.

Prayer is made in the interest of justice.

Dated:

Inayatullah
(Accused)

Appendix 'D'

SPECIMEN OF ORDER FOR APPOINTMENT OF ADVOCATE FOR PAUPER ACCUSED

The accused namely Inayatullah moved an application to provide him legal aid on State expense as he cannot engage an advocate due to his poor financial conditions.

His application is forwarded to Hon'ble District & Sessions Judge for consideration who is also Chairman of District Legal Empowerment Committee having sufficient funds to meet the legal aid expenses.

-sd-

(Judge)

ORDER OF THE CHAIRMAN, DISTRICT LEGAL EMPOWERMENT COMMITTEE (DLEC)

Appendix 'E'

This application filed by an accused has been received from the Court of II Judicial Magistrate Malir whereby prayer has been made for providing legal assistance from District Legal Empowerment Funds (DLEF).

The application was taken up in meeting of District Legal Empowerment Committee (DLEC) held on 01-08-2020 The prayer has been considered, and accordingly Mr. Sajjad Alvi, Advocate is appointed to defend the accused. 50% of the fee shall be paid immediately from DLEF and remaining fee will be paid after conclusion of the trial on submission of copy of judgment. Accountant to make necessary entries and maintain record. Trial court and Mr. Sajjad Ali Advocate be informed about the decision of DLEC.

Application is disposed of.

-Sd-
Chairman,
DLEC

MOCK TRIAL I : MOCK TRIAL IN A CRIMINAL CASE (Appendix ‘ S/1)

Session I

Proceeding Conducted: It was first date of hearing after submission of challan. Accused was produced in custody and copies of documents were provided to him as required under Section 241-A Cr.P.C. A receipt was obtained and marked as Exh. 1. Case was adjourned to next date for framing charge.

Session Activities: Court is in sitting. All officials and the accused present in court.

Reader: State Vs. Inayatullah Magistrate Case No.73 of 2020. [He speaks loudly by using cause list].

Naib Qasid: State Vs. Inayatullah. Mulzim Inayatullah Hazir Hoo [speaks loudly by standing near outer door of the Courtroom. Reader puts up file of Inayatullah’s case before the Hon’ble Judge].

Prosecutor: Your Honour a set of documents viz. is ready, and it may be supplied to the accused. [He provides set of documents to the Reader].

Court: [Addressed to the Reader]. Prepare a receipt and supply documents to the accused.

Reader: [He addressed to the accused]. Come forward and receive the documents. [He supplies documents and obtain signature of the accused. Receipt is marked as Exh. 1 and it is placed before the Judge for signature. Receipt is signed].

Prosecutor: [Addressed to Accused**]** Have you engaged advocate?

Accused: No sir I am poor man and cannot afford advocate’s fee. Is it possible for me to be provided an advocate on the state’s expense.

Prosecutor: (1) Submit application (addresses to accused). (2) Sir, his application may be sent to Hon’ble Chairman of District Legal Empowerment Committee **(DLEC)** for consideration. Gives (advice to court).

Court: Fine let him file an application and accordingly it will be forwarded.

Accused: (After sometime he submits application) Sir this is my application.

Court: [Addressed to the accused]. Today you have been supplied copies of relevant documents viz., statement of witnesses and memo of place of incident and on the next

date of hearing charge will be framed and you are advised to go through the documents so that you may have an idea about the accusation levelled against you. Your application will be forwarded to the Hon'ble Chairman DLEC and hopefully advocate will be provided by next date. [This conversation is made by the Court in local language].

Reader: [Shows production order before Judge] Sir date may be fixed.

Court: Case is adjourned to 30-03-2020 at 10:00 AM. [Reader writes next date on the production order, cause list and title page of the file. Judge signs the production order. Custody is taken back].

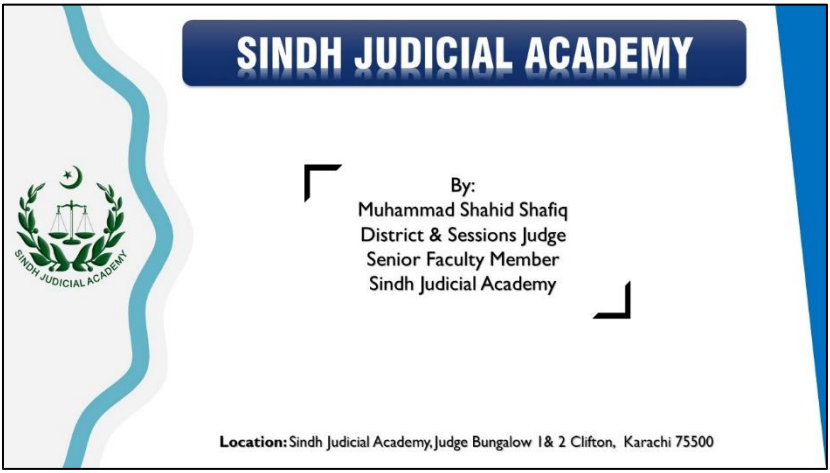
Documents required: Statement of witnesses, memos, receipt and application of accused.

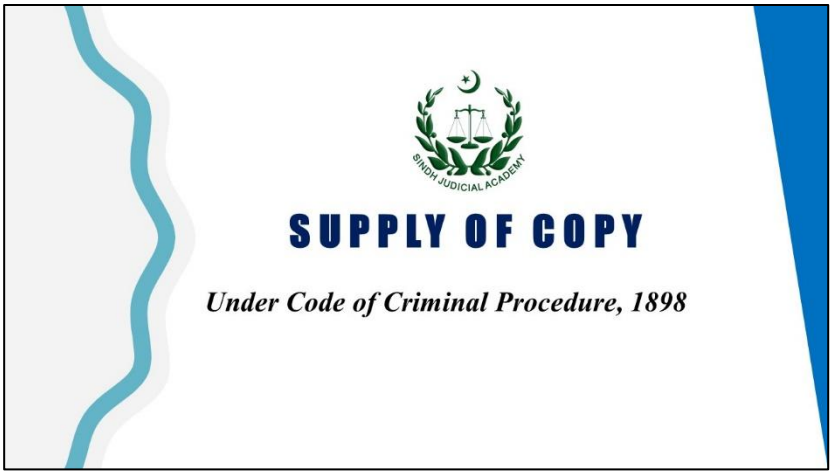
Court: [Addresses to Reader and directs him to write necessary diary and starts dictation].

Case called. Accused is produced in custody by jail authority. Learned Prosecutor provided copy of relevant documents which are supplied to the accused at Exh. 1 as provided under Section 241-A Cr.P.C. Accused's application is forwarded to Hon'ble Chairman DLEC for consideration. Case adjourned to 30-03-2020 at 10:00 AM for framing of charge. [The Reader after writing diary places it before the Judge for signature].

POWERPOINT SLIDES

Appendix-P/1





OBJECTIVE OF THE SESSIONS

1. *Know relevant law about of copy*
2. *Aware with update case law*
3. *Procedure to be followed while supply copy*
4. *Legal aid Mechanism*
5. *Guidelines*

RELEVANT LAW (265 C)

1. Supply of documents and Appointment of Advocate Section 265-C

(1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely:

(a) the first information report;

(b) the police report;

(c) the statements of all witnesses recorded under sections 161 and 164, and (d) the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any: Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

RELEVANT CASE LAW

- ***Muhammad Riaz & others versus The State*** **(PLD 2003 Lahore 290)**

1. The statements recorded under section 161 of the Cr.P.C. are not privileged even if recorded in the body of the case diaries. Those are public documents within the meaning of Article 49 of the Qanon e Shahadat, 1984 and are per se relevant under its Article 49. Moreover, the privilege stated in section 172 of the Cr.P.C. is not of absolute nature.

   In nutshell, we hold that statements of all witnesses recorded under section 161 of the Cr.P.C. by an Investigating Officer shall be made available to an accused person as of right seven days before the commencement of the trial. Resultantly this petition is accepted, order dated 25-4-2002 passed by the trial Court is set aside with a direction to the trial Court to supply to the petitioners' copies of statements of all witnesses, whether cited or not, as envisaged by section 265-C(1), Cr.P.C.

RELEVANT CASE LAW

- ***Hakam Deen versus The State through Advocate-General and 15 others*** **(2005 YLR 2032)**

1. The Lahore High Court in the case reported as Ajeet Sindh v. The State (PLD 1982 Lah. 10), relying upon the cases reported as V.M. Abdul Rehman v. King Emperor AIR 1927 PC 44 and Emperor v. Mustaffa Joosb (AIR 1947 Bom 325) has gone to the extent of saying that "prejudice to the accused is to be inferred from every breach of the provisions of law given for the protection or benefit of the accused. The provisions would not change even if the accused had himself consented to such breach. On otherwise principles omission to comply with the provisions of section 265-C must be treated to have vitiated the conviction. Where the procedure adopted is illegal, the consent or waiver on the part of the accused cannot cure the defect under section 537, Cr. P.C even through no prejudice is caused to him.

RELEVANT CASE LAW

- ***Soobo versus The State* (2016 P Cr. L J 290)**

It is settled principle of law that the accused has a right to obtain the copies of 161, Cr.P.C. statements, and such right is enshrined in section 265-C, Cr.P.C. The purpose of providing these statements is to enable the accused to contradict the witness(es) with his/their statement(s). There is also no cavil to the fact that provisions of section 537, Cr.P.C. are mandatory in nature and High Court cannot interfere without coming to the conclusion that there has been substantial error or failure of justice, due to any irregularity, during course of the trial. If, It is assumed, for the sake of argument, that copies of the statements under section 161, Cr.P.C. were not provided to the appellants, even then we have to determine whether any failure of justice has occasioned and whether any prejudice has been caused to the accused/appellants.

RELEVANT CASE LAW

- ***Abdul Jabbar versus The State* (2011 YLR 2169)**

The object of section 265-C of the Cr.P.C. appears to be to meet the vacuum created by the abolition of commitment proceedings and to make available to the accused all the available evidence, which the prosecution have for the unfolding of the true case before the Court. The purpose is that the accused can know before he is sent up to stand trial in a charge punishable with death or imprisonment for live as to what evidence he would have to meet at the trial in order to take up a proper defence plea. The interval of seven days emerged under section 265-C of the Cr.P.C. is also significant, because it is meant to give the accused sufficient time to study the allegations against him and to prepare his plea in defence.

EXERCISE (1)

GIVEN:

An accused, challaned in murder case has been produced by jail authorities before your court to face trial. It is first date of hearing.

REQUIRED:

You are prosecutor in the court and police file is already with you. What would be the process to be observed by the court on the first date and how will you assist court. Explain in detail.

ANSWER:

A set of documents viz. the first information report, the police report, the statements of all witnesses recorded under section 161 and 164 Cr.P.C. and the inspection note recorded by an investigation officer on his first visit to the place of occurrence and the note recoded by him on recoveries made, will be provided to the court for the accused in compliance of section 265-C Cr.P.C. A set of documents will be supplied by the court to the accused against a receipt which shall be marked Exh. Number. It shall be signed by the Judge and the accused. Format of receipt would be as under:

- ***Sikander Ali Lashari versus The State and another*** **(2016 YLR 62 Sindh)**

The learned trial court is directed to supply the copies of CD and USB to the applicant in compliance of provisions of section 265-C Criminal Procedure Code.

EXERCISE (1)

GIVEN:

Accused on the first date of hearing informed the court that he is unable to engage advocate because of his poor financial condition.

REQUIRED:

How would you assist court and the accused in providing legal aid to the accused.

ANSWER:

Accused will be assisted and provided specimen of an application which may be used for making prayer to provide free legal aid. Court will be assisted by giving information about DLEC according to which District & Sessions Judge has authority to provide service of an advocate to a deserving litigant. Specimen of application and draft order of the court is attached herewith. District Legal Empowerment Committee is headed by District & Sessions Judge and therefore the application will be forwarded to his office.

Relevant rules may be seen and down loaded from the website of Law and Justice Commission of Pakistan.

IN THE COURT OF IInd ADDITIONAL DISTRICT & SESSIONS JUDGE, MALIR KARACHI.

SC No.73 of 2010

The State Versus. Inayatullah & others

Application for Legal Aid

It is respectfully submitted that I am accused in the above case. The complainant has filed false case against me. I am working as labour and power financial condition and unable to pay professional fee of an advocate and therefore it is requested to Hon'ble Chairman District Legal Empowerment Committee that an advocate having experience to proceed the criminal trial may be appointed and state may pay his professional fee.

Prayer is made in the interest of justice.

Dated: Inayatullah

(Accused)

LEGAL AID APPLICATION

Receipt for Copy Supply

Ex. No. I

IN THE COURT OF _____ KARACHI.

SC No.** of ****

ABC Versus. XYZ

RECEIPT OF SUPPLY OF COPIES

Following copies were supplied in above mentioned case:

1) FIR
2) Police Report
3) Statement under Section 161 & 164 Cr.P.C.
4) Inspection Report/Memo of place of incident.
5) Memos of arrest and recovery.

Signature of Accused

-sd-

(Judge)

Dated:

Original

Ex. No. I

IN THE COURT OF IInd ADDITIONAL DISTRICT & SESSIONS JUDGE, MALIR KARACHI.

SC No.73 of 2010

The State Versus. Inayatullah & others

RECEIPT OF SUPPLY OF COPIES

Following copies were supplied in above mentioned case:

1) FIR
2) Police Report
3) Statement under Section 161 & 164 Cr.P.C.
4) Inspection Report/Memo of place of incident.
5) Memos of arrest and recovery.

Signature of Accused

-sd-

(Judge)

Dated:

+

Accused namely Molvi Inayatullah moved an application praying therein to provide him legal aid on State expense as he cannot engage an advocate due to his poor financial condition.

The application is forwarded to Hon'ble District & Sessions Judge who is also Chairman of District Legal Empowerment Committee, having sufficient fund to meet the legal aid expense for consideration.

-sd-
(Judge)

ORDER

IN THE COURT OF IInd ADDITIONAL DISTRICT & SESSIONS JUDGE, MALIR KARACHI.

SC No.73 of 2010

The State Versus. Inayatullah & others

Application for Legal Aid

It is respectfully submitted that I am accused in the above case. The complainant has filed false case against me. I am working as labour and power financial condition and unable to pay professional fee of an advocate and therefore it is requested to Hon'ble Chairman District Legal Empowerment Committee that an advocate having experience to proceed the criminal trial may be appointed and state may pay his professional fee.

Prayer is made in the interest of justice.

Dated: Inayatullah
(Accused)

APPLICATION FOR APPOINTMENT OF ADVOCATE FOR PAUPER ACCUSED

16-03-2010

Case called. Accused is produced by Jail Authorities. Learned DDP is present. Matter was fixed for supplying copies which are provided to the accused in compliance of Section 265-C Cr.P.C. and acknowledgement of receipt is marked as Exh.1. Accused could not engage advocate and he submitted an application for appointment of advocate on State expense on the ground of his poor financial condition. The application is forwarded to the Hon'ble District & Sessions Judge who is also Chairman of District Legal Empowerment Committee for consideration. File of absconding accused is separated. Case is adjourned to 30-03-2010 for framing of charge or otherwise. Accused to be produced on the fixed date.

-sd-
(Judge)

CASE DAIRY

Social Link

- *Click this link for more videos:*

https://www.youtube.com/channel/UC7FSvTh36sEMqgmNvRDBCgg

https://www.facebook.com/shahid.shafiq.9250

https://www.youtube.com/watch?v=GX02XknnUFc&t=400s

POST-ASSESSMENT

Session's Name: Supply of Documents in Magisterial trial Time: 8 minutes

After completing the session assign this post-assessment as this would reflect about changed behavior.

Name: _____ Date:

_____

Q.1. On 1st date of hearing, Court of Magistrate observes proceeding as provided under section ……...

A. 265-A Cr.P.C.
B. 265-C Cr.P.C.
C. 265-D Cr.P.C.
D. 241-A Cr.P.C.

Q.2. It is the duty of …… to provide copies of case papers to accused.

A. Station House Officer
B. Investigation Officer
C. Prosecutor
D. Judge/Magistrate

Q.3. Section 241-A Cr.P.C. refers to-

A. Statements of witnesses recorded under section 161 Cr.P.C.
B. Memo of inspection of place of incident
C. Statements of witnesses recorded under section 164 Cr.P.C.
D. All of the above

Q.4. Copies are supplied to the accused before …….. from the date of commencement of trial.

A. Three days
B. Seven days
C. Thirty days
D. On the day of recording evidence

Q.5. D.L.E.C. stands for-

A. District Logistic Enforcement Committee

B. District Legal Empowerment Committee
C. District Law Enforcement Commissioner
D. None of the above

Q.6. D.L.E.C. is headed by-

A. Magistrate
B. Assistant Sessions Judge
C. Addl. District & Sessions Judge
D. District & Sessions Judge

Q.7. D.L.E.C. may pay fee to an Advocate to the extent of-

A. Rs. 10,000/-
B. Rs. 20,000/-
C. Rs. 30,000/-
D. No limit of payment

TRUE OR FALSE

Q.8. Accused privately obtained copies of documents and therefore there is no need to supply him set of documents.

True ☐ False ☐

Q.9. Some Evidence collected through modern devices is available in USB which must be given to accused at the time of supplying documents.

True ☐ False ☐

Q.10. Statement of witnesses recorded under Section 161 Cr.P.C. who were not listed in challan sheet should be provided to the accused.

True ☐ False ☐

Q.11. Accused after receiving documents should sign receipt being acknowledgement.

True ☐ False ☐

Q.12. An adult accused cannot request the court for free legal aid.

True ☐ False ☐

Q.13. A newly enrolled advocate may be appointed as Advocate for the accused on state expenses for pauper accused.

True ☐ False ☐

Q.14. Juvenile can request the court for free legal aid.

True ☐ False ☐

Q.15. A victim below the age of 18 may request the court for free legal aid.

True ☐ False ☐

KEY

1 D	**2 C**	**3 C**	**4 B**	**5 B**	**6 C**
7 B	**8 False**	**9 True**	**10 True**	**11 True**	**12 False**
13 False	**14 True**	**15 True**			

SUPPLEMNENTARY MATERIAL

The supplementary following reading material includes:

i) A short video explaining process of supply of documents to an accused may be accessed at https://www.youtube.com/watch?v=yXiD6U3fLv0

ii) A short video explaining rules of DLEC may be accessed at: https://www.youtube.com/watch?v=GX02XkppUFc&t=400s

iii) The District Legal Empowerment Committee (Constitution and Functions) Rules 2011 may be accessed at http://ljcp.gov.pk/nljcp/viewpdf/pdfView/RExFQ3MucGRm#book/

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