

Procedure-
In case of references made to the
Remembrancer of Legal Affairs.

GOVERNMENT OF MAHARASHTRA,
Law and Judiciary Department,
Circular No. 1-2016/'A'
Mantralaya, Mumbai-400 032, dated 11th March, 2016

CIRCULAR

Of late, it has been noticed by this department that despite the Circular dated 18.09.1998 issued by the Law and Judiciary Department prescribing the procedure to be followed in respect of references forwarded to the Remembrancer of Legal Affairs seeking opinion, instructions issued thereunder are not meticulously followed. This often results in unavoidable movement of the files and leads to delay.

In order to enable the Remembrancer of Legal Affairs to tender his opinion, without undue delay, the departments are again requested to ensure that the requirements of Rule 7(1) of the Rules for the Conduct of Legal Affairs of Government, 1984 are scrupulously followed. The said provisions are reiterated below for ready reference.

RULE 7: Procedure for making a reference to Remembrancer of Legal

Affairs:-

(1) The administrative departments, while making a reference to the Remembrancer of Legal Affairs for advice, should follow scrupulously the following requirements:

- (a) the facts of the case in which the opinion is required should be clearly stated;
- (b) the point or points on which the advice or opinion is required should be stated as precisely as possible; and

- (c) the reference should be made by an officer authorized to do so, i.e. officer not below the rank of a Deputy Secretary or the concerned Desk Officer;
 - (d) before making a reference, the department concerned should consider such previous opinions of the Remembrancer of Legal Affairs, as may be available in the Digests or opinions which have been supplied to all the Departments. These Digests and the recent opinions should be consulted before seeking the Remembrancer of Legal Affairs opinion, and a reference should be made to any relevant opinion that may have a bearing on the point at issue. This procedure would help the Remembrancer of Legal Affairs' in giving expeditious advice to the referring department;
 - (e) the drafts and the cases for opinion should not be sent to the Remembrancer of Legal Affairs till all the administrative questions have been finally decided in consultation with the various authorities.
 - (f) the drafts or notes should as far as possible be self contained. Any suggestion which have been approved in the course of correspondence should be embodied in the drafts or notes forwarded to the Remembrancer of Legal Affairs.
 - (g) before sending the case to the Remembrancer of Legal Affairs for opinion the concerned department should consider the case on merits and come to certain conclusion and then refer the case to him for advice whether that conclusion is right or wrong.
- Attention of all the Departments in Mantralaya is also invited to **Rule 8** of the said Rules, which reads as follows:-

Rule 8: Matters on which opinion of Remembrancer of Legal Affairs may

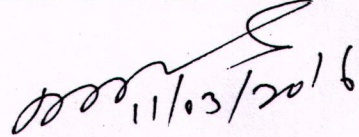
not be sought:-

Generally the opinion of the Remembrancer of Legal Affairs may not be sought on the following matters:

- (1) Points concerning mainly the questions of facts or policy matters;
- (2) Cases of hypothetical nature;
- (3) Ordinary departmental procedure or administrative matters; and
- (4) Scrutiny of letters and resolutions which do not involve any legal point.

Considering the obvious advantages of following a standardized pattern it is expected that, hereafter, all references forwarded to this department are in strict compliance with the provisions mentioned above.

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


11/03/2016

(N. J. Jamadar)

Secretary and Remembrancer of
Legal Affairs to Government.

Copy to-

1. The All Additional Chief Secretaries, Maharashtra State, Mantralaya, Mumbai.
2. The All Principal Secretaries/Secretaries, Mantralaya, Mumbai.
3. The Deputy Secretary to the Hon'ble Chief Secretary, Mantralaya, Mumbai.

Procedure-

In cases of references made to the Remembrancer of Legal Affairs.

GOVERNMENT OF MAHARASHTRA
Law and Judiciary Department,
Circular No. 2172/A,
Mantralaya, Mumbai-400032, dated the 18th September, 1998.

CIRCULAR

It is noticed that the Administrative Departments have recently started the practice of referring to the Remembrancer of Legal Affairs cases, wherein no point or points of law are involved; and, if, these cases do involve any point or points of law, the facts are found to be not clearly stated and sometimes the point or points of law raised for R.L.A.'s advice are also found to be not properly formulated. Further, the cases are forwarded unaccompanied by a clear and detailed statement of case, giving specific references to previous opinions of R.L.A., if any, by consulting the Digest of Opinions supplied or compilations of the opinions given by the R.L.A. to the departments, to the orders, Circulars, Notifications, if any, issued by departments and found to have a bearing on the point at issue, as required by Rule 7(1) of the Law Officers Rules. The Rule prescribes the procedure to be followed by administrative departments while referring cases to R.L.A. for his advice.

In order to enable the Remembrancer of Legal Affairs to tender his opinion, without undue delay, the departments are requested to ensure that the requirements of Rule 7(1) of the Law Officers Rules, which are reproduced below for their ready reference, are followed scrupulously while referring the cases to R.L.A.

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which
Rule 7(1)(a) the facts of the cases in which the opinion is required should be clearly stated;

(b) the point or points on which the advice or opinion is required should be stated as precisely as possible; and

(c) the reference should be made by an officer authorised to do so, i.e. officer not below the rank of a Deputy Secretary or the concerned Desk Officer;

(d) before making a reference, the department concerned should consider such previous opinions of the Remembrancer of Legal Affairs, as may be available in the Digests of Opinions, which have been supplied to all Departments. These Digests as also recent opinions should be consulted before seeking the Remembrancer of Legal Affairs' opinion, and a reference should be made to any relevant opinion that may have a bearing on the point at issue. This procedure would help the Remembrancer of Legal Affairs in giving expeditious advice to the referring department;

(e) the drafts and the cases for opinion should not be sent to the Remembrancer of Legal Affairs till all the Administrative questions have been finally decided in consultation with the various authorities;

(f) the drafts or notes should as far as possible be self contained; any suggestion which have been approved in the course of correspondence should be embodied in the drafts or notes forwarded to the Remembrancer of Legal Affairs.

(g) before sending the case to the Remembrancer of Legal Affairs for opinion the concerned department should consider the case on merits and come to certain conclusion and then refer the case to him for advice whether that conclusion is right or wrong;

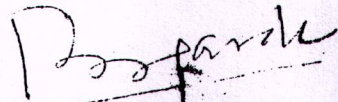
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Attention of all the Departments in
Mantralaya is also invited to rule 8 of the said Rules,
reads
which/~~is reproduced~~ as follows :-

Rule 8. Matters on which opinion of Remembrancer
of Legal Affairs may not be sought. - Generally the
opinion of the Remembrancer of Legal Affairs may not be
sought on the following matters :-

- (1) Points concerning mainly the questions of
facts or policy matters;
- (2) Cases of hypothetical nature;
- (3) Ordinary departmental procedure or
administrative matters; and
- (4) Scrutiny of letters and resolutions which
do not involve any legal point.

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



(R. M. Deshpande)
Secretary and Senior Legal Adviser to
-Government.

TO

All Secretaries of Mantralaya, Departments.