# HIGH COURT OF TRIPURA
## AGARTALA

**No.F.3(35)-HC/17/7706** **Dated, Agartala, the 17th April, 2017**

# NOTIFICATION

### The High Court of Tripura Civil Courts (Commissioners) Rules, 2017

**Whereas** a considerable time of the Court is consumed in recording oral evidence of witnesses whose examination-in-chief on affidavit are submitted by the parties in civil proceedings;

**And whereas** such time can be saved and utilized to facilitate expeditious disposal of cases by resorting to the procedure of recording evidence (cross-examination and re-examination) of witnesses by the commissioners in terms of sub-rule(2) of Rule 4 of order XVIII of the Code of Civil Procedure;

**Now, therefore,** in exercise of the powers conferred by Section 122 of the Code of Civil Procedure, 1908, and all other powers enabling it, in this behalf, the High Court of Tripura hereby makes the following Rules to regulate the selection and functioning of the Commissioners appointed for recording evidence in Civil suits and proceedings in terms of sub-rule (2) of Rule 4 of order XVIII of the Code of Civil Procedure;

**Short title and commencement:**

**1.** I) These Rules may be called "The High Court of Tripura Civil Courts (Commissioners) Rules, 2017."

II) These Rules shall come into force with immediate effect.

**2. Definition:**

In these Rules, unless the context otherwise requires;

(i) **"Chief Justice"** shall mean the Chief Justice of the High Court of Tripura.

(ii) **"Civil Court"** shall include courts of District Judge, Additional District Judge, Civil Judge (Sr.Divn.) and Civil Judge (Jr.Divn.)

(iii) **"Committee"** shall mean the committee constituted under section 123 of Code of Civil Procedure, 1908.

(iv) **"Code"** shall mean Code of Civil Procedure, 1908.

(v) **"District"** shall mean a Judicial District.

(vi) **"District Judge"** shall mean the Judge of a Principal Civil Court of original jurisdiction.

(vii) **"Government"** shall mean the Government of Tripura.

(viii) **"High Court"** shall mean the High Court of Tripura

(ix) **"Selection Committee"** shall mean a committee constituted for the selection of Commissioners in terms of sub-rule (2) of Rule 4 of order XVIII of the Code of Civil Procedure.

**3. Application:**

These rules shall apply to all Civil Courts within the jurisdiction of the High Court of Tripura.

**4. Eligibility for Selection of Commissioner:**

(i) No person shall be selected as Commissioner unless he/she is a practicing advocate in the concerned district.

(ii) No person shall be selected as Commissioner unless he/she has **completed at least seven (7) years** of regular practice in the Bar and is a practicing advocate on the day of his/ her selection as such commissioner.

(iii) An Advocate willing for such selection shall have to submit a declaration to the Chairperson of the **Selection Committee constituted under Rule 5** that no criminal or civil proceeding is pending in any court and no disciplinary proceeding is pending in the Bar Council against him/her.

**5. Constitution of Selection Committee.**

The Committee for selection of the Commissioners shall be as follows:

(i) The District Judge— Chairperson.

(ii) The senior most Additional District Judge **posted at the District Headquarters** and where there is no such Addl. District Judge in the District **Headquarters** the senior most Civil Judge (Sr.Divn.)— Member.

(iii) President of the Bar Association— Member.

(iv) Any other Judicial Officer of the District as may be nominated by the District & Sessions Judge.

**6. Procedure for Selection of Commissioners:**

(i) The concerned District Judge shall initiate the process of selection of Advocate Commissioner of his District.

(ii) The District Judge shall publish a notice inviting applications from the eligible and willing Advocates by affixing such notice in the Notice-board of his office which shall also be uploaded in the official website of the District Court. A copy of the notice shall also be forwarded to the President of the local Bar Association.

(iii) The District Judge shall then prepare a list of the eligible and willing advocates and publish the same in the notice board and on the official website of the District Court.

(iv) The selection Committee constituted for the purpose shall fix a date for conducting *Viva-Voce* within thirty (30) days from the date of publication of the list of eligible and willing Advocates.

(v) The selection Committee shall test the knowledge of the advocate on the relevant provisions of the Code, High Court of Tripura Civil Rules and Orders, relevant provisions of the Indian Evidence Act, and Information Technology Act, the Oaths Act and the General Aptitude of the candidate.

(vi) The *Viva-Voce* will be conducted in 100 marks.

(vii) The object of such *Viva-Voce* test is to assess the overall suitability of the candidate for doing the job of the Commissioner.

(viii) The Selection committee of each of the Districts shall prepare a select list of maximum 12 Advocates for each of the Districts in order of merit and performance in *Viva-Voce* and prepare a panel of such commissioners which shall be valid for the period of three years subject to approval of the Hon'ble High Court. The concerned District Judge, out of the panel, shall attach suitable number of commissioners for each of the Civil Court. While making such selection and preparing the panel, the selection Committee shall see that at least 2 of such advocates are selected from each of the subdivisions within the District, as far as practicable.

(ix) The District Judge may take such action, as he deems fit, including striking out the name of any commissioner from the panel for misconduct or for any other reasons, rendering such commissioner not suitable to function as such, after affording opportunity of being heard.

7. **Appointment of Commissioner:**

The concerned Civil Court shall appoint Commissioner from the panel prepared in terms of Rule-6(viii).

8. **Role and Duties of Referral Court.**

(i) A Civil Court before referring a suit or case to a commissioner for recording evidence shall apply his mind as to whether the case is fit to be referred to Commissioner taking into consideration the facts of the case, nature of the allegations, nature of the evidence and importance of the witness-etc.

(ii) A civil Court shall exercise its discretion with circumspection to refer a case to commissioner in cases where complex question of the title is involved and in suits relating to partnership business, suits relating to execution of will, etc.

(iii) A Civil Court while referring cases to Commissioners shall give preference to old pending cases.

(iv) A Civil Court shall not refer a case to commissioner without following the mandatory stages of a Civil litigation, like framing of issues, steps before peremptory hearing, production of documents, compliance of Section-89 of the Code, etc.

(v) A civil court shall pass a specific judicial order while referring a case to Commissioner and one month time shall be given to a commissioner to record cross- examination, re-examination, if any, of the witnesses of each party and for submission of report.

(vi) A Civil Court while referring a case to Commissioner may furnish copies of plaint, written statement and issues, so that the Commissioner understands the nature of the case and evidence which is required to be adduced.

(vii) A Civil Court shall pass the referral order in presence of the counsel of the parties and their signatures shall be obtained in the order sheet. The Court shall make endeavour to obtain the mobile numbers of the counsel of both parties and may furnish the same to the commissioner.

(viii) A Civil Court shall furnish the attested photocopies of the documents produced by the parties to the Commissioner retaining the originals with the court and with the consent of the parties the **photocopies can be marked as exhibits. The trial court shall compare the original with the photocopies so marked as exhibits by the Advocate Commissioner and after such comparison the original shall be marked as exhibits by the trial Judge in Court. While giving the**

**photocopies of the documents to the Advocate Commissioner for the purpose of recording cross-examination of witnesses, the trial Court shall ensure that no photocopy of any document is given to the Advocate Commissioner, the original of which is not submitted in Court.** If the case requires the original document for the purpose of cross-examination the court shall depute one staff to carry the original document/record to the Commissioner for the purpose of recording evidence. The commissioner shall submit the report along with the documents marked as exhibits. Thereafter, the Court shall sign the document.

**9. Role and Duties of Commissioners:**

(i) All Commissioners appointed under these rules shall maintain a diary indicating the number of the case, the court from which it is referred and the data in which the report is required to be submitted.

(ii) A Commissioner on receipt of a referral order shall fix a convenient date, time and place in writing for recording the evidence in consultation with the counsel and obtain their signatures.

(iii) Ordinarily all evidence shall be recorded during office hours at a place within the Court premises with the approval of the District & Sessions Judge or the senior most Judicial Officer of the station as the case may be. The concerned District & Sessions Judge shall provide the logistic supports to the Commissioners for recording such evidence. ***If such place in the court premises cannot be made available, the evidence may also be recorded in the chamber of the Advocate Commissioner.*** **In case, the witness is incapacitated for any reason to appear for deposing in the place at the court premises or in the chamber of the Advocate Commissioner, the Commissioner may record such evidence at a place considered convenient for the witness falling in such category.**

(iv) The parties to suit or a case shall produce their witnesses before the Commissioner and no fresh summons shall be issued in this regard. The Court may also ensure the attendance of the witnesses, who have filled their affidavit of examination-in-Chief and refer them to commissioner for cross examination.

(v) A Commissioner shall administer oath to witness as per the provisions of the Oaths Act, 1969 or any other law or rules laid down in this regard.

(vi) A Commissioner shall record the evidence of the witness either in English or in the official / Court language.

(vii) A Commissioner after recording the evidence of the witness shall read over the evidence to witness and obtain his / her sign or signature and thereafter shall write R.O.A.C (Read over and admitted as correct). No space shall be left above R.O.A.C and signature of the commissioner.

(viii) A commissioner shall ensure to obtain the signature and name of the person who may take the thumb impression of a witness, unable to sign.

(ix) A Commissioner shall note that the deposition is dictated and corrected, if the deposition is typed either in a computer or in a typewriter.

(x) A Commissioner shall at the end of the deposition take the signature of the advocates of both plaintiff and defendant, who are present at the time of recording of the evidence.

(xi) A Commissioner shall ensure that cross-examination and re-examination of the outstation witness is completed as far as possible on the same day.

(xii) A Commissioner shall consider a request for adjournment judiciously.

(xiii) A Commissioner shall not declare a witness hostile. If such situation arises, the Commissioner shall refer the matter to the concerned court and if the court finds such plea frivolous, it may impose heavy cost on the defaulting party.

(xiv) A Commissioner, if necessary, may record the demeanor of the witness while recording the evidence.

(xv) A Commissioner shall refer the matter to the court, if a witness refuses to answer a question during cross-examination on the plea that the question relates to a privilege communication. However, the commissioner shall record the question.

(xvi) A Commissioner shall mark a document as exhibit tentatively. If it is objected to by the other side, the admissibility of the said document shall be decided by the court.

(xvii) A Commissioner shall not impound a document. If document is found to be deficient in payment of stamp duty, the commissioner shall bring the matter to the notice of the Court.

(xviii) A Commissioner shall preserve original records safely and shall ensure that documents are not lost or manipulated. A Commissioner shall give an undertaking in this regard after their appointment.

(xix) A Commissioner shall return the record or documents to the court immediately on completion of recording of evidence.

(xx) A Commissioner shall complete the commission work and shall submit report within a period of one month.

(xxi) No persons selected and empanelled as a commissioner shall undertake the work of recording evidence in a case in which he is interested in any manner. If such instances come to the knowledge of the Court after referral of the case to the commissioner, the matter will be reported to the Chairman of the Bar Council of the State by the District Judge for disciplinary action against such commissioner in appropriate cases, in addition and deference to other actions as provided by these rules.

**10. Remuneration:**

(i) A Commissioner shall be entitled to a fee of **Rs.500 (Rupees five hundred)** per witness. In case the cross- examination of a witness continues beyond the day, Commissioner's fee shall be **Rs.300 (three hundred) per day** for such witness.

(ii) A commissioner shall submit his bills to the concerned District Judge through the presiding officers of the referral court.

**11. Code of Conduct for the Commissioners:**

(i) A Commissioner performs judicial functions by way of delegation as such he is expected to maintain high ethical standard.

(ii) A Commissioner shall record the evidence of witness impartiality, diligently and in presence of the parties or their authorized counsel.

(iii) A Commissioner shall conduct himself in such a manner that the confidence and trust of the litigants are not eroded.

(iv) A Commissioner shall not comment on the merit of the case and shall avoid *ex-parte* communication with the parties.

(v) A Commissioner shall endeavour to create a court room ambience while recording evidence.

(vi) A Commissioner shall maintain the dress code of Advocates as prescribed by the High Court.

(vii) A Commissioner shall try to record evidence of a witness expeditiously and shall avoid frivolous adjournments.

**12.Training:**

After their empanelment as Commissioner, each of them shall have to undergo compulsory training for a period of at least 1 week in the Tripura Judicial Academy or elsewhere as the High Court, may, by order, determine.

**13.Residuary Provision:**

**The concerned Court shall decide** the question, if any ambiguity relating to the rules is raised by any of the parties to the proceeding.

**14.Power to Relax:**

When the Chief Justice is satisfied that the operation of any rule causes undue hardship, he may by an order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it is necessary for dealing with the case in a just and equitable manner.

**15.Repeal and Saving:**

Notwithstanding anything provided in these rules, any evidence recorded by a Commissioner prior to coming into force of these rules, shall be valid and will not vitiate any proceeding.

**By order,**

Sd/-

**S. G. Chattopadhyay**
Registrar General

# HIGH COURT OF TRIPURA
## AGARTALA

**No. F. 3(35)-HC/2017/7707-749** **Dated, Agartala, the 17th April, 2017**

**Copy to:**

1. The Advocate General, Tripura.
2. The President/ Secretary, Tripura High Court Bar Association.
3. The Chairman, Bar Council of Tripura.
4. The Principal Secretary, Finance Department, Government of Tripura for information.
5. The LR & Secretary, Law, Government of Tripura, Agartala for information and necessary action.
6. The President / Secretary, Tripura Bar Association, Agartala, Tripura.
7. The Director, Tripura Judicial Academy, High Court of Tripura, Agartala.
8. **The District & Sessions Judge**, South Tripura Judicial District at Belonia/ West Tripura Judicial District at Agartala/ North Tripura Judicial District at Dharmanagar/ Unakoti Judicial District at Kailashahar/ Gomati Judicial District at Udaipura. **They are to circulate the Rules among the Judicial Officers working within their respective jurisdiction and prepare panel of Advocate Commissioners for their respective Districts immediately in terms of procedure laid down under Rule 6 of The High Court of Tripura Civil Courts (Commissioners) Rules, 2017.**
9. The Member Secretary, Tripura State Legal Services Authority, Melarmath, Agartala for information and necessary action.
10. The Registrar (Vigilance), High Court of Tripura, Agartala.
11. The Registrar (Judicial), High Court of Tripura, Agartala for information and necessary action.
12. The Principal Secretary to Hon'ble the Chief Justice, High Court of Tripura, Agartala.
13. The Registrar (Admn. P& M), High Court of Tripura, Agartala for information and necessary action.
14. The Deputy Registrar (Judicial)-cum-CPC, High Court of Tripura, Agartala.
15. The Deputy Registrar (Admn.), High Court of Tripura, Agartala for information and necessary action.
16. All Deputy Registrars, High Court of Tripura, Agartala.
17. The Secretaries to Hon'ble Judges, High Court of Tripura, Agartala.
18. The Secretary attached with Ld. Registrar General, High Court of Tripura, Agartala.
19. All Assistant Registrars, High Court of Tripura, Agartala.
20. The System Analyst, for uploading the notification in the official website of the High Court of Tripura, Agartala.
21. The Manager, Government Press, Agartala, Tripura. He is requested to publish the said Notification in the next extra-ordinary issue of the Tripura Gazette and send at least 5(five) copies of the same to the undersigned after publication.
22. The Superintendent, Establishment Section, High Court of Tripura, Agartala.
23. Concerned file.

17.4.17

**(S.G.Chattopadhyay)**
**Registrar General**