No.34 (01)/2012-Judl
Government of India
Ministry of Law and Justice
Department of Legal Affairs
Judicial Section
****

Shastri Bhawan, New Delhi
Dated the 5th December, 2012.

OFFICE MEMORANDUM

Sub : Engagement of Counsel on behalf of Union of India- regarding

It has been noticed in the recent past that the Administrative Ministries instead of following standard practice have been insisting upon: engagement of Law Officers on special fees; engagement of Panel Counsel /Assistant Solicitors General as special Counsel; engagement of Law Officers with varied terms and conditions such as to be assisted by specific junior(s) who at times are not even on the panel of Union of India; engagement of Law Officers in courts/places other than their normal place/court of operation; transporting the ASGs/Counsel/ Asstt. SGs from one place to another; engagement of Counsel who are not even on the panel of Union of India; and engagement of Panel Counsel without consent of the concerned controlling authorities.

Such deviations violate procedure established by law and are thus against the spirit of the rule of law.

2. It may be recalled that as per the **Government of India (Allocation of Business) Rules, 1961** the Department of Legal Affairs has been assigned the task of engagement of counsel on behalf of the Union of India in various Courts/Tribunals including conduct of cases in the Supreme Court on behalf of the Central Government and on behalf of the Governments of States participating in the Central Agency Scheme.

3. In pursuance of the above mentioned Rules and with a view to smooth conduct of litigation on behalf of Union of India, this Department has appointed 20 Law Officers, comprising Attorney General for India, Solicitor General and Additional Solicitors General, 29 Assistant Solicitors General and a number of Counsel in various Courts / Tribunals on the laid down terms and conditions. In spite of the exhaustive list of Law Officers and Counsel, terms and conditions of their engagement etc., requests for special counsel, private counsel etc. are routinely being made to this Department. Also engagement of counsel are being made without the prior approval of this Ministry and files are routinely being routed for *ex post facto* approval which is contrary to the spirit of the Allocation of Business Rules.

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4. In view of the above, it has been decided for the guidance of the administrative Ministries that except in extraordinary cases determined by this Ministry:-

(i) no proposal for engagement of Law Officers/panel counsel as special counsel in Government litigation on special rates of fees shall be entertained;

(ii) a counsel not on the panel will be engaged only in very exceptional case;

(iii) no proposal for *ex post facto* approval in respect of the engagement of any counsel and payment of their fee shall be entertained unless the prior approval of this Ministry is not possible in exceptional circumstances; and

(iv) all the Ministries/Departments are requested to engage the services of Law Officers/ panel counsel, in their litigation matters only through the Officer in charge, Central Agency Section for the cases before the Supreme Court/ Branch Secretariats at Bengaluru/Chennai/Mumbai/Kolkata or the concerned Assistant Solicitors General for the cases before various High Courts.

5. **This issues with the approval of Hon'ble Minister for Law and Justice.**

(Suresh Chandra)
Joint Secretary and Legal Adviser to the Government of India
Ph. 23381589

To

1. All Ministries/Departments as per the list.
2. All the Law Officers as per list.
3. All Assistant Solicitors General as per the list.
4. Incharge Branch Secretariats at Bengaluru/Chennai/Mumbai/ Kolkata.

(Dr. R. S. Shrinet)
Assistant Legal Adviser to the Government of India