

REGISTRAR'S CIRCULAR NO. 7 OF 1956.

Circular to Presidents and Magistrates.

AUDIT PROCEDURE.

The following matters have been the subject of recent consultation with the Director of Audit, with whose concurrence this Circular is now issued.

A. Monthly Summaries of Cases.

Attention is drawn to Registrar's Circular No. 4 of 1955 and in particular to para 5 of Appendix A thereto and to the form of the "Summary of Cases" in Appendix B.

2. It may not be generally realized that these Summaries, in the Courts from which they are required, form the basis of the audit on the accounting for fines. It is therefore essential that they should contain all the details required by the Audit Department and that they should be accurate.

3. It will be observed that they are not required from Sub-ordinate Courts in towns where there is an Audit Department Branch Office. In such Courts the audit is made direct from the Charge Sheets. All other Courts must supply them.

4. The Director of Audit states that the Summaries vary in different Courts in the details supplied. He has therefore prepared a specimen pro-forma, (a copy of which is annexed hereto) shewing how the Summary should be prepared. In future, all Monthly Summaries should follow this Form and supply the information so indicated.

5. It will be noted that no mention is made of exhibits in the Pro-forma. They should not be mentioned in the Monthly Summary, but should be dealt with in the Exhibit Book, which will be the subject of further instructions in another Circular to be issued shortly. The Exhibit Book will contain all the information which the Audit Department require on the subject of Exhibits, and must be made available to Audit Officers when required.

6. Annexure A to Registrar's Circular No.4/55 lays down that:-

(a) Monthly Summaries must be prepared daily from the Charge Sheets. This is essential and must continue.

(b) They should be checked and certified by the President or Magistrate. This has been honoured more in the breach than in the observance by some officers, probably because it takes so much time in busy Courts. It is therefore proposed to try a somewhat different procedure in future, as follows:-

(i) Except as mentioned in sub-paras (ii), (iii) and (iv) below, the President can appoint a responsible officer in all Courts in his Circuit, which have to submit these Summaries, and instruct him to check and certify them. Such officer need not necessarily be the officer who prepares them, and in fact, it might be a better check if it is another officer. The President must appoint an officer who he feels is trustworthy. On change of holders, another officer should be appointed. Presidents should make the appointment in writing and keep a record of them in order to obviate uncertainty.

- (ii) In small Courts when there is only one officer capable of this duty, it would be better not to appoint. In such places, cases are few, and the President and Magistrate can easily check and certify their own cases in the Summary.
- (iii) If the appointed officer is absent, the President and Magistrate must not allow an unauthorised officer to check and certify, but must do so themselves.
- (iv) If the President considers there is no reliable officer available he should not appoint, and he and the Magistrate will have to make their own check.
- (v) It must be appreciated that this procedure is not intended to relieve Senior Officers from all responsibility. It is their duty to make certain, by occasional check themselves that the appointed officer is functioning correctly. It is suggested that when making the check on cash, laid down by P.G.O. 167, from time to time, they should check also a Monthly Summary or part thereof. This is important and need not be laborious. A short check is better than an occasional long one. Magistrates must report errors to the President who should take action thereon.

7. The other requirements of Appendix A to Registrar's Circular No. 4/55, (i.e., 1 to 4) must continue to be supplied to the Audit Department. If the Audit Officer asks for other information it should be supplied if reasonably possible, but if it involves an undue amount of clerical work, reference should be made to this office.

B. Imprisonment in Default of Payment of Fine.

1. When a convicted person is undergoing imprisonment in default of payment of a fine, it sometimes happens that an offer is made either to the Court or to the Superintendent of the Prison to pay that portion of the fine which would enable his release under Section 283 (i) (f) of the C.P.C. States Code (or Section 279 (i) (f) of the Settlements Code). It must be realized that only the Prisons Department are in a position to know what remission is due to the prisoner (vide Rule 52 of the Prison Rules L.M.326/53), and therefore to work out the exact sum which would ensure release on any given date.

2. Therefore, if the offer is made to the Court:-

- (a) A calculation can be made immediately taking the proportion of the term served to the whole sentence in default, and determining the amount to be paid on that basis. This would not be incorrect because Section 283 (i) (f) uses the wording "not less than proportionate". The person offering must be told that if this sum is paid, an Order of Release will be signed and sent to the Prison immediately.
- (b) But the person offering should also be told that it is possible that a somewhat lesser amount might secure release, but that this cannot be ascertained without reference to the Prison Superintendent, which must involve some delay. If the person offering elects to wait, the exact amount taking into consideration the remission earned must be ascertained from the Prison Superintendent, and after payment, an Order of Release must then be issued and sent to the Prison Superintendent. The Prison Superintendent should give the amount to be paid in writing.

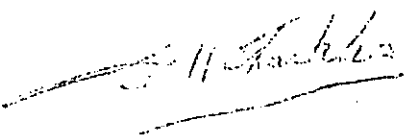
- (c) It is quite clear and must be made clear to the person offering that no refund of any excess amount involved in the calculation by method (a) above can be made. Imprisonment in default does not in itself satisfy a fine, and therefore no refund can be made.

3. Where the person offering goes or writes first to the Prison, the procedure followed by the Prison Superintendent is as follows:-

- (a) He calculates the amount to be paid to secure release on a stated date, taking remission under the Prison Rules into account, and tells the person offering to pay that to the Court concerned. The Commissioner of Prisons is being asked to instruct that the amount be informed to the Court in writing.
- (b) If and when the amount is paid to the Court, the Court gives a receipt therefor and sends an Order of Release on the stated date to the Prison.

4. It is necessary to tie up the above procedure with the Monthly Summary of Cases for the Audit Department. It will be observed from Case No. S.C.1057/55 in the Pro-forma annexed hereto, that where an accused goes to Prison in default of payment of fine, the Warrant of Commitment number and date are given. Such a case need not appear again in subsequent Monthly Summaries unless a payment is made. If this occurs the case should be put in the next Monthly Summary again, in the way shown as Case S.C.1058/55 in the Pro-forma.

5. In Courts where Monthly Summaries are required, the Prison Superintendent's notes of the amounts to be paid to secure release under paras 2 (b) and 3 (a) above should be submitted with the Summaries. In Courts where no Summaries are submitted, these notes must be kept for the Audit.


(D. H. SHACKLES)
REGISTRAR.

The Federal Registry,
Supreme Court, F. of M.,
Kuala Lumpur, 8th June, 1956.

RSC.39/54/25 & RSC.149/50-II/1114.
DHS/CHK

Distribution:

All Senior Assistant Registrars, Supreme Court.
All Assistant Registrars, Supreme Court.
All Presidents, Session Courts.
All Circuit Magistrates.
The Director of Audit, F.M., K.L.
The Commissioner of Prisons, F.M., Taiping.