

**“Protocol for Recording of Evidence before Court
Commissioner ”**

Part-1
Preliminary

1. **Short title-** This Protocol is titled “Protocol for Recording of Evidence before Court Commissioner.”
2. **Statutory Provision-** This protocol is prepared as per Order 18 Rule 4 CPC and Section 10, 15 & 16 Family Courts Act, 1984.
3. **Court-** Whenever the term ‘Court’ appears in this Protocol it should refer to as defined under Section 2a of Family Courts Act, 1984.

Part-2
Preparation for Assignment

4. **Recording of evidence in Matrimonial Cases-** Recording of evidence in Family Court Cases may be carried out before the Court Commissioner.

Explanation: For reasons to be recorded, Court may retain the case for recording of evidence before the Court.

Appointment of Court Commissioner- As per the Protocol, on the date of Hearing when the issues are identified or any time thereafter, the Court may pass an order for appointment of Court Commissioner by Ld. Secretary, DLSA.

5. **Copy of order be shared with parties and Court Commissioner-** Copy of the order of framing of issues,

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appointment of Court Commissioner and the schedule of recording of evidence shall be supplied to the parties as well as the Court Commissioner.

Part-3
Recording of Evidence

6. **Filing of list of witnesses-** Both sides shall file list of witnesses preferably within one week but not later than 15 days of identification of issues before the Court while sharing an advanced copy thereof with the opposite party.

7. **Order of assignment of Case to the Court Commissioner-** While assigning the case, following aspects shall be complied :

- i. **Schedule of evidence-** Recording of evidence shall start preferably within two weeks of identification of issues. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule for recording of evidence, if needed, shall be decided by the Court Commissioner as per convenience of all concerned, as far as possible. However, entire evidence shall be endeavored to be concluded within Eight weeks of initiation.
- ii. **Judicial File-** Judicial file shall not be sent or summoned for the purpose of recording of evidence by the Court Commissioner.

- iii. **Examination-in-Chief-** An advance copy of examination in chief by way of affidavit shall be supplied to opposite party preferably one week in advance. However, no adjournment shall be granted in case of non-supply of advance copy.
- iv. **Production of documents for cross-examination-** In case the opposite side is desirous of production of any document by the witness or any other entity for the purpose of cross-examination, an application requesting the same shall be moved well in advance before the Court.

Part-4
Duty of Court Commissioner

8. Recording of evidence by the Court Commissioner-

(1) **Place and Time-** Court Commissioner shall record evidence either in Lawyer's chamber, or Judges/Bar Library, Court Room or any other public place within the Court Complex as mutually agreed by all concerned. Evidence shall be recorded between 10.00 AM to 5.00 PM. It can carry on beyond 5.00 PM as well in case both parties agree. It can be recorded even on a holiday if all the stakeholders are comfortable and agree to the same.

(2) **Chronology of recording-** Court Commissioner shall proceed to record the

examination by first recording the deposition of litigating party before examining additional summoned witnesses.

(3) **Oath to witnesses-** Court Commissioner shall administer oath to the witnesses under examination as a delegate of the Court as per Oaths Act, 1969.

(4) **Recording of evidence-** The evidence shall be preferably typed on a computer but can also be recorded by hand neatly.

(5) **Time frame-** Court Commissioner shall conclude the recording of evidence, as early as possible, but not later than eight weeks of assignment of a case. In case, for any reason the parties are unable to adhere to the time schedule, extension can be sought from the Court.

(6) **Comfortable sitting space-** Witnesses and their Counsel shall be provided comfortable sitting space by the Court Commissioner.

(7) **Exhibition of documents-** Court Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by either side, the objection shall be recorded in some detail and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof thereof and that admissibility of

such document shall be decided by the referral Court at final stage.

(8) **Original documents to be retained by parties-** Court Commissioner shall make an observation in the record of evidence of all original documents produced and shall sign the exhibits with an endorsement OSR (original seen and returned) wherever necessary. If a party has filed original documents along with pleadings in Court, the same can be taken back as per rules for the purpose of recording of evidence before the Court Commissioner. Original documents be submitted with the Court at the time of final arguments.

(9) **Language-** Recording of evidence shall preferably be carried out in English, unless requested by the parties otherwise.

(10) **Adjournments-** Once started, the cross-examination shall preferably concluded on the same day or continue on day-to-day basis. In case of any hardship viz. ill health etc. the case can be deferred but preferably for a day or two but not later than a week.

In case an evidence schedule is fixed and adjournment is sought by the opposite side, i.e the side other than who is leading evidence, without 24 hour advance notice.

(11) **Explanation:** In case a witness scheduled to be examined or under examination is reported to be unwell or unavailable, the party leading the evidence shall produce the next witness in line in the list for recording of evidence.

(12) **Recording of objections-** All the objections raised during cross-examination/ reexamination shall be recorded in the deposition under title objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to answer the question asked.

(13) **Questions to be allowed-** In case Court Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer. However, Ld. Counsels shall refrain from asking questions relating to contents of a Documents/ Pleadings/ Affidavit which can be answered by reading them. Also questions like who drafts the Affidavit and who attested it etc. may be avoided. Witness can be confronted with a document in cross-examination even if it is not available on record.

(14) **No third person intervention-** Court Commissioner shall ensure that the witness is not

assisted by his Counsel or any other person while under examination in answering the questions.

(15) **Recording of demeanour of witness-** Court Commissioner shall record the demeanour of the witness wherever it is found pertinent and necessary for sharing with the Court.

(16) **Copy of evidence-** All parties shall be provided uncertified electronic/hard copy of the evidence recorded, free of cost by Court Commissioner.

(17) **Safe keeping of original deposition-** Court Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.

(18) **Miscellaneous proceedings-** Court Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court at the time of submission of final report.

(19) **Hostile Witness-** In case a witness is sought to be declared hostile, then Court Commissioner shall refer both the parties to Court at the earliest and the Court shall decide the issue within three days.

Part-5
Miscellaneous

9. **Summoning of Witness-**

(1) **Summons from Court-** In case a litigating party is desirous of summoning a person for deposition or production of documents, it shall obtain summons from the Court with an endorsement that such person shall appear before the address of Court Commissioner on scheduled date, time and place.

(2) **Diet Money-** Diet money shall be paid to such witness by the party desirous of summoning as per rules.

10. **Advisory to Court Commissioner-** While recording the evidence on commission, the Court Commissioner shall ensure the following:

Impartial- Court Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.

(1) **Polite-** Court Commissioner shall be polite with the witness and other stakeholders while recording of evidence.

(2) **Confidentiality-** Court Commissioner shall maintain confidentiality during the whole process.

(3) **Keeping professional distance-** Court Commissioner shall not solicit professional work from the parties.

(4) **Integrity-** Court Commissioner shall not accept remuneration or any favour in cash or kind from

the parties over and above the honorarium fixed by the Court.

- (5) **Non-judgmental-** Court Commissioner shall not criticize the professional conduct of lawyers and litigating parties on their understanding of law.
- (6) **Punctuality-** Court Commissioner shall adhere to time schedules and shall not make excuses like being engaged in some personal or Court work etc.
- (7) **Coordination-** In case of any unforeseen circumstances warranting change of dates of hearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, SMS, Whatsapp Group etc..
- (8) **No third party sharing-** Court Commissioner shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with any stranger without permission of the Court.
- (9) **Inspection-** Court Commissioner shall allow any party to inspect the recorded proceedings only in his presence.
- (10) **Recusal-** In case either of the parties or Counsel for the parties are related or closely known to Court Commissioner, he/she shall recuse self from the case and inform the referral Court.

11. Remuneration of Court Commissioner -

- (1) **Remuneration-** In terms of Order 18 Rule 4 of the Code read with Section 10, 15 & 16 of Family Courts Act, 1955, Court Commissioner shall be paid remuneration for the work carried out.
- (2) **Mode of payment-** Such remuneration shall be paid by the Secretary, DLSA as per its policies and schedule.
- (3) **Cost to parties-** Each party shall individually bear any additional cost other than that of LC incurred in leading its evidence.
- (4) **Fee to be paid-** Remuneration fee for recording of evidence shall be payable by Secretary, DLSA as per internal policy document or payment scheduled of DLSA. Court Commissioner shall record the Evidence himself and in case the Stenographer services are taken it can either be arranged by a litigating party on its own cost or in case the same is arranged by Court Commissioner, then the actual cost of typing shall be reimbursed by the party to the Court Commissioner.
- (5) **Litigation Cost-** Expenditure incurred in recording of evidence shall be redeemable as cost of litigation at the end of the suit, as applicable.

12. Judicial Intervention during recording of evidence-

- (1) **Parties to cooperate-** It is expected that both the sides will cooperate with Court Commissioner as well as with each other in recording of evidence and carry out proceedings in a cordial manner.
- (2) **Dissolution of hindrances-** In case of any conflict resulting into hindrance recording of evidence, it shall be resolved amicably by the parties at their own level with the active help of the Court Commissioner.
- (3) **Court intervention-** However, in case of any unforeseen situation requiring judicial intervention, Court Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

13. Miscellaneous Applications-

- (1) **Moving the application-** In case either of the parties is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. it shall share an advance copy with the opposite side and reply thereof, if any, shall be filed and shared within seven days.
- (2) **Date of hearing-** Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court with the help of Reader of the

Court and shall not wait till next date fixed for hearing. All such miscellaneous applications shall be registered, numbered and indexed separately.

- (3) **Evidence not to be stalled-** It is clarified that, unless Court Commissioner is of the view that the interim application moved by either of the parties is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

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