

E109/142/07

6 September 2007

Circular 31/2007: Attendance of Civil Servants in Court as Witnesses

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1. I am directed by the Minister for Finance to state that the following arrangements should apply where civil servants are required to attend in Court as witnesses.

Part A: Civil servants called as witnesses on behalf of the State

2. A civil servant required to attend Court as a witness on behalf of the State in criminal or civil proceedings must attend as directed. The officer's attendance may be required by means of a sub poena or may be arranged through his/her official duties.

3. A civil servant's attendance as a witness on behalf of the State in relation to any of the following matters should be treated in accordance with Part A of this Circular:

- (a) a Court Martial;
- (b) a Court of Inquiry assembled pursuant to the Defence Act 1954;
- (c) the investigation of a charge by a Commanding Officer or the trial of a charge by an authorised officer in accordance with the provisions of the Defence Act 1954;
- (d) the taking of a summary of evidence by a military officer in accordance with the provisions of the Rules of Procedure (Defence Forces) 1954.

4. The officer's attendance in Court should be regarded as part of his/her official duties and the officer should accordingly be paid his/her:

- (i) Normal salary for the period of the necessary absence, and
- (ii) Travel and subsistence subject to the usual regulations.

The amount of such travel and subsistence should be charged to the Vote for the officer's Department/Office.

5. The officer should request the prosecuting authority to claim any expenses s/he may be entitled to as a witness. In civil proceedings where the State is successful, the Chief State Solicitor or Local State Solicitor should claim the amount of the travel and subsistence expenses payable to the officer by his/her Department/Office. Sums received from the party requesting attendance should be dealt with as in Section D below.

6. A claim for recovery of salary or loss of service should not be made.

Part B: Civil Servants called as witnesses on behalf of parties other than the State

7. A civil servant called as a witness on behalf of a party other than the State, should, provided s/he has been served with a summons or sub poena, be granted special leave with pay for the period of necessary absence.
8. If called as a witness in connection with a matter in his/her official capacity s/he should also be paid travel and subsistence subject to the usual regulations. The officer should request the prosecuting authority to claim any expenses s/he may be entitled to as a witness from the party requesting attendance. If possible, the party requesting attendance should be given preliminary notice that the claim will be made. A claim for recovery of salary or loss of service should not be made. Sums received from the party requesting attendance should be dealt with as in Section D below.
9. Where an officer is called as a witness on matters not connected with his/her official duty, travelling and subsistence expenses should not be paid by the Department/Office, but s/he may keep amounts paid to him/her by the party requesting attendance by way of witness expenses. A claim for recovery of salary or loss of service should not be made.

Part C: Viaticum Payments

10. An officer attending Court as a witness following a sub poena may receive a *viaticum* to cover certain costs incurred in attending Court. Officers are entitled to retain these payments where no travel or subsistence expenses are payable under the usual regulations. Where officers are entitled to travel and subsistence expenses they should surrender the amount received by way of *viaticum* to the Department/Office to which they make the claim. The surrendered *viaticum* payment should be accounted for as set out in Section D below.
11. Where Departments/Offices receive *viaticum* payments from the party requesting attendance in respect of the officer's attendance at Court, Departments/Offices should ensure that any payments so received are passed on to the officer attending the Court, unless the officer has an entitlement to travel and subsistence expenses greater than the amount of *viaticum*. The retained *viaticum* payment should be accounted for as set out in Section D below.
12. Any travel and subsistence expenses incurred over and above the *viaticum* should be claimed from the party requesting attendance and the sums received should be accounted for as set out in Section D below.

Part D: Accounting treatment of sums paid by the party requesting a witness's presence

Viaticum payments or payments on foot of a claim, can be made by the party requesting a witness's presence to the prosecuting authorities, the Chief State

Solicitor, or Local State Solicitor, and credited to the Vote of the Office of the Chief State Solicitor or to the Department/Office of the officer attending as a witness. In cases where sums due to a Department/Office under Parts A, B and C above are received by an officer from the party requesting attendance, they should be surrendered to his/her Department/Office.

13. Where sums have been credited to the Vote of the Chief State Solicitor, Departments/Offices should liaise with the Chief State Solicitor's Office for the transmission of those sums to the Department/Office.

14. Sums received by a Department/Office should be taken to account as an Appropriation-in-Aid to the Department's/Office's Vote, or in the absence of an Appropriation-in-Aid subhead, credited to the relevant subhead.

Part E: Other Issues

15. Where an officer is required to attend Court as a witness during a period of annual leave, the amount of annual leave taken may be suitably adjusted. Where an officer on annual leave is required to attend Court as a witness on behalf of the State or on behalf of a Party other than the State, in connection with a matter coming before him/her in his/her official capacity, s/he may, subject to paragraphs 3 and 7 preceding be paid travelling expenses, if appropriate, provided conditions set out in Circular 11/82, relating to recall from annual leave, are fulfilled. [See Appendix 1].

16. The provisions of this Circular will not apply where special arrangements are in force for furnishing expert evidence in Court by professional or technical officers at the request of parties other than the State.

17. Circulars 5/52 and 8/58 are hereby revoked.

Yours sincerely

Michael Errity
Personnel and Remuneration Division

Appendix 1.

Circular 11/1982 – Travelling and Subsistence Regulations (extract)

Travelling Expenses in respect of Recall From Leave

30. Travelling expenses in respect of recall from leave will be paid only on the condition that the officer was not informed of the probability of recall or that the recall could not have been foreseen when he went on leave.

31. Subsistence allowance will not be paid in respect of recall from leave unless the officer's usual place of residence at headquarters is not available.