

# PROCESSES & MAINTENANCE OF DIARY

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# Due Process

- ▶ Due process is the legal requirement that the state must respect all of the legal rights that are owed to a person. Typically, "Due process" means NOTICE, generally written, but some courts have determined, in rare circumstances, other types of notice suffice. Notice should provide sufficient detail to fully inform the individual of the decision or activity that will have an effect on his/her rights or property or person

# Fundamental Principle of Justice

- ▶ Audi alteram partem (or audiatur et altera pars) is a Latin phrase that means "hear the other side too", or "hear the alternative party too". It is most often used to refer to the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.

# Applicability of Criminal & Civil Procedure Code to FATA.

- ▶ Criminal Procedure Code is extended to Fata vide Notification No.8-W, dated 3-9-39
- ▶ 20. ***Attendance of parties and witnesses before Political Agent or District Coordination Officer or Council of Elders.***— Where a reference is made to a Council of Elders, the Political Agent or the District Coordination Officer, as the case may be, may exercise all or any of the powers conferred by the Code of Civil Procedure, 1908, (Act V of 1908) and the Code of Criminal Procedure, 1898, (Act V of 1898) respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders or Joint Council of Elders, of the parties, and witnesses, or any of them, in any case and at any stage of the proceedings.

# . Effect of decree on finding of Council.-

- ▶ 9. A decree passed under clause (a) of subsection (4) of section 8 shall,-
  - (a) be a final settlement of the case so far as the decree relates to the matter stated in the reference; and
  - (b) have, to that extent and subject to the provisions of this Regulation with respect to the finding of appeal or revision as the case may be, the same effect as a decree of a Civil Court of ultimate jurisdiction, and be *enforced* by the Political Agent or the District Coordination Officer, as the case may be, *as a decree of such Court*.

# Methods of Service of Summons

- ▶ Three basic methods are used for service of process: (1) actual, or personal, service, (2) substituted service, [(i) service by mail; (ii) service on agent or other member of family; (iii) service by affixation of copy (iv) service by publication]

# Personal Service

- ▶ "Personal service" means that someone – NOT a party to the case – must personally delivery the court documents to the other side.
- ▶ In “personal service”:

The server gives the papers to the party being served. It can be at the party’s home, work, or anywhere on the street.

The server has to identify the party being served and hand the legal papers to him or her and inform him or her that they are court papers.

If the party being served does not want to take the papers, they can be left on the ground in front of him or her. If he or she takes the papers and tears them up or throws them away, service is still considered to be valid.

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- The server then fills out a proof of service, detailing when, where, and how (in person) the papers were served. The server signs the proof of service and returns it to file in court.

Personal service is complete the day the papers are served.

“Personal service” is the most reliable type of service because the court knows for sure that the person being served got the papers and, if necessary, can question the process server about the “service.”

Since it is the most reliable, “personal service” is valid in all types of case. Also because it is so reliable, it is generally required when serving the first papers (the petition or complaint) in a case.

# Substituted Service (Service by Mail)

- ▶ For “service by mail”:
  - ▶ • The server mails the papers to the party being served. If the party being served is a person, the papers can be mailed to his or her home or mailing address. If it is a business, the papers must be mailed to the owner(s) at the business’s main office. If the business has an agent for service, the papers should be mailed to the agent for service.
  - ▶ The server then fills out a Proof of Service, detailing to whom the papers were mailed, to what address, when, how, and where they were mailed from. The server signs the Proof of Service and returns it to court.

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# service on agent or other member of family

- ▶ If the server is unable to find the person to be served, he or she can, on the last attempt, leave the papers with an agent or someone at the other party's house, at least 18 years old, who lives there. If the server is trying to serve the papers at the other party's work, then the papers can be left with someone at the office that appears to be in charge and is at least 18 years old.
- ▶ The server must tell the person that he or she hands the papers to that they are legal documents for the other party. The server must also write down the name and address of the person he or she gave the court papers to. If the person will not give his or her name, the server must write down a detailed physical description.

# Service by Affixation of Copy

- ▶ . Some systems permit service by affixing the summons and complaint to the entrance of the defendant's home or place of business and then mailing a copy of the papers to that individual at his last known address. This method is often called "nail and mail" service.
- ▶ Boundaries must be mentioned with witnesses & server be examined in court.

# Service by Publication

- ▶ . Publication is also called constructive service because the court construes it to be effective whether the defendant actually reads the notice or not. Generally, service by publication is allowed only by leave of the court, which usually grants permission only when the plaintiff can show that no other method of service can be effected. Usually the legal notice must be published in at least one newspaper of general circulation where the defendant is likely to be found or where the court is located, or in both places.

# Service of warrant

- ▶ The arrest warrant includes:
  - ▶ identification of the charged person
  - ▶ brief description of the act, for which the person is charged
  - ▶ designation of section of criminal code, under which the person is charged
  - ▶ precise description of reasons for the issuance of the arrest warrant
- ▶ The arrest is conducted by the police. Following the arrest, the police must within 24 hours either hand the arrested person over to the nearest court or release the person.

# Warrants to Whom Directed

- ▶ A warrant of arrest shall ordinarily be directed to one or more police-officers, but any Court issuing such a warrant may, if its immediate execution is necessary and, no police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.
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# Warrant Forwarded for Execution Outside Jurisdiction:

- ▶ When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or District Superintendent of Police within the local limits of whose jurisdiction it is to be executed.

# Procedure on Arrest of Person Against Whom Warrant Issued

- ▶ When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate or District Superintendent of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under Section 76, be taken before such Magistrate or District Superintendent.
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# Procedure by Magistrate Before Whom Person Arrested is Brought

- ▶ Transferred to court issuing warrant or;
- ▶ Release him on bail in bail able offence;
- ▶ Court of sessions may release him in non bail able offence

# Procedure for Removal in Custody to Tribal Areas

- ▶ The magistrate after satisfying himself order the removal to tribal areas

# Summons to Witnesses or Production of Documents

- ▶ Such summons can be issued both by civil & criminal courts with just exceptions & in case of defiance coercive measures can be resorted to.

# Maintenance Of Diary

- ▶ A managerial exercise.(case flow management)
  - Challenge.
  - Accommodation of stake holders.
  - Expeditious Disposal.
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# Concluded

THANKS

