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In the Name of Allah, the Most Merciful, the Most Compassionate!

Islamic Emirate of Afghanistan
The Supreme Court
General Directorate of Secretariate
Directorate of Correspondence
Instructions Department

Letter No. 631-632/360-361

Date: 27/04/2024 (18/10/1445 A.H.)

To: The Appellate Court of Nangarhar Province

The instruction letter No. (9619) dated March 5, 2024 (24/08/1445 A.H.) from the Appellate Court of Nangarhar Province, received via letter No. (3700) dated March 23, 2024 (13/09/1445 A.H.) from the Directorate of Correspondence of the Supreme Court, has been received by the General Directorate of the Secretariat of the Supreme Court containing the following text:

- 1- As you are aware, advocates pursue legal and criminal cases against individuals in court, and most of these advocates are registered with the Ministry of Justice. However, some cases have issues such as:

These advocates are unable to prepare their indictments in accordance with legal/Sharia terms in cases involving individual rights.¹ As a result, most of these cases are decided on a non-hearing basis due to their invalidity.

- 2- Most advocates charge their clients more than what is determined by the procedure.
- 3- The petitions submitted to the courts are written by advocates or petition writers, but these petitions do not comply with the required terms. Moreover, they charge 500 AFN, 1000 AFN, or more for each petition.
- 4- In cases involving public rights², when a perpetrator is detained, an advocate visits the court and claims to be the assigned advocate for the perpetrator. They then charge the perpetrator's relatives for representation despite being of no

¹ Translator's Comment: Hoqooq-ul-Ebad (Rights of Individuals): These refer to the rights of individuals, focusing on personal and private matters, such as property disputes or personal injuries.

² Translator's Comment: Hoqooq-u-Allah (Rights of God): These are typically public rights in Islamic law, which pertain to the community or state, such as criminal offenses or public order matters.

use to their clients. If the perpetrator admits to the offense, the judge issues a decision. If the perpetrator is not satisfied with the decision, the case is referred to a higher court. If the perpetrator denies the offense, the judge investigates based on circular No. (28) dated December 29, 2023 (16/06/1445 A.H.) from the General Directorate of the Secretariat of the Supreme Court. If found guilty, the perpetrator will be punished; if found not guilty, he will be acquitted. If there are no advocates in the court in cases involving public rights, it will be kindness to people and the perpetrator's victims because their money will not be wasted on hiring an advocate. The presence of advocates in such cases often results in unnecessary expenses for the relatives of the accused, who frequently face financial difficulties. Often, when the relatives of the prisoners visit the court, especially women, they say they do not even have enough money to pay the advocate, which often causes additional problems.

- 5- In many cases, these advocates also act as brokers, leading to corruption. Such brokers are prevalent in many places in Nangarhar Province, further harming the court's reputation. These issues exist in most places where I have worked.
- 6- The advocates assert that they are official advocates and demand more privileges from the court's judges than the public. However, judges are legally obliged to remain impartial and not give preference to either the claimant or the defendant. Advocates sometimes complain that judges do not treat them properly or assist them in taking their turns in court, and they do not agree to be treated the same as the opposing party. We have presented the above explanation to the honorable authority and await any instructions deemed necessary.

The above-mentioned issue has been forwarded to the Supreme Court, and the Supreme Court issued a decision dated April 25, 2024 (16/10/1445 A.H.) as follows:

1. In legal cases, the Ministry of Justice should not issue licenses to advocates until they have been tested for preparing various types of valid indictments. Those advocates who have already been issued licenses shall also be tested, and if they fail, their licenses should be revoked.
2. Advocates who charge more than what has been determined by the approved procedure shall be identified, and their licenses should be revoked.
3. If the charging fee has not been determined for petition writers, it should be set by the concerned authority. If they still violate the rules, their licenses should be revoked.

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4. There is no need for an advocate in cases involving public rights because the court itself hears the statements of the accused/perpetrator and issues a decision based on it. Advocates in such cases might cause problems, and these problems will be avoided in their absence.

Moreover, the General Directorate of the Secretariat of the Supreme Court has ordered courts via Circular No. (27), dated December 29, 2023 (16/06/1445 A.H.), to give priority to these issues, and actions should be taken in the order they are received. There is no provision stating that advocates' cases should be preferred over others.

Therefore, the decision of the Supreme Court on the mentioned issue has been sent to your department through this letter to act in accordance with the guidance/instruction provided.

Respectfully

Mufti Abdul Rashid "Saeed"

General Director of the Secretariate

Supreme Court

[Signed and stamped]

Copy to the Directorate of Correspondence of the Supreme Court regarding Letter No. (3700) dated March 23, 2024 (13/09/1445 A.H.).

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This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at www.arlo.online.