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Islamic Emirate of Afghanistan
The Supreme Court
The Secretariat
Sub-Directorate of Correspondences
Department of Circulars

No. of Circular: 5

Date: August 13, 2022 (15/1/1444 A.H.)

To:

The Personnel of Cassation, Divisions, Appellate, and Primary Courts of the Islamic Emirate of Afghanistan

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Personnel of the Cassation, Divisions, Appellate, and Primary Courts of the Islamic Emirate of Afghanistan

May Allah's blessings, mercy, and peace be upon you!

The Secretariat recently submitted a proposal to the High Council of the Supreme Court during its session on March 8, 2022 (5/8/1443 A.H.). The text of the proposal is provided below for your consideration:

"Several courts have raised the question, 'When is a case considered to be in process, and when is it not?' To clarify this distinction, we provide the following explanation:

There are instances when a plaintiff files a petition in court. The court then issues a summons for the defendant to appear. If the defendant appears and states, 'I want to transfer my case to another court' either before the plaintiff's indictment is presented or after the indictment but before their defense statement is produced, this request may be granted. The same applies if the defendant does not appear in court at all and seeks a transfer through the Cassation court. In these three scenarios, the defendant has the right to request a transfer to another court, and the case is not considered to be in process.

However, if the defendant requests a transfer after their defense statement has been presented, the case is deemed to be in process, and they lose their right to request a transfer. An exception to this rule exists when the opposing party agrees to the transfer despite the case being in the process. In this situation, the defendant may request a transfer in accordance with Article 57 of the Bill of Courts."

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As this text has been previously circulated to all courts of the Islamic Emirate by the High Council of Courts through Letter No. (515ح) dated 4/1/1442 (23 August 2020), we propose that it be circulated once again for your attention. Your directive, whatever it may be, will be followed.

In response to the aforementioned matter, the High Council issued Directive No. (40) on 5/8/1443 A.H. (8 March 2022) as follows:

"The Secretariat shall dispatch the said letter as a circular to all the courts."

In compliance with the High Council's resolution, we are sending this circular to the Cassation, Divisions, Appellate, and Primary Courts. Please ensure that actions are taken in accordance with Sharia principles and the stated directive.

Regards,

(Signed)

Mufti Abdul Rasheed "Saeed"

General Director of the Secretariat

The Supreme Court

(Stamped)