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Air Headquarters
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Air HQ/C 23381/PS

08 Dec 05

HQ WAC,	IAF	} (For AOsC-in-C)
HQ SWAC,	IAF	
HQ CAC,	IAF	
HQ EAC,	IAF	
HQ SAC,	IAF	
HQ TC	IAF	
HQ MC	IAF	

USE OF TELERECORDING / FAX SYSTEMS
FOR RECORDING OF EVIDENCE IN THE
C OF I/FORMAL INVESTIGATION PROCEEDINGS

1. The expeditious finalisation of the proceedings of fact-finding bodies in the IAF like Courts of Inquiry, Formal Investigation etc., is *sine qua non* for the timely initiation of appropriate remedial and punitive actions. Due to non-availability of outstation witnesses, such proceedings, at times, get inordinately delayed.

2. To avoid and minimise delays in the completion of investigation proceedings, it has been decided that the C of I / Investigating Officer may record the evidence of outstation witnesses *in situ* at their respective Units, by tele-recording and fax facilities. Wherever possible, the evidence of outstation witnesses belonging to the Army, Navy and civilian witnesses may also be recorded by following a similar procedure. The evidence of witnesses belonging to Units located on the same Station shall, however, continue to be recorded in accordance with the existing procedure and practice.

3. The C of I/ Formal Investigation shall make all possible endeavours to record the evidence of all outstation witnesses by tele-recording and fax. However, if the C of I/ Investigating Officer intends to invoke the

provisions of Para 790(a), (b) & (c), or any other akin provision, in respect of any outstation individual, it is imperative that the presence of such individual, irrespective of the location of his/her unit, is procured at the place where C of I/ Formal Investigation is being conducted and normal procedure is followed. Likewise, if the convening authority is of the view that the nature of evidence of a particular outstation witness is material or sensitive, it may take up the case with the Command HQ for procuring the attendance of such witness. Certain examples are: -

- (a) The individual is a sole/eye witness in the matter and without his actual presence, the progress of proceedings is likely to be hampered.
- (b) The individual is the complainant in the case and the investigation has been ordered as a sequel to his complaint.
- (c) The individual is required to bring out certain facts in person; explain/produce complicated documents; or, is required to visit the scene of incident and bring out facts.
- (d) For reasons to be stated in writing, any witness whose presence is considered imperative by the convening authority at the place of investigation.

4. Likewise, if an individual on whom Para 790 of the Regulations for the Air Force, 1964, or any other akin provision, has been applied, insists upon the physical presence of a particular witness for cross-examination, on the ground of denial of meaningful opportunity for defence, the Presiding Officer would consider such request keeping in view the relative importance of the evidence of such witness. If agreed to, the Presiding Officer would recommend to the Assembling Authority to procure the attendance of such witness(es), who will initiate necessary steps in this regard.

5. For the above purpose, the existing resources such as secure voice communication lines, civil STD lines, computers and fax machines are to be advantageously used. As an *ab-initio* measure, the designated telephone instruments in the Units are to be fitted with speakers and microphone facility. Provision for voice recording from the speaker phone is required both at the place of investigation and the location of the witness(es). PD Sigs and PDIT at this HQ are in the process of

issuing necessary instructions for the provisioning of associated facilities for the recording of evidence in the abovesaid manner.

6. The detailed procedure for recording the evidence of outstation witnesses is enclosed as Appendix 'A'. The duties of the Presiding Officer/ Investigating Officer are enclosed as Appendix 'B'. The duties of the 'Authenticating Officer' and the 'Witness' are enclosed as Appendix 'C' and 'D', respectively.

7. You are requested to disseminate this letter to all Stns / Units under your Command. It is possible that certain Units might initially experience a few teething problems in following the above procedure. In such cases, CJA of Command HQ/ Deptt of JAG (Air) at this HQ, may be actively consulted so as to decide the most suitable course of action in the facts and circumstances of a particular case.

8. Please acknowledge.

(HS Garkal)
Air Mshl
AOA

Encl : As Stated

Copy to:

HQ IDS
HQ SFC
HQ ANC
NDC
CAW
DSSC
All Units under Air HQ

Internal Copy

AA to CAS
VCAS
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IG

Appendix 'A'
(Refers to Para 6 of
Air HQ/C 23881/ PS
dated 08 Dec 05)

**PROCEDURE FOR RECORDING OF EVIDENCE OF
OUTSTATION WITNESSES**

1. **Examination of the Subject Matter** On the ordering of C of I/Formal Investigation, the Presiding Officer/Investigating Officer shall examine the entire subject matter in accordance with the 'Terms of Reference'. The C of I/O shall proceed with the investigation in the normal course with the available witnesses. However, the identity of likely outstation witnesses shall be ascertained.
2. **Identification of Outstation Witnesses** The PO/IO shall then decide about outstation witnesses, if any, whose presence is considered essential to be procured at the place where the C of I is being conducted. The Assembling Authority shall be informed, who, if it deems fit, shall initiate necessary steps to procure their attendance. The list of outstation witnesses whose evidence is intended to be recorded *in situ* at their respective units, shall accordingly be drawn up.
3. **Notification** The PO/IO shall inform the COs of all outstation witnesses about the requirement of recording the evidence of the individual belonging to their respective units. The subject matter of the investigation and relevance of the 'Witness', shall be informed to the COs. The date and time of recording the evidence shall be fixed accordingly.
4. **Appointment of Authenticating Officer** The CO of the outstation witness(es) shall then appoint an Independent Officer from his Unit, who shall be known as 'Authenticating Officer' (AO). In the case of an Officer 'witness', the 'AO' should preferably be of the same rank as that of the 'Witness'. The AO is to serve as an interface between the C of I/ Investigating Officer and the witness(es). The CO shall brief the 'AO' about the details of investigation, as received by him from the PO/IO.
5. **Initial Spade-work** The 'AO' shall contact the PO/IO and ascertain the nature and subject matter of the C of I. The PO/IO shall inform the 'AO' as to how the witness is connected to the subject matter.

6. The 'AO' shall brief the witness accordingly and ask him to be ready for giving his evidence by the tele-recording and fax system on the appointed day.

7. On the appointed day, before the time fixed for tele-recording, the PO/IO and the 'AO' shall ensure at their respective ends that telephones with speaker and tape-recording facilities are available for tele-recording. A fax machine should also be designated for despatch or receipt of documents.

8. **Recording of Evidence** The 'Witness' shall report to the 'AO' well before the designated time for tele-recording of evidence and obtain briefing about the system and procedure. He shall make an oral statement to the 'AO', who shall record the same. The witness as well as the 'AO' shall sign each page of his statement. He will also submit documentary evidence, if any, as exhibits to the 'AO', who shall authenticate the same in his presence.

9. At the designated time and date, the 'AO' shall contact the PO/IO, identity himself and confirm readiness of witness for the recording of evidence.

10. The administration of oath/affirmation, wherever necessary, will be done telephonically and so authenticated by the 'AO'. It shall be so stated in the statement before the commencement of the evidence of the witness.

11. The witness shall then make his oral statement on telephone, which is read out on telephone to the PO/IO in a clear audible tone. The statement read out by the witness is voice recorded by the 'AO' and PO/IO. The cassette(es) will form part of the text in the proceedings, however, the same will be retained in the Unit for safe custody.

12. The 'AO' will then immediately fax the written statement of the witness along with any unclassified documentary evidence, as necessary. All pages of the fax will bear the signature of the witness as well as the 'AO'.

13. If required, the C of I/Investigating Officer may thereafter question the witness either immediately or at a subsequent time or day.

14. The questions and answers are to be recorded by the C of I/O as well as the 'AO'. It will also be tape-recorded. The 'AO' will then fax transcription of the questions and answers to the PO/IO, after due authentication on each page by the witness and 'AO'.

15. The C of I / IO shall provide an opportunity to an individual on whom Para 790 or other akin provision has been applied, to cross-examine the witness. The questions and answers are to be audio-taped in the similar manner, as questioning by the C of I/O. Likewise, the 'AO' will fax transcription of such questions and answers to the IO/PO.

16. The accuracy and completeness of the evidence so recorded shall be certified by the PO/IO, 'AO', 'Witness' and affected individual(s), e.g., an individual in respect of whom Para 790 of the Regs has been invoked.

17. The ink-signed statement(s) and original exhibits (including classified documents) will be forwarded by the 'AO' to the convening officer by service mail/speed post. Such documents will be handed over to the PO/IO for proper compilation of the proceedings. If the C of I has concluded by then, these documents will be forwarded by the convening officer to the PO/IO.

Appendix 'B'
(Refer to Para 6 of
Air HQ/C 23881/ PS
dated 08 Dec 05)

**DUTIES OF THE PRESIDING OFFICER/
INVESTIGATING OFFICER**

1. On being detailed by the convening authority, the Presiding Officer/Investigating Officer, as the case may be, is to perform the following duties:-

- (a) Examine the matter under investigation and ascertain the likely witnesses involved. Proceed with the investigation of the matter in the normal course with the witnesses available and present.
- (b) Identify the outstation witness(es). If the presence of an outstation witness is considered essential at the place of C of I/Formal Investigation, apprise convening authority about the same, who shall, if deemed fit, take up the case with Command HQ for procuring the attendance of such witness(es).
- (c) Identify the outstation witness(es) whose evidence is proposed to be recorded in *situ* at their respective Units. Intimate respective COs as regards matter under reference and requirement of the evidence of personnel belonging to their Units. Fix up the place, date and time for the tele-recording of evidence.
- (d) Confirm the availability of the witnesses at respective duty stations, obtain the details of the 'AO' and ascertain the availability of tele-recording facilities.
- (e) Contact the 'AO' and brief him on the procedure for tele-recording of evidence of witness. Also inform the 'AO' about the subject-matter of the investigation so as to enable him to brief the witness.
- (f) Ensure that telephone with speaker and tape recording facilities are available for tele-recording. Desirably, fax machine should also be located nearby.

(g) At the designated time and date, contact the 'AO' & the 'Witness' and confirm their identity. Request the witness to make his statement over tele-recording facility and record the same. Put forth questions/clarifications to the witness, as required. If essential, fix up a subsequent date and time for such questioning. The questions and answers are also to be recorded in the similar manner as the statement.

(h) Receive the statement of the witness duly signed by him on each page and authenticated by the 'AO'. The statement is to be shown to the individual likely to be apportioned blame.

(j) Allow the witness to be cross-examined by the individual on whom Para 790 of the Regs has been applied and record the evidence. Obtain the recorded version of the same duly signed and attested by the AO by fax and verify the same with the record made by the C of I. Any doubts in this regard are to be resolved immediately.

(k) If any time is sought by the individual likely to be apportioned blame for cross-examination, the same may be granted while ensuring the expediency in concluding the proceedings. Same procedure is to be followed at the reassembly, if any.

(l) All the authenticated documents like statements and exhibits received by fax are to be compiled in respect of each witness in the same manner as if he/she made the same in person.

(m) The ink-signed copies of statements and original exhibits, if any, received subsequently, are also to be attached to the proceedings as exhibits.

Appendix 'C'
**(Refer to Para 6 of
Air HQ/C 23881/ PS
dated 08 Dec 05)**

DUTIES OF THE AUTHENTICATION OFFICER

1. On being appointed as the 'AO' the Officer shall serve as an interface between the C of I/Investigating Officer and the witness and perform mainly the following duties: -

- (a) Obtain the details of C of I/ IO from the CO as regards the subject matter of investigation, date and time of recording evidence by tele-recording.
- (b) Contact the witness, intimate the subject-matter of investigation, time, place of assembly and explain the procedure and modalities of giving evidence.
- (c) Inform the witness to be prepared to give his statement in writing as regards matter under investigation and produce at the stage of recording evidence.
- (d) Ascertain the location, availability and readiness of tele-recording and Fax system for the witness to give evidence.
- (e) At the time of assembly, contact the C of I/IO. Identify himself and confirm the identity, presence and readiness of the witness to give evidence.
- (f) Be present during the process of deposition and recording of evidence and assist the C of I/IO as well as the witness.
- (g) If an oath/affirmation is required to be administered to the witness, administer the same. Record the oral statement of the witness in writing; take signature of the witness on the each page of the statement; and authenticate the same by signing and annotating the fact that the statement has been made voluntarily, in his presence.

- (h) Require the witness to make his statement over tele-recording facility and authenticate the same by his own voice.
- (j) Despatch the statement of the witness along with classified exhibits, if any, after certification, by fax to the C of I/IO, and confirm its receipt.
- (k) The entire process is to be repeated when a witness is further questioned/cross examined.
- (l) All the originals statements and exhibits are to be forwarded to the Assembling Authority. The CO would hand over such documents to the PO/IO for being attached to the proceedings. A set of copies of the documents are to be retained by the CO of the witness. If the C of I/Formal Investigation has been concluded, the Assembling Officer will forward the original to the PO/IO.

Appendix 'D'
Refer to Para 6 of
Air HQ/C 23881/ PS
dated 08 Dec 05)

DUTIES OF THE WITNESS

1. On being directed to be present and give evidence before a C of I/Formal Investigation through the 'AO', a 'Witness' shall mainly comply with the following: -

- (a) Obtain the details of C of I/Formal Investigation from his CO/ 'AO' as regards the subject matter of investigation, date and time of tele-recording.
- (b) Contact the 'AO' and obtain details about the venue, date, time, procedure and modalities of giving evidence.
- (c) Report to the 'AO' well before the designated time for tele-recording of evidence, and obtain briefing about the system and procedure. The witness will make an oral statement to the 'AO', who shall record the same. The witness shall also sign and submit his statement and exhibits, if any, to the AO who would authenticate the same in his presence.
- (d) At the time of assembly, under the guidance of 'AO', communicate with the C of I/IO, identify himself/herself and confirm the readiness to give evidence.
- (e) Make his statement over tele-recording facility and answer to the questions, as necessary, and thereafter, respond to the questions put forth by the individuals likely to be apportioned blame.
- (f) Assist the AO in recording of the evidence, affix signature on each page of the statement as well as exhibits. Assist the 'AO' in faxing and dispatching the original statement and exhibit to the PO/Convening authority.
- (g) The entire process is to be repeated when a witness is further questioned/cross examined.

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1. Please refer Note 3.
2. The Draft Policy (Encl 3A) has been revised on the lines approved by the CAS. The revised Draft is placed at Encl 5A.
3. Submitted, please.

(PC Grover)
Gp Capt
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Dec 05
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