

## **7 FAM 450 TRIALS**

*(CT:CON-092; 10-28-2004)*  
*(Office of Origin: CA/OCS/PRI)*

### **7 FAM 451 POLICY ON ATTENDANCE**

*(CT:CON-092; 10-28-2004)*

The Department encourages consular observance of the trial process as a general rule, but also understands that consular attendance at trials or hearings in some judicial systems is neither necessary nor useful, and in a few instances could actually be counter-productive. Also, we understand that your presence at a ten or twenty-minute hearing may sometimes require sitting in a courtroom for all or a significant part of a day, idle time that you can little afford. For this reason, the Department generally leaves it up to you to determine whether it is necessary or desirable to attend the trial of a U.S. citizen or national prisoner.

#### **7 FAM 451.1 Advantages To Attending Trials And Hearings**

*(CT:CON-092; 10-28-2004)*

As a consular officer, you may not actively participate in the judicial process. However, the single fact of your presence often accomplishes several things, including:

- (1) Helps ensure that there is no discrimination against the U.S. citizen or national arrestee on the basis of U.S. nationality, either in procedure or sentence;
- (2) Shows the U.S. citizen or national arrestee, and the local government, that the U.S. has a legitimate interest in the case;
- (3) Enables you to accurately report proceedings first-hand, not only to the Department, but to family members, Congressional representatives and others;
- (4) Improves your own knowledge of the judicial system in the host country; and
- (5) Allows you to monitor the conduct and capabilities of local attorneys.

## **7 FAM 451.2 When Consular Attendance Is Mandatory**

*(CT:CON-092; 10-28-2004)*

There are indications of discrimination against the U.S. citizen or national on the basis of U.S. nationality, race, religion or ethnicity either in procedure or sentence. Such indications could include, but are not limited to:

- (1) Past history of discriminatory treatment of other U.S. citizen or national prisoners;
- (2) Treating an U.S. citizen or national prisoner of one race, religious or ethnic background differently than an U.S. citizen or national prisoner of another racial, religious or ethnic background;
- (3) Refusal to provide the U.S. citizen or national with translation facilities when proceedings are in a language the prisoner does not understand;
- (4) Slanted pre-trial publicity, particularly where the press is government-controlled, or it is clear the host government is "leaking" the information;
- (5) Proposed sentences or fines that clearly exceed those normally accorded local nationals or third country nationals convicted of similar crimes;
- (6) The charges are political in nature, or the trial is expected to have political overtones;
- (7) The charges and/or the trial are a pertinent factor in the bilateral relationship with the host government;
- (8) The prisoner or his family has specifically requested your presence at the trial, and it is reasonably feasible for you to do so; and
- (9) You are instructed to do so by the Department.

## **7 FAM 451.3 Attendance By Local Employee**

*(CT:CON-092; 10-28-2004)*

You may find it helpful in some cases to have a Foreign Service national employee attend the trial:

- (1) To accompany a consular officer in order to translate or to explain local procedure;
- (2) In circumstances where a consular presence is not necessary, but it is useful to have a first-hand report on the proceedings;
- (3) In those few cases where the known presence of a consular officer

would be disruptive and perhaps detrimental to the U.S. citizen or national prisoner.

**Note: The national employee's attendance cannot substitute for that of the consular officer when the circumstances in 7 FAM 451.2 are present.**

## 7 FAM 452 BAIL, BOND AND PAROLE ISSUES

*(CT:CON-092; 10-28-2004)*

It is common practice in many countries to release prisoners pending completion of their trial or judicial process, either on bail or some other type of conditional liberty. This can sometimes create problems, which you must address carefully.

### 7 FAM 452.1 Guarantees

*(CT:CON-092; 10-28-2004)*

Consular officers may not, under any circumstances, provide a written or oral guarantee to a court or detaining official stating that the arrested U.S. citizen or national will appear for a hearing or trial.

### 7 FAM 452.2 Bail Fees

*(CT:CON-092; 10-28-2004)*

- a. There are no programs or provisions that allow consular officers to loan funds to an U.S. citizen or national arrestee for the purposes of posting bail. There no government funds earmarked for such payment.
- b. You may advise family members or others in the private sector to utilize the **OCS TRUST** procedures for transmission of sufficient funds to post bail or pay fines (see 7 FAM 435.2.)

**Note: In such cases, it is preferable for you to make payment to the prisoner's attorney, or the prisoner, rather than deal directly with the court or the bail bondsmen. Your direct payment could be misinterpreted as a U.S. Government guarantee.**

### 7 FAM 452.3 Denied Bail

*(CT:CON-092; 10-28-2004)*

Often U.S. citizen or national prisoners will allege discrimination because bail

is common for host country nationals facing similar charges, but has been denied in their case. In such cases:

- (1) You should satisfy yourself that the denial is based on the increased likelihood of a non-resident to flee the country, and that other third-country nationals are treated similarly; and
- (2) Once your review is finished, you should make an effort to explain the factors behind the decision to the U.S. citizen or national prisoner and his family.

## **7 FAM 452.4 Consuls Cannot Be Parole Officers**

*(CT:CON-092; 10-28-2004)*

At times, foreign government officials, particularly court officials not familiar with immunity concepts, will request you to serve as the parole officer for an U.S. citizen or national arrestee. You must explain that you are explicitly forbidden by the Department, as well as by international law and practice, to serve in such a capacity.

## **7 FAM 453 PROTESTING JUDICIAL DISCRIMINATION**

*(CT:CON-092; 10-28-2004)*

Whenever you encounter discrimination against U.S. citizen or national prisoners in the judicial system, you should take immediate action to counter this discrimination at whatever level appears most effective.

### **7 FAM 453.1 Reporting Discrimination**

*(CT:CON-092; 10-28-2004)*

- a. Immediately, brief your senior management on the incident, and develop an appropriate post strategy for dealing with the issue.
- b. Immediately, advise the Department, detailing the incident and outlining post's plans to protest.

### **7 FAM 453.2 Evidence Of Discrimination**

*(CT:CON-092; 10-28-2004)*

When protesting an instance of discrimination, you should develop the strongest case possible, and provide specific evidence supporting the claim of discrimination to the appropriate host government officials. Such evidence might include information contained in the following sub sections.

## **7 FAM 453.2-1 Transcript of Trial or Hearing**

*(CT:CON-092; 10-28-2004)*

If the discrimination is based on oral statements or slurs made during a judicial hearing, obtain an official transcript if possible, and highlight the significant portions in your protest.

## **7 FAM 453.2-2 Prior Case Records**

*(CT:CON-092; 10-28-2004)*

Excerpt from your own records, or whatever prior court records are available, information to statistically document your case whenever:

- (1) The discrimination is based on treatment of an U.S. citizen or national prisoner that is obviously different that treatment accorded a local national; and
- (2) Treatment of an U.S. citizen or national prisoner is different from other U.S. citizen or national prisoners of different race, religion or ethnic background.

## **7 FAM 453.2-3 Host Country Law Or Regulation**

*(CT:CON-092; 10-28-2004)*

You should know what laws or regulations the host country may have against discrimination in the judicial process, and cite the appropriate statutes or regulations in your protest.

**FYI: Your post may wish to hire a local private attorney who can research this issue. Department funds may be available in such cases. Contact CA/OCS/ACS for possible assistance.**

## **7 FAM 453.3 Level Of Protests**

*(CT:CON-092; 10-28-2004)*

Together with post leadership, you should carefully develop a post strategy that determines the type of protest; level of protesting official, and to whom the protest should be made.

### **7 FAM 453.3-1 If The Trial Is Still Ongoing**

*(CT:CON-092; 10-28-2004)*

- a. An informal protest to the appropriate judicial authority may be the

fastest and most efficient method to eliminate the bias.

- b. For example, if the discrimination springs from an abusive or virulently anti-American judge or prosecutor, an unofficial approach to a Chief Judge or similar judicial official requesting a change in trial judge or prosecutor may be the best action for you to take.
- c. A timely formal protest remains a possibility if circumstances warrant.

## **7 FAM 453.3-2 If The Trial Is Concluded**

*(CT:CON-092; 10-28-2004)*

- a. Determine whether the discrimination protest can be a part of a sentence hearing or an appeal. It is usually helpful to work with the U.S. citizen or national's attorney in these instances.
- b. If this is not feasible, a formal protest, such as a diplomatic note and/or a formal call on the Foreign Minister or Justice Minister may be the most appropriate action

## **7 FAM 454 APPEALS**

*(CT:CON-092; 10-28-2004)*

When a convicted U.S. citizen or national decides to appeal the verdict or the sentence, you should:

- (1) Continue to provide appropriate consular services, including visits and attending hearings;
- (2) Be available to perform liaison services with the prisoner's lawyer and judicial authorities; and
- (3) Scrupulously avoid offering advice to a convicted prisoner or attorney on whether the prisoner should file an appeal. You may, however provide general information on the appeal process.

**Note: In cases where the prisoner may be eligible for a transfer to the U.S. under a bilateral or multilateral treaty, you should make certain the prisoner understands that he or she cannot be processed for transfer while any appeals are still pending**

## **7 FAM 455 REPORTING**

*(CT:CON-092; 10-28-2004)*

You should promptly record in the ACS system and report to the Department each step in the judicial process. Significant decisions or actions should be reported by cable, others may be reported by e-mail.

## **7 FAM 455.1 Interim Hearings**

*(CT:CON-092; 10-28-2004)*

Significant decisions or actions should be reported by cable, others may be reported by e-mail. Actions include:

- (a) Date;
- (b) Purpose;
- (c) Any changes or additions to charges;
- (d) Whether consul or FSN attended;
- (e) Any significant outcome of hearing; and
- (f) Whether accused and/or attorney appeared.

## **7 FAM 455.2 Delayed Or Cancelled Hearings**

*(CT:CON-092; 10-28-2004)*

Significant decisions or actions should be reported by cable, others may be reported by e-mail. Actions include:

- (a) Reason for delay, postponement or cancellation; and
- (b) Expected date of rescheduling.

## **7 FAM 455.3 Judgment Or Determination**

*(CT:CON-092; 10-28-2004)*

It is critical to report the outcome of a trial to the Department (CA/OCS/ACS) as quickly as possible, since a verdict, particularly a guilty verdict, will often generate immediate family congressional and media inquiries.

### **7 FAM 455.3-1 If Acquitted**

*(CT:CON-092; 10-28-2004)*

Report decisions by cable. You may also want to alert the Department (CA/OCS/ACS) by e-mail. Include:

- (a) Date and time of release or expected release;
- (b) Reasons for acquittal as stated in judicial proceedings;

- (c) Further consular services to be provided (passport issuance; repatriation loan, etc); and
- (d) Persons to notify at U.S. citizen or national's request.

## **7 FAM 455.3-2 If Convicted**

*(CT:CON-092; 10-28-2004)*

Report decisions by cable. You may also want to alert the Department (CA/OCS/ACS) by e-mail. Include:

- (a) Exact charges;
- (b) Sentence if known;
- (c) Sentencing date, if this is a separate process or hearing;
- (d) Decision to appeal, if known;
- (e) Conduct or emotional state of U.S. citizen or national;
- (f) Persons to notify;
- (g) Name and address of new detention facility, if prisoner is to be moved; and

**Note: If the new detention site is outside of your consular district, transfer your post's file to the U.S. consular office in that district and notify the Department (CA/OCS/ACS).**

- (h) Any overall observations or comments on the judicial process you consider useful or significant.

## **7 FAM 456 THROUGH 459 UNASSIGNED**

*(CT:CON-092; 10-28-2004)*