

## APPENDIX “A”

### **MOTION**

WHEREAS on the 6<sup>th</sup> of November 2009, the Penang Bar Committee held a Dialogue with members of the Penang Bar to discuss recent developments pertaining to the re-organisation of the Courts in Penang and in other states.

WHEREAS the Penang Bar welcomes changes to the Court system to improve the administration of the Courts and supports all steps taken towards achieving this without any compromise to the just administration of justice.

WHEREAS the Penang Bar opines that the unrealistic targets set by the Chief Justice of Malaysia (CJ) by way of Key Performance Indicators (KPIs) for disposal of cases and the strict directives given not to allow postponements except in instances of “death or near death” has caused the Courts to give priority solely to meeting the KPIs set without regard to the fair and just disposal of cases which had hitherto been practised by the Courts.

WHEREAS members of the Judiciary should be allowed to exercise unfettered discretion in the conduct of cases before them with the primary objective of fair and proper dispensation of justice without being constantly monitored or pressured into completing a minimum number of cases in a day, week or month as a means of meeting their KPIs.

WHEREAS members of the Bar are concerned and totally dissatisfied with the manner in which the Courts are fixing hearings and rushing the disposal of cases without regard to availability of Counsel and thereby causing Counsel to “double-park” their cases without their concurrence.

WHEREAS it is highly prejudicial and in breach of the Rules of the High Court for Courts to direct that parties file written submissions not exceeding 5 pages simultaneously without giving either party the right to reply and also to disallow oral submissions before judgment is delivered. This practice will not only lead to the death of advocacy but also result in hastily and poorly considered decisions as there will be no opportunities for clarification or amplification of the written submissions, where necessary.

WHEREAS it is in breach of the Constitutional rights of an accused in a capital offence case for the Court to proceed with his trial in the absence of his Counsel, especially when his Counsel is engaged in another case which had been fixed much earlier.

WHEREAS it an affront to the fair and proper dispensation of justice for the Courts to strike out cases for flimsy and unjust reasons and to insist on parties closing their cases even when witnesses are not available for good reason.

WHEREAS it is highly prejudicial to the proper conclusion of a trial for Counsel to be compelled to continue immediately with submissions at the close of the case without ample time being given to prepare submissions on the legal and evidential issues raised during the trial and without due regard to the length of the trial or the complexity of the case. As a consequence the quality of judgments will undoubtedly suffer and there will not be any good legal precedents to rely on in future.

WHEREAS the haste to clear the targeted minimum number of cases has resulted in cases proceeding or being struck out even when Counsel or witnesses have been admitted to hospital or have a valid Medical Certificate or good grounds for their absence and such unreasonable haste has brought the administration of justice to disrepute.

WHEREAS the confidence of the Penang Bar and members of the public in the due administration of justice has been severely undermined with the introduction of such drastic measures all of which appear to have been introduced solely with the objective of disposing and clearing the backlog of cases at all costs.

**NOW IT IS HEREBY RESOLVED AS FOLLOWS:**

1. The Penang Bar unequivocally objects to the use of disposal of a minimum number of cases as a measure of KPIs for the Judiciary and Judicial officers as this compromises the quality of the administration of justice in the name of speed. Other indicators such as judicial temperament, fair and just hearings, quality of judgments etc. which are important aspects of the administration of justice must be given more emphasis.
2. That the Penang Bar immediately send a Memorandum to the Chief Justice of Malaysia and the relevant authorities with actual details, examples and illustrations on how the new Court system and directives have undermined the administration of justice and caused undue hardship to the public and members of the Bar.

3. The Penang Bar urges the Penang Bar Committee and the Bar Council to take up this issue seriously with the Chief Justice of Malaysia and the relevant authorities and to find ways of working with the Judiciary with a view to finding a solution to improve the administration of justice without compromising the quality of justice meted out to the litigants.

Dated: 12<sup>th</sup> November 2009.

Proposed by: Penang Bar Committee

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Quote:

Former Chief Justice of Malaysia, His Lordship Hashim Yeop A Sani J (as he then was) observed in Public Prosecutor v H Chamras Tasaso [1975] 2 MLJ 44:

*At the outset let me say this. I would rather live with arrears and backlog of cases, which is I think a lesser evil, than have cases disposed of with such a speed and in such hurried fashion as would leave in the minds of the ordinary persons a lingering suspicion that something is not right. Justice must not only be done but must manifestly be seen to be done. This case which I have called for revision is a case in point.*

Lord Widgery CJ, in R v Thames Magistrates' Court, ex p Polemis [1972] 2 All ER 1219 said the following at p. 1223:

*It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say, 'Well, even if the case had been properly conducted, the result would have been the same.' That is mixing up doing justice with seeing that justice is done, so I reject that argument.*