



JAWATANKUASA PEGUAM PULAU PINANG (PENANG BAR COMMITTEE)

Your ref :

Our ref :

Date :

CL 16/09

02-12-2009

To all Members of the Penang Bar,

LATEST UPDATE :

RE-ORGANISATION OF PENANG COURTS

The Bar Council together with representatives from the Penang Bar Committee met with the Chief Justice of Malaysia YAA Tun Dato' Seri Zaki Bin Tun Azmi, Chief Judge of the High Court in Malaya YAA Tan Sri Arifin Bin Zakaria and Managing Judge for the Penang Courts YA Dato' James Foong at the Palace of Justice in Putrajaya on 18th November 2009 to discuss grievances raised by members of the Bar.

Subsequently, members of the Penang Bar Committee met with the Chief Judge (CJM) and YA Dato' James Foong in Penang on 20th November 2009 before our EGM to discuss issues relevant to the Penang Courts.

A further meeting was held between the Penang Bar Committee and YA Dato' James Foong on 24th November 2009 to work out details of matters discussed earlier.

During all these meetings, we were assured of the following by the Chief Justice, CJM and Dato' James Foong:

1. Key Performance Indicators (KPIs)

We were assured that KPIs will only be used as a guide for the disposal of cases and would not be considered as the only measure to judge the performance of the Judge. As such, Judges and Judicial Officers will be able to exercise unfettered discretion to ensure the ends of justice are served without causing any injustice to litigants.

2. Applications for postponements/adjournments

Judges should exercise discretion in granting requests for adjournments/postponements, with compassion and the interests of justice being prime consideration.

However, take note that if, for instance, a case is fixed for Hearing and Counsel is only able to attend Court at 4.00pm, the matter will proceed even to extended hours if necessary.

If Senior Counsel is engaged in another Court and sends his junior to request for a postponement, the decision to allow the postponement would also depend on whether the case had been fixed recently or whether the date had been determined a long time ago.

3. Medical Certificates

The Court has assured us that they will accept Medical Certificates (MCs) at face value but there must be a rider that the lawyer cannot attend Court in line with an earlier Practice Direction.

They have further agreed to accept a lawyer's undertaking to produce an MC within two (2) days in the event the lawyer is gravely ill or hospitalised.

Kindly take note that the same applies for witnesses.

4. Case Management / Mentions at the Subordinate Courts

We have been assured that matters will not be struck out before 2.00pm should Counsel not be present in Court earlier in the day.

We therefore urge Counsel who have matters in other Courts to notify the respective Court interpreters of their other engagements, so their cases can be stood down and so as to not cause any inconvenience to other lawyers and parties.

5. Submissions

Written Submissions will no longer be limited to only 5 pages and the new requirements are as follows:

- Maximum of 15 pages

- Font size 12
- Single spacing

Parties will also be allowed a right to reply orally before the Court.

Further, parties will only need to insert the relevant pages of authorities/cases cited with the relevant sections highlighted, and not have to attach the full reported judgment.

For the Subordinate Courts, every Friday will be designated as Submissions Day, whereby there will be no hearings fixed on that day to allow parties to conduct submissions. Dates will be fixed by the respective Sessions Court Judge, Magistrate or Registrar and parties will be notified accordingly.

6. Revision / Appeal

For cases which were previously struck out due to the following reasons:

- Counsel not being present any valid reason
- Counsel were unable to close cases as witness(es) was not present in Court for any valid reason
- Parties being forced to close their cases prematurely

Parties may file appeals or revisions (as the case may be) and the Court has assured us that they will fix an early Hearing date for these cases and due consideration will be given to the circumstances in which the cases were struck off in the first instance.

7. Fixing of dates

The Court will consult with the respective lawyers before cases are fixed in the following manner; if the first date given is found to be unsuitable to one or both parties, the Court will give a second date. If that date is also unsuitable to one or both parties, a third date will be given and no further requests for other dates will be entertained.

This will include dates for Appeals and Interlocutory applications.

In any event, parties will be given a 'grace period' whereby there will be a minimum of 30 days from the date parties are notified of the Hearing date to the actual Hearing date.

Members who require subpoenas for their witnesses are to apply for the same as soon as the Hearing date is fixed and the Courts have also been directed to expedite the issuance of subpoenas accordingly.

8. Part-heard / Continued Hearing

Running Down cases will be allowed to continue as part-heard cases if they are not completed within a day.

The Court has suggested that vital witnesses such as the Investigating Officer be called to give evidence first, and thereafter subsequent part heard dates would be given for the Plaintiff's employer and specialist however, they must attend Court once the case is fixed and they are to proceed without delay.

9. Hearing of Appeals

The Court will no longer hear Appeals on Saturdays.

Instead, one (1) Friday in every month will be dedicated as an Appeals Day where all eight (8) High Court Judges will hear Appeals.

To properly manage these Appeal cases pending before the Court, cases will be called up for Case Management and/or Show Cause will be issued for parties to update the Court on the status of the Appeals and to do the necessary i.e. file written submissions, withdraw / discontinue the appeal, file any applications, etc.

Relevant cause lists will also be posted on the Judiciary's website (portal.kehakiman.gov.my) and the Penang Bar website (www.penangbar.org) accordingly for parties' information.

10. Witnesses

As a general rule, the Court will not entertain requests for postponements due to the absence of witnesses.

However if a witness is unwell, a Medical Certificate is required and the same rule applies as for lawyers (see item 3 above).

EXTRAORDINARY GENERAL MEETING OF THE MALAYSIAN BAR

Date: 12th December 2009 (Saturday)

Time: 10.00am

Venue: Dewan Lee San Choon, 2nd Floor Wisma MCA, No. 163 Jalan Ampang, KL.

Members are urged to attend the Malaysian Bar EGM which will deliberate on matters pertaining to, amongst others, the manner in which the courts are dealing with the fixing and postponement of cases.

GENERAL INFORMATION

The CJ, CJM and YA Dato' James Foong assured us that the above information will be notified to members of the Judiciary and Judicial Officers in due course and we request that members cooperate with the Courts to ensure that cases can be effectively disposed off and that litigants are effectively accorded justice.

Members are requested to take further note that the above new directions have been agreed to by the Courts after continuous dialogues with the Bar Council and Penang Bar Committee and as such, we urge members to take every concerted effort to ensure that they attend to cases punctually and organise their diaries to ensure that the Court is able to accommodate your requests and at the same time ensure that justice is not delayed.

We hereby enclose our Feedback Form again which we urge members to fill in with your views and feedback and to return the same to us via e-mail (secretariat@penangbar.org), fax (04-262 8664), post or hand to our Bar Secretariat. Please be assured that your feedback is invaluable and will be helpful in ensuring that problems will be attended to immediately. As always, parties' personal information will not be disclosed unless we have your prior consent to do so.

Thank you.

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MURELI NAVARATNAM
CHAIRMAN

FOLLOW-UP COURT FEEDBACK FORM

“Your Feedback Will Make A Difference!”

Date of Incident:

Case No. & Court:

Name(s) & firm(s) of lawyers:

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Brief facts on what transpired:

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We assure members that all information will be kept confidential and will not be made known without the prior consent of the members involved.