

## **JOHORE BAR COMMITTEE**

### **JAWATANKUASA PEGUAM NEGERI JOHOR**

No. 7.02 & 7.03, 7<sup>th</sup> Floor

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CIRCULAR NO. 100/11

**FOR MEMBERS ONLY**

**Internal Circulation**

22<sup>nd</sup> February 2012

**PRIVATE & CONFIDENTIAL**

**TO ALL MEMBERS OF THE JOHORE BAR**

**BY COURT BOX/EMAIL/FAX/JBC WEBSITE**

(Note: As the circular is distributed via e-mail/fax, in the event it is forwarded to one person in a firm, Kindly print the same and distribute amongst the other lawyers and pupils in your office)

### **ANNUAL GENERAL MEETING ON 24<sup>TH</sup> FEBRUARY 2012**

Notice is hereby given that the following motions, copies of which are enclosed herewith, will be tabled to be discussed and if approved by members adopted at the AGM to be held at 3.00 pm on 24<sup>th</sup> February 2012 at JOTIC Auditorium.

- 1) Motion by R. Jayabalan dated 14<sup>th</sup> February 2012 on the CRT System
- 2) Motion by Mathews George dated 17<sup>th</sup> February 2012 on Mediation

I trust movers of the motion will be present to table same or have someone else to do so on their behalf in the event for some reason, they are unable to attend the meeting.

**P. Sunthara Jothi**  
**Hon. Secretary**

(This is a computer generated letter. No signature is required)

## **MOTION TO BE TABLED AT THE AGM OF THE JOHOR STATE BAR**

### **WHEREAS :**

- (a) the Judiciary has implemented the Court Record Transcribing (CRT) system to modernise and expedite the disposal of proceedings particularly in civil trials;
- (b) the CRT system includes an audio and video recording of proceedings and a copy of the recordings in DVD format is given to lawyers upon conclusion of the proceedings;
- (c) lawyers are then directed by the court to transcribe the Notes of Evidence and to furnish a copy to the court before or at the time that submissions are to be filed;
- (d) the copy of the notes given to the court is then treated as the Notes of Evidence of the court;
- (e) this practice is not extended to criminal cases

### **WHEREAS :**

- (a) it is and has always been the function of the courts to type out, prepare and supply the Notes of Evidence to the parties;
- (b) the preparation and supply of the Notes of Evidence is the function of the court and not that of the litigants is plain from :
  - (i) O. 49 r. 2 (3) Subordinate Courts Rules 1980 which states '*The Court appealed from shall thereupon supply to the appellant, upon payment of the fee therefor for a certified copy of the notes of evidence...*'

- (ii) O. 18 r. (4) Rules of the Court of Appeal 1994 which states '*The appellant shall attach to such memorandum copies of the proceedings in the High Court, including – (b) a copy of the Judge's note of the hearing of the cause or matter in which the decision appealed against was given which may be recorded wholly or partly by mechanical means*';
- (c) there is no provision in the Courts of Judicature Act 1964 and Subordinate Courts Act 1948 that requires the court to supply the Notes of Evidence to the parties before submission nor requiring the parties to prepare the Notes of Evidence at any stage of the proceedings;


**WHEREAS :**

- (a) in recent times the courts have generally (save for a few judges) imposed upon the lawyers the duty to prepare and supply the Notes of Evidence to the court before submissions are closed and/or before the decision is given and/or when an appeal is filed;
- (b) in doing so, the courts appear to be transferring an integral and important function of the courts to lawyers, in contravention of the rules and established practice;
- (c) the task of listening to the audio video recording and typing the notes is extremely arduous, cumbersome and hugely time consuming for lawyers;
- (d) this task is imposed upon the lawyers in addition to preparing the submissions at the same time;

**IT IS HEREBY RESOLVED BY THE JOHORE BAR THAT :**

- (a) the courts should cease from directing or expecting the lawyers, in the absence of clear legislative provisions, to type, prepare and supply the Notes of Evidence;

- (b) the Notes of Evidence should be prepared by the courts and supplied to the parties based on the audio visual recording when there is an appeal or an application from the parties;
- (c) the Judiciary should consider studying the practice in other jurisdictions such as in Singapore where the task of preparing the notes of evidence is fully technologised and outsourced with direct supervision by the courts and without burdening the judge and the lawyers and also in Sabah and Sarawak where the transcript of court proceedings under the CRT is done by the court stenographers;
- (e) the Judiciary should engage a sufficient number of typists or stenographers to facilitate the process of transcribing the Notes of Evidence;
- (f) the Bar Council to seriously pursue this issue with the Judiciary including bringing to the Judiciary's attention of the difficulties faced by lawyers and to forward proposals including the systems used in other jurisdictions on transcribing court proceedings.



Proposer : R. Jayabalan

NRIC No. : 711213-01-5857



Seconder : Mary Jesmal Periera

NRIC No. : 62121206-07-5182

## MOTION

**WHEREAS** this meeting recognises the Malaysian Judiciary's inclination towards mediation as an alternative dispute resolution.

**WHEREAS** this meeting also recognises mediation as an effective mechanism to dispose cases without a lengthy and costly court proceedings.

**WHEREAS** it notes that judicial officers conducting mediation have been overzealous and overbearing to the detriment of the rights of litigants and without regard to advocates and solicitors' duty to uphold the interest of clients, justice and dignity of the profession.

**WHEREAS** it notes the following instances in which mediation have been conducted:-

- (i) Coercion and undue pressure on the lawyers and litigants to compromise their cases as their cases are perceived to be weak and unmaintainable;
- (ii) Proposing mediation at any stage of proceeding;
- (iii) Meeting litigants in the absence of their counsels;

**BE IT RESOLVED** that mediation process is only resorted to with express consent of the litigants.

**BE IT FURTHER RESOLVED** that mediation should be only conducted at the initial stage of proceedings.

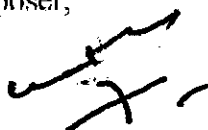
**BE IT FURTHER RESOLVED** that Judicial Officers conducting mediation refrained from passing judgment on the strength and weakness of the cases.

**BE IT FURTHER RESOLVED** that mediation should not be purchased at the expense of litigants' rights and interest and lawyer's professionalism.

**BE IT FURTHER RESOLVED** that the above resolution if adopted be sent by the Johor Bar Committee to the Chief Justice of Malaysia, President of the Court Of Appeal, Senior Judge High Court Johor Bahru and to the Bar Council.

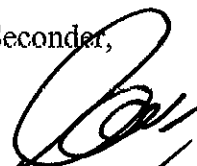
DATED 17<sup>TH</sup> FEBRUARY 2012

Proposer,



.....  
(Mathews George)

Seconder,



.....  
(Thilagavathy Rama loo)