

JOHORE BAR COMMITTEE

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FOR MEMBERS ONLY
Internal Circulation

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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)

COURT MATTERS

Since the election of the new Johore Bar Committee on 25th February 2011, the Committee paid the customary courtesy calls on the Judges and Judicial Commissioners of the High Court in both Johore Bahru and in Muar and had also held the following meetings, to discuss, inter alia, problems and issues posed by our members:

- (1) meeting with Justice Vernon Ong Lam Kiat, the Senior Judge of the High Court in Johor Bahru in charge of administration on 9th March 2011;
- (2) meeting with the Sessions Court Judges in Johor Bahru, presided by Justice Vernon Ong Lam Kiat on 8th April 2011; and
- (3) meeting with Justice Vernon Ong Lam Kiat on 13th May 2011.

It was agreed and accepted that the Chief Judge of Malaya's (CJM) Practice Directions No. 1 & 2 of 2011 were clear and would resolve many of the problems faced by members and litigants when the KPI measures were enforced vigorously by the courts. Kindly therefore be guided by both the said practice directions, which have earlier been circulated to you. You may also view them at <http://www.johorebar.org.my/>

One of the issues that had been clarified beyond doubt by the CJM's Practice Direction No. 2/2011 is that adjournments may be granted on medical ground and this was understood and accepted by all at the meeting with the Sessions Court Judges on 8th April. But just about a week later, two separate courts in Johor rejected an application for adjournment by a member of the Johore Bar who was admitted to hospital with a suspected heart condition, which was not only wholly unreasonable but in breach of the CJM's practice direction. The matters were referred to Justice Vernon Ong on an urgent basis and were eventually resolved. Whilst thanking His Lordship for his timely intervention, we also stated our position that we should not really be troubling him every now and then whenever a matter of this sort crops up. **The learned Judge agreed and suggested that when lawyers apply to the court for an adjournment on a good and valid medical ground, a copy of the said application be extended to his secretary to enable him to monitor the situation.**

Recently another member of the Johore Bar had a running-down matter fixed for hearing in the Sessions Court. He was ready with 5 of his 6 witnesses who had come from Simpang Renggam and Singapore but the sixth witness, the investigating officer could not attend court because he was attending an official course in Kuala Lumpur on that day. Counsel notified the court of the position and tendered the official police form to confirm it and asked to proceed with the case on that day with a short adjournment to call his last witness. The court however refused and insisted that he should close the case on the same day. Since the investigating officer was a very material witness in the case and counsel could not take the risk of closing it without his evidence, he was left with no other alternative but to withdraw his case with liberty to file afresh. He could take that course of action only because limitation had not as yet set in. What if the situation were otherwise? Apparently this practice of withdrawing with liberty to file afresh is an everyday occurrence in the subordinate courts. Although the court records will show this as a disposal and bolster its statistics, the reality is that the case would find its way back into the system the very next day. It is a very ludicrous situation. **The learned Judge acknowledged this fact and agreed to look into it.**

Yet another member of the Johore Bar was placed in a dilemma face when the High Court fixed the hearing of a matter (without getting her free dates) on a day when she already had a case for hearing in the Sessions Court. Her application to the Sessions Court for an adjournment was refused by the said court. We were advised by Justice Vernon Ong that the present policy of the judiciary is that **a matter that has been fixed for hearing earlier by a particular court would take precedence and that it is not a good reason to adjourn it if another court, even if it is of a higher judicial heirarchy, subsequently fixes another matter for hearing on the same day, and that in a situation of this sort, if an adjournment is sought it should be directed to the court that fixed the case later, and that this applies equally to the Court of Appeal.**

We were also informed by Tuan Nurazlan bin Ahmad, Sessions Court Judge (Civil Court No. 1) hearing running-down matters, that he preferred counsel to make oral submissions immediately upon conclusion of the case and if counsel for good reason requested for a written submission, he would give a very short adjournment of one or two days only.

The judges also made the following observations of our members:

- (a) that many lawyers often came late to court, kept everyone waiting and when they eventually turned up, did not have the courtesy of apologising; and
- (b) some lawyers did not have a grasp of the basic rules of evidence and procedure and lacked advocacy skills.

So please take this as a timely reminder to be punctual in court. If you happen to be held up elsewhere please inform the court beforehand and refrain from keeping it waiting for you. Your opposing counsel may be able to assist you in this matter.

It would also pay for you to brush up your evidence and procedure and to be familiar with the various practice directions that have been issued by the Chief Justice, Chief Judge of Malaya and the Chief Registrar.

As for the purported deficiency of advocacy skills among our members, please do not despair. The Johore Bar Committee would soon be organizing an Advocacy Workshop for the benefit of our members and we hope that you would avail yourself of this opportunity to hone your advocacy skills.

We have complained a lot about judges and continue to do so. The judges have accepted that we have the right to complain and often respond positively to our comments and criticisms. Likewise, when the judges complain against us we must take positive steps to correct our shortcomings so that we do not give them cause to complain about us again.

The Johore Bar Committee and the Courts Liaisons Sub-Committee would continue to have regular dialogues with the judiciary to iron out problems. As usual, members may continue to refer problems faced by them in court to the Johore Bar Committee for our further action. However, if you were to encounter any difficulty that requires urgent attention you may contact the following members of the Courts Sub-Committee, who have been appointed as the Courts' Liaison Officers and who have been authorized to seek an appointment with the Registrar or the Judge, as the case may be, to find an immediate solution to the problem:

Civil cases:

1. Ms. J. Chandrika of Messrs John Ang & Jega; and
2. Ms. Kalpana of Messrs Nadzarin Kuok Puthucheary & Tan

Criminal cases:

1. Ms. M.J. Periera of Messrs Teh Poh Teik & Co; and
2. Puan Suzana Sudin of Messrs Zaid Ibrahim & Co

Finally, we attach herewith a summary of Guidelines for Court Practice for your reference.

S. GUNASEGARAN
Chairman
Johore Bar Committee

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

GUIDELINES FOR COURT PRACTICE

1. The court hours are from 9.00a.m to 5.00p.m. The court will not continue with the hearing of cases beyond 5.00p.m., except with the consent of all parties.
2. The court may stagger the hearing of cases.
3. The courts shall consider the free dates of counsel in fixing cases for hearing, subject to the need to dispose off cases, especially the older ones, speedily.
4. Cases that have already been fixed earlier cannot be brought forward, except with the consent of all parties.
5. If the court wishes to change or vacate a date that has already been fixed, the new date must be fixed with the consent of all parties.
6. Subject to the Chief Justice's Practice Direction No. 1/2008 and the Chief Justice's letter dated 14th July 2009, the Court may allow adjournments on medical or emergency grounds.
7. The court cannot reject an application for an adjournment made for the first time on the ground that a subpoenaed witness did not attend court; instead a warrant of arrest may be issued against him.
8. In all other cases, the adjournment of a matter is subject to the court's discretion.
9. Where written submissions have been filed, the court must allow the parties to make an oral submission for purposes of clarification.
10. If all the parties are not present when a case is called up for mention or case-management, the court cannot strike out the case immediately but shall recall the case at the end of the cause list for the day and if the parties are still absent, it may strike out the case.
11. If all parties are not present for the trial or hearing of a matter, the court cannot strike out the case immediately but shall recall the case at the end of the cause list for the day and if the parties are still absent, it may strike out the case.
12. Subject to the Rules of the High Court 1980 and the Rules of the Subordinate Courts 1980, a case that had been struck out may be reinstated by way of oral application made before the court rises for the day.
13. Counsel may at the outset itself request the court to give priority to expert witnesses like doctors and to fix the time for their evidence to be taken so that they do not waste their time unnecessarily in court.
14. Witness Statements help to expedite the trial of cases and their use should be encouraged. Counsel must endeavour to prepare, file and serve on the other side, the Witness Statements of the parties to the action, namely the plaintiff and the defendant, and of all other witnesses whose statements may be procured easily. However, it may not always be possible to prepare the witness statements of subpoenaed witnesses such as police officers, employers and expert witnesses and that the court shall not insist upon the witness statements of such witnesses.

15. Although adjournment on medical ground will not be an issue anymore, a copy of the application for adjournment together with the supporting document should be forwarded to the Secretary of Justice Vernon Ong.
16. Counsel who is expecting and would be going on maternity leave can assist and co-operate with the court by planning her maternity leave carefully, avoiding the fixing of cases during that period and by giving early notice to the court.
17. Parties/counsel must be prepared to submit orally immediately upon closing their case. Any application for written submission to be made would be considered on a case by case basis, and if granted, only a very short adjournment of one or two days would be given.
18. Parties/counsel are advised to use pre-trial procedures prescribed by the Rules of Courts, such as discovery, notice to produce, etc. and the various Practice Directions issued by the CJ/CJM and the Chief Registrar to get their cases ready for trial.
19. It is preferable for a single Agreed Bundle of Documents to be filed but if that is not possible, it is permissible for parties to file their separate bundle of documents.
20. If a court fixes a case for hearing on a date on which you already have another case for hearing in a different court, your application for an adjournment, if necessary, must be directed to the court that fixed the matter subsequently, irrespective of the hierarchy of the said court.
21. In view of the acute shortage of interpreters, parties desiring the services of an interpreter should give advance notice of at least one week to the court concerned.
22. Please observe punctuality. If you are going to be delayed please inform the court beforehand. Your opposing counsel should be able to assist you. And when you turn up do not forget to convey your apologies to the court.