Bil: 12/JUD/134/1

Jabatan Kehakiman,
Kuching,
Sarawak.

To All Secretaries to Judges.
All Magistrates in Sarawak and Sabah.

Yang Arif/Tuan/Puan,

Re: Practice Note No. 1 Of 1975

His Lordship the Chief Justice of Borneo has directed me to say that His Lordship is perturbed by the numerous complaints of long delay of hearing and delivery of rulings and judgments in our Courts. Those fixing cases are to take note of Practice Note No. 1 of 1975 (attached herewith) in giving priority to accident cases when the victims may be the sole breadwinners.

2. As to delay which is totally unacceptable, Lord Scarman in delivering the judgment of the Board in the Privy Council case of K. Ratnasingam V. Kow Ah Dek & Anor (1983) 2 M.L.J. 297 where liability was admitted and the only issue was damages commented:-

> "The time taken to hear and determine this simple, straightforward case, from close of pleadings to judgment, was a period of 4 years 9 months. In their Lordships' view such delay is totally unacceptable. Whatever the reason for it, it was a substantial obstacle in the way of justice."

(AGNES WONG KIEN LING)
Registrar,
High Court, Kuching.

Kuching:

10th March, 1984.

IN THE HIGH COURT IN BORNEO

PRACTICE NOTE NO: 1 OF 1975

Claims Arising Out Of Road Accidents

The Chief Justice has directed that whenever possible in civil matters claims arising out of road accidents should be given priority of hearing over other civil suits particularly where the victims of fatal accidents happened to be sole breadwinners. Certain directions issued by the High Court Malaya in respect of these claims appear to be working well there. These directions subject to slight modifications are, therefore, to be adopted here.

Accordingly, the Chief Justice has issued the following directions:-

1. An Agreed Bundle of Documents and an Agreed Statement of Facts shall be filed 30 days after the close of pleadings and not later than 90 days thereafter.

2. Minimal requirements of the Agreed Bundle of Documents shall include:-

   (a) the police report or reports made by the driver or drivers of the vehicles involved;

   (b) photographs taken by police in the course of investigation, including photographs (if any) taken by the party or parties;

   (c) the sketch plan, with measurements of the locus in quo;

   (d) the report of any Government Vehicle Examiner of the condition and damage caused to the vehicle(s) in the accident;

   (e) in case of death, the autopsy report of the medical examiner and, in cases of bodily injury, the expert medical opinion should be given in written form. Exchange of medical reports to be compulsory, after such exchange, questions and answers in writing may follow (taking the place of cross-examination of these medical experts) to be filed with the reports as soon as possible after receipt and, in any event, before date of trial. Attendance of such expert witness is to be required only when absolutely indispensable; when called on frivolous or unjustifiable grounds, costs will be awarded against the offending party.

3. Statement of Agreed Facts

   (i) The greater part of the allegations in pleadings relate to matters not in dispute e.g. (1) that the vehicles were travelling in the same direction or towards each other before the accident; (2) the weather conditions; (3) road surface; (4) the locus in quo - at a bend or straight; and (5) the narrative of facts generally before and after the event. What is intended to be achieved is the saving of time taken by witnesses in giving evidence in the box as they can proceed directly to deal with the material facts in issue.

   (ii) Many of the items of special damage, especially when supported by receipts, and loss of personal property, are generally not disputed.

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4. In addition to the Agreed Bundle of Documents and Statement of Agreed Facts required to be filed, every practitioner instituting proceedings in any Court claiming damages arising out of road accidents shall file in such Court -

   (a) the agreement in writing made with his client in respect of his remuneration under section 15 of the Sarawak Advocates Ordinance (Cap. 110) and similar section in the Sabah Advocates Ordinance (Cap. 2); or

   (b) where in fact no definite agreement has been made with the client, a statement in writing to that effect, which shall be signed by both the advocate and the client.

5. In all cases coming up for trial the Judge or the Magistrate trying the case will see that the agreement or statement is filed in Court, before the commencement of the hearing; otherwise the Court shall, before proceeding further, inquire from the practitioner and record the agreement made for his remuneration and obtain from the client confirmation that the agreement is as stated.

6. It shall be the duty of every practitioner, immediately upon acceptance of his retainer, to make in triplicate either the agreement under section 15 or the statement that there is no such agreement. The original will be filed in Court; the practitioner will retain the duplicate copy bearing thereon an acknowledgment signed by the client that the triplicate copy of the agreement or statement has been given to the client; such triplicate must forthwith be delivered to the client on the date of retainer, whether or not proceedings are subsequently commenced in Court.

7. The object of this exercise is to put a stop to unconscionable charges being deducted as fees out of damages awarded to clients who are ignorant or illiterate. The requirement that the triplicate copy be delivered to the client forthwith, upon retainer of the practitioner, will, it is hoped, ensure that exorbitant fees are not paid by clients whose claims are settled before action or by consent on terms prejudicial to the client, or indeed at any time.

8. Where the statement is filed that the terms of the practitioner's remuneration have not been fixed, clients who, as a rule, have no idea as to the meaning of "taxation of a bill as between solicitor and client", should be given the explanation that, in the event of fees not being settled by mutual consent, the Court will determine what is just and fair to be paid to the practitioner having regard to the services rendered and the amount of claim collected as the result of such aid and advice.

9. These directions will be effective from 1st October, 1975.

(SGD: CHEW KUI SANG, A.B.S., P.P.B.)
AG. REGISTRAR.

Kuching, 2nd September, 1975.

Distribution:

All Secretaries to Judges.

All Magistrates in Sarawak and Sabah.