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KETUA HAKIM NEGARA
MAHKAMAH PERSEKUTUAN
MALAYSIA
KUALA LUMPUR

CHIEF JUSTICE
FEDERAL COURT
MALAYSIA
KUALA LUMPUR

K.H.N. 47

10 April, 2000

Y.A. Hakim-Hakim Mahkamah Tinggi

Hakim Mahkamah Sesyen

Majistret

Timbalan Pendaftar/Penolong Kanan Pendaftar

Yang Arif Dato'/Tuan/Puan,

KES-KES TERTANGGUH

Pekeliling mengenai perkara ini telah banyak dikeluarkan. Tujuan pekeliling ini ialah untuk mengingatkan tindakan-tindakan yang perlu diambil untuk mengurangkan lagi kes-kes tertangguh.

1. Kes Sivil (Mahkamah Tinggi)

Timbalan Pendaftar/Penolong Kanan Pendaftar (T.P./P.K.P.) hendaklah mengeluarkan setiap hari 20 kes (mulai kes terlama hingga terkini). Jika didapati -

i) writ telah luput, kes itu hendaklah dibatalkan;

ii) writ masih hidup, tetapi tidak ada tindakan lanjut, notis tunjuk sebab mengapa kes itu tidak patut dibatalkan, hendaklah dikeluarkan;

iii) writ masih hidup dan dokumen-dokumen teratur, kes-kes itu hendaklah terus diberi tarikh perbicaraan dan notis-notis bicara dikeluarkan.

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T.P./P.K.P. hendaklah menetapkan sekurang-kurangnya lima kes untuk dibicara setiap hari (2 kes sivil dan 3 rayuan). Daripada pengalaman, satu atau dua kes boleh diselesaikan tanpa perbicaraan. Hakim yang membicara kes hendaklah menentukan kes mana yang beliau perlu membicaranya, dan bagi yang lainnya pula, Hakim hendaklah serta-merta memberi tarikh baru untuk perbicaraan.

2. Saman-saman Dalam Kamar (S.I.C.)

T.P./P.K.P. hendaklah membicara kes-kes dalam kamar melainkan diarah sebaliknya oleh Hakim (lihat Aturan 32 kaedah 9, Kaedah-kaedah Mahkamah Tinggi). 20 (dua puloh) atau lebih kes hendaklah ditetapkan setiap hari.

3. Senarai penetapan kes harian bagi Hakim, T.P./P.K.P. (Daily fixing list of cases before Judge, D.R./S.A.R.)

T.P./P.K.P. hendaklah menghantar senarai ini pada tiap-tiap hari Isnin kepada Y.A.A. Ketua Hakim Negara bagi kes-kes yang akan dibicara pada minggu berikutnya.

4. Kes Jenayah (di luar Kuala Lumpur)

T.P./P.K.P. hendaklah menetapkan satu kes jenayah pada mana-mana minggu pada tiap-tiap bulan untuk dibicara, dan lima hingga 10 kes rayuan jenayah mengenai hukuman (sentencing) hendaklah di tetapkan sehari kerana hujah-hujahnya adalah pendek.

5. Penangguhan kes-kes yang ditetapkan untuk bicara (semua mahkamah)

Kes-kes yang telah ditetap untuk bicara hendaklah diteruskan perbicaraannya. Alasan penangguhan berikut hendaklah ditolak -

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i) peguam ada kes di mahkamah-mahkamah lain walaupun kes lain itu berada di mahkamah yang lebih tinggi termasuk di Mahkamah Persekutuan. (Sila lihat Kaedah-kaedah 6 dan 24 Legal Profession (Practice and Etiquette) Rules 1978 di Lampiran `A'). Notis untuk bicara lazimnya dikeluarkan sebulan sebelum bicara, dan permohonan untuk menangguh perbicaraan hendaklah di-buat 2 minggu sebelum tarikh perbicaraan supaya kes lain boleh dimasukkan sebagai ganti ke dalam lis perbicaraan. Permohonan yang kurang daripada 2 minggu hendaklah di-tolak.

ii) Saksi tak hadir di mahkamah.
Adalah tugas pihak pendakwa, plaintif, defendan, O.K.T. membawa saksi-saksi mereka ke mahkamah pada hari perbicaraan. Oleh itu adalah tugas mereka untuk mendapatkan sapina dengan segera supaya dapat diserah kepada saksi sebelum hari perbicaraan. Mahkamah pula hendaklah memastikan sapina dikeluarkan dengan segera.

iii) peguam menarik diri pada hari perbicaraan. (Sila lihat Lampiran `B'- Order 64 r.5 R.H.C. dan Order 11 r.5 S.C.R.)

iv) peguam, plaintif, defendan dan saksi sakit.
Sijil sakit hendaklah mengikut Pekeliling Ketua Pendaftar bertarikh 9.11.1996 (Peraturan-Peraturan Perubatan (Pindaan) 1977 P.U.(A) 376).

v) laporan kimia, perubatan, J.P.J.dan lain-lain, tak siap. Pihak berkenaan (plaintif, defendan) hendaklah mengambil sapina supaya pakar berkenaan datang memberi keterangan. Lazimnya jika sapina' disampaikan, laporan akan disediakan.

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6. Dokumen yang tak mengikut Peraturan Mahkamah
(Lihat Pekeliling Ketua Pendaftar Mahkamah Persekutuan Bil. 2/1999 bertarikh 22.5.1999).

Writ, saman, affidavit dan lain-lain dokumen yang difail tidak mengikut peraturan hendaklah di-tolak.

Pekeliling ini berkuatkuasa serta merta.

(TUN DATO' SERI MOHD.EUSOFF B. CHIN)
Ketua Hakim Negara Malaysia.

s.k:

Y.A.A. Presiden Mahkamah Rayuan

Y.A.A. Hakim Besar Malaya

Y.A.A. Hakim Besar Sabah & Sarawak

Y.A. Hakim Mahkamah Persekutuan

Y.A. Hakim Mahkamah Rayuan

Ketua Pendaftar
Mahkamah Persekutuan.

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LAMPIRAN A

APPENDIX C

LEGAL PROFESSION (PRACTICE AND ETIQUETTE) RULES 1978

ARRANGEMENT OF RULES

Rule	
1	Citation
2	Obligation of advocate and solicitor to give advice on or accept any brief
3	Advocate and solicitor not to accept brief if embarrassed
4	No advocate and solicitor to accept brief if professional conduct likely to be impugned
5	No advocate and solicitor to accept brief if difficult to maintain professional independence
6	An advocate and solicitor not to accept brief if unable to appear
7	No advocate and solicitor to accept remuneration in capacity as Member of Parliament, etc except emoluments as Member of Parliament, etc
8	Advocate and solicitor not to ask for excuse from assignment
9	Advocate and solicitor to undertake defence fairly and honourably
10	Advocate and solicitor to conduct prosecution so that no innocent person is convicted
11	Fees for litigious or contentious matters
12	Advocate and solicitor not to conduct civil case intended to delay proceedings, etc
13	Advocate and solicitor to guard against insulting or annoying questions
14	Questions irrelevent to actual enquiry not to be asked
15	Respect to court
16	Advocate and solicitor to uphold interest of client, justice and dignity of profession
17	No deception on Court
18	Advocate and solicitor not to refer to facts not proved
19	Advocate and solicitor to conduct with candour, courtesy and fairness
20	Advocate and solicitor to put before Court any relevant binding decision
21	Improper to misquote
22	Advocate and solicitor to bring to Court's attention any proposition of law, etc

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LAMPIRAN 'B'

RULES OF THE HIGH COURT 1980

ORDER 64 RULE 5

5 Withdrawal of solicitor who has ceased to act for party (O 64 r 5)

(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or the Federal Court, as the case may be, may make an order accordingly, but unless and until the solicitor serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the High Court or the Federal Court.

(2) An application for an order under this rule must be made by summons in Form 142 or, in the case of an application to the [Federal Court], by motion, and the summons or notice of motion must, unless the Court or the [Federal Court], as the case may be, otherwise directs, be served on the party for whom the solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order in Form 143 made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the legal aid certificate of an assisted person within the meaning of the Legal Aid Act 1971 is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 2 shall apply as if that party had previously sued or defended in person.

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23 Advocate and solicitor to supply to Court all information
24 Advocate and solicitor to be ready for the day fixed for trial
25 Advocate and solicitor to disclose all circumstances to client
26 Advocate and solicitor not to mislead
27 Advocate and solicitor not to appear where pecuniarily interested
28 Advocate and solicitor not to appear in a case where he is a witness
29 Advocate and solicitor not to testify on behalf of client
30 Advocate and solicitor appearing as party or witness not to wear robes
31 Advocate and solicitor to uphold dignity of profession
32 Clients' feeling not to influence conduct of counsel
33 Advocate and solicitor to treat adverse witnesses with fairness and due consideration
34 Advocate and solicitor may interview witnesses for opposing side
35 Advocate and solicitor not to abuse confidence reposed in him by client
36 Advocate and solicitor to prevent client from wrongful conduct towards courts, etc
37 Advocate and solicitor writing for press not to describe himself as advocate and solicitor
38 Exceptions
39 Advocate and solicitor not to describe himself as advocate and solicitor without consent of Bar Council
40 Advocate and solicitor not to stand surety
41 Advocate and solicitor who has advised Arbitrator cannot appear in arbitration proceedings
42 Advocate and solicitor not to communicate with a person represented by another advocate and solicitor
43 Advocate and solicitor not to stir up strife and litigation
44 Advocate and solicitor not to actively carry on any trade
45 Advocate and solicitor not to advertise
46 No personal advertisement
47 Advocate and solicitor not to give interview
48 Advocate and solicitor not to publish photograph
49 Advocate and solicitor not to solicit reporting
50 Advocate and solicitor not to advertise address
51 Advocate and solicitor not to do or cause touting
52 No division of costs or profits with unqualified person
53 Agency commission or profit costs

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SUBORDINATE COURT RULES 1980

ORDER 11 RULE 5

Withdrawal of solicitor who has ceased to act for party. [O. 64, r. 5]. [O. 11, r. 5].

5. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the solicitor serves on every party to the cause or matter a copy of the order, he shall subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter.

(2) An application for an order under this rule must be made by notice in Form 25, and the notice must, unless the Court otherwise directs, be served on the party for whom the solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order in Form 26 made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the Legal Aid Certificate of an assisted person within the meaning of the Legal Aid Act 1971 is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 2 shall apply as if that party had previously sued or defended in person.