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HAKIM BESAR MALAYA
MAHKAMAH PERSEKUTUAN
MALAYSIA
PUTRAJAYA

CHIEF JUDGE OF MALAYA
FEDERAL COURT
MALAYSIA
PUTRAJAYA

HBM/ 1

5 Januari 2007

Semua Hakim Kanan Mahkamah Sesyen/ Majistret,
Semua Majistret,
Semenanjung Malaysia

Dato'/Tuan/Puan,

PRACTICE DIRECTION NO 1 OF 2007
GUIDELINES ON INQUEST

The guidelines below shall be followed in relation to Inquests in the Magistrates' Courts with effect from 1 February 2007.

(RELEVANT PROVISIONS IN PART V11, CAP XXX11 SECTION 328-341A CRIMINAL PROCEDURE CODE)

1. **What is an Inquest?**

   (a) It is not like a trial;

   (b) There are no parties to prosecute and to defend;

   (c) It is only an inquiry by a Magistrate as to the cause of death and the Prosecuting Officer is there not to prosecute anyone but only to assist the court with the examination of witnesses for the purpose of giving evidence;

   (d) A defence counsel present at an inquest is not there to defend anyone, but only to look after the interest of those who engage him. Whilst he has no right to speak as of right, this right seldom becomes an issue because the court normally gives such indulgence whenever it is asked;

   (e) Although addressing the court without permission is not contempt, it is certainly not polite to do so without permission. In polite circles such as the legal profession, this simple etiquette is expected;

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(f) A Magistrate/ Coroner shall not express any opinion on any matter until the conclusion of the inquest;

(g) There is no conviction or punishment at the end of it.

2. **Matters to be ascertained at Inquest**

The proceedings and evidence at an Inquest shall be directed solely at ascertaining the following matters, namely:-

(a) who the deceased was;

(b) how, when and where the deceased came by his death;

(c) particulars for the time being required by the Registration Act to be registered concerning the death of persons;

(d) the person(s) who carried out the act(s) or omission(s) causing the death, where such evidence is available, without however making any finding on the criminal liability of such person(s).

3. **When should an inquest be held?**

A. **When an inquest must be held**

1) The Magistrate must hold an inquest if:-

(a) any person dies while in the custody of the police (section 334 CPC); or

(b) any person dies while in the care, or in circumstances that raise doubt about the deceased's care; or

(c) The Public Prosecutor directs a Magistrate to arrange for an inquest to be held into the death (section 339 CPC to be read with section 328 and 329 CPC).

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B. **When an inquest may be held**

An inquest may be held into a reportable death if the Magistrate considers it desirable to hold an inquest (section 334 CPC) in cases of person who dies whilst in a psychiatric hospital or prison;

C. **When an inquest must not be held or continued**
(Section 333(3) CPC)

(1) Someone has been charged with an offence in which the question whether the accused caused the death may be in issue.

(2) If the Magistrate is informed before an inquest is started, that criminal proceedings will be brought against any person, then the Magistrate must not start an inquest until after the end of the criminal proceedings, including any appeal that may be brought.

D. **Categories of cases in which an inquest should usually be held**

(1) Any death where there is such uncertainty or conflict of evidence as to justify the use of the judicial forensic process,

(2) Any death in which there is a likelihood that an inquest will uncover important systemic defects or risks not already known about,

(3) Any deaths in which the views of the family or other significant members of the public are such that an inquest is likely to assist maintain public confidence in the administration of justice, health services or other public agencies,

(4) Any death that when grouped with others that have occurred in similar circumstances indicates that there may be an unexpected increase of danger in a particular location, area, family, industry or activity,

(5) Any workplace death in which industrial processes or activities are implicated,

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(6) Any disaster involving multiple deaths,

(7) Any death from self harm in which it is not possible to exclude the involvement of a third party in procuring the death or in failing to prevent it.

PRE INQUEST

A. Viewing Body Of Deceased

1. When the Magistrate is notified of any non custodial death under section 329 or custodial death under section 334 CPC, the Magistrate should :

- with a medical officer, view and examine the body in situ, take note of any injury or marks on the body;
- obtain information pertaining to the discovery of the body, including questioning cellmates of the deceased and other relevant persons (in cases of custodial deaths);
- draw a sketch plan of the scene and position of the body after securing the scene from any interference and take note of any other matter/things found in the vicinity of the body;
- obtain copies of the lock up diaries or any relevant written documentation which will provide information about the movement of the deceased in custody before the death (in cases of custodial death);
- after ensuring the scene from any interference, ensure that the body is not moved from its original position. In the event the scene has been tampered with and the body has been moved from its original position, an explanation must be sought from the relevant persons/authorities;
- enquire into the reasons, if there was a delay in notifying the magistrate of the death;
- issue order to a medical officer to make a post mortem examination of such body;

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Whatever observations made should be noted down and these form part of the Magistrate's notes for the inquest.

2. The Magistrate with the assistance of the police should:

- inform as soon as possible the family/next of kin/other interested persons about the death of the deceased;
- inform the family/next of kin/interested persons of any post mortem to be carried out and the reasons for the postmortem.

3. The Magistrate with the assistance of the police (who should be liaising with the pathologist), should try to ensure that the body is released to the family/next of kin for burial at the earliest opportunity provided that the necessary investigations and/ or postmortem for the purpose of an inquest has been duly carried out. Reasons for the delay in releasing the body of the deceased should be recorded in the notes of the Magistrate.

B. **Order of Post Mortem**

The Magistrate shall direct the Government Medical Officer to do a postmortem and investigate and subsequently draw up a report of:

- the apparent cause of death, the wounds, fractures, bruises and other marks of injury as may relate to the cause of the death; or
- the person, if any, who caused the death and stating what manner and what weapon or instrument, if any, was used.

The report shall be signed by the officer by whom it was drawn up and the officer shall as soon as may be, forward the report of the apparent cause of death to the Magistrate.

A Magistrate shall commence an inquiry into the death **as soon as possible** after the notification of the report from the Government Medical Officer.

C. **Notice of an Inquest**

The Magistrate should arrange to notify the family members/ next of kin regarding the holding of an inquest, as to the date, hour and place of inquest. A minimum of 2 weeks notice should be given.

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As for the first mention date, a maximum of 3 weeks will be given for parties to appear before the Magistrate, calculate from the date of the receipt of the report from the Government Medical Officer.

INQUEST

A. Protocols for examining witnesses

The Magistrate who sits as a Coroner has control of the proceedings, and therefore, it is the Magistrate who shall examine firstly the witnesses, to be followed by others who have the right to participate in the inquest. The Magistrate is assisted by a Prosecuting Officer (a police officer or a Deputy Public Prosecutor).

B. Entitlement to examine witnesses

There are no 'parties' to an inquest as there are in accusatorial or adversarial proceedings such as a trial. Instead there are only 'interested persons'. The Magistrate should exercise his discretion to determine who shall have the right to examine the witnesses.

C. Persons who have the right to examine witnesses

(a) A parent, child, spouse and any personal representative of the deceased;

(b) Any person whose act or omission or that of his agent or servant may, in the opinion of the coroner, have caused, or contributed to, the death of the deceased;

(c) An inspector appointed by, or a representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;

(d) Any other person who, in the opinion of the coroner, is a properly interested person.

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D. **Disclosure of Documents**

The Magistrate have the discretion with regard to the release of documents. This discretion should in general be exercised in favour of release.

E. **Procedure and rules of evidence not to be strictly applied**

The procedure and rules of evidence which are suitable for the accusatorial process are unsuitable for inquisitorial process.

Therefore, the Magistrate should not entertain any attempt by any of the interested parties to dispute the credibility of the witnesses through impeachment proceedings, for instance.

Evidence in the form of guesswork should not be allowed.

F. **Self Incrimination**

No witness at an inquest shall be obliged to answer any question tending to incriminate himself.

Where it appears to the Magistrate that a witness has been asked such a question, the Magistrate shall inform the witness that he may refuse to answer.

G. **Findings**

A magistrate who conducted an inquest must if possible find:-

(a) who the deceased person is; and
(b) how the person died; and
(c) when the person died; and
(d) where the person died; and
(e) what caused the person to die; and
(f) who, if any, was/were the person(s) who carried out the act(s) or omission(s) causing the death, without however making any finding on the criminal liability of such person(s).

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The Magistrate shall transmit such findings to the Public Prosecutor (section 338 CPC)

H. **Verdict**

No verdict shall be framed in such a way to appear to determine any question of :-

(a) criminal liability on the part of a named person; or
(b) civil liability

At the conclusion of the Inquest, the Magistrate must deliver a verdict on any one of the following:

(a) An open verdict;
(b) A verdict of misadventure
(c) Death by person or persons unknown.

I. **Place of Inquest**

Shall be open to the public but the Magistrate may, on special grounds of public policy or expediency exclude the public/persons in particular at any stage of the inquiry. (section 338 (2) CPC)

J. **Inquest should be prompt**

Public interest requires that Inquiries into deaths should be held more promptly than has been the case in the past. Inquests should be done at the very earliest moment after death. Inquests should be best conducted continuously until the end with the most minimal of postponements in between.

POST INQUEST

A. The Magistrate then transmits to the Public Prosecutor the original of the evidence and finding duly authenticated by his signature or a copy of such evidence and finding certified under his hand as correct.

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B. The Magistrate, with the assistance of the police, should inform the family/next of kin of the verdict.

C. The Magistrate has a discretion to provide a copy of the verdict and notes of evidence to interested persons upon application by them.

(TAN SRI DATO' SITI NORMA BINTI YAAKOB)
Chief Judge of Malaya
Palace of Justice, Putrajaya.

s.k.

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