

HONG KONG BAR ASSOCIATION'S VIEWS ON
The Pilot Scheme for the Reform of Ancillary Relief Procedures

The following is the response of the Bar to the letter of Mr. Kenneth Liu, dated 16th February 2006, seeking views on the Pilot Scheme for the Reform of Ancillary Relief Procedures (the "Pilot Scheme").

A. Form E

It was agreed that the Form E is a useful document and that it should be retained without amendment.

B. The First Appointment

It was agreed that the First Appointment procedure is useful and should be retained without any change to the time provisions.

However, the following comments were also made:

- (i) time schedules are frequently observed in the breach;
- (ii) Questionnaires should be filed with the First Appointment papers to avoid adjournments;
- (iii) the Case Management Judge should be more proactive;
- (iv) "on-the-job training" for deputy judges would help;
- (v) feedback from the Judiciary would be useful: eg statistics on compliance with First Appointment timing and documentation;
- (vi) Practice Guidance Notes for practitioners emanating from the Judiciary would be helpful. These should address shortfalls, indicate how compliance can be achieved, and note, if appropriate, that costs may be imposed on delinquents. Such Practice Note should be circulated by the 2 professions to all their members and would be particularly helpful for practitioners who are not specialists with access to anecdotal information.

C. The FDR

It was agreed that the FDR procedure should be retained and the FDR was considered a useful procedure, drawing attention to the desirability of settlement where this was possible.

However, the following comments were also made:

- (i) Some judges were not sufficiently proactive;
- (ii) Difficulties arise if the FDR judge has not had the opportunity to thoroughly read and digest the papers;
- (iii) Difficulties could arise if non-specialist Family judges handled FDRs because they are unable to be sufficiently firm and/or indicate to the parties the likely outcome if the matter went to trial. An FDR by such a judge may prove to be a waste of time/costs;
- (iv) To clear a backlog, a practitioner who was a specialist in Family Law could be appointed for say one month, just to conduct FDRs. He/she could be re-appointed, if necessary, to deal with those cases which had been adjourned for further FDRs. If there was no settlement, the case could revert to the Case Management Judge who would not be debarred from presiding at the trial by reason of having held the FDR;
- (v) Training with practical exercises would assist, particularly as regards deputy judges;
- (vi) Input from overseas judges in jurisdictions where a comparable procedure was in place would be very helpful;
- (vii) As part of the training exercises, and to provide some consistency in practice, deputy judges should sit with permanent judges and/or the specialist practitioner hearing FDRs, to obtain “on-the-job training”.

D. Other Comments

- (i) The number of part-heard cases and/or the length of time elapsing before the resumed hearing of part-heard cases, is a continuing problem which needs attention;
- (ii) A larger panel of experienced permanent Family Judges is necessary for a more effective and cost efficient promulgation of the Pilot Scheme.

Dated this 4th day of April 2006

Hong Kong Bar Association