



The Law Society of Singapore
39 South Bridge Road S(058673)

t: +65 6538 2500 f: + 65 6533 5700
www.lawsociety.org.sg

Sender's Fax: 6533 5700

Sender's DID: 6530 0237

Sender's Email: represent@lawsoc.org.sg

Our Ref: LS/10/RLR/CON(3)/2017/FLPC/KG/kl/yj

Your Ref: To be advised

28 March 2017

Jonathan Lee
District Judge
Family Justice Courts
3 Havelock Square
Singapore 059725

Dear DJ Lee,

Public Consultation on the Proposed Amendments to the PCR 2015 and the Development of a Best Practices Guide

- 1 We refer to the abovementioned public consultation between 20 February 2017 to 20 March 2017 (both dates inclusive) conducted by the Law Society and considered by Council.
- 2 A copy of the consolidated views received during the consultation period is attached as **Annex A**.
- 3 Thank you.

Yours faithfully,


K Gopalan
Director, Representation & Law Reform Department



Council Members 2017

Gregory Vijayendran (President)
Kuah Boon Theng (Vice President)
Tan Gim Hai Adrian (Vice President)
Dhillon Dinesh Singh (Treasurer)

Thio Shen Yi, SC (Immediate Past President)
M Rajaram
Lim Seng Siew
Chia Boon Teck
Tito Shane Isaac
Ng Lip Chih
Lisa Sam Hui Min
Michael S Chia
Anand Nalachandran
Yeo Chuan Tat
Tan May Lian Felicia
Tan Beng Hwee Paul
Simran Kaur Toor
Tien De Ming Grismond
Low Ying Li, Christine
Sui Yi Siong (Xu Yixiong)
Ng Huan Yong

Secretariat

Chief Executive Officer
Delphine Loo Tan

Compliance
Daniel Tan

Conduct
Ambika Rajendram
Rajvant Kaur

Knowledge Management
Kenneth Goh

Representation & Law Reform
K Gopalan

Administration
Clifford Hang

Communications /
Membership Interests
Shawn Toh

Continuing Professional Development
Jean Wong

Finance
Jasmine Liew
Clifford Hang

Information Technology
Michael Ho

Pro Bono Services
Lim Tanguy
Gopinath s/o B Pillai
Tan Su Lyn Claudine

Publications
Sharmaine Lau

Annex A

FEEDBACK ON THE FAMILY LAW CONSULTATION PAPER – PROPOSED AMENDMENTS TO THE PCR 2015 AND BEST PRACTICES GUIDE

A. Introduction

1. This document contains all feedback collated during the consultation period from 20 February 2017 to 20 March 2017 (both dates inclusive). Only feedback received via email and from the feedback session conducted on 8 March 2017 at the State Courts Bar Room has been included in this document.
2. The headings below represent the broad key focus of the feedback received. Detailed comments are included as separate paragraphs.

B. Wording Related

3. One member suggested a re-wording of the proposed rule 15A to emphasise a child-centric approach.

Conduct of family proceedings

15A. (1) The following principles guide the interpretation of this rule:

Principle

(a) A legal practitioner must adopt a constructive and conciliatory approach, ~~whenever it is reasonably possible to do so,~~ in the conduct of family proceedings from the time such proceedings are contemplated until their resolution.

(b) A legal practitioner must always take a child-centric approach and prioritise the welfare of the children involved in family proceedings.

4. Another member made a similar suggestion to re-word the proposed rule as follows:

Conduct of family proceedings

15A. (1) A legal practitioner must adopt a constructive and conciliatory approach, whenever it is reasonably possible to do so, in the conduct of family proceedings from the time such proceedings are contemplated until their resolution. In particular, a legal practitioner must assist parties to have in mind the best interest of any children involved in any family proceedings.

(2) This paragraph shall apply to legal practitioners who have been appointed to act as a Parenting Coordinator or Child Representative under Part 4 of the Family Justice Rules. A legal practitioner who has acted as a Parenting Coordinator or Child Representative in a dispute must not subsequently act for any party to the family proceedings in relation to:

*(a) the subject matter of the family proceedings; or
 (b) any matter relating to the family proceedings which was discussed during the course of the practitioners' appointment as a Parenting Coordinator or a Child Representative.*

5. A member asked to clarify if the distinction is deliberate between rules 15A(1) and 15A(2)(c). Other related questions raised by the member include:

- (a) Is "conciliatory" synonymous to being "reasonable"?
- (b) Do we switch from being "conciliatory" to being "reasonable" once "adjudication" starts (but remain "constructive" throughout)?
- (c) Must the practitioners "adopt" a "constructive and conciliatory" approach, but should "advise the client" to be "constructive and reasonable"?

6. Another member commented that rules 15A(2) and 15A(3) seem to relate to complaints from a practitioner's own clients while rule 15A(1) appear to relate to complaints from the other party/other party's practitioners. Thus it is pertinent that practitioners understand what is being expected of them when they have a duty to act in a "constructive" and "conciliatory" manner.

7. One member said it would be helpful if "All available dispute resolution options" mentioned in rule 15A(2)(a) could be further clarified. For example, a sub-page on the FJC website specifically setting out "all available dispute options" would assist to elaborate these options.

8. Another view raised was that the use of wordings such as "constructive and conciliatory" approach and "potentially adverse impact of the family proceedings on the children" may not be sufficiently clear.

9. It was suggested by another member that the words "constructive and conciliatory" should be replaced with "practical and realistic" because chances are that parties are not willing to reach a settlement when they have already approached a lawyer.

C. Rule or Best Practice?

10. One comments was that there should be a distinction between the "Rules" and "Best Practices Code/Guide" because save for the obligation to inform a client of the available alternate dispute resolution (rule 15A(2)(a)) which appears to be incorporated as "rules" in NZ and Australia, the rest of the rules seem to have their genesis from "Best Practices Code/Guide" from other jurisdictions.

11. Another member commented that the proposed provision of rules 15A and 15B should be in the guidelines and not the PCR. By making it compulsory and mandatory, the member felt that it imposed a rigorous and burdensome obligation on lawyers. The same member also added that non-compliance carries sanction and penalties which requires practitioners to defend when complaints are lodged.

12. A member queried specifically on the "constructive and conciliatory" approach mentioned in rule 15A and what is required from the practitioner to avoid a potential

complaint. The member considered that it might be better to be contained within the BPG rather than the PCR 2015. Placing it in the rules would open up “the Pandora's box insofar as complaints are concerned”.

D. Existing Measures

13. One member has questioned the need for the proposed amendments as there are already several avenues in place for conciliatory approaches and children's issues. For example, pre-divorce writ counselling, CFRC process and mandatory mediation.

E. Effectiveness of the Intended Rule

14. With regards to the use of the word "contemplation" of divorce, a member commented that the mere fact that one has approached a practitioner shows an unwillingness to settle the matter amicably. Thus the courts are placed in a better position to convince and mandate litigants to attend counselling or mediation.

15. A member queried on the how rule 15A will unfold in practice. Does it mean that the legal practitioner needs to write the requirements down and get the client to sign a form to be created such that the obligations imposed are discharged?

16. Another member queried how the new rules would operate in circumstances where the other party is a litigant-in-person. Can the legal practitioner approach the litigant-in-person to try to settle the matter? Would it be a case for a potential conflict of interest?

17. One member questioned if these rules extend to the conduct of legal practitioners in matters relating to Personal Protection and Maintenance matters under Magistrate's Complaints.

F. Alternative Measures

18. A member suggested that a long term solution is to conduct relevant seminars by psychologists/counsellors to help practitioners understand the negative impact of acrimonious divorces on the children. This will enable them to better persuade their clients to adopt a constructive and conciliatory approach for family matters.

19. Another member queried the reason why reference is not drawn to the equivalent provision of the Women's Charter given that many of these provisions appear to mirror those in the Woman's Charter which contain something similar (for example, welfare of the child)?