

**URGENT****HONG KONG BAR ASSOCIATION**

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Ms. Flora Tai
 Clerk to the Panel on
 Administration of Justice and Legal Services
 Legislative Council Building,
 8 Jackson Road, Central,
 Hong Kong

By Hand

12 January 2009

Dear Ms. Tai,

Re: Panel Meeting on 13 January 2009

I refer to the captioned meeting. Due to another Bar function, neither the undersigned nor the other representatives of the Bar will be able to attend this meeting. However, we would like to make the following observations in respect of Items V and VI of the agenda. I would be grateful if you can circulate this letter to members of the Panel for their consideration.

Item V - Implementation of Civil Justice Reform

1. Every practising barrister has a duty to keep himself or herself abreast of legal development. Hence, it is the duty of every barrister to familiar himself or herself with the provisions of the new legislative provisions concerning the Civil Justice Reform ("CJR"). Our members are conscious of this duty and their response to the Bar's CJR training programme is positive.

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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2. The Bar has provided the Judiciary with information concerning the CJR training programme organized by the Bar for its members. I trust that the relevant information would have been included in the report from the Judiciary Administration. In short, the position is follows:
 - (1) Apart from two large scale seminars jointly organized with the Law Society, the Bar has organized small group training sessions for its members. The trainers are senior members of the Bar who themselves have attended the training sessions of the Judiciary. Further to the four rounds which have already been organized since November 2008, there will be two further rounds of these small group sessions to be held on 17 January 2009 and 21 February 2009.
 - (2) An arrangement has been made with the Department of Justice whereby a limited number of barristers will be allowed to attend training courses organized by the Department of Justice and *vice versa*. Apart from its educational value, this arrangement provides a platform for members of the Bar and the Department of Justice to exchange views on the Civil Justice Reform.
 - (3) Facilitation of settlement (especially through mediation) is one of the key features in the CJR. The Bar Council is conscious of the need to assist members in this aspect. Apart from organizing training courses to enable its members to become accredited mediators, talks and seminars were and will continue to be organized to enhance members' general knowledge of alternative dispute resolution (especially mediation). A talk on mediation has already been given by Ms. Teresa Cheng SC at the end of last year. The talk will be repeated in March for the benefit of those members who could not attend the

first one. Further talks (at least two) will be organized with the assistance of the Mediation Council of the Hong Kong International Arbitration Centre before the implementation of the CJR in April.

- (5) Talks on specialized areas will also be organized. For instance, Mr. Mohan Bharwaney SC and Mr. Raymond Leung will be giving a talk on Personal Injuries Practice Direction (date to be confirmed).
3. On the whole, I am confident that members of the Bar are ready for the implementation of the CJR in April this year.

Item VI - Statutory and non-statutory appointments of judges for extra-judiciary functions


4. The Bar appreciates that when circumstances require, the Administration may wish to appoint judges for extra-judiciary functions. (For the avoidance of doubt, the expression “extra-judiciary function” is used here to mean function which is not judicial in nature nor concerned with law reform, legal education and the like.)
5. Not only do judges command high respect and public confidence, they are and are perceived to be independent. The Judiciary plays a pivotal role in the administration of justice and the maintenance of the rule of law. It is of crucial importance that the appointment of judges for extra-judiciary functions should not have any actual or perceived adverse impact on any individual judges or the Judiciary as a whole.
6. A proper balance has to be struck between the advantages of appointing judges for extra-judiciary function and the impact of such appointment on the Judiciary. A cautious approach is called for and the Bar invites the Administration to bear in mind

at least the following two factors when requesting the assistance of judges for extra-judiciary function.

7. First, judges should not be requested to take up any extra-judiciary function which may put the individual judge or the Judiciary as a whole in any actual, potential or perceived embarrassment or position of conflict. In particular, no judges should be asked to perform any extra-judiciary function which is or may be perceived to be political in nature.
8. Second, judicial resources are valuable and limited. The Administration should only request the assistance of judges for extra-judiciary function when it is really necessary to do so. The alternative of appointing retired judges or members of the legal profession who command a reputable standing should be explored whenever possible.

Best Regards.

Yours sincerely,


Rinsky Yuen, S.C.
Chairman 