

THE LAW SOCIETY OF HONG KONG

CIRCULAR TO MEMBERS NO. 6/81.

19th January, 1981.

- (1) Paper Work
- (2) Payment of Counsel's Fees
- (3) Marking of Counsel's Diary

The Council has come to the following agreements with the Bar Committee on the above items :-

1. Paper Work

Whenever Counsel is requested to do paper work, e.g. pleadings, the instructing solicitor should inform Counsel of the time limit in which such paper work is required and if Counsel is for any reason unable to do so, he should inform the instructing solicitor and return the papers, if any, at the earliest possible opportunity.

2. Payment of Counsel's Fees

Counsel's fees must be paid or challenged promptly, and in any event, within 2 months from the submission of Counsel's fee ~~note.~~ Failure to pay Counsel's fees within the time limit will, on complaint, be dealt with and investigated as an allegation of breach of conduct.

The Council has received complaints about late payment of Counsel's fees which some members place in a deposit account to earn interest. The Council cannot too strongly deplore such conduct which calls for disciplinary sanction.

Annexed hereto is an extract from "A Guide To The Professional Conduct of Solicitors" 1974 edition at page 74 which deals with the question of a solicitor's liability for payment of Counsel's fees. Members are well advised in their own interests to acquaint themselves with the rulings contained therein.

3. Marking of Counsel's Diary

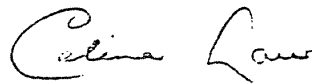
- (a) The marking of Counsel's diary does not commit either Counsel or solicitor, and no fees are therefore payable on account of it.
- (b) Counsel and solicitors should be encouraged to come to an express agreement relating to both the brief and refreshers and the manner in which such are payable.
- (c) Counsel and solicitors should be encouraged to come to such a specific agreement even before Counsel's diary is obtained; but if this should prove to be impossible, then the sooner they come to a specific agreement, the better it is for both.
- (d) If after the marking of Counsel's diary, Counsel is approached by another solicitor wishing to brief him

during the same period in question or part thereof, Counsel (who by that time has agreed his brief as well as refreshers) would be obliged to approach the 1st solicitor and he should specify terms as to the manner in which the agreed brief fee and refreshers should become payable. If the 1st solicitor or his client is not in agreement with such terms, then Counsel will be at liberty to accept the brief from the 2nd solicitor. In such event, the 1st solicitor need not pay Counsel anything in relation to the reserved dates : Provided that the above rule does not apply where -

- (i) Counsel and solicitors have come to an express agreement relating to both the brief and refreshers and the manner in which they are payable; or
 - (ii) A brief is delivered before the commencement of trial, because in such event, the brief fee is payable in any event, but the payment of unused refreshers will still be governed by the above rule.
- (e) Briefs are as a rule delivered and accepted on the understanding that Counsel may be justifiably prevented from attending at Court.
- (f) Moreover, Counsel is entitled to return a brief if he has a commitment in the Court of Appeal although dates therefor were fixed subsequent to the acceptance of the brief to be returned in respect of a matter in which he appeared in the Court below or in cases of a complex nature where he was involved from the inception of the appeal.

4. The Vine Formula

The period of 2 months specified in the Vine Formula is reduced to 1 month. This Formula is, of course, subject to express agreement between Counsel and solicitors. A copy of Circular To Members No. 58/66 setting out the Vine Formula is annexed for members' reference.



Secretary.

Encls: As stated.

EXTRACT FROM "A GUIDE TO THE PROFESSIONAL
CONDUCT OF SOLICITORS" 1974 EDITION PAGE 74.

1:3. A solicitor is personally liable for payment of counsel's proper fees whether or not he has received the money from his client with which to pay the fees. At one time, this was said to be a matter of etiquetts but in November, 1971 the Council decided that failure to pay counsel's fees should be treated as a breach of conduct, for which the usual sanctions apply. A solicitor who fails to pay counsel's proper fees, when the Council call upon him so to do, lays himself open to disciplinary action.

1:4. Where a solicitor has in fact received money from his client for the express purpose of paying counsel's fees and does not so apply it, this would be unbefitting conduct, and disciplinary proceedings would follow.

In one case a solicitor failed to account to counsel for fees he had received from the lay client for the purpose the Disciplinary Committee stated that thereby the relationship of confidence and trust between the two branches of the profession which were of paramount importance had been jeopardised and the solicitor was found guilty of unbefitting conduct.

1:5. In another case a client wishes his solicitor not to pay the fees of counsel which had been incurred on the client's behalf as the client wishes to set-off those fees against a personal debt due to him from the member of the Bar concerned. The Council decided that the solicitor was liable as a matter of conduct to pay counsel notwithstanding his client's instructions but that it was a question of law as to whether the client was entitled to any set-off and whether the solicitor would succeed in any action again the client for recovery of the sum paid to counsel in those circumstances.

1:6. Counsel's fees should be paid (or challenged) within three months from the date of delivery of the fee note at the conclusion of a case whether or not the solicitor has been put in funds by his client or has taxed his costs. (For legal aid cases see page 75 para. 1:8)

If the litigation is still proceeding when the fee note is delivered the solicitor may delay payment until conclusion of the litigation and in such cases the fee note should be returned with the specific fees marked "case not yet concluded". If, during the course of the litigation, the amount of counsel's fees becomes substantial, the solicitor may wish to bring that fact to the notice of the client and request to be put in funds to enable him to discharge the outstanding fees.

1:7. The Council have expressed the view that it would be reasonable for solicitors, where possible and when requested to do so, to pay

a proportion of any outstanding fees due to counsel on account in non-legally aided cases where proceedings may not be terminated speedily and where the fees might not otherwise be paid to counsel for a considerable time. The Council have stated that they wish it to be known that, where such a request is made, solicitors should strive to comply with such a request, particularly when they are dealing with recently called barristers.

1:8. In civil legal aid cases counsel's fees are not payable until the costs have been taxed or assessed and are then paid direct out of the Legal Aid Fund. It is possible, however, for a solicitor and/or a member of the Bar who is suffering hardship by reason of the time taken to dispose of the proceedings or to tax the costs to apply for and obtain a sum on account of either the costs and/or disbursements of the solicitor, or the fee of the barrister, in exchange for an undertaking to refund any sum subsequently disallowed. In criminal legal aid cases the payment of the barrister is by the court (other than in magistrates' court cases when it is by the solicitors).

C O P Y

THE INCORPORATED LAW SOCIETY OF HONG KONG

CIRCULAR TO MEMBERS NO. 58/66.

21st December, 1966.

COUNSEL'S FEES.

1. The "Vine Formula", as it is understood by the Committee, means that the Society recognises the freedom of contract between members of the Society (acting for lay clients) and members of the Bar. Since this understanding was communicated to the Bar during the presidency of Mr. Peter Vine, certain members of the Bar, when retained by members, have made special arrangements regarding their fees. The most common arrangement adopted is that regardless as to whether an action comes on trial, the member of the Bar retained will receive his Brief Fee and half unused refreshers in any event. This particular mode of arrangement has also been understood by certain members of the Bar as the "Vine Formula".

2. It is the unanimous opinion of your Committee that the latter formula may be harsh on lay clients, as a case might be fixed many months in advance and settled long before the hearing date. Many members have written to the Committee complaining against this latter formula and the matter was freely discussed with the Bar Association in order to arrive at a much more satisfactory and acceptable arrangement. Furthermore, it was essential that the meaning of one formula be standardised so that both Solicitors and Counsel, in agreeing that such formula should apply in respect of a case, would immediately understand the arrangements regarding Counsel's fees. This would, however, still leave Counsel and Solicitors in any particular case to make arrangements different from the formula.

3. It was, however, recognised :-

- (a) that Counsel did not usually ask for the latter formula or any formula unless the case had been set down for fixed date for five days or more, and that in cases fixed for a shorter period, the usual ten-day rule still applied.
- (b) that the latter formula had not been applied to cases on the Running List or Supplementary Running List, to which no standard formula applied; ad hoc arrangements were, however, made sometimes between Solicitors and Counsel dependent on particular circumstances.

4. It has now been agreed between the Committee and the Committee of the Bar Association that henceforth the meaning of the "Vine Formula" be as follows :-

If a solicitor requests counsel to reserve five days or more fixed for the hearing of any proceedings, and counsel undertakes to appear during such days to conduct such proceedings, the solicitor agrees to pay counsel's brief fee and half the unused refreshers in the event

/(a) of the solicitor....

- (a) of the solicitor not releasing counsel at least 2 months before the first of the days so reserved, or where the long vacation of the Supreme Court intervenes, at least 2 months plus the length of the long vacation before the first of the days so fixed.
- (b) of counsel informing the solicitor before the time stated in sub-paragraph (a) has arrived that the dates reserved are required for another case, and the solicitor requests counsel nevertheless to reserve such dates.

PROVIDED that such fees shall not be payable if days so reserved are not utilized for the hearing by reason of the proceedings being adjourned by the Court of its own motion or on account of illness of the lay client or the opposite party or a material witness (counsel having agreed to an adjournment on any such grounds or the Court granting the adjournment on the application of the opposite party notwithstanding opposition) or on account of some cause other than the default of lay client or the solicitor.

5. By way of practice directions, I have also been instructed to set out hereunder :-

- (a) Arrangements other than that provided in the "Vine Formula" as so defined are freely negotiable, in respect of cases of the length above stated or for example :-
 - (i) in respect of cases on the Running List or Supplementary Running List.
 - (ii) in respect of cases where the "Vine Formula" was agreed, where an adjournment is ordered through the default of the opposite party or his solicitor.
 - (iii) in respect of cases fixed for less than five days.
- (b) In the absence of a special arrangement regarding fees, the usual ten-day rule applies in each matter where Counsel is briefed.
- (c) Where the "Vine Formula" or any other special arrangements regarding fees are specially agreed, members should ensure, prior to such arrangement, that they have their clients' specific instructions to the proposed arrangement.

(Sd.)

Secretary.