



**FEEDBACK ON BEST PRACTICES GUIDELINES**

**BY THE FAMILY LAW FIRMS OF PRACTICEFORTE ADVISORY  
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**Submitted on 25th Feb 2018.**

**Table of Feedback In Summary (details follow after table)**

<b>Chapter</b>	<b>LS</b>	<b>Area</b>	<b>Feedback</b>
1		General Duties	
2	1-5	Forming the Lawyer-Client Relationship	<p><b><u>General</u></b> Chapter should provide guidance on communications with clients through third parties such as relatives or children.</p> <p><b><u>Specific guidelines</u></b> LS5: Emergency advice</p> <p>Network of hotlines should be made available to family practitioners so as to equip them to handle emergency situations like physical violence or suicidal parties.</p>
3	6-13	Dispute Resolution Options	<p><b><u>Specific guidelines</u></b> Point 3.34 should specify the types of documents that ought to be disclosed in the event that lawyers may divulge more information than necessary.</p>
4	14-21	Children	<p><b><u>General</u></b> Guidelines should be given as to when it is appropriate to seek supervised</p>



			<p>exchange, supervised access, and assisted access as a resolution.</p> <p>The chapter also does not provide for a situation where one party completely alienates the child and what are the appropriate options a family practitioner can seek.</p>
5	22-27	Communicating with the Client: Other Aspects	<p><b><u>General</u></b> Save for administrative matters, lawyers should endeavour to communicate with clients as much as possible.</p> <p><b><u>Specific guidelines</u></b> Point 5.3 states that family lawyers may include a standard paragraph on how the lawyer will resolve disputes in a “constructive and non-confrontational” way. However, this phrase is vague and not always appropriate. In some instances, might even raise problems for the relationship between the practitioner and client. View is that it is better not to have such a standard paragraph.</p> <p>Point 5.6 on letter of engagements requires family lawyers to explain the public funding scheme to clients who may qualify for it. However, this raises several questions regarding the responsibility of practitioners to such clients. Ultimately, it may be more appropriate for private lawyers not to advise on legal aid schemes.</p>
6	28-30	Conflict of Interest	<p><b><u>Specific guidelines</u></b> LS29: Duties of loyalty and confidentiality</p> <p>The guideline states that practitioners should be mindful that they owe their former clients duties of “loyalty” and confidentiality even after the termination of the retainer. However, loyalty is an amorphous concept and should be replaced</p>



			with a better term.
7	31-32	Concluding or Terminating the Lawyer-Client Relationship	<p><b><u>General</u></b> In instances where lawyers are taking over a case and the client has yet to conclude or terminate their previous lawyer-client relationship, guidelines could be given to allow this relationship to be terminated amicably (both by the client and the lawyer taking over the case).</p> <p>Guidelines could also be given with regard to cases about to be concluded as well as procedures occurring after conclusion (e.g. how documents are still available to ex-clients after case closure).</p> <p>The availability of the Law Society as a mediator between lawyers and clients should also be more greatly publicised.</p>
8	33-42	Pre-Trial Proceedings	<p><b><u>General</u></b> Guidance should be provided as to when it is appropriate for a child to be called to the stand as a witness, and to sign affidavits.</p>
9	43-46	Court Hearings	<p><b><u>General</u></b> There could be a channel of communications/ recourse created for family lawyers to clarify issues with family court judges without fear of contempt of court.</p> <p><b><u>Specific guidelines</u></b> Points 10.18.6 requires family lawyers to respect the seniority of other lawyers while 10.18.9 requires lawyers to defer the order in which matters are heard to more senior lawyers. While seniority should understandably be respected, perhaps it is not necessary to always require queue orders to be deferred to senior lawyers unless they have a pressing issue to attend to, etc.</p>

			Point 10.28 on not discouraging witnesses from talking to opposing counsel is appreciated.
10	47-54	Relationship with Other Practitioners	<b>General</b> Litigation by correspondence should be discouraged.
11	55-57	Relationship with Litigants-in-Person	<b>Note:</b> The following is a link to the Law Society’s Guidance Note on Limited Retainers - <a href="http://v1.lawgazette.com.sg/2016-09/1658.htm">http://v1.lawgazette.com.sg/2016-09/1658.htm</a>  It could be recommended for practitioners to state in their letter of engagement that this pertains to a limited retainer. The specific matter the limited retainer is for should also be specified (e.g. “This is only for a PPO/ POHA/ etc.”). It could also be recommended that practitioners get the LIP to sign a notice to act in person at the beginning of the limited retainer.

### **Explanation In Details**

1. General Duties
2. Forming the Lawyer-Client Relationship

### **General comments**

Chapter should include communications with client through third parties such as relatives or children.

It is common practice for older, Chinese-speaking clients to have their children handle the matter, including attending meetings and liaising through email. Questions such as whether relatives can be present at the meeting, and who to send emails arise. A proposed solution would be to get the client to sign a warrant to act including who counsel can take instructions from, and who to liaise with.

### **Specific guidelines**

LS5: Emergency advice

Not all family lawyers are equipped to know what to do in the case of an emergency situation and what their involvement should be. Some of the things that can be done include working with organizations that provide help for vulnerable persons and to have a network of helplines available so as to be able to know where to direct the client to for help. For violent cases, organizations such as PAVE, AWARE and Project Start, are viable contact helplines. This network of helplines should be made available on the Family Justice website for easy access.

### 3. Dispute Resolution Options

### **Specific guidelines**

Point 3.34 (Best Practice Guideline LS12) of the guide notes that practitioners should “endeavour to exchange proposals before the mediation, as well as prepare a mediation summary and copies of relevant documents, if any, for the other party and the mediator”.

This may not be comfortable for litigation practitioners to adapt to since it potentially involves divulging more information than necessary and may encourage “fishing”. The guidelines may have to draw the line or specify what type of documents should be produced at this stage since it may otherwise be confusing for lawyers to figure out to what extent documents should be disclosed.

### 4. Children

This chapter does not give guidelines for when it is appropriate to seek supervised exchange, supervised access, assisted access. Many lawyers might be unaware that such options exist for their clients or when is it appropriate to ask for such options. It is also unclear when it is appropriate to invoke options such as asking for a parenting coordinator, child representative, and social welfare reports, given that there are no rules governing such options.

The chapter does not provide for a situation where one party completely alienates the child and the appropriate actions for a practitioner to take.

## 5. Communicating with the Client: Other Aspects

### **General**

In terms of communication with clients, administrative matters alone should be left to staff while legal matters should be communicated directly with the client by the lawyer. Notably, using the phrase “Please let us know your instructions” (which may be standard practice) in an email to clients may not be enough for them to understand what their options are and how they should respond.

### **Specific**

Point 5.3 states that family lawyers may include a standard paragraph on how the lawyer will resolve disputes in a “constructive and non-confrontational” way. While the intent behind including such a paragraph is recognised and appreciated, it raises several issues. First, what does “constructive” and “non-confrontational” entail? Second, it assumes that all family lawyers are rational, helpful and willing to resolve disputes amicably but this may not necessarily be true. In such cases, how does the other party’s lawyer deal with the “confrontational” lawyer? Third, it may raise more questions in clients’ minds, including whether they themselves have to be “confrontational” to “win” a case. Perhaps it would be better not to have such a standard paragraph.

Point 5.6 on letter of engagements requires family lawyers to explain the public funding scheme to clients who may qualify for it. However, it may be better simply to tell such clients to apply for legal aid first and only become paying clients if legal aid does not work out for them. Additionally, this requirement raises a few questions: (i) Does explaining the legal aid scheme mean that family lawyers should not take up such persons as clients? (ii) What happens to clients who qualify but require legal assistance more quickly than what the legal aid scheme can provide them? Ultimately, it may be more appropriate for private lawyers not to advise on legal aid schemes.

## 6. Conflict of Interest

### **Specific**

LS29: Duties of loyalty and confidentiality

The guideline states that practitioners should be mindful that they owe their former clients duties of “loyalty” and confidentiality even after the

termination of the retainer. However, loyalty is an amorphous concept, what exactly does it entail? It should be replaced with another word or better defined so as not to place onerous responsibilities on family law practitioners.

## 7. Concluding or Terminating the Lawyer-Client Relationship

### **General**

In instances where lawyers are taking over a case and the client has yet to conclude or terminate their previous lawyer-client relationship, guidelines could be given to allow this relationship to be terminated amicably (both by the client and the lawyer taking over the case).

Guidelines could also be given with regard to cases about to be concluded. For example, lawyers should make clear that documents from the case are available to the clients even after the conclusion of the lawyer-client relationship.

The availability of the Law Society as a mediator between lawyers and clients should also be more greatly publicised as there seems to be a lack of awareness about it.

## 8. Pre-Trial Proceedings

### **General (Children as Witnesses)**

Guidance should be provided as to when it is appropriate for a child to be called to the stand as a witness, and to sign affidavits. In some situations, it might be more necessary, such as in the case of PPO hearings. However, what sort of considerations come into play? At what age should we get children to sign affidavits?

## 9. Court Hearings

### **General**

There could be a channel of communications/ recourse created for family lawyers to clarify issues with family court judges without fear of

contempt of court.

Points 10.18.6 requires family lawyers to respect the seniority of other lawyers while 10.18.9 requires lawyers to defer the order in which matters are heard to more senior lawyers. Practically speaking, there is often no queue system and this would result in senior lawyers being heard first, which may not be as fair as a first come first serve system, or a system where more pressing issues are heard first.

While seniority should understandably be respected, perhaps it is not necessary to always require queue orders to be deferred to senior lawyers unless they have a pressing issue to attend to, etc.

Point 10.28 on not discouraging witnesses from talking to opposing counsel is appreciated.

#### 10. Relationship with Other Practitioners

##### **General**

Practitioners should not commence arguments/ litigate by correspondence with each other.

#### 11. Relationship with Litigants-in-Person

##### **General**

**Note:** The following is a link to the Law Society's Guidance Note on Limited Retainers - <http://v1.lawgazette.com.sg/2016-09/1658.htm>

It could be recommended for practitioners to state in their letter of engagement that this pertains to a limited retainer. The specific matter the limited retainer is for should also be specified (e.g. "This is only for a PPO/ POHA/ etc.").

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