

FAMILY COURT PRACTICE

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I. Petitions for Divorce

See also Section XII for the checklist on [Divorce Petitions](#)

1. Form 4 – Litigants in Person

The Family Court Users' Committee (FCUC) has commented on the practice whereby some solicitors acting for the Petitioner prepared a typed copy of Form 4 in English and then asked the Respondent acting in person to sign. This practice is improper as the respondent might refute the document on the basis it was in English, a language with which he or she is unfamiliar.

The Family Registry was instructed by HH Judge Gill some years ago not to accept Application for Directions for Trial if the solicitor was unable to demonstrate the Form 4 had actually been prepared by the Respondent.

The FCUC has stated that the Petitioner's legal representatives should not prepare the Form 4 for a Respondent acting in person to sign especially if it is drafted in English only and the Respondent does not understand English.

2. Affidavit by Petitioner in support of the Petition: Form 21 Matrimonial Causes Rules (Cap.179)

The statutory form is relatively simple and practitioners should seek *additional directions when submitting the relevant Form 21* and thus avoid an unnecessary additional hearing. The sample clauses *should be amended and adapted as appropriate* for use in the following directions:

- Custody and ancillary relief orders
- Social Welfare Report
- Any order for valuation report
- Petitioner seeking \$1 nominal maintenance
- Filing of Affidavit of Means
- Dispensing with the "usual directions"
- No agreement on ancillary matters

[Click here to obtain the sample clauses](#)

3. Defended Divorce Petitions: Pre-Trial Review

Solicitors acting in defended divorces should apply for a 15 to 30 minute pre-trial review before setting the matter down for trial.

4. Applications for Substituted Service: [FHFK and NCM CACV 182/2007](#)

See also Section XI for the checklist on [Substituted Service](#)

The Family Court Users' Committee has asked the Law Society to highlight the judgment in [FHFK and NCM](#) where the Court of Appeal set aside a decree absolute because of irregularity in the proceedings:

Solicitors for the petitioning husband applied for substituted service of a petition based on desertion by the wife. However the Court of Appeal held that the order granted by the court was obtained improperly by means of false information as:

- the order was obtained by false information or material non-disclosure
- the case was a "voidable proceeding and the court has jurisdiction to set it aside"

Notwithstanding the fact the husband had re-married the Court of Appeal set aside:

- the order for substituted service of the petition
- Decree Nisi dated May 2006
- Decree Absolute dated June 2006
- Directed the Registrar to send the judgment to the Secretary for Justice to consider criminal prosecutions in light of the husband's conduct

Members should remind their clients of the seriousness of perjury and that applications for substituted service should only be made after serious and genuine efforts to locate the party have failed

5. Petition for Divorce: Costs Orders

(a) Grounds for Divorce

The Family Court Judges *might not* award costs where solicitors issue petitions based on any of the "fault facts" if it is clear from the petition that the parties have "*lived apart for more than 2 years*".

(b) Legally-Aided clients

For a petition based on say 'unreasonable behaviour', or 'desertion', if the petitioner is legally aided, Judges understand that the petitioner's solicitor is under an obligation to seek costs of the suit. Bearing in mind that the court has a wide discretion over costs, if a judge sees in a case that the chance of recovering costs is slim or nil, the judge may, upon granting the Decree Nisi, make an order nisi that there be no order as to costs. If the petitioner's solicitor wishes to argue the matter, then he/she may write and request for a hearing date.

6. Pronouncement of Orders at Decree Nisi Hearing

In cases where the parties are able to agree and settle issues concerning children and ancillary relief, the usual practice is for a consent summons to be prepared and signed by the parties for the necessary orders to be made at the Decree Nisi hearing. Previously, the Court made two orders in open court at the time of granting the Decree Nisi, one being the pronouncement of the Decree Nisi, and the other dealing with issues concerning the children and/or ancillary relief.

Orders relating to children and/or ancillary relief will be made in Chambers and the practice of the Family court will be:

A. Settlement relating to children and ancillary relief

The court will make **three orders** to deal with situations as outlined above: **two orders will be in open court and one in chambers:** -

a. Open Court

1. Pronouncement of the Decree Nisi; and
2. An order to adjourn the application for custody order and ancillary relief to chambers forthwith (if applicable) and the costs order for the main suit.

b. Chambers

3. An order dealing with custody with a Section 18 Declaration, ancillary relief and any other arrangements/terms in the consent summons; **or**

The application will be adjourned.

B. Practice where there are *no issues* on children and ancillary relief

Two orders only will be made in **open court**, namely: -

1. Pronouncement of the Decree Nisi; **and**
2. Section 18 Declaration and costs order.

[Click here for a copy of the judgment FHFK and NCM](#)

7. Special Procedure List

Practitioners should be familiar with the requirements of Practice Direction 15.4.

As there is no longer any hearing for the Decree Nisi it is important that the Statement of Arrangements for the child(ren) be as detailed as possible. Failure to provide accurate and relevant information results in requisitions which could have been avoided and leads to obvious delay:-

- (a) The details should be accurate;
- (b) Sufficient details on the proposed arrangements for the child(ren): e.g.
 - Who assists in looking after the child(ren) while the parent is at work? or
 - If the petitioner seeks custody of the child(ren) and nominal maintenance of HK\$1*, additional information about the petitioner's financial means and ability to support the child(ren) will be required.
 - See also [PD 15.13](#) on **Pilot Scheme on Children's Dispute Resolution**

II. Domicile

In a judgment **Y v W** FCMC 1847/2011, HHJ Bebe Chu reviewed the legal principles concerning domicile in all petitions and joint applications, where domicile is pleaded for jurisdiction under sections 3, 4, 5 and 6 of the Matrimonial Causes Ordinance (Cap. 179).

Members instructed in divorce proceedings should review the judge's decision on domicile in **Y v W**. A simple reference that the Petitioner holds 'a Permanent Hong Kong Identity Card' will not be considered as sufficient evidence of domicile and more particulars should be provided.

Click [here](#) for a copy of the judgment of **Y v W**

III. Children

1. Judiciary's Guidance Note on Meeting Children

The Chief Justice has provided guidance to Judges to determine whether a meeting should take place with a child in the following proceedings:

- Matrimonial and Family Proceedings (See PD 15.12)
- Wardship Proceedings
- Proceedings under the Child Abduction and Custody (Cap. 512)

The Guidance Note came into effect on 2 May 2012 and covers the following:

- Whether there should be a meeting
- Factors to assist the Judge in making the decision
- Representation by the parties
- If a decision is made not to meet with the child
- If a decision is made to meet with the child
- Commencement of the meeting - The child will be told a recording of the meeting will be kept and the outcome of the meeting will be conveyed to the child after the meeting

[Click here for a copy of the Guidance Note](#)

2. Separate Representation for Children

The Chief Justice issued a Guidance Note *Separate Representation for Children in Matrimonial and Family Proceedings which came into effect on 3 October 2012*.

[Click here for a copy of the Guidance Note](#)

3. Public Housing

The Family Court judges indicated they are prepared to add an order identifying the party with the right of care and control of the child(ren).

4. Supervised Access

If supervised access is required this should take place at the work place of the social worker during the office hours of the social worker in charge of the case unless otherwise agreed by the social worker. In exceptional cases, parties may apply to the court for directions; the social worker concerned should also be informed of the application.

5. Children's Dispute Resolution – Pilot Scheme

The Chief Justice issued PD 15.13 on 23 July 2012 on the Pilot Scheme which commenced on 3 October 2012.

[Click here for a copy of PD 15.13](#)

IV. Financial Dispute Resolution Pilot Scheme (“FDR”)

1. Chief Justice's Practice Direction 15.11

The Revised Practice Direction 15.11 on “*Financial Dispute Resolution Pilot Scheme*” came into effect on 1 November 2007. Click the following links for the following documents:

(a) English version

[Practice Direction 15.11](#)

[Form A](#): Notice of [Intention to Proceed with] an Application for Ancillary Relief

[Form B](#): Notice of an application under Rule 56B

[Form C](#): Notice of First Appointment

[Form D](#): Notice of Financial Dispute Resolution Appointment

[Form E](#): Financial Statement (computerised form)

[Form F](#): Notice of allegation in proceedings for Ancillary Relief (computerised form)

[Form G](#): Notice to dispense with paginated page

Forms A to G are in *Word* format. Members are encouraged to download and save these documents into their office database.

(b) Chinese version

[Practice Direction 15.11](#)

[Form E](#): Financial Statement (computerised form)

2. The Family Court Judges have expressed concern that many solicitors appearing in the Family Court do not appear to have *any* knowledge of the FDR procedures.

Solicitors who appear in the Family Court should be competent to do so. Principle 6.01 of the *Hong Kong Solicitors' Guide to Professional Conduct* states:

“6.01 Duty to Act Competently

(a) A solicitor owes his client a duty to be competent to perform any legal services undertaken on the client's behalf.

(b) A solicitor should serve his client in a conscientious, diligent, prompt and efficient manner.

Commentary

1. *Competence in the context of Principle 6(a) goes beyond formal qualification to practise law. It has to do with a solicitor's capability to deal with the matter in question. It includes knowledge, skill, and the ability to use them effectively in the interests of a client.*
2. *As members of the legal profession, solicitors hold themselves out as being knowledgeable, skilled and capable in the practice of law. A client is entitled to assume that a solicitor has the ability and capacity to deal adequately with any legal matters undertaken on the client's behalf.*
3. *A solicitor should not undertake a matter without being either competent to handle it, or able to become competent without undue delay, risk or expense to the client. This is an ethical consideration and is to be distinguished from the standard of care that a court would apply for purposes of determining negligence.*
4. *Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied and the ability to put such knowledge to practical effect.”*

3. FDR Questionnaires: PD 15.11 - Paragraph 4

Paragraph 4 of PD 15.11 on FDR which requires the parties to file and serve *not later than 14 days before the hearing of the First Appointment.....a questionnaire and/or request for particulars setting out the further information sought of the other party.*

This is required so that the FDR Judge can have the opportunity to consider the Questionnaire/Request before deciding whether or not to make an order at the First Appointment for the Questionnaire/Request to be answered.

The Questionnaire/Request should only contain questions/requests relevant to the issues in their case and necessary for the purposes of an FDR. Practitioners should be prepared to explain to the court the relevance of each question raised in relation to the issues which need to be resolved at the FDR hearing. The Family Judges have expressed concerns that they see questionnaires setting out pro forma/standard questions which are not applicable, or inappropriate for their cases or simply not necessary for an FDR.

4. 1st Appointment Hearings

(a) Applications to vacate a 1st Appointment hearing, with leave to file a questionnaire

Where both parties wish to make an application to vacate a 1st Appointment with leave to file a questionnaire, the parties must file a consent summons and attach a draft questionnaire for the judge to review; failure to attach the draft questionnaire may result in the Judge declining leave to the parties to file the questionnaires.

(b) First Appointment Bundle

The only bundle to be filed for the purpose of the 1st Appointment hearing is the one containing those documents specified in paragraph 4 of PD 15.11. It is not necessary to file any paginated 'pleadings bundle' or paginated 'correspondence bundle', unless otherwise directed by the Judge.

(c) Bundles

The First Appointment Bundle should be indexed and paginated. For second and subsequent 1st. Appointments, the bundle lodged at the 1st First Appointment should be re-used and updated as necessary

5. FDR List of Issues

PD 15.11 also provides for the filing of *a concise statement of the apparent issues between the parties*. The statement should only include matters which are relevant to the issues in dispute. Use of a tabular format setting out the Petitioner's and the Respondent's respective position on apparent issues is recommended.

[Click here for the Sample Form](#)

6. FDR hearings: Draft Consent Summons to be drawn up

Where possible, solicitors should prepare a draft consent summons incorporating terms to be discussed at the FDR and any agreed terms for all applications including ancillary relief, custody and access for the FDR hearing.

Likewise, a draft order of the issues for consideration should be drawn up.

7. Application for Decree Nisi hearing

Solicitors should set their client's petition down for the hearing of the Decree Nisi as soon as possible as settlements reached during the FDR hearing may not be made an order of the court until after the pronouncement of the Decree Nisi.

8. Unsuccessful FDR - Fixing of Trial Dates (May 2010)

After an unsuccessful FDR, in an ancillary relief trial not anticipated to last more than one day, the FDR Judge will be fixing the date for the trial together with the PTR date, before the Trial Judge. The trial date is likely to be the earliest available date in the court diary. Practitioners should therefore bring their diaries to the FDR hearing.

V. Maintenance Orders

1. Maintenance Pending Suit

The Family Court Judges have adopted the wording (or substantially similar wording) when making orders for maintenance pending suit.

(i) ***“By consent maintenance pending suit to be paid to the Petitioner/Respondent in the sum of \$ p.m. until date of Decree Absolute and thereafter Petitioner/Respondent to pay periodical payments at the said rate until further order. Credits to be given for payments already made. Payments to be effected on or before the day of each and every month commencing on the day of*”**

(ii) Members should ensure that all Petitions should include in the prayer for relief an appropriate prayer for maintenance pending suit.

2. Maintenance Orders: Commencement date

- (a) If the consent summons provides for maintenance payments, **the commencement date of any court order should be clearly stated in the draft order.**
- (b) Any consent summons for monthly maintenance payments should also include the date of subsequent payments per month as well as the date when such payments shall cease.
- (c) If the maintenance order is for a spouse, unless otherwise agreed or ordered, the duration for the maintenance payments should be in accordance with section 9 of the MPPO, which is for joint lives of the parties or a term ending with the date of the remarriage of the recipient, whichever is the shorter term.

3. Maintenance for Children

The Family Law Committee recommends that the following wording be used when seeking an order for maintenance under section 10 of the MPPO:

“... maintenance for the children should continue until they attain the age of 18 years or until they cease full time education whichever is the later or until further order.”

4. Nominal Maintenance Orders by Consent

Legally-aided/CSSA recipient clients seeking nominal maintenance of \$1 per annum by consent must support the application with an affidavit providing details justifying the request. The information in the affidavit should assist the Judge to exercise his or her discretion as these applications are not regarded as mere paper applications. The Family Judges have indicated that they will reject applications based on the justification of *“the client instructs”*.

5. Defaulting Maintenance Payers in Hong Kong

The Law Society has received confirmation from the Home Affairs Bureau (“HAB”) that practitioners can apply for details of the current address of a defaulting maintenance payer from the Immigration Department, Housing Department and the Transport Department (“the Departments”) by sending an approved pro forma letter.

[Draft pro forma letter and Contact addresses of the Departments](#)

6. Tracing the Maintenance Payer

A maintenance payer who fails to give notice of his or her change of address without reasonable excuse commits an offence, and a maintenance payee can report such offence to the police.

The maintenance payee should initially consider tracing the maintenance payer by contacting the Immigration Department, Housing Department or the Transport Department (“Departments”) to obtain details of the maintenance payer’s current address.

In order for the Departments to comply with such requests, it will be necessary to provide sufficient information, including the reason why an exemption under section 58(2) of the Personal Data (Privacy) Ordinance applies. Even if an address is provided the defaulting maintenance payer might not be contacted at this address and so it would be prudent to conduct a thorough check with the client to try and obtain additional information on the possible whereabouts of the defaulting payer.

HAB has provided a pro forma request letter which members can send to the Departments on the last known address of the defaulting payer; currently **no fee** is required.

7. Statutory requirements to Notify Change of Address by the Maintenance Payer

A maintenance payer is required to give notice of his or her new address to the maintenance payee:

- Within 14 days of any change
- By registered post to the maintenance payee’s last known address

Members should review the relevant sections in the following Ordinances:

- (a) S.9 of the *Guardianship of Minors Ordinance* (Cap.13)
- (b) S.10 of the *Separation and Maintenance Orders Ordinance* (Cap.16); and
- (c) S.28A of the *Matrimonial Proceedings and Property Ordinance* (Cap.192)

If a maintenance payee intends to make a report this should be done at the *nearest police station to the maintenance payer’s last known address*.

8. Reporting to the Police

A maintenance payee who wishes to make a complaint will be required to provide a brief statement outlining details of the offence which will then enable the police to start an investigation. The maintenance payee should make available supporting documents and or evidence such as:

- (i) returned registered mail sent by the maintenance payee to the payer at his or her last known address which indicates the letter has not been delivered because the payer has moved; and/or
- (ii) a statement listing the number of visits made to by the maintenance payee the payer’s address within a certain period of time (for example, within a week) and confirming the maintenance payer could not be located during these visits; and/or
- (iii) a statement of an independent witness who accompanied the maintenance payee to the payer’s address in (b) above confirming the payer could not be located at that address; and/or
- (iv) any other documents/evidence which substantiates and supports the maintenance payee’s claim the maintenance payer has moved and failed to notify the payee of the change in address within the statutory period of 14 days; and

(v) a copy of the maintenance order with evidence of the application to enforce maintenance payment.

VI. Costs

Practitioners are reminded of the costs consequences if a party fails to comply with the timetable and requirements set out in PD 15.11. The court will take a robust approach in penalizing a party on costs for unreasonable breaches of the PD.

1. PD15.12 - Generally in relation to costs

(a) Practitioners should be aware of paragraph 26 of PD 15.12. If costs are sought after an interlocutory application, then a Statement of Costs should be prepared to enable the Judge to make a summary assessment.

Most “Estimates of costs” contain only a very rough global sum, which may suffice for a very short hearing. However, for interlocutory applications with some arguments the Judge will not be able to make any summary assessment where there is inadequate information.

(b) For an argument/submissions on costs, the party seeking costs should produce a bundle of relevant correspondence, including any *Calderbank offers*.

(c) The comments above also apply to any First Appointment Hearing, if a party intends to ask the Court to make a summary assessment of costs.

VII. Part Heard and Urgent Cases: Applications for Maintenance and Custody

1. Time Estimates

Family law practitioners must use their best endeavours to provide realistic time estimates for contested application. It is noted that some practitioners underestimate the time of such applications to obtain an earlier date. This practice is to be discouraged as clearly there is insufficient time to deal with the issues and such applications are likely to be adjourned part heard, which only compounds the problems of re-listing.

2. Applications to transfer to the High Court

Practitioners dealing with contested applications or cases involving complicated matters can consider making a joint application to transfer the matter to the High Court.

3. Urgent Cases

If practitioners cannot get an early date from the Registry, they should write to the Judge in charge of the case for advice to see whether an early date can be fixed.

4. Service of Custody Order on Immigration Department (Circular 10-452 August 2010)

Family Judges propose to add a new note to custody orders in **all** Family Proceedings:

“Either parent may serve this Order on the Director of Immigration to restrain the child/children from being removed from Hong Kong.”

The duty to serve such orders on the Immigration Department will be the responsibility of the parents.

5. Service of injunction order with authorisation of arrest on Commissioner of Police

As such injunction applications are by their very nature urgent, when an applicant is legally represented, the court will order the applicant's solicitors to serve the order on the Commissioner of Police.

The following order will be added to all injunction orders with an Authorisation of Arrest:

“On being satisfied that the urgency of this case so requires, it is ordered that solicitors for the petitioner/respondent/applicant are to serve this injunction order on the Commissioner of Police.”

VIII. Consent Summonses

See also Section XI on the checklist for [Consent Summonses](#)

1. Conflict of Interest

The Family Court Judges have expressed concern over the approach of some solicitors who have clearly provided advice to both parties on the drafting of consent summonses in cases where one of the parties is not represented.

The Family Court Judges have indicated the following practice should be adopted:-

- (a) Solicitors should obtain a written acknowledgement (in the appropriate language) from the non-represented spouse confirming that he or she has been informed on the right to seek independent legal advice.
- (b) If the consent summons is in English, confirmation by the solicitor that the document has been properly explained and, where necessary, interpreted to that spouse.
- (c) Draft consent orders failing to meet judicial scrutiny will be rejected with the consequential costs orders.

Members should also review the [Guidance Notes and Commentary in Chapter 9 of the Hong Kong Solicitors' Guide to Professional Conduct: "Conflict of Interest between Clients"](#)

2. Time for Filing a Consent Summons when a Hearing Date has been fixed

Copies of consent summons or settlement agreements should be sent with a covering letter addressed to the Judge's clerk *at least 48 hours before the date of the hearing*, e.g. Hearing of the Decree Nisi.

3. Time for Filing when No Hearing Date has been fixed

Where agreement has been reached between the parties but there is no hearing date, the consent summons should be filed with the Family Registry.

4. Draft Orders

Practitioners should file draft orders as soon as possible. Where there are delays with consent, practitioners should seek an appointment with the judge.

In cases where one party is represented and the other is unrepresented, the Court expects the represented party to draw up the orders.

IX. Ex Parte Applications

1. Practice Direction 11.1

Solicitors making ex parte applications before the Duty Judge should ensure the application complies with the requirements of the Chief Justice's Practice Direction 11.1

[Click here for a copy of Judiciary's PD 11.1](#)

2. Ex-parte application for Non-disclosure of Address

(a) Application for Non-Disclosure of Address

An application for non-disclosure of a client's address is made by ex-parte application supported by an affidavit. Solicitors making such applications are requested by the Family Court to file the applicant's address and contact details in a sealed envelope with the Family Court Registry when the application is filed. This practice will assist the Family Registry staff to locate parties who subsequently become "litigants in person" ("LIPs"). Solicitors are reminded of the Privacy (Personal Data) Ordinance and should obtain their client's consent in relation to the filing of the contact details.

(b) Disclosure of addresses

Practitioners should note that such applications in (a) above are only for non-disclosure of the residential address in the proceedings. The applicant should, however, provide an address for service.

While an applicant is legally represented, the address for service is his/her lawyer's office. In cases where the legal aid certificate has been discharged, or the applicant decides to act in person, if possible, the previous lawyer should remind the applicant to notify the court of an address for service. Failure to do so may leave the court with no alternative but to order disclosure of the applicant's residential address to the respondent for service.

(c) Court Order

The order, if granted will take the following form –

"Leave for non-disclosure of residential address granted subject to the following undertakings and conditions:

- (i) the applicant undertaking to the Court to provide his/her residential address, and/or the child/ren's residential address, and any changes thereof within 7 days of such change, in a sealed envelope;*
- (ii) the applicant undertaking to the Court to provide his/her address for service, or any new address of service forthwith upon any change, such address for service to be disclosed to the respondent/s; and*
- (iii) the sealed envelope in (i) above shall be opened by the Court in case of any failure to comply with (i) or (ii) above, or with leave of the Court."*

3. Applications for leave for non-disclosure of the child(ren's) school(s)

The order, if granted, will take the following form:

"Leave for non-disclosure of the child/children's school/s granted subject to the applicant undertaking to the Court to provide the name and address of the child/children's school/s, or any changes thereof within 7 days of such change, in a sealed envelope; and the sealed envelope to be opened only with leave of the Court."

4. Address for service

The applicant must provide an “*address for service*” so that the respondent can serve documents on the applicant.

When an order is granted to omit the residential address the applicant will still be required to provide an “*address for service*”, which will not be placed into a sealed envelope as this will be disclosed to the respondent. It is only the residential address which will be held in a sealed envelope.

5. Litigants in Person (LIPs)

Family Registry staff will explain to LIPs the meaning of “*address for service*” and of the obligation to inform the court if there have been any changes to this address. The staff will require LIPs to provide his/her *address for service* when an application for non-disclosure of residential address is made.

X. Judgment Summonses in the Family Court

1. Judgment Summonses

Rule 87(5)(a) of the *Matrimonial Causes Rules* (Cap. 179A) states:

(5) *On the hearing of the judgment summons the judge may-*

(a) *where the order is for-*

(i) *the payment of a lump sum or costs; or*

(ii) *maintenance pending suit or other periodical payments and it appears to him that the order would have been varied or suspended if the judgment debtor had made an application for that purpose, make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, the interest and surcharge payable, either at a specified time or by installments; (18 of 2003 s. 19)*

This rule permits a judge to make a new order for *all arrears* therefore, judgment creditors *are not required to file multiple judgment summonses for arrears of maintenance.*

2. Hearings in Chambers/Open Court

The Court of Appeal has declared the Family Court practice of hearing applications for ancillary relief *and* judgment summons together in a single hearing to be wrong as a matter of principle and practice. Members should review the following judgments:

[C v C and Another \(CACV272/2002\)](#)

And

[L v L \(2001 1HKLRD 150\)](#)

The practice of most of the Family Judges now is to deal with and make decision on the variation summons *in chambers* first, and that thereafter the matter will be stood down to give the parties time to reconsider their positions.

The Judge will then robe and proceed to deal with the Judgment Summons in *open court*. If the Judge needs to reserve decision on the variation application, then the Judgment Summons will be adjourned to another day for an *open court* hearing.

3. Burden of Proof

Practitioners are reminded of the burden of proof in the following applications:

- Judgment Summons on the applicant is “beyond reasonable doubt”
- Variation application: it is “on a balance of probabilities”.

4. Hearings in Open Court

Members should note the following:-

(a) Hearing of an application for a Judgment Summons in the Family Court must be heard in open court.

(b) Court dress is required for appearances in Open Court:

- white blouse with collar/collarette, or white wing collared shirt/bands
- dark suit
- robes

5. Judgment Summonses: Certification

Practice Direction 15.12 on Matrimonial Proceeding and Family Proceeding does not require a statement of truth to be made in relation to the two forms required for a Judgment Summons, namely, *Praeceptum for Issue of Judgment Summons* (Form 22) and *Judgment Summons* (Form 23).

The Family Court Judges require the last part of the *Praeceptum* to contain the following statement:

“I further certify that no writ of fieri facias has been issued to enforce the said order [or, if a writ of fieri facias has been issued, give details and state what return to it has been made].”

This statement should also be repeated in the affidavit/affirmation in support of the Judgment Summons.

[Click here for a copy of Practice Direction 15.12](#)

XI. Indorsement of Penal Notices on Court Orders

Location of the Indorsement Notice

The indorsement must be placed on the **FRONT** of the order and not on the back sheet. The indorsement of Penal Notices on Court Orders must comply with the requirements of Order 45 r7/6 which states:

“It is a necessary condition for the enforcement of a judgment or order under r.5 by way ofcommittal, that the copy of the judgment or order served under this rule should have the requisite penal notice prominently indorsed thereon.

The indorsement on the *front of the order* should be in the following words or in words to the following effect:-

In the case of a judgment or order requiring a person to do an act within a specified time or to abstain from doing an act:

If you, the within named A.B. neglect to obey this judgment (or order) by the time stated (or in the case of an order to abstain from doing an act, “If you, the within named A.B. disobey this judgment (or order)), you may be held to be in contempt of Court and liable to process of execution to compel you to obey it”

There is no requirement under the rules for a separate application to have a Penal Notice indorsed on the back sheet.

XII. Family Court Registry

1. Checklists Issued by the Family Court Registry

The Family Court Registry has published 3 checklists to assist practitioners and their clerks in the preparation of divorce petitions and ancillary documents.

Click the link below for the relevant checklist:

[Divorce Petitions](#)

[Substituted Service](#)

[Consent Summonses](#)

Members should ensure documents prepared by their staff follow the guidance in the checklists and thereby improve the standard of documents submitted to the Registry.

2. Time Estimates

(a) Time Estimates for Interlocutory Hearings

It is the *duty* of solicitors to provide proper time estimates of all hearings.

Many clerks file applications for 3 minute hearings which are seriously underestimated. This attempt to “jump the queue” will be penalised. The Registry clerks will scrutinise the application and where it is clear the matter cannot be disposed of within the 3 minute application, the Registry will mark the filed papers with this observation and appropriate costs orders will be made.

(b) Substantive Hearings

Solicitors should provide proper time estimates for substantive hearings. As in paragraph 13a above where there is a serious underestimation of time the papers will be marked by the Registry.

e.g. contested custody applications where both parties are represented should be listed for at least 1 day.

Should these hearings overrun, the Family Court Judges have indicated that it is *unlikely* the case can continue the following day and will be adjourned part heard.

3. Skeleton Arguments

Practitioners are required to comply with the directions in Practice Direction 5.4. Skeleton arguments *must be served at least 48 hours* before the hearing on the court and the other party unless otherwise directed. Failure to do so may result in penal costs orders.

[Click here for a copy of Practice Direction 5.4](#)

4. Registration of Ancillary Relief Orders as *lis pendens*

Important Note: It is no longer appropriate to register the divorce petition itself at the Land Registry and this practice should cease with immediate effect.

Ancillary relief orders are often lengthy and full public disclosure is inappropriate. Where a party wishes to register a court order dealing with the former matrimonial property, the Family Court Judges have indicated the parties can apply for **separate orders** in relation to *inter alia* the following applications: custody, transfer of property, maintenance, lump sum orders etc.

5. Separate Applications

Application for separate orders should be made during the same hearing. After the order(s) have been sealed the relevant order can be registered with the Land Registry thus protecting the privacy of the parties in respect of their divorce proceedings.

The *Matrimonial Causes Rules* (“MCR”) (Cap. 179) prescribe forms for ancillary relief applications:

Form 25: Applications for Ancillary Relief

Form 26: Applications under Rule 56B (consideration of the financial position of the respondent after the divorce)

[Click here for copies of MCR Forms 25 and 26](#)

6. Family Court Files - Copying of documents

Family Registry personnel have noticed some filing clerks use their mobile phones to take copies of documents in the court files. This practice is not allowed and practitioners should remind their clerks not to engage in such practice.

7. Registry Hours

The Registry has “quiet periods” particularly between 9 a.m. to 11:00 a.m. and practitioners should, where possible, use this “window” to file documents.

8. Pilot Scheme on Security Checks

A Pilot Scheme to enhance security in the Family Court will be implemented from 24 October 2012.

Under the Pilot Scheme, all persons, including legal representatives, will be required to go through security checks before entering the courtrooms in the Family Court. All bags and briefcases will be checked and *inter alia*, the following will be prohibited to be brought into courtrooms:

- all liquids, including water and drinks
- knives, scissors, etc
- umbrellas
- other objects capable of being used as offensive weapons

The Judiciary Administrator has made arrangements for court users to store possessions in self-serviced lockers.

[Click here for a copy of the Judiciary Administrator's letter dated 24 September 2012](#)

XIII. Family Court Registry Post Boxes

1. Waiting List for boxes

Currently, all Family Court Registry post boxes have been allocated.

New firms wishing to apply for a box should contact the Registrar of the District Court and apply to be placed on the waiting list. The Registrar will deal with applications according to the priority on the waiting list.

2. Returning keys to the Registrar

Firms ceasing practice should make arrangements to return the post box key to the Registrar of the District Court who will then make arrangement to re-allocate the post box to the next firm on the waiting list.

3. High Court and District Court Post boxes

(a) Security of Post Boxes

The Family Court Registry has noticed some firms have failed to lock their assigned post boxes thus causing concern over confidentiality of the court documents.

Principle 8.01 of the *Hong Kong Solicitors' Guide to Professional Conduct* imposes a duty of confidentiality on all solicitors:

"A solicitor has a duty to hold in strict confidence all information concerning the business and affairs of his client acquired in the course of the professional relationship, and must not divulge such information unless disclosure is expressly or impliedly authorized by the client or required by law or unless the client has expressly or impliedly waived the duty."

Commentary 1 notes this duty *"extends to the solicitor's staff, whether admitted or unadmitted, and it is the responsibility of the solicitor to ensure compliance."*

Practitioners should remind their clerical staff to lock the firm's post box after each visit to the Registry.

(b) Post box number to be marked on court documents

The firm's High Court Registry and District Court Registry post box number should be marked on the back sheet of all court documents together with the firm's full contact details.

The post box number should be marked on the top right hand corner of each draft order/judgment lodged for approval in either the High Court or the District Court Registry.

XIV. Professional Conduct of Solicitors: Punctuality

The Family Court Judges have complained that many practitioners fail to be punctual when attending Court. Members are reminded of *Rule 2 of the Solicitors' Practice Rules* namely:-

"A solicitor shall not, in the course of practising as a solicitor, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair:-

- (a) his independence or integrity;*
- (b) the freedom of any person to instruct a solicitor of his choice;*

- (c) *his duty to act in the best interests of his client;*
- (d) *his own reputation or the reputation of the profession;*
- (e) *a proper standard of work; or*
- (f) *his duty to the court."*

XV. Court Dress

Members should dress in *appropriate attire* when attending Court:

"Suits of solemn or dark colour, such as navy blue, dark grey, and black and shirts of white or other unobtrusive colour. Female solicitors may wear trouser suits of like colour."