

JUDICIARY

Case No. OMB 1803/95

Complaint against Judiciary - failure to properly notify a party in a divorce case of the venue for hearing of the case

The complainant's former wife filed a divorce petition and a proposal as to the custodial arrangement for their daughter to the District Court in August 1995. The case was scheduled for hearing at the Family Court, Supreme Court Building, Queensway on 3 November 1995 at 9:30 a.m. The complainant arrived at the court at 9:00 a.m. that day and waited in the lobby area until 10:30 a.m. but no one called out his name. The complainant made enquiries and eventually was told that the judgement of his case had already been delivered in the favour of his former wife.

2. The complainant was aggrieved that, due to improper arrangement on the part of the Judiciary, he had not been informed of the exact venue for hearing his case as there was no mention of the exact court room number in the "Notice of Hearing of Petition" (NoH) issued to him by the Registrar of Hong Kong District Court, thereby resulting in his losing the opportunity to make representations at the court hearing.

3. According to the Judiciary Administrator (JA), the complainant's former wife's petition for divorce was served, in August 1995, on the complainant who was directed to file a Form 4 and an answer if he intended to defend the case. As he did not respond, the case was set for hearing on 3 November 1995 in the undefended list before Court 36 at 9:30 a.m. There was a total of 25 cases to be heard on that morning.

4. On the date of the hearing, the complainant's former wife attended the court hearing but the complainant could not be found inside the court room. Since most respondents in undefended cases do not turn up, the court assumed that he was absent. The hearing proceeded and granted the complainant's former wife the divorce and the custody of their daughter. The complainant was required to pay his former wife a nominal sum of \$1 for maintenance. As there was no objection, application for appeal or re-hearing from the complainant and his former wife, the court's rulings were made absolute in January 1996.

5. Under existing regulations, the Registrar shall give not less than 10 days' notice of the date, place and the estimated time of the hearing to every party to the petition. At present, two court rooms are shared amongst the four judges and it is only possible to allocate the two court rooms amongst them two days prior to the hearing date. It is not possible to indicate on the NoH, usually issued 15 days before the date of hearing, the exact court room number. Hence the NoH sent to the complainant did not specify the exact court room number. Nevertheless, the daily cause list showing the case numbers and the court numbers in which the cases are to be heard was posted on the notice boards on Lower Ground 4th floor, Ground Floor as well as on the 14th Floor of the Supreme Court Building.

6. The normal arrangement in all court hearings is for the Judges' Clerks to call out the names of the parties outside the court room to ascertain their presence before the hearing is due to start. If the petitioner or respondent does not turn up when the hearing commences, the court may decide whether to proceed in the absence of the parties, having regard to the readiness of the case and whether the court is satisfied that the notice has been served on the other party. Orders may be made ex-parte in the absence of any one party.

7. In most uncontested divorce cases, the respondents do not attend the hearings. When such case was called and no response was received, some Judges' Clerks in the Family Court took this high absence rate of the respondents for granted. Hence no additional effort was made to call out the names of the respondents outside the court. In the complainant's case, the JA informed this Office that the Judge's Clerk did not repeat the call outside the court.

8. This is not an isolated incident. In 1991 this Office had handled a similar complaint against the Judiciary on improper ushering arrangements in court hearings on the 14th floor of the Supreme Court Building. The complaint was found to be substantiated. As a result, among other recommendations, the Ombudsman recommended that the Judiciary should :- (a) remind all Judges' Clerks periodically, in the form of a circular, that they must call out names of the parties concerned or delegate their ushers to do so before informing the Judges of the position; and (b) on every floor of the Supreme Court Building display notices and floor plans indicating the location of the ground floor enquiry counter.

9. It was noted that the Judiciary had subsequently accepted recommendation (a) while not accepting recommendation (b).

10. In response to the enquiries raised by this Office in connection with the complainant's case, the JA confirmed that the circular, though issued in 1991 following our recommendation, had not been re-circulated to the Judges' Clerks regularly. As regards the display of notices and floor plans, the Judiciary agreed that it would put up a notice board on each floor of the Supreme Court Building to direct public to the information counter on the ground floor for information or assistance.

11. In the complainant's case, the JA accepted that the Judges' Clerks had failed to observe the standard practices. As a remedy, the JA had immediately instructed the Judges' Clerks in the Family Court to rectify their practices. They would call out the names of all parties outside the court room before a hearing commences. In addition, the JA had initiated a quick review of the information contained in the NoHs issued by the Family Court. The NoH would remind the parties that they could ascertain the exact court room number by checking the relevant notice boards or making enquiries at the information counter.

12. The complainant's case demonstrated that the Judiciary had neither closely monitored the situation nor properly supervised performance of its staff in ensuring implementation of the recommendation of the Ombudsman on the previous complaint. Hence, there was no one to check if the complainant was waiting outside the court room. As a result, the complainant lost the opportunity to make his representations at the court hearing. Having regard to the circumstances, the Ombudsman is of the view that the complainant has good reasons to feel aggrieved and finds that his complaint **substantiated**.

13. The Ombudsman recommends the JA to take the following actions to redress the complainant and avoid recurrence of similar mistakes in future -

- (a) sending the complainant a letter of apology;
- (b) considering what other appropriate form of remedy/assistance could be offered to the complainant;
- (c) reminding all Judges' Clerks, regularly that they must call out the names of parties concerned both inside and outside the court room before informing the Judge of the position;
- (d) carrying out regular spot checks to ensure that the standard practices are adhered to by all the Judges' Clerks at all times;
- (e) producing a bilingual daily cause list in ascending case number sequence to facilitate searching by the public; and
- (f) displaying on every floor of the Supreme Court Building, bilingual notices indicating the location of the ground floor information counter.

14. In reply to the findings and recommendations of the Ombudsman, the JA agreed to carry out all the recommendations except (e). She considered that the existing arrangement regarding the posting of daily cause lists was sufficient and that there was an information counter available on the ground floor to provide the necessary assistance.

15. Having studied the Judiciary's comments carefully in detail, the Ombudsman considers that the findings, conclusion and recommendations of this investigation should remain unchanged.