CONSULTATION PAPER

(A) PROPOSED AMENDMENTS TO LEGAL PROFESSION (PROFESSIONAL CONDUCT) RULES FOR FAMILY AND RELATED PROCEEDINGS; AND

(B) BEST PRACTICES GUIDE FOR FAMILY LAW PRACTITIONERS

Consultation Period:
[One Month]

Introduction

1. The Law Society of Singapore (‘Law Society’) and the Family Justice Courts (‘FJC’) are seeking feedback on: (a) proposed amendments to the Legal Profession (Professional Conduct) Rules 2015 (‘PCR 2015’) in the context of family and other related proceedings; and (b) a “Best Practices Guide for Family Law Practitioners” which sets out best practice guidelines for legal practitioners conducting family proceedings in Singapore. The draft amendments to PCR 2015 are to be submitted for consideration to the Professional Conduct Rules Working Group after consultation.

Background

2. Over the years, family law practitioners have seen changes to the family law landscape, in terms of the processes and procedures to be adopted and the approach towards the practice of family law. On 1 October 2014, the Family Justice Act 2014 came into operation, establishing the FJC. On 1 January 2015, the Family Justice Rules and FJC Practice Directions came into effect.

3. An area of family law practice which is of vital importance is that of ethics. Family lawyers may face many unique and challenging ethical issues when acting in their client’s best interest in matrimonial and children cases, including in their dealings with fellow members of the bar, the courts or vis-à-vis clients. The solution to ethical problems is often varied in one of the most dynamic and challenging areas of the law as it often involves considerable emotional upheaval in parties’ lives.

4. The PCR 2015 provides specific rules for the conduct of criminal proceedings. However, there is an absence of guidelines in relation to family proceedings, making
it timely to consider amendments to address the specific challenges faced by family lawyers.

5. On 27 September 2016, the Family Law Practice Committee (‘FLPC’) organised a seminar entitled “Ethics in Family Law Seminar – Right and Wrong and Being Strong”, which was well-attended. This seminar aimed to help family law practitioners keep up with, and highlight, potential ethics traps; and also explore steps that may be taken in ethical decision-making. The seminar concluded with a general consensus that ethics had an important role in family practice. At the inaugural International Family Law Conference organised by the FJC from 29 to 30 September 2016, a session on “The Future of Family Justice: The Evolving Role of Family Practice and Ethics” was held.

6. On 9 January 2017, the Honourable the Chief Justice Sundaresh Menon mentioned in the Opening of the Legal Year 2017 that it would be “beneficial to spell out professional standards that will apply specifically to family law practitioners who are often placed in precarious position because of the many competing demands they face”. At the same time, the President of the Law Society, Mr Gregory Vijayendran, reinforced the point that part of “honouring the highest ethical standards this year includes upping our game in family bar ethics”.

7. An Ethics Workgroup comprising family law practitioners, academics and members of the judiciary¹ was formed to consider the ethical issues faced by family law practitioners. The FJC and the FLPC will work with practitioners to develop clear standards of professional conduct that apply in family proceedings.

Proposed Amendments to the Legal Profession (Professional Conduct) Rules 2015

8. The proposed introduction of a new Rule 15A and 15B in the PCR 2015 relating specifically to the practice of family law, read in conjunction with proposed Practice Directions which will be issued by either the Law Society or the Professional Conduct Council, will provide legal practitioners with a useful set of principles to guide them in the ethical practice of family law. This is particularly relevant and important given that the practice of family law often presents some of the most difficult ethical issues

¹ See Annex B.
which confront lawyers, given the sometimes divergent interests of their clients and the children involved in the proceedings.

9. The broad intention of these amendments is to: (a) reduce the adversarial nature of family proceedings by ensuring that practitioners consider and advise their clients on different available dispute resolution options; and (b) ensure that the interests of any children involved in family proceedings are considered by practitioners. In brief, the proposed amendments seek to:

(a) Ensure that practitioners take a constructive and conciliatory/non-confrontational approach towards the resolution of family proceedings.

(b) Ensure that practitioners inform their clients about alternative dispute resolution options such as mediation and counselling, and advise their clients to consider an amicable resolution of family proceedings whenever it is possible to and on a reasonable basis.

(c) Where a matter has to be adjudicated, ensure that practitioners advise their clients to adopt a constructive and reasonable approach to the resolution of the family proceedings.

(d) Make it clear that practitioners have a duty to advise their clients to consider the welfare of, potentially adverse impact of the family proceedings on, any children who may be involved in the family proceedings.

(e) Set out the duties of practitioners in relation to conflicts of interest where they are appointed as Child Representatives and/or Parenting Coordinators.

10. The full text of the proposed amendments and a brief commentary are found at Annex A to this document.

**Best Practices Guide for Family Law Practitioners**

11. The time is ripe for the establishment of a Best Practices Guide for Family Law Practitioners. The motivation behind such a best practices guide is to provide a reference with realistic examples to assist family law practitioners in their practice.

13. The proposed Best Practices Guide for Family Law Practitioners hopes to provide a useful and practical guide for family law practitioners in their dealings with the FJC, clients, fellow practitioners and litigants-in-person. It also seeks to provide illustrations which practitioners may come across.

14. The suggested topics to be covered by the Best Practices Guide are:
   (a) General duties of the family law practitioner
   (b) Relationship with the Court
   (c) Relationship with the client
   (d) Relationship with other practitioners
   (e) Relationship with litigants-in-person
   (f) Dispute resolution options
   (g) Relationship with children
   (h) Conduct of litigation and preparation and drafting of Affidavits
   (i) Communications and Correspondence

15. The FLPC will be organising dialogue sessions with members of the profession on the proposed amendments to the PCR 2015 and the Best Practices Guide for Family Law Practitioners.

**Invitation for Views and Feedback**

16. The Law Society and the FJC invites members to provide their views and feedback on the proposed amendments to the PCR 2015 and the “Best Practices Guide for Family Law Practitioners”.

17. The consultation period is from 20 February 2017 to 20 March 2017 (both dates inclusive). All views and feedback may be sent in electronic form to represent@lawsoc.org.sg.
## Proposed Amendments

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<tr>
<th>Proposed inclusion of Rule 15A under:</th>
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<tr>
<td>“Part 3 Rules Applicable to Practice of Singapore Law and Practice in Singapore Courts;</td>
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<td>Division 1 – Role in administration of justice”</td>
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### Conduct of family proceedings

15A. (1) The following principle guides the interpretation of this rule:

*Principle*

A legal practitioner, acting in the context of family disputes, must always be alert to the fact that a client's best interest is often impacted by other considerations such as the best interests of the child, the psychological health of the client, and the resultant desirability to reduce conflict. A legal practitioner must adopt a constructive and conciliatory approach, whenever it is reasonably possible to do so, in the conduct of family proceedings from the time such proceedings are contemplated until their resolution.

(2) The legal practitioner must:

(a) inform his or her client about all available dispute resolution options (including but not limited to mediation and counselling) that are reasonably available to the client, so as to enable the client to make an informed decision regarding the resolution of family proceedings (including when such proceedings are contemplated);

(b) advise his or her client to consider an amicable resolution of family proceedings (including when such proceedings are contemplated) whenever it is reasonably possible to do so; and

(c) advise his or her client to adopt a constructive and reasonable approach in the adjudication of family proceedings.

### Remarks

This follows the general approach as set out in Ireland’s Guide to Good Professional Conduct for solicitors, section 2.2; and Appendix 4: Family Law in Ireland, Code of Practice 2008.


Similar wording found in Canada’s Model Code of Professional Conduct, Clause 3.2-4.
(3) Where there are issues concerning minor children, the legal practitioner must:

(a) advise his or her client that the court will prioritise the best interests of the children which will prevail over the wishes of either of the parents or the children or both; and

(b) advise his or her client to consider the welfare of, and potentially adverse impact of the family proceedings on, the children.

15B. (1) The following principle guides the interpretation of this rule:

Principle

A legal practitioner must ensure that when he acts in a particular capacity, his role in that capacity does not result in a conflict of interests.

(2) Paragraph (3) shall apply to legal practitioners who have been appointed to act as a Parenting Coordinator or Child Representative under Part 4 of the Family Justice Rules.

(3) A legal practitioner who has acted as a Parenting Coordinator or Child Representative in a dispute must not subsequently act for any party to the family proceedings in relation to:

(a) the subject matter of the family proceedings; or

(b) any matter relating to the family proceedings which was discussed during the course of the practitioners’ appointment as a Parenting Coordinator or a Child Representative.

Similar wording found in Ireland’s Guide to Good Professional Conduct for solicitors, Appendix 4; Canada’s Model Code of Professional Conduct, Section 5.1-1, Commentary para [4]; Australia’s Best Practice Guidelines for Lawyers doing Family Law Work (Oct, 2011), para 1.5.

See USA’s The Bounds of Advocacy (American Academy of Matrimonial Lawyers) paragraph 6.

This paragraph is similar to the wording in paragraph 8(6) PCR, which details the role of mediators in all proceedings. The aim of this provision is to provide specific guidelines as to conflicts in the specific family law context, where practitioners may be appointed as Parenting Coordinators or as Child Representatives.
Annex B

The Workgroup comprises:

1. Judicial Commissioner Valerie Thean, Presiding Judge, Family Justice Courts
2. District Judge Yarni Loi, Family Justice Courts
3. District Judge Jonathan Lee, Family Justice Courts
4. Professor Jeffrey Pinsler, S.C.
5. Mr Ang Cheng Hock, S.C.
6. Mr Alvin Chen
7. Ms Malathi Das
8. Ms Angelina Hing
9. Ms Michelle Woodworth
10. Mr Raymond Yeo
11. Mr Yap Teong Liang