

# PRACTICE DIRECTION – APPLICATIONS

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 23

### REFERENCE TO A JUDGE

- 1 A Master or district judge may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Master or district judge.

### APPLICATION NOTICES

- 2.1 An application notice must, in addition to the matters set out in rule 23.6, be signed and include:
  - (1) the title of the claim,
  - (2) the reference number of the claim,
  - (3) the full name of the applicant,
  - (4) where the applicant is not already a party, his address for service, and
  - (5) either a request for a hearing or a request that the application be dealt with without a hearing.

(Practice Form N244 may be used.)
- 2.2 On receipt of an application notice containing a request for a hearing the court will notify the applicant of the time and date for the hearing of the application.
- 2.3 On receipt of an application notice containing a request that the application be dealt with without a hearing, the application notice will be sent to a Master or district judge so that he may decide whether the application is suitable for consideration without a hearing.
- 2.4 Where the Master or district judge agrees that the application is suitable for consideration without a hearing, the court will so inform the applicant and the respondent and may give directions for the filing of evidence. (Rules 23.9 and 23.10 enable a party to apply for an order made without a hearing to be set aside or varied.)
- 2.5 Where the Master or district judge does not agree that the application is suitable for consideration without a hearing, the court will notify the applicant and the respondent of the time, date and place for the hearing of the application and may at the same time give directions as to the filing of evidence.
- 2.6 If the application is intended to be made to a judge, the application notice should so state. In that case, paragraphs 2.3, 2.4 and 2.5 will apply as though references to the Master or district judge were references to a judge.

- 2.7 Every application should be made as soon as it becomes apparent that it is necessary or desirable to make it.
- 2.8 Applications should wherever possible be made so that they can be considered at any other hearing for which a date has already been fixed or for which a date is about to be fixed. This is particularly so in relation to case management conferences, allocation and listing hearings and pre-trial reviews fixed by the court.
- 2.9 The parties must anticipate that at any hearing the court may wish to review the conduct of the case as a whole and give any necessary case management directions. They should be ready to assist the court in doing so and to answer questions the court may ask for this purpose.
- 2.10 Where a date for a hearing has been fixed and a party wishes to make an application at that hearing but he does not have sufficient time to serve an application notice he should inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it. He should then make the application orally at the hearing.

### **APPLICATIONS WITHOUT SERVICE OF APPLICATION NOTICE**

- 3 An application may be made without serving an application notice only:
  - (1) where there is exceptional urgency,
  - (2) where the overriding objective is best furthered by doing so,
  - (3) by consent of all parties,
  - (4) with the permission of the court,
  - (5) where paragraph 2.10 above applies, or
  - (6) where a court order, rule or practice direction permits.

### **GIVING NOTICE OF AN APPLICATION**

- 4.1 Unless the court otherwise directs or paragraph 3 of this practice direction applies the application notice must be served as soon as practicable after it has been issued and, if there is to be a hearing, at least 3 clear days before the hearing date (rule 23.7(1)(b)).
- 4.2 Where an application notice should be served but there is not sufficient time to do so, informal notification of the application should be given unless the circumstances of the application require secrecy.

### **PRE-ACTION APPLICATIONS**

- 5 All applications made before a claim is commenced should be made under Part 23 of the Civil Procedure Rules. Attention is drawn in particular to rule 23.2(4).

## TELEPHONE HEARINGS

- 6.1 The court may order that an application or part of an application be dealt with by a telephone hearing.
- 6.1 A The applicant should indicate on his application notice if he seeks a court order under paragraph 6.1. Where he has not done so but nevertheless wishes to seek an order the request should be made as early as possible.
- 6.2 An order under 6.1 will not normally be made unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the order.
- 6.3
  - (1) Where a party entitled to be heard at the hearing of the application is acting in person, the court -
    - (a) may not make an order under 6.1 except on condition that arrangements will be made for the party acting in person to be attended at the telephone hearing by a responsible person to whom the party acting in person is known and who can confirm to the court the identity of the party; and
    - (b) may not give effect to an order under 6.1 unless the party acting in person is accompanied by a responsible person who at the commencement of the hearing confirms to the court the identity of the party.
  - (2) The 'responsible person' may be a barrister, solicitor, legal executive, doctor, clergyman, police officer, prison officer or other person of comparable status.
  - (3) If the court makes an order under 6.1 it will give any directions necessary for the telephone hearing.
- 6.4 No representative of a party to an application being heard by telephone may attend the judge in person while the application is being heard unless the other party to the application has agreed that he may do so.
- 6.5 If an application is to be heard by telephone the following directions will apply, subject to any direction to the contrary:
  - (1) The applicant's legal representative must arrange the telephone conference by the British Telecom conference call 'call out' system or by some other comparable system for precisely the time fixed by the court.
  - (2) He must tell the operator the telephone numbers of all those participating in the conference call and the sequence in which they are to be called.
  - (3) It is the responsibility of the applicant's legal representative to ascertain from all the other parties whether they have instructed counsel and, if so the identity of counsel, and whether the legal representative and counsel will be on the same or different telephone numbers.

- (4) The sequence in which they are to be called will be:
  - (a) the applicant's legal representative and (if on a different number) his counsel,
  - (b) the legal representative (and counsel) for all other parties, and
  - (c) the judge.
- (5) The applicant's legal representative must arrange for the conference to be recorded on tape by the telecommunications provider whose system is being used and must send the tape to the court.
- (6) Each speaker is to remain on the line after being called by the operator setting up the conference call. The call may be 2 or 3 minutes before the time fixed for the application.
- (7) When the judge has been connected the applicant's legal representative (or his counsel) will introduce the parties in the usual way.
- (8) If the use of a 'speakerphone' by any party causes the judge or any other party any difficulty in hearing what is said the judge may require that party to use a hand held telephone.
- (9) The telephone charges debited to the account of the party initiating the conference call will be treated as part of the costs of the application.

## VIDEO CONFERENCING

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- 7 Where the parties to a matter wish to use video conferencing facilities, and those facilities are available in the relevant court, they should apply to the Master or district judge for directions.

## NOTE OF PROCEEDINGS

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- 8 The procedural judge should keep, either by way of a note or a tape recording, brief details of all proceedings before him, including the dates of the proceedings and a short statement of the decision taken at each hearing.

## EVIDENCE

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- 9.1 The requirement for evidence in certain types of applications is set out in some of the rules and practice directions. Where there is no specific requirement to provide evidence it should be borne in mind that, as a practical matter, the court will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application.

- 9.2 The court may give directions for the filing of evidence in support of or opposing a particular application. The court may also give directions for the filing of evidence in relation to any hearing that it fixes on its own initiative. The directions may specify the form that evidence is to take and when it is to be served.
- 9.3 Where it is intended to rely on evidence which is not contained in the application itself, the evidence, if it has not already been served, should be served with the application.
- 9.4 Where a respondent to an application wishes to rely on evidence which has not yet been served he should serve it as soon as possible and in any event in accordance with any directions the court may have given.
- 9.5 If it is necessary for the applicant to serve any evidence in reply it should be served as soon as possible and in any event in accordance with any directions the court may have given.
- 9.6 Evidence must be filed with the court as well as served on the parties. Exhibits should not be filed unless the court otherwise directs.
- 9.7 The contents of an application notice may be used as evidence (otherwise than at trial) provided the contents have been verified by a statement of truth<sup>1</sup>.

## **CONSENT ORDERS**

- 10.1 Rule 40.6 sets out the circumstances where an agreed judgment or order may be entered and sealed.
- 10.2 Where all parties affected by an order have written to the court consenting to the making of the order a draft of which has been filed with the court, the court will treat the draft as having been signed in accordance with rule 40.6(7).
- 10.3 Where a consent order must be made by a judge (i.e. rule 40.6(2) does not apply) the order must be drawn so that the judge's name and judicial title can be inserted.
- 10.4 The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any rule or practice direction a letter will generally be acceptable for this purpose.
- 10.5 Where a judgment or order has been agreed in respect of an application or claim where a hearing date has been fixed, the parties must inform the court immediately. (note that parties are reminded that under rules 28.4 and 29.5 the case management timetable cannot be varied by written agreement of the parties.)

## OTHER APPLICATIONS CONSIDERED WITHOUT A HEARING

- 11.1 Where rule 23.8(b) applies the parties should so inform the court in writing and each should confirm that all evidence and other material on which he relies has been disclosed to the other parties to the application.
- 11.2 Where rule 23.8(c) applies the court will treat the application as if it were proposing to make an order on its own initiative.

## Applications to stay claim where related criminal proceedings

- 11A.1 An application for the stay of civil proceedings pending the determination of related criminal proceedings may be made by any party to the civil proceedings or by the prosecutor or any defendant in the criminal proceedings.
- 11A.2 Every party to the civil proceedings must, unless he is the applicant, be made a respondent to the application.
- 11A.3 The evidence in support of the application must contain an estimate of the expected duration of the stay and must identify the respects in which the continuance of the civil proceedings may prejudice the criminal trial.
- 11A.4 In order to make an application under paragraph 11A.1, it is not necessary for the prosecutor or defendant in the criminal proceedings to be joined as a party to the civil proceedings.'

## MISCELLANEOUS

- 12.1 Except in the most simple application the applicant should bring to any hearing a draft of the order sought. If the case is proceeding in the Royal Courts of Justice and the order is unusually long or complex it should also be supplied on disk for use by the court office [The current word processing system to be used is WordPerfect 5.1].
- 12.2 Where rule 23.11 applies, the power to re-list the application in rule 23.11(2) is in addition to any other powers of the court with regard to the order (for example to set aside, vary, discharge or suspend the order).

## COSTS

- 13.1 Attention is drawn to the costs practice direction and, in particular, to the court's power to make a summary assessment of costs.
- 13.2 Attention is also drawn to rule 44.13(i) which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.