

PRACTICE DIRECTION – DEPOSITIONS AND COURT ATTENDANCE BY WITNESSES

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 34

WITNESS SUMMONSES

Issue of witness summons

- 1.1 A witness summons may require a witness to:
 - (1) attend court to give evidence,
 - (2) produce documents to the court, or
 - (3) both,on either a date fixed for the hearing or such date as the court may direct¹.
- 1.2 Two copies of the witness summons² should be filed with the court for sealing, one of which will be retained on the court file.
- 1.3 A mistake in the name or address of a person named in a witness summons may be corrected if the summons has not been served.
- 1.4 The corrected summons must be re-sealed by the court and marked 'Amended and Re-Sealed'.

Witness summons issued in aid of an inferior court or tribunal

- 2.1 A witness summons may be issued in the High Court or a county court in aid of a court or tribunal which does not have the power to issue a witness summons in relation to the proceedings before it³.
- 2.2 A witness summons referred to in paragraph 2.1 may be set aside by the court which issued it⁴.
- 2.3 An application to set aside a witness summons referred to in paragraph 2.1 will be heard:
 - (1) in the High Court by a Master at the Royal Courts of Justice or by a district judge in a District Registry, and
 - (2) in a county court by a district judge.

1 Rule 34.2(4).
2 in Practice form N20.
3 Rule 34.4(1).
4 Rule 34.4(2).

- 2.4 Unless the court otherwise directs, the applicant must give at least 2 days' notice to the party who issued the witness summons of the application, which will normally be dealt with at a hearing.

Travelling expenses and compensation for loss of time

- 3.1 When a witness is served with a witness summons he must be offered a sum to cover his travelling expenses to and from the court and compensation for his loss of time⁵.
- 3.2 If the witness summons is to be served by the court, the party issuing the summons must deposit with the court:
- (1) a sum sufficient to pay for the witness's expenses in travelling to the court and in returning to his home or place of work, and
 - (2) a sum in respect of the period during which earnings or benefit are lost, or such lesser sum as it may be proved that the witness will lose as a result of his attendance at court in answer to the witness summons.
- 3.3 The sum referred to in 3.2(2) is to be based on the sums payable to witnesses attending the Crown Court⁶.
- 3.4 Where the party issuing the witness summons wishes to serve it himself⁷, he must:
- (1) notify the court in writing that he wishes to do so, and
 - (2) at the time of service offer the witness the sums mentioned in paragraph 3.2 above.

DEPOSITIONS

To be taken in England and Wales for use as evidence in proceedings in courts in England and Wales

- 4.1 A party may apply for an order for a person to be examined on oath before:
- (1) a judge,
 - (2) an examiner of the court, or
 - (3) such other person as the court may appoint⁸.
- 4.2 The party who obtains an order for the examination of a deponent⁹ before an examiner of the court¹⁰ must:

⁵ Rule 34.7.

⁶ Fixed pursuant to the Prosecution of Offences Act 1985 and the Costs in Criminal Cases General Regulations 1986.

⁷ Rule 34.6(1).

⁸ Rule 34.8(3).

⁹ See rule 34.8(2) for explanation of 'deponent' and 'deposition'.

¹⁰ For the appointment of examiners of the court see rule 34.15.

- (1) apply to the Foreign Process Section of the Masters' Secretary's Department at the Royal Courts of Justice for the allocation of an examiner,
 - (2) when allocated, provide the examiner with copies of all documents in the proceedings necessary to inform the examiner of the issues, and
 - (3) pay the deponent a sum to cover his travelling expenses to and from the examination and compensation for his loss of time¹¹.
- 4.3 In ensuring that the deponent's evidence is recorded in full, the court or the examiner may permit it to be recorded on audiotape or videotape, but the deposition¹² must always be recorded in writing by him or by a competent shorthand writer or stenographer.
- 4.4 If the deposition is not recorded word for word, it must contain, as nearly as may be, the statement of the deponent; the examiner may record word for word any particular questions and answers which appear to him to have special importance.
- 4.5 If a deponent objects to answering any question or where any objection is taken to any question, the examiner must:
- (1) record in the deposition or a document attached to it –
 - (a) the question,
 - (b) the nature of and grounds for the objection, and
 - (c) any answer given, and
 - (2) give his opinion as to the validity of the objection and must record it in the deposition or a document attached to it.
- The court will decide as to the validity of the objection and any question of costs arising from it.
- 4.6 Documents and exhibits must:
- (1) have an identifying number or letter marked on them by the examiner, and
 - (2) be preserved by the party or his legal representative¹³ who obtained the order for the examination, or as the court or the examiner may direct.
- 4.7 The examiner may put any question to the deponent as to:
- (1) the meaning of any of his answers, or
 - (2) any matter arising in the course of the examination.
- 4.8 Where a deponent:
- (1) fails to attend the examination, or

11 Rule 34.8(6).

12 See rule 34.8(2) for explanation of 'deponent' and 'deposition'.

13 For the definition of legal representative see rule 2.3.

(2) refuses to:

- (a) be sworn, or
- (b) answer any lawful question, or
- (c) produce any document,

the examiner will sign a certificate¹⁴ of such failure or refusal and may include in his certificate any comment as to the conduct of the deponent or of any person attending the examination.

- 4.9 The party who obtained the order for the examination must file the certificate with the court and may apply for an order that the deponent attend for examination or as may be¹⁵. The application may be made without notice¹⁶.
- 4.10 The court will make such order on the application as it thinks fit including an order for the deponent to pay any costs resulting from his failure or refusal¹⁷.
- 4.11 A deponent who wilfully refuses to obey an order made against him under Part 34 may be proceeded against for contempt of court.
- 4.12 A deposition must:
 - (1) be signed by the examiner,
 - (2) have any amendments to it initialled by the examiner and the deponent,
 - (3) be endorsed by the examiner with –
 - (a) a statement of the time occupied by the examination, and
 - (b) a record of any refusal by the deponent to sign the deposition and of his reasons for not doing so, and
 - (4) be sent by the examiner to the court where the proceedings are taking place for filing on the court file.
- 4.13 Rule 34.14 deals with the fees and expenses of an examiner.

Depositions to be taken abroad for use as evidence in proceedings before courts in England and Wales

- 5.1 Where a party wishes to take a deposition from a person outside the jurisdiction, the High Court may order the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is¹⁸.
- 5.2 An application for an order referred to in paragraph 5.1 should be made by application notice in accordance with Part 23.

¹⁴ Rule 34.10.

¹⁵ Rule 34.10(2) and (3).

¹⁶ Rule 34.10(3).

¹⁷ Rule 34.10(4).

¹⁸ Rule 34.13(1).

- 5.3 The documents which a party applying for an order for the issue of a letter of request must file with his application notice are set out in rule 34.13(6). They are as follows:
- (1) a draft letter of request in the form set out in Annex A to this practice direction,
 - (2) a statement of the issues relevant to the proceedings,
 - (3) a list of questions or the subject matter of questions to be put to the proposed deponent,
 - (4) a translation of the documents in (1), (2) and (3) above unless the proposed deponent is in a country –
 - (a) of which English is one of the official languages, or
 - (b) listed at Annex B to this practice direction, unless the particular circumstances of the case require a translation,
 - (5) an undertaking to be responsible for the expenses of the Secretary of State, and
 - (6) a draft order.
- 5.4 The above documents should be filed with the Masters' Secretary in Room E214, Royal Courts of Justice, Strand, London WC2A 2LL.
- 5.5 The application will be dealt with by the Senior Master of the Queen's Bench Division of the High Court who will, if appropriate, sign the letter of request.
- 5.6 Attention is drawn to the provisions of rule 23.10 (application to vary or discharge an order made without notice).
- 5.7 If parties are in doubt as to whether a translation under paragraph 5.3(4) above is required, they should seek guidance from the Foreign Process Section of the Masters' Secretary's Department.
- 5.8 A special examiner appointed under rule 34.13(4) may be the British Consul or the Consul-General or his deputy in the country where the evidence is to be taken if:
- (1) there is in respect of that country a Civil Procedure Convention providing for the taking of evidence in that country for the assistance of proceedings in the High Court or other court in this country, or
 - (2) with the consent of the Secretary of State.
- 5.9 The provisions of paragraphs 4.1 to 4.12 above apply to the depositions referred to in this paragraph.

Depositions to be taken in England and Wales for use as evidence in proceedings before courts abroad pursuant to letters of request

- 6.1 Schedule 1 to Part 50 (RSC Order 70) relating to obtaining evidence for foreign courts applies to letters of request and should be read in conjunction with this part of the practice direction.
- 6.2 The Evidence (Proceedings in Other Jurisdictions) Act 1975 applies to these depositions.
- 6.3 Where a foreign court sends a letter of request under which it is proposed that an application to give effect to the request be made by an agent in England or Wales of a party to the foreign proceedings, the application should be made by an application notice (see CPR Part 23) and should be supported by a witness statement or affidavit exhibiting:
 - (1) the letter of request;
 - (2) a statement of the issues relevant to the proceedings;
 - (3) a list of questions or the subject matter of questions to be put to the proposed deponent;
 - (4) a translation of the documents in (1), (2) and (3) above if necessary; and
 - (5) a draft order.
- 6.4 Where the application to give effect to the request is made by the Treasury Solicitor (see RSC Order 70 rule 3), he must provide to the court:
 - (1) a statement of the issues relevant to the proceedings;
 - (2) a list of questions or the subject matter of questions to be put to the proposed deponent;
 - (3) a translation of
 - (a) the documents in (1) and (2) above and
 - (b) the letter of request, if necessary; and
 - (4) a draft order.
- 6.5 The order for the deponent to attend and be examined together with the evidence upon which the order was made must be served on the deponent.
- 6.6 Attention is drawn to the provisions of rule 23.10 (application to vary or discharge an order made without notice).
- 6.7 Arrangements for the examination to take place at a specified time and place before an examiner of the court or such other person as the court may appoint shall be made by the applicant for the order (ie. the agent referred to in paragraph 6.3 or the Treasury Solicitor) and approved by the Senior Master.

- 6.8 The provisions of paragraph 4.2 to 4.12 apply to the depositions referred to in this paragraph, except that the examiner must send the deposition to the Senior Master.

(For further information about evidence see Part 32 and the practice direction which supplements it.)

Annex A

DRAFT LETTER OF REQUEST

To the Competent Judicial Authority of
in the _____ of _____

I [name] Senior Master of the Queen's Bench Division of the Supreme Court of England and Wales respectfully request the assistance of your court with regard to the following matters.

1. A claim is now pending in the _____ Division of the High Court of Justice in England and Wales entitled as follows

[set out full title and claim number]

in which [name] of [address] is the claimant and [name] of [address] is the defendant.

2. The names and addresses of the representatives or agents of *[set out names and addresses of representatives of the parties]*.

3. The claim by the claimant is for:-

(a) *[set out the nature of the claim]*

(b) *[the relief sought, and]*

(c) *[a summary of the facts.]*

4. It is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that you cause the following witnesses, who are resident within your jurisdiction, to be examined. The names and addresses of the witnesses are as follows:-

5. The witnesses should be examined on oath or if that is not possible within your laws or is impossible of performance by reason of the internal practice and procedure of your court or by reason of practical difficulties, they should be examined in accordance with whatever procedure your laws provide for in these matters.

6. Either/

The witnesses should be examined in accordance with the list of questions annexed hereto.

Or/

The witnesses should be examined regarding *[set out full details of evidence sought]*

N.B. Where the witness is required to produce documents, these should be clearly identified.

7. I would ask that you cause me, or the agents of the parties (if appointed), to be informed of the date and place where the examination is to take place.
8. Finally, I request that you will cause the evidence of the said witnesses to be reduced into writing and all documents produced on such examinations to be duly marked for identification and that you will further be pleased to authenticate such examinations by the seal of your court or in such other way as is in accordance with your procedure and return the written evidence and documents produced to me addressed as follows:-

Senior Master of the Queen's Bench Division
Royal Courts of Justice
Strand
London WC2A 2LL
England

Annex B

Countries where the translation referred to in paragraph 5.3(4) above should not be required:

Australia

Canada (other than Quebec)

Holland

New Zealand

The United States of America