

PRACTICE DIRECTION - 5.4

PREPARATION OF INTERLOCUTORY SUMMONSES AND APPEALS TO JUDGE IN CHAMBERS FOR HEARING

PART A

Contested interlocutory summonses listed before a judge and appeals to judge in chambers and contested interlocutory summonses listed before a master for 30 minutes or more

1. The directions in paragraphs 2 to 12 hereinbelow must be complied with for
 - 1.1 all contested interlocutory summonses listed before a judge for 30 minutes or more, except interlocutory injunctions (which will continue to be governed by Practice Direction 5.3), and appeals to judge in chambers; and
 - 1.2 all contested interlocutory summonses listed for 30 minutes or more before a master.

Jointly prepared hearing bundles, dramatis personae and chronology of events

2. There should be before the Court :
 - 2.1 the following paginated hearing bundles :
 - 2.1.1 one containing copies of the court documents (pleadings, summons, notice of appeal, order for directions, affidavits/affirmations, etc.) relevant to the particular application or appeal;
 - 2.1.2 one containing copies of the exhibits relevant to the particular application or appeal (save and except correspondence between the parties and/or their solicitors);
 - 2.1.3 one containing copies of *inter partes* correspondence relevant to the particular application or appeal (if any);

- 2.2 where a number of companies/firms/individuals may be mentioned in the course of the submissions, a *dramatis personae*;
 - 2.3 a chronology of the relevant events cross referenced to the hearing bundles.
 3.
 - 3.1 The Court expects the parties to be able to agree on and to jointly prepare the hearing bundles, *dramatis personae* and chronology.
 - 3.2 The proper way to deal with a disagreement as to the inclusion of a document is not for the parties to go about preparing different hearing bundles but for such document to be inserted in the hearing bundles with the objection to its inclusion noted in the index.
 - 3.3 In the exceptional case where such agreement cannot be reached, it shall be the duty of the applicant or the appellant to prepare the same. If a party refuses to agree the hearing bundles without justification and if such refusal results in any wastage of costs, that party may be penalized in costs irrespective of whether or not it is the party who succeeds on the application or appeal.
 - 3.4 Upon agreement with the other parties, the applicant or appellant shall have the responsibility for the physical compilation of the hearing bundles, *dramatis personae* and chronology.
 - 3.5 The costs of making copies of the hearing bundles, *dramatis personae* and chronology is and will be dealt with as part of the costs of the application or appeal at the end of the hearing. In providing the other parties with their own sets of the hearing bundles, *dramatis personae* and chronology, the applicant or appellant must not impose any condition of prepayment of photocopying charges.
 4. Hearing bundles should contain only the documents relevant to the particular application or appeal and to which the parties will need to refer in the course of their respective submissions. More particularly, they should be prepared as follows:

4.1 Bundle of Court Documents

- 4.1.1 Court documents need not be arranged in the chronological order in which they were filed.
- 4.1.2 The following order is generally more sensible and helpful to the Court :
 - 4.1.2.1 the pleadings;
 - 4.1.2.2 the summons;
 - 4.1.2.3 the order for directions for the preparation of the summons for hearing;
 - 4.1.2.4 in the case of an appeal, the order made by the Master and the notice of appeal; and
 - 4.1.2.5 the affidavits/affirmations.

The above order should, where possible, be adopted and, where necessary, be adapted to suit the specific application or appeal. For instance, the lists of documents can be put after the pleadings in a specific discovery application.

- 4.1.3 There is no need to put in the generally indorsed writ of summons (if any) unless the contents of the general indorsement are relevant to the application or appeal. It is usually sufficient for the Court to see just the Statement of Claim.
- 4.1.4 Only the latest version of each pleading should be included.
- 4.1.5 Where a pleading has been amended more than once, the copy in the hearing bundle should be properly coloured unless the precise timing and sequence in which the amendments were made are irrelevant to the application or appeal.
- 4.1.6 Further and Better Particulars of a pleading should be placed immediately after the pleading to which it relates. There is no need to include the Request for Further and Better Particulars.
- 4.1.7 Summonses and orders for extension of time for the

filing and service of evidence in support of or in opposition to the application or appeal are rarely relevant at the substantive hearing and should be omitted.

4.2 Bundle of Exhibits (excluding correspondence between the parties and their solicitors)

4.2.1 Solicitors should use their discretion in copying exhibits. Only exhibits which go to facts and circumstances that are in dispute between the parties and that are relevant to the application or appeal should be included.

4.2.2 By way of illustration, public records such as land search and company search records can be left out unless the matters evidenced thereby are in dispute and such matters are relevant to the application or appeal.

4.2.3 Commercial documents in a standard form such as conditions of sale or purchase, sales or purchase orders or confirmations, bills of lading, sea or air waybills, commercial invoices, certificates of origin, certificates of quality/quantity, packing lists, delivery orders, etc. are often exhibited in bulk where the case concerns a series of transactions. However, it is rarely necessary for the parties to refer to or for the court to read each and every of such documents. It is sufficient for a copy of one such document to be included in the hearing bundle as being representative of the others in the same category.

4.2.4 The same practice should be followed with other documents which are merely repetitive of or similar in content to other documents.

4.3 Bundle of Correspondence : This should include copies of all the relevant letters exchanged between the parties and their solicitors, whether before or after the action, arranged in a chronological order.

4.4 The advocates who have the conduct of the case on behalf of the parties have the duty to ensure that the hearing bundles are properly prepared.

- 4.5 Bundles that have been provided on a previous occasion could be retrieved from court for reuse with the addition of new documents, if necessary, unless the court considers that this is not appropriate.

Skeleton arguments and lists of authorities

5. Skeleton arguments and lists of authorities must be lodged in support of/in opposition to every application or appeal.
6. A skeleton argument should be concise and succinct.
7. It should at the same time be comprehensive in that it should state all the points which a party intends to take and summarize the argument on each of those points. A point not taken or an argument not advanced in a party's skeleton argument may not be pursued at the hearing of the application or appeal without the leave of the Court.
8. More particularly, the skeleton argument lodged by the applicant/appellant should outline
 - 8.1 the order sought;
 - 8.2 the grounds upon which the order is sought;
 - 8.3 the relevant rules of the High Court;
 - 8.4 paragraph numbers of notes in the Hong Kong Civil Procedure relied upon;
 - 8.5 the authorities to be cited with references to passages relied upon.
 - 8.6 the evidence relied upon cross referenced to the hearing bundles; and
 - 8.7 the points of fact, law and procedure to be taken and the arguments on each of such point.

9. The skeleton argument of the respondent to the summons or the appeal should outline
 - 9.1 what part of the order is opposed;
 - 9.2 the grounds of opposition;
 - 9.3 whether any other rules of the High Court are to be referred to or relied upon;
 - 9.4 whether any other notes in the Hong Kong Civil Procedure are to be referred to or relied upon;
 - 9.5 what additional authorities, if any, are to be referred to with details of the passages relied upon;
 - 9.6 which part of the evidence is relied upon if different to the references in the applicant/appellant's skeleton argument;
 - 9.7 if any order different from that being sought by the other party is being put forward, the reasons why it is more appropriate than the order being sought;
 - 9.8 the points of fact, law and procedure to be taken and the arguments on each of such point.
10. Photocopies of the authorities cited (save and except the Rules of the High Court and notes from the Hong Kong Civil Procedure) should be annexed to the list of authorities. For the avoidance of doubt, paragraphs 2, 6, 7 and 8 of Practice Direction 5.5 relating to submission of authorities do not apply to interlocutory summonses and appeals to judge in chambers governed by this Practice Direction.

Time for filing and service and reckoning of time

11. The applicant or appellant should serve on the other party/parties and lodge with the Court the hearing bundles, *dramatis personae*, chronology of events, his skeleton argument and list of authorities at least 72 hours before the hearing (excluding Sunday and general holiday).

12. The respondent should serve on the other party and lodge with the Court his skeleton argument and list of authorities at least 48 hours before the hearing (excluding Sunday and general holiday).

PART B

Contested interlocutory summonses listed for less than 30 minutes for argument before a judge or master

13. In respect of contested interlocutory summonses listed for argument for less than 30 minutes before a judge or a master, except summonses for extension of time and “unless” orders, the following provisions shall apply:
 - 13.1 The applicant should serve on the other side and lodge with the Court his skeleton argument and list of authorities and also for the Court copies of authorities (other than the Rules of the High Court and notes from the Hong Kong Civil Procedure) at least 72 hours before hearing (excluding Sunday and general holiday).
 - 13.2 The respondent should serve on the other side and lodge with the Court skeleton argument and list of authorities and also for the Court copies of authorities (other than the Rules of High Court and notes from the Hong Kong Civil Procedure) at least 48 hours before hearing (excluding Sunday and general holidays).
 - 13.3 Each party should inform the master’s clerk and the other party/parties in writing of the court documents, other than the subject summons and the affidavits filed in support of and in opposition to the summons, which will be referred to.
 - 13.4 The skeleton arguments should clearly identify the issues and should be as brief as possible, in most cases no more than 2 pages.

PART C

Contested interlocutory summonses listed for directions before a master

14. As for contested interlocutory summonses listed for directions before a master, where the parties agree on the disposal or on the directions for the substantive hearing of the summons, to secure a vacation of the hearing and dispensation of the parties' attendance, a consent summons should be sent to the master's clerk no later than 2:30 p.m. the day before the hearing.
15. To save the waiting time in court for parties who reach an agreement on the disposal or on the directions for the substantive hearing of the summons but not sufficiently in advance to vacate the hearing, the master will exercise his discretion to hear such cases ahead of other cases listed for the same time provided the parties produce to the master's clerk a signed self contained consent summons setting out the order or directions to be made 15 minutes before the hearing.

Other practice directions

16. The Practice Direction on Preparation of Summonses for Hearing (PD 5.4) which came into effect on 25 April 1995 is hereby superseded.
17. Practitioners are reminded of Practice Direction 10.1 relating to affidavit evidence and paragraphs 4 and 5 of Practice Direction 5.5 relating to submissions of authorities.
18. Nothing contained in this Practice Direction is to affect the operation of the Practice Directions for the Construction and Arbitration List (PD 6.1), *Ex Parte*, Interim and Interlocutory Applications for Injunctions (PD 11.1), the Personal Injuries List (PD 18.1), civil proceedings in the District Court (PD 27), the Constitutional and Administrative Law List (PD SL3) or for family law practice.

Waiver

19. A party may apply to the hearing judge or master by way of letter with a copy to the other side for waiver or abridgement of any of the requirements in this Practice Direction provided that such application should be made well in advance before the hearing with reasons provided. Only in exceptional circumstances will a waiver be given.

Consequences of non-compliance

20. Those not observing or complying with these directions may be called upon to explain such failure and, in the absence of a satisfactory explanation, may be penalized in costs irrespective of whether or not they are the parties who succeed on the application. Parties are warned that to ensure observance of and compliance with these directions, a party who has breached any of such directions may, despite his success in the application or appeal, still be deprived of all or part of his costs of the application or appeal as a penalty. Further, such costs penalty may be imposed irrespective of whether or not the breach has resulted in any adjournment of the hearing or any other forms of wastage of time or costs.

Commencement date

21. This Practice Direction shall come into effect on 17 October 2005.

Dated this 30th day of September 2005.



Andrew Li
Chief Justice