

## **PRACTICE DIRECTION – APPLICATIONS WITHIN PROCEEDINGS**

*This practice direction supplements Part 10 of the Court of Protection Rules 2007*

### **PRACTICE DIRECTION A – APPLICATIONS WITHIN PROCEEDINGS**

#### **Application notice**

1. Rule 77 provides that an applicant may use the Part 10 procedure if the application is made:
  - (a) in the course of existing proceedings; or
  - (b) as provided for in a rule or relevant practice direction.
2. An application under Part 10 must be made by filing an application notice using form COP9.
3. An application notice must, in addition to the matters set out in rule 79, be signed and include (unless an order to the contrary pursuant to rule 19 has been made):
  - (a) the name of the person to whom the application relates (P);
  - (b) the case number (if available);
  - (c) the full name of the applicant;
  - (d) where the applicant is not already a party, his address; and
  - (e) a draft of the order sought.
4. If the order sought is unusually long or complex, a disk containing the draft order sought should be made available to the court in a format compatible with the word processing software used by the court. (Queries in relation to software should be directed to a court officer.)
5. The application notice must be supported by evidence set out in either:
  - (a) a witness statement; or
  - (b) the application notice provided that it is verified by a statement of truth.
6. For the purposes of rules 90 to 92, a statement of truth in an application notice may be made by a person who is not a party.<sup>1</sup>

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<sup>1</sup> See rule 11(6)(a).

7. The evidence must set out the facts on which the applicant relies for the application, and all material facts known to the applicant of which the court should be made aware.
8. A copy of the application notice and evidence in support must be served by the person making the application as soon as practicable and in any event within 21 days of the application notice being issued.
9. An application may be made without service of an application notice only:
  - (a) where there is exceptional urgency;
  - (b) where the overriding objective is best furthered by doing so;
  - (c) by consent of all parties;
  - (d) with the permission of the court; or
  - (e) where a rule or other practice direction permits.

(Practice direction B accompanying Part 10 sets out more detailed requirements for urgent applications.)

10. Where an application is made without service on the respondent, the evidence in support of the application must also set out why service was not effected.
11. The court may decide, upon considering the application, that other persons ought to be served with or notified of it and have the opportunity of responding. In such a case, the court will give directions as to who should be served with or notified of the application.
12. On receipt of an application notice, the court will issue the application notice and, if there is to be a hearing, give notice of the date on which the matter is to be heard by the court.
13. Notice will be given to:
  - (a) the applicant;
  - (b) anyone who is named as a respondent in the application notice (if not otherwise a party to the proceedings);
  - (c) every other party to the proceedings; and
  - (d) any other person, as the court may direct.

14. Any directions given by the court may specify the form that the evidence is to take and when it is to be served.
15. Applications should wherever possible be made so that they can be considered at a directions hearing or other hearing for which a date has already been fixed or for which a date is about to be fixed.
16. Where a date for a hearing has been fixed and a party wishes to make an application at that hearing but does not have sufficient time to file an application notice, he should inform the court (if possible in writing) and, if possible, the other parties 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.

**Type of case may be indicated in the application notice**

17. The applicant may indicate in the application notice that the application:
  - (a) is urgent;
  - (b) should be dealt with by a particular judge or level of judge within the court;
  - (c) requires a hearing; or
  - (d) any combination of the above.

**Telephone hearings**

18. The court may direct that an application or part of an application will be dealt with by a telephone hearing.
19. The applicant should indicate in his application notice if he seeks a direction pursuant to paragraph 17. Where he has not done so but nevertheless wishes to seek such a direction the request should be made as early as possible.
20. A direction under paragraph 17 will not normally be given unless every party entitled to be given notice of the application and to be heard at the hearing has consented to the direction.

## **Video conferencing**

21. Where the parties to a matter wish to use video conferencing facilities, and those facilities are available, they should apply to the court for such a direction.

(Practice direction A accompanying Part 14 contains guidance on the use of video conferencing.)

## **Consent orders**

22. 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 signed by all parties will generally be acceptable for this purpose.

23. Where an order has been agreed in relation to an application for which a hearing date has been fixed, the parties must inform the court immediately.