

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 41A - STATEMENTS OF TRUTH

Remarks

1. Interpretation (O. 41A, r. 1)

Rule 77,
Rec 26 to 32
and 35

In this Order, unless the context otherwise requires –
“expert report” () means a report disclosed under Order 38, rule 37;

“pleading” () includes –

- (a) particulars of a pleading given by a party to another party,
whether voluntarily or pursuant to –
 - (i) a request of that other party; or
 - (ii) an order of the Court made under Order 18, rule 12(3) or (4);
- and
- (b) an amendment to a pleading or any of the particulars referred to in
paragraph (a);

“witness statement” () means a statement served under Order 38, rule
2A.

2. Documents to be verified by statement of truth (O. 41A, r. 2)

(1) The following documents shall be verified by a statement of truth in
accordance with this Order –

- (a) a pleading;
- (b) a witness statement;
- (c) an expert report; and
- (d) any other document verification of which in accordance with this
Order is required by any other provision of these rules or by a
practice direction.

(2) A pleading must be verified by a statement of truth in accordance with
this Order notwithstanding that the party has in the pleading made an
allegation of fact in accordance with Order 18, rule 12A, which is inconsistent
with another allegation of fact in the same pleading.

(3) If the Court considers that it is expedient to do so in a particular case, it
may direct that all or any of the documents specified in paragraph (1) need not

be verified by a statement of truth.

(4) All or any of the documents specified in paragraph (1) need not be verified by a statement of truth if it is so provided by a practice direction.

(5) A practice direction may only provide that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth if the documents or document relate to a matter that is to be heard in a specialist list.

3. Signing of statement of truth (O. 41A, r. 3)

(1) Subject to paragraphs (4), (5), (6) and (7), a statement of truth shall be signed by –

- (a) in the case of a witness statement or expert report, the maker of the statement or report;
- (b) in any other case –
 - (i) the party or where appropriate, his next friend or guardian ad litem; or
 - (ii) the legal representative of the party or next friend or guardian ad litem.

(2) Subject to paragraphs (5), (6) and (7), where a party is a body of persons, corporate or unincorporate, the statement of truth shall be signed by a person holding a senior position in the body. That person shall state the office or position he holds.

(3) Each of the following persons is a person holding a senior position –

- (a) in respect of a corporation, any director, manager, secretary or other similar officer of the corporation; and
- (b) in respect of an unincorporated association, any corresponding person appropriate to that unincorporated association.

(4) Subject to paragraphs (5), (6) and (7), where the party is a partnership, the statement of truth shall be signed by –

- (a) any of the partners; or
- (b) a person having the control or management of the partnership business.

(5) A statement of truth in or in relation to a pleading may be made by –

- (a) a person who is not a party; or
- (b) two or more parties jointly,

if this is permitted by a practice direction.

Remarks

(6) An insurer or the Motor Insurers' Bureau of Hong Kong may sign a statement of truth in or in relation to a pleading on behalf of a party where the insurer or the Motor Insurers' Bureau of Hong Kong has a financial interest in the result of proceedings brought wholly or partially by or against that party.

(7) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in a relation to a pleading may be signed by an officer responsible for the case as the lead insurer, but –

- (a) the person signing shall specify the capacity in which he signs;
- (b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
- (c) the Court may order that the statement of truth also be signed by one or more of the parties.

4. Effect of statement of truth (O. 41A, r. 4)

(1) Subject to paragraph (2), a statement of truth is a statement that –

- (a) the party putting forward the document believes the facts stated in the document are true; or
- (b) in the case of a witness statement or expert report, the maker of the witness statement or expert report believes that the facts stated in the document are true.

(2) If a party is conducting proceedings with a next friend or guardian ad litem, the statement of truth in or in relation to a pleading is a statement that the next friend or guardian ad litem believes the facts stated in the document being verified are true.

(3) Where a legal representative or insurer has signed a statement of truth on behalf of a party, the Court shall treat his signature as his statement that –

- (a) the party on whose behalf he has signed had authorized him to do so;
- (b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and
- (c) before signing he had informed the party of the possible consequences to the party if it should subsequently appear that the party did not have an honest belief in the truth of those facts.

5. Form of statement of truth (O. 41A, r. 5)

(1) The form of the statement of truth verifying a document other than a

witness statement and expert report shall be as follows –

“[I believe][the (plaintiff or as may be) believes] that the facts stated in this [name document being verified] are true.”.

(2) The form of the statement of truth verifying a witness statement or expert report shall be as follows –

“I believe that the facts stated in this [name document being verified] are true.”.

(3) Where the statement of truth is not contained in the document which it verifies –

- (a) the document containing the statement of truth must be headed with the title of the proceedings and the action number; and
- (b) the document being verified must be identified in the statement of truth as follows –
 - (i) pleading: “the [statement of claim or as may be] served on the [name of party] on [date]”;
 - (ii) particulars of pleading: “the particulars of pleading issued on [date]”;
 - (iii) amendment to a pleading or particulars of pleading: “the amendment to [name document being verified], made on [date]”;
 - (iv) witness statement: “the witness statement filed on [date] or served on [party] on [date]”;
 - (v) expert report: “the expert report disclosed to [party] on [date]”.

6. Failure to verify pleading (O. 41A, r. 6)

(1) If a party fails to verify his pleading by a statement of truth –

- (a) the pleading remains effective unless struck out; but
- (b) the party may not rely on the pleading as evidence of any of the matters set out in it.

(2) The Court may order to be struck out a pleading which is not verified by a statement of truth.

(3) Any party may apply for an order under paragraph (2).

7. Failure to verify witness statement or expert report (O. 41A, r. 7)

If the maker of a witness statement or expert report fails to verify the witness statement or expert report by a statement of truth, the Court may

direct that it shall not be admissible in evidence.

8. Power of Court to require document to be verified (O. 41A, r. 8)

(1) The Court may order a person who has failed to verify a document in accordance with this Order to verify the document.

(2) Any party may apply for an order under paragraph (1).

9. Verified statement to be used as evidence in interlocutory proceedings (O. 41A, r. 9)

A document verified by a statement of truth may be used as evidence in any interlocutory proceedings.

10. False statements (O. 41A, r. 10)

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only –

(a) by the Secretary for Justice or a person aggrieved by the false statement; and

(b) with the leave of the Court.

(3) The Court shall not grant the permission under paragraph (2) unless it is satisfied that the punishment for contempt of court is proportionate and appropriate in relation to the false statement.

(4) Proceedings under this rule are subject to the law relating to contempt of court and this rule is without prejudice to such law.

11. Transitional (O. 41A, r. 11)

This Order does not apply in relation to a document in any action if that document was filed, served or exchanged before the commencement of this Order.