

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

~~Order 34 – PRE-TRIAL REVIEW AND FIXING DATE FOR TRIAL OF ACTIONS BEGUN BY WRIT~~

Remarks

Rule 151
Alignment with
RHC

~~1. Application and interpretation (O. 34, r. 1)~~

~~(1) This Order applies to all actions begun by writ.~~

~~(2) In this Order-~~

~~“notice of application” (申請通知書) means a notice under rule 3 applying for a pre-trial review;~~

~~“notice in response” (回應通知書) means a notice under rule 4 responding to a notice of application;~~

~~“pre-trial review” (審訊前的覆核) means a pre-trial review under rule 7.~~

~~2. Plaintiff’s default in applying for pre-trial review (O. 34, r. 2)~~

~~— Where the plaintiff fails to apply for a pre-trial review within the period fixed by a direction made or taking effect under Order 23A, rule 4, 5 or 9, or otherwise, any defendant may apply for a pre-trial review or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed or may make such order as it thinks just.~~

~~3. Application for pre-trial review (O. 34, r. 3)~~

~~(1) Except where the Court otherwise allows, an application for a pre-trial review shall be made by a notice of application filed in the Registry which must be served on all the other parties within 2 days of the date of filing.~~

~~(2) A notice of application shall state-~~

~~— (a) whether all the directions or orders which have been made or have taken effect in the action have been fully complied with and, if not, which of them have not been complied with and in what respects there has been non-compliance;~~

~~— (b) whether the applicant desires any further direction or order for the future course of the action and, if so, what further direction or order he desires;~~

~~— (c) whether the applicant intends to call any witnesses other than expert~~

witnesses, and, if so—

- ~~— (i) how many witnesses will be called and in what language each of them will give his evidence; and~~
- ~~— (ii) where no order has been made for the exchange of witness statements under Order 38, rule 2A, whether there is any and if so what good reason for there to be no such order;~~
- ~~— (d) where any party has served an expert's report pursuant to any direction therefor, whether the report has been agreed, and, if not, what steps have been taken to secure such agreement;~~
- ~~— (e) the applicant's estimate of the length of trial;~~
- ~~— (f) whether the applicant contends that it is appropriate in all the circumstances to fix a date for trial and, if not, why not; and~~
- ~~— (g) any other matters which the applicant considers to be material for the pre-trial review.~~

~~(3) Where a notice of application states that a further direction or order is desired, the notice shall be treated for the purposes of these Rules as a summons for the further direction or order specified in the notice.~~

~~(4) The applicant shall, when filing the notice of application, lodge in the Registry a bundle of all the documents (if any) which are material to the pre-trial review and have not been filed in the Registry, including any experts' reports and any material correspondence between the parties, and the applicant shall serve written notice of the lodging of all such documents to all the other parties at the same time as he serves the notice of application.~~

~~4. Duty of parties on whom notice of application is served (O. 34, r. 4)~~

~~(1) Every party whom a notice of application is served shall, within 14 days after service thereof, file in the Registry and, within 2 days thereafter, serve on all the other parties, a notice in response.~~

~~(2) Rule 3(2) and (3) shall apply to a notice in response, with the modifications that the expressions "notice of application" and "the applicant" shall be taken to refer to a notice in response and the party issuing such a notice.~~

~~5. Default by party on whom notice of application is served (O. 34, r. 5)~~

~~— Where a party on whom a notice of application is served fails to serve a notice of response within the period fixed under rule 4(1) or such further time as may be agreed between all the parties or allowed by the Court, the applicant for a pre-trial review may apply to the Court to dismiss the action or strike out the defence, as the case may be, and, on the hearing of any such application, the Court may order the action to be dismissed or the defence struck out as the case may be and judgment to be entered accordingly or may make such other order as it thinks just.~~

6.—Circumstances in which an oral hearing of a pre-trial review to take place (O. 34, r. 6)

~~(1) The Court shall conduct a pre-trial review without an oral hearing except where—~~

- ~~— (a) the Court orders an oral hearing of its own motion; or~~
- ~~— (b) within 7 days after the filing of a notice in response (or, if there is more than one notice in response, the date of the filing of the notice in response last filed) any of the parties, by written notice to the Registrar and all the other parties, requests an oral hearing.~~

~~(2) Where a pre-trial review is conducted without an oral hearing, any party may, within 7 days after the expiry of the period of notice referred to in paragraph (1)(b), make representations in writing to the Court and the Court shall conduct the pre-trial review as soon as practicable thereafter.~~

7.—Pre-trial review (O. 34, r. 7)

~~(1) At the pre-trial review, if the Court is satisfied that the action is ready for trial, the Court shall grant leave for the action to be set down or fix a date for trial and specify the place and mode of trial.~~

~~(2) At the pre-trial review, if the Court is not satisfied that the action is ready for trial, the Court shall—~~

- ~~— (a) give all such directions and make all such orders as are required in order to get the action ready for trial; and~~
- ~~— (b) adjourn the pre-trial review to a fixed date and on that date proceed in accordance with paragraph (1) or this paragraph.~~

~~(3) In exercising its powers under paragraph (2)(a), Order 23A, rules 9 to 12 and 14, shall apply as if the pre-trial review were a directions hearing under that Order.—~~

8.—Costs (O. 34, r. 8)

~~(1) If, at a pre-trial review, the Court is of the opinion that a party acted unreasonably in requesting an oral hearing of the pre-trial review, the Court may order that party to pay all the costs wasted by his unreasonableness, including the cost of the oral hearing.~~

~~(2) If, at a pre-trial review, the Court is of the opinion that the action is not ready for trial because of the failure by any party to comply with any direction or order, the Court may order that party to pay the costs of the pre-trial review and make such other order as to costs as the Court thinks fit having regard to the failure of that party to comply with the direction or order.~~

9. ~~Abatement, etc., of action (O. 34, r. 9)~~

~~(1) Where after a pre-trial review the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar who shall cause the appropriate entry to be made in the list of actions set down for trial.~~

~~(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.~~

**Order 34 – SETTING DOWN FOR TRIAL ACTION
BEGUN BY WRIT**

1. Application and interpretation (O. 34, r. 1)

This Order applies to actions begun by writ and, accordingly, references in this Order to an action are to be construed as references to an action so begun.

2. Time for setting down action (O. 34, r. 2)

(1) Unless the Court has fixed a trial date or a period in which the trial is to take place under Order 25, rule 2(2)(b) or 3(b), an order made in an action which provides for trial before a judge must fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may –
(a) set the action down for trial; or
(b) apply to the Court to dismiss the action for want of prosecution.

(3) On the hearing of an application made under paragraph (2)(b), the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(4) An order made in an action which provides for trial before a judge (otherwise than in any list which may be specified for the purposes of this paragraph by directions under rule 4) must –
(a) contain an estimate of the length of the trial; and
(b) subject to any such directions, specify the list in which the action is to be put.

3. Lodging documents when setting down (O. 34, r. 3)

(1) In order to set down for trial an action which is to be tried before a judge, the party setting it down shall deliver to the Registrar, by post or otherwise, a request that the action may be set down for trial, together with a bundle (for the use of the judge) consisting of one copy each of the following documents that is to say –

- (a) the writ;
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;
- (c) all orders made –
 - (i) pursuant to the questionnaire completed in accordance with Order 25, rule 1(1)(a);
 - (ii) pursuant to a case management summons; and
 - (iii) at a case management conference;
- (d) the requisite legal aid documents, if any; and
- (e) all witness statements served under the provisions of Order 38, rule 2A.

(2) The bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies must be placed immediately after the pleading to which they relate.

(3) In this rule “the requisite legal aid documents” (必需的法律援助文件) means any documents which are required to be filed in the Registry under the Legal Aid Ordinance (Cap. 91) or the regulations made thereunder.

4. Directions relating to lists (O. 34, r. 4)

Nothing in this Order prejudices any powers of the Chief Justice to give directions –

- (a) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;
- (b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
- (c) as to the making of applications (whether to the Court or an officer of the Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

5. Notification of setting down (O. 34, r. 5)

(1) A party to an action who sets it down for trial shall, within 24 hours after doing so, notify the other parties to the action that he has done so.

(2) It is the duty of all parties to an action entered in any list to –

- (a) furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial; and
- (b) if the action is settled or withdrawn, notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a sanctioned payment or a sanctioned offer in accordance with Order 22, shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

6. Abatement, etc., of action (O. 34, r. 6)

(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it –

- (a) certify the abatement or change of interest or liability; and
- (b) send the certificate to the officer who keeps the list.

(2) That officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(3) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action must on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.