

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 12 – ACKNOWLEDGMENT OF SERVICE OF WRIT OR ORIGINATING SUMMONS

Remarks

1. Mode of acknowledging service (O. 12, r. 1)

(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorized to act on the defendant's behalf but, except as expressly provided by or under any enactment or where leave is given under paragraph (2A) for such defendant to be represented by one of its directors, such defendant may not take any further step in the action otherwise than by a solicitor.

(2A) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director. (L.N. 103 of 1994; L.N. 108 of 2002)

(b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(2B) No appeal shall lie from an order of the Registrar under paragraph (2A) giving or refusing leave.

(2C) Leave given by a Registrar under paragraph (2A) may be revoked by the Court at any time.

(2D) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service as defined by rule 3 and handing it in at, or sending it by post to, the Registry.

(4) If two or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be

completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the Registry.

3. Acknowledgment of service (O. 12, r. 3)

(1) An acknowledgment of service must be in Form No. 14 ~~or 15, 15 or 15A~~ in Appendix A, whichever is appropriate, and except as provided in rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.

Rule 7
Rec 9, 17 & 18

(2) An acknowledgment of service must specify –

- (a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and
- (b) in the case of a defendant acknowledging service by a solicitor, a business address to which may be added a numbered box at a document exchange of his solicitor within the jurisdiction;

and where the defendant acknowledges service in person the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

In relation to a body corporate the references in sub-paragraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment for service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purpose of Order 10, rule 1(5), and Order 65, rule 9.

4. Procedure on receipt of acknowledgment of service (O. 12, r. 4)

On receiving an acknowledgment of service an officer of the Registry must –

- (a) affix to the acknowledgment an official stamp showing the date on which he received it;
- (b) enter the acknowledgment in the cause book with a note showing, if it

- be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment, and send by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service.

5. Time limited for acknowledging service (O. 12, r. 5)

References in these rules to the time limited for acknowledging service are references –

- (a) in the case of a writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these rules, to that time as so extended; and
- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

6. Late acknowledgment of service (O. 12, r. 6)

- (1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.
- (2) Except as provided by paragraph (1) nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

7. Acknowledgment not to constitute waiver (O. 12, r. 7)

The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ or extending the validity of the writ for the purpose of service.

8. Dispute as to jurisdiction (O. 12, r. 8)

- (1) A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for-

- (a) an order setting aside the writ or service of the writ on him, or
- (b) an order declaring that the writ has not been duly served on him, or
- (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction, or
- (d) the discharge of any order extending the validity of the writ for the purpose of service, or
- (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings, or
- (f) the discharge of any order made to prevent any dealing with any property of the defendant, or
- (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject-matter of the claim or the relief or remedy sought in the action, or
- (ga) an order staying the proceedings, or**
- (h) such other relief as may be appropriate.

Rule 86
Rec 17

(2) A defendant who wishes to argue that the Court should not exercise its jurisdiction in the proceedings on one or more of the grounds specified in paragraph (2A) or on any other ground shall also give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for –

- (a) a declaration that in the circumstances of the case the Court should not exercise any jurisdiction it may have, or**
- (b) an order staying the proceedings, or**
- (c) such other relief as may be appropriate, including the relief specified in paragraph (1)(e) or (f).**

(2A) The grounds specified for the purposes of paragraph (2) are that –

- (a) considering the best interests and convenience of the parties to the proceedings and the witnesses in the proceedings, the proceedings should be conducted in another court,**
- (b) the defendant is entitled to rely on an agreement to which the plaintiff is a party, excluding the jurisdiction of the Court, and**
- (c) in respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court.**

~~(3) An application under paragraph (1) must be made–~~

- ~~(a) in an Admiralty action in rem, by motion;~~
- ~~(c) in any other action, by summons or motion,~~

~~and the notice of motion or summons must state the grounds of the application.~~

Rule 86
Rec 17

(3) An application under paragraph (1) or (2) must be made by summons and the summons must state the grounds of the application.

(4) An application under paragraph (1) **or (2)** must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the ~~notice of motion or~~ summons by which the application is made.

Rule 86
Rec 17

(5) Upon hearing an application under paragraph (1) **or (2)**, the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(6) A defendant who makes an application under paragraph (1) **or (2)** shall not be treated as having submitted to the jurisdiction of the court by reason of his having given notice of intention to defend the action; ~~and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), lodge a further acknowledgment of service and in that case paragraph (7) shall apply as if the defendant had not made any such application.~~ **but if the Court makes no order on the application or dismisses it, the notice shall stand unless otherwise directed by the Court and the defendant shall be treated as having given notice of intention to defend the action.**

(6A) If the Court makes no order on an application under paragraph (1) or (2) or dismisses it, it may give such directions as may be appropriate for service of a defence and the further conduct of the proceedings.

(7) Except where the defendant makes an application in accordance with paragraph (1) **or (2)**, the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

8A. Application by defendant where writ not served (O. 12, r. 8A)

(1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must acknowledge service within the time limited for so doing.

9. Acknowledgment of service of originating summons (O. 12, r. 9)

(1) Each defendant named in and served with an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) must acknowledge service of the summons as if it were a writ.

(3) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) as they apply to a writ except that after the word “extended” wherever it occurs in rule 5(a), there shall be inserted the words “or abridged” and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).
(L.N. 119 of 1998)

10. Acknowledgment of service to be treated as entry of appearance (O. 12, r. 10)

For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the Court of First Instance, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

(25 of 1998 s. 2)

(Enacted 1988)

11. Transitional provision relating to rule 86 of Amendment Rules 2008 (O. 12, r. 11)

Rule 87
Transitional

Where an application under rule 8(1) is pending immediately before the commencement of the Amendment Rules 2008, then the application is to be determined as if rule 86 of the Amendment Rules 2008 had not been made.