

Rules of the High Court (Amendment) Rules 2008

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

Remarks

~~Order 25—SUMMONS FOR DIRECTIONS~~

Rule 135
Rec 52-60, 62

Order 25 – CASE MANAGEMENT SUMMONS AND CONFERENCE

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

1. Summons for directions-Case Management Summons and Conference (O. 25, r. 1)

Rule 136
Rec 52-60, 62

~~(1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparation for the trial of the action, so that~~

~~(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with, and~~

~~(b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,~~

~~the plaintiff must, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days.~~

(1) For the purpose of facilitating the giving of directions for the management of a case, each party shall, within 28 days after the pleadings in an action to which this rule applies are deemed to be closed –

(a) complete a questionnaire prescribed in a practice direction issued for that purpose by providing the information requested in the manner specified in the questionnaire; and

(b) serve it on all other parties and file it with the Court in the manner specified in the practice direction.

(1A) Where, upon completion of the questionnaire, the parties are able to reach an agreement on –

(a) the directions relating to the management of the case that they wish the Court to make; or

(b) a timetable for the steps to be taken between the date of the giving of those directions and the date of the trial,

they shall procure an order to that effect by way of a consent summons.

(1B) Where there is no agreement on any of the matters specified in paragraph (1A)(a) and (b) –

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the time specified in the practice direction, take out a summons (in these rules referred to as a case management summons) returnable in not less than 14 days, so that the Court may give directions relating to the management of the case.

- (2) This rule applies to all actions begun by writ except-
- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;
 - (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
 - (c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
 - (d) actions in which directions have been given under Order 29, rule 7;
 - (e) actions in which an order for the taking of an account has been made under Order 43, rule 1;
 - (f) actions in which an application for transfer to the commercial list is pending;
 - (h) actions for the infringement of a patent; and
 - (j) actions for personal injuries for which automatic directions are provided by rule 8; and.
 - ~~(k) actions in which the parties agree under rule 9 that the only matters to be determined are the mode of trial and time for setting down.~~

Rule 174
Rec 52-60, 62

~~(3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this rule shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.~~

Rule 136
Rec 52-60, 62

~~(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.~~

(4) If the plaintiff does not file the questionnaire in accordance with paragraph (1)(b) or take out a case management summons in accordance with paragraph (1B)(b), the defendant or any defendant may –

- (a) take out a case management summons; or
- (b) apply for an order to dismiss the action.

- (5) On an application by a defendant to dismiss the action under paragraph (4)

the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a ~~summons for directions~~ case management summons.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule ~~and rule 1A(1)(c)~~ to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in paragraph ~~(1)~~ (1B), any party to an action to which this rule applies may take out a ~~summons for directions~~ case management summons at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

1A. Case management timetable (O. 25, r. 1A)

Rule 137
Rec 52-60, 62

(1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been filed with the Court, the Court shall, having regard to the questionnaire and the needs of the case –

- (a) give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial;
- (b) fix a case management conference if the Court is of the opinion that it is desirable to do so; or
- (c) direct the plaintiff to take out a case management summons if he has not already done so under rule 1(1B)(b).

(2) Where the Court has fixed a case management conference, it shall –

- (a) give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the case management conference; and
- (b) at the case management conference, fix a timetable for the steps to be taken between the date of the conference and the date of the trial, and the timetable must include –
 - (i) a date for a pre-trial review; or
 - (ii) the trial date or the period in which the trial is to take place.

(3) Where the Court has not fixed a case management conference, any timetable fixed under paragraph (1)(a) must include –

- (a) a date for a pre-trial review; or
- (b) the trial date or the period in which the trial is to take place.

(4) The Court may, without a hearing of the case management summons and having regard to the completed questionnaire, by an order nisi, give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial.

(5) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for varying the order.

(6) The Court shall, on an application made under paragraph (5), hear the case management summons.

1B. Variation of case management timetable (O. 25, r. 1B)

(1) The Court may, either of its own motion or on the application of a party, give further directions relating to the management of the case or vary any timetable fixed by it under rule 1A.

(2) A party may apply to the Court if he wishes to vary a milestone date.

(3) The Court shall not grant an application under paragraph (2) unless there are exceptional circumstances justifying the variation.

(4) A non-milestone date may be varied by procuring an order to that effect by way of a consent summons.

(5) A party may apply to the Court if he wishes to vary a non-milestone date without the agreement of the other parties.

(6) The Court shall not grant an application under paragraph (5) unless sufficient grounds have been shown to it.

(7) Whether or not sufficient grounds have been shown to it, the Court shall not grant an application under paragraph (5) if the variation would make it necessary to change a trial date or the period in which the trial is to take place.

(8) In this rule –

“milestone date” (進度指標日期) means –

(a) a date which the Court has fixed for –

(i) a case management conference;

(ii) a pre-trial review; or

(iii) the trial; or

(b) a period fixed by the Court in which a trial is to take place;

“non-milestone date” (非進度指標日期) means a date or period fixed by the Court, other than a date or period specified in the definition of “milestone date”.

1C. Failure to appear at case management conference or pre-trial review (O. 25, r. 1C)

(1) Where the plaintiff does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the plaintiff's claim.

(2) Where the defendant has made a counterclaim in the action and he does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the defendant's counterclaim.

(3) Where the Court has provisionally struck out a claim or counterclaim under paragraph (1) or (2), the plaintiff or the defendant may, before the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be, apply to the Court for restoration of the claim or counterclaim.

(4) The Court may restore the claim or counterclaim subject to such conditions as it thinks fit or refuse to restore it.

(5) The Court shall not restore the claim or counterclaim unless good reasons have been shown to the satisfaction of the Court.

(6) If the plaintiff or the defendant does not apply under paragraph (3) or his application under that paragraph is refused, then –

- (a) the plaintiff's claim or the defendant's counterclaim stands dismissed upon the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be; and
- (b) (i) in the case of the plaintiff's claim, the defendant is entitled to his costs of the claim; and
 - (ii) in the case of the defendant's counterclaim, the plaintiff is entitled to his costs of the counterclaim.

2. Duty to consider all matters (O. 25, r. 2)

Rule 138
Rec 52-60, 62

(1) When the ~~summons for directions first comes to be heard~~ **case management summons first comes to be determined**, the Court shall consider whether –

- (a) it is possible to deal then with all the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons for directions~~, **at the case management summons**; or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the ~~summons for directions first comes to be heard~~ **case management summons first comes to be determined** the Court considers that it is possible to deal then with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with

on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the ~~summons for directions first comes to be heard~~ case management summons first comes to be determined, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons~~ at the case management summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or ~~at a resumed hearing of the summons for directions~~ at such time as the Court may specify.

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons for directions~~ at the case management summons have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, ~~on the summons for directions~~ at the determination of the case management summons, an action is ordered to be transferred to the District Court or some other court, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order ~~on the summons~~ at the case management summons.

(7) If the ~~hearing of the summons for directions~~ determination of the case management summons is adjourned without a day being fixed for ~~the resumed hearing thereof~~ its resumption, any party may restore ~~it~~ the summons to the list on 2 days' notice to the other parties.

3. Particular matters for consideration (O. 25, r. 3)

~~On the hearing of the summons for directions~~ At the determination of the case management summons, the Court shall in particular consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say-

- (a) any provision of Part IV and Part V of the Evidence Ordinance (Cap. 8) (hearsay evidence of fact or opinion in civil proceedings) or of Part III and Part IV of Order 38;
- (b) Order 20, rule 5 and Order 38, rules 2 to 7;
- (c) section ~~40~~ 43 of the District Court Ordinance (Cap. 336).

Rule 139
Rec 52-60, 62

Rule 175
Tidying up

Remarks

4. Admissions and agreements to be made (O. 25, r. 4)

At the ~~hearing of the summons for directions~~ **determination of the case management summons**, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

Rule 140
Consequential
Amendment

5. Limitation of right of appeal (O. 25, r. 5)

Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the ~~summons for directions~~ **case management summons** may record any such agreement.

Rule 141
Consequential
Amendment

6. Duty to give all information at ~~hearing~~ **determination of case management summons** (O. 25, r. 6)

Rule 142
Rec 52-60, 62

(1) Subject to paragraph (2), no affidavit shall be used ~~on the hearing of the summons for directions~~ **at the determination of the case management summons** except by the leave or directions of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents ~~on any hearing of the summons~~ as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties ~~present or represented on the hearing of the summons~~ as well as to the Court.

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party ~~on the hearing of the summons for directions~~ **at the determination of the case management summons** in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(3) If the Court ~~on any hearing of the summons for directions~~ **at the determination of the case management summons** requires a party to the action or his solicitor or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may –

(a) cause the facts to be recorded in the order with a view to such special

- order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

7. Duty to make all interlocutory applications ~~on summons for directions at case management summons~~ (O. 25, r. 7)

Rule 143
Consequential
Amendment

(1) Any party to whom the ~~summons for directions-~~ **case management summons** is addressed must so far as practicable apply ~~at the hearing at the time fixed for determination~~ of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days ~~before the hearing~~ **before the time fixed for determination** of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the ~~hearing of the summons for directions~~ **determination of the case management summons** is adjourned and any party to the proceedings desires to apply ~~at the resumed hearing~~ for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the ~~resumed hearing~~ **resumption of the determination** of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the ~~summons for directions~~ **case management summons** and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

8. Automatic directions in personal injury actions (O. 25, r. 8)

- (1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically-
- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;

Remarks

- ~~(b) — subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 6 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;~~
- ~~(c) — unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;~~
- (d) photographs, a sketch plan and the contents of any police accident report shall be receivable in evidence at the trial and shall be agreed if possible;
- (HK)(dd) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;
- (f)-(g) (Repealed L.N. 99 of 1993)

Rule 263
Logical
Extension

~~(2) — Where paragraph (1)(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.~~

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate or prevent the making of an order for the transfer of the proceedings to ~~a district court~~ the District Court.

Rule 176
Tidying up

(4) For the purpose of this rule-

“a road accident” (道路意外) means an accident on land due to a collision or apprehended collision involving a vehicle; and

“documents relating to special damages” (關於專項損害賠償的文件) include –

- (a) documents relating to any industrial injury, industrial disablement or sickness benefit rights, and
- (b) where the claim is made under the Fatal Accidents Ordinance (Cap. 22), documents relating to any claim for dependency on the deceased.

(5) This rule applies to any action for personal injuries except –

- (a) any Admiralty action; and
- (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

~~9. — Standard direction by consent (O. 25, r. 9)~~

Rule 144
Rec 62

~~(1) — (Repealed L.N. 99 of 1993)~~

Remarks

~~(3) The Court may give such further directions or orders, whether on application by a party or its own motion, as may, in the circumstances, be appropriate.
(Enacted 1988)~~

10. Application to action in specialist list (O. 25, r. 10)

Rule 145
Rec 62

Notwithstanding anything in this Order, a specialist judge may, by a practice direction, determine the extent to which this Order is to apply to an action in a specialist list.

11. Transitional provisions relating to Part 11 of the Amendment Rules 2008 (O. 25, r. 11)

Rule 145
Transitional

(1) A summons for directions taken out before the commencement of the Amendment Rules 2008 and pending immediately before the commencement is deemed to be –

- (a) if the summons for directions was taken out by the plaintiff, a case management summons taken out under rule 1(1B)(b); or**
- (b) if the summons for directions was taken out by a defendant, a case management summons taken out under rule 1(4)(a).**

(2) Where the pleadings in an action to which rule 1 applies are deemed to be closed but no summons for directions has been taken out before the commencement of the Amendment Rules 2008, rule 1(1) has effect as if for the words “the pleadings in an action to which this rule applies are deemed to be closed”, there were substituted the words “the commencement of the Amendment Rules 2008”.