

Rules of the High Court (Amendment) Rules 2008

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

Order 41A – STATEMENTS OF TRUTH

Remarks

Rule 105
Rec 26-32, 35

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

In this Order, unless the context otherwise requires –
“expert report” (專家報告) means an expert report disclosed under these
rules;

“pleading” (狀書) includes –

- (a) particulars of a pleading given by a party to any other party,
whether voluntarily or pursuant to –
 - (i) a request made by 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” (證人陳述書) 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 must 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 just 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 (6), (7), (8) and (9), a statement of truth must 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 putting forward the verified document 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 (6), (7), (8) and (9), where a party is a body of persons, corporate or unincorporate, the statement of truth must be signed by a person holding a senior position in the body.

(3) Subject to paragraph (7), where the party is a public officer, the statement of truth must be signed by the public officer or a person holding a senior position in the public body or public authority to which the proceedings relate.

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

- (a) in respect of a corporation that is neither a public body nor a public authority, any director, manager, secretary or other similar officer of the corporation;
- (b) in respect of an unincorporated association that is neither a public body nor a public authority, any corresponding person appropriate to that unincorporated association; and
- (c) in respect of a public body or public authority, a person duly authorized by the public body or public authority for the purposes of this sub-paragraph.

(5) Where a statement of truth is signed by a person holding a senior position, that person shall state in the statement of truth the office or position he holds.

(6) Subject to paragraphs (7), (8) and (9), where the party is a partnership, the statement of truth must be signed by –

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

(7) A statement of truth in or in relation to a pleading may be signed by –
(a) a person who is not a party; or
(b) two or more parties jointly,
if this is permitted by a practice direction.

(8) 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.

(9) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in relation to a pleading may be signed by an officer of the insurer 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.

(10) Where a legal representative signs a statement of truth, he shall sign in his own name, and shall not sign only in the name of the firm to which he belongs.

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 that 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 and (if applicable) the opinion expressed in it is honestly held.

(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 or expert report is 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 is as follows –

“I believe that the facts stated in this [*name document being verified*] are true and (if applicable) the opinion expressed in it is honestly held.”.

(3) Where the statement of truth is not contained in the document that 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) The Court may by order strike out a pleading that is not verified by a statement of truth.

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

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 witness statement or expert report is not admissible in evidence unless otherwise

ordered by the Court.

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. False statements (O. 41A, r. 9)

(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 leave 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.

10. Transitional (O. 41A, r. 10)

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.