

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

PRACTICE DIRECTION NO. 2 OF 2008

MISCELLANEOUS AMENDMENTS

1 This practice direction makes miscellaneous amendments to paragraphs 13, 41, 42, 43, 57, 115, 144 and 146 of the *Supreme Court Practice Directions (2007 Ed)*.

Amendments to paragraphs 13 and 57

2 The Honourable the Chief Justice has directed that solicitors appearing in any cause or matter may mention for counsel for all other parties, provided that:

- (a) the solicitor obtains confirmation of his authority to mention on their behalf for the purpose of the hearing; and
- (b) parties have agreed on the order sought.

3 However, where an adjournment of a hearing date is sought, solicitors for all parties must attend the hearing.

Amendments to paragraphs 42 and 144

4 Pursuant to Order 32, Rule 9 of the Rules of Court, the Honourable the Chief Justice has directed that applications for *Mareva* injunctions and for search orders, whether made on an *ex parte* or *inter partes* basis, should be heard by a Judge in person. For the avoidance of doubt, all other *ex parte* applications for interim injunctions may be heard by a Registrar. Applications for an inquiry on the mental state of a person and the appointment of a committee of the person and/or estate under the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) may also be heard by a Registrar. Accordingly, amendments have been made to paragraphs 42 and 144.

Amendment to paragraph 41

5 During the hearing of an application for an *ex parte* injunction, the applicant’s solicitors should inform the Court as to whether the other parties or their solicitors consent to the application being heard without their presence. Accordingly, an amendment has been made to paragraph 41(2).

Amendment to paragraph 43

6 Paragraph 43(1) applies to applications for pre-action discovery or interrogatories against network service providers. Sub-paragraph (a) currently suggests that such applications may be made “by or on behalf of” an owner or exclusive licensee of copyright material. Paragraph 43 has been amended to delete the words “or on behalf of” in order to bring the paragraph in line with the common law position as set out in *Odex Pte Ltd v Pacific Internet Ltd* [2008] 3 SLR 18.

Amendment to paragraph 115

7 Skeletal arguments that are electronically filed under Part XIII of the *Supreme Court Practice Directions (2007 Ed)* should be filed and *served* at least 10 days before the hearing. Paragraph 115(1) has been amended accordingly.

Amendment to paragraph 146

8 In order to assist the Court in the hearing of an application under the Mental Disorders and Treatment Act, the medical report that is being relied upon should be as current as possible. Accordingly, paragraph 146(3) has been amended to state that the medical report should be current and should be made not more than 6 months before *the date of the hearing* of the application.

9 This practice direction will take effect on 1 September 2008.

10 This practice direction should be included in *The Supreme Court Practice Directions (2007 Ed)* immediately before the first page of the table of contents.

Instructions for effecting the amendments to *The Supreme Court Practice Directions (2007 Ed)* are contained in the Appendix hereto.

Dated this 20th day of August 2008

A handwritten signature in black ink, appearing to read 'FCH', is positioned above the printed name.

FOO CHEE HOCK
ACTING REGISTRAR
SUPREME COURT

APPENDIX

- 1) The existing page i to be replaced with the attached page i.
- 2) The existing page PART II - 1 to be replaced with the attached page PART II - 1.
- 3) The existing page PART II - 8 to be replaced with the attached page PART II - 8.
- 4) The existing pages PART IV - 8 to IV - 11 is to be replaced with the attached pages PART IV - 8 to IV - 11.
- 5) The existing page PART VI - 6 is to be replaced with the attached page PART VI - 6.
- 6) The existing page PART XIII - 7 is to be replaced with the attached page PART XIII - 7.
- 7) The existing page PART XX - 3 is to be replaced with the attached page PART XX - 3.
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13. Attendance of solicitors in Court and mentioning on behalf of other solicitors

- (1) Subject to sub-paragraph (2), a solicitor appearing in any cause or matter may mention for counsel for all other parties provided that:
 - (a) the solicitor obtains confirmation of his authority to mention on their behalf for the purpose of the hearing; and
 - (b) parties have agreed on the order sought.
- (2) However, where an adjournment of the hearing date of any cause or matter is sought, solicitors for all parties must attend the hearing. See also paragraphs 56 and 57 of these Practice Directions.
- (3) Solicitors appearing in any cause or matter should be punctual in attending Court, as delay in the commencement of the hearing leads to wastage of judicial time. Appropriate sanctions may be imposed for solicitors who do not arrive for hearings on time.

41. Ex parte applications for injunctions

- (1) Order 29, Rule 1 of the Rules of Court provides that an application for the grant of an injunction may be made *ex parte* in cases of urgency. However, the cases of *Castle Fitness Consultancy Pte Ltd v Manz* [1989] SLR 896 and *The 'Nagasaki Spirit' (No 1)* [1994] 1 SLR 434 take the position that an opponent to an *ex parte* application, especially where the application seeks injunctive relief, should be invited to attend at the hearing of the application.

- (2) In view of this, any party applying *ex parte* for an injunction (including a *Mareva* injunction) must give notice of the application to the other concerned parties prior to the hearing. The notice may be given by way of facsimile transmission or telex, or, in cases of extreme urgency, orally by telephone. The notice should inform the other parties of the date, time and place fixed for the hearing of the application and the nature of the relief sought. If possible, a copy of the *ex parte* summons should be given to each of the other parties. At the hearing of the *ex parte* application, in the event that some or all of the other parties are not present or represented, the applicant's solicitors should inform the Court of:
 - (a) the attempts that were made to notify the other parties or their solicitors of the making of the application; and
 - (b) whether the other parties or their solicitors consent to the application being heard without their presence.

- (3) The directions set out in sub-paragraph (2) need not be followed if the giving of the notice to the other parties, or some of them, would or might defeat the purpose of the *ex parte* application. However, in such cases, the reasons for not following the directions should be clearly set out in the affidavit prepared in support of the *ex parte* application.

42. Mareva injunctions and search orders⁺

- (1) Pursuant to Order 32, Rule 9 of the Rules of Court, the Honourable the Chief Justice has directed that applications for *Mareva* injunctions and for search orders, whether made on an *ex parte* or *inter partes* basis, should be heard by a Judge in person. For the avoidance of doubt, all other *ex parte* applications for interim injunctions may be heard by a Registrar.
- (2) Applicants for *Mareva* injunctions and search orders are required to prepare their orders in accordance with the following forms in Appendix A of these Practice Directions:
 - (a) Form 8: Search order;
 - (b) Form 9: worldwide *Mareva* injunction; and
 - (c) Form 10: *Mareva* injunction limited to assets within the jurisdiction.
- (3) The language and layout of the forms are intended to make it easier for persons served with these orders to understand what they mean. These forms of orders should be used save to the extent that the Court hearing a particular application considers there is a good reason for adopting a different form. Any departure from the terms of the prescribed forms should be justified by the applicant in his supporting affidavit(s).
- (4) The applicant should undertake not to inform any third party of the proceedings until after the return date.
- (5) Wherever practicable, applications should be made sufficiently early so as to ensure that the Court has sufficient time to read and consider the application in advance.

⁺ Formerly known as “*Anton Piller* order”.

SUPREME COURT PRACTICE DIRECTIONS (2007 ED.)

- (6) On an *ex parte* application for either a *Mareva* injunction or a search order, an applicant may be required, in an appropriate case, to support his cross-undertaking in damages by a payment into Court, the provision of a bond by an insurance company, a banker's guarantee or a payment to the applicant's solicitor to be held by the solicitor as an officer of the Court pending further order.

Applications for search orders

- (7) It was suggested in *Universal Thermosensors Ltd v Hibben* [1992] 3 All ER 257 at 276 that the order be served by a supervising solicitor and carried out in his presence and under his supervision.
- (a) The supervising solicitor should be an experienced solicitor who is not a member or employee of the firm acting for the applicant and who has some familiarity with the operation of search orders. The evidence in support of the application should include the identity and experience of the proposed supervising solicitor. These guidelines are equally applicable in the local context and the Judge in his discretion may, in appropriate cases, require a supervising solicitor.
- (b) Where the premises are likely to be occupied by an unaccompanied woman, at least one of the persons attending on the service of the order should be a woman.
- (c) Where the nature of the items removed under the order makes this appropriate, the applicant will be required to insure them.

43. Applications for discovery or interrogatories against network service providers

- (1) This paragraph applies to applications made under Order 24, Rule 6(1) or Order 26A, Rule 1(1) of the Rules of Court:
 - (a) by an owner or exclusive licensee of copyright material against a network service provider for information relating to the identity of a user of the network service provider's primary network who is alleged to have infringed the copyright in the material in relation to an electronic copy of the material on, or accessible through, the network service provider's primary network; or
 - (b) by the performer of a performance against a network service provider for information relating to the identity of a user of the network service provider's primary network who is alleged to have made an unauthorised use of the performance in relation to an electronic recording of the material on, or accessible through, the network service provider's primary network.
- (2) An application referred to in sub-paragraph (1) shall:
 - (a) be made in Form 4 (originating summons) of Appendix A of the Rules of Court; and
 - (b) when made in accordance with sub-paragraph (2)(a), be fixed for hearing within 5 days from the date of filing of the application.
- (3) The onus shall lie on the applicant to highlight the nature of the application to the Legal Registry of the Supreme Court and to request that the application be fixed for hearing within 5 days.
- (4) In sub-paragraph (1)(a), the words "electronic copy", "material", "network service provider" and "primary network" have the same meanings as in section 193A(1) of the Copyright Act (Cap. 63, 2006 Rev Ed).

- (6) In any other case, solicitors on record for all parties must attend before the Court to make an application for an adjournment. See also paragraph 13 of these Practice Directions.

115. Timelines for filing

- (1) Skeletal arguments that are electronically filed under this Part must be filed and served at least 10 days before the hearing.
- (2) Hard copies of bundles of authorities shall be tendered to the Legal Registry of the Supreme Court at the same time as hard copies of skeletal arguments.

116. Filing fees

- (1) No transmission or processing fees shall be payable in respect of documents filed under this Part.
- (2) Electronic filing at the service bureau shall be subject to such administrative charges as may be imposed by the service bureau from time to time. However, the service bureau has agreed to waive the payment of any administrative charges incurred by unrepresented accused persons.

144. The originating summons

Title of originating summons

- (1) The originating summons should be entitled:
In the Matter of the Mental Disorders and Treatment Act (Cap 178)
And
In the Matter of [*name of person alleged to be of unsound mind*]
(NRIC No. ...) a person alleged to be of unsound mind
And
In the Matter of an application by [*name of applicant*] (NRIC No. ...)

Prayers for dispensation of service and attendance

- (2) In most applications, the person alleged to be of unsound mind will not be served with the application and will not appear at the hearing of the application. Similarly, the doctor whose medical evidence is being relied on is usually absent at the hearing. In such circumstances, the applicant should seek the following orders in the originating summons:
- (a) dispensation of service of the originating summons on the person alleged to be of unsound mind;
 - (b) dispensation of attendance of the person alleged to be of unsound mind at the inquiry; and
 - (c) dispensation of attendance of the doctor at the inquiry.

The Court will decide whether dispensation should be granted on the facts of each case.

Standard prayers

- (3) The following standard prayers (varied as appropriate to each case) should be put into the originating summons:
- (a) that an inquiry be held as to whether the person alleged to be mentally disordered is or is not of unsound mind and incapable of managing himself and his affairs within the meaning of the Act;

146. Doctor's affidavit exhibiting medical report

Affidavit by doctor required

- (1) Under Order 40A, Rule 3 of the Rules of Court, expert evidence "is to be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him testifying that the report exhibited is his and that he accepts full responsibility for the report". The doctor whose medical report is being relied on should affirm or swear to an affidavit and exhibit his or her medical report.

- (2) In addition, the doctor should indicate in the affidavit that he or she is aware that his or her report is being adduced for the purpose of obtaining a declaration that the person concerned is of unsound mind and incapable of managing himself and his affairs, and for the appointment of a committee under the Act.

The medical report

- (3) In order to assist the Court, the medical report should:
 - (a) distinguish clearly between observations or conclusions based on information given to the doctor and those that are based on the doctor's examination of the person concerned;
 - (b) contain a clear opinion as to whether the person concerned is of unsound mind and incapable of managing himself and his affairs; and
 - (c) be current and should be made not more than 6 months before the date of the hearing of the application.