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10.00 Applications

Introduction

TWO TYPES: An application may be an originating process (r 25) or made in a proceeding (r 31).

GIVING EVIDENCE: Evidence in an application is always given by way of affidavit: r 390(b).

- See '11. Affidavit Evidence'.

Originating Applications

Content

REQUIREMENTS: An originating application must fulfil the following requirements (r 26):

- (1) Be in the Approved Form (Form 5).
- (2) Name as respondents all persons directly affected by the relief sought.
 - o Court may direct that others be included: r 69.
 - o This rule does not apply if the rules (or another law) authorise the application be heard ex parte: r 26(3).
- (4) List the affidavits to be relied on by the applicant.
- (5) Specify the orders or other relief sought.
- (6) If application made under an Act, start the name and section number of that Act under which the application is made.
- (7) Specify the day set for hearing the application.
- (8) If filed in QMC or QDC, show that the court has jurisdiction to decide the application.
 - o It is permissible that this be shown on material filed with the application.

Estimated Duration of Hearing:

Applicant must write on the application an estimate of the duration of the hearing: r 463(1).

- Any change in the estimated hearing time must notify the registrar as soon as practicable after becoming aware: r 463(3).

Service of Application

GENERAL RULE: Must be filed and served on each respondent at least 3 business days before the hearing date: r 27(1).

- In calculating the time, day of hearing and day of service are excluded: AIA s 38(1)(a).

EXCEPTIONS: The general rule does not apply if (r 27(2)):

- (a) The rules, an Act or another law permits hearing of the application without service; or
- (b) The applicant proposes the application be decided without a hearing; or
- (c) Another time is provided under the rules or an Act.

CONTRAVENTION: If the above rules are not complied with, the court must not hear or decide the application UNLESS it considers it just to do so AND one of the following apply (r 27(3)):

- (a) Court is satisfied delay caused by giving notice of the application would cause irreparable or serious mischief to the applicant or another person; or
- (b) Court is satisfied the respondents to the application will suffer not prejudice if it hears and decides the application on the hearing date; or
- (c) The respondents to the application consent to hearing and deciding the application on the hearing date.

COURT ORDERS: For an application heard despite contravention of the general rule (r 27(4)):

- (a) Court may make an order on an undertaking given by the applicant and acceptable to the court; and
- (b) A person affected by the order may apply to the court for it to be set aside.

Service of Affidavits in Originating Process

RULE: Affidavits to be relied on by the applicant must be filed and served on each respondent at least 3 business days before the hearing date: r 28(1).

- Rule does not apply where court gives leave: r 28(2).

Applications in a Proceeding ('Interlocutory Applications')

Content

REQUIREMENTS: An originating application must fulfil the following requirements (r 31):

- (1) Applicant or solicitor must sign and file it.
- (2) Be in the Approved Form (Form 9).
- (3) Name as respondent any party whose interests may be affected by the granting of relief sought.
- (4) If application made by a non-party, must have on it the information required by r 17 to be on an originating process (listed directly below).
 - This rule does not apply if the information has already been provided on a document filed in the proceeding.
 - Requirements of r 17 are:
 - If Applicant acting personally (r 17(1)(a)):
 - (i) Residential or business address of applicant.
 - (ii) If in QSC or QDC and if address in (i) is outside Qld – a Qld address for service on applicant.
 - (iii) Applicant's telephone number (if any).
 - (iv) If no phone number – a way of contacting applicant by phone.
 - (v) Applicant's fax number (if any).
 - (vi) If no fax number – applicant's email address (if any).
 - If Applicant represented (r 17(1)(b)):
 - (i) Residential or business address of applicant.
 - (ii) Solicitor's name and firm (if in firm).
 - (iii) Address of solicitor's place of business.
 - (iv) If address not in Qld – a Qld address for service on applicant (inc. an address approved by the Court).
 - (v) Solicitor's telephone number.
 - (vi) Solicitor's fax number.
 - (vii) Solicitor's email address and firm's email address (if in firm).
- (5) Filed and served on each respondent at least 2 business days before hearing date.
 - In calculating the time, day of hearing and day of service are excluded: AIA s 38(1)(a).

Estimated Hearing Duration:

Applicant must write on the application an estimate of the duration of the hearing: r 463(1).

- Any change in the estimated hearing time must notify the registrar as soon as practicable after becoming aware: r 463(3).

ADJOURNMENT: If all parties to application consent – the hearing of the application may be adjourned by noting the adjournment on the court file: r 31(6).

*****Hearing Procedure for All Applications on Next Page*****

Hearing Procedure for All Applications

Listing for Hearing

LISTEN WHEN FILED: On the filing of an application, the registrar must record a return date for the matter to be heard: rr 461, 462.

SETTLEMENT: If the matter is settled prior to hearing, the applicant must (as soon as practicable after settlement), notify the registrar: rr 461, 462(2).

Outline of Arguments

NOTE: Following requirements are from *Supreme Court Practice Direction No 6 of 2004*

MANDATORY: Practitioners must provide written outlines of argument in all application hearings before a Judge or Registrar: [1].

REQUIREMENTS: An outline should ([2]):

- (a) Provide a concise summary of the argument in point form;
- (b) Identify relevant authorities and legislative provisions;
- (c) Not exceed four pages; and
- (d) Attach a chronology where appropriate.

EXCHANGE: Outlines should be exchanged as early as practicable prior to the hearing. They should also be handed to the Judge or Registrar at the commencement of the hearing: [3].

- At the conclusion of the hearing they will be placed in the court file for future reference and retained for at least 24 months.
- Practitioners should also provide copies of authorities and legislative provisions for the Judge or Registrar: [4].

Material to be Read

PROVIDE COPIES: Practitioners should provide two copies of the list of material to be read. Filed documents should be identified by the Court File Index Doc No: [7].

- If any material is to be filed by leave, the swearing date should be listed.

FAMILIARISE: Practitioners should familiarise themselves with the Court File Index relevant to their case: [5].

COURT FILE INDEX: The Court File Index contains the following details of filed documents ([6]):

- Doc no. under court filing system
- Date filed
- Doc. Type
- Doc. Description
- Name of filing party

Appearance Slip

Practitioners must complete an appearance slip for each Application hearing: [8].
