

Supreme Court of Victoria

Practice Note No. 9 of 1986

Applications to Masters

The Chief Justice has approved the issue of the following Practice Note:

This Practice Note replaces that issued with effect from 3 October 1983. It concerns applications to the Masters of the Supreme Court (other than the Listing Master and the Taxing Master) under the General Rules of Procedure in Civil Proceedings 1986 which come into operation on 1 January 1987 and the other Chapters of the Rules to the extent that the Masters have jurisdiction thereunder and subject to the provisions of those Chapters and any Practice Notes in force with respect to them.

A. The Fourteenth Court - All applications to a Master not expressly directed to be made otherwise shall be made to the Master sitting in the Fourteenth Court.

3. Commencement

(a) All summonses returnable in the Fourteenth Court must be filed with:

(b) All other applications to the Master in the Fourteenth Court must be made on notice to:

the second secretary to the Senior Master or, in the absence of that secretary, the secretary for the time being receiving such summonses for filing or accepting notice of applications not by summons.

When a summons is filed or notice given of an application not by summons, the secretary will allot a date for the hearing. Subject to the business then pending in the Fourteenth Court, that date will be the earliest practicable having regard to the nature of the case.

Subject to directions which the Senior Master may give the second secretary (and other secretaries) from time to time, all applications in the Fourteenth Court will be expressed to commence at 10.30 a.m. on the date allotted.

2. Originating motions under O.53 The date to be specified in the originating motion as the date of application to the Master must be allotted by the second secretary or other secretary as for other applications in the Fourteenth Court. Allotment of the date will necessarily occur before the originating motion is filed with the Prothonotary. The insertion of the date in the originating motion will be initialled by the secretary who allots it. The person attending upon the secretary for allotment of the date must inform the secretary of any circumstances likely to cause delay in effecting service on any person named as a defendant in the originating motion so that the date allotted will be the earliest practicable in those circumstances.

[1987] VR 163 at 164

3. Originating motions in Form 5D In common with other originating motions, the initial application upon an originating motion to which there is no defendant is to be made to the Court constituted by a Master. Unless such an application is expressly directed to be made to a Master other than the Master in the Fourteenth Court, for example an application for directions under s84(3) of the Property Law Act, *infra*, it is to be made to that Master; and the procedure for allotment of a date for the application before the filing of the originating motion shall be the same as that provided, *supra*, with respect to originating motions under O.53.

4. Production of court files In each case, the applicant will be responsible for the production of the court file to which the application relates. Save in extraordinary circumstances, no order will be made in the absence of the relevant court file. Accordingly, notice to the prothonotary to produce a court file required must be filed a sufficient time, usually two clear days, before the date of the hearing.
 5. Order of business The Master will usually make any orders sought by consent before he deals with any unopposed or opposed applications. Subject to urgency or other special circumstances, the Master:
 - (a) will hear unopposed before opposed applications;
 - (b) will hear applications in an order determined by reference to the seniority of admission to practise of practitioners appearing.
 6. Reference of applications for hearing by another Master When any other Master becomes available to hear an application pending in the Fourteenth Court, the Master in the Fourteenth Court will refer to him an opposed or lengthy unopposed application awaiting hearing. If possible, the reference will be to the Seventh Court or another Court specified at the time of reference. If no Court is available to the Master to whom the application is referred, he will hear the referred application in his Chambers.
- B. Applications Not To Be Made In Fourteenth Court - The following applications shall not be made in the Fourteenth Court:
- (a) For approval of a compromise in relation to a claim by or on behalf of or against a person under disability.
 - (b) For payments out of court of moneys held by the Senior Master.
 - (c) For an order under s66(1) of the Guardianship and Administration Board Act 1986.
 - (d) For orders nisi to review.
 - (e) For the appointment of a provisional liquidator.
 - (f) For a certificate concerning the holding of meetings to consider a scheme of arrangement.
 - (g) For directions in an application for confirmation of a resolution reducing the capital of a company.
 - (h) For directions under s84(3) of the Property Law Act.
 - (i) For directions concerning an assessment of damages or value.
 - (j) For directions concerning the taking of accounts.
 - (k) For directions concerning the making of an inquiry.
 - (l) For directions in interpleader proceedings.
 - (m) For an order under R67.02.
 - (n) For an order under R67.03.

[1987] VR 163 at 165

The foregoing list is not necessarily exhaustive and it may be altered by the Senior Master from time to time.

At all times (other than vacations) a Master will be designated by the Senior Master as the Master whose primary function for the period of that designation is the hearing of applications of the types referred to in the foregoing list.

That Master will hear the applications described in (a), (b) and (c) in his Chambers. If the Seventh Court or another Court is available he will hear other applications in that Court. Otherwise, he will hear such applications in his Chambers.

If it is appropriate to hear and determine the substantive application without adjournment, the Master will do so. Accordingly, an applicant should ensure that the application provides for this and, where appropriate, for the giving of directions as an alternative. Thus, an applicant "for assessment of damages or value, or for directions concerning the assessment of damages or value", must comply with R51.02(2); and an applicant for an order nisi to review must be ready to argue the substantive merits of the application and have available a statement of the grounds on which it will be submitted the order should be made.

When not in Court or otherwise unavailable, the secretary to the Master will receive all summonses for filing and appoint dates and times for the making of applications. If the secretary is unavailable, the second secretary to the Senior Master, or another secretary, will perform these functions. It may frequently not be possible to specify at the time a summons is filed or notice of an application received whether the Master will conduct the hearing in a Court or in his Chambers. In such cases, that will be made known on the day of the hearing, if not before.

The allotment of the date to be specified as the date of application to the Court in an originating motion to which there is no defendant, when that application will be to the Master hearing applications directed not to be made in the Fourteenth Court, for example an application for directions under s84(3) of the Property Law Act, shall be made before the filing of the originating motion and, subject to the preceding paragraph, the procedure followed shall be the same as that provided, supra, with respect to originating motions under O.53 and originating motions in Form 5D.

Save in exceptional circumstances, the Master who, in cases of the type described in (h), (i), (j), (k), (1), (m) and (n), has made a preliminary order including an order for directions, or who by order adjourns the further hearing of an application for an order nisi to review, will hear the substantive application on a date indicated at the time of making the order.

The subsequent hearing will usually be in the Seventh Court but if another Court is available when the hearing is due to commence it may take place in that other Court if that would be more beneficial to the disposition of the business pending before the Masters on that date. Practitioners are to be prepared for the subsequent hearing on the date indicated or as soon thereafter as the Master reaches it.

[1987] VR 163 at 166

C. OTHER MATTERS

1. References to a Judge - The procedures described in Practice Note No. 7 concerning references to a Judge under R45.04(4)(c) will be followed, with the same obligations for practitioners, when a Master refers an application to a Judge pursuant
2. Unauthenticated and unsigned orders - An application will not be entertained by a Master if it is dependent on or arises from an order which has not been authenticated by the Prothonotary or signed by the Judge or Master who made it, unless the order was for adjournment only.
3. Applications arising out of an order made by a Master Any application for the setting aside of an order made ex parte by a Master or to alter a time specified in an order by a Master or otherwise to vary the effect of an order made by a Master should, in other than exceptional circumstances, be made to that Master. Other Masters will ordinarily decline to hear such an application. Arrangements for such an application to be heard by the Master whose order it concerns can be made by communicating with the principal secretary to the Senior Master.
4. Applications for payments out of moneys held by the Senior Master - The applicant for payment out of an amount held by the Senior Master in a Common Fund and equivalent to the total sum shown to the credit of a particular account in the Common Fund should ensure that an order for payment:
 - (a) is subject to the retention of a sum sufficient to discharge any liability for income tax;
 - (b) (except where the moneys are held for security for costs) provides for payment of interest accrued in respect of the sum to be paid out at the rate declared with respect to the Common Fund on the first day of June last preceding; and
 - (c) specifies, by number, the account or accounts in the Common Fund to which payments are to be debited.

(From 1 January 1987 the Senior Master will be obliged to pay to the Consolidated Fund all interest which would otherwise be added to an account in a Common Fund representing moneys paid into court as security for costs.)

5. Applications to be directed by the principal secretary Applications: -
 - (a) for executor's commission to be allowed;
 - (b) to a Master as proper officer under the Judgment Debt Recovery Act 1984;
 - (c) concerning the examination of a company officer (referred to in Practice Note No. 6 of 1986) - shall be filed with the principal secretary to the Senior Master who will make arrangements for them to be dealt with.

6. Vacations Arrangements with respect to the hearing of applications to a Master during a vacation will, as now, be announced shortly prior to the commencement of the vacation.

KJ MAHONY SENIOR MASTER