

4/89

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

CHANCERY OFFICE

1989 No 2

PRACTICE DIRECTION

1. APPLICATION FOR JUDGMENT IN DEFAULT OF DEFENCE
UNDER O 19, r 7.

- (1). An application for judgment in default of defence under O.19, r 7, must be made by summons or motion. It is normally made by summons to the Master unless an injunction is sought in which case it is heard by the Judge. The summons must contain minutes of the judgment sought. These may be set out in the body of the summons or in a schedule attached to the summons. Service must be effected on each defendant against whom judgment is sought, whether or not he has appeared. Service is in accordance with O.65, r 5.
- (2) The plaintiff's solicitor must as soon as possible and not later than 4 clear working days before the date appointed for the hearing, lodge in the Chancery Office (Room 33) a book properly paged and indexed containing the following documents or copies thereof:-
 - (a) Where no appearance has been entered
 - (i) summons with minutes of judgment;
 - (ii) writ of summons;
 - (iii) statement of claim, with the plaintiff's solicitor's certificate indorsed thereon dated not earlier than the date of issue of the summons stating that no defence has been served;
 - (iv) affidavit(s) proving service of writ of summons, statement of claim and summons;

(b) Where appearance has been entered

- (i) summons with minutes of the judgment;
- (ii) writ of summons;
- (iii) memorandum of appearance;
- (iv) statement of claim, with the plaintiff's solicitor's certificate indorsed thereon dated not earlier than the date of issue of the summons stating that no defence has been served;
- (v) affidavit(s) proving service of statement of claim and summons;

2. APPLICATION FOR SUMMARY JUDGMENT UNDER O.14 OR O.86.

- (1) An application for judgment under O.14 must, by r.2(1), be made by summons; and the same applies to an application for judgment under O.86 r.2(1).
- (2) Where such an application includes an application for an injunction, the granting of which is outside the powers of a Master (O.32 r.11(1)(f)), the summons should be made returnable before the Judge in chambers instead of the Master. In that event the return date to be inserted in the summons will be a Monday which (i) for O.14 is at least 10 clear days (r.2(4)) after the date when the summons will be served and (ii) for O.86 is at least 4 clear days (r.2(3)) after the date when the summons will be served.

3. ORDERS (O.42)

Orders are usually prepared by Court staff after the hearing.

In a difficult or unusual case the draft may have to be approved by the Judge, Master and/or counsel. Sometimes the solicitors or counsel for

one of the parties may be directed to submit a draft order for approval. The precise terms of the order sought should be set out in the ex parte docket, summons, notice of motion, or minutes of judgment. In a straight-forward case the order should be prepared, signed, filed and available for bespeak by the parties within 2 or 3 days. Parties wishing to obtain copies of orders may do so by lodging in Room 33 the following:

- (1) A form of General Requisition (obtainable in the Office) or other written request specifying:
 - (a) the record number of the action;
 - (b) the date of the order;
 - (c) the name of the Judge or Master who made the order.
- (2) The appropriate judicature fee in adhesive or impressed stamps at 25 pence per page affixed to the requisition or request.
- (3) A stamped addressed envelope (if postal service desired).

The parties should upon receipt of a court order check it carefully to see that it correctly reflects the order as pronounced and also to see that the property, if any, described in the order is properly described. Any alleged errors in orders especially as to the description of property or parties should be brought to the attention of the Principal Clerk without delay. Before serving an order a party should consider carefully whether it is necessary to endorse upon it the penal notice in accordance with O.45, r.5.

The penal notice (O.45, r.5) reads:

"If you the within named AB neglect to obey this order within the time specified therein you will be liable to process of enforcement to compel you to obey it,"

or if the order is to abstain from doing an act;

"If you the within named AB disobey this order you will be liable to process of enforcement to compel you to obey it."

4. AMENDMENT OF ORDERS

An application to amend an order should be made to the Judge or Master who pronounced the order by summons grounded on affidavit invoking the assistance of O.20, r.11 (the slip rule) and/or the inherent jurisdiction of the Court. There are many authorities listed in the notes to O.20 of the Supreme Court Practice 1988. See also Creaney's Estate [1988] 5 NIJB 47.

5. WRITTEN JUDGMENTS

Parties and other interested persons may obtain copies of written judgments delivered by the Judge on payment of 25 pence per page. Applications for copies should be made not to the Chancery Office, but to the Appeals and Lists Office, Room 56, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

The mode of application and payment is similar to that set out in paragraph 3.

6. SETTLEMENT OR COMPROMISE OF LITIGATION

Where a case is settled, the solicitor for the moving party should notify the Office as quickly as possible. It is helpful if the solicitor can indicate the type of order that will be sought e.g. Tomlin order (stay of proceedings on agreed terms scheduled).

O.34 r.7(2) reads:

"It shall be the duty of all parties to an action to furnish without delay to the officer who keeps the lists of actions for hearing all available information as to the action being or being likely to be settled, and if the action is settled or withdrawn, to notify that officer of the fact without delay."

See also PRACTICE DIRECTION 1973 No.1 Orders by consent.

7. ENFORCING TERMS OF SETTLEMENT

When a party seeks to enforce an order containing scheduled terms of settlement of an action a formal application should be made to the Court by summons or notice of motion as the case may be.

When a party seeks to enforce terms of settlement which have been endorsed on counsel's briefs he ought to have regard to the case of Green v. Rozen [1955] 1 W.L.R. 741 and [1955] 2 A.E.R. 797; and in particular to pp. 745-6 of the Weekly Law Reports and pp. 800-801 in the All England Reports.

8. APPLICATION BY MORTGAGEE FOR LEAVE TO ENFORCE SUSPENDED POSSESSION ORDER

- (1) An application under O.46, r.1, to enforce a suspended order for possession of mortgaged property must be made by summons, supported by an affidavit showing service of the order on the defendant and default in complying with the terms of the suspension.
- (2) Where a defendant has appeared the summons and affidavit should be served in accordance with O.65, r.5.
- (3) To ensure that a defendant who is in default of appearance has an opportunity of being heard the plaintiff must also send to him by post to his last known address a copy of the summons and of the affidavit in support so as to reach him not less than 2 clear days before the hearing, and lodge in Room 33 before the hearing, the affidavit indorsed with a certificate by the plaintiff's solicitor in the form following or as near thereto as may be appropriate -

"I certify that on _____, 198 , a copy of the summons herein dated _____ 198 , together with a true copy of the within affidavit was sent by ordinary first class post addressed to the defendant at his last known address being [insert address].

(Signed)

Plaintiff's Solicitor"

9. VENUE OF HEARINGS BEFORE MASTER (CHANCERY)

As all hearings (except those for which special arrangements are made) before the Master are heard in his Chambers, Room ³⁴~~35~~, First Floor, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF, that address in full should appear as the venue of the proceedings on all notices of appointments [Form 10], and summonses [Form 28].

10. TELEPHONE NUMBERS

Solicitors lodging ex parte dockets, summonses, affidavits etc in the Chancery Office should endorse their telephone number with code after their address. Solicitors outside Belfast who have offices in several towns should use the address from which their action is being conducted. In any oral or written communication the record number must be given.

11. The following Chancery Division Practice Directions are hereby revoked -

1 April 1965	1965 No 2 Remuneration of Auctioneers and Estate Agents on Sales of land
15 April 1965	1965 No 3 Authorities cited in argument
21 February 1972	1972 No 1 Hearing of Originating Summonses etc.
21 February 1972	1972 No 3 Applications by (Mortgagees for Sale, Possession or Payment.
21 February 1972	1972 No 4 Fixing Dates for Trials of Actions.
12 December 1972	1972 No 7 Hearing of Applications by Mortgagees for Possession or payment.
23 October 1973	1973 No 2 Applications by Mortgagees for Possession or payment.
25 February 1974	1974 No 1 Applications by Mortgagee for Leave to Enforce Possession Order.
1 March 1978	1978 No 1 Setting Down an Action on Motion for Judgment in Default of Defence under O.27, r.12.

12. Of the Chancery Division Practice Directions made prior to the date of this Direction only the following remain in operation:

18 January 1968	1968 No 1	Proof of Personal Service of Documents
21 February 1972	1972 No 5	Title of Chancery Proceedings
21 February 1972	1972 No 6	Style and Language of Documents
23 October 1973	1973 No 1	Orders by consent
1 December 1987	1987 No 1	Hearing of Originating Summons, Summons or Notice of Motion by Judge
1 December 1987	1987 No 2	Setting down and fixing date of trial by Judge of action begun by writ
1 December 1987	1987 No 3	Points in Practice
14 February 1989	1989 No 1	Ex Parte Applications to Judge in Court for injunctions etc.

By direction of the Honourable Mr Justice Murray.

V. G. Bridges

Master (Chancery)

3 April 1989