
STATUTORY INSTRUMENTS

1982 No. 1786

The Rules of the Supreme Court (Amendment No. 3) 1982

Originating Summons Procedure

10. Order 21, rule 2 shall be amended as follows:—

(1) There shall be inserted in paragraph (2), after the words “a defendant”, the words “to an action begun by writ”.

(2) There shall be inserted in paragraph (3), after the words “to an action”, the words “begun by writ”.

(3) There shall be inserted after paragraph (3) the following new paragraphs:—

“(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(2) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.”.

11. Order 28 shall be amended by inserting, after rule 1, the following new rule:—

“Affidavit Evidence

1A.—(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the office of the Court out of which the summons was issued the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the office of the Court out of which the summons is issued and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

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(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.”.

12. Order 28, rule 2 shall be amended as follows:—

(1) In paragraph (1) there shall be substituted, for the words from “Where, in the case” to “the plaintiff may”, the words “In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A,”.

(2) Paragraph (2) shall be amended by substituting a comma for the stop at the end and inserting the words “and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.”.

13. Order 28, rule 3 shall be amended by substituting, for the title, the title “*Notice of hearing*” and by omitting paragraphs (3) and (4).

14. Order 28, rule 4(2) shall be amended by substituting, for the words from “Unless on the” to “altogether or orders”, the words “In any case where the Court does not dispose of any originating summons altogether at a hearing or order”, and by substituting for the word “makes” the word “make”.

15. Order 62, rule 10(1) shall be amended by inserting, after the words “particular claim made”, the words “or question raised” and by inserting, after the words “by him therein”, the word “as”.