PART 23 General Rules About Applications For Court Orders

PART 23

Meaning of ‘Application Notice’ and ‘Respondent’

23.1

In this Part:

(1) ‘application notice’ means a document in which the applicant states his intention to seek a Court order; and

(2) ‘respondent’ means:

(a) the person against whom the order is sought; and

(b) such other person as the Court may direct.

Application notice to be filed

23.2

The general rule is that an applicant must file an application notice .

23.3

An applicant may make an application without filing an application notice if:

(1) this is permitted by a Rule or Practice Direction; or

(2) the Court dispenses with the requirement for an application notice .

Notice of an application

23.4

The general rule is that a copy of the application notice must be served by the applicant on each respondent even if such service is on short notice.

23.5

An application may be made without serving a copy of the application notice if this is permitted by:

(1) a Rule; or

(2) a Court order.

Applications without service of application notice

23.6

The Court's permission is required for an application to be made without serving an application notice . The Court's permission will be granted only:

(1) where there is exceptional urgency;

(2) where the overriding objective is best furthered by doing so;

(3) by consent of all parties;

(4) where Rule 23.19 below applies;

(5) where a Rule or Practice Direction permits; or

(6) where there are good reasons for making the application without notice, for example, because notice would or might defeat the object of the application.

23.7

Where an application notice should be served but there is not sufficient time to do so, informal notification of the application should be given unless the circumstances of the application require secrecy.

23.8

Where an application without notice does not involve the giving of undertakings to the Court , it will normally be made and dealt with without a hearing, as, for example, applications for an extension of time in which to serve a claim form.

23.9

Any application for an interim injunction or similar remedy will require an oral hearing.

23.10

A party wishing to make an application without notice which requires an oral hearing before a Judge should contact the Court at the earliest opportunity.

23.11

On all applications without notice it is the duty of the applicant and those representing him to make full disclosure of all matters relevant to the application including, in particular, disclosure of any possible defences that may be available to the respondent in response to the application.

23.12

The papers lodged for the application should include two copies of a draft of the order sought. Save in exceptional circumstances where time does not permit, all the evidence relied upon in support of the application and any other relevant documents must be lodged in advance with the Registry . If the application is urgent, the Court should be informed in writing of the fact and of the reasons for the urgency.

Expedited applications

23.13

The Court will expedite the hearing of an application on notice in cases of sufficient urgency and importance.

23.14

Where a party wishes to make an expedited application a request should be made to the Registrar on notice to all other parties.

Pre-action applications

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All applications made before a claim is commenced should be made under Part 8 of the Rules, unless the Court orders otherwise..

Time when an application is made

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Every application should be made as soon as it becomes apparent that it is necessary or desirable to make it.

23.17

Applications should, wherever possible, be made so that they can be considered at any other hearing for which a date has already been fixed or for which a date is about to be fixed. This is particularly so in relation to Case Management Conferences, listing hearings and pre-trial reviews fixed by the Court .

23.18

Where a date for a hearing has been fixed and a party wishes to make an application at that hearing but he does not have sufficient time to serve an application notice he should inform the other party and the Court (if possible in writing) as soon as he can of the nature of the application and the reason for it. He should then make the application orally at the hearing..

23.19

The Court will only entertain applications at a hearing for which a date has been fixed if the proposed (additional) application will not increase the time estimate already given for the hearing.

23.20

Where an application must be made within a specified time, it is so made if the application notice is received by the Court within that time.

What an application notice must include

23.21

An application notice must state:

(1) what order the applicant is seeking; and

(2) briefly, why the applicant is seeking the order.

23.22

An application notice must be signed and include:

(1) the title of the claim;

(2) the reference number of the claim;

(3) the full name of the applicant;

(4) where the applicant is not already a party, his address for service ; and

(5) either a request for a hearing or a request that the application be dealt with without a hearing.

23.23

On receipt of an application notice containing a request for a hearing the Court will notify the applicant of the time and date for the hearing of the application.

Service of a copy of an application notice

23.24

Unless the Court otherwise directs, or Rule 23.5 applies a copy of the application notice :

(1) must be served as soon as practicable after it is filed; and

(2) except where another time limit is specified in these Rules , must in any event be served at least 3 days before the Court is to deal with the application.

23.25

When a copy of an application notice is served it must be accompanied by:

(1) a copy of any written evidence in support; and

(2) a copy of any draft order which the applicant has attached to his application.

23.26

If:

(1) an application notice is served; but

(2) the period of notice is shorter than the period required by these Rules ;

the Court may direct that, in the circumstances of the case, sufficient notice has been given and hear the application.

Evidence already filed

23.27

Rule 23.25(1) does not require written evidence:

(1) to be filed if it has already been filed; or

(2) to be served on a party on whom it has already been served.

Filing and service of evidence

23.28

The requirement for evidence in certain types of applications is set out in some of the Rules . Where there is no specific requirement to provide evidence it should be borne in mind that, as a practical matter, the Court will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application.

23.29

The Court may give directions for the filing of evidence in support of or opposing a particular application. The Court may also give directions for the filing of evidence in relation to any hearing that it fixes on its own initiative. The directions may specify the form that evidence is to take and when it is to be served.

23.30

Where it is intended to rely on evidence which is not contained in the application itself, the evidence, if it has not already been served, should be served with the application.

23.31

Where a respondent to an application wishes to rely on evidence which has not yet been served, he should serve it as soon as possible and in any event in accordance with any directions the Court may have given.

23.32

If it is necessary for the applicant to serve any evidence in reply, it should be served as soon as possible and in any event in accordance with any directions the Court may have given.

23.33

Evidence must be filed with the Court as well as served on the parties. Exhibits should not be filed unless the Court otherwise directs.

Evidence verified by statement of truth

23.34

Although evidence may be given by affidavit , the Court will generally exercise its discretion under Article 51(1) of the Court Law to permit evidence to be given by witness statement, except where Part 29 requires evidence to be given on affidavit (as, for example, in the case of an application for a freezing order or a search order). In other cases the Court may order that evidence be given by affidavit .

23.35

Witness statements and affidavits must comply with the requirements of Part 29, save that photocopy documents should be used unless the Court orders otherwise.

23.36

Witness statements must be verified by a statement of truth signed by the maker of the statement.

23.37

At hearings other than trial, an applicant may rely on the application notice itself, and a party may rely on his statement of case , if the application notice or statement of case (as the case may be) is verified by a statement of truth.

23.38

Proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a witness statement (or any other document verified by a statement of truth) without an honest belief in its truth. Evidence in support of an application for contempt of court should generally be given by affidavit unless the Court orders otherwise.

Ordinary applications

23.39

Applications likely to require an oral hearing lasting 2 hours or less are regarded as “ordinary” applications.

23.40

Many ordinary applications are very short indeed (e.g. applications to extend time). Such applications can normally be heard without evidence and on short (i.e. a few days) notice.

23.41

Where evidence is necessary, the timetable for ordinary applications is as follows:

(1) evidence in support must be filed and served with the application;

(2) evidence in answer must be filed and served within 14 days thereafter;

(3) evidence in reply (if any) must be filed and served within 7 days thereafter.

23.42

The timetable may be abridged or extended by agreement between the parties provided that any date fixed for the hearing of the application is not affected. In appropriate cases, this timetable may be abridged by the Court .

23.43

If the date fixed for the hearing of an application means that the times in Rules 23.41(2) and 23.41(3) cannot both be achieved, the evidence must be filed and served:

(1) as soon as possible; and

(2) in sufficient time to ensure that the application may fairly proceed on the date fixed.

Heavy applications

23.44

Applications likely to require an oral hearing lasting more than 2 hours are regarded as “heavy” applications.

23.45

Heavy applications normally involve a greater volume of evidence and other documents and more extensive issues. They accordingly require a longer leadtime for preparation and exchange of evidence.

23.46

The timetable for heavy applications is as follows:

(1) evidence in support must be filed and served with the application;

(2) evidence in answer must be filed and served within 28 days thereafter;

(3) evidence in reply (if any) must be filed and served as soon as possible, and in any event within 14 days of service of the evidence in answer.

23.47

The timetable may be abridged or extended by agreement between the parties provided that any date fixed for the hearing of the application is not affected. In appropriate cases, the timetable may be abridged by the Court.

Liaison with the Registrar

23.48

In all cases the parties must liaise with the Registrar :

(1) for directions as to the preparations for the hearing of the application;

(2) to fix a date for the hearing; and

(3) for directions as to the management of the hearing.

Hearing dates, time estimates and time limits

23.49

Not later than 5 days before the date fixed for the hearing the applicant must provide the Registry with his current estimate of the time required to dispose of the application.

23.50

It is essential for the efficient conduct of the Court’s business that the parties inform the Court of the reading required in order to enable the Judge to dispose of the application within the time allowed for the hearing and of the time likely to be required for that purpose. Accordingly:

(1) each party must lodge with the Registry a reading list with an estimate of the time required to complete the reading; and

(2) each party’s reading list should identify the material on both sides which the Court needs to read.

23.51

All time estimates should be given on the assumption that the Judge will have read in advance the skeleton arguments and the documents identified in the reading list lodged in accordance with Rule 23.50(1).

23.52

If at any time either party considers that there is a material risk that the hearing of the application will exceed the time currently allowed, it must inform the Registry immediately.

23.53

A time estimate for an ordinary application should allow time for judgment and consequential matters; a time estimate for a heavy application should not.

23.54

Save in the situation referred to in Rule 23.55, a separate estimate must be given for each application, including any application issued after, but to be heard at the same time as, another application.

23.55

A separate estimate need not be given for any application issued after, but to be heard at the same time as, another application where the legal representative in the case certifies in writing that:

(1) the determination of the application first issued will necessarily determine the application issued subsequently; or

(2) the matters raised in the application issued subsequently are not contested.

23.56

If it is found at the hearing that the time required for the hearing has been significantly underestimated, the Judge hearing the application may adjourn the matter and may make any special costs orders (including orders for the immediate payment of costs) as may be appropriate.

Applications - Preparation of documents

Application Bundles

23.57

Bundles for use on applications may be compiled in any convenient manner but must contain the following documents (preferably in separate sections in the following order):

(1) a copy of the application notice ;

(2) a draft of the order which the applicant seeks;

(3) a copy of the statements of case;

(4) copies of any previous orders which are relevant to the application; and

(5) copies of the witness statements and affidavits filed in support of, or in opposition to, the application, together with any exhibits.

23.58

Copies of the statements of case and of previous orders in the action should be provided in a separate section of the bundle. They should not be exhibited to witness statements.

23.59

Witness statements and affidavits previously filed in the same proceedings should be included in the bundle at a convenient location. They should not be exhibited to witness statements.

23.60

The applicant must, as a matter of course, provide all other parties to the application with a copy of the application bundle at the cost of the receiving party. Further copies should be supplied on request, again at the cost of the receiving party.

Bundles of Legal Authorities

23.61

On some applications there will be key legal authorities that it would be useful for the Judge to read before the oral hearing of the application. Copies of these authorities should be provided with the skeleton arguments.

23.62

It is also desirable for bundles of all of the legal authorities on which the parties wish to rely to be provided to the Judge hearing the application as soon as possible after skeleton arguments have been exchanged.

Skeleton Arguments

23.63

Skeleton arguments (with a chronology unless one is unnecessary, and with a list of persons if one is warranted) must be lodged with the Registry and served on the legal representativesfor all other parties to the application. Guidelines on the preparation of chronologies are set out in Schedule A to this Part.

General

23.64

(1) Where the hearing is fixed for a Sunday, or for a Monday where the Judge is hearing other matters on the Sunday, unless the Court orders otherwise:

(a) All bundles to be submitted for the hearing of the Heavy Application must be received by the DIFC Courts Registry by 10am on the Wednesday prior to the hearing date.

(b) Skeleton arguments shall be exchanged and filed with the DIFC Courts by no later than 2pm on the Thursday prior to the hearing.

(2) For all other applications or those to be heard by video conference, all bundles must be received by the DIFC Courts Registry by

(a) 10am on the Wednesday prior to any hearing fixed for a Monday or Tuesday, with Skeleton arguments to be filed with the Courts by 2pm on the Thursday prior to the hearing and

(b) 10am on the Sunday prior to any hearing fixed for a Wednesday or Thursday with Skeleton arguments to be filed with the Courts by 2pm on the day falling two working days prior to the hearing."

23.65

For each day that a submission or filing for a hearing as set out in 23.4 above is delayed, a charge of US$200 will be applied to the party responsible for making the filing.

23.66

Problems with the lodging of bundles or skeleton arguments should be notified to the Registrar as far in advance as possible. If the application bundle or skeleton argument is not lodged by the time specified, the application may be stood out of the list without further warning.

23.67

Failure to comply with the requirements for lodging bundles for the application will normally result in the application not being heard on the date fixed at the expense of the party in default. An order for immediate payment of costs may be made.

23.68

The parties must anticipate that at any hearing the Court may wish to review the conduct of the case as a whole and give any necessary case management directions. They should be ready to assist the Court in doing so and to answer questions the Court may ask for this purpose.

Applications which may be dealt with without a hearing

23.69

The Court may deal with an application without a hearing if:

(1) the parties agree as to the terms of the order sought;

(2) the parties agree that the Court should dispose of the application without a hearing; or

(3) the Court does not consider that a hearing would be appropriate.

Agreed orders

23.70

Rule 36.28 sets out the circumstances where an agreed judgment or order may be entered and sealed.

23.71

Where an agreed order is to be made by a Judge the order must be drawn so that the Judge's name and judicial title can be inserted.

23.72

The parties to an application for an agreed order must ensure that they provide the Court with any material it needs to be satisfied that it is appropriate to make the order. Subject to any Rule or Practice Direction, a letter will generally be acceptable for this purpose.

23.73

Agreed orders may be submitted to the Court in draft for approval and initialling without the need for attendance.

(1) Two copies of the draft, one of which (or a counterpart) must be signed on behalf of all parties to whom it relates, should be lodged at the Registry . The copies should be undated. The order will be dated with the date on which the Judge initials it, but that does not prevent the parties acting on their agreement immediately if they wish.

(2) The parties should act promptly in lodging the copies at the Registry . If it is important that the orders are made by a particular date, that fact (and the reasons for it) should be notified in writing to the Registry .

23.74

Where a judgment or order has been agreed in respect of an application or claim where a hearing date has been fixed, the parties must inform the Court immediately.

Parties agree hearing unnecessary

23.75

If the applicant considers that the application is suitable for determination on paper, he should ensure before lodging the papers with the Court:

(1) that the application notice together with any supporting evidence has been served on the respondent ;

(2) that the respondent has been allowed the appropriate period of time in which to serve evidence in opposition;

(3) that any evidence in reply has been served on the respondent ; and

(4) that there is included in the papers

(a) the written consent of the respondent to the disposal of the application without a hearing; or

(b) a statement by the applicant of the grounds on which he seeks to have the application disposed of without a hearing, together with confirmation that a copy has been served on the respondent .

23.76

The Court at its discretion may dispose of an application without a hearing in the absence of the respondent’s consent.

23.77

Certain applications relating to the management of proceedings may conveniently be made in correspondence without issuing an application notice . It must be clearly understood that such applications are not applications without notice and the applicant must therefore ensure that a copy of the letter making the application is sent to all other parties to the proceedings. Accordingly, the following procedure should be followed when making an application of this kind:

(1) the applicant should first ascertain whether the application is opposed by the other parties;

(2) if it is, the applicant should apply to the Court by letter stating the nature of the order which it seeks and the grounds on which the application is made;

(3) a copy of the letter should be sent (by fax or email where possible) to all other parties at the

same time as it is sent to the Court ;

(4) any other party wishing to make representations should do so by letter within two days (i.e. two clear days) of the date of the applicant's letter of application. The representations should be sent (by fax or email where possible) to the applicant and all other parties at the same time as they are sent to the Court ; and

(5) the Court will advise its decision by letter to the applicant. The applicant must forthwith copy the Court's letter to all other parties, by email where possible.

Court does not consider hearing appropriate

23.78

Where Rule 23.69(3) applies the Court will treat the application as if it were proposing to make an order on its own initiative.

Hearings to be in public

23.79

Applications (other than arbitration applications) will be heard in public in accordance with Article 13 of the Court Law , save where otherwise ordered.

23.80

With certain exceptions, arbitration applications will normally be heard in private.

23.81

An application without notice for a freezing order or a search order will normally be heard in private.

Hearings by video link, telephone, electronic device or other appropriate means

23.82

Parties must consider whether hearings can conveniently take place by video link, telephone, electronic device or other appropriate means in accordance with Article 51 of the Court Law .

23.83

(1) The general rule for all hearings before the DIFC Courts is that the advocate for each party should appear physically in the DIFC Courts

(2) There may be exceptional situations in which an advocate is unable to appear, for example due to the urgency of the matter, or because the estimated cost of his appearance in person before the Court is wholly disproportionate to the matters to be addressed at the hearing. In such circumstances that advocate may, by application on notice under RDC Part 23.77, request permission from the Registrar to participate in a hearing by video or telephone conference.

23.84

Guidelines on the conduct of hearings by video link and telephone are set out Schedules B and C to this Part.

Power of the Court to proceed in the absence of a party

23.85

Where the applicant or any respondent fails to attend the hearing of an application, the Court may proceed in his absence.

23.86

Where:

(1) the applicant or any respondent fails to attend the hearing of an application; and

(2) the Court makes an order at the hearing;

the Court may, on application or of its own initiative, re-list the application.

23.87

The power to re-list the application in Rule 23.86 is in addition to any other powers of the Court with regard to the order (for example to set aside , vary, discharge or suspend the order).

Note of proceedings

23.88

The Court will keep, either by way of a note or a tape recording, brief details of all proceedings before it, including the dates of the proceedings and a short statement of the decision taken at each hearing.

Schedule C to Part 23 Telephone hearings-1

Orders generally drawn up by the parties

23.89

Except for orders made by the Court on its own initiative and unless the Court orders otherwise, every judgment , order or direction will be drawn up by the parties.

Agreed orders

23.90

An application for an agreed order must include a draft of the proposed order signed on behalf of all the parties to whom it relates in accordance with Rule 23.73(1).

Arabic translations

23.91

Parties are reminded of the obligation to produce Arabic translations of any judgment , order or direction in accordance with Rule 2.4.

Time for compliance with Orders

23.92

Where an order provides a time by which something is to be done, the order should wherever possible state the particular date by which the thing is to be done rather than specify a period of time from a particular date or event.

Service of application where application made without notice

23.93

This Rule applies where the Court has disposed of an application which it permitted to be made without service of a copy of the application notice .

(1) Where the Court makes an order, whether granting or dismissing the application, a copy of the application notice and any evidence in support must, unless the Court orders otherwise, be served with the order on any party or other person:

(a) against whom the order was made; and

(b) against whom the order was sought.

(2) The order must contain a statement of the right to make an application to set aside or vary the order under Rule 23.94.

23.94

A person who was not served with a copy of the application notice before an order was made under Rule 23.91, may apply to have the order set aside or varied.

23.95

An application under this Rule 23.94 must be made within 7 days after the date on which the order was served on the person making the application.

Immediate assessment of costs

23.96

Attention is drawn to Part 38 and, in particular, to the Court's power to make an immediate assessment of costs.

23.97

Attention is also drawn to Rule 38.56 which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.

23.98

In carrying out an immediate assessment of costs, the Court may have regard amongst other matters to:

(1) advice from the Registrar on costs of legal representatives ;

(2) any survey published showing the average hourly expense rate for legal representatives in the DIFC or Dubai;

(3) any information provided to the Court by a Bar Association (or similar body) on average charges by legal representatives .

Schedule A to Part 23 Skeleton arguments, chronologies and indices

Schedule B to Part 23 Video-conferencing protocol

Schedule C to Part 23 Telephone hearings