PART 30 Witnesses, Depositions And Evidence For Other Courts

PART 30

Scope of this section

30.1

This Section of this Part provides:

(1) for the circumstances in which a person may be required to attend Court or a tribunal to give evidence or to produce a document; and

(2) for a party to obtain evidence before a hearing to be used at the hearing.

30.2

In this Section, reference to a hearing includes a reference to the trial.

Witness summonses

30.3

A witness summons is a document issued by the Court requiring a witness to:

(1) attend the Court or a tribunal to give evidence; or

(2) produce documents to the Court or a tribunal .

30.4

A witness summons must be in Form P30/01.

30.5

There must be a separate witness summons for each witness.

30.6

A witness summons may require a witness to produce documents to the Court or a tribunal either:

(1) on the date fixed for a hearing; or

(2) on such date as the Court may direct.

30.7

The only documents that a summons under Rule 30.3(2) can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

Issue of a witness summons

30.8

A witness summons is issued on the date entered on the summons by the Court .

30.9

Two copies of the witness summons should be filed with the Court for sealing, one of which will be retained on the Court file.

30.10

A mistake in the name or address of a person named in a witness summons may be corrected if the summons has not been served.

30.11

The corrected summons must be re-sealed by the Court and marked ‘Amended and Re-Sealed’.

30.12

A party must obtain permission from the Court where he wishes to:

(1) have a summons issued less than 7 days before the date of the hearing;

(2) have a summons issued for a witness to attend the Court or a tribunal to give evidence or to produce documents on any date except the date fixed for the hearing; or

(3) have a summons issued for a witness to attend the Court or tribunal to give evidence or to produce documents at any hearing except the trial.

30.13

In Rule 30.12(3) ‘trial’ includes a hearing before a tribunal which is intended to dispose of the matter before it.

30.14

The Court may set aside or vary a witness summons issued under this Rule 30.8.

Witness summons in aid of tribunal

30.15

The Court may issue a witness summons in aid of a tribunal .

30.16

The Court may set aside a witness summons issued under Rule 30.15.

30.17

Unless the Court otherwise directs, the applicant must give at least 2 days' notice of the application to the party who issued the witness summons , which will normally be dealt with at a hearing.

30.18

In Rule 30.15, 'tribunal' means any tribunal that does not have power to issue a witness summons in relation to proceedings before it.

Time for serving a witness summons

30.19

The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the Court or tribunal .

30.20

The Court may direct that a witness summons shall be binding even though it will be served less than 7 days before the date on which the witness is required to attend before the Court or tribunal .

30.21

A witness summons which is:

(1) served in accordance with this Rule 30.19 or 30.20; and

(2) requires the witness to attend before the Court or a tribunal to give evidence;

is binding until the conclusion of the hearing at which the attendance of the witness is required.

Who is to serve a witness summons

30.22

A witness summons is to be served by the Court unless the party on whose behalf it is issued indicates in writing, when he asks the Court to issue the summons, that he wishes to serve it himself.

30.23

Where the Court is to serve the witness summons , the party on whose behalf it is issued must deposit, in the Court office, the money to be paid or offered to the witness under Rule 30.24.

Right of witness to travelling expenses and compensation for loss of time

30.24

At the time of service of a witness summons the witness must be offered or paid:

(1) a sum reasonably sufficient to cover his expenses in travelling to and from the Court; and

(2) such sum by way of compensation for loss of time as may be specified in the relevant Practice Direction.

Evidence by deposition

30.25

A party may apply for an order for a person to be examined before the hearing takes place.

30.26

A person from whom evidence is to be obtained following an order under Rule 30.25 is referred to as a ‘deponent’ and the evidence is referred to as a ‘deposition’.

30.27

An order under Rule 30.25 shall be for a deponent to be examined on oath before:

(1) a Judge ;

(2) an examiner of the Court ; or

(3) such other person as the Court appoints.

30.28

The order may require the production of any document which the Court considers is necessary for the purposes of the examination.

30.29

The order must state the date, time and place of the examination.

30.30

At the time of service of the order the deponent must be offered or paid:

(1) a sum reasonably sufficient to cover his expenses in travelling to and from the place of examination; and

(2) such sum by way of compensation for loss of time as may be specified in the relevant Practice Direction.

30.31

Where the Court makes an order for a deposition to be taken, it may also order the party who obtained the order to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

Conduct of examination

30.32

Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

30.33

If all the parties are present, the examiner may conduct the examination of a person not named in the order for examination if all the parties and the person to be examined consent.

30.34

The examiner may conduct the examination in private if he considers it appropriate to do so.

30.35

The examiner must ensure that the evidence given by the witness is recorded in full:

(1) In ensuring that the deponent's evidence is recorded in full, the Court or the examiner may permit it to be recorded on audiotape or videotape, but the deposition must always be recorded in writing by him or by a competent shorthand writer or stenographer.

(2) If the deposition is not recorded word for word, it must contain, as nearly as may be, the statement of the deponent; the examiner may record word for word any particular questions and answers which appear to him to have special importance.

30.36

If a deponent objects to answering any question or where any objection is taken to any question, the examiner must:

(1) record in the deposition or a document attached to it:

(a) the question;

(b) the nature of and grounds for the objection; and

(c) any answer given; and

(2) give his opinion as to the validity of the objection and must record it in the deposition or a document attached to it.

30.37

The Court will decide as to the validity of the objection and any question of costs arising from it.

30.38

Documents and exhibits must:

(1) have an identifying number or letter marked on them by the examiner; and

(2) be preserved by the party or his legal representative who obtained the order for the examination, or as the Court or the examiner may direct.

30.39

The examiner may put any question to the deponent as to:

(1) the meaning of any of his answers; or

(2) any matter arising in the course of the examination.

30.40

A deposition must:

(1) be signed by the examiner;

(2) have any amendments to it initialled by the examiner and the deponent; and

(3) be endorsed by the examiner with:

(a) a statement of the time occupied by the examination; and

(b) a record of any refusal by the deponent to sign the deposition and of his reasons for not doing so.

30.41

The examiner must send a copy of the deposition:

(1) to the person who obtained the order for the examination of the witness; and

(2) to the Court .

30.42

The party who obtained the order must send each of the other parties a copy of the deposition which he receives from the examiner.

Enforcing attendance of witness

30.43

If a person served with an order to attend before an examiner:

(1) fails to attend; or

(2) refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document at the examination;

a certificate of his failure or refusal, signed by the examiner, must be filed by the party requiring the deposition. The examiner may include in his certificate any comment as to the conduct of the

deponent or of any person attending the examination.

30.44

On the certificate being filed, the party requiring the deposition may apply to the Court for an order requiring that person to attend or to be sworn or to answer any question or produce any document, as the case may be.

30.45

An application for an order under Rule 30.44 may be made without notice.

30.46

The Court will make such order on the application under Rule 30.44 as it thinks fit including an order for the deponent to pay any costs resulting from his failure or refusal.

30.47

A deponent who wilfully refuses to obey an order made against him under this Section of this Part may be proceeded against for contempt of court.

Use of deposition at a hearing

30.48

A deposition ordered under Rule 30.25 may be given in evidence at a hearing unless the Court orders otherwise.

30.49

A party intending to put in evidence a deposition at a hearing must serve notice of his intention to do so on every other party.

30.50

He must serve the notice at least 21 days before the day fixed for the hearing.

30.51

The Court may require a deponent to attend the hearing and give evidence orally.

30.52

Where a deposition is given in evidence at trial, it shall be treated as if it were a witness statement for the purposes of Rule 29.61 (availability of witness statements for inspection).

Restrictions on subsequent use of deposition taken for the purpose of any hearing except the trial

30.53

Where the Court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.

30.54

However, it may be used for some other purpose:

(1) by the party who was examined;

(2) if the party who was examined agrees; or

(3) if the Court gives permission.

30.55

Where a party wishes to take a deposition from a person who is out of the DIFC, they should make an application by application notice in accordance with Part 23, accompanied by supporting evidence. The Registry will proceed to give directions as to the requisite procedure to be followed, depending on the jurisdiction in which the taking of evidence is being sought. Parties are put on notice that the taking of evidence abroad may not be feasible in all jurisdictions.

Fees and expenses of examiner of the Court

30.56

An examiner of the Court may charge a fee for the examination.

30.57

He need not send the deposition to the Court unless the fee is paid.

30.58

The examiner's fees and expenses must be paid by the party who obtained the order for examination.

30.59

If the fees and expenses due to an examiner are not paid within a reasonable time, he may report that fact to the Court .

30.60

The Court may order the party who obtained the order for examination to deposit in the Court office a specified sum in respect of the examiner's fees and, where it does so, the examiner will not be asked to act until the sum has been deposited.

30.61

An order under this Rule 30.60 does not affect any decision as to the party who is ultimately to bear the costs of the examination.

Examiners of the Court

30.62

The Chief Justice shall appoint persons to be examiners of the Court .

30.63

The persons appointed shall be practitioners with rights of audience before the Court who have been practising for a period of not less than three years.

30.64

The Chief Justice may revoke an appointment at any time.

Scope

30.65

Where an application is made to the Court for an order for evidence to be obtained in the DIFC and the Court is satisfied:

(1) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising jurisdiction in:

(a) Dubai; or

(b) in any other part of the UAE ;

(c) or in a country or territory outside the UAE ; and

(2) that the evidence to which the application relates is to be obtained for the purposes of proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated;

the Court shall have the powers conferred on it by the following provisions of this Section of this Part.

Power of the Court to give effect to application for assistance

30.66

The Court shall have the power, on an application under Rule 30.65, by order to make such provision for obtaining evidence in the DIFC as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.

30.67

Without prejudice to the generality of Rule 30.66 but subject to the provisions of this Rule, an order under Rule 30.66 may, in particular, make provision:

(1) for the examination of witnesses, either orally or in writing;

(2) for the production of documents;

(3) for the inspection, photographing, preservation, custody or detention of any property;

(4) for the taking of samples of any property and the carrying out of any experiments on or with any property;

(5) for the medical examination of any person; and/or

(6) without prejudice to sub-paragraph (5) above, for the taking and testing of samples of blood from any person.

30.68

An order under Rule 30.66 shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings

in the Court (whether or not proceedings of the same description as those to which the application for the order relates); but this Rule shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

30.69

An order under Rule 30.66 shall not require a person:

(1) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or

(2) to produce any documents other than particular documents specified in the order as being documents appearing to the Court making the order to be, or likely to be, in his possession, custody or power.

30.70

A person who, by virtue of an order under Rule 30.66, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in proceedings before the Court .

Privilege of witnesses

30.71

A person shall not be compelled by virtue of an order under Rule 30.66 to give any evidence which he could not be compelled to give:

(1) in civil proceedings in the DIFC ; or

(2) subject to Rule 30.72, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction .

30.72

Rule 30.71(2) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either:

(1) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or

(2) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this Section of this Part) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

30.73

Without prejudice to 30.71, a person shall not be compelled by virtue of an order under Rule 30.66 to give any evidence if his doing so would be prejudicial to the security of the DIFC , Dubai or UAE; and a certificate signed by or on behalf of a responsible authority to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

30.74

In this Section of this Part references to giving evidence include references to answering any question and to producing any document and the reference in Rule 30.72 to the transmission of evidence given by a person shall be construed accordingly.

Application for order

30.75

An application for an order under Rule 30.66 for evidence to be obtained:

(1) must be:

(a) supported by written evidence. The written evidence supporting an application must include or exhibit:

(i) a statement of the issues relevant to the proceedings;

(ii) a list of questions or the subject matter of questions to be put to the proposed deponent;

(iii) a draft order;

(iv) a translation of the documents in (i) and (ii) into English, if necessary; and

(b) accompanied by the request as a result of which the application is made, and where appropriate, a translation of the request into English; and

(2) may be made without notice.

Service of the order

30.76

The order for the deponent to attend and be examined together with the evidence upon which the order was made must be served on the deponent.

30.77

Attention is drawn to the provisions of Rule 23.94 (application to vary or discharge an order made without notice).

Examination

30.78

The Court may order an examination to be taken before:

(1) any fit and proper person nominated by the person applying for the order;

(2) an examiner of the Court ; or

(3) any other person whom the Court considers suitable.

30.79

Unless the Court orders otherwise:

(1) the examination will be taken as provided by Rules 30.32 to 30.42; and

(2) Rules 30.43 to 30.47 apply.

30.80

The Court may make an order under Rule 30.60 for payment of the fees and expenses of the examination.

Dealing with deposition

30.81

The examiner must send the deposition of the witness to the Registrar unless the Court orders otherwise.

30.82

The Registrar will:

(1) give a certificate sealed with the seal of the Court for use out of the DIFC identifying the following documents:

(a) the request;

(b) the order of the Court for examination; and

(c) the deposition of the witness; and

(2) send the certificate and the documents referred to in sub-paragraph (1) to the requesting court.

Claim to privilege

30.83

Rules 30.84 to 30.89 apply where:

(1) a witness claims to be exempt from giving evidence on the ground specified in Rule 30.79(2); and

(2) that claim is not supported or conceded as referred to in Rule 30.80.

30.84

The examiner may require the witness to give the evidence which he claims to be exempt from giving.

30.85

Where the examiner does not require the witness to give that evidence, the Court may order the witness to do so.

30.86

An application for an order under Rule 30.85 may be made by the person who obtained the order under Rule 30.66.

30.87

Where such evidence is taken:

(1) it must be contained in a document separate from the remainder of the deposition;

(2) the examiner will send to the Registrar :

(a) the deposition; and

(b) a signed statement setting out the claim to be exempt and the ground on which it was made.

30.88

On receipt of the statement referred to Rule 30.87(2)(b), the Registrar will:

(1) retain the document containing the part of the witness's evidence to which the claim to be exempt relates; and

(2) send the statement and a request to determine that claim to the requesting court or tribunal together with the documents referred to in Rule 30.75.

30.89

The Registrar will:

(1) if the claim to be exempt is rejected by the requesting court or tribunal , send the document referred to in Rule 30.87(1) to that court or tribunal ;

(2) if the claim is upheld, send the document to the witness; and

(3) in either case, notify the witness and person who obtained the order under Rule 30.66 of the requesting court or tribunal's decision.