



# In The Supreme Court of Bermuda

## PRACTICE DIRECTION

### ISSUED BY THE CHIEF JUSTICE

Ref. A/50

CIRCULAR NO. 7 OF 2007

#### PUNCTUALITY, NON-APPEARANCE, ADJOURNMENTS ETC.

##### **Punctuality**

1. Counsel are reminded that it is their duty to be before the Court at the time fixed for the start of any hearing, robed (where appropriate) and ready to start on time. They should understand that the Court will start whether they are present or not, and will not wait for them.
2. Counsel who do appear late should normally apologise to the court and offer an explanation. In the absence of a satisfactory explanation the Court may refer the matter to the Bar Council or proceed summarily against the Counsel concerned for contempt in the face of the Court.
3. Where counsel is not present, the Court will proceed in accordance with the rules applicable to the particular cause or matter. These will usually permit summary dismissal in the absence of a plaintiff or appellant. In the absence of a defendant the court will, upon proof of service, normally proceed to determine the matter on the merits in their absence.
4. Where, notwithstanding the above, a hearing has to be adjourned because of the non-attendance of counsel, there will be costs consequences, which may include a personal order against counsel under Ord. 62, r. 11. Counsel who fail to appear should note that they have no right to be heard before such an order is made against them: Ord. 62, r. 11(5).

##### **Vacation of Fixed Dates, Adjournments etc.**

5. For criminal matters counsel are referred to Practice Direction No. 10 of 2004 ("Fixed Dates for Criminal Trials"), which continues in full force and effect.
6. In civil matters all parties should appreciate that the provision of court space and a judge represents a considerable commitment of resources by the Court, and that the question whether to adjourn a fixture is a matter for the discretion of the Court and not for the agreement or convenience of counsel.
7. The following practice will apply:
  - (i) Matters in the Thursday Chambers list may continue to be de-listed or adjourned by letter at short notice if both sides consent. Matters may not be de-listed by letter unilaterally, and in the absence of consent the parties should appear and seek an adjournment. A failure to do so may result in the court proceeding in the absence of one or both of the parties.
  - (ii) Summonses which have been given a special fixture of one day or less may be adjourned or de-listed by consent no later than two working days prior to the date fixed. The letter or other document conveying that consent must be received in the Registry in accordance with this time-limit, and documents lodged after working hours will be treated as received when date-stamped by the staff on the following day.
  - (iii) All other matters will require a summons. This applies to all trials, whatever their duration, and to all summonses which have been given a special fixture of more than one day.

(iv) Applications to adjourn should be issued as soon as counsel becomes aware of the difficulty. The later the application, the more likely it is to be refused. The costs consequences are likely to become more severe with late applications, and in an appropriate case may include a personal order against counsel under Ord. 62, r. 11.

(v) If the matter is settled or likely to be settled, or otherwise likely to go short, the Court must be informed at the earliest possible opportunity.

8. As to the applicable principles, counsel's attention is drawn to the note at 32/6/25 of the Supreme Court Practice 1999:

**“Late applications for adjournment** – Late applications to vacate appointments before Judges or [the Registrar] because of lack of preparation will not be granted easily or without close scrutiny. The effect of the late vacating of a fixed date or appointment is that other cases waiting to be heard are necessarily and proportionately delayed because of the waste of the time set aside. An applicant who obtains a fixed date for a hearing should notify the other party or parties of the date forthwith, and should serve the summons and any supporting affidavit without delay; he should not postpone such service until the last date allowed by the rules. It is the duty of all parties to ensure that affidavits are served in sufficient time to allow the hearing on the fixed date to proceed, which may well require service at an earlier date than that permitted by the rules. Where a summons has to be adjourned because of lack of preparation in due time the court may, in an appropriate case, disallow costs as between solicitor and client or order the solicitor responsible to pay costs under O.62, r.11, or dismiss the summons (*Fowkes v. Duthie* [1991] 1 All E.R. 337).

...  
If a hearing needs to be adjourned for a good reason, an application must be made to the [Court] as early as possible. If the matter is settled or is likely to go short, the Court must be informed immediately . . .”

#### **Content of Summonses**

9. All summonses and similar applications should clearly and precisely identify the provision under which they are made: i.e. the relevant rule, section or other authority.

10. In the cases of application to strike out pleadings under Ord. 18, r. 19 the attention of counsel is drawn to the note at 18/19/4 of the Supreme Court Practice 1999:

“The application should specify precisely what order is being sought: e.g. to strike out or to stay or to dismiss the action or to enter judgment, and precisely what is being attacked whether the whole pleading or indorsement or only parts thereof and if so the alleged offending parts should be clearly specified . . .”

#### **Interpretation**

11. In this Practice Direction ‘Summons’ includes all interlocutory applications, however made.

Dated this 2<sup>nd</sup> day of April 2007

Richard W. Ground OBE QC  
Chief Justice

cc. Deputy Governor  
Attorney General's Chambers  
Department of Public Prosecutions  
Hamilton Police Station  
Commissioner of Police  
Commissioner of Corrections  
Magistrates' Court  
Legal Aid Office