

GUIDELINES FOR EQUITY DUTY LIST MATTERS

Note: These Guidelines may be revised so practitioners should check before making or responding to any application

1. The Duty List will operate in conformity with the Chief Justice's directive that all hearings in the Court are to be conducted electronically.
2. If the urgency of the matter requires that an application be made to the duty judge in court, a request should be made to the associate who will advise how the application should be made.
3. Communications to the Court about matters should be by email to the associate, with copies to the representatives of all other parties that have been joined. Phone calls to the associate should be limited to requests for information and warnings, in the case of new matters, as to when an application may be made.
4. Where the degree of urgency permits, the required information should be emailed to the associate before 9 AM on the day of the hearing, and preferably before 4 PM on the previous day.
5. The required information is, as may be applicable:
 - a. names, phone numbers and email addresses of all practitioners who would speak on behalf of a party at a hearing;
 - b. an estimate of the time required to deal with the matter assuming a hearing in the virtual courtroom by phone;
 - c. signed consent short minutes of order in PDF format plus a copy in Word format;
 - d. draft short minutes of order in Word format in new matters or where there is no consent – wherever possible, the defendant's proposed short minutes of order should be a marked up version of the plaintiff's short minutes of order;
 - e. PDF copies of any signed summons, notice of motion, pleadings and affidavits for which leave to file in court is required;

- f. exhibits where brief, or extracts of important parts of larger exhibits, including, where necessary, proof of email addresses where leave to serve at email addresses is sought;
 - g. an undertaking by a named person, or alternatively, after explicit instructions have been given, a statement that a named person undertakes to the Court to pay any filing fees, and the role of that person;
 - h. a duly executed written undertaking by the party giving the undertaking, or alternatively, after explicit instructions have been given, in all cases where the relief sought requires a party to give to the Court the usual undertaking as to damages, a statement that named a named party gives that undertaking; and
 - i. where an early return date is sought, dates suitable to the practitioner within the relevant date range.
6. All documents sent as attachments to emails as PDF documents must be separate attachments. The pages of all exhibits to affidavits must be sequentially numbered. Except where prevented by genuine urgency, references in affidavits to exhibits should be to exhibit and page numbers.
 7. Parties must make arrangements with the associate in the case of large exhibits to obtain approval for the provision of those exhibits as attachments to emails, or to make arrangements for the physical delivery of the exhibits to the associate.
 8. Where the degree of urgency of a matter makes compliance with these guidelines impracticable, they should be adapted and applied in the most timely way possible.
 9. Attachment A is a draft of orders for ex parte applications in the Duty List that may be adapted to the needs of parties.
 10. If the duty judge grants leave to a party to file a copy document in court, that copy will stand as an original, and may be served on any other party, subject to any other order that the Court may make requiring the filing of an original document in the Registry.

11. Practitioners may inform the associate by email that their views that oral submissions by the parties will be necessary, or that the matter is suitable to be dealt with in chambers if the duty judge decides that it is convenient to do so.
12. Practitioners should, where practicable, provide to the associate by email an explanation of the party's position in relation to the matter, in the same way that the party's position would be explained to the duty judge if the matters in the Duty List were called at the beginning of the list. Written submissions may be provided if available.
13. Where the parties want a matter stood in the list to enable discussions to take place, a practitioner for one of the parties should inform the associate by email, preferably before 9 AM on the morning of the hearing, that the matter should be stood in the list. The discussion should not take place in the precincts of the Court. The result of the discussions should be communicated to the associate by email and these guidelines followed as may be applicable.
14. Where it is likely that a contested hearing taking more than 40 minutes will be necessary, the practitioners involved should, wherever the period of notice for the hearing permits, or as soon as possible thereafter, confer at least two days before the date of the hearing to agree appropriate arrangements for conducting the hearing orally in the virtual courtroom. The suggested arrangements should be conveyed to the associate by 4 PM on the date two days before the hearing date. It is assumed that the calling of oral evidence and cross-examination will not be necessary in Duty List matters. Where it is expected that oral evidence will be necessary, the parties must advise the Court in due time for arrangements to be made, or the taking of oral evidence may not be possible.
15. Where it is expected that the Registrar will refer a matter into the Duty List, practitioners must comply with these guidelines in advance as may be appropriate.
16. Where the duty judge decides that an oral hearing should take place by phone in the virtual courtroom, the practitioners who have provided a phone number will be phoned by the duty judge's staff at some time convenient to the Court, to advise the practitioners of the phone number that should be called by the practitioners to enter the virtual courtroom, and the time when the hearing is expected to commence. Practitioners should make the call at the allotted time

even if they enter the virtual courtroom while a hearing in another matter is taking place.

17. As the phone number that will be given to practitioners will be the permanent number for the courtroom allotted to the duty judge, practitioners must not disclose that number to any person other than a practitioner involved in the matter, who will also be subject to this prohibition. Where a practitioner is to be involved in a virtual court hearing, that practitioner must make appropriate arrangements for all persons associated with the party who wish to participate in the virtual court hearing to be present, in appropriate physical circumstances given current restrictions on interpersonal contact, who will be able to listen to the proceedings.
18. The Court will disclose the phone number to practitioners solely for the purpose of the proceedings and the due administration of justice, and the unauthorised disclosure of the number will be considered to be an abuse of the Court's process, and may constitute unsatisfactory professional conduct or professional misconduct.
19. Practitioners whose phone numbers are provided to the Court must be available to take calls throughout the day, until notified that their matter has been dealt with, or arrange at all times for someone else to take calls from the Court.
20. If the duty judge makes orders without an oral hearing, those orders will be entered and a copy emailed by the associate by reply email, or by email to all parties who have an email address for service. Parties must pay filing fees and collect orders issued by the Registry in accordance with whatever practice is implemented by the Registry.
21. The duty judge may deliver ex tempore judgments by phone in the virtual courtroom, or deliver reserved judgments by reply email or by email to all parties who have an email address for service.
22. In matters involving self-represented litigants these guidelines may require adjustment. Where a practitioner is involved in the matter, the practitioner should communicate with the associate to make appropriate arrangements where it is understood that a self-represented party will appear.

23. Parties or practitioners who have any doubt about the operation of these guidelines should phone or email the associate with their queries.

Attachment A

DRAFT ORDERS FOR EX PARTE DUTY LIST APPLICATIONS

THE COURT

1. NOTES the email addressed to The Principal Registrar of the Supreme Court of New South Wales by [named solicitor] that [he/she] undertakes to the Court to pay the filing fee payable in respect of the filing in court of any document for which leave to file is given.

OR

NOTES the email addressed to The Principal Registrar of the Supreme Court of New South Wales by [named lawyer] that, having been given instructions to do so, [he/she] undertakes to the Court on behalf of [named solicitor] that [he/she] will pay the filing fee payable in respect of the filing in court of any document for which leave to file is given.

2. GRANTS LEAVE to the plaintiff, on the undertaking to the Court of [named solicitor] to pay the filing fee, to file in court the copy [summons/notice of motion etc] which has been [signed/initialled] by [Judge] J and dated today's date.
3. GRANTS LEAVE to the plaintiff to file in court the [describe documents] each of which has been [signed/initialled] by [Judge] J and dated today's date.
4. ORDERS that the [summons/summons and notice of motion] be returnable instanter [if appropriate].
5. ORDERS pursuant to rule 1.12 of the Uniform Civil Procedure Rules 2005 (NSW) that the time for service of the documents referred to in orders 3 and 4 be abridged to [time and date].
6. ORDERS that the documents referred to in order 5 together with these orders as issued by the Court may be served in the first instance by [insert permitted mode of service].
7. NOTES the written undertaking to the Court executed by the plaintiff, addressed to the Principal Registrar of the Supreme Court of New South Wales, that the plaintiff gives the usual undertaking as to damages.

OR

NOTES the email addressed to the Principal Registrar of the Supreme Court of New South Wales by [named lawyer] that, having been given instructions to do so, [he/she] gives to the Court the usual undertaking as to damages on behalf of the plaintiff.

ONLY IF SECOND ALTERNATIVE IN ORDER 7 USED

8. ORDERS the plaintiff by [time and date] to send as an attachment to an email addressed to the associate to [Judge] J a document properly executed by or on behalf of the plaintiff addressed to the Principal Registrar of the Supreme Court of New South Wales confirming that the Plaintiff gives to the Court the usual undertaking as to damages.
9. ORDERS, upon the [plaintiff/ plaintiff by [named lawyer]] giving to the Court the usual undertaking as to damages that [insert terms of order].
10. ORDERS that the [summons/notice of motion etc] be [adjourned to/returnable before] the duty judge in Equity at [time] on [date].
11. ORDERS that the parties shall, by no later than 9 AM on the date stated in order 10, but preferably by 4 PM on the preceding day, send by email to the associate to the duty judge on the [adjourned date/return date] the following:
 - a. If agreement is reached as to orders to be made, consent short minutes of order signed on behalf of the parties in PDF and Word format.
 - b. If agreement is not reached as to the orders to be made, draft short minutes of order proposed by each party in Word format, preferably with the defendant's draft being a marked up copy of the plaintiff's draft.
 - c. A brief statement by each party as to the party's position concerning how the matter should proceed.
 - d. Brief submissions by each party to support the making of the orders sought by that party.
 - e. All affidavits to be relied upon by each party duly executed in PDF format.
 - f. The names, phone numbers and email addresses of the lawyers who will speak for each party at any virtual court hearing conducted by the duty judge by telephone.
12. DIRECTS any party who wishes to tender any exhibit to any affidavit to communicate with the associate to the duty judge by no later than 9 AM on the date stated in order 10, but preferably by 4 PM on the preceding day, either for

permission to send the exhibits to the associate by email, or for the making of arrangements for the delivery of the exhibits to the associate.

13. NOTES that the duty judge will decide whether the matter is appropriate to be dealt with in chambers or in the virtual court room by telephone, and in the latter case the Court will inform the lawyers nominated in accordance with Order 11(f) by their phone numbers or email addresses of the phone number to call to participate in the virtual court hearing and the expected time that the hearing will commence.
14. RESERVES costs.
15. ORDERS that these orders be entered forthwith.