****

**EX-PARTE APPLICATIONS FOR ORDERS ON THE PAPERS**

**Table of contents**

1. Filing and Registry contact details

2. Application fees

3. Applications for substituted service

4. Applications for extension of writs and originating motions

5. Applications for reinstatement of proceedings

6. Applications under S28R *Building and Construction Industry Security of Payment Act 2002*

7. Application for leave to file and serve a garnishee summons

8. Applications in relation to warrants of execution

9. Applications for dispensation of the requirement under Rule 69.06(4) of the Rules to personally serve an advertisement on the judgment debtor not less than 14 days before the auction

10. Applications for leave to appear in *Instruments Act 1958 (Vic)* proceedings

11. Applications for leave to cease to act

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**1. Filing and Registry contact details**

***Filing Ex Parte Applications:***

Ex parte applications may be received as follows:

* Via email to the appropriate Registry (see below), where no original documentation is required
* Delivery to the County Court Registry
* Via mail – DX: 290078 Melbourne or 250 William Street, Melbourne 3000 and addressed to the appropriate Registry (see below)

***Registry Contact details***

Common Law Registry – commonlaw.registry@countycourt.vic.gov.au, telephone: 8636 6515

Commercial Registry – commercial.registry@countycourt.vic.gov.au, telephone: 8636 6690

**2. Application fees**

***Application Fee:***

Please refer to the County Court Fees Costs and Charges on our [website](https://www.countycourt.vic.gov.au/forms-and-fees/fees-and-costs-civil-proceedings) for the current ex-parte application fee.

Please note that the following ex-parte applications are exempt from filing fees:

* Applications under S28R *Building and Construction Industry Security of Payment Act 2002*
* Application for leave to file and serve a garnishee summons
* Applications for leave to appear in *Instruments Act 1958 (Vic)* proceedings
* Applications for leave to cease to act

For any applications that are filed in person at the Registry counter, payment can be made in cash, cheque or money order, and EFTPOS (other than Amex and Diners Club).

For any applications that are filed by mail, payment can be made by cheque, money order or by credit card. For credit card payments, please include with the application a completed credit card authorisation form which can be downloaded from our [website](https://www.countycourt.vic.gov.au/going-court/commercial-division/commercial-division-registry).

**3. Applications for Substituted Service**

Applications for substituted service are made under Rule 6.10 of the *County Court Civil Procedure Rules 2018*.

The application must be supported by affidavit material showing that:

* personal service is impracticable in the circumstances; and
* there is a reasonable probability that the document will come to the attention of the defendant if served in the manner proposed.

This would ordinarily include evidence as to:

1. the source of the proposed address for service and its reliability;
2. searches for alternative methods of contacting the defendant (including, for example; telephone directory; electoral roll; land titles office; ASIC; and social media searches); and
3. attempts to personally serve the defendant utilising this information.

Where there are grounds for believing the defendant is outside Australia evidence that the proceeding is within Rule 7.01 is also required.

Documents referred to in the affidavit, such as land titles office searches and communications from process servers, should be exhibited.

Parties are required to file their proposed order using the Form 60C General Form of Order, following the format below and including all available methods of contacting the defendant.

Standard Orders:

1. In lieu of personal service, good and sufficient service of the Writ on the Defendant may be effected by:

[insert as appropriate]

* 1. [leaving with a person] leaving a sealed copy of the Writ and Statement of Claim and a copy of this Order, in an envelope addressed to the Defendant, with [name] of [address];
	2. [prepaid post] sending a sealed copy of the Writ and Statement of Claim and a copy of this Order by prepaid post to the [Defendant] at [addresses];
	3. [text message] sending a SMS text message to the mobile phone number \*\*\*\*\*\*\*\*\*\*\*\* which states "Urgent message for [name] re: County Court proceedings. Writ and Statement of Claim have been issued against [name] and substituted service has been permitted by Court Order. Documents on file CI-1\*-\*\*\*\*\* can be inspected at County Court, 250 William Street, Melbourne or a request for copies of the documents should be sent by email to the Plaintiff’s solicitor at [insert P’s email address]";
	4. [social media] sending a personal message to the [Defendant's] account on Facebook which states “Urgent message for [name] re: County Court proceedings. Writ and Statement of Claim have been issued against [name] and substituted service has been permitted by Court Order. Documents on file CI-16-\*\*\*\*\* can be inspected at County Court, 250 William Street, Melbourne or a request for copies of the documents should be sent by email to the Plaintiff’s solicitor at [insert P’s email address]";
	5. [email] sending an email to the Defendant at [email address] attaching pdf file format copies of the sealed Writ and Statement of Claim and this Order; and
	6. Sending an Instagram Direct Message to the [Defendant’s] account on Instagram which states "Urgent message for [name] re: County Court proceedings. Writ and Statement of Claim have been issued against [name] and substituted service has been permitted by Court Order. Documents on file CI-1\*-\*\*\*\*\* can be inspected at County Court, 250 William Street, Melbourne or a request for copies of the documents should be sent by email to the Plaintiff’s solicitor at [insert P’s email address]".
1. Service on the Defendant is deemed to have taken effect 14 days after compliance with each paragraph of Order 1.
2. The Plaintiff's costs of the application for substituted service are its costs in the proceeding.

**4. Applications for Extension of Writ/Originating Motion**

Applications for extension of writ/originating motion are made under Rule 5.12 of the *County Court Civil Procedure Rules 2018*.

The application must be supported by affidavit material that provides the following:

* why service has not yet been effected on the Defendant, including how the case has been managed thus far; and
* that extending the validity for service would not be prejudicial to the Defendant

Any supporting material must be exhibited to the affidavit.

Parties are required to file their proposed order using the Form 60C General Form of Order, following the format below:

Standard Orders:

1. Pursuant to Rule 5.12 of the *County Court Civil Procedure Rules 2018,* the period of the validity for service of [insert as appropriate] filed on [date] be extended until [a chosen date].

**5. Applications for reinstatement of proceedings**

An application to reinstate a proceeding should be served on other parties if an appearance has been filed.

Where an application is made ex parte, parties are expected to draw the attention of the Court to any *Limitations of Actions Act 1958* (Vic) issues which may arise.

*If the Writ has not been served.*

If the Writ has not been served it will also be necessary to apply to extend the period of validity of the Writ under Rule 5.12(2). The Plaintiff should file an ex parte application containing:

* 1. the proposed orders in Form 60C;
	2. an affidavit evidencing:
		1. the grounds for reinstatement;
		2. a good reason for the extension of writ;
		3. that reasonable efforts have been made to serve the Defendant; and
		4. explaining any delay;
	3. the date of the Writ to originating motion, and if it had already been renewed, the date of the last renewal;
	4. a sealed Writ for stamping with date of order and extended date of validity pursuant to Rule 5.12(5);
	5. a sealed Writ for stamping with the date of the order and extended date of validity pursuant to Rule 5.12(5);
	6. why the originating process has not been served, and what efforts have been made to serve it.

Standard Orders:

1. The proceeding is reinstated.
2. The period of the validity of the Writ for service be extended for three months from the date of this order [or until date].
3. Costs reserved.

*If period of validity of Writ is not required to be extended*

The Plaintiff may email an application to relevant Registry attaching:

* the proposed orders in pdf and word versions; and
* an affidavit evidencing the grounds for reinstatement and explaining any delay.

Standard Orders:

1. The proceeding is reinstated.
2. Pursuant to Order 34A. 15(2) of the *County Court Civil Procedure Rules 2018*, the time before which the proceeding shall stand dismissed as against any defendant, if at the time –
	1. that defendant has not filed an appearance; and
	2. judgment has not been entered or given against that defendant,

is extended to [4 pm on 3 months from date of order].

1. Any application to extend the validity of the writ is to be made by [1 month from date of order].
2. Costs reserved.

**6. Applications under section 28R of the *Building and Construction Industry Security of Payment Act 2002***

Application for judgment pursuant to section 28R must be filed in hard copy with the Registry, and must be commenced by a Form 5D Originating Motion, and supported by an affidavit:

1. Exhibiting the original adjudication certificate;
2. Specifying the amount, date and method of any payments made or, if no payments have been made, stating that fact;
3. Stating that no review application has been made or any review application has been completed (as applicable)

Parties are required to file their proposed order using the Form 60C General Form of Order, following the below format:

Standard Orders:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. Judgment for the plaintiff against the defendant that the defendant must pay the plaintiff the following amounts: |  |  |  |  |  |  |
| 1) | Adjudicated amount: |  |  |  |  | $ |
| 2) | Fees: |  |  |  |  | $ |
| 3) | Interest from |  | [date] | to  | [date] | $ |
| 4) | Further interest to |  | [date] |  |  | $ |
|  |  |  |  | **Total** |  | **$0.00** |
|  |  |  |  |  |  |  |
| 2. The defendant must pay the plaintiff's costs of the proceeding fixed in the sum of $2000. |  |  |  |  |  |  |

**7. Applications for leave to file and serve a garnishee summons**

Please see the cross reference document “Garnishee summons procedure” on our [website](https://www.countycourt.vic.gov.au/going-court/commercial-division/request-hearing).

An application for leave to file and serve a garnishee summons should be supported by an affidavit:

* Exhibiting the judgment to be enforced;
* Stating the date, amount and method of payment of any payments made, or if no payments have been made, stating that fact;
* Providing a calculation of the amount due, any interest accrued or accruing and the costs of the judgment creditor’s costs of the garnishee proceedings on a standard basis;
* Providing evidence:
	1. That a debt is due or accruing to the judgment debtor from the garnishee, or
	2. That a debt will or is likely to become due or accruing to the judgment debtor from the garnishee together with the date it will become due or accrue;
* Exhibiting the proposed garnishee summons in form 71A; and
* Explaining any delay in seeking to enforce the judgment and drawing the Court’s attention to any limitations act issues which may arise.

Standard Orders:

1. The Judgment Creditor has leave to file and serve a garnishee summons on the Garnishee substantially in the form of the draft exhibited to the affidavit of [name] sworn on [date], and made returnable before the Commercial Division Judicial Registrar on [date] at 10:30am.
2. The Judgment Creditor must serve a copy of this Order, the Affidavit in support of application and the Garnishee Summons on the Judgment Debtor and the Garnishee not less than 7 days before the return date of the Garnishee Summons.
3. Reserve Liberty to the parties to apply to the Commercial Division Judicial Registrar upon giving reasonable notice to all other parties.
4. Costs reserved.

**8. Applications in relation to warrants of execution**

An application under Rule 68.05 of the *County Court Civil Procedure Rules 2018* to extend a warrant should be made well prior to the expiry of the warrant. The Court will not extend a warrant after it has expired, even if the application was filed shortly before the expiry of the warrant (see Rule 68.05(2)).

The application should be supported by an affidavit:

* Exhibiting the warrant;
* Exhibiting any advertisement of auction;
* Exhibiting any relevant land titles office search (including any notice under s52(2) of the Transfer of Land Act 1958);
* Informing the Court of any priority issues which may arise;
* Explaining any delay.

**8. Applications for dispensation of the requirement under Rule 69.06(4) of the Rules to personally serve an advertisement on the judgment debtor not less than 14 days before the auction**

An application to dispense with the requirement under Rule 69.06(4) to personally serve an advertisement on the judgment debtor not less than 14 days before the auction should be supported by an affidavit:

* Exhibiting the warrant;
* Exhibiting the advertisement of auction;
* Exhibiting any relevant land titles office search (including any notice under s52(2) of the Transfer of Land Act 1958);
* Informing the Court of any priority issues which may arise;
* Providing evidence of the difficulties with complying with Rule 69.06(4) and the attempts made to bring the advertisement to the attention of the judgment creditor;
* Explaining any delay.

In preparing the proposed order and supporting affidavit material, regard should be had to the requirements for an application for substituted service (see above).

**10. Applications for leave to appear in *Instruments Act 1958 (Vic)* proceedings**

Under section 5 of the *Instruments Act 1958* (Vic), the defendant must apply for leave to enter an appearance, obtain that leave and enter an appearance:

1. if the defendant resides within 80 kilometres of the post office corner of Bourke and Elizabeth Streets Melbourne, within 16 days; and
2. if the defendant resides beyond that distance within 21 days.

The Court has **no power to extend this time** (*Kay’s Leasing Corporation Pty Ltd v Burgess*[1961] VR 703 at 704)

An application to enter an appearance MUST therefore be made as soon as possible and well before the expiry of the relevant period and should be marked urgent.

The affidavit in support should:

* State the date of service of the writ;
* Provide evidence of a valid defence or any other grounds for seeking leave to enter an appearance;
* Exhibit a proposed notice of appearance.

Standard Orders:

1. The defendant have leave to file and serve a notice of appearance.
2. The notice of appearance exhibited to the affidavit of XX sworn/affirmed [insert date] as exhibit XX is deemed filed in this proceeding.
3. Costs reserved.

**11. Applications for leave to cease to act**

Please see the cross reference document “Application to file a notice of ceasing to act - Commercial Division” on our [website](https://www.countycourt.vic.gov.au/going-court/commercial-division/commercial-division-registry).