

RULE 48 – SETTING DOWN APPLICATIONS FOR HEARING

Application of this rule

- (1) This rule applies to petitions and applications.

Definitions

- (2) In this rule:

"applicant" means a person bringing a petition or application;

"respondent" means a person who has delivered a response in Form 11.

Setting application for hearing

- (3) An applicant wishing to set an application down for hearing must file
 - (a) a notice of hearing in Form 103, and
 - (b) 2 copies of the petition or application so marked as to indicate claims for relief that will not proceed and those that will proceed by consent.

Date and time of hearing

- (4) If the application is estimated to take less than 30 minutes for all parties, the hearing must be set for a date and time on which the court regularly holds chambers or at such other time or date as has been fixed by the trial coordinator.

Date and time if hearing time more than 30 minutes

- (5) If the application is estimated to take more than 30 minutes, the date and time of hearing must be fixed by the trial coordinator.

Time for filing and delivery of notice of hearing

- (6) The applicant must file and deliver the notice of hearing to each respondent,
 - (a) if the applicant or any respondent has estimated that the time required for the hearing of the application will be more than 30 minutes, at least 7 days, not counting Saturday or holidays, before the date set for the hearing, or
 - (b) in any other case, at least 2 days, not counting Saturday or holidays, before the date set for the hearing,unless the application is made without notice or by consent.

Documents to be filed with the notice of hearing if application is without notice

- (7) If the application is to be made without notice, the applicant must file, with the notice of hearing, the original of every affidavit, and of every other document, that
 - (a) has not already been filed in the proceeding, and
 - (b) is to be referred to at the hearing.

Documents to be filed with the notice of hearing if application is by consent, unopposed or estimated to take not more than 30 minutes

- (8) If the application is to be made by consent, will be unopposed, or will be opposed but is not estimated by the applicant or by any respondent to take more than 30 minutes, the applicant must file, with the notice of hearing and other documents referred to in subrule (3),
 - (a) the original of every affidavit, and of every other document, that
 - (i) is delivered by the applicant to a respondent with respect to the application, and
 - (ii) is to be referred to at the hearing, and
 - (b) a copy of every response, affidavit and other document that
 - (i) was delivered by a respondent to the applicant with respect to the application, and
 - (ii) is to be referred to at the hearing.

Documents to be filed by respondent if application is opposed

- (9) If the application will be opposed, each respondent must, before the hearing commences, file the original of every affidavit, and of every other document, that
 - (a) was delivered by that respondent to the applicant with respect to the application, and
 - (b) is to be referred to at the hearing by that respondent.

Procedure if the application is estimated to take more than 30 minutes

- (10) If the application will be opposed and the applicant or any respondent has estimated that the time required for the hearing of the application will be more than 30 minutes,
 - (a) the applicant and each respondent must prepare an outline in Form 104 and

- (i) the applicant must deliver the applicant's outline to each respondent with or after delivery of the applicant's reply affidavits and at least 7 days, not counting Saturday or holidays, before the date set for the hearing, and
 - (ii) each respondent must deliver that respondent's outline to the applicant and to each other respondent at least 3 days, not counting Saturday or holidays, before the date set for the hearing,
- (b) the applicant must compile a chambers record in a ring binder or in some other form of secure binding,
- (c) the chambers record must contain, in consecutively numbered pages, or separated by tabs, the following documents in the following order:
- (i) a title page bearing the style of proceeding and the names of lawyers;
 - (ii) an index;
 - (iii) a copy of the applicant's outline;
 - (iv) a copy of the outline of each respondent;
 - (v) a copy of the petition or application, as the case may be;
 - (vi) a copy of each response in Form 11; and
 - (vii) a copy of every affidavit, and of every other document other than a written argument, that is to be referred to at the hearing,
- (d) the chambers record may contain any of the following:
- (i) a draft order;
 - (ii) a written argument;
 - (iii) a copy of necessary authorities;
 - (iv) a draft bill of costs,
- (e) the chambers record must not contain affidavits of service,
- (f) the applicant must file the chambers record and deliver the index of the chambers record to each respondent who has responded to the application 2 days, not counting Saturday or holidays, before the date of hearing,
- (g) the party or person that intends to rely on an affidavit must file the original affidavit 2 days, not counting Saturday or holidays, before the date of hearing.

If respondent's application is to be heard at the hearing

- (11) If a respondent intends to bring on an application for hearing at the same time as the applicant's application and the applications together are estimated by any party to take more than 30 minutes to hear, subrule (10) applies and the parties must, so far as is possible, prepare and file a joint chambers record and agree to a date for the hearing of both applications.

Chambers record to be returned

- (12) The judge may direct the chambers record to be destroyed or returned to the applicant at the conclusion of the hearing.

May apply for directions

- (13)
 - (a) The applicant or a respondent may apply for directions in a case management conference or by way of appearance notice.
 - (b) If the applicant does not set an application down for hearing within a reasonable time after a respondent has requested the applicant to do so, a respondent may apply by appearance notice for directions.