

RULE 10 – PETITION

Petition

- (1) A Petition in Form 2 shall be filed where:
 - (a) an application is authorized to be made to the court;
 - (b) the sole or principal question at issue is alleged to be one of interpretation of a statute or regulation, will, deed, oral or written contract, or other document;
 - (c) the petitioner is the only person who is interested in the relief claimed, or there is no person against whom relief is sought;
 - (d) the relief, advice or direction sought relates to a question arising in the administration of an estate of a deceased person or the execution of a trust, or the performance of an act by a person in the person's capacity as executor, administrator or trustee, or the determination of the persons entitled as creditors or otherwise to the estate or trust property;
 - (e) the relief, advice or direction sought relates to the maintenance, guardianship or property of infants or other persons under disability;
 - (f) the relief sought is for payment of funds into or out of court;
 - (g) the relief sought relates to land and is for
 - (i) a declaration of a beneficial interest in or a charge on land and of the character and extent of the interest or charge,
 - (ii) a declaration settling the priority between interests or charges,
 - (iii) an order cancelling a certificate of title or making a title subject to an interest or charge,
 - (iv) an order of partition or sale; or
 - (h) the relief, advice or direction sought relates to the determination of a claim of lawyer and client privilege.

Application by consent or if notice not required

- (2) An application referred to in Rule 43(10), (11) or (13) may be commenced by requisition for order in Form 3 rather than petition.

Supporting affidavits to be filed

- (2.1) An application filed under this rule shall be accompanied by supporting affidavits, unless otherwise ordered by the court.

Service

- (3) Unless these rules provide otherwise, a copy of the filed petition and of each affidavit in support must be served on all persons whose interests may be affected by the order sought.

Setting down for case management and for hearing

- (4) A petition shall:
 - (a) state the date for the case management conference if required by Rule 1(7); and
 - (b) be set down for hearing in accordance with Rules 41 and 48.

Response

- (5) A respondent who wishes to receive notice of the time and date of the hearing of the petition or to respond to it must, in addition to filing an appearance under Rule 14(1)(b), file and deliver to the petitioner and to every other party of record one copy, of
 - (a) a response in Form 11, and
 - (b) each affidavit on which the respondent intends to rely.

Time for Response

- (6) A respondent must deliver the documents referred to in subrule (5) on or before the eighth day after the date indicated for appearance in Rule 14(2).

Reply by petitioner

- (7) A petitioner who wishes to reply to a response must, within seven (7) days of receiving the response, deliver a reply and any supporting affidavits to each respondent.

No additional affidavits

- (8) Unless all parties of record consent or unless the court otherwise orders, a party must not deliver any further affidavits.

Conversion

- (9) On application to a judge, or on the court's own motion, a petition may be converted to a statement of claim.

Applicable rules

- (10) Rules 8(4)-(10) and Rule 9 apply to petitions.