

**CAYMAN ISLANDS**



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**THE GRAND COURT PRACTICE DIRECTION 1/99.**



# **GRAND COURT PRACTICE DIRECTION NO. 1/99**

**(GCR O.1, r.12)**

## **Filing Documents in Court**

### **1 Application and Commencement**

- 1.1 This practice direction applies to all proceedings to which the Grand Court Rules have general application by virtue of O.1, r.2 and to all winding up proceedings.
- 1.2 It does not apply to-
  - 1.2.1 proceedings governed by the Matrimonial Causes Rules 1986 as amended;
  - 1.2.2 proceedings governed by the Grand Court (Bankruptcy) Rules 1977 as amended; and
  - 1.2.3 appeals from civil proceedings in the Summary Court.
- 1.3 This practice direction shall come into force on 1<sup>st</sup> March, 1999 ("the Commencement Date").

### **2 Introduction**

- 2.1 The Grand Court (Civil Procedure) Rules 1976 specifically required that all pleadings be filed. Although there was no similar requirement for affidavits and other documents to be filed, it became the established practice for all pleadings, affidavits, notices, lists and other documents to be filed whether or not they were actually used by the Court.
- 2.2 The rules relating to filing were materially changed with effect from 1<sup>st</sup> June, 1995, but the pre-existing practice has continued with the result that the Court office is accumulating a large volume of documents unnecessarily. The Grand Court Rules 1995 required that the following documents shall be issued by or filed with the Court-
  - 2.2.1 writs, originating summonses, originating motions and petitions (O.5, r.1);
  - 2.2.2 third party notices (O.5, r.1 and O.16, r.3);
  - 2.2.3 acknowledgements of service (O.12, r.4);

- 2.2.4 interlocutory summonses and notices of motion (O.32, r.2);
  - 2.2.5 affidavits (including the exhibits) which are actually used in court (O.41, r.9);
  - 2.2.6 judgements and orders (O.42, r.5);
  - 2.2.7 applications for default judgements (O.42, r.6);
  - 2.2.8 writs of execution (O.46, r.6);
  - 2.2.9 notices of change, appointment, etc. of attorney (O.67, r.8).
- 2.3 No other documents are required to be filed, although it is the established practice to file all pleadings. GCR O.18 has been amended to require pleadings to be filed within 14 days after service.
- 2.4 The procedure for issuing writs (including writs of execution) and other forms of originating and interlocutory process involves filing an original document signed by or on behalf of the plaintiff or applicant. The procedure for drawing up and perfecting judgements and orders also involves filing an original document signed by the judge or stamped with a facsimile of the judge's signature. Acknowledgements of service and notices of change, etc. are required to be filed because they constitute notice both to the Court and to the parties. Affidavits only require to be filed if and when they are *used* in a cause or matter.
- 2.5 With effect from the Commencement Date, the practice relating to filing will be brought into line with the Rules as follows.

### 3 New Practice

- 3.1 **Pleadings.** The new GCR O.18 now requires that all pleadings be filed within 14 days after service. Pleadings are defined to mean statements of claim, defences, replies, counterclaims, defences to counterclaims, pleadings subsequent to reply (which may only be served with leave) and particulars of pleadings (but not the requests for particulars). It should be noted that the term "pleadings" does not include generally endorsed writs, summonses, motions or petitions, all of which do require to be filed as part of the procedure whereby they are issued. A writ which is specially endorsed with a statement of claim does constitute a pleading and requires to be filed as part of the procedure for issuing the writ.
- 3.2 **Discovery.** GCR O.24 requires that lists of documents, notices to produce documents, affidavits verifying lists, etc. shall be served. It does not require that any such documents shall be filed.

3.3 **Interrogatories.** Interrogatories and affidavits containing answers to interrogatories served in accordance with GCR O.26 shall not be filed.

3.4 **Evidence for trial.** The parties to actions commenced by writ are required or permitted by various rules to prepare and exchange written evidence in advance of the trial. GCR O.38 provides for the exchange of witness statements, expert reports and affidavits. GCR O.38 Part II comprises a code relating to the admission of hearsay evidence which involves the service of notices and counter-notices. GCR O.39 makes provision for evidence to be taken by deposition. No witness statements, affidavits, reports, depositions or notices served pursuant to these rules are required to be filed.

3.5 **Affidavits.**

3.5.1 Whether or not affidavits are required to be filed depends upon the purpose for which they are served. GCR O.41, r.9 provides that every affidavit *used* in a cause or matter must be filed. An affidavit is only *used* within the meaning of this rule when it is read by the judge and constitutes part of the evidential basis upon which a judgement is given or an order is made. Affidavits which are sworn in compliance with orders (e.g., affidavits verifying lists of documents and affidavits made in compliance with asset disclosure orders) are required to be served but should not be filed because they are not intended to be used by the Court.

3.5.2 Whilst copies of affidavits sworn in connection with interlocutory applications are required to be served, the original affidavits are only required to be filed in accordance with GCR O.41, r.9 if the application is in fact contested with the result that such affidavits are read by the judge and constitute part of the evidential basis upon which the order is made. It follows that original affidavits need not be filed in advance of the hearing.

3.5.3 Written statements of evidence, whether in the form of affidavits, witness statements or depositions, intended to be used in evidence at trial are only required to be filed in the event that a trial takes place and such documents are in fact admitted in evidence. Since the vast majority of actions are settled, such documents should not be filed in anticipation of a trial taking place.

3.5.4 GCR O.41, r.9(2) requires that the exhibits to affidavits should *not* be filed. Copy exhibits need to be served and made available to the Judge in advance of the hearing but the original exhibits should be kept by the party's attorney and are not required to be filed.

- 3.6 **Originating Summons Procedure.** Affidavits sworn in compliance with GCR O.28 are required to be filed.
- 3.7 **Petition and Originating Notice of Motion Procedure.** Affidavits sworn in connection with petitions and originating (but not interlocutory) notices of motion require to be filed.
- 3.8 **Payment into Court.** Notices relating to payment into court and acceptance of funds in court served pursuant to GCR O.22, rr.3 and 4 shall not be filed. Lodgement and payment schedules require to be delivered to the Court Funds Office but are not required to be filed on the Court file.
- 3.9 **Voluntary Filing is not Permitted.** With effect from the Commencement Date, the Clerk of the Court will not accept for filing any document which is not required to be filed under the Rules.

#### 4 **Preparing Interlocutory Applications and Trials**

- 4.1 When preparing an interlocutory application, it shall be the duty of the applicant's attorney, after consultation with the attorneys for the other parties, to prepare and deliver to the relevant judge's secretary a bundle containing copies of all those pleadings, affidavits, etc. which are relevant to the application. Unless the application is both short and straightforward, such bundles should normally be delivered in advance of the hearing, preferably by the Thursday of the previous week. In the event that the hearing is vacated for whatever reason, the judge's bundle will be returned to the applicant's attorney and there will be no requirement for any part of it to be filed. In the event that the hearing takes place, the judge's bundle will be returned to the applicant's attorney after the judge has made his order, but it shall be the duty of the parties' attorneys to file the originals of those affidavits read by the judge.

#### 5 **Correspondence Between Attorneys.**

- 5.1 Correspondence between the parties' attorneys should never be copied to the Court and will not be placed on court files.
- 5.2 Any such correspondence received by the Clerk of the Court will be destroyed.

#### 6 **Authorities**

- 6.1 Lists of authorities and/or bundles of copy authorities should be agreed between the parties' attorneys and sent to the Judge's secretary in advance of the hearing.

6.2 Neither lists of authorities nor bundles of copy authorities should be filed.

**DATED** this 28<sup>th</sup> day of January, 1999.

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Honourable Anthony Smellie, QC  
Chief Justice