

## DISTRICT COURT PRACTICE DIRECTION NO. 4 OF 1997

### PRACTICE DIRECTION RE: APPEALS

1. This Practice Direction applies in all districts.
2. The purpose of this Practice Direction is to assist the District Courts, the profession and unrepresented litigants in the efficient determination of appeals.
3.
  - (a) This Practice Direction applies to all Appeals to a District Court under any statute.
  - (b) This Practice Direction operates except where any Act or Regulation or Rule in relation to a particular Appeal or category of Appeals to the District Courts provides to the contrary.
  - (c) A reference to an Appeal in this Practice Direction includes an Appeal in the strict sense, an Appeal on a question of law only, an Appeal by way of rehearing, and a situation where there is a right to have a matter heard and determine de novo by a District Court.
  - (d) This Practice Direction does not apply where there is an Appeal to an entity by some other name, although in fact constituted, or in law required to be constituted, or partly constituted, by a Judge of District Courts.
  - (e) This Direction operates subject to any Direction given in particular proceedings by a Judge.
4. In this Practice Direction:
  - (a) "Appellant" means the person by whom the Appeal was commenced.
  - (b) "Respondent" means every other party to the proceedings from which the appeal is brought, together with any other person who becomes a party to the Appeal.
  - (c) "Registrar" includes a Deputy Registrar at any centre designated for the holding of a District Court.
  - (d) An outline of argument means a written statement of the issues and arguments in a proceeding which incorporates the following:
    - (i) A concise, logical statement of any factual conclusions upon which it is contended that the District Court Judge should proceed which are different from or additional to the findings made in the decision under Appeal, together with the reasons why the District Court Judge should form a factual conclusion sought including precise references to the evidence relied upon in connection with each disputed factual conclusion;
    - (ii) A concise, logical summary of submissions, including references to all statutory provisions, citation of authorities and passages and previous decisions or other material relied on.
    - (iii) A list of all documents including exhibits which the party may wish to rely on.
5.
  - (a) Where there is an Appeal as of right to a District Court the proceeding should be commenced by the filing of a Notice of Appeal which should be in the attached Form 1.

Superseded by PD 5 of 2007

- (b) Where the leave of a District Court or Judge thereof is required to Appeal to a District Court, the proceedings should be commenced by the filing of a Notice of Appeal which should be in the attached Form 2.
  - (c) The Notice of Appeal must state:
    - (i) Whether the whole or part only of the decision is appealed from;
    - (ii) Briefly, but specifically, the grounds of Appeal;
    - (iii) Whether the appellant will seek to put further evidence before the District Court;
    - (iv) What decision the appellant seeks in lieu of that appealed from;
    - (v) The name and last known address of each respondent.
    - (vi) An address for service of the appellant (to be deemed an effective address until supplanted by clear written notice of a change of address for service to the Registrar of the Court in the appropriate district) and should contain advice of some practicable telephone and/or facsimile number and/or E-mail address to facilitate urgent contact.
  - (d) Practitioners and unrepresented appellants are reminded that this provision does not apply where some other form of Notice of Appeal is required by or under some other Act, as is the case for example with an Appeal pursuant to s.222 of the *Justices Act* 1886. Form 3 reproduces the form required under that section.
  - (e) Persons wishing to appeal should consult the relevant statute for any applicable time limit.
  - (t) When a Notice of Appeal is filed by a person who is not legally represented the Registrar shall provide at once a copy of this Practice Direction and Form 4 to the person.
6. A Notice of Appeal must be served on the respondent; subject to the requirements and limitations of any Act, Rule or regulation this may be done:
- (a) By serving a copy personally upon the respondent;
  - (b) By delivering a copy to an address which was an address for service of the respondent for the purposes of the proceedings from which the Appeal is brought;
  - (c) By delivering a copy to any solicitor who has agreed to accept service of the Notice of Appeal on behalf of the respondent;
  - (d) By any means which in fact causes the contents of the Notice of Appeal to come to the attention of the respondent;
  - (e) By such means as may be specified by order of a District Court Judge in a particular case; or
  - (t) By such means as is allowed in any Act or Rule or Regulation.
7. (a) Any respondent who wishes to participate in the Appeal must within fourteen days file in the Court in which the Appeal is commenced an Entry of Appearance to the Notice of Appeal (Form 5) which states an address for service of the respondent, and serve a copy on the appellant. The address for service shall be deemed an effective address until supplanted by clear written notice of a change of address for service to the Registrar of the Court in the

- appropriate district. It should contain advice of some practicable telephone and/or facsimile number and/or E-mail address to facilitate urgent contact.
- (b) Any document required to be served may be served on the appellant at the address for service stated in the Notice of Appeal, and on the respondent at the address for service stated in the Entry of Appearance.
  - (c) Any respondent who has not filed and served an Entry of Appearance shall be taken to have been served with a document by the appellant filing the document in the Court, and the respondent may obtain a copy of the document from the Registry by payment of the applicable fee.
  - (d) It shall not be necessary for a respondent to give Notice of Appeal by way of cross-appeal, but if a respondent intends to contend on the hearing of the Appeal that the decision appealed from should be varied, the respondent shall give notice of such intention, and the grounds to be relied on, to the appellant and to all other respondents, within 14 days of being served with the Notice of Appeal.
  - (e) If a respondent proposes to argue that the decision under appeal can be supported on grounds other than those set out in the reasons for it, the respondent shall set this out and the basis for it in the outline of argument.
  - (f) When an appearance is entered by a person who is not legally represented the Registrar shall provide at once a copy of this Practice Direction and Form 4 to the person.
8.
    - (a) The appellant shall also within seven days of filing the Notice of Appeal in the Court serve a copy of the Notice of Appeal on the Registrar of the Court from which the Appeal is brought, or on the Registrar or Secretary or other similar official of the entity other than a Court from which the Appeal is brought, or if there is no such suitable official on the person, or one of the persons, constituting such entity.
    - (b) Upon being served with such copy of the Notice of Appeal the person served shall arrange to forward forthwith to the Registrar of the Court in which the Appeal has been commenced copies of all documents used by that entity in the proceedings from which the Appeal is brought including initiating documents, anything in the nature of pleadings, affidavits or statements of evidence in writing, transcript or note of oral evidence, exhibits, the document embodying the formal decision, any document recording reasons for that decision, and any other document which would be relevant to the hearing of the Appeal.
  9.
    - (a) Within twenty-eight days of filing the Notice of Appeal the appellant shall file and serve on any respondent who has entered an appearance an outline of argument on behalf of the appellant.
    - (b) An appeal will not be given a date for hearing until the outline of argument has been filed.
    - (c) The Court may of its own motion or on application of a respondent strike out an Appeal if no complying outline of argument has been lodged within sixty days of filing the Notice of Appeal, or within thirty days of transmission to the appellant or the solicitors for the appellant by the Registrar of the District Court of a request for a complying outline of argument to be filed.
  10. Within twenty-eight days of the service of the outline of argument on behalf of the appellant, any respondent wishing to contest the Appeal shall file and serve on the

solicitors for the appellant and any other respondent who has entered an appearance an outline of argument on behalf of the respondent.

11. (a) Within fourteen days after service of the outlined argument on behalf of the respondent, or within forty-two days of service of the outline of argument on behalf of the appellant, the appellant or the solicitors for the appellant and all respondents who have entered an appearance or their solicitors shall confer with a view to identifying:
  - (i) The matters in issue in the Appeal;
  - (ii) Whether any and what further evidence is to be or is to be sought to be put before the Court for the purposes of the Appeal;
  - (iii) How long the hearing of the Appeal is estimated to take.
 (b) If agreement is reached such parties or their solicitors as the case may be shall forthwith sign and file in the Registry a Certificate of Readiness in Form 4 attached.
 (c) If the parties or their solicitors cannot agree on such matters, each party to the Appeal shall file a Certificate of Readiness in Form 4.
  
12. (a) Short Appeals will be ordinarily heard by the Chamber Judge. In the Brisbane district Appeals will ordinarily be heard by the Chamber Judge on one day each week.
 (b) Long Appeals will be dealt with as civil matters, and upon the filing of the Certificate of Readiness signed by on behalf of all parties who have filed an address for service shall be placed on the call-over list with priority.
 (c) Appeals shall be determined to be long Appeals or short Appeals at the discretion of the Registrar, taking into account the terms of the Certificate of Readiness or Certificates of Readiness filed, but in general any Appeal which is expected to require two hours or more for hearing will be treated as a long appeal.
 (d) When the Registrar has decided whether an Appeal is a short Appeal or a long Appeal, and a date of hearing has been fixed by the Registrar or a call-over, the Registrar shall give notice in writing to all parties to the Appeal of the date for hearing. Such notice can be given by facsimile transmission where appropriate and, in the case of a respondent who has not filed an Entry of Appearance, shall be given by ordinary prepaid post addressed to the respondent at the address given in the Notice of Appeal.
  
13. (a) To facilitate the hearing of Criminal Appeals from the Magistrates Court in addition to the provisions of s. 222(2)(c) of the *Justices Act* 1886 the Registrar of the Court at which the Appeal is to be dealt with will ensure that the notice required to be given will be forwarded to at least twenty-one days before the date notified as the date on which the Appeal is to be heard.
 (b) Where possible such notice can be given by facsimile transmission.
  
14. (a) Unless a Judge otherwise orders a record of proceedings need not be prepared. The Judge of the District Court shall rely upon the transcript and exhibits provided from the hearing. In the absence of any other order of the Court the onus of obtaining a copy of the transcript and other documents in the custody of the entity from which the appeal is brought lies upon the parties.
 (b) The Registrar of the Court in which the appeal is to be dealt with shall prepare the relevant file with the lists of documents of parties attached on the outside of the file

with each document identified and clearly marked, so that each document referred to may readily be identified by the Judge at the hearing of the appeal.

15. An Appeal shall not operate as a stay of the decision under appeal unless a District Court Judge so orders.
16. Any party may apply to a Judge in Chambers for a special direction or such other order as may be necessary to facilitate the proper hearing and determination of the Appeal.
17. In the event that an Appeal is resolved between the parties the provisions of Rule 331 of the District Court Rules may be adopted and their consent prepared in accordance with Order 70 Rule 5(3) of the Rules of the Supreme Court.
18. The Registrar of the Court in which the Appeal is heard shall forward to the Registrar, secretary or similar officer of the relevant Court or entity from which the Appeal is brought a copy of the order and/or reasons for judgment in each Appeal.

CHIEF JUDGE  
18 AUGUST 1997

FORM I

IN THE DISTRICT  
COURT HELD  
AT.....  
QUEENSLAND

Appeal No. 19

BETWEEN:

AB [Name of Appellant]

**Appellant**

AND:

CD [Name of Respondent]

**First Respondent**

EF [Name of Second Respondent]

**Second Respondent**

**NOTICE OF APPEAL**

Take notice that [Name of Appellant] appeals against the whole/that part of the decision of (Insert name of Court or other body from which the appeal is brought) dated (Insert date) by which it was ordered/decided that:

(Insert the operative part of the decision under Appeal or that part which is subject to Appeal)

This Appeal is on the grounds that:

1. (Insert grounds of Appeal)

(Where the Appellant has a right to have the proceeding which is subject to Appeal heard de nova by a District Court, it shall be sufficient to state that the Appellant is exercising that right.)

(If the District Court may on the hearing of the Appeal hear the proceedings subject to the Appeal de nova, and the Appellant will seek to have that course followed, state after the statement of the grounds: "The Appellant seeks a hearing de nova of the proceedings the subject of the Appeal" .)

(If the Appellant will on the hearing of the Appeal seek to adduce fresh evidence, state: "On the hearing of the Appeal the Appellant will seek, to adduce fresh evidence to the following effect: "and set out briefly the effect of the fresh evidence sought to be introduced).

The Appellant seeks the following orders from the District Court:

1. Appeal allowed.

2. Decision of (*description of the body appealed from*) dated (*date*) set aside/varied.
3. (*Insert details of further order sought, by including any order sought in relation to costs.*)

*Dated: (Insert date)*

*AB (or Solicitor for AB)*

This Notice of Appeal is filed by [XY, Solicitors for] AB whose address for service is at  
(*Insert address for service including telephone number, facsimile number, and DX address if any.*)

To: CD of (*Insert last name and address of the Respondent CD*)

[and to PQ Solicitors for CD]

[and to EF of (*Insert last name and address etc*)

Take notice that if you wish to resist the Appeal or otherwise participate in the hearing of the Appeal you must, within 14 days of the date of service on you of this Notice of Appeal, file in the Court and serve on [the Solicitors for] the Appellant an Entry of Appearance to the Appeal which gives your address for service, otherwise the Appeal may be heard and determined without further notice to you.

The Appeal shall be heard by the Court on a date to be fixed.

**FORM 2**

**IN THE DISTRICT COURT**  
**HELD AT .....**  
**QUEENSLAND**

**Appeal No. 19**

**BETWEEN:**

**AB** [Name of Appellant]

**Appellant**

**AND:**

**CD** [Name of Respondent]

**First Respondent**

**[AND:**

**EF** [Name of Second Respondent]

**Second Respondent**

**NOTICE OF APPEAL SUBJECT TO LEAVE**

Take notice that [*Name of appellant*] seeks leave to appeal against the whole/that part of the decision of (*Insert name of Court or other body from which the appeal is brought*) dated (*Insert date*) by which it was ordered/decided that:

(*Insert the operative part of the decision under Appeal or that part which is subject to Appeal*)

If leave is granted, the Appeal will be on the grounds that:

1 (*Insert grounds of appeal*)

(*Where if leave to appeal is granted the Appellant has a right to have the proceeding which is subject to Appeal heard de novo by a District Court, it shall be sufficient to state that the Appellant is exercising that right.*)

(*If the District Court may on the hearing of the Appeal hear the proceedings subject to the Appeal de novo, and the Appellant will seek to have that course followed, state after the statement of the grounds:, "The Appellant seeks a hearing de novo of the proceedings the subject of the Appeal. 'J*

(*If the Appellant will on the hearing of the Appeal seek to adduce fresh evidence, state: "On the hearing of the Appeal the Appellant will seek to adduce fresh evidence to the following effect: "and set out briefly the effect of the fresh evidence sought to be introduced.*)



The Appellant will seek the following orders from the District Court:

- I. Appeal allowed.
2. Decision of *(description of the body appealed from)* dated *(date)* set aside/varied.
3. *(Insert details of further order sought, by including any order sought in relation to costs.)*

Dated: *(Insert date)*

AB *(or Solicitor for AB)*

This Notice of Appeal is filed by [XY, Solicitors for] AB whose address for service is at *(Insert address for service including telephone number, facsimile number, and DX address if any.)*

To: CD of *(Insert last name and address of the Respondent CD)* [and to PQ Solicitors for CD] [and to EF of *(Insert last name and address etc)*]

The application for leave to appeal shall be heard by a Judge at *[Insert place]* on *[Insert date]* at *[Insert time]*. If you wish to be heard in opposition to that application you should appear then and present the arguments and read the affidavits relied on. No Entry of Appearance is required prior to the hearing of the application for leave.

*(Details of the place, date and time to be inserted by the Registrars; in Brisbane these applications will be heard by the Chamber Judge.)*

If leave is granted, take notice that if you wish to resist the Appeal or otherwise participate in the hearing of the Appeal you must, within 14 days of the date of service on you of this Notice of Appeal, file in the Court and serve on [the Solicitors for] the Appellant an Entry of Appearance to the Appeal which gives your address for service, otherwise the Appeal may be heard and determined without further notice to you.

The Appeal shall then be heard by the Court on a date to be fixed.

**FORM 3**  
Form 27  
QUEENSLAND  
*JUSTICES ACT 1886*

**NOTICE OF APPEAL TO A JUDGE OF A DISTRICT COURT**

In the Magistrates Court at  
in the State of Queensland

Between: Complainant

and: Defendant

I, the abovenamed \*defendant/complainant, hereby give you notice that I appeal to a District Court judge, under the provisions of section 222 of the *Justices Act 1886*, against the order made on:-

Date:        /        1199

Place:        Magistrates Court at

By: \*a Stipendiary Magistrate/2 Justices of the Peace for the said State

Whereby: (Set out the terms of order)

\*(On        /        1199        His Honour Judge (name of Judge)  
made an order extending the time for service of the notice of appeal as follows: (Set out the terms of the order made by the judge))

The grounds of my appeal are as follows:-

I desire the appeal to be heard and determined in the District Court at:

Appellant  
Place:  
D-        /        /199  
TO: (person concerned in upholding decision)  
of:

AND TO: The Clerk of the Court at

**IMPORTANT NOTES:-**

- (1) This Notice of Appeal shall be served by the appellant on the person concerned in upholding such decision and on the Clerk of the Court at the place where the decision was given, within 1 calendar month after the decision, or as ordered by a District Court judge, as the case may be.
- (2) Within 7 days of such service, you must enter into a recognisance before a justice in such sum and with such sureties (if any) as the justice may require, conditioned to appear on the hearing of the appeal and to abide the decision of the judge thereof and to pay the costs the judge may order.

\_\_\_\_\_ \*Delete whichever is not applicable.

FORM 4

IN THE DISTRICT COURT  
HELD AT .....  
QUEENSLAND

Appeal No. 19

BETWEEN:

AB [Name of Appellant]

Appellant

AND:

CD [Name of Respondent]

[First] Respondent

EF [Name of Second Respondent]

Second Respondent

CERTIFICATE OF READINESS

We certify that:

1. The matters in issue in the Appeal are: *(List all matters in issue)*
2. On the hearing of the Appeal the appellant/respondent/both parties will/will seek to/will not seek to put before the Court further evidence, which will be in the form of documents/testimony of witnesses/both. If further testimony of witnesses is received the opposite party will/will not wish to cross-examine. *(Delete as applicable)*
3. Hearing of the Appeal is estimated to take..... hours.

Dated: .....  
(Insert date)

For Appellant:  
Contact Name:  
Phone No:

(Solicitor for the) Appellant

For [First] Respondent  
Contact Name:  
Phone No:

(Solicitor for the) [First] Respondent

[For Second Respondent:  
Contact Name:  
Phone No: ..]

[(Solicitor for the) Second Respondent]

FORM 5

IN THE DISTRICT  
COURT HELD AT

.....  
QUEENSLAND

Appeal No. of 199

**BETWEEN:**

AB [Name of Appellant]

**Appellant**

**AND:**

CD [Name of Respondent]

**First Respondent**

EF [Name of Second Respondent]

**Second Respondent**

**ENTRY OF APPEARANCE TO NOTICE OF APPEAL**

Enter an appearance in this appeal for the [First] [Second] Respondent/s (delete as applicable) whose address for service is

DATED: ..... (insert date)

(Solicitor for the) [First] Respondent

(Solicitor for the) [Second] Respondent

\* The address for service should contain the address at which documents may be served, a telephone and/or facsimile number and/or E-Mail address for urgent contact.