

PRACTICE DIRECTION NO. 4 OF 2001

APPLICATIONS JURISDICTION: DISTRICT COURT Consent orders: Rule 666 Uniform Civil Procedure Rules, and “abiding the order of the court”

Rule 666 – consent orders

1. The court encourages more widespread use of Rule 666 with a view to streamlining proceedings and saving costs. The Rule provides that the Registrar may make an order if the parties consent in writing, the consents are filed in the Registry and the Registrar considers it appropriate. The last of those requirements accommodates situations where a residual judicial discretion falls to be exercised.
2. Parties should not proceed on the basis that when they themselves are in agreement, the need for the exercise of the judicial discretion of itself requires the application to be brought before a judge.
3. Applications for “consent orders” should in the following cases ordinarily be made in the first instance to the Registrar:
 - a) that a matter be placed on the settlement list, including where there is a further order disposing of costs;
 - b) for the transfer of proceedings from the Magistrates Court to the District Court (in such cases the supporting affidavit material must deal with whether the other party has been asked to consent to the matter’s being determined by the Magistrates Court);
 - c) for directions as to the conduct of proceedings;
 - d) extending time with respect to steps to be taken prior to or in the course of proceedings;
 - e) for extension of injunctions or undertakings which have been made or offered in proceedings before a judge;
 - f) for security for costs, or substituting a bank guarantee for money paid into court as security;
 - g) for stay of judgment pending the determination of an appeal, security for costs of appeal, dismissing an application for leave to appeal or for other procedural directions in relation to the conduct of an appeal.
 - h) an order under Part 19 of the Property Law Act
4. If an application under para 3 is in the first instance brought before a judge, the judge may require an affidavit of justification, and adverse cost consequences may follow should the Judge consider the matter could appropriately have proceeded before the Registrar.

5. In applications under Rule 666 in the above categories, the applicant should ordinarily file affidavit material justifying a favourable exercise of the discretion, in addition to the consents required by Rule 666(2).
6. Such consents should when filed be accompanied by two copies of the proposed draft order and a list of the material on which the applicant relies.
7. In the event of the Registrar's declining to exercise the relevant discretion, the party lodging the consents will be notified and, if requested, the matter referred to a judge.
8. The Registrar may act on an e-mail (dcdep_registrarconsents@justice.qld.gov.au) conforming with the court's e-mail policy (www.courts.qld.gov.au and www.lawnow.com) if:
 - the matter is clearly identified by court heading;
 - the solicitor or counsel responsible for the matter is clearly identified;
 - the solicitor or counsel has undertaken that all parties have consented and that the written consents and draft orders will be filed forthwith.
9. Insofar as the Registrar may presently lack the power to hear and decide applications of the types specified in para 3, or it is unclear whether or not the Registrar has that power, the jurisdiction is, pursuant to Rule 452(2), hereby accorded.

“Abiding the order of the court”.

10. In light of the statement of the philosophy behind the Uniform Civil Procedure Rules and the parties' "overriding obligations", in Rule 5, it may be that litigants are too frequently taking the position of "neither consenting to nor opposing" the making of orders which on any reasonable view are plainly warranted. It is unusual that the court does not in such situations proceed to make the order sought. In view especially of Rule 5, parties who choose to take that position of neutrality may in the future suffer adverse consequences in costs, where the matter could otherwise have been disposed of appropriately by consent, utilising Rule 666.

(P.M. Wolfe)
Chief Judge

Date: 4 May 2001