



Australian Capital Territory

Magistrates Court

*Practice Direction Civil 1
1 January 2019*

Usual Directions in Civil Matters

Application

1. This direction applies to civil proceedings before the Magistrates Court and commences on 1 January 2019.

Background

2. For clarity, certainty and efficiency the Court has defined a number of usual directions for use in civil proceedings. The Court may make these usual directions in a matter with or without variation.

Usual directions

3. **Usual directions when listing a civil hearing, other than personal injury proceedings** means the directions contained in Annexure A.
4. **Usual directions when listing a hearing in personal injury proceedings** means the directions contained in Annexure B.
5. **Usual directions for mediation** means the directions contained in Annexure C.
6. **Usual directions for consolidated electronic chronology** means the directions contained in Annexure D.
7. The terms 'plaintiff' and 'defendant' within those directions are replaced with the terms 'applicant' and 'respondent' where appropriate.

By direction of the Chief Magistrate and Magistrates.

A handwritten signature in blue ink, appearing to read 'Jayne Reece', with a long horizontal flourish extending to the right.

Jayne Reece
Acting Registrar
ACT Magistrates Court

6 December 2018

Usual Directions when Listing a Civil Hearing, other than Personal Injury Proceedings

..... Case number:

Timetable:

- a. Hearing to commence at 10 am/...../..... fixed for day/s
- b. Plaintiff to serve witness statements by/...../.....
- c. Defendants to serve witness statements by/...../.....
- d. Plaintiff to serve witness statements in reply by/...../.....
- e. to serve statements in reply by/...../.....
- f. to serve statements in reply by/...../.....
- g. to serve statements in reply by/...../.....

The Court directs:

Hearing

1. The matter is listed for final hearing in accordance with the above timetable.

Evidence, witness statements and evidence by telephone

2. Evidence at the hearing, other than the evidence-in-chief of an expert, is to be given orally.¹
3. Each of the parties are to serve on all other parties (not file) a statement² by each of their witnesses setting out the evidence to be given orally by their witness in accordance with the timetable above.
4. Any party wishing to make an application for leave to serve additional statements in response to statements received from another party is to do so no later than 14 days after receiving those statements.

¹ This is the ordinary arrangement for proceedings commenced by originating claims. See *Court Procedures Rules 2006*, r 6700 and Part 2.12.

² These statements are not affidavits, and provide opposing parties with notice about who the witnesses will be and what they are expected to say orally during the hearing. Those statements, or parts thereof, may be admitted into evidence by consent.

5. If a witness refers to a document in their statement, then a legible copy of that document is to be either annexed to the statement or provided in a chronological and paginated bundle of documents served with the statement and appropriately identified.
6. A party intending to call a witness by telephone is to notify the other parties of that intention forthwith after forming that intention. Any other party who does not consent to that course, is to advise the party calling the witness no later than 7 days after receiving the notice, or if the hearing is listed within 7 days, then as soon as practicable.

Legal costs information to clients – 28 days after these directions

7. No later than 28 days after these directions, the solicitors on the record for each party are to provide to their clients a summary of:
 - a. the total legal costs, including all disbursements, incurred to date;
 - b. a realistic estimate of future costs;
 - c. an estimate of what proportion of those costs, if any, may be recoverable from another party if the client is successful; and
 - d. the amount already paid by their client towards such costs.

Court Book – 7 days before the hearing

8. No later than 7 days before the hearing, the plaintiff is to file and serve a court book as required by r 1312 of the *Court Procedures Rules 2006*.

Case outline and tender bundle – 7, 2 and 1 day/s before the hearing

9. No later than 7 days before the hearing, the parties are to file and serve on all other parties a Case Outline that is prepared by whomever is to appear at the hearing. That document is to set out:
 - a. the relief sought;
 - b. a summary of the issues in dispute;
 - c. a list of witnesses intended to be called, including an indication if the party proposes to call a witness by telephone; and
 - d. in the case of a represented party, a statement confirming compliance with the above requirement for the solicitor on the record to provide to their client advice about legal costs.
10. No later than 2 days before the hearing, the plaintiff is to serve on the other parties a tender bundle of documents that they propose to tender at the hearing.

11. No later than 1 day before the hearing, the defendant is to serve on the other parties a tender bundle of documents that they propose to tender at the hearing, excluding any document included in the tender bundle served by the plaintiff.³
12. Those bundles should be bound, paginated, indexed and, as appropriate, arranged in chronological order.

Chronology at opening

13. Prior to the commencement of the plaintiff's opening, the plaintiff is to provide to the Court a detailed chronology that includes appropriate references to relevant page numbers of the tender bundles.

Final submissions and list of legal authorities

14. The parties are to be in a position to commence final submissions immediately following the conclusion of the evidence.
15. Prior to final submissions, the parties are to provide to the Court a list of legal authorities upon which they intend to rely.

Documents generally

16. The covering page of all documents prepared for Court should identify the name of the proceedings and the party filing or providing the document.

Non-compliance

17. A failure by one party to comply with these directions will not be considered an adequate excuse for any failure by another party to comply. Non-compliance with these directions may result in adverse costs orders.
18. Each party has liberty to relist the matter at short notice before the Magistrate allocated to hear the final hearing or, if the Magistrate is not known, the Registrar, for the purpose of bringing to the Court's attention any failure to comply with these directions.⁴

And it is noted:

Statement of agreed facts

19. The parties are encouraged to agree on and file by consent a statement of agreed facts.

Agreed tender bundle

20. The parties are encouraged to agree on and file by consent two (one being a working copy) identical, bound, indexed, paginated and chronological tender bundles that contain the documents that the parties intend to rely upon.

³ These documents should have been disclosed to the other parties well before this step.

⁴ This is in addition to the procedure available at r 1452.

Legal authority bundle

21. The parties are encouraged to agree on and provide to the Court at closing submissions one bound, indexed and paginated copy of a legal authority bundle that contains copies of the legal authorities to which the parties intend to refer.

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...../...../.....

Magistrate / Registrar

Usual Directions when Listing a Hearing in Personal Injury Proceedings

..... Case number:

The Court directs:

Hearing

1. The matter is listed for final hearing at 10 am on /..... /....., fixed for day/s.

Evidence by telephone – advice forthwith and response after 7 days

2. A party intending to call a witness by telephone is to notify the other parties of that intention forthwith after forming that intention. Any other party who does not consent to that course, is to advise the party calling the witness no later than 7 days after receiving the notice, or if the hearing is listed within 7 days, then as soon as practicable.

Court Book – 7 days before the hearing

3. No later than 7 days before the hearing, the plaintiff is to file and serve a court book as required by r 1312 of the *Court Procedures Rules 2006*.

Objections to expert reports – 7 days before the hearing

4. No later than 7 days before the hearing, each party is to serve on all other parties a list of objections to any expert reports that have been served by a party. Those lists are to identify with precision the part of the report objected to and the reason why, with sufficient particularity to permit the other parties to understand the legal and factual basis for any objection.

Witness lists – 3 and 2 days before the hearing

5. No later than 3 days before the hearing, the plaintiff is to serve on all other parties a list of witnesses that it proposes to call to give evidence.
6. No later than 2 days before the hearing, the defendants are to serve on all other parties a list of witnesses that it proposes to call to give evidence.

Financial and medical documents – 3 and 2 days before the hearing

7. No later than 3 days before the hearing, the plaintiff is to serve on all other parties; and no later than 2 day before the hearing, the defendants are to serve on all other parties, the following documents that they proposes to tender at the hearing:
 - a. a bundle of tax or other documents relating to economic loss;

- b. a bundle of documents relating to past or future out of pocket expenses; and
 - c. a bundle of medical records.
8. The defendants are not to include in the above bundle, documents already contained in the plaintiff's bundle.
9. Those bundles should be bound, paginated and, where appropriate, arranged in chronological order. They should also contain summaries that identify:
- a. for the documents relating to economic loss, the relevant figures for each relevant year; and
 - b. for the documents relating to out of pocket expenses, the amounts said to be proved by the documents.
10. Those bundles need not be served if the facts or evidence are agreed. In the former case, the agreement is to be part of an agreed statement of facts. In the latter case an agreed tender bundle is to be filed and is to include either an agreed summary, or each party is to file separate summaries as required above.

Chronology at opening

11. Prior to the commencement of the plaintiff's opening, the plaintiff is to provide to the Court a detailed chronology that includes appropriate references to relevant page numbers of the tender bundles.

Final submissions, list of legal authorities and schedule

12. The parties are to be in a position to commence final submissions immediately following the conclusion of the evidence.
13. Prior to final submissions, the parties are to provide to the Court a list of legal authorities upon which they intend to rely.
14. During their final submissions, each party is to provide to the Court a schedule of the damages that it contends should be awarded by the Court if liability is established. It should set out:
- a. Each head of damages for which damages is sought, including:
 - i. the method by which the amount is calculated,
 - ii. any assumptions or findings upon which the calculations are dependent;
 - iii. any relevant multiplier; and
 - iv. in the case of any head of damages for the past, any interest claimed and how the party submits such interest should be calculated;
 - b. The plaintiff's age at the date of the hearing;
 - c. The plaintiff's life expectancy at the date of the hearing; and

- d. The number of years until retirement.
- 15. The Court will treat any head of damages or interest not included within the above schedule as having been abandoned.

Documents generally

- 16. The covering page of all documents prepared for Court should identify the name of the proceedings and the party filing or providing the document.

Non-compliance

- 17. A failure by one party to comply with the Court’s directions will not be considered an adequate excuse for any failure by another party to comply. Non-compliance with these directions may result in adverse costs orders.
- 18. Each party has liberty to relist the matter at short notice before the Magistrate allocated to hear the final hearing or, if the Magistrate is not known, the Registrar for the purpose of bringing to the Court’s attention any failure to comply with these directions.¹

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Magistrate / Registrar

¹ This is in addition to the procedure available at r 1452 of the *Court Procedures Rules 2006*.

Usual Directions for Mediation

..... Case number:

Schedule:

- a. Mediation before on/...../..... at am/pm
- b. The mediation fee is to be:
- shared equally between the parties, or
 -
 -

The Court directs:

Mediation

1. The matter is referred to mediation in accordance with the arrangements stipulated within the schedule¹.
2. The parties are reminded of their duty to take part genuinely and constructively in the mediation² and that non-compliance with these directions may result in an adverse costs order or an order dismissing the proceedings.

Fee – 4 weeks before mediation

3. No later than 4 weeks before the scheduled mediation, the parties are to pay the mediation fee of \$1500 / (including GST) directly to the mediator, in the proportions stipulated within the schedule. Information about payment methods is available from the Registry.
4. As soon as a party has paid their share of the mediation fee, they are to complete the *Confirmation of Payment of Mediator's Fees* form and email the same to the mediator and to the registry at mediation@courts.act.gov.au. That form is available at www.courts.act.gov.au/magistrates/forms_and_applications.

¹ See r 1179 of the *Court Procedures Rules 2006*.

² See r 1180.

Statement of particulars – 14 days before mediation

5. In personal injury matters, if not already done and no later than 14 days before the mediation, the plaintiff is to file and serve on the other parties a statement of particulars, in accordance with r 1304 of the *Court Procedures Rules 2006*.

Legal costs information to clients – 28 days after these directions / 7 days before mediation

6. The solicitors on the record are to provide to their clients, no later than 28 days after these directions or 7 days before the mediation, whichever is the earlier, a summary of:
 - a. the total legal costs, including all disbursements, incurred to date;
 - b. a realistic estimate of future costs;
 - c. an estimate of what proportion of those costs, if any, may be recoverable from another party if the client is successful; and
 - d. the amount already paid by their client towards such costs.

Mediation agreement and statement confirming compliance – 2 days before mediation

7. The parties are to provide to the Registry no later than 2 working days before the scheduled mediation:
 - a. a mediation agreement signed by the party; and
 - b. in the case of a represented party, a statement confirming compliance with the above requirement to provide advice about legal costs to the client.
8. The mediation agreement is available at:
www.courts.act.gov.au/magistrates/forms_and_applications

Position paper – 2 days before mediation

9. No later than 2 working days before the scheduled mediation, the parties are to provide the mediator, other parties and the Registry a positions paper. That paper is to not exceed 3 pages in length.

Authorised person to be present

10. A person authorised to commit each party to the settlement of the matter is to attend the mediation in person.
11. If an insurance company is involved on behalf of a party, the insurance company is to have present in person at the mediation its claims manager or an officer of the claims manager's office who has authority to give final agreement to a settlement proposal within the range that can be reasonably anticipated.

And it is noted:

- 12. At the finalisation of the mediation, the parties are invited to participate in the survey available at www.courts.act.gov.au/mediationsurvey.

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Magistrate / Registrar

Usual Directions for Consolidated Electronic Chronology

..... Case number:

1. No later than,
the plaintiff is to provide to the other parties and the Magistrate's Associate a
chronology in electronic form (RFT, Word or other agreed format). The chronology is
to be cross-referenced with the evidence on which it is based, and is to be in a tabulated
form including the columns: Date, Event, Source and Response by Defendant.
2. No later than 7 days after receiving the above chronology, the defendant is to provide to
the other parties and the Magistrate's Associate an electronic copy of a revised version
of the chronology. That version should identify any changes by the use of either the
final column or track changes. The Court will rely upon that revised chronology to
distinguish what facts are and are not in issue.

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Magistrate / Registrar