

# THE LAW SOCIETY OF SINGAPORE

## PRACTICE DIRECTION 8.5.10

*[Formerly PDR 2013, para 86]*

### **SERVICE OF ORIGINATING PROCESS ON LEGAL PRACTITIONERS**

#### **A. Accepting Service of Originating Process**

*[Formerly PDR 1989, chap 7, para 11(a)]*

Legal practitioners when writing to the effect that they have instructions to accept service, should state that they 'undertake' to accept service and enter an 'appearance' instead of the usual form of merely 'we have instructions to accept service'.

#### **B. Effecting Service of Originating Process, Court Documents or Other Written Communications on a Client of Another Legal Practitioner**

*[Formerly Council's Practice Direction 4 of 2012]*

Part B of this Practice Direction sets out the ethical duties of a legal practitioner ('Legal Practitioner') who represents a client ('Client') in actual or contemplated proceedings and who is instructed to effect service of originating process, court documents or other written communications ('Documents') on a client (or persons associated with the client) ('Third Party') who is represented by another legal practitioner ('Third Party's Legal Practitioner') in such proceedings.

##### **1. Where personal service of documents is not allowed**

If:

- (a) the Legal Practitioner has been in communication with the Third Party's Legal Practitioner and such communication is related to the Client's actual or contemplated proceedings; and
- (b) the Rules of Court or other applicable law require the Legal Practitioner to serve the Documents on the Third Party personally but permit the Legal Practitioner to serve the Documents on the Third Party's Legal Practitioner as an alternative to personal service on the Third Party, the Legal Practitioner must not serve the Documents on the Third Party personally unless:
  - (i) the Legal Practitioner has enquired with the Third Party's Legal Practitioner whether the latter has instructions to accept service of the Documents on behalf of the Third Party; and
  - (ii) the Third Party's Legal Practitioner does not confirm within three working days (excluding a Saturday, Sunday or public holiday) or such other period of time as agreed between the parties that the Third Party's Legal Practitioner has instructions to accept service of the Documents on behalf of the Third Party.

## **Illustrations**

- (A) *The Legal Practitioner was involved in settlement negotiations with the Third Party's Legal Practitioner in a tenancy dispute. Subsequently, the Client instructed the Legal Practitioner to effect service of a Writ of Summons filed against the Third Party for the same matter:*
- (i) *The Legal Practitioner serves the Writ on the Third Party at the Third Party's residential premises without making any enquiry whether the Third Party's Legal Practitioner had instructions to accept service of the Writ on behalf of the Third Party. The Legal Practitioner is prima facie in breach of paragraph B.1(b)(i) above.*
  - (ii) *Before effecting service of the Writ, the Legal Practitioner wrote to the Third Party's Legal Practitioner to enquire if the latter had instructions to accept service of the Writ on behalf of the Third Party. The Third Party's Legal Practitioner indicated that he/she would be taking the Third Party's instructions and would revert shortly on whether he/she was instructed to accept service. No reply was received from the Third Party's Legal Practitioner after two working days. The Legal Practitioner then immediately proceeded to serve the Writ personally on the Third Party without waiting for the reply from the Third Party's Legal Practitioner. The Legal Practitioner is prima facie in breach of paragraph B.1(b)(ii) above.*
- (B) *The Legal Practitioner was involved in settlement negotiations with the Third Party's Legal Practitioner in a tenancy dispute. Subsequently, the Client instructed the Legal Practitioner to effect service of a Writ of Summons filed against the Third Party for a civil dispute unrelated to the tenancy dispute. The Legal Practitioner did not enquire whether the Third Party's Legal Practitioner had instructions to accept service of the Writ on behalf of the Third Party. The Legal Practitioner is prima facie not in breach of paragraph B.1(b)(i) above .*

Where paragraphs B.1(a) and B.1(b) above apply, except where the Legal Practitioner is not permitted by the Rules of Court (Cap 322, R 5, 2014 Rev Ed) or other applicable law to serve the Documents on the Third Party's Legal Practitioner, the Legal Practitioner must inform the Third Party's Legal Practitioner in writing that personal service of the Documents on the Third Party had been effected, without delay and as soon as possible in the circumstances, having regard to the nature of the act to be done.

## **2. Ethical duties in effecting personal service of documents**

In all cases where the Legal Practitioner effects personal service of the Documents on the Third Party, the Legal Practitioner must:

- (a) limit communication with the Third Party (which includes persons associated with the Third Party) to only such communication as is necessary to effect service; and
- (b) comply with his/her ethical duties *vis-à-vis* the Third Party and the Third Party's Legal Practitioner under rules 7 and 8 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ('PCR 2015').

## **Illustrations**

*The Legal Practitioner accompanied the Client to serve a notice to evict on the Third Party, who is the tenant of the Client's premises:*

- (A) *The Legal Practitioner behaved in a hostile manner towards the Third Party by using offensive language and threatening actions. The Legal Practitioner is prima facie in breach of paragraph B.2(a) above.*
- (B) *The Legal Practitioner knows that the Third Party's Legal Practitioner is representing the Third Party in this matter and intends to communicate with the Third Party at the Client's premises in accordance with paragraph B.2(a) above. Pursuant to paragraph B.2(b) above, the Legal Practitioner must be mindful of his/her additional ethical duties under rules 7 and 8 of the PCR 2015.*

For the avoidance of doubt, this Practice Direction is subject to:

- (a) any directions of the court (including directions that the Documents are to be served on a Third Party on an urgent basis);
- (b) prevailing Practice Directions by the Supreme Court and State Courts; and
- (c) anything to the contrary in any written law, including the Legal Profession Act (Cap 161, 2009 Rev Ed) and the subsidiary legislation thereunder, in particular, rule 7(3) of the PCR 2015.

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**THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE**