

L.N. 4 of 2016

Rules of the District Court (Amendment) (No. 2) Rules 2015

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Order 121

Proceedings and Applications under Child Abduction and Custody Ordinance (Cap. 512)

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Rules of the District Court (Amendment) (No. 2) Rules 2015

(Made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336))

1. Commencement

These Rules come into operation immediately after the Child Abduction Legislation (Miscellaneous Amendments) Ordinance 2014 (16 of 2014) comes into operation.

2. Rules of the District Court amended

The Rules of the District Court (Cap. 336 sub. leg. H) are amended as set out in rules 3 to 7.

3. Order 3, rule 2 amended (reckoning periods of time)

Order 3, Chinese text, rule 2(4), after “整天”—

Add

“或整日”.

4. Order 7, rule 2 amended (form of summons, etc.)

Order 7, after rule 2(2)—

Add

“(3) This rule is subject to Order 121, rule 2.”.

5. Order 11, rule 9 amended (service of originating summons, etc.)

(1) Order 11, rule 9(1)—

Repeal

“Rule 1”

Substitute

“Subject to paragraph (4A), rule 1”.

(2) Order 11, rule 9(4)—

Repeal

“Service out of”

Substitute

“Subject to paragraph (4A), service out of”.

(3) Order 11, after rule 9(4)—

Add

“(4A) Service out of the jurisdiction of any originating summons issued under Order 121, rule 2 is permissible without the leave of the Court.”.

6. Order 121 added

After Order 113—

Add

“Order 121

**Proceedings and Applications under Child Abduction and
Custody Ordinance (Cap. 512)**

1. Interpretation (O. 121, r. 1)

(1) In this Order—

Ordinance (《條例》) means the Child Abduction and Custody Ordinance (Cap. 512).

(2) Expressions used in this Order that are used in the Ordinance have the same meanings in this Order as in the Ordinance.

2. Mode of application (O. 121, r. 2)

Except as provided in the Ordinance, an originating application under section 21(3) of the Ordinance may be made by originating summons in—

- (a) (subject to subparagraph (b)) Form No. 10A in Appendix A; or
- (b) (if the application is made ex parte as provided in this Order) Form No. 10B in Appendix A.

6. Time for acknowledging service (O. 121, r. 6)

The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is—

- (a) (subject to subparagraph (b)) 7 days after the service of the originating summons, including the day of service; or
- (b) (if the service takes place out of the jurisdiction) 14 days after the service of the originating summons, including the day of service.

6A. Hearing of originating summons (O. 121, r. 6A)

- (1) A day and time for the attendance of the parties before the Court for the hearing of an originating summons may be fixed on the application of the applicant.
- (2) If an originating summons is required to be served, the time limited for acknowledging service may, where appropriate, be abridged so as to expire on the 2nd day before the day so fixed.
- (3) If an originating summons is required to be served and a day is fixed under paragraph (1) for the hearing of the originating summons, the applicant must, at least 4 clear days before that day, serve on the respondent—

- (a) the originating summons and the affidavit required under this Order; or
 - (b) (if the respondent has been served with the originating summons and the affidavit required under this Order) a notice of the day fixed for the hearing.
- (4) If the hearing of an originating summons required to be served is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, that party must, at least 2 clear days before the resumed hearing of the originating summons, serve on the other party a notice specifying those orders and directions.

7. Further evidence (O. 121, r. 7)

- (1) Any respondent may within 5 days after acknowledging service of the originating summons file and serve on the other parties any affidavit on which the respondent intends to rely.
- (2) The applicant may within 5 days thereafter file and serve on the respondent an affidavit in reply.

8. Assignment of proceedings (O. 121, r. 8)

Every application must be heard and determined by a judge, except that applications to extend time and to join a respondent may be heard by a master, and must be dealt with in chambers unless the Court otherwise directs.

12C. Application for an order under section 21(3) of the Ordinance: for prohibiting removal of child out of Hong Kong (O. 121, r. 12C)

- (1) An application for an order under section 21(3) of the Ordinance must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
 - (a) provide the information set out in paragraph (3) about the following persons—
 - (i) the child;
 - (ii) the applicant;
 - (iii) the person believed to be intending to remove, or to be removing, the child out of Hong Kong; and
 - (iv) the person specified in section 21(2)(a) of the Ordinance who has the custody of the child under a court order or who is exercising the rights of that custody (other than the applicant);
 - (b) state the basis for believing that the person mentioned in subparagraph (a)(iii) may remove the child out of Hong Kong;
 - (c) provide any other relevant information; and
 - (d) exhibit all relevant documents.
- (3) The information includes—
 - (a) the following in respect of the child—

-
- (i) name (in both Chinese and English, if applicable);
 - (ii) date of birth (if available);
 - (iii) gender;
 - (iv) birth certificate number (if available);
 - (v) Hong Kong Identity Card number (if available);
 - (vi) travel document number (if available); and
 - (vii) address (if available);
- (b) the following in respect of the applicant—
- (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) Hong Kong Identity Card number or travel document number;
 - (iv) address;
 - (v) contact telephone number; and
 - (vi) relationship with the child;
- (c) the following in respect of the person mentioned in paragraph (2)(a)(iii)—
- (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available); and

- (vi) relationship with the child; and
- (d) the following in respect of the person mentioned in paragraph (2)(a)(iv)—
 - (i) name (in both Chinese and English, if applicable);
 - (ii) gender;
 - (iii) (if available) Hong Kong Identity Card number or travel document number;
 - (iv) address (if available);
 - (v) contact telephone number (if available); and
 - (vi) relationship with the child.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (6) The application may be made ex parte.

12D. Application for an order under section 21(4) of the Ordinance: for variation, discharge, suspension or revival (O. 121, r. 12D)

- (1) An application for an order under section 21(4) of the Ordinance must be supported by an affidavit sworn by—
 - (a) the applicant; or
 - (b) a person duly authorized to swear it on behalf of the applicant.

- (2) The affidavit must, as far as possible—
 - (a) state the ground of the application;
 - (b) provide any other relevant information; and
 - (c) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
 - (a) within the time specified by the Court; or
 - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.

13. Searching for, inspecting and obtaining copies of documents filed in proceedings under the Ordinance (O. 121, r. 13)

- (1) Unless otherwise directed by the Court, a party to any proceedings under the Ordinance or the party's solicitor, or the Secretary for Justice, may do one or more of the following—
 - (a) have a search in the Registry made for a document filed in the Registry in those proceedings;
 - (b) inspect or obtain a copy of the document.
- (2) Except as provided in paragraph (1), if a document is filed in the Registry in any proceedings under the Ordinance (other than an order made in open court)—
 - (a) the document is not open to inspection by any person without leave of the Court; and

(b) no copy of the document, or of an extract from the document, may be taken by, or issued to, any person without leave of the Court.”.

7. Appendix A amended (forms)

Appendix A, after Form No. 10—

Add

“No. 10A

**Originating summons—expedited form for applications under
Child Abduction and Custody Ordinance**

(Order 121 rule 2)

20....., No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. OF 20.....

In the matter of an application under of the Child Abduction and Custody Ordinance (Cap. 512) and Order 121 of the Rules of the District Court (Cap. 336 sub. leg. H) in respect of a child, namely

Between *A.B.* Applicant

AND

C.D. Respondent

Let *C.D.* of attend before His/Her Honour Judge/Master in Chambers, at the District Court, Hong Kong, onday, the day of 20....., at o'clock in the noon (or, if no application has yet been made for a day to be fixed, on a day to be fixed), on the hearing of an application by the applicant *A.B.* of that

And let the respondent within 7 days after service of this summons (or within 14 days after service of this summons out of the jurisdiction) on the respondent counting the day of service, return the accompanying Acknowledgment of Service to the Registry of the District Court.

Dated the day of 20.....

*Note:—*This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by of solicitors for the applicant whose address is as stated above.

[or where the applicant acts in person:

This summons was taken out by the applicant who resides at and (if the applicant does not reside within the jurisdiction) whose address for service is].

Note:—If the respondent does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

No. 10B

Ex parte originating summons for applications under Child Abduction and Custody Ordinance

(Order 121 rule 2)

20....., No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

NO. OF 20.....

In the matter of an application under of the Child Abduction and Custody Ordinance (Cap. 512) and Order 121 of the Rules of the District Court (Cap. 336 sub. leg. H) in respect of a child, namely

Let all parties concerned attend before His/Her Honour Judge/Master in Chambers, at the District Court, Hong Kong, onday, the day of

..... 20....., at o'clock in the
..... noon, on the hearing of an application by the
applicant *A.B.* that

Dated the day of 20.....

This summons was taken out by
of
solicitors for the applicant whose address is
.....”.

Made this 21st day of December 2015.

The Hon. Mr. Justice
Andrew CHEUNG
Chief Judge of the High Court

H.H. Judge KO

H.H. Judge LEUNG

H.H. Judge LEVY

Elaine LIU

Amirali NASIR

Simon LUI
Temporary Registrar, District Court

Explanatory Note

These Rules amend the Rules of the District Court (Cap. 336 sub. leg. H) (*DC Rules*) to provide for the general procedures for applications made to the District Court under the Child Abduction and Custody Ordinance (Cap. 512) (*Ordinance*), and to effect other related and technical amendments.

2. Rule 6 adds a new Order 121 to the DC Rules setting out—
 - (a) the general procedures for applications made to the District Court under the Ordinance; and
 - (b) the procedures relating to applications for—
 - (i) an order for prohibiting removal of a child out of Hong Kong under section 21(3) of the Ordinance; and
 - (ii) an order for variation, discharge, suspension or revival under section 21(4) of the Ordinance.
3. Rules 4, 5 and 7 contain related amendments and rule 3 contains a technical amendment.