



LORD CHIEF JUSTICE OF THE KINGDOM OF TONGA

Practice Direction 2 of 2023

DOCUMENTS FOR TRIAL - COURT BOOKS

1. Trials or final hearings of civil and land cases often involve a significant number of documents whether by way of pleadings, briefs of evidence and/or evidentiary documents. In the absence of a structured and comprehensive bundle of such documents, the efficient and orderly conduct of trials can often be impaired.
2. Therefore, this Practice Direction seeks to formalise and create a standard operating direction for the preparation of court books for trials or final hearings in civil and land cases.
3. The direction will always be subject to modification or other order by the presiding judge in a given case.
4. Parties and/or their counsel are required to confer in relation to the contents of the court book well in advance of the date for filing it. This may best be achieved by the Plaintiff distributing a draft index of the documents proposed to be included which the other parties may mark up or provide comments on, for instance, either adding further documents, deleting others (with explanation) and/or raising any objections as to admissibility of any document proposed for inclusion. Where any issues as to admissibility cannot be resolved by the relevant parties within a reasonable time, the matter should be brought before the presiding judge for hearing and determination as soon as practicable. It is essential for effective preparation for trial that all parties (and the court) have reasonable certainty as to the contents of the court book well in advance of the commencement of the trial.
5. A court book is to comprise the following documents:

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- (a) An index populated in accordance with the following column headings:
 - (i) Document Number;
 - (ii) Date;
 - (iii) Description;
 - (iv) Discovery number;
 - (v) Page Number.
 - (b) Part A – all current pleadings, in chronological order.
 - (c) Part B - filed briefs of evidence or affidavits for trial and any expert reports (amended in accordance with any determination as to objections as to admissibility), grouped in order of appearance on the title to the proceeding. Where, in a brief of evidence, a witness refers to a document, the copy of the brief of evidence for inclusion in the court book is to be marked up by cross-referencing the court book page numbers for each such document.
 - (d) Part C – non-duplicated discovered documents (other than those already included as exhibits to affidavits) referred to in briefs of evidence or to be referred to during the trial, in chronological order. This does not preclude a party from withholding a discovered document from inclusion in the court book if there is some legitimate forensic purpose for doing so such as challenges to credit during cross-examination.
6. The complete court book is to be:
- (a) paginated from the first page in Part A to the last page in Part C, at the bottom right-hand corner of each page
 - (b) demarcated by labelled tabs between each Part; and
 - (c) bound or placed in a lever arch or ring back folder.
7. An additional copy of the court book is to be made available at trial for use by witnesses during their evidence. A copy (in either hard copy or single PDF format) must also be provided to any witness who is expected to appear at trial remotely via AVL.

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8. In the ordinary course, the Plaintiff will be responsible for preparing the court book and filing and serving sufficient copies for all parties, the court and the witness box. The costs of such preparation will be borne by the Plaintiff in the first instance and will otherwise form part of the costs of the proceeding. Printing costs may be reduced where the master copy is also prepared by way of scanning the documents and compiling them into a single PDF file which may be provided to other parties upon their request.
 9. In the absence of any other Order, or upheld objection as to admissibility raised at an appropriate time prior to the commencement of or during the trial, all evidentiary documents contained in Part C of the court book will be regarded as admissible and tendered into evidence without the requirement to formally prove each such document during the evidence of relevant witnesses.
 10. The date by which a court book should be filed and served will ordinarily be no later than 14 days prior to the date listed for the commencement of the trial. In longer or more complex trials, that period may be extended as the court considers appropriate. Necessarily, therefore, a direction for the provision of a court book will usually be the final preparatory step prior to trial and will be issued when the trial date is set.
 11. In criminal trials:
 - (a) the Prosecution is required to disclose all relevant documents to an accused person or his/her counsel;
 - (b) those documents which the Prosecution intends to tender at trial are to be notified to the accused or his/her counsel at least 14 days prior to the commencement of the trial;
 - (c) any late discovered documents are to be provided as soon as they are to hand;
 - (d) any disputed objections as to admissibility of any document upon which the Prosecution intends to rely at trial are to be brought before the presiding judge on notice as soon as practicable and prior to the commencement of the trial;

- (e) documents admitted by the Defence may be tendered by consent during the Prosecution opening at trial and should be produced in a fully paginated and indexed bundle;
 - (f) all other documents are to be tendered in the usual way during the trial through identification and confirmation by a relevant witness; and
 - (g) the tendering party is required to provide sufficient copies of all evidentiary documents for the judge, any jury members and for the witness box.
12. Practice Direction No. 1 of 2004 is repealed.
13. This Practice Direction shall take effect from 1 February 2023.



Michael Whitten KC
Lord Chief Justice of the Kingdom of Tonga

Nuku'alofa

27 January 2023