

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

*Rules of the Supreme Court, 1986*

**PRACTICE NOTE  
P.N. (TD) No. 2015-02**

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RULES AFFECTED: 56A.17, 56A.18, 56A.19

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PREVIOUS PRACTICE  
NOTES REVISED: P.N. (TD) No. 2011-02

The following Practice Note is published pursuant to Rule 4.04 of the *Rules of the Supreme Court, 1986*.

**APPLICATIONS BROUGHT *WITHOUT NOTICE* TO THE OTHER PARTY AND  
ASSOCIATED APPLICATIONS BROUGHT *WITH NOTICE* IN FAMILY  
PROCEEDINGS**

**Background and Purpose**

1. The following practice note provides guidance on the issuance and disposition in family proceedings of applications brought *without notice* to the other party and the associated applications brought *with notice* to the other party.
2. Applications brought *without notice* are only permissible where a statute or rule permits it. Rule 56A.17(1)(b) specifies that an application may be made *without notice* to a party or another person interested or affected where the court is satisfied that,
  - (i) the delay caused by giving notice would or may impose serious harm or prejudice on the applicant or a child affected by the application;
  - (ii) there is a degree of urgency or another reason that makes it inappropriate to give notice; or
  - (iii) the circumstances of the case make notice unnecessary.
3. The procedure on applications brought *without notice* is governed by rules 56A.17, 56A.18, and 56A.19.

4. In general, applications made *without notice* to the other party are limited to temporary relief. Following a “*without notice*” application, the applicant must also file a subsequent application *with notice* to the other party in order to seek more permanent relief. Some procedural applications (such as applications to renew an originating application, applications for substituted service, and applications for an extension of time for service) do not require a return date or a subsequent “*with notice*” application.
5. The Registry must set an early return date, within seven days of the order, to hear the subsequent “*with notice*” application (rule 56A.18(2)).
6. The intention of the return date appearance is to consider permanent relief for only those matters that were addressed on the prior “*without notice*” application.
7. It has come to the attention of the Court that a considerable number of subsequent applications brought *with notice* have not been in compliance with rules 56A.17 and 56A.18. Specifically, concern has been raised that applicants appearing on subsequent “*with notice*” applications are seeking relief on issues that were not dealt with on the prior application and would not have been appropriately dealt with on a *without notice* basis.
8. To clarify the practice and procedure that should be followed on such applications, it is considered appropriate to issue the following practice note.

### **Practice Note**

9. Since the Court hears from only one party on an application brought *without notice*, these applications are limited to the circumstances listed in rule 56A.17(1). To establish that it is appropriate to hear an application *without notice*, the applicant must file (among other things) an affidavit setting out the reasons why a *without notice* application is necessary. In the affidavit, the applicant must also list the steps that have been taken or may be taken to minimize any potential prejudice to the other party.
10. The *without notice* application should only include issues that require relief on a *without notice* basis. If parties wish to raise broader issues that do not necessitate relief on a *without notice* basis, they should submit a separate application.
11. An applicant who brings an application *without notice* must also bring a subsequent application seeking more permanent relief *with notice* (rule 56A.17(2)(b)). The “*with notice*” application should only include the issues raised on the prior “*without notice*” application. Some procedural applications (such as applications to renew an originating application, applications for substituted service, and applications for an extension of time for service) do not require a return date and do not require a subsequent “*with notice*” application.
12. Wherever possible, the applicant should include a draft of the formal order sought on the application.
13. When an application *without notice* is filed with the Court, the Court may:

- (i) refuse to hear the application until notice is given to a party or person affected by or interested in the application;
- (ii) shorten the normal time for the giving of notice;
- (iii) order that a hearing be held as quickly as possible;
- (iv) hear the application without notice on terms and conditions the Court considers just; and/or
- (v) make another order that balances the interests of the applicant with the interests of a party or person affected by or interested in the application.

(See rule 56A.17(3).)

14. When hearing an application *without notice* a judge may, in his or her discretion, do one or more of the following:

- (i) without ruling on the application, require the applicant to provide additional information in appropriate form, and so indicate by means of a signed and dated endorsement on the application itself;
- (ii) without ruling on the application, require the applicant to appear in open court to address the application, and so indicate by means of a signed and dated endorsement on the application itself;
- (iii) allow the application and so indicate on the application itself by means of a signed and dated endorsement which provides, where the judge considers it necessary, reasons in summary form for allowing the application;
- (iv) dismiss the application and so indicate on the application itself by means of a signed and dated endorsement which includes reasons in summary form for dismissing the application;
- (v) sign a formal order reflecting the disposition of the application;
- (vi) where appropriate, direct the Registry to set a return date for an *inter partes* appearance in accordance with r. 56A.18(2).

15. If the judge does not sign a formal order reflecting the disposition of the application, the endorsement of the judge on the application itself will be considered for all purposes to be the formal order.

16. Upon the return of the file to the Registry, the Registry will advise the applicant of the disposition of the application (granted, refused, or otherwise) as reflected in the written endorsement on the application or order. The Registry will enter the disposition of the

application into the Court's case management system.

17. Where the Court grants an order on an application brought *without notice*, a return date will be set within seven days. The applicant must provide all other parties and interested persons with notice of the return hearing date, the original "*without notice*" application, and the proposed application for more permanent relief.
18. On the subsequent "*with notice*" appearance, the Court will only address issues that were dealt with in that order. It is inappropriate for parties to raise any additional issues. Parties will be required to amend their applications and any affidavits to reflect only those issues that the Court addressed in the order.
19. This practice note does **not** apply to warrants under the *Children and Youth Care and Protection Act*, SNL 2010, c. C-12.2.
20. This practice note repeals P.N. (TD) No. 2011-02.

Authorized by:

[Signed]

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Raymond P. Whalen  
CHIEF JUSTICE OF THE SUPREME COURT  
OF NEWFOUNDLAND AND LABRADOR,  
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[Signed]

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Darlene Wells  
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