

7A. Application for pre-action discovery or for non-party discovery (O. 24, r. 7A)

- (1) An application for an order under section 33(2) of the English Senior Courts Act 1981, as applied in the Cayman Islands by section 11 of the Grand Court Act, for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 2 in Appendix A) and the person against whom the order is sought shall be the defendant to the summons.
- (2) An application after the commencement of proceedings for an order under section 34(2) of the English Senior Courts Act 1981, as applied in the Cayman Islands by section 11 of the Grand Court Act, for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.
- (3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must—
 - (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the Grand Court;
 - (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.
- (4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.
- (5) An order under paragraph (1) or (2) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.
- (6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce—
 - (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or
 - (b) in the case of a summons under paragraph (2), if he had been served with a writ of *subpoena duces tecum* to produce the documents at the trial.
- (7) No rule (O.24, r7A(7)).
- (8) For the purposes of rules 10 and 11 an application for an order under paragraph (1) or (2) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.