



CIVIL SECTION MAGISTRATES' COURT

GUIDELINE FOR PRIVATE SUMMONS

Parties involved in the summons:

1. Plaintiff – A person who is bringing the action to the court.
2. Defendant - The person whom the action is brought against.

Checklist before filing a summons:

1. The amount of claim does **not exceed** BND\$50,000 (*Subordinate Courts Act (SCA), Cap 6, Sec 17*).
2. The limitation of the cause of action is not more than 6 years, and not more than 3 years for personal injuries and general damages (*Limitation Act Cap 14*).
3. The cause of action can be i) *Monetary*; ii) *breach of contract*; and iii) *personal injury*.
4. The court has no jurisdiction in proceedings which concerns claims where there is a genuine dispute as to a title registered under the Land Code and for Probate matters. (*SCA, Sec 17 (3)*).
5. Defendant/Company resides or carries on business in Brunei Darussalam (*SCA, Sec 17*).

Filing of Summons:

Filing of summons is based on defendant's or company's address:

- i) Brunei Muara & Temburong cases to be filed in the Magistrates' Court in Bandar Seri Begawan.
- ii) Tutong cases to be filed in Tutong District Court.
- iii) Belait cases to be filed in Belait District Court.

Once the **checklist is completed**, make an appointment with the Legal Assistant in court to assist you in the court's procedures, document, templates and fees. A legal Assistant does not give legal advice. If you need one, you can refer to a **Law firm** or the **Legal Clinic**, a free consultation by the Law Firms in Brunei Darussalam, held Saturday every end of the month. (*See the court's notice board*)

If summons is approved, a mention date will be fixed by the court.

SERVICE OF THE DOCUMENTS

- The summons will be served by court's process server (*\$40.00 fee*). Once summons is served, the *Affidavit of Service (\$16.00 fee)* will be filed.
- If it cannot be served, the process server will file an *Affidavit of Attempted Service (\$16.00 fee)* and the defendant would have to apply to court for an Order for Substitute Service (*\$30.00 fees*) for the summons to be served by way of leaving at the last known address or by advertisement.

DURING THE FIRST MENTION

1. If summons is served and defendant is absent.
 - *Notice of application for entry of judgment (\$16.00 fee) has to be filed in advanced and Judgment in default of appearance with \$400.00 cost can be entered against the defendant;*

2. If summons is served and the defendant is present:-

- *if the defendant admits to the claim, either in court or by filing the Statement of Admission (more information on our website), a Consent Judgment with \$400.00 cost will be entered against the defendant.*
- *if the defendant disputes to the claim, the defendant will need to file in their defence and counterclaim (if any) in two (2) weeks. At the same, the matter will be assigned for "Case Management" and a mention will be fixed by the trial magistrate.*

* In the said mention, the magistrate will give parties the option to mediate the matter.

PRE-TRIAL CONFERENCE (PTC) AND TRIAL

What is a Pre-trial conference (PTC)?

A PTC is for the magistrate to review the case and to ensure that all documents have been prepared by parties and are ready for trial.

Issues that are normally dealt in a PTC:

- 1) *Number of witnesses and the type of evidences you want to bring to trial.*
- 2) *If expert witnesses are needed*
- 3) *Timeline for the gathering and exchange of documents*
- 4) *Length of trial i.e. date and time*
- 5) *Alternative dispute resolution (Mediation)*

What is Mediation?

A magistrate will provide parties the option of mediation. Mediation is an alternative dispute resolution, which enables you to settle the matter in an amicable manner without going for trial.

Benefits of Mediation:

- *Mediation can be a faster and a cheaper form of settling disputes.*
- *No witnesses and evidences are required during the mediation. The aim of mediation is for parties to reach an amicable settlement.*
- *All matters discussed or addressed during mediation are confidential and cannot be used in trial.*

The outcome of mediation

- If mediation is successful – Consent Order will be entered.
- If mediation is not successful – the matter will proceed to pre-trial conference and trial dates will be fixed by the trial magistrate.

PREPARATION FOR TRIAL

Documents needed to prepare by parties before trial:

- i) Affidavit of Evidence in Chief (for plaintiff, defendant and witnesses)
- ii) Bundle of documents including: (if needed)
 - Exhibits
 - Bundle of pleadings.

If you need a witness to give oral evidence in trial, you may write in to court for the court to issue *subpoena(s)* for the witnesses to attend court at the set date and time.

TRIAL PROCEDURE

1. *Plaintiff to present their case by calling their witnesses to give evidence.*
2. *Defendant will then take their turn to present their case by calling their witnesses to give evidence.*

3. *Court directs parties to make closing submission i.e. summarizing trial evidence and reasons why the court should rule in their favour. This can be made orally or in writing. You can provide bundle of authorities (case laws) for the court.*
4. *Court will proceed to fix a date for delivery of judgment.*

DEFAULT OF AN ORDER FOR PAYMENT

Once a judgment has been entered and there is an order for payment to which the defendant defaulted, Plaintiff can file in the Judgment Debtor Summon (JDS) to show cause.

At this stage, plaintiff will be known as **Judgment Creditor** and the defendant is known as **Judgment Debtor**.

1. If summons is served and Defendant is present.

- Magistrate will ask why the defendant defaulted in payment and an Examination of means (EOM) can be conducted.
- Once an EOM has been conducted, the magistrate may order for an order for payment.

2. If summons is served and Defendant is absent.

- Plaintiff can apply for Warrant of Arrest (\$40.00 fee). This is where the police will search for the defendant and once the defendant is found, he will be brought to court.

3. If summons cannot be served

- Plaintiff can apply for an Order for Substitute Service (\$30.00 fees) from the court for the JDS to be served way of leaving at Defendant's last known address OR by advertisement in Borneo Bulletin or Pelita Brunei and at court's notice board.

EXECUTION PROCEEDING

If judgment debtor still defaulted in payment after JDS or after judgment order (post trial), plaintiff / judgment creditor can apply for execution proceeding:

1. Warrant of Attachment and Sale

Where the defendant's immovable property will be sold and the proceeds of sale will be used to pay the judgment debt (*Rule 10, Subordinate Courts Act, Magistrates' Court (Execution Proceedings)*).

2. Garnishee Order

The court can order a third party to pay the money to settle the defendant's debt. For example, the court may order a bank (garnishee) to pay the money in the debtor's bank account to the creditor. (*Rule 17, Subordinate Courts Act, Magistrates' Court (Execution Proceedings)*).

3. Warrant Committal

This is where the defendant will be put in prison as a 'civil prisoner' for 30 days and the Judgment creditor would have to pay a deposit of \$600.00 for the Judgment debtor's maintenance in prison. This action does not extinguish or remove the judgment debt, Judgment debtor is still expected to pay upon his release. (*Rule 14, Subordinate Courts Act, Magistrates' Court (Execution Proceedings)*).

FOR MORE INFORMATION PLEASE CONTACT

THE CIVIL SECTION

Magistrates' Court, Law and Courts building
KM1/2 Jalan RIPAS, Bandar Seri Begawan BA1910
Brunei Darussalam

Magistrates' Courts in Tutong District Court
or Belait District Court

Office Hours:

8.00 am-12.00 pm & 2.00 pm-4.30 pm

General Inquiry:

+673 2232979 Ext. 133/155

Email: bsbsubordinatecourt.civil@judicial.gov.bn

Website: www.judiciary.gov.bn