

IF I AM BRINGING A MOTION, WHEN DO I APPEAR BEFORE A JUDGE AND WHEN DO I APPEAR BEFORE A MASTER?

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This publication contains information of a general nature intended to assist the public at large. It is not legal advice about your situation. You should consult a lawyer for advice on your particular situation. This publication is not a substitute for you or your lawyer's own research, analysis and judgment.

WHAT IS A MOTION?

A “motion” is a request to the court for an order in some preliminary issue of the main proceeding, whether an application or an action, often in a procedural matter. There are many types of motions under the *Rules of Civil Procedure*. Motions are heard by both Judges and Masters. Both are judicial officers of the court and both sit on the Ontario Superior Court of Justice.

WHAT IS THE DIFFERENCE BETWEEN A MASTER AND A JUDGE?

The difference is in their powers or, in legal terms, their jurisdiction. Masters have the power to make a limited number of orders. If the Master has jurisdiction, then the motion must be heard by a Master. A list of the orders that a Master can make is attached as *Appendix A*.

Judges have the power to make a broader range of orders. Judges have the power to make the same orders as Masters but Judges also have the power to make other orders that Masters cannot make. A list of the orders that a Judge can make is attached as *Appendix B*.

HOW DO I APPEAR BEFORE A MASTER OR A JUDGE?

You must prepare, serve and file a Motion Record with the court – that is, prepare a Notice of Motion, Affidavit and any accompanying Exhibits. In your Notice of Motion, you **must** indicate whether you are appearing before a Master or a Judge to hear your motion. For more complete information about bringing motions at the Superior Court of

Justice, see Law Help Ontario's *A Guide to Motions in a Civil Action*, available on Law Help Ontario's website at www.lawhelpontario.org.

CAN YOU GIVE ME SOME EXAMPLES?

Example 1 – Both Judge and Master have power to make order requested

Sue wants to have an order made relating to Rule 3.02 (Extension of Time). Although both a Master and a Judge can make this order, Sue must appear before a Master. The order Sue wants does not fall within the Judge's exclusive powers.

Example 2 – Only Judge has power to make order requested

John wants to have an order made relating to Rule 21.02 (Striking a Pleading on Grounds that there is no Reasonable Cause of Action). John must have a Judge hear his case because only Judges have the power to make the order that John wants. A Master does not have the power to make such an order.

Example 3 – Only Judge has power to make both orders requested

Ted wants two orders – the first relating to Rule 3.02 (Extension of Time) and the second to Rule 21.02 (Striking a Pleading on Grounds that there is no Reasonable Cause of Action). The first order (Rule 3.02) can be made by either a Master or a Judge. The second order (Rule 21.02) can only be made by a Judge. Ted must have the Judge hear his motion in order to have both his requested orders made.

WHERE CAN I GET MORE INFORMATION?

The Ministry of the Attorney General has a series of guides that are available at court offices and at the Ministry of the Attorney General website. The site also has general information on civil cases: <http://www.attorneygeneral.jus.gov.on.ca>

Legal research: <http://www.canlii.ca>

Court forms: <http://www.ontariocourtforms.on.ca/english/forms/civil/index.jsp>

Guide to Ontario Courts: <http://www.ontariocourts.on.ca/english.htm>

Rules of Civil Procedure for Ontario (*Rules*):

<http://www.canlii.org/on/laws/regu/1990r.194/20070813/toc.html>

APPENDIX A

LIST OF ORDERS THAT A MASTER CAN MAKE

Rule 3.02	Extension of Time.
Rule 5.03, 5.04 and 5.05	Relief from joinder or adding, deleting or substituting parties.
Rule 6	Consolidation or hearing together.
Rule 7.03 and 7.04	Appointment and removal of litigation guardians.
Rule 9.02	Appointment of litigation administrator.
Rule 13.01	Leave to intervene.
Rule 13.1 and 46	Transfer of proceedings or place of trial.
Rule 15.04	Removal of Solicitor of Record.
Rule 16.04	Substituted service or validation of service.
Rule 17.03	Leave to serve party outside Ontario.
Rule .17.06	Setting aside service outside Ontario.
Rule 19.03 and 19.08	Setting aside Default Judgment.
Rule 20	Summary Judgment (except where only genuine issue is a question of law).
Rule 24	Dismiss Action for delay.
Rule 24.01	Exemption from mandatory mediation.
Rule 25.10	Particulars of Pleading.
Rule 25.11	Striking out Pleading or other Document on grounds that it is scandalous, frivolous, or vexatious OR is an abuse of process of the court where referred to a Master: see Appendix B at Rule 21.01(3).
Rule 26	Amending Pleadings.
Rule 30.08	Discovery of documents – orders for failure to comply.
Rule 30.10 and 31.10	Non-Party documentary and/or oral discovery.
Rule 30.1.01(8)	Relief from deemed undertaking.
Rule 31.06(6)	Divided discovery.
Rule 32	Inspection of Property.
Rule 33 and S. 105 of the CJA ¹	Medical examinations.

¹ The CJA is the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

Rule 34	Directions for examination out of court of a party outside Ontario.
Rule 34.12	Rulings on objections to questions on examinations out of court.
Rules 34.14 and 34.15	Directions and sanctions for default or misconduct on examinations out of court.
Rule 35	Failure to answer written discovery questions and improper conduct.
Rule 36	Taking evidence before trial.
Rule 42	Certificate of Pending Litigation.
Rule 43 and S. 103 of the <i>CJA</i>	Interpleader order
Rule 44 and 45	Interim recovery or preservation of personal property.
Rule 47	Strike out jury notice.
Rule 48.11	Restore an action to the trial list Note: A Master may return an action to the trial list if removed by the Registrar, as opposed to a Judge.
Rule 51.05	Leave to withdraw an admission.
Rule 56	Security for costs.
Rule 72.02	Payment of money out of court (without consent).
S. 106 of the <i>CJA</i>	Stay of Proceedings (see also Rule 15.02(2)(b) failure to serve declaration of authority to commence proceedings or Rule 56.02 failure to declare plaintiff's/applicant's place of residence or Rule 57.03(2) failure to pay costs of motion or 60.12 failure to comply with interlocutory order).

APPENDIX B

LIST OF ORDERS THAT A JUDGE HAS EXCLUSIVE POWER TO MAKE

Rule 7.08(2)	Judgment on consent in favour of or against a <i>party under disability</i> . ²
Rule 7.08(1)	Approve settlement of a claim by or against a person under disability.
Rule 7.07.1(1) [or Rule 23.01(2)]	Leave to discontinue an action by or against a party under a disability.
Rule 7.09(1), (2)	Pay money in favour of a person under a disability other than into court.
Rule 10.01	Representation orders for unascertained persons.
Rule 10.02	Continue an action in the absence of an estate representative or appoint a representative if there is no executor.
Rule 12	Class Action judge to hear all motions.
Rule 13.02	Leave to intervene as friend of the court in advance of hearing.
Rule 19.05	Judgment on the Statement of Claim where Defendant noted in default and Registrar cannot sign Judgment.
Rule 21.02(1)	Strike a pleading on the ground that it discloses no reasonable cause of action OR determine a question of law raised by a pleading.
Rule 21.01(3)	Dismissal or stay of action on the ground that the court has no jurisdiction OR a party does not have legal capacity OR another action is pending between the parties OR the action is frivolous, vexatious or an abuse of process. Note: A Master may also Striking out Pleading or other Document on grounds that it is scandalous, frivolous, or vexatious OR is an abuse of process of the court: see Appendix A at Rule 25.11.
Rule 22.01(1)	Special case on a stated question of law.
Rule 24.02	Exemption from service of motion to dismiss for delay on Children's Lawyer or Public Guardian and Trustee when plaintiff under disability.
Rule 24.1.15(1)(a)	Judgment in the terms of a signed agreement at mediation when a party fails to comply.
Rule 34.15(2)	Contempt order respecting failure to attend or misconduct at an examination.
Rule 37.14(4)	Motion to vary or set aside an order of a Judge.
Rule 37.15	Judge assigned to hear all motions [<i>BUT</i> the motions may be referred to a Master: see Rule 37.15(1.1)]

² A motion affecting a **party under a disability** means, for example, persons such as a minor (child under 18), or a person with a mental disability, such as Down Syndrome or Alzheimer's Disease.

Rules 40.01(1), 41.02 and Sections 101 and 102(1) of the CJA	Interlocutory injunction, mandatory order or appointment of a receiver.
Rule 43.04(3)	Interpleader that raises a genuine issue of fact or of law.
Rule 47.02(2)	Strike a jury notice on the ground that the action “ought to be tried without a jury”.
Rule 48.11	Restore an action to the trial list Note: A Master may return an action to the trial list if removed by the Registrar, as opposed to a Judge.
Rule 49.09(a)	Judgment in the terms of an accepted offer to settle.
Rule 51.06(1)	Order based on an admission in an affidavit of examination.
Rule 51.06(2)	Order based on admission in a pleading or response to request to admit.
Rule 52.02	Adjournment of Trial.
Rule 54.02(1) and (2)	Direct a reference of a whole proceeding or to determine an issue.
Rule 54.09(2) and (4)	Oppose confirmation of a referee's report.
Rule 60.08(16)	Garnishment hearing that raises a genuine issue of fact or of law.
Rule 60.11	Contempt order to enforce an order requiring a person to do an act or to discharge or vary a contempt order.
Rule 60.18(5)	Contempt order where a debtor has concealed or made away with property to defeat creditors.
Rule 62.01	Appeal from an interlocutory order of a Master or from a certificate of assessment of costs.
Rule 62.02(1.1)	Motion for leave to appeal to the Divisional Court to a Judge of the Divisional Court sitting as a Superior Court of Justice Judge.
Rule 72.03(1)	Pay money out of court to the credit of a person under disability.
Rule 77.12	Case management Judge assigned.
S. 107(1) of the CJA	Transfer an action from one court to another where two or more proceedings are pending in two or more different courts.
Commercial List	Judge assigned.