

RULE 8

PARTNERSHIPS AND SOLE PROPRIETORSHIPS

PARTNERSHIPS

- 8.01** (1) A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.
- (2) Subrule (1) extends to a proceeding between partnerships having one or more partners in common.

Defence

- 8.02** Where a proceeding is commenced against a partnership using the firm name, the partnership's defence shall be delivered in the firm name and no person who admits he or she was a partner at any material time may defend the proceeding separately, except with leave of the court.

Notice to Alleged Partner Where Enforcement Sought Against Partner

- 8.03** (1) In a proceeding against a partnership using the firm name, where a plaintiff or applicant seeks an order that will be enforceable personally against a person as a partner, the plaintiff or applicant may serve the person with the originating process, together with a notice to alleged partner (Form 8A) stating that the person was the partner at a material time specified in the notice.
- (2) A person served as provided in subrule (1) shall be deemed to have been a partner at the material time, unless the person defends the proceeding separately denying that he was a partner at the material time.

Person Defending Separately

- 8.04** Where a person defends a proceeding separately,
- (a) denying that he was a partner at the material time; or
 - (b) with leave of the court under Rule 8.02,

the person becomes a party to the proceeding as a defendant or respondent, and the title of the proceeding shall be amended accordingly.

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Disclosure of Partners

- 8.05** (1) Where a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose forthwith the names and addresses of all the partners constituting the partnership at a time specified in the notice and, where the present address of a partner is unknown, the partnership shall disclose the last known address of that partner.
- (2) Where a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its defence may be struck out.
- (3) Where the name of the partner is disclosed pursuant to a notice under paragraph (1) and the partner has not been served as provided in Rule 8.03, the partner may be so served within fifteen days after the name is disclosed.

ENFORCEMENT OF ORDER

Against Partnership Property

- 8.06** (1) An order against a partnership using the firm name may be enforced against the property of the partnership.

Against Person Served as Alleged Partner

- (2) An order against a partnership using the firm name may also be enforced, where the order or a subsequent order so provides, against any person who was served as provided in Rule 8.03 and who,
- (a) under that rule, is deemed to have been a partner;
 - (b) has admitted that he or she was a partner; or
 - (c) has been adjudged to have been a partner, at the material time.

Against Person not Served as Alleged Partner

- (3) Where, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who was served as provided in Rule 8.03, the party may move before a judge for leave to do so, and the judge may grant leave if the liability

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of the person as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge directs.

Sole Proprietorships

- 8.07** (1) Where a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name.
- (2) Rules 8.01 to 8.06 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.