



STATUTORY INSTRUMENTS.

**S.I. No. 254 of 2016**



RULES OF THE SUPERIOR COURTS (CONDUCT OF TRIALS) 2016

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by The Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 29th day of October, 2015.

Sean Ryan

Mary Laffoy

Peter Kelly

Deirdre Murphy

Paul McGarry

Gerard Meehan

Stuart Gilhooly

Michael Kavanagh

Noel Rubotham

John Mahon

I concur in the making of the following Rules of Court.

Dated this 5th day of April, 2016.

FRANCES FITZGERALD,  
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 20th May, 2016.*

## S.I. No. 254 of 2016

## RULES OF THE SUPERIOR COURTS (CONDUCT OF TRIALS) 2016

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Conduct of Trials) 2016, shall come into operation on the 1st day of October 2016.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2016.

2. The Rules of the Superior Courts are amended:

(i) by the insertion, immediately following rule 11 of Order 20, of the following rule:

“12. (1) Where a plaintiff intends or proposes to offer expert evidence on any matter at the trial, the statement of claim shall disclose that intention or proposal and state succinctly the field of expertise concerned and the matters on which expert evidence is intended or proposed to be offered.

(2) This rule shall not apply to personal injuries actions.”;

(ii) by the insertion, immediately following rule 22 of Order 21, of the following rule:

“23. (1) Where a defendant intends or proposes to offer expert evidence on any matter (including on any matter arising only in connection with a counterclaim) at the trial, the defence (or, as the case may be, the counterclaim) shall disclose that intention or proposal and state succinctly the field of expertise concerned and the matters on which expert evidence is intended or proposed to be offered.

(2) This rule shall not apply to personal injuries actions.”;

(iii) by the insertion, immediately following rule 29 of Order 31, of the following rule:

“30. (1) Without prejudice to—

(a) the preceding rule and

(b) any rule of law under which the non-party would be entitled or have a duty to

withhold disclosure of information,

where a person not a party to the cause or matter before the Court (in this rule, the “non-party”) has access to information which is not reasonably available to a party to the cause or matter, and which the Court is satisfied would not have been procurable by means of discovery made, or answers to interrogatories given by the person under rule 29, the Court may, on the application of a party by motion on notice to the non-party, and unless it is satisfied that it would not be in the interests of justice that the information concerned be disclosed, make an order directing the non-party who has access to the information to—

- (a) prepare and file a document recording the information; and
- (b) serve a copy of that document on the parties to the cause or matter.

(2) An application under sub-rule (1) shall be supported by an affidavit sworn by or on behalf of the moving party, which shall set out the grounds on which the moving party believes that:

- (a) the information sought is not reasonably available to the moving party;
- (b) the information would not have been procurable by means of discovery made, or answers to interrogatories given by the person under rule 29;
- (c) the information sought is reasonably available to the non-party against whom such an order is sought;
- (d) the information sought is likely to support the case of the moving party or adversely affect the case of one of the other parties to the cause or matter; and
- (e) disclosure of the information sought is necessary in order to dispose fairly of the claim or to save costs.

(3) The non-party may deliver and file an affidavit in reply.

(4) The Court may make an order under sub-rule (1) only where—

- (a) the information of which disclosure is sought are likely to support the case of the moving party or adversely affect the case of one of the other parties to the cause or matter; and

(b) disclosure of the information sought is necessary in order to dispose fairly of the claim or to save costs.

(5) An order under sub-rule (1) shall—

(a) specify the information or the classes of information which the non-party must disclose; and

(b) require the non-party, when making disclosure, to specify any such information—

(i) which is no longer in the non-party's control; or

(ii) in respect of which the non-party claims an entitlement or duty to withhold disclosure.

(6) An order under sub-rule (1) may—

(a) require the non-party to indicate what has happened to such information which is no longer in the non-party's control; and

(b) may include directions as to the time and manner of disclosure of the information.

(7) The moving party seeking an order under sub-rule (1) shall indemnify the non-party in respect of all costs thereby reasonably incurred by that person and such costs borne by the said party shall be deemed to be costs of that party for the purposes of Order 99.

(8) An order under sub-rule (1) shall not be made unless:

(a) the moving party shall have previously applied by letter in writing requesting that disclosure be made voluntarily; and

(b) a reasonable period of time for such discovery has been allowed; and

(c) the non-party requested has failed, refused or neglected to make such disclosure or has ignored such request.

(9) Notwithstanding sub-rule (8), in any case where by reason of the urgency of the matter or the consent of the moving party and the non-party against whom such order is sought, the nature of the case or any other circumstances which to the Court seem appropriate, the Court may make such order as appears proper, without the necessity for:

- (a) the prior application in writing mentioned in sub-rule (8), or
  - (b) the issue and service of the notice of motion mentioned in sub-rule (1), provided that in any such case, a non-party affected who has not been heard by the Court before the making of such order may apply to the Court by motion on notice to the moving party to set aside or vary such order.”;
- (iv) by the substitution for the caption preceding rule 1 of Order 36 of the following caption:

“I. Place, mode and sequence of trial”

- (v) by the substitution for rule 9 of Order 36 of the following rule:

“9. (1) Subject to the provisions of the preceding rules of this Order, the Court may in any cause or matter, at any time or from time to time order:

- (a) that different questions of fact arising therein be tried by different modes of trial;
- (b) that one or more questions of fact be tried before the others;
- (c) that one or more issues of fact be tried before any other or others.

(2) Subject to the provisions of the preceding rules of this Order, the Judge chairing any case management conference or pre-trial conference (each within the meaning of Order 63A, Order 63B or, as the case may be, Order 63C) or the trial Judge may in any cause or matter:

- (a) which is listed for trial in the Commercial List or which is required to be heard in the Competition List, or
- (b) in which an order may be made under Order 63C, rule 4,

make an order:

- (i) directing that the trial be conducted in particular stages (in this rule, “modules”) and determining the questions, issues or set of questions or issues of fact, or of fact and law, to be the subject of each or any module, and the sequence in which particular modules shall be tried;

- (ii) specifying the nature of the evidence, or the witnesses, including expert witnesses, required to enable the Court to determine the questions or issues arising in each or any module;
- (iii) directing the exchange and filing in Court, either in advance of each or any module or following the conclusion of the module concerned, of written submissions on the questions or issues of law arising in that module.

(3) Where a trial is being conducted in accordance with an order made under sub-rule (2), the provisions of these Rules which relate to management of time at trial, expert evidence and preparation for trial (including Parts VI and XI of this Order; rules 14 to 22 inclusive of Order 63A; rules 13 to 21 inclusive of Order 63B, and rules 6 to 16 inclusive of Order 63C) shall, unless the Judge otherwise orders, apply to each module as if it were a separate trial”;

- (vi) by the substitution for rules 41 and 42 and the caption preceding rule 43 of Order 36 of the following rules and caption:

“V. Trials with assessors

41. (1) The Court may, on the application of a party or of its own motion and having heard the parties, appoint a person to assist the court in understanding or clarifying a matter, or evidence in relation to a matter, in respect of which that person (in this rule referred to as an “assessor”) has skill and experience.

(2) Trials with assessors appointed in accordance with this rule, Order 63B, rule 23 or Order 64, rule 43, shall take place in such manner and upon such terms as the Court shall direct.

(3) The Court may appoint an assessor nominated by the parties or nominated by the Court (having heard the parties), and on such terms as to the payment of the fees of the assessor and otherwise as the Court may direct.

(4) The fees to be paid to an assessor shall be determined by the Court, having heard the parties, in such amount or by such measure as the Court considers reasonable, and shall form part of the costs of the proceedings.

(5) The Court may order any party:

- (a) to pay to the assessor, or
- (b) to deposit with the Accountant on account of fees to become payable to the assessor,

a specified sum in respect of or on account of an assessor's fees and, where the Court so orders, the assessor shall not be required to act until the said sum has been paid or, as the case may be, deposited.

(6) An assessor appointed in accordance with this rule, Order 63B, rule 23 or Order 64 rule 43 shall take such part in the proceedings as the Court may direct and in particular the Court may direct an assessor to—

- (a) prepare a report for the Court on any matter at issue in the proceedings; and
- (b) attend the whole or any part of the trial to advise the Court on any such matter and be available thereafter to assist the Court as aforesaid.

(7) Where an assessor prepares a report for the Court before the trial has begun—

- (a) the Court shall cause a copy of the report to be sent to each of the parties; and
- (b) any party may use that report at the trial.

(8) Where an assessor provides advice or other information to the Court, the Court shall inform the parties of such advice or information and afford each of them an opportunity to make submissions in respect of it.

## VI. Management of time at trial

42. (1) The Court or an officer of the Court may require any party to proceedings to provide a reasoned estimate of the time likely to be spent in the trial of the proceedings, including a list of the witnesses intended to be called by that party and an estimated time for the examination or cross-examination (as the case may be) of each witness intended to be called by that party or by any other party.

(2) The trial of proceedings shall, as regards the time available for any step or element, be under the control and management of the trial Judge, and the trial Judge may, from time to time, make such orders and give such directions as are expedient for the efficient conduct of the trial consistently with the interests of justice.

(3) The trial Judge may:

- (a) having regard to the period of time fixed for the trial, and

- (b) having considered any materials (including any reports and summaries or statements of the evidence of any witnesses) delivered to him or her in advance of the trial in accordance with any provision of these Rules or any order or direction of the Court, and
- (c) having heard the parties,

make such orders and give such directions as are expedient for the efficient conduct of the trial consistently with the requirements of justice which may, without limitation, include:

- (I) orders fixing or limiting the amount of time allowed to each party for opening and closing the case (including, subject to paragraph (II)(d), the making of oral submissions on points or issues of law) and for examining and cross-examining each witness, which may include an order allowing each party an amount of time (out of the total time set aside for the trial of the proceedings) for its presentation of its case, which may be used in opening the case, in closing the case, in examining in chief or in re-examining any witness called by that party, and in cross-examining any witnesses called by any other party, and

(II) directions:

- (a) as to the issues on which the Court requires evidence;
- (b) as to the nature of the evidence required to enable such issues to be determined;
- (c) as to the manner in which such evidence is to be put before the Court;
- (d) where written submissions on points or issues of law have been lodged in advance of the trial, as to whether the Judge shall require any oral submissions on points or issues of law in addition to those written submissions, or
- (e) requiring the parties or any party at any stage of the trial to identify the issues which arise or remain for determination by the Court and the questions which the Court is required to decide in order to determine each such issue.

(4) For the purposes of considering the making of an order under sub-rule (3) or otherwise, the trial Judge may require counsel for each party (or a party, if appearing in person) to

indicate how much time is required by that party to be taken in the examination or cross-examination of each witness, or in any other step in the trial.

(5) The trial Judge may, having regard to any order or direction given in accordance with sub-rule (3), allow the time proposed by any party, or may allow such other period of time as the Court considers is consistent with the efficient conduct of the trial and with the requirements of justice.

(6) The re-examination of witnesses shall be limited to new matters that were raised for the first time on cross-examination and shall be concise.

(7) A party shall avoid duplicating the same evidence by different witnesses, save where such duplication is necessary for the just determination of the proceedings.

(8) Without prejudice to any other powers conferred on the Court by Order 99, in any case in which the Court is satisfied that the evidence of a witness called by a party was (in whole or in part):

- (a) unnecessary for the determination of any question or issue arising in the proceedings, or
- (b) merely duplicative of the evidence given by another witness called by that party,

the Court may:

- (i) make an order disallowing (in whole or in part) recovery by a party of the expenses of the witness concerned or the costs occasioned by calling the evidence of the witness concerned, or
- (ii) order the payment by that party (in whole or in part) of the costs occasioned to any other party by the calling of the witness concerned, provided that no such order shall be made where the Court is satisfied that any duplication of evidence was necessary for the just determination of the proceedings.

#### VII. Reference to Master as to damages”

- (vii) by the insertion, immediately following rule 54 of Order 39 of the following captions and rules:

“X. Evidence by video link or other means

55. (1) Where the Court directs in accordance with section 26 of the Civil Law (Miscellaneous Provisions) Act 2008 that a party may participate in the trial of proceedings, or that a witness may give evidence, whether from within or outside the State, through a live video link or by other means, the Court shall give such further directions as to the participation or evidence as are necessary for the efficient conduct of the trial consistently with the requirements of justice.

(2) Evidence given in accordance with sub-rule (1) shall be recorded electronically or otherwise as the Court directs.

XI. Expert Evidence

56. (1) Rules 59 to 61 inclusive apply to proceedings:

- (a) which is listed for trial in the Commercial List or which is required to be heard in the Competition List, or
- (b) in which an order may be made under Order 63C, rule 4.

(2) In this rule and rules 57 to 61 inclusive:

reference to a “case management conference” or a “pre-trial conference” is a reference to such a conference fixed in accordance with the provisions of Order 63A, Order 63B, or as the case may be, Order 63C;

the “evidence” of an expert witness includes testimony as to fact and the expression of any opinion;

“expert” means an expert witness.

57. (1) It is the duty of an expert to assist the Court as to matters within his or her field of expertise. This duty overrides any obligation to any party paying the fee of the expert.

(2) Every report of an expert delivered pursuant to these Rules or to any order or direction of the Court shall:

- (a) contain a statement acknowledging the duty mentioned in sub-rule (1);
- (b) disclose any financial or economic interest of the expert, or of any person connected with the expert, in any business or economic activity of the party retaining that expert, including any sponsorship of or contribution to any research of the expert or of any University, institution or other body with which the expert was, is or will be connected, other than any fee agreed for the preparation by the expert of the report

provided or to be provided in the proceedings concerned and any fee and expenses due in connection with the participation of the expert in the proceedings concerned.

58. (1) Expert evidence shall be restricted to that which is reasonably required to enable the Court to determine the proceedings.

(2) A Judge may—

- (a) of his own motion and after hearing the parties, or
- (b) on the application of a party by motion on notice to the other party or parties,

make any of the following orders or give any of the following directions as to expert evidence:

- (i) requiring each party intending or proposing to offer expert evidence to identify—
  - (a) the field in which expert evidence is required; and
  - (b) where practicable, the name of the proposed expert;
- (ii) determining the fields of expertise in which, or the proposed experts by whom, evidence may be given at trial;
- (iii) fixing the time or times at which a report setting out the key elements of the of the evidence of each expert intended or proposed to be offered by each party shall be delivered to each other party concerned or exchanged and in default of such order being made, the provisions of sub-rules (1) to (5) inclusive of rule 46 shall apply to every such report;
- (iv) where two or more parties (in this rule, the “relevant parties”) wish to offer expert evidence on a particular issue, direct that the evidence on that issue is to be given by a single joint expert (in this rule, the “single joint expert”);
- (v) where the relevant parties cannot agree who should be the single joint expert—
  - (a) select the expert from a list prepared or identified by the relevant parties; or
  - (b) direct that the expert be selected in such other manner as the Court directs;
- (vi) as to the terms on which and manner in which the single joint expert is to be instructed;
- (vii) requiring any party:

- (a) to pay to the single joint expert, or
- (b) to deposit with the Accountant on account of fees to become payable to the single joint expert,

a specified sum in respect of or on account of a single joint expert's fees and, where the Court so orders, the single joint expert shall not be required to act until the said sum has been paid or, as the case may be, deposited.

(3) Save where the Court for special reason so permits, each party may offer evidence from one expert only in a particular field of expertise on a particular issue. Such permission shall not be granted unless the Court is satisfied that the evidence of an additional expert is unavoidable in order to do justice between the parties.

59. (1) A party may put a concise written question or questions concerning the content of an expert's report to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed pursuant to agreement of the parties or pursuant to order made in accordance with rule 58(2)(iv).

(2) An expert shall not be obliged to answer any written questions put in accordance with sub-rule (1) which are disproportionate, unnecessary for the determination of any matter at issue in the proceedings or not within the expert's field of expertise. If necessary, a party or single joint expert may apply by motion on notice for a ruling on any issue arising from such written questions.

(3) Written questions under sub-rule (1)—

- (a) may be put once only;
- (b) shall be put within 28 days of service of the expert's report; and
- (c) shall be for the purpose only of clarification of the report, unless in any case—
  - (i) the Court permits otherwise, or
  - (ii) the other party who has instructed the expert concerned agrees.

(4) An expert's answers to questions put in accordance with sub-rule (1) shall be treated as part of the expert's report.

(5) Where—

- (a) a party has put a written question to an expert instructed by another party; and
- (b) the expert does not (in the absence of a ruling that he is not obliged to do so) answer that question,

the Court may make one or both of the following orders in relation to the party who instructed the expert—

- (i) that the party may not rely on any, or a specified part, of the evidence of that expert; or
- (ii) that the party may not recover any, or a specified part, of the fees and expenses of that expert from any other party.

60. Where two or more parties intend to call experts who, according to their reports as exchanged between the parties or filed in Court, may contradict each other as to evidence, then:

- (i) following application by any party by motion on notice to the Judge chairing and regulating the pre-trial conference, or of that Judge's own motion, in any case in which such a conference is to be held, or
- (ii) following application by any party by motion on notice to the trial Judge in any case, or
- (iii) where so ordered by the trial Judge, having heard the parties, in the absence of any such motion,

the Judge concerned may order that the procedure set out in rule 61 be applied where that Judge considers it necessary in the interests of justice.

61. (1) Where an order has been made under rule 60, the experts shall be required to meet privately, without the presence of any party or any legal representative of any party, and to discuss with each other their proposed evidence.

(2) Following the meeting referred to in sub-rule (1), the experts shall be required to draw up a written statement (in this rule, the “joint report”) identifying such evidence as is agreed between or among them and such evidence as is not agreed. The joint report shall be lodged in Court to be furnished to the trial Judge in advance of the trial and a copy shall be provided to each of the parties.

(3) Upon a consideration of the joint report, the trial Judge may, at any appropriate stage of the trial:

- (a) require any opposing experts to be examined and cross-examined (either on the whole or on a specified part of their evidence) one after another, in such order as the trial Judge shall direct, or
- (b) apply the “debate among experts” procedure in accordance with sub-rule (4).

(4) Where the “debate among experts” procedure is applied, each of two or more contradicting experts shall be sworn in order to testify at the same time. When sworn, each expert, in such order as the trial Judge shall determine, and without being examined by, or by counsel for, any party, shall give an outline of the evidence that is agreed between or among them. The experts shall then, in such order as the trial Judge shall determine, present the evidence on which they are not agreed the one with the other or others. Following such presentation, the experts may, subject to the directions of the trial Judge in that regard, be required to debate the points which are not agreed between or among them, the one with the other or others.

(5) When the “debate among experts” in accordance with sub-rule (4) is complete, examination in chief by counsel, if deemed necessary by the trial Judge, and cross examination by counsel on such matters as the Judge directs, or if the Judge so directs, general cross examination shall be allowed, as may re-examination.”

EXPLANATORY NOTE

*(This note is not part of the instrument and does not purport to be a legal interpretation.)*

These rules amend Orders 20, 21, 31, 36 and 39 of the Rules of the Superior Courts to regulate, in respect of the proceedings types specified therein, the procedure for the conduct of the trial and the adducing of expert evidence.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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