



STATUTORY INSTRUMENTS.

S.I. No. 11 of 2018



CIRCUIT COURT RULES (MEDIATION) 2018

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We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961), section 27 of the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the annexed Rules of Court.

Dated this 2nd day of January 2018.

(Signed): Raymond Groarke

(Chairman of the Circuit Court Rules Committee)

Jacqueline Linnane
Fiona Duffy Coady
Mairead Ahern
Noel Rubotham

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

Dated this 12th day of January 2018.

Signed: CHARLES FLANAGAN,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 19th January, 2018.*

S.I. No. 11 of 2018

CIRCUIT COURT RULES (MEDIATION) 2018

1. (1) These Rules, which may be cited as the Circuit Court Rules (Mediation) 2018, shall come into operation on the 22nd day of January 2018.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2018.

(3) The Circuit Court Rules 2001 to 2018 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2018.

2. The Circuit Court Rules are amended:

(i) by the insertion in rule 9 of Order 5A immediately following sub-rule (4) of the following sub-rule:

“(5) The Court may give a direction under section 15 of the Act of its own motion on any occasion on which the personal injuries action is before the Court.”;

(ii) by the substitution for rule 7 of Order 19A of the following rule:

“7. (1) The County Registrar at a case progression hearing, may on the application of any of the parties on notice or of his own motion, when he considers it appropriate and having regard to all the circumstances of the case, order that the proceedings or any issue therein be adjourned for such time, ordinarily not exceeding 28 days, as he considers appropriate and invite the parties to use conciliation, arbitration or another dispute resolution process, not including mediation, (each of which process is referred to in this sub-rule as “another ADR process”) to settle or determine the proceedings or issue.

(2) Where the parties decide to take a step referred to in sub-rule (1)—

(a) the County Registrar may extend the time for compliance by any party with any provision of these Rules;

(b) the Judge may extend the time for compliance by any party with any order made by the Judge in the proceedings, and

(c) the County Registrar may make further or other orders or give directions to facilitate the effective use of another ADR process.

(3) Where an order has been made under sub-rule (1)—

(a) the County Registrar may list the proceedings from time to time for a report as to the extent of progress made in the use of another ADR process;

(b) any party may, on notice to the other party, apply for the order to be discharged.”;

(iii) by the insertion immediately following Order 33 of the Order set out in the Schedule hereto, and

(iv) by the insertion in rule 1 of Order 66 immediately following sub-rule (4) of the following sub-rule:

“(5) Notwithstanding sub-rule (1), the Court

(i) in considering the awarding of the costs of any proceeding in the Court in which the parties have been invited by the Court to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings in accordance with section 16(1) of the Mediation Act 2017, may, where it considers it just, have regard to the matters set out in section 21 of that Act,

(ii) in considering the awarding of the costs of any proceeding in the Court may, where it considers it just, have regard to the refusal or failure without good reason of any party to participate in another ADR process referred to in Order 19A, rule 7, where an order has been made in the proceedings under Order 19A, rule 7.”.

SCHEDULE

“Order 33A**Mediation and other Alternative Dispute Resolution processes**

I. Definitions

1. In this Order:

the “2017 Act” means the Mediation Act 2017 (No. 27 of 2017);

each of the expressions “mediation”, “mediation settlement” and “mediator” has the same meaning as in section 2 of the 2017 Act;

“another ADR process” means arbitration, conciliation or such other dispute resolution process as may be approved by the Court, but does not include mediation.

II. Mediation

2. An application by a party under section 16(1) of the 2017 Act shall be by notice of motion, on notice to the other party or parties and shall be made within the period mentioned in section 16(4) of the 2017 Act. An application under section 16(4) of the 2017 Act to dispense with the requirement for an affidavit may be made ex parte.

3. (1) The Court may issue an invitation to consider mediation mentioned in section 16(1) of the 2017 Act of its own motion in any civil proceedings to which the 2017 Act applies, on any occasion on which such proceedings are before the Court and where, following an invitation by the Court, the parties decide to engage in mediation, the Court may, having heard the parties, make such orders in accordance with section 16(2) of the 2017 Act as it considers appropriate.

(2) An application by a party to civil proceedings under section 19(1) of the 2017 Act for an order adjourning the proceedings shall be by notice of motion, on notice to the other party or parties, but need not be grounded upon any affidavit.

4. If all of the parties to civil proceedings (including any third parties) agree at a mediation on the terms of an order to be made, including an order for the final disposition of the proceedings, the Court may make the order.

5. (1) An application under section 11(3) of the 2017 Act to enforce the terms of a mediation settlement shall:

- (a) where the mediation settlement concerns proceedings pending before the Court, be by notice of motion, or

- (b) where there are no proceedings pending before the Court concerning the subject matter of the mediation settlement, be by originating notice of motion,

in either case grounded upon an affidavit sworn by or on behalf of the moving party which shall exhibit and verify the mediation settlement.

(2) Copies of the originating notice of motion or notice of motion, grounding affidavit and any exhibits shall be served on each other party to the mediation settlement and filed not later than 14 days before the date fixed for the hearing of the application.

(3) Each other party to the mediation settlement may serve and file a replying affidavit not later than seven days before the date fixed for the hearing of the application.

6. (1) A mediator's report required by section 17 of the 2017 Act shall be entitled as in the proceedings to which it relates and shall be submitted to the Court by the filing by the mediator of an affidavit verifying and exhibiting the report.

(2) An application under section 17(2) of the 2017 Act for a direction to dispense with the requirement that a copy of the report be given to the parties at least seven days prior to its submission to the Court may be made ex parte.

7. Every statutory declaration required by section 14(2) or, as the case may be, section 15(2) of the 2017 Act shall be filed in the Office and a copy served on the defendant.

8. Notwithstanding any other provision of these Rules, if proceedings are referred to mediation, the time for taking any step in the proceedings under any of those Rules shall, unless the Court otherwise orders, be calculated as if time did not run during the period of any adjournment to facilitate the mediation.

III. Other ADR processes

9. (1) The Court, on the application of any of the parties or of its own motion, may, when it considers it appropriate and having regard to all the circumstances of the case, order that proceedings or any issue therein be adjourned for such time as the Court considers just and convenient and—

- (i) invite the parties to use another ADR process to settle or determine the proceedings or issue, or
- (ii) where the parties consent, refer the proceedings or issue to such process,

and may, for the purposes of such invitation or reference, invite the parties to attend such information session on the use of another ADR process, if any, as the Court may specify.

(2) Where the parties decide to use another ADR process, the Court may make an order extending the time for compliance by any party with any provision of these Rules or any order of the Court in the proceedings, and may make such further or other orders or give such directions as the Court considers will facilitate the effective use of that process.

10. An application by a party for an order under rule 9 shall be by notice of motion, on notice to the opposing party or parties, or without such motion at any other time when the proceedings are before the Court.

11. Save where the Court for special reason to be recited in the Court's order allows, an application for an order under rule 9 shall not be made later than 28 days before the date on which the proceedings are first listed for hearing.

12. Where the Court has adjourned proceedings to enable the parties to consider using mediation or another ADR process,

- (a) the Court may list the proceedings from time to time for a report as to the extent of progress made in the mediation or other ADR process;
- (b) any party may, on notice to the other party, apply for any order made under rule 9 or any consequential order made or direction given to facilitate the use of mediation or another ADR process to be varied or discharged.”

EXPLANATORY NOTE:

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

These rules amend Orders 5A, 19A, 66 and insert Order 33A to facilitate the operation of the Mediation Act, 2017.

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