



STATUTORY INSTRUMENTS.

S.I. No. 9 of 2018



DISTRICT COURT (MEDIATION) RULES 2018

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The District Court Rules Committee, in exercise of the powers conferred on them by section 91 of the Courts of Justice Act 1924, section 72 of the Courts of Justice Act 1936, section 34 of the Courts (Supplemental Provisions) Act 1961, section 24 of the Interpretation Act 2005, and of all other powers enabling them in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the following rules of court.

Dated this 2nd day of January 2018.

Rosemary Horgan Chairperson
Brian Sheridan
Conal Gibbons
Shane McCarthy
Riobard Pierse
Noel A Doherty
Michelle Johnston

I concur in the making of the following rules of court.

Dated this 12th day of January 2018.

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. 9 of 2018

DISTRICT COURT (MEDIATION) RULES 2018

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

(2) These Rules shall be construed together with the District Court Rules 1997 (S.I. No. 93 of 1997) and all other District Court Rules.

(3) The District Court Rules as amended by these Rules may be cited as the District Court Rules 1997 to 2018.

2. The District Court Rules 1997 (S.I. No. 93 of 1997) are amended:

(i) by the insertion immediately following rule 5 of Order 39 of the following rule:

“6 Statutory declaration required by section 14(2) or 15(2) of Mediation Act 2017
6. The statutory declaration required by section 14(2) or 15(2) of Mediation Act 2017 may be in the Form 39. 03, Schedule C.”;

(ii) by the insertion in rule 10 of Order 40A immediately following sub-rule (3) of the following sub-rule:

“(4) The Court may give a direction under section 15 of the 2004 Act of its own motion on any occasion on which the personal injuries action is before the Court.”;

(iii) by the substitution for Order 49B of the Order set out in Schedule 1;

(iv) by the substitution for rule 1 of Order 53 of the following rule:

“1 Costs in general to be in the discretion of Court
1. (1) Save as otherwise provided by statute or by these Rules, the granting or withholding of the costs of any party to civil proceedings or other proceedings in the Court in which by law the Court may award costs are in the discretion of the Court.

(2) Notwithstanding sub-rule (1), the Court

(i) in considering the awarding of the costs in proceedings 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 in proceedings 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 49B, rule 1, where an order has been made in the proceedings under Order 49B, rule 7.”, and

(v) by the substitution for rule 9 of Order 58 of the following rule:

“9. (1) A notice or court order required by this Order to be served shall be accompanied in the case of a notice of proceedings under section 6A (inserted by the Act of 1997) of the Act, section 11 of the Act or section 11B (inserted by the Act of 1997) of the Act, in which a solicitor is acting for the applicant, by a statutory declaration of the solicitor indicating, if it be the case, that the solicitor has complied with subsection (2) of section 20 of the Act of 1964 (as inserted by section 11 of the Act of 1997) in relation to the matter, and may be served upon the person to whom it is directed in accordance with the provisions of Order 41 at least 14 days or, in the case of proceedings certified as urgent under rule 2(2), at least two days, before the date of the sitting of the Court to which it is returnable.

(2) Save where service has been affected by the Clerk, the original of every such notice or order served shall, accompanied, in appropriate cases, by a copy of the statutory declaration described in rule 9(1), together with a statutory declaration as to service thereof, be lodged with the Clerk at least two days before the date of the said sitting.”

3. (1) The form numbered 39.03, in Schedule 2 shall be added to Schedule C to the District Court Rules 1997 (S.I. No. 93 of 1997) immediately following form 39.02.

(2) The form numbered 49B.01, in Schedule 2 shall be added to Schedule C to the District Court Rules 1997 (S.I. No. 93 of 1997) immediately following form 49.09.

SCHEDULE 1

“Order 49B

Mediation and other Alternative Dispute Resolution

1 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 conciliation or another dispute resolution process approved by the Court, but does not include mediation or arbitration.

2 Invitation to mediate; application for adjournment to facilitate mediation

2. (1) The Court may, in civil proceedings to which the 2017 Act applies, in accordance with section 16(1) of the 2017 Act, on the application of any of the parties or of its own motion, where it considers it appropriate having regard to all the circumstances of the case:

- (a) invite the parties to consider mediation as a means of attempting to resolve the dispute the subject of the proceedings, and
- (b) provide the parties to the proceedings with information about the benefits of mediation to settle the dispute the subject of the proceedings.

(2) Where, following an invitation by the Court, the parties decide to engage in mediation, the Court may, in accordance with section 16(2) of the 2017 Act—

- (a) make an order adjourning the proceedings to such date as the Court considers just and convenient in all the circumstances,
- (b) make an order extending the time for compliance by a party with any relevant provision of these Rules or with any order of the Court in the proceedings, or
- (c) make such other order or give such direction as the Court considers necessary to facilitate the effective use of mediation.

(3) An application by a party to civil proceedings under section 19(1) of the 2017 Act for an order adjourning the proceedings must be made by motion to the Court on notice to the other party or parties in accordance with Order 44, but need not be grounded on any affidavit.

3 Application for invitation to mediate

3. An application by a party under section 16(1) of the 2017 Act must be made by motion to the Court on notice to the other party or parties in accordance with Order 44 within the period mentioned in section 16(4) of the 2017 Act. An application by such a party under section 16(4) of the 2017 Act to dispense with the requirement for an affidavit may be made ex parte at any sitting of the Court in the Court district concerned.

4 Orders by consent

4. If all the parties to a proceeding (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 a proceeding, the Court may make the order.

5 Proceedings to enforce mediation settlement

5. (1) An application under section 11(3) of the 2017 Act to enforce the terms of a mediation settlement must be made by notice of application in the Form 49B.01, Schedule C grounded on an affidavit sworn by or on behalf of the moving party which must exhibit and verify the mediation settlement.

(2) Copies of the notice of application, grounding affidavit and any exhibits must be served, in accordance with Order 41, on each other party to the mediation settlement not later than 14 days before the date fixed for the hearing of the application.

(3) A statutory declaration as to the service of the notice of application on each respondent must be lodged with the Clerk not later than seven days before the return date.

6 Mediator's report to Court

6. (1) A mediator's report required by section 17 of the Act must be entitled as in the proceedings to which it relates and must be submitted to the Court by the lodgment by the mediator with the Clerk 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 at any sitting of the Court in the Court district concerned.

7 Adjournment to facilitate other ADR process

7. (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 such other 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.

8 Application for adjournment to facilitate other ADR process

8. An application by a party for an order under rule 7 may be made by motion to the Court on notice to the opposing party or parties, or may be made without such motion at any other time when the proceedings are before the Court, including at a case management hearing.

9 Orders by consent

9. If all the parties to a proceeding (including any third parties) agree at an other ADR process on the terms of an order to be made, including an order for the final disposition of a proceeding, the Court may make the order.

10 Extension of time limits

10. Despite any other provision of these Rules, if a proceeding is referred to mediation or an other ADR process, the time for taking any step in a proceeding under any of those Rules must, unless the Court otherwise orders, be calculated as if time did not run during the period of any adjournment to facilitate the mediation or other ADR process.”

SCHEDULE 2

39.03

Declaration as to compliance with section *14 *15 of the Mediation Act 2017

Schedule C
O.39,r.6(2)

District Court Area of

District No.

Record number

Between

.....Claimant

..... Respondent

STATUTORY DECLARATION AS TO COMPLIANCE WITH
SECTION *14 *15 OF THE MEDIATION ACT 2017

I, of , *practising solicitor *practising barrister, aged eighteen years and upwards, do solemnly and sincerely declare that:

1. I act on behalf of of , the *claimant in the above-named proposed proceedings (in this declaration referred to as my “client”).
2. I have advised my client to consider mediation as a means of attempting to resolve the dispute the subject of the proposed proceedings.
3. I have provided my client with information in respect of mediation services, including the names and addresses of persons who provide mediation services.
4. I have provided my client with information about—
 - (i) the advantages of resolving the dispute otherwise than by way of the proposed proceedings, and
 - (ii) the benefits of mediation.
5. I have advised my client that mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of my client and/or their children is at risk.
6. I have informed my client of the matters referred to in sections 10, 11 and 14(2) and (3) of the Mediation Act 2017.

I make this solemn declaration conscientiously believing the same to be true for the purposes of section *14 *15 of the Mediation Act 2017 and by virtue of the Statutory Declarations Act 1938.

Signed:.....

Declared before me [name in capitals] a *(Judge of the District Court) *(commissioner for oaths/practising solicitor) *(peace commissioner) *(notary public) by the said.....

*[who is personally known to me]

*[who is identified to me by who is personally known to me]

*[whose identity has been established to me before the taking of this Declaration by the production to me of

†passport no..... issued on the..... day of by the authorities of which is an authority recognised by the Irish Government,

†national identity card no..... issued on the..... day of by the authorities of which is an EU Member State, the Swiss Confederation or a Contracting Party to the EEA Agreement,

†Aliens Passport no. (..... issued on the..... day of..... by the authorities of which is an authority recognised by the Irish Government,

†refugee travel document no..... issued on the..... day of..... by the Minister for Justice and Equality,

† travel document (other than refugee travel document) issued on the..... day of by the Minister for Justice and Equality,]

at this..... day of 20.....

Signed:

*Judge of the District Court *Commissioner for Oaths / *Practising Solicitor / *Peace Commissioner / *Notary Public

This statutory declaration has been filed with the District Court Clerk at on the day of 20.....

*Delete where inapplicable

†Where relevant, provide details of the document by which identity has been established and delete the remaining alternatives.

Notice of application to enforce mediation settlement

Schedule C
O.49B, r. 5

District Court Area of

District No.

Record number:

†Between

.....Claimant

..... Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the above-named claimant will apply to the District Court sitting at on the..... day of 20.... at..... a.m./p.m. (the “return date”) for:

(1) An order under section 11(3) of the Mediation Act 2017 for the enforcement of the terms of a mediation settlement made on the..... day of 20...., as between the above-named claimant and the above named respondent **(or as the case may be)* which is enforceable between the said parties,

[(2) insert any other order(s) sought, e.g. costs]

Which application is grounded upon the affidavit of sworn on the..... day of 20...., which exhibits the said mediation settlement.

Signed:

**(Solicitor for the) claimant*

To: District Court Clerk at

And: **(Solicitor for the) respondent*

of

This notice of application has been filed with the District Court Clerk at and issued to the above return date on the..... day of 20....

**delete where inapplicable*

EXPLANATORY NOTE:

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

These rules amend Orders 39, 40A, 53, 58, substitute Order 49B, and insert of Forms 39.03 and 49B.01 to facilitate the operation of the Mediation Act, 2017.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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