



STATUTORY INSTRUMENTS.

S.I. No. 43 of 2020



RULES OF THE SUPERIOR COURTS (CORONERS) 2020

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, 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, the Coroners Act 1962, section and section 62(6), and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 16th day of January, 2020.

Frank Clarke (Chairperson)

George Birmingham

Peter Kelly

Elizabeth Dunne

Brian R. Murray

Deirdre Murphy

Teresa Pilkington

Stuart Gilhooly

Liam Kennedy

James Finn

John Mahon

I concur in the making of the foregoing rules

Dated this 6 day of February 2020

CHARLES FLANAGAN

Minister for Justice and Equality

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 14th February, 2020.*

S.I. No. 43 of 2020

RULES OF THE SUPERIOR COURTS (CORONERS) 2020

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Coroners) 2020, shall come into operation on the 17th day of February 2020.

(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 2020.

2. The Rules of the Superior Courts are amended by the insertion immediately following Order 138 of the Order set out in the Schedule.

Schedule
“Order 139
Applications under the Coroners Act 1962

Definitions

1. In this Order:

the “1962 Act” means the Coroners Act 1962; the “2019 Act” means the Coroners (Amendment) Act 2019.

Title of proceedings

2. An originating notice of motion issued in accordance with this Order shall be entitled:

“The High Court

In the Matter of the Coroners Act 1962

On the Application of AB, Coroner for the District of...

and, where applicable

Between

AB, Coroner for the District of.....Applicant

and

CD,.....Respondent]”.

Applications under section 33(1) of the 1962 Act

3. (1) An application by a coroner for an order under section 33D(6) of the 1962 Act (inserted by section 21 of the 2019 Act) shall be made by motion on such notice as the applicant considers reasonably practicable to the person to whom a direction was given under section 33D(1) of the 1962 Act (in this rule, the “respondent”) and, subject to sub-rule (2), grounded upon an affidavit, The Court may adjourn the application so as to give the respondent a sufficient opportunity to be heard on the application.

(2) The originating notice of motion shall:

(a) specify the direction or directions sought, and

(b) indicate whether the Court is requested under section 33D(7) of the 1962 Act (inserted by section 21 of the 2019 Act) to hear the application otherwise than in public and if so, state the reasons for such request.

(3) Where the Court is satisfied that the urgency of the case so requires, it may direct or allow the application to which this rule applies to be heard on oral evidence.

(4) Where an affidavit is delivered by or on behalf of the applicant, the affidavit shall:

- (a) specify the capacity in which the respondent has been directed to give medical records relating to the deceased person to the registered medical practitioner making the examination;
- (b) exhibit a copy of the direction or of the confirmation of the direction;
- (c) set out any reasons given to the applicant by the respondent for failing or refusing to comply with the direction;
- (d) set out any facts and circumstances relevant to the consideration of the application by the Court, in particular such facts and circumstances as are relevant for the purposes of section 33 D(8) of the 1962 Act and, where necessary, the basis of the deponent's belief as to the existence of such facts or circumstances;
- (e) verify the facts grounding the reasons for any request to the Court under section 33D(7) of the 1962 Act to hear the application otherwise than in public.

(5) Where the applicant has delivered an affidavit, the respondent may, but is not obliged to, deliver a replying affidavit, which shall indicate the parts of the applicant's affidavit which the respondent accepts and which the respondent does not accept, and sets out the reasons why the respondent has failed or refused to comply with the direction and any facts or circumstances supporting such reasons and, where necessary, the basis of the deponent's belief as to the existence of such facts or circumstances.

(6) The provisions of Order 52, rule 6 shall not apply to an application under this rule.

Applications under section 62 of the 1962 Act

4.(1) A coroner may apply to the Court under section 62 of the 1962 Act (inserted by section 36 of the 2019 Act) for directions on a point of law regarding the performance of his or her functions under the 1962 Act in relation to the death of any person of his or her own motion or arising from a request in that regard by a person who seems to the coroner to have a proper interest in the circumstances in the point of law arising.

(2) Where a coroner is minded to apply to the Court under section 62 of the 1962 Act (inserted by section 36 of the 2019 Act) for directions, he or she shall:

- (a) notify those persons he or she considers to be properly interested in the inquiry concerned of the question or questions of law proposed to be referred and any directions proposed to be sought;
- (b) afford those persons an opportunity to provide written submissions to him or her, within a period specified in the notification, not being greater than two months from the date of such notification, on the proposal to refer such question or questions and any proposed directions;
- (c) having considered any such submissions received, issue the application to the Court not later than four months after the date of the notification, and

(d) adjourn the inquest pending the directions of the Court.

(3) The application shall be made by originating notice of motion. The originating notice of motion shall:

- (a) state as concisely as is reasonably possible the point of law arising;
- (b) set out any proposed or suggested directions, and
- (c) indicate whether the Court is requested under section 62(3) of the 2019 Act to hear the application otherwise than in public and if so, the reasons for such request.

(4) The coroner may, but is not obliged to, name as respondent or respondents to the application a person or persons seeming to the coroner to have a sufficient interest in the circumstances in the point of law arising.

(5) The originating notice of motion shall be grounded upon an affidavit sworn by or on behalf of or at the direction of the applicant which shall:

- (a) set out succinctly the relevant facts or circumstances giving rise to the point of law arising as found by the coroner and any relevant inferences or conclusions drawn by the coroner, and the reasons for any such inferences or conclusions;
- (b) explain succinctly the interest of any respondent named in the originating notice of motion;
- (c) exhibit any submissions received in accordance with sub-rule (2)(b);
- (d) exhibit copies of any further correspondence or documents relevant to the point of law arising in respect of which directions are sought; subject to any direction the Court may give, such copies shall be incorporated in a single exhibit, in which event they shall be indexed and numbered sequentially in chronological order;
- (e) where the Court is requested under section 62(3) of the 2019 Act to hear the application otherwise than in public, set out the facts and circumstances supporting such request as are relevant for the purposes of section 62(3) of the 2019 Act and, where necessary, the basis of the deponent's belief as to the existence of such facts or circumstances.

(6) Where the applicant contends that particular directions are appropriate to be made on the application, the applicant shall additionally file in the Central Office when issuing the originating notice of motion a statement specifying the directions for which the applicant contends and concisely setting out the supporting reasons, if any facts are relied on therein, the affidavit referred to in sub-rule (5) shall verify such facts.

(7) Not less than 21 days' notice of the application shall be given.

(8) Each respondent shall be served with copies of the originating notice of motion, of any statement filed under sub-rule (6), and of the grounding affidavit and any exhibits thereto.

(9) Any respondent intending to be heard on the application shall file in the Central Office a statement specifying the directions (if any) which the

respondent contends are appropriate to be made on the application and concisely setting out the supporting reasons, and an affidavit:

- (a) verifying any facts relied on in the respondent's statement, and
- (b) setting out the respondent's interest in the circumstances in the point of law arising.

(10) Copies of any statement and affidavit filed by a respondent (and any exhibits to any such affidavit) shall be served upon the applicant and upon every other respondent before the return date of the originating notice of motion.

(11) The applicant shall be at liberty to file a further affidavit replying to any matter in an affidavit of a respondent, in which event a copy of such affidavit shall be served upon each respondent within [seven] days of the service upon him of the respondent's statement and verifying affidavit.

(12) An affidavit giving the names and addresses of, and the places and dates of service on, any and all persons who have been served with the originating notice of motion shall be filed by the applicant before the motion is heard.

(13) On the return date of the originating notice of motion (or on any adjournment from such date), the Court shall give directions and make orders for the conduct of the proceedings on the application as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings which, where appropriate, may include:

- (a) directions as to the service of notice of the application on any person or on any other person (including, without limitation, the Attorney General), including mode of service and the time allowed for such service (and the Court may for that purpose adjourn the hearing of the motion or further hearing of such application to a date specified);
- (b) directions as to the filing and delivery of any further affidavits;
- (c) orders fixing time limits;
- (d) directions as to the furnishing by the parties to the Court and delivery of written submissions;
- (e) directions as to the giving of notice in advance of the hearing to any person other than a party to the proceedings on the application who the Court considers should be afforded an opportunity to be heard on the hearing of the application.

(14) Save where the Court otherwise directs or permits, any evidence in proceedings to which this rule applies shall be given on affidavit.

Applications under section 37(2A) or section 38(2) of the 1962 Act

4. Applications to the Court:

- (a) under section 37(2A) of the 1962 Act (inserted by section 23 of the 2019 Act) to order a person to comply with a summons, or

(b) under section 38(2) of the 1962 Act (substituted by section 24 of the 2019 Act) to order a person to comply with a direction, shall be commenced and conducted by originating notice of motion in accordance with Order 84B.”

EXPLANATORY NOTE

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

The Rules take account of section 21 and section 36 of the Coroners (Amendment) Act 2019 which amends the Coroners Act 1962 (the Principal Act).

Section 21 of the 2019 Act inserts into the Principal Act a new section 33D. That section provides that where a coroner has directed that a post mortem examination be made, he may direct a person in charge of a health institution in which the deceased received treatment immediately before their death to provide records to the pathologist who is conducting the post mortem, within such period as the coroner directs.

Section 36 of the 2019 Act inserts into the Principal Act a new section 62, providing for a new consultative case stated procedure, allowing a coroner to apply to the High Court for directions on a point of law regarding performance of the coroner's functions under the Coroners Acts.

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