



STATUTORY INSTRUMENTS.

**S.I. No. 486 of 2009**



CIRCUIT COURT RULES (DEFAMATION) 2009

**(Prn. A9/1771)**

CIRCUIT COURT RULES (DEFAMATION) 2009

We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, and section 12 of the Courts of Justice Act 1947, 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) and 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, Equality and Law Reform, make the annexed Rules of Court.

Dated this 10th day of November 2009.

(Signed): Matthew Deery  
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Tony Hunt

Shane Murphy

Gerard J. Doherty

Joe Deane

Noel Rubotham

Susan Ryan

Patricia Casey

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

Dated this 2nd day of December 2009.

Signed: DERMOT AHERN,

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM.

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 11th December, 2009.*

S.I. No. 486 of 2009

CIRCUIT COURT RULES (DEFAMATION) 2009

1. These Rules, which may be cited as the Circuit Court Rules (Defamation) 2009, shall come into operation on the 1st day of January 2010.
2. These Rules shall be construed together with the Circuit Court Rules 2001 to 2009.
3. The Circuit Court Rules are amended by:
  - (i) the insertion immediately following Order 5B of the following:

“Order 5C

Defamation Act 2009

*Definitions*

1. In this Order:

“the Act” means the Defamation Act 2009 and any reference in this Order to a section shall, unless the context otherwise requires, be deemed to be a reference to a section of the Act;

“defamation action” has the same meaning as in section 2.

*Statement as to offer to make amends*

2. In a defamation action, the plaintiff shall include in the indorsement of claim in his Civil Bill a statement that no offer to make amends under section 22 of the Defamation Act 2009 by a person who has published the statement has been accepted or that such an offer to make amends has been accepted and, in that case, the indorsement shall include particulars of the order made under paragraph (d) of section 23(1) permitting the bringing of the proceeding.

*Verifying affidavit under section 8*

3. (1) A pleading requiring, under section 8, to be verified on affidavit shall be in the Form 6A(iii) of the Schedule of Forms, with such modifications as may be necessary. The affidavit, if not separate to the pleading concerned, may be endorsed upon that pleading.

(2) A copy of the affidavit of verification shall be delivered to the party to whom the pleading is to be delivered. Where the affidavit is endorsed on the pleading, the copy of the affidavit shall be delivered within the time prescribed by these Rules for delivery of that pleading. Otherwise, the affidavit shall be delivered within the time prescribed by section 8(5) for filing of the affidavit in court.

(3) An affidavit of verification shall be lodged in court, as required by section 8(5), by filing the same in the Office.

(4) Where the copy of the affidavit of verification is delivered subsequent to delivery of the pleading, the time prescribed by these Rules for delivery of any pleading in reply shall run from the date of delivery of such copy.

*Applications under sections 11, 14, 33 and 34, and under section 11(2)(c) of the Statute of Limitations 1957*

4. (1) An application to the Court for leave under section 11(2) may be brought by originating motion ex parte, grounded upon an affidavit sworn by or on behalf of the moving party. The Court may, on the hearing of such an application, give such directions, if any, as to the giving of notice of the application or otherwise, as it considers just and convenient.

(2) The following applications in a defamation action shall be made by motion to the Court on notice to the opposing party or parties, grounded upon an affidavit sworn by or on behalf of the moving party:

- (i) an application for a ruling under section 14;
- (ii) an application for an interlocutory order under section 33;
- (iii) an application for summary relief under section 34(1), and
- (iv) an application to dismiss the defamation action under section 34(2).

(3) Where a defamation action has not been brought before the Court in respect of the statement in question, an application to the Court for a direction under section 11(2)(c) of the Statute of Limitations 1957 shall be brought by originating notice of motion, in which the intending plaintiff shall be named as applicant and the intended defendant as respondent. The application shall be grounded upon an affidavit sworn by or on behalf of the moving party.

*Applications under section 23 where an offer to make amends is accepted*

5. (1) Where a defamation action has been brought before the Court in respect of the statement in question and an offer to make amends under section 22 is accepted, an application:

- (i) under paragraph (a) of section 23(1) for an order directing the party who made the offer to take the measures concerned, or
- (ii) under paragraph (b) of section 23(1) for the leave of the Court to make a correction and apology by means of a statement before the Court in such terms as may be approved by

the Court and to give an undertaking as to the manner of their publication

shall be made by motion on notice to the opposing party, and shall be grounded upon an affidavit sworn by or on behalf of the moving party.

(2) Where a defamation action has been brought before the Court in respect of the statement in question, an offer to make amends under section 22 is accepted, and the parties do not agree as to the damages or costs that should be paid by the person who made the offer, the plaintiff shall apply by motion on notice to the defendant for the Court's directions (which may, without limitation, include directions as to the terms upon which any pleadings may be amended) for the conduct of an application for a determination under paragraph (c) of section 23(1).

6. Where an offer to make amends under section 22 is accepted, an application to the Court under paragraph (d) of section 23(1) to bring or to proceed with a defamation action against another person in respect of the statement to which the offer to make amends applies shall:

- (i) where a defamation action has been brought before the Court in respect of the statement in question against that other person, be made by motion in that defamation action on notice to the defendant, grounded upon an affidavit sworn by or on behalf of the moving party;
- (ii) where a defamation action has not been brought before the Court in respect of the statement in question against that other person, be made by originating notice of motion entitled in the matter of paragraph (d) of section 23(1) and in which the person to whom the offer was made shall be named as applicant and the other person referred to in paragraph (d) of section 23(1) shall be named as respondent, which motion shall be grounded upon an affidavit sworn by or on behalf of the moving party.

7. A grounding affidavit referred to in rules 5 and 6 shall:

- (i) identify with sufficient precision, or exhibit a copy or transcript of, the statement to which the offer of amends relates;
- (ii) exhibit a copy of the offer of amends, and
- (iii) give particulars of any agreement asserted to have been made arising from the acceptance of the offer of amends.

8. In addition to any other order which may be made on the hearing of an originating notice of motion under sub-rule (3) of rule 4 or paragraph (ii) of rule 6, the Court may, at such hearing:

- (a) make such orders or give such directions as seem appropriate for the delivery of further affidavits and for the determination of the application;
- (b) direct that the application (or any undetermined part of the application) be determined by way of plenary hearing, where it appears to the Court that the subject matter of the application is likely to involve a substantial dispute of fact or it is otherwise necessary or desirable in the interests of justice (and the Court may for that purpose make orders and give directions in relation to the exchange of pleadings or points of claim or defence between the parties).

*Notification of evidence of apology under section 24*

9. Where a defendant in a defamation action intends to give evidence to which section 24(1) applies, he may notify the plaintiff of such intention in accordance with section 24(2) of the Act by including a statement in his defence of such intention.

*Applications for declaratory orders under section 28*

10. (1) A motion referred to in section 28(5) shall be an originating notice of motion entitled in the matter of section 28 and in which the person who claims to be the subject of a statement that he or she alleges is defamatory shall be named as applicant and the person against whom relief is sought shall be named as respondent.

(2) A grounding affidavit referred to in section 28(5) shall:

- (a) set out the circumstances in which it is claimed that the alleged defamatory statement was made, including the time and method of publication;
- (b) set out the grounds on which it is claimed that the statement is defamatory of the applicant;
- (c) contain an averment that the respondent has no defence to the application;
- (d) contain an averment that the applicant requested the respondent to make and publish an apology, correction or retraction (as the case may be) in relation to the alleged defamatory statement and specify when and the manner in which the applicant requested the respondent to make and publish such apology, correction or retraction in relation to the alleged defamatory statement (and if in writing, exhibit a copy of such request and proof of delivery of same), and
- (e) produce evidence of the response (if any) by the respondent to the request (and if in writing, exhibit a copy of such response).

*Particulars of evidence in mitigation to be given*

11. In a defamation action, in which the defendant does not by his defence assert the truth of the statement complained of in accordance with section 16, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the defamatory statement was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnished particulars to the plaintiff of the matters as to which he intends giving evidence.”;

- (ii) by the insertion immediately following rule 9 of Order 15 of the following:

“9A. In an action for damages for defamation the defendant may, upon giving notice in writing to the plaintiff, pay a sum of money into court in satisfaction of the action in accordance with section 29 of the Defamation Act 2009.”,

and

- (iii) by the substitution for rule 21 of Order 66 of the following:

“21. In all defamation actions the costs shall be taxed in such manner as the County Registrar or a Judge at the hearing of the action or on appeal from taxation shall determine.”

EXPLANATORY NOTE

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

These rules insert a new Order 5C to facilitate the operation of the Defamation Act 2009.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
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