



STATUTORY INSTRUMENTS.

S.I. No. 483 of 2023



RULES OF THE SUPERIOR COURTS (SUBPOENA) 2023

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RULES OF THE SUPERIOR COURTS (SUBPOENA) 2023

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, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 20th day of July, 2023.

Donal O'Donnell (Chairperson)

David Barniville

Elizabeth Dunne

Brian R. Murray

John A. Edwards

Máire R. Whelan

Richard Humphreys

Siobhán Phelan

Grainne Larkin

Michele O'Boyle

James Finn

Mary Cummins

John Mahon

Dated this 27th day of September, 2023.

Helen McEntee

Minister for Justice

S.I. No. 483 of 2023

RULES OF THE SUPERIOR COURTS (SUBPOENA) 2023

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Subpoena) 2023, shall come into operation on the 3rd day of October 2023.

(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 2023.

2. These Rules shall apply to any request or application for a subpoena made after the date on which these Rules enter into force, including any such request or application made in proceedings which were commenced before these rules entered into force.

3. The Rules of the Superior Courts are amended:

(i) by the substitution for rules 25 to 30 inclusive of Order 39 of the following rules respectively:

“25. An order directing an intended witness in proceedings before the Court to attend before the Court or before a person authorised for that purpose by the Court to give oral evidence on oath (subpoena ad testificandum) may be obtained by filing in the Central Office a praecipe or request for that purpose, in the Form No 1 in Appendix D, Part I, and containing the name or firm and the registered place of business of the solicitor or party so requesting and a brief description of the matters concerning which the intended witness is required to give oral evidence.

26. A party seeking an order directing an intended witness in proceedings before the Court to attend before the Court or before a person authorised for that purpose by the Court to give oral evidence on oath and to produce any documents in the possession of the witness (subpoena duces tecum) shall apply by motion *ex parte* grounded on an affidavit setting out:

- (i) a brief description of the matters concerning which the moving party requires the intended witness to give oral evidence;
- (ii) a brief description of the documents the moving party requires the intended witness to produce, and
- (iii) the steps (if any) previously taken by the moving party to procure the production of the documents concerned, by discovery (including non-party discovery) or otherwise.

27. An order may be made under rule 26 requiring the production of documents where the production by the intended witness of any documents specified in the order is necessary for the fair disposal of the proceedings and could not effectively have been, or be, achieved by other practicable means.

28. (1) A subpoena issued under this Order or Order 79 shall be in one of the Forms Nos 2 to 5 in Appendix D, Part I.

(2) Unless the witness consents to shorter notice or the period of notice to the witness is abridged by order of the Court, every subpoena shall be served on the witness concerned not later than fourteen days before the first date on which the witness is required by the subpoena to attend.

(3) An application to abridge the period of notice to a witness may be made *ex parte* to the Court.

(4) Any application to set aside or discharge a subpoena shall be made by motion to the Court of the witness on notice to the party who required the attendance of that witness.

29. A subpoena for the attendance of a witness before the Master or the Examiner may issue from the Central Office upon a note from the Master or Examiner as the case may be.

30. (1) A subpoena ad testificandum may, at the request of the party applying for same, be addressed to one or several of the intended witnesses.

(2) Every subpoena duces tecum shall be addressed to one intended witness, and shall be served together with a copy of the affidavit grounding the application under rule 26 concerning that witness and any exhibits thereto.”;

- (ii) by the substitution for rule 18 of Order 61 of the following rule:

“18. A subpoena ad testificandum at the High Court on Circuit may be sued out either in the Central Office or in the office of the County Registrar of the County in which the case was heard.”;
- (iii) by the substitution for paragraph (26) of rule 1 of Order 63 of the following paragraph:

“(26) An order of subpoena duces tecum under Order 39, rule 27.”, and
- (iv) by the substitution in Appendix D, Part I for the forms numbered 1-5 of the forms set out in the Schedule bearing the like numbers respectively.

Schedule
“PART I: EVIDENCE.

No. 1.

O. 39, r. 25

PRAECIPE FOR SUBPOENA.

[*Heading as in Form No. 2*].

Seal a subpoena directed to of on behalf of the returnable
....20 ... to give oral evidence concerning [*set out a brief description of the matters
concerning which the intended witness is required to give oral evidence*]

X.Y.

Solicitor for

Dated:20...

No. 2.

O. 39, r. 25

SUBPOENA AD TESTIFICANDUM.

THE HIGH COURT.

20 No.

Between:—

Plaintiff,

and

Defendant.

Toof

You are hereby commanded to attend before at ... on the day of ,
20 .., at the hour of ... and, unless otherwise directed or permitted by the trial
judge, on each subsequent day on which the trial continues until it is concluded,
to give evidence on behalf of the concerning [*set out a brief description of
the matters concerning which the intended witness is required to give oral evidence
as given in the praecipe*]

Dated:20...

BY ORDER, &c.

Note that you may apply to the Court by motion on notice to the party who has
required your attendance if you wish to set aside this order.

No. 3.

O. 39, r. 28

SUBPOENA DUCES TECUM.

[Heading as in Form No. 2].

To of

You are hereby commanded to attend before at on ... the ... day of, 20..., at the hour of ... and unless otherwise directed or permitted by the trial judge, on each subsequent day on which the trial continues until it is concluded,

(1) to give evidence on behalf of the concerning [*set out a brief description of the matters concerning which the intended witness is required to give oral evidence as given in the praecipe*] and

(2) to bring with you and produce at the time and place aforesaid the following documents- [*insert description*]

Dated:20...

BY ORDER, &c.

Note that you may apply to the Court by motion on notice to the party who has required your attendance if you wish to set aside this order.

No. 4.

O. 39, r. 28

SUBPOENA TO A WITNESS TO BE EXAMINED TOUCHING A
TESTAMENTARY PAPER.

THE HIGH COURT.
(PROBATE).

In the estate of X.Y., deceased.

To of

You are hereby commanded to appear before at ... on the ... day of, 20..., at the hour of ... and unless otherwise directed or permitted by the trial judge, on each subsequent day on which the trial continues until it is concluded, to testify the truth according to your knowledge (or to answer to certain interrogatories to be administered to you touching a certain paper writing or script being, or purporting to be, testamentary to wit [here describe the script and give its date as accurately as possible]) of which said paper writing or script reasonable grounds have been furnished to the High Court for believing that you have knowledge.

Dated:20...

BY ORDER, &c.

No. 5.

O. 39, r. 28

SUBPOENA TO BRING INTO PROBATE OFFICE A TESTAMENTARY PAPER.

[Heading as in Form No. 4].

Toof

Whereas it appears by a certain affidavit filed in the Probate Office, sworn the ... day of 20..., and made by of, that a certain original paper writing or script being, or purporting to be, testamentary, to wit [describe the document], bearing date the ... day of, 20..., is now in your possession or under your control.

Now you are hereby commanded within eight days after service hereof on you, inclusive of the day of such service, to bring into and leave in the Probate Office the said paper writing or script, or, in case the same be not in your possession or under your control, within such eight days to file in the Probate Office an affidavit to that effect and therein to set forth what knowledge you have of and respecting the said script.

Dated:20...

BY ORDER, &c.

EXPLANATORY NOTE

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

These rules amend Order 39 and Appendix D of the Rules of the Superior Courts along with ancillary amendments to require application to the Master of the High Court for permission to issue a subpoena duces tecum.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
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