



STATUTORY INSTRUMENTS.

S.I. No. 470 of 2009



CIRCUIT COURT RULES (STATUTORY APPLICATIONS AND
APPEALS) 2009

(Prn. A9/1723)

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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, 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 13th day of October 2009.

(Signed): Matthew Deery

(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Tony Hunt

Fergal Foley

Gerard J. Doherty

Ronan Boylan

Susan Ryan

Noel Rubotham

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

Dated this 27th day of November 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 4th December, 2009.*

S.I. No. 470 of 2009

CIRCUIT COURT RULES (STATUTORY APPLICATIONS AND
APPEALS) 2009

1. These Rules, which may be cited as the Circuit Court Rules (Statutory Applications and Appeals) 2009, shall come into operation on the 25th day of December 2009.

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 in Order 15, immediately following rule 7, of the following:

“7A. A respondent in proceedings commenced by originating notice of motion pursuant to Order 64B or Order 64C, and to whom notice of such motion has been given, shall enter an Appearance to the originating notice of motion in the Form No. 5B of the Schedule of Forms. The Appearance shall be lodged with or sent by post to the County Registrar so as to reach the Office before the expiration of the time limited for appearance. A copy of the Appearance shall at the same time be sent by post to the applicant or his Solicitor. Where a respondent is given notice of such motion after the date first fixed for the hearing of the motion, he shall enter an Appearance thereto within the time fixed by the Court for that purpose. A respondent in such proceedings shall not be required to deliver a Defence and no respondent in such proceedings shall, without the leave of the Court, be entitled to be heard in such proceedings unless he has entered an Appearance.”;

(ii) the insertion in Order 27, immediately following rule 5, of the following:

“6. Where any respondent in proceedings commenced by originating notice of motion pursuant to Order 64B or Order 64C fails to enter an Appearance to the originating notice of motion (or, having failed to enter an Appearance, has not been heard by leave of the Court in accordance with Order 15, rule 7A), the Court may, on the hearing of the motion, if satisfied as to the service of notice of the motion on that respondent, grant against that respondent such of the reliefs sought in the originating notice of motion against that respondent as seem just and proper. The other provisions of this Order shall not apply to such proceedings.”;

(iii) the insertion, immediately following Order 64A, of the following:

“Order 64B
Procedure in Statutory Applications

1. (1) In this Order—

“enactment” has the same meaning as in the Interpretation Act 2005;

“relevant authority” means any agency, board, authority, commission, council, ombudsman, tribunal, or other body (not including a company formed under the Companies Acts) established by or under any enactment and authorised to exercise powers under any enactment to determine, decide, settle or make any recommendation on any dispute, complaint or issue, and includes, where the context so admits or requires, any committee, officer or member of the staff of such body who has been authorised by any enactment or by such body to exercise such powers.

“relevant application” means any of the following applications—

- (a) an application to the Court under any enactment by any person authorised by that enactment so to apply for an order directing, requiring or compelling any person to take any step or do any thing or prohibiting or restraining any person from, or directing any person to cease or refrain from, taking any step or doing any thing (hereafter in this Order, a “direction application”),
- (b) an application to the Court by a person authorised by any enactment so to apply, for an order of the Court directing, requiring or compelling any person to perform, comply with, carry out or implement, or for the enforcement of, a decision, determination, recommendation, request or settlement of any relevant authority (hereafter in this Order, an “enforcement application”) but, for the avoidance of doubt, does not include any application for the issue out of the Office of any order for execution of any such decision, determination, recommendation, or settlement which an enactment provides may be enforced or executed as, or in the like manner to, a judgment of the Court, or
- (c) any other application to the Court, required, authorised or permitted by any enactment to be brought or made in a summary manner.

(2) Where any enactment provides for or permits a relevant application to be made to the Court or to a judge of the Court

and provision for the procedure applicable is not made either by the enactment concerned or by another Order of these Rules, the procedure set out in the following rules of this Order shall apply, subject to any requirement of the relevant enactment.

(3) Where any enactment provides for an application (other than a relevant application) to be made to the Court and the Court determines that it is just and convenient that such application be so determined, the procedure set out in the following rules of this Order shall, subject to any requirement of the relevant enactment, apply to such application.

(4) Unless otherwise provided in the enactment, an application referred to in sub-rule (2) or (3) shall be brought in the County where the person or one of the persons against whom any order or other relief is sought in the application resides or carries on any trade, profession or business.

2. (1) Subject to sub-rule (3), the application shall be made by originating notice of motion (in this Order hereinafter called “the notice of motion”) in Form No. 50 in the Schedule of Forms, and not by Civil Bill.

(2) The notice of motion shall be entitled in the matter of the provision of the enactment pursuant to which the application is made. Where any order, direction or other relief is sought as against any person or persons, the notice of motion shall additionally be entitled as between the applicant and such person or persons as respondents, and shall contain the names and addresses of each respondent. The notice of motion shall specify the particular relief sought against each respondent and the particular provision or provisions of the relevant enactment authorising the granting of each such relief.

(3) Where the application is authorised by an enactment to be made *ex parte*, or where no order, direction or other relief is sought as against any person or persons, the application shall be made by originating motion (in this Order hereinafter called “the motion”) in Form No. 50A in the Schedule of Forms entitled in the matter of the provision of the enactment pursuant to which the application is made and shall additionally be entitled on the application of the applicant.

3. (1) The notice of motion (or, as the case may be, the motion) shall be grounded upon an affidavit sworn by or on behalf of the applicant which, subject to sub-rule (3), shall:

- (a) contain a description of the applicant, including particulars sufficient to explain the standing of the applicant to make the application under the relevant provision of the enactment and, where the deponent is

not the applicant, the authority of the deponent to make the affidavit on behalf of the applicant;

- (b) if the applicant is acting in any representative capacity, or relief is sought against any respondent in a representative capacity, state the capacity of the applicant or, as the case may be, the respondent;
- (c) set out the facts or circumstances which it is alleged authorise or entitle the applicant to make, or justify the applicant in making, the application and which support the granting of the relief sought; and
- (d) set out the basis of the deponent's belief as to the existence of the facts or circumstances referred to in the preceding paragraph.

(2) The affidavit shall exhibit copies of all correspondence and documents passing between the applicant and each respondent (if any), or otherwise issuing from any of them, relevant to the matter or matters in respect of which relief is 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.

(3) Notwithstanding sub-rules (1) and (2), where the application is an enforcement application, and the relevant enactment provides that the Court shall not hear the respondent, or party in default, it shall be sufficient for the grounding affidavit to:

- (a) set out the making of the decision, determination, recommendation or settlement of the relevant authority sought to be enforced;
- (b) exhibit a copy of the decision, determination, recommendation or settlement of the relevant authority (if in writing), and
- (c) contain averments as to when and by what means that decision, determination, recommendation or settlement was communicated or delivered to each respondent.

4. (1) Subject to any provision to the contrary in the relevant enactment, where the application is by notice of motion, not less than 14 days' notice of the application shall be given.

(2) Each respondent shall be served with the notice of motion and copies of the grounding affidavit and any exhibits thereto.

5. (1) A respondent wishing to be heard on the application shall enter an Appearance in accordance with Order 15, rule 7A, and deliver a copy of his Appearance to the applicant.

(2) Save where an enactment provides that the Court shall not hear a party, any respondent intending to oppose the application may file in the Office a replying affidavit setting out concisely the grounds for such opposition and verifying any facts relied on in opposing the application, and a copy of such affidavit (and any exhibits thereto) shall be served upon the applicant and upon every other respondent before the return date of the notice of motion.

(3) The applicant shall be at liberty to file a further affidavit replying to any matter verified 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 affidavit.

(4) In any case where reference is made in an affidavit to a document exhibited previously in an affidavit of any party, the document concerned shall not be further exhibited, but shall be identified by the exhibit reference used in relation to that document in the previous affidavit.

6. An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion, grounding affidavit and exhibits (if any) shall be filed by the applicant before the notice of motion is heard. If any person who ought under this Order to have been served has not been so served, the affidavit shall state that fact and the reason for it.

7. Save where the Court otherwise directs, any evidence in proceedings to which this Order relates shall be given on affidavit.

8. (1) On the return date of the notice of motion (or on any adjournment from such date), the Court shall (if it does not hear the application on that date) give directions and make orders for the conduct of the proceedings 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 other person, including mode of service and the time allowed for such service (and the Court may for that purpose adjourn the hearing of the notice of

- motion or further hearing of such application to a date specified);
- (b) directions as to the filing and delivery of any further affidavits by any party or parties;
 - (c) orders fixing time limits;
 - (d) directions as to discovery;
 - (e) directions as to the exchange of memoranda between or among the parties for the purpose of the agreeing by the parties or the fixing by the Court of any issues of fact or law to be determined in the proceedings on the application, or orders fixing such issues;
 - (f) a direction that the application be determined on oral evidence, 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);
 - (g) directions as to the furnishing by the parties to the Court and delivery of written submissions;
 - (h) directions as to the publication of notice of the hearing of the application and the giving of notice in advance of such hearing to any person other than a party to the proceedings who desires to be heard on the hearing of the application.

(2) On the return date of the notice of motion (or on any adjournment from such date), the Court may, where it deems fit, hear any application for relief of an interlocutory nature, whether in the nature of an injunction or otherwise.

Order 64C Procedure in Statutory Appeals

1. (1) In this Order, “enactment” has the same meaning as in the Interpretation Act 2005.

(2) Where any enactment provides for an appeal to be made to the Court or to a judge of the Court from a decision or determination made or direction given by a person or body (other than the District Court), authorised by any enactment to make such decision or determination or give such direction (in this Order referred to as “the relevant authority”), and provision for

the procedure applicable is not made either by the enactment concerned or by another Order, the procedure set out in this Order shall apply, subject to any requirement of the relevant enactment.

(3) Unless otherwise provided in an enactment, the appeal shall be brought in the County where the appellant or one of the appellants resides or carries on any trade, profession or business.

(4) For the avoidance of doubt, the procedure set out in this Order shall not apply to any re-hearing by a judge of the Court of an appeal determined by the Appeal Commissioners appointed under section 850 of the Taxes Consolidation Act 1997.

2. (1) The appeal shall be commenced by way of originating notice of motion (in this Order hereinafter called “the notice of appeal”) in Form No. 50B in the Schedule of Forms. The notice of appeal shall be entitled in the matter of the provision of the enactment pursuant to which the appeal is made. The notice of appeal shall name the person making the appeal as appellant and any person who the relevant enactment provides shall be a respondent to the appeal shall be named as a respondent.

(2) The notice of appeal shall contain the names and addresses of the appellant and of each respondent. The notice of appeal shall specify the relief sought, and the particular provision or provisions of the relevant enactment authorising the granting of such relief.

(3) Where the relevant enactment provides that the Court may grant relief consequential upon or in addition to determining the appeal, the notice of appeal shall state concisely the consequential or additional relief sought.

(4) Subject to any provision to the contrary in the relevant enactment, the notice of appeal shall be issued—

- (a) not later than 21 days following the giving by the relevant authority to the intending appellant of notice of the relevant authority’s decision, or
- (b) within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter.

(5) Subject to any provision to the contrary in the relevant enactment, an application to the Court referred to in paragraph (b) of sub-rule (4)—

- (a) shall, unless the Court otherwise permits, be made by motion on notice to any person who the relevant enactment provides shall be a respondent to the appeal and to any other person who the Court directs shall be given notice of such application, and
- (b) may be made after the period of 21 days referred to in paragraph (a) of that sub-rule.

3. (1) The notice of appeal shall be grounded upon an affidavit sworn by or on behalf of the appellant which shall:

- (a) contain a description of the appellant, including particulars sufficient to explain the standing of the appellant to appeal under the relevant provision of the enactment, and, where the deponent is not the appellant, the authority of the deponent to make the affidavit on behalf of the appellant;
- (b) if the appellant is acting in any representative capacity, or relief is sought against any respondent in a representative capacity, state the capacity of the appellant or, as the case may be, the respondent;
- (c) state the authority of the relevant authority to make the decision, determination or direction from which appeal is made;
- (d) state the interest of any respondent and of any other person given notice of the appeal in the decision, determination or direction from which appeal is made;
- (e) exhibit:
 - (i) a copy of any application made to the relevant authority;
 - (ii) the evidence and any other material adduced to the relevant authority, and copies of all relevant correspondence and documents passing between the appellant and the relevant authority;
 - (iii) any official record and, if relevant, any other record of the proceedings before the relevant authority;

- (iv) a copy of the decision, determination or direction made or given (as the case may be) by the relevant authority;
- (f) set out the facts or circumstances relevant to the making of the decision, determination or direction from which appeal is made (including any act or omission of the principal respondent complained of) which it is alleged support the granting of the appeal in respect of the decision, determination or direction or of any consequential or additional relief sought, and
- (g) set out the basis of the deponent's belief as to the existence of the facts or circumstances referred to in the preceding paragraph.

(2) Subject to any direction the Court may give, copies of documentation exhibited in the grounding affidavit shall be incorporated in a single exhibit, in which event they shall be indexed and numbered sequentially in chronological order.

4. (1) Save where otherwise provided by the relevant enactment, not less than 14 days' notice of the appeal shall be given.

(2) Each respondent shall be served with the notice of appeal and copies of the grounding affidavit and any exhibits thereto.

(3) Copies of the notice of appeal, grounding affidavit and any exhibits thereto shall be delivered to the relevant authority (where the relevant enactment does not provide that the relevant authority shall be a respondent to the appeal).

5. (1) Any respondent intending to oppose the appeal shall file in the Office an affidavit setting out concisely the grounds for such opposition and verifying any facts relied on in opposing the appeal, in which event, a copy of such affidavit (and any exhibits) shall be served upon the appellant and upon every other respondent before the return date of the notice of appeal.

(2) The appellant shall be at liberty to file a further affidavit replying to any matter verified 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 affidavit.

(3) In any case where reference is made in an affidavit to a document exhibited previously in an affidavit of any party, the document concerned shall not be further exhibited, but shall be identified by the exhibit reference used in relation to that document in the previous affidavit.

6. An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with, or to whom have been delivered, the notice of appeal, and copies of the grounding affidavit and exhibits (if any) shall be filed by the appellant before the appeal is heard. If any person who ought under this Order to have been served has not been so served, the affidavit shall state that fact and the reason for it.

7. (1) On the return date of any notice of appeal pursuant to this Order (or on any adjournment of such hearing), the Court shall give directions and make orders for the conduct of the proceedings 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 may include:

- (a) directions as to the service of notice of the appeal on any other person including mode of service and the time allowed for such service (and may for that purpose adjourn the hearing of the notice of motion or further hearing of same to a date specified);
- (b) directions as to the filing and delivery of any further affidavits by any party or parties;
- (c) directions as to the furnishing by the parties to the Court and delivery of written submissions on any issue which arises as to the proper scope of the appeal or as to the matter which ought to be before the Court on the hearing of the appeal, and directions as to the hearing and determination of any such issue;
- (d) orders fixing time limits;
- (e) a direction that the appeal be determined on oral evidence, where it appears to the Court that the subject matter of the appeal 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 such orders and give such directions in relation to the exchange of pleadings or points of appeal or reply between the parties);
- (f) directions as to discovery;
- (g) directions as to the furnishing by the parties to the Court and delivery of written submissions;
- (h) directions as to the exchange of memoranda between or among the parties for the purpose of the agreeing by the parties or the fixing by the Court of any issues

of fact or law to be determined in the proceedings on the appeal, or orders fixing such issues.

(2) On the return date of any notice of appeal pursuant to this Order (or on any adjournment from such date), the Court may, where it appears just and proper, make orders for relief of an interlocutory nature, whether in the nature of an injunction or otherwise.

8. Save where the Court otherwise directs, any evidence in proceedings to which this Order relates shall be given on affidavit.”.

4. Nothing in these Rules shall affect the validity of any step taken or any other thing done in any proceedings on any relevant application within the meaning of Order 64B rule 1 or in any proceedings on any appeal referred to in Order 64C rule 1(2), initiated before the commencement of these Rules. Any such proceedings shall, save where the court in those proceedings otherwise orders, be continued and completed as if these Rules had not been made.

5. Form No. 5B following shall be inserted in the Schedule of Forms annexed to the Circuit Court Rules immediately following Form No. 5A. Forms No. 50, 50A and 50B following shall be inserted in the Schedule of Forms annexed to the Circuit Court Rules immediately following Form No. 49.

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

In the matter of [state relevant provision of the enactment pursuant to which
the application/appeal is made]

BETWEEN

Applicant/Appellant

AND

Respondent(s)

ENTRY OF APPEARANCE

1. To the County Registrar at

I request that you will enter an Appearance herein on behalf of the respondent
to the originating *[notice of motion] *[notice of appeal] served upon him on
..... 20.....

Dated 20.....

Signed:_____

Respondent/Solicitor for the Respondent, of

2. To the Applicant/Appellant/Solicitor for the Applicant/Appellant

The Appearance mentioned above was this day lodged by hand (sent by post)
and the said respondent intends to defend this proceeding.

Dated 20.....

Signed:_____

Respondent/Solicitor for the Respondent

*insert as appropriate

FORM 50

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTIONOF THE

ORIGINATING NOTICE OF MOTION

BETWEEN

Applicant

AND

Respondent(s)

Take notice that application will be made to the Court at.....on the.....20., or the next opportunity thereafter on behalf of [here, insert the name, address and description of the applicant] for:

(1) An order under [here, specify the provision of the relevant enactment relied on] against the first-named respondent of.....in the county of[here, specify the nature of the order sought, e.g. an order directing, requiring or compelling that respondent to take a specified step or do a specified thing or prohibiting or restraining the respondent from, or directing the respondent to cease or refrain from, taking a specified step or doing a specified thing; an order directing, requiring or compelling the respondent to perform, comply with, carry out, implement, or for the enforcement of, a decision, determination, recommendation or settlement of a specified relevant authority]

*(2) An order under [...] against the second-named respondent of.....in the county of[.....]

[Insert any further or consequential relief or orders sought]

And further take notice that the said application will be grounded upon the affidavit ofsworn on20., a copy of which is served with this originating notice of motion.

Dated20.....

Signed.....
Applicant /Solicitor for the Applicant

To:.....
The Respondent /Solicitor for the Respondent

And
To: [Relevant authority (where applicable)]

And
To: The County Registrar

*insert as appropriate

FORM 50A

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTION OF THE

ORIGINATING MOTION

Take notice that application will be made to the Court at.....on the.....20., or the next opportunity thereafter on behalf of *[here, insert the name, address and description of the applicant]* for:

(1) An order under *[here, specify the provision of the relevant enactment relied on]* *[here, specify the nature of the order sought,]*

[Insert any further or consequential relief or orders sought]

And further take notice that the said application will be grounded upon the affidavit ofsworn on20., which is filed with this originating motion.

Dated..... 20.....

Signed.....
Applicant /Solicitor for the Applicant

To: The County Registrar

FORM 50B

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTIONOF THE

NOTICE OF APPEAL

BETWEEN

Appellant

AND

Respondent(s)

Take notice that the above-named appellant will appeal to the Court at.....on the.....20., or the next opportunity thereafter from the [*here, specify decision or determination made or direction given by the relevant authority concerned*] given on20...

on the grounds that:

[here, set out grounds of appeal]

[Insert any further or consequential relief or orders sought]

And further take notice that the said appeal will be grounded upon the affidavit ofsworn on20..., a copy of which is served with this notice of appeal.

Dated 20.....

Signed.....
Appellant /Solicitor for the Appellant

To:.....
The Respondent /Solicitor for the Respondent

And
To: [Relevant authority (where applicable)]

And
To: The County Registrar

EXPLANATORY NOTE

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

These rules amend Order 15 and Order 27 and insert new Orders 64B and 64C into the rules to provide a template procedure to accommodate applications and appeals made to the Circuit Court under statutory regimes.

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
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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