



STATUTORY INSTRUMENTS.

S.I. No. 511 of 2009



RULES OF THE SUPERIOR COURTS (DEFAMATION) 2009

(Prn. A9/1819)

RULES OF THE SUPERIOR COURTS (DEFAMATION) 2009

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by The Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 3rd day of December, 2009.

John L. Murray

Nicholas Kearns

William McKechnie

Elizabeth Dunne

Patrick O'Connor

Paul McGarry

Noel Rubotham

Maeve Kane

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

Dated this 14th day of December, 2009.

DERMOT AHERN

Minister for Justice, Equality and Law Reform

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 18th December, 2009.*

S.I. No. 511 of 2009

RULES OF THE SUPERIOR COURTS (DEFAMATION) 2009

1. The Rules of the Superior Courts are hereby amended:

(i) by the insertion immediately following Order 1A of the following:

“Order 1B
Defamation Act 2009

I. Preliminary

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.

II. Verifying affidavit under section 8

2. (1) A pleading requiring, under section 8, to be verified on affidavit shall be in the Form No. 4 in Appendix CC, with such modifications as may be necessary. The affidavit, if not separate from the pleading concerned, may be endorsed upon such 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 such 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 Central 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.

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

3. (1) An application 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) 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.

(3) The following applications in a defamation action shall be made by motion to the Court on notice to the opposing party, 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).

(4) Where no defamation action has been brought in relation to a statement referred to in section 33, an application:

- (i) for an interim order under subsection (3)(a) of that section shall, unless the Court otherwise directs, be made by originating motion *ex parte*, entitled in the matter of section 33, in which the person referred to as plaintiff in section 33 is named as applicant and the person referred to as defendant in section 33 is named as respondent, grounded upon an affidavit sworn by or on behalf of the applicant;
- (ii) for an interlocutory order under subsection (3)(b) of that section, or for a permanent order under subsection (3)(c) of that section, or for both, shall be made by originating notice of motion entitled in the matter of section 33, in which the person referred to as plaintiff in section 33 is named as applicant and the person referred to as defendant in section 33 is named as respondent, grounded upon an affidavit sworn by or on behalf of the applicant, unless an interim order referred to in

paragraph (i) has been sought, in which case the application shall be by notice of motion in the proceedings referred to in that paragraph.

(5) The provisions of sub-rules (2) to (4) of rule 5 and rule 6 shall apply mutatis mutandis to an application under paragraph (ii) of sub-rule (4) and the affidavit referred to in either paragraph (i) or paragraph (ii) of sub-rule (4) shall identify with sufficient precision or exhibit a copy or transcript of the statement in respect of which the application is made.

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

4. (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 an order allowing either party to alter or amend his pleadings) for the conduct of an application for a determination under paragraph (c) of section 23(1).

5. (1) Where no 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 to the Court:

- (i) under paragraph (a) of section 23(1) for an order directing the party who made the offer to take the measures concerned,

(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, or

(iii) for a determination under paragraph (c) of section 23(1)

shall be made by originating notice of motion entitled in the matter of section 23 and in which the person to whom the offer was made shall be named as applicant and the person who made the offer shall be named as respondent, which motion shall be grounded upon an affidavit sworn by or on behalf of the moving party.

(2) Notice of an application under sub-rule (1) shall be given by delivering copies of the originating notice of motion and grounding affidavit and any exhibits thereto to the respondent not later than four clear days before the return date for the originating notice of motion.

(3) Save as otherwise directed by the Court, the respondent to such originating notice of motion may deliver a replying affidavit within two weeks of the delivery to him or her of copies of the said originating notice of motion and grounding affidavit.

(4) Save as otherwise directed by the Court, the applicant may deliver a further affidavit within two weeks of the delivery of any replying affidavit.

6. Save in the case of an application under paragraph (a) of section 23(1), the Court may, at the hearing of an originating motion under rule 5 (and in addition to any other order it may make):

(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).

7. A grounding affidavit referred to in rules 4 and 5 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. 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 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, and a copy of which motion and affidavit shall be served on the respondent not later than seven clear days before the date on which the motion is returnable.

V. 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.

VI. Particulars of evidence in mitigation

10. 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 1(1) of Order 22 of the following:

“(1A) 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.”;

- (iii) by the substitution for rule 1(3) of Order 22 of the following:

“(3) In actions where the defence raises questions of title to land or incorporeal hereditaments, money may not be paid into Court under this rule unless liability is admitted in the defence.”;

- (iv) by the deletion from Order 36 of rule 36, and

- (v) in Appendix B, Part II, by the substitution for the forms of indorsement (opposite and immediately following the marginal note “Defamation”)

“The plaintiff’s claim is for damages for libel.”
and

“The plaintiff’s claim is for damages for slander.”
of the following form of indorsement—

“The plaintiff’s claim is for damages for defamation

[State whether an offer to make amends under section 22 of the Defamation Act 2009 by a person who has published the statement has been accepted and, if so, provide particulars of the order made under paragraph (d) of section 23(1) permitting the bringing of these proceedings.]”

2. These rules shall come into operation on the 1st day of January 2010.

3. These rules shall be construed together with the Rules of the Superior Courts 1986 to 2009 and may be cited as the Rules of the Superior Courts (Defamation) 2009.

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 1B in, and amend Orders 22, Order 36 and Appendix B, Part II of the Rules of the Superior Courts 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
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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