



STATUTORY INSTRUMENTS.

S.I. No. 282 of 2020



CIRCUIT COURT RULES (FAMILY LAW AND DOMESTIC VIOLENCE)
2020

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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, 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), section 27 of the Courts (Supplemental Provisions) Act 1961, section 31(1) of the Domestic Violence Act 2018 and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the annexed Rules of Court.

Dated this 3rd day of March 2020.

Patricia Ryan, Chairperson

Jacqueline Linnane

Tomás Keys

Fiona Duffy Coady

Keith Walsh

Sabina Purcell

Mairead Ahern

Rita Considine

James Finn

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

Dated this 27th day of July 2020.

HELEN MCENTEE

Minister for Justice and Equality

S.I. No. 282 of 2020

CIRCUIT COURT RULES (FAMILY LAW AND DOMESTIC VIOLENCE)
2020

1. (1) These Rules, which may be cited as the Circuit Court Rules (Family Law and Domestic Violence) 2020, shall come into operation on the 12th day of August 2020.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2020.

(3) The Circuit Court Rules 2001 to 2020 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2020.

2. Order 59 of the Circuit Court Rules is amended:

(i) by the substitution in sub-rule (1) of rule 1 for the definition of the “Domestic Violence Act” of the following definition:

“the “Domestic Violence Act” means the Domestic Violence Act 2018 (No. 6 of 2018);”;

(ii) by the substitution for sub-rule (4) of rule 2 of the following sub-rule:

“(4) Proceedings under the Domestic Violence Act shall be brought:

(i) in the county where the applicant resides (subject to section 22(2) of the Domestic Violence Act), or

(ii) if the application is for a barring order or an emergency barring order, in the county where the place, in relation to which that application is made, is situated”;

(iii) by the substitution for paragraph (i) of sub-rule (1) of rule 6 of the following paragraph:

“(i) applications under section 47 of the Civil Registration Act 2004 for an order exempting the marriage from the application of section 46(1)(a)(i) of that Act;”

- (iv) by the substitution for sub-rule (4) of rule 7 of the following sub-rule:

“(4) Subject to rule 27(5), in all proceedings where the welfare of a dependent child may be at issue, an Affidavit of Welfare in the intended action sworn by the Applicant shall be filed together with the Family Law Civil Bill.”;

- (v) by the substitution for paragraph (iii) of sub-rule (1) of rule 8 of the following paragraph:

“subject to rule 27(5), a copy of the applicant’s Affidavit of Welfare, in compliance with rule 44, in the Form 37B of the Schedule of Forms, where required by rule 7(4).”;

- (vi) by the substitution for paragraph (xi) of rule 21 of the following paragraph:

“(xi) details of all dependants of the deceased spouse at the date of death and of all dependants of the applicant at the date of the application together with details of any other interested persons;”;

- (vii) by the substitution for sub-rule (1) of rule 31 of the following sub-rule:

“31.(1) A Respondent shall, within 10 days from the date of service of the Appearance, or such further time as may be agreed between the parties or allowed by the Court, file and serve a Defence.”;

- (viii) by the substitution for rule 60 of the following rule:

“(1) An application by originating motion *ex parte* under section 47 of the Civil Registration Act 2004 for an order exempting the marriage from the application of section 46(1)(a)(i) of that Act shall be made by both parties to the intended marriage.

(2) The application may be grounded upon Affidavit or upon oral evidence given by or on behalf of the parties, as the Court may direct, which evidence shall

set out the serious reasons justifying the exemption and the basis upon which it is claimed that the application is in the interests of the parties to the intended marriage.”;

- (ix) by the substitution for sub-rule (2) of rule 65 of the following sub-rule:

“(2) Where:

- (i) both parties have lodged a joint certificate of completion (signed by or on behalf of both parties) of the pre-case progression steps in the Form 37W of the Schedule of Forms, or
- (ii) a party has lodged a certificate of completion by that party of the pre-case progression steps in the Form 37W of the Schedule of Forms, and has given the opposing party not less than 14 days’ written notice of his completion of the pre-case progression steps and his intention to apply for a case progression hearing and calling on that party to complete the pre-case progression steps,

the County Registrar shall cause the proceedings to be listed before him for a case progression hearing and shall issue a Summons in Form 37L of the Schedule of Forms to each of the parties to attend such hearing, to which shall be attached the case progression questionnaire referred to in rule 78.”;

- (x) by the substitution for rule 82 of the following rule:

“82.(1) Any declaration made under section 35 of the Status of Children Act shall be in Form 37G of the Schedule of Forms or such modification thereof as may be appropriate.

(2) A copy of every declaration made under section 35 of the Status of Children Act shall be furnished by the County Registrar to An tArd-Chláraitheoir within ten days of the making of such declaration.”;

- (xi) by the substitution for Part VII, comprising rules 84 to 91 inclusive, of the Part set out in Schedule 1, and
- (xii) by the substitution for rule 112 of the following rule:

“Accompanying person or support worker

112.(1) Where a party, being the applicant or the respondent or other party in the proceedings, wishes to be accompanied in court in any proceedings to which a relevant enactment relates by another person (hereinafter referred to as “the accompanying person”) in accordance with section 40(5) of the 2004 Act, save in a case to which section 26 of the Domestic Violence Act applies, the party shall complete Form 37K and

- (a) where the other party or parties to the proceedings have agreed to the accompanying person, the party making such application shall lodge Form 37K, duly completed, with the County Registrar prior to or at the commencement of the hearing in the proceedings, and shall apply to the Court at that hearing to approve the accompanying of the party concerned by the accompanying person and for such directions as the Court may give under section 40(5) of the 2004 Act.
- (b) save in *ex parte* applications, where the other party or parties have not agreed to the accompanying of the party by the accompanying person, the party seeking to be so accompanied shall, by motion (to which Form 37K, duly completed, shall be appended) on notice to the other party or parties returnable not later than four days prior to the date fixed for the hearing of such proceedings, unless the Court otherwise directs, apply to the Court to approve the accompanying of the party concerned by the accompanying person and for such directions as the Court may give under section 40(5) of the 2004 Act.
- (c) in *ex parte* applications, subject to the filing of Form 37K in accordance with paragraph (a), the approval of any accompanying person shall be at the discretion of the Court.

(2) On any such application, the Court may approve the accompaniment of the party concerned by the accompanying person, subject to such directions as the Court may give, or may refuse such approval.

(3) The Court may, of its own motion or on the application of any party or person, vary or modify any directions given under sub-rule (2).

(4) The Court may, of its own motion or on the application of any party or person, make an order under section 26(2) of the Domestic Violence Act at any stage of the proceedings.”

3. Order 59A of the Circuit Court Rules is amended by the substitution for sub-rule (1) of rule 35 of the following sub-rule:

“35. (1) Civil partnership law proceedings for relief under the Domestic Violence Act 2018 shall be brought, heard and determined in accordance with Part VII of Order 59, save that the Domestic Violence Civil Bill shall specify the order or orders sought under the Domestic Violence Act and any orders intended to be sought under section 30, 34 or 45 of the Act.”

4. The Form 2O in Schedule 2 shall be substituted for the form bearing the like number set out in the Schedule to the Circuit Court Rules.

Schedule 1

“VII. Domestic Violence

Forms

84. (1) An originating application for the making of a safety order or barring order shall be instituted by the issuing of a Domestic Violence Civil Bill in the Form 2O of the Schedule of Forms or such modification thereof as may be appropriate in the circumstances.

(2) A Domestic Violence Civil Bill in which a safety order is sought shall include the following details—

(a) the relationship, if any, between the applicant (or person on whose behalf the Agency is applying) and the respondent or the circumstances in which the applicant has resided with the respondent (including the matters set out in section 6(1)(b)(i) to (iii) of the Domestic Violence Act);

(b) particulars of any dependent person to whom the application relates and of the relationship between the dependent person and each of the applicant and the respondent;

(c) the facts and incidents or events relied on in the application;

(d) where relevant, the facts and matters relevant to each of the factors or circumstances specified in section 5(2) of the Domestic Violence Act that may have a bearing on the application.

(3) A Domestic Violence Civil Bill in which a barring order is sought shall include the following details—

(a) the relationship between the applicant (or person on whose behalf the Agency is applying) and the respondent;

(b) particulars of any dependent person to whom the application relates and of the relationship between the dependent person and each of the applicant and the respondent;

(c) the facts and incidents or events relied on in the application;

(d) where relevant, the facts and matters relevant to each of the factors or circumstances specified in section 5(2) of the Domestic Violence Act that may have a bearing on the application;

(e) where relevant in a case to which section 7(5) of the Domestic Violence Act applies, the conduct of the respondent which prevents the applicant or dependent person from residing at the place concerned;

(f) where relevant in a case to which section 7(5) of the Domestic Violence Act applies, the legal or beneficial interest of the applicant and the respondent in the place.

(4) A Domestic Violence Civil Bill in which an interim barring order is sought shall also include the following details—

(a) the nature and extent of the immediate risk of significant harm to the applicant or dependent person;

(b) whether the property from which it is sought to bar the respondent on an interim basis is also a place of business of the respondent or includes or abuts a place of business of the respondent.

(5) Where the Domestic Violence Civil Bill is issued by the Agency under section 11 of the Domestic Violence Act, the Domestic Violence Civil Bill shall set out details of each of the matters specified in section 11(1) of the Domestic Violence Act.

(6) The Domestic Violence Civil Bill shall specify the order or orders sought under the Domestic Violence Act and any orders intended to be sought in the same proceedings under:

(a) section 11 of the Guardianship Act,

(b) section 5, 5A, 5B, 6, 7 or 21A of the Maintenance Act,

(c) section 5 or 9 of the Family Home Act, or

(d) the Child Care Act 1991

(e) section 30, 34 or 35 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Protection orders, Interim barring orders and emergency barring orders

85.(1) An application for a protection order may be made by Motion on Notice or by *ex parte* application after the institution of proceedings for a safety order or barring order.

(2) An application for an interim barring order may be made by Motion on Notice or by *ex parte* application after the institution of proceedings for a barring order.

(3) An application for an emergency barring order may be made by Originating Notice of Motion or by Originating Motion *ex parte*.

(4) Such applications shall, where made *ex parte*, be grounded upon an affidavit sworn by the applicant and where made on notice, be grounded upon an affidavit sworn by the applicant or by such other person as may be appropriate.

(5) Urgent applications under this rule may be made to a Judge at any time or place approved by him or her, by arrangement with the County Registrar.

(6) Where any relief under the Domestic Violence Act, other than on application for a protection order, is granted following an *ex parte* application, the applicant shall forthwith cause a Notice of Motion to issue in respect of the reliefs which are being sought and/or affirming the *ex parte* orders which have been made. The Motion shall be made returnable before the Court not later than eight days following the granting of the *ex parte* relief. Copies of the Notice of Motion, where applicable, and grounding affidavit and a note prepared by the applicant or the applicant's solicitor and approved by the judge (or as otherwise directed or approved by the judge) of any oral evidence given in the *ex parte* application shall be served upon the respondent as soon as practicable in accordance with the provisions of rule 88, unless otherwise directed by the Court.

(7) Save where the Court directs that such order shall cease to have effect sooner, all *ex parte* emergency barring orders obtained shall cease to have effect upon the expiration of eight working days following the making thereof.

(8) Save where the Court directs that such order shall cease to have effect sooner, all *ex parte* interim barring orders obtained shall cease to have effect upon the expiration of eight working days following the making thereof.

(9) An application for the variation or discharge of a protection order, an interim barring order or an emergency barring order shall be by Motion on Notice and shall be grounded upon an affidavit to be sworn by the respondent or by such other person as may be appropriate.

(10) An affidavit to be used in an application for an interim barring order, an emergency barring order or a protection order shall include:

- (a) evidence as to the relationship between the applicant (or person on whose behalf the Child and Family Agency is applying) and the respondent;
- (b) where relevant, evidence as to each of the factors or circumstances specified in section 5(2) of the Domestic Violence Act that may have a bearing on the application;
- (c) where relevant, evidence as to the matters specified in section 6(1)(b) of the Domestic Violence Act;
- (d) where relevant in a case to which section 7(5), section 8(4), section 9(6) or section 10(3) of the Domestic Violence Act applies, evidence of the conduct of the respondent which prevents the applicant or dependent person from residing at the place concerned;
- (e) where relevant in a case to which section 7(6) or section 8(5) of the Domestic Violence Act applies, evidence of the legal or beneficial interest of the applicant and the respondent in the place;
- (f) in a case to which section 8(1) of the Domestic Violence Act applies, evidence of the nature and extent of the immediate risk of significant harm to the applicant or dependent person;
- (g) in a case to which section 11 of the Domestic Violence Act applies, evidence as to each of the matters specified in section 11(1) of the Domestic Violence Act;
- (h) in the case of an application under section 8(7), section 9(8) or section 10(4) of the Domestic Violence Act for the variation or an application under section 21 of the Domestic Violence Act for the discharge of an interim barring order, an emergency barring order or a protection order, evidence of the standing of the applicant to make the application concerned and of the facts and circumstances justifying the variation or discharge.

Issue of Domestic Violence Civil Bill

86.(1) Every Domestic Violence Civil Bill under rule 84 shall be issued out of the Office before service and:

(a) in every Circuit other than the Dublin Circuit, a date for the hearing of same or a date upon which a date for hearing shall be fixed by the Court shall be allocated to the Domestic Violence Civil Bill;

(b) in the Dublin Circuit, a date for the hearing of same may be fixed by the Court at the hearing of any application (including an application for that purpose) or motion in the proceedings.

(2) On the date fixed in accordance with sub-rule (1), or on any adjournment from such date, the Court may give directions for the further hearing of the proceedings, and may fix times for, or dispense with, the delivery of pleadings.

(3) Subject to any directions given in accordance with sub-rule (2), rules 30 to 35 inclusive shall apply *mutatis mutandis* to proceedings on a Domestic Violence Civil Bill, provided that nothing in this rule shall operate to prevent or restrict the Court from hearing a respondent, or from hearing and determining such proceedings or any motion in such proceedings, on a date fixed in accordance with sub-rule (1), or on any adjournment from such date, notwithstanding that the respondent may not have entered an Appearance or filed a Defence.

Hearings

87.(1) Any application to fix a date for the hearing of a Domestic Violence Civil Bill may be set down for hearing at any sitting of the Court within the Circuit.

(2) An application for a variation of a safety order under section 6(8) of the Domestic Violence Act or of a barring order under section 7(12) of the Domestic Violence Act or for the discharge of a safety order or of a barring order under section 21 of the Domestic Violence Act shall be by Notice of Motion. On the initial return date of the Notice of Motion, the Court may give directions for the further hearing of the application, and may direct the exchange of pleadings, or points of claim and defence.

Service

88.(1) Every Domestic Violence Civil Bill under rule 84 and every Notice of Motion under rule 85 or rule 87 shall be served at least four clear days before the date scheduled for the hearing thereof.

(2) The Court may, for the purpose of ensuring the expeditious hearing of applications under the Domestic Violence Act, direct or deem sufficient service of a Notice of Motion under the Domestic Violence Act by a means other than registered post or personal service, including by electronic means, where it is satisfied that such service is likely to bring, or has brought, the application and the

documents which relate to the application to the attention of the person to be served.

(3) An Affidavit of Service of every Domestic Violence Civil Bill and every Notice of Motion shall be filed in the Office prior to the hearing of the application or Motion.

Evidence

89.(1) Save by special leave of the Court, all applications made *ex parte* or by Motion on Notice for an interim barring order, emergency barring order or protection order or for the variation of same pursuant to rule 85 shall be heard on affidavit evidence only.

(2) Where, by leave of the Court, any oral evidence is heard by the Court in the course of any such application *ex parte*, a note of such evidence for the purposes of section 8(13), section 9(14) or section 10(9) of the Domestic Violence Act shall, unless otherwise directed by the Court, be prepared by the applicant or the applicant's solicitor and approved by the Judge and served, together with copies of the order made, the Notice of Motion, and grounding affidavit, in accordance with the requirement of those provisions.

(3) Save by special leave of the Court, all applications for a safety order or barring order and all applications for a variation or discharge of any safety order or barring order shall be heard on oral evidence.

Joinder

90. Any application for a Barring Order or Safety Order may be joined together with any other application on the same Notice or application.

Service of orders

91. On the making, varying or discharging of a safety order, a barring order, an interim barring order, an emergency barring order or a protection order, the County Registrar shall cause a copy of the order in question to be given or sent as soon as practicable to each person mentioned in section 19(1), section 19(2), section 19(3) and/or section 19(4) of the Domestic Violence Act as appropriate to the case.”

Schedule 2

FORM 20

AN CHÚIRT CHUARDA TEAGHLAIGH

THE CIRCUIT FAMILY COURT

CIRCUIT

COUNTY OF

DOMESTIC VIOLENCE CIVIL BILL

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 2018

BETWEEN..... Applicant

AND

..... Respondent

This Civil Bill is to require you to attend before the Court at Court No.....on.....20...at.....am/pm for *the hearing of *the fixing of a date for the hearing of the Civil Bill issued on.....20.....by/or on behalf of.....of.....the Applicant

The Applicant’s claim against you is set out in the section of this Civil Bill headed “Indorsement of Claim”.

If you wish to attend and be heard, you are required, within ten days after the service of this Civil Bill upon you, to enter or cause to be entered with the County Registrar, at his Office at, an Appearance to answer the claim of of, the Applicant herein.

And take notice that unless you do enter an Appearance, you will be held to have admitted the said claim, and the Applicant may proceed therein and judgment may be given against you in your absence without further notice.

And further take notice that, if you intend to defend the proceeding on any grounds, you must not only enter an Appearance, but also, within ten days after Appearance, deliver a statement in writing showing the nature and grounds of your Defence.

The Appearance may be entered by posting same to the said Office and by giving copies thereof to the Applicant or his/her Solicitor by post and the Defence may be delivered by posting same to the Applicant or his/her Solicitor.

Dated the day of

Signed

Applicant/Solicitors for the Applicant

To:

The Respondent/Solicitor for the Respondent

INDORSEMENT OF CLAIM

[Here insert details of Applicant's claim and the grounds upon which relief is being sought as required by these Rules including the basis upon which jurisdiction is claimed]

THE APPLICANT CLAIMS:

[Insert reliefs sought by the Applicant]

.....

Applicant/Solicitors for the Applicant

*delete where inapplicable

EXPLANATORY NOTE

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

These rules amend Order 59 and 59A to facilitate the operation of the Domestic Violence Act 2018.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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