



STATUTORY INSTRUMENTS.

S.I. No. 469 of 2015



RULES OF THE SUPERIOR COURTS (ORDER 70A) 2015

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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), 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 18th day of December 2014.

Susan Denham
Sean Ryan
Donal O'Donnell
Peter Kelly
Michael Peart
Anthony Barr
Gerard Meehan
Stuart Gilhooly
Noel Rubotham
John Mahon

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

Dated this 25th day of October, 2015.

FRANCES FITZGERALD
Minister for Justice and Equality

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 30th October, 2015.*

S.I. No. of 2015

RULES OF THE SUPERIOR COURTS (ORDER 70A) 2015

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Order 70A) 2015, shall come into operation on the 23rd day of November, 2015.

(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 2015.

2. The Rules of the Superior Courts are amended:

(i) by the substitution for rule 1 of Order 70A of the following:

“I. Family law proceedings — General

1. (1) In this Order, “family law proceedings” shall include:

- (a) any proceeding pursuant to section 36 of the Family Law Act 1995 or pursuant to that section as applied by section 44 of the Family Law (Divorce) Act 1996;
- (b) an application pursuant to the Adoption Act 2010;
- (c) an application pursuant to section 3(8), section 4, section 5 or section 9 of the Family Home Protection Act 1976;
- (d) any application pursuant to section 6 or section 7 of the Family Law Act 1981;
- (e) any proceeding pursuant to the Guardianship of Infants Act 1964, pursuant to the Family Law (Maintenance of Spouses and Children) Act 1976 or pursuant to the Domestic Violence Acts 1996 and 2002 which has been instituted and maintained in the High Court pursuant to Article 34.3.1 of the Constitution;
- (f) an application for a decree of judicial separation pursuant to section 3 of the Judicial Separation and Family Law Reform Act 1989 and any preliminary or ancillary application relating thereto under Part II of the Family Law Act 1995;
- (g) any proceedings transferred to the High Court pursuant to section 31(3) of the Judicial Separation and Family Law Reform Act 1989;
- (h) an application for a decree of divorce pursuant to section 5 of the Family Law (Divorce) Act 1996 and preliminary or

ancillary application relating thereto under Part III of that Act;

- (i) an application to institute proceedings for relief subsequent to a divorce or separation outside the State pursuant to section 23 of the Family Law Act 1995;
 - (j) an application pursuant to section 15A or section 25 of the Family Law Act 1995 or pursuant to section 18 of the Family Law (Divorce) Act 1996;
 - (k) an application for a declaration as to marital status under Part IV of the Family Law Act 1995.
- (ii) by the substitution in rule 2 of Order 70A of the words “other than an application to which rule 26 or rule 27 of this Order applies” for the words “other than an application under rule 27 of this Order”;
 - (iii) by the substitution for rules 23 to 30 inclusive of Order 70A of the following titles and rules:

“II. Adoption

Definitions

23. In this Part of this Order,

the “2010 Act” means the Adoption Act 2010;

the “Agency” means the Child and Family Agency established under section 7 of the Child and Family Agency Act 2013, and

the “Authority” means the Adoption Authority of Ireland.

Applications to give custody of child to prospective adopters and to authorise dispensing with consent to adoption

24. (1) In any proceeding pursuant to section 31 of the 2010 Act, the applicants for the adoption order shall cause a copy of the special summons to be served on the Authority, and upon the service of a summons on the Authority, the Authority shall take the following steps:

- (a) It shall cause the other person referred to in section 31(2)(b) of the 2010 Act (in this rule, the “other person”), to be informed of the following matters:
 - (i) the fact of the institution of the proceeding under section 31 of the 2010 Act without revealing to such person the name or identity of the applicants;

- (ii) the fact that the other person is entitled to be heard and represented upon the hearing of the summons.
- (b) It shall ascertain from the other person the following information:
- (i) whether the other person wishes to be heard and to be represented at the hearing of the summons;
 - (ii) whether the other person has available to him or her advice and is in a position from his or her own resources to be represented by solicitor or solicitor and counsel at the hearing of the summons;
 - (iii) the address at which the person may be informed of the proceeding and in particular of the date of any hearing at which the other person will be heard and represented.

(2) Upon the completion of the steps provided for in sub-rule (1), the Authority shall apply to the Court for directions by motion on notice to the applicants. Such application shall, in the first instance, be on affidavit and if it has been possible to communicate with the other person, such affidavits shall include an affidavit by the officer or member of staff of the Authority who has actually spoken to and had communication with the other person. The other person shall not be identified in the body of the affidavit but the name and address, present and future, of the other person shall be set out in a sealed envelope exhibited to the affidavit. That exhibit shall be opened by the Judge only, and unless by special direction of the Court, the name, address and identity of the other person shall not be revealed to any of the other parties in the suit.

(3) On the hearing of the motion for directions, the Court may give such directions as it shall think fit for the hearing of the action and in particular may:

- (a) provide, if necessary, for the representation of the other person;
- (b) fix a date for the hearing in camera of the evidence and submissions on behalf of the applicants in the absence of the other person but in the presence of the solicitor or solicitor and counsel representing the other person;
- (c) fix a separate date for the hearing in camera of the evidence and submissions by and on behalf of the other person in the absence of the applicants but in the presence of the solicitor or solicitor and counsel for the applicants.

(4) If it is satisfied by the affidavits supporting the motion or such further evidence, oral or otherwise, as may be adduced on behalf of the Authority that it is not possible to ascertain the whereabouts of the person who has placed the child for adoption and that it is not possible to communicate with the other person, the Court may proceed to hear and determine the application without further notice to the other person.

Applications for orders authorising the Authority to make adoption orders for children whose parents fail in their duty towards them

25. (1) In an application brought pursuant to section 54(1)(a) of the 2010 Act, the Agency shall serve a copy of the summons on the applicants and shall verify by affidavit the reasons why it considers it proper to make the application.

(2) In any proceeding brought pursuant to section 54(1)(b) of the 2010 Act, the applicants shall serve a copy of the summons on the Agency and thereupon the Agency shall verify by affidavit its reasons for (as the case may be):

- (i) declining to apply to the Court, or
- (ii) failing to apply to the Court and failing to serve the notice required by section 54(1)(b)(i) of the Act.

Such affidavit shall be sworn by the proper officer of the Agency.

(3) In an application brought under sub-rule (1) or (2), the provisions of rule 24 relating to the steps to be taken by the Authority shall apply *mutatis mutandis* to the Agency in relation to the parents alleged to have failed in their duty to the child or children concerned.

Other applications to the Court under the 2010 Act

26. (1) The following applications to the Court under the 2010 Act shall be made by originating motion grounded upon an affidavit:

- (a) an application by the Authority under section 18(4)(i), under section 18(6)(i) or section 18(7)(a) of the 2010 Act for the approval of the Court to authorise an accredited body to place a child for adoption in the circumstances specified in section 18(4), section 18(6) or, as the case may be, section 18(7) of the 2010 Act;
- (b) an application by the Authority under section 26(1)(b) of the 2010 Act for an authorisation to dispense, for the purposes of the making of an adoption order, with the consent of a person who is the child's mother or guardian or other person having charge of or control over the child;

- (c) an application by the Authority under section 30(4) or section 30(6) of the 2010 Act for the approval of the Court to make an adoption order in the circumstances specified in section 30(4) or, as the case may be, section 30(6) of the 2010 Act;
- (d) an application under section 90(11) of the 2010 Act to direct that a specified correction be made in the register of inter-country adoptions, or
- (e) an application for orders under section 92(1) and section 92(3) of the 2010 Act.

(2) An application by the Authority under section 26(1)(a) of the 2010 Act for the sanction of the Court to dispense, for the purposes of the making of an adoption order, with the consent of a person who is the child's mother or guardian or other person having charge of or control over the child shall, where the person whose consent is necessary is a ward of court, be made by motion in the wardship proceedings.

(3) On the hearing of an originating motion referred to in sub-rule (1) or, as the case may be, a motion referred to in sub-rule (2) (or on any adjournment of such hearing), the Court may, in addition to any other order it may make, give directions and make orders for the conduct of the application as appear just and convenient, 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 or further hearing of the application to a date specified) and
- (b) directions as to the filing and delivery of any further affidavits by any party or person.

(4) An originating motion referred to in paragraph (a), (b) or (c) of sub-rule (1) shall be entitled

“THE HIGH COURT
FAMILY LAW
In the matter of the Adoption Act 2010
On the application of the Adoption Authority.”

(5) An originating motion referred to in paragraph (d) or (e) of sub-rule (1) shall be entitled

“THE HIGH COURT
FAMILY LAW

In the matter of the Adoption Act 2010

Between:

A.B, Applicant

and

The Adoption Authority, Respondent.”

(6) Where a question is referred under section 49 of the 2010 Act to the Court and there is a request that the proceedings before the Court be in private in accordance with section 49(4) of the 2010 Act, such request shall be expressed on the face of the case stated, and the provisions of Order 62 shall apply to the proceedings thereon.

Applications under the Guardianship of Infants Act 1964

27. (1) In an application to the Court pursuant to section 6A or section 11 of the Guardianship of Infants Act 1964 where an infant is in the care of prospective adoptive parents under the 2010 Act, the following procedure shall be followed:

- (i) Upon the service of a summons on the Authority, the Authority shall take the following steps:
 - (a) It shall cause the prospective adoptive parents (in this rule, the “prospective adopters”) to be informed of the following matters:
 - (i) the fact of the institution of the proceeding under section 6A or section 11 of the Guardianship of Infants Act 1964 without revealing to such parents the name or identity of the applicant or of the natural mother;
 - (ii) the fact that the prospective adopters are entitled to be heard and represented on the hearing of the summons.
 - (b) It shall ascertain from the prospective adopters the following information:
 - (i) whether they wish to be heard and to be represented at the hearing of the summons;
 - (ii) whether they have available to them advice and are in a position from their own resources to be represented by solicitor or solicitor and counsel at the hearing of the summons;

- (iii) the address at which they may be informed of the proceedings and in particular of the date of any hearing at which they will be heard and represented.

(2) Upon the completion of the steps provided for in sub-rule (1), the Authority shall apply to the Court for directions by motion on notice to the father. The application shall, in the first instance, be made on affidavit and such affidavits shall include an affidavit by the person who has actually spoken to and had communication with the prospective adopters. The prospective adopters shall not be identified in the body of the affidavit but their names and addresses, present and future, shall be set out in a sealed envelope exhibited to the affidavit. The exhibit shall be opened by the Judge only, and unless by special direction of the Court the name, address and identity of the prospective adopters shall not be revealed to any of the other parties in the suit.

(3) On the hearing of the motion for directions, the Court may give such directions as it shall think fit for the trial of the action and in particular may:

- (a) provide, if necessary, for the representation of the prospective adopters and of the father and mother of the child;
- (b) fix a date for the hearing in camera of the evidence and submissions on behalf of the applicant and the natural mother in the absence of the prospective adopters but in the presence of the solicitor or solicitor and counsel representing the prospective adopters;
- (c) fix a separate date for the hearing in camera of the evidence and submissions by and on behalf of the prospective adopters in the absence of the applicant and the natural mother but in the presence of the solicitor or the solicitor and counsel for the applicant and the natural mother.

III. Miscellaneous

Service of Orders

28. In all cases in which the Registrar of the Court is required to serve or lodge a copy of an order upon any person or persons or body such service or lodgement may be effected by the service of a certified copy of the said order by registered post to the said person or persons or body.

Court attire

29. The provisions of Order 119, rules 2 and 3 solely insofar as they relate to the wearing of a wig and gown, shall not apply to any cause, action or proceeding under Order 70 or Order 70A.

IV. Admission to proceedings and disclosure of documents, information or evidence for the purposes of section 40 of the Civil Liability and Courts Act 2004

Recorders, bona fide representatives of the press and accompanying persons

30. (1) In this rule:

the “2004 Act” means the Civil Liability and Courts Act 2004;

“the Court” means, as the case may be, the Supreme Court, the Court of Appeal, the High Court and, where he has jurisdiction, the Master of the High Court;

a “recorder” means a person referred to in section 40(3)(a) of the 2004 Act intending to attend or attending any proceedings to which a relevant enactment relates for the purpose of the preparation and publication of a report of such proceedings in accordance with section 40(3) of the 2004 Act;

“relevant enactment” has the same meaning as in section 39 of the 2004 Act.

(2) A recorder intending to attend any proceedings to which a relevant enactment relates for the purpose of the preparation and publication of a report of such proceedings in accordance with section 40(3) of the 2004 Act shall, prior to or at the commencement of the hearing of the proceedings, identify himself or herself to the Court and apply for such directions as the Court may give under section 40(3) of the 2004 Act.

(3) On any such application, the Court—

(a) if satisfied that the applicant is a person referred to in section 40(3)(a) of the 2004 Act and that the applicant intends to attend the proceedings for the purpose of the preparation and publication of a report of proceedings to which a relevant enactment relates, and

(b) having heard any submission made by or on behalf of any party to the proceedings,

may allow the applicant to attend the proceedings subject to such directions as the Court may give in that regard.

(4) Prior to, at the commencement of, or during the course of the hearing of proceedings to which a relevant enactment relates, the Court may

- (a) make inquiries of any person attending the proceedings with a view to verifying whether that person is a bona fide representative of the press within the meaning of section 40(3A) of the 2004 Act;
- (b) hear any application by or on behalf of a party or person mentioned in section 40(3A)(b) of the 2004 Act (or the Director of Public Prosecutions in a case to which paragraph (e) of that sub-section refers) for an order under section 40(3A)(b) of the 2004 Act or may for the purposes of considering the making of any such order of its own motion, hear submissions from any such party or person.

(5) An application referred to in paragraph (b) of sub-rule (4), if made prior to the commencement of the hearing of the proceedings, shall be by way of notice of motion, on notice to the other party and to any other person the Court shall direct.

(6) The Court may, at any time during the course of the hearing of the proceedings, of its own motion or on the application of a party or person mentioned in section 40(3A)(b) of the 2004 Act (or the Director of Public Prosecutions in a case to which paragraph (e) of that sub-section refers), having heard the parties and any other person it considers necessary, vary or modify any order made in accordance with sub-rule (4)(b).

(7) Where a party (in this sub-rule referred to as the “applicant”) wishes to be accompanied in court in any proceedings to which a relevant enactment relates by another person (in this sub-rule referred to as “the accompanying person”) in accordance with section 40(5) of the 2004 Act, the applicant shall complete Form No. 8 and

- (a) where the other party or parties have agreed to the accompanying person, the applicant shall lodge Form No. 8, duly completed, with the Registrar of the Court 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 applicant by the accompanying person and for such directions as the Court may give under section 40(5) of the 2004 Act, or
- (b) except in ex parte applications, where the other party or parties have not agreed to the accompanying person, the applicant shall, by motion (to which Form No. 8, duly completed, shall be appended) on notice to the other party or parties returnable not later than seven days prior to the date fixed for the hearing in such proceedings, unless the Court otherwise directs, apply to the Court to approve the accompanying of the party by the other person and for such

directions as the Court may give under section 40(5) of the 2004 Act, or

(c) in ex parte applications, subject to the lodgment of Form No. 8 duly completed in accordance with paragraph (a), the approval of any accompanying person is at the discretion of the Court.

(8) On any such application, the Court may approve the accompaniment of the applicant at the proceedings by the accompanying person, subject to such directions as the Court may give, or may refuse such approval.

(9) 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 (7) or sub-rule (8) during the course of any proceedings.

Disclosure

31. An application by a party for an order for the disclosure to any third party of documents, information or evidence connected with or arising in the course of proceedings under a relevant enactment (as defined in section 40(2) of the Civil Liability and Courts Act 2004) for the purposes set out in section 40(8) of the said Act of 2004 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.”;

(iv) by the substitution for rule 5(5) of Order 79 of the following sub-rule:

“(5) The provisions of the Adoption Act 2010 shall apply in determining the title to a grant as they apply to the devolution of property on intestacy.”, and

(v) by the substitution for rule 6(5) of Order 80 of the following sub-rule:

“(5) The provisions of the Adoption Act 2010 shall apply in determining the title to a grant as they apply in the devolution of property on intestacy.”

EXPLANATORY NOTE

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

These rules amend Order 70A of the Rules of the Superior Courts to facilitate (i) the operation of the Adoption Act 2010 and (ii) Part 2 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 which amends the Civil Liability and Courts Act 2004 permitting reporting by bona fide representatives of the Press of various categories of family and other proceedings.

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