

1995 No. 151

COUNTY COURTS

**County Court (Amendment No. 2) Rules
(Northern Ireland) 1995**

Made 7th April 1995

Coming into operation 1st September 1995

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(a), in exercise of the powers conferred on us by Article 47 of that Order, hereby make the following Rules:—

Citation and interpretation

1.—(1) These Rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 1995.

(2) In these Rules “the principal Rules” means the County Court Rules (Northern Ireland) 1981(b).

(3) In these Rules a reference to an Order, Rule, Appendix or Form is a reference to that Order, Rule, Appendix or Form as numbered in the principal Rules.

New arrangements for entry and listing of civil bills

2.—(1) In Order 8 for Rules 1 to 4 there shall be substituted the following new Rules:—

“Entry of civil bills for hearing

1. In each division for any court held in that division defended civil bills shall be entered for hearing in accordance with the following Rules.

Notice of intention to defend

2.—(1) Without prejudice to paragraph (2), in any proceedings commenced by civil bill which a defendant intends to defend he shall, within a period of 21 days from the date of service upon him of the civil bill, serve on the other party or parties to the proceedings a notice of intention to defend in Form 42.

(2) A defendant shall not serve a notice of intention to defend after the expiration of a period of 21 days after service upon him of the civil bill except with the consent in writing of the other party or parties or with the leave of the court.

(a) S.I. 1980/397 (N.I. 3)

(b) S.R. 1981 No. 225

(3) Service by a defendant of a notice of intention to defend shall not prevent a defendant from raising any issue or defence which he would otherwise be entitled to raise concerning the civil bill, or issue or service of the civil bill, or the jurisdiction of the court.

Lodging of certificate of readiness

3.—(1) In any proceedings commenced by civil bill in which a notice of intention to defend has been served the plaintiff shall after the conclusion of all interlocutory matters request the chief clerk to enter the proceedings for hearing by delivery to the chief clerk at his office of a certificate of readiness in Form 43 and shall, at the same time, cause to be served on the other party or parties to the proceedings a copy of the certificate of readiness.

(2) In any proceedings in which a notice of intention to defend has been served the chief clerk shall, if no certificate of readiness has been delivered to him within a period of 6 months immediately following the date of service of the notice of intention to defend, list the proceedings before the judge and notify the parties accordingly and the judge may issue such directions concerning the future conduct of any such proceedings as he considers appropriate.

Documents to be delivered to the chief clerk

4. In every proceedings commenced by civil bill in which the defendant serves a notice of intention to defend the defendant shall also at the same time as he serves the notice of intention to defend on the other party or parties to the proceedings deliver to the chief clerk a copy of the civil bill and of the notice of intention to defend.”.

(2) In Order 8 Rules 5, 8 and 9 are hereby revoked.

(3) In Order 8, Rule 6(3):

- (a) the words “or an application under paragraph (2) is granted” are hereby revoked; and
- (b) the words “or, as the case may be, entered the civil bill for hearing and had failed to proceed thereon at the sittings named therein” are hereby revoked.

New default procedure

3. For Order 12 of the principal Rules there shall be substituted the new Order 12 set out in Schedule 1.

Third Party and Counterclaim Procedure

4.—(1) In Order 11, after Rule 2 there shall be inserted the following new Rules:—

“Notice of intention to defend

2A.—(1) Without prejudice to paragraph (2), in any proceedings commenced by a third party notice which a defendant to that notice intends to defend he shall, within a period of 21 days from the date of

service upon him of the third party notice serve on the other parties to the proceedings and deliver to the chief clerk a notice of intention to defend in Form 42.

(2) A defendant to a third party notice shall not serve a notice of intention to defend after the expiration of a period of 21 days after service upon him of the third party notice except with the consent of the other parties or with the leave of the court.

Application for Directions

2B.—(1) In any proceedings in which a third party notice has been served under Rule 1 and a notice of intention to defend that third party notice has been served any party to the proceedings may at any time apply to the district judge for directions in respect of the conduct or disposal of the third party proceedings.

(2) On an application for directions under paragraph (1) the district judge may make such orders and give such directions as he considers appropriate.”.

Expert evidence

5. Order 24 shall be amended by inserting after Rule 2 the following new Rules:—

“Evidence of plans, photographs etc.

2A.—(1) Unless, at or before the hearing, the judge for special reasons otherwise orders, no map, plan or other drawing, photograph or model shall be receivable in evidence at the hearing of any proceedings unless at least 3 weeks before the commencement of the hearing the parties, other than the parties producing it, have been given an opportunity to inspect it and to agree to its admission without further proof.

(2) Any order under this Rule (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the judge made at or before the hearing.

Medical reports, maps, plans etc may be given in evidence

2B.—(1) Unless the judge otherwise orders and subject to paragraph (2), any medical report or other accompanying or supplemental document served or disclosed pursuant to the provisions of this Order or any map, plan, drawing, photograph or model produced pursuant to the provisions of Rule 2A by any party to proceedings to the other parties may be given in evidence without formal proof at the hearing or an assessment of damages by the party who has disclosed or produced it.

(2) Any other party may, on giving sufficient notice to the party making the disclosure or production specified in paragraph (1), require the maker of any such medical report to give oral evidence or require any such map, plan, drawing, photograph or model to be proved, and in any such case paragraph (1) shall not apply.

(3) Where a medical witness or other expert witness is unable to attend court to give oral evidence at the hearing or an assessment of

damages the judge may direct that his written report or reports may be given in evidence or that any such map, plan, drawing, photograph or model may be admitted in evidence without further proof thereof, and in such case paragraph (2) shall not apply.

Number of expert witnesses

2C. Unless the judge otherwise orders, the number of expert witnesses who may be called by any party to give oral evidence in any proceedings shall be limited to two medical experts and one expert of any other kind."

Medical evidence

6.—(1) Order 24 shall be amended by inserting after Part II the following new Part III:—

“PART III

MEDICAL EVIDENCE

Application

35.—(1) Subject to paragraph (2), this Part applies to all proceedings for damages in respect of personal injury or death.

(2) While liability remains an issue, this Part shall not apply to an action grounded on an allegation of medical or surgical negligence except insofar as the medical evidence relates to quantum only.

Medical evidence to be served on the defendant

36. The plaintiff shall serve on the defendant medical evidence substantiating the personal injuries alleged in the civil bill within 14 days after service upon him of the defendant's notice of intention to defend.

Medical examination of another party: disclosure of report

37. Any party who has been afforded medical examination of another party shall disclose to that other party any medical evidence resulting from such examination within 21 days of receiving it and in any case before the first day of the hearing.

Disclosure of medical evidence

38. Subject to Rule 36, where a party proposes to adduce medical evidence at the hearing he shall disclose it to the other parties in accordance with Rule 36 or within 21 days of receiving it and in any case before the first day of the hearing.

Evidence received during hearing

39. Where a party obtains on or after the first day of the hearing any report or evidence of the kind mentioned in Rule 36 or Rule 37, he shall disclose that report or evidence to the relevant party or parties immediately.

Restrictions on medical evidence

40. No party shall, except with the leave of the judge or on consent, adduce medical evidence at the hearing the contents of which he has not disclosed to the other parties in accordance with Rule 38 or Rule 39.

Party to furnish name and address of doctor etc.

41. Any party to an action shall furnish to any other party on demand the name and address of any medical practitioner or the name of any hospital from whom or at which he received any medical or surgical treatment material to the action.

Failure to comply with Rules

42. Where any party fails to comply with any of the provisions of Rules 36 to 39 or 41, the judge may stay the proceedings or order that the party be debarred from defending the proceedings, as the case may be, or make such other order as to the judge may seem appropriate.

Mode of disclosure

43.—(1) A party serving or disclosing medical evidence under this Part shall do so by furnishing any relevant medical report or reports, together with any documents emanating from the maker thereof which are intended by him to accompany or supplement any such report. All such reports or other documents shall be signed and dated by the maker thereof and shall specify his professional qualifications. A photostat copy of any such report or document shall be sufficient for this purpose.

(2) On the ex parte application of any party bound to serve or disclose any medical report under this Order the judge may give him leave—

- (i) to adduce at the trial the evidence contained in any report without serving or disclosing the report; or
- (ii) to omit or amend any part of any report when serving or disclosing the report.

Variation between evidence disclosed and evidence at trial

44. Where a party's medical evidence at the hearing varies from the evidence which that party has disclosed to another party, the judge may on the application of any party adjourn the hearing or make any such order, on such terms as to costs and otherwise, as to the judge may seem appropriate.

Definition of "medical evidence"

45. For the purposes of this Part "medical evidence" means the evidence contained in any report or other accompanying or supplemental document as specified in Rule 43 and includes surgical and radiological evidence and any ancillary expert or technical evidence, and the expression "medical examination" shall be construed accordingly."

(2) Order 55 shall be amended by inserting after Rule 19 the following new Rule:—