

**County Court (Chapter I Amendment No. 11) Rules
2003**

S.R. No. 109/2003

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STATUTORY RULES 2003

S.R. No. 109/2003

County Court Act 1958

**County Court (Chapter I Amendment No. 11) Rules
2003**

A majority of the Judges of the County Court makes the following Rules:

1. Object

The object of these Rules is to make miscellaneous amendments to the Principal Rules.

2. Authorising provisions

These Rules are made under section 78 of the **County Court Act 1958** and all other enabling powers.

3. Commencement

These Rules come into operation on 1 November 2003.

4. Principal Rules

In these Rules, the County Court Rules of Procedure in Civil Proceedings 1999¹ are called the Principal Rules.

5. Office hours

In Rule 3.09 of the Principal Rules, for "9.30 a.m." **substitute** "9 a.m."

6. Definition of expert

In Rule 34A.19.1(1) of the Principal Rules, for the definition of "expert", **substitute—**

' **"expert"** means a person who has specialised knowledge based on the person's training, study or experience;'

7. New Rule 41.08.1

After Rule 41.08 of the Principal Rules **insert—**

"41.08.1 Confidentiality of deposition

Unless the Court gives leave, a deposition taken or recorded under this Part shall not be disclosed to any person not a party before it has been admitted into evidence."

8. Subpoena before Registrar

(1) In Rule 42.10(1) of the Principal Rules **omit** "in writing".

(2) In Rule 42.10(6) of the Principal Rules for "The person named" **substitute** "Subject to paragraph (6.1), the person named".

(3) After Rule 42.10(6) of the Principal Rules **insert—**

"(6.1) If the document is not in writing, then, provided the original is held by the person named until trial, a copy only need be produced to the Registrar and, if a copy is produced, it shall be clearly marked as such and may be used by the Registrar for the purposes of inspection and, if necessary, copying."

- (4) For Rule 42.10(8) of the Principal Rules
substitute—

"(8) If—

- (a) the person named has any objection to producing a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding; or
- (b) a person having a sufficient interest, other than a party, has any objection to the production of a document identified in the subpoena or to its being inspected by any one or more of the parties to the proceeding—

that person shall notify the Registrar in writing of that objection before the day specified in the subpoena."

- (5) In Rule 42.10(9) of the Principal Rules for "If a party" **substitute** "Subject to paragraph (9.1), if a party".

- (6) After Rule 42.10(9) of the Principal Rules
insert—

"(9.1) If a party other than the plaintiff seeks by subpoena the production of any hospital or medical file or record concerning the plaintiff or his condition, the plaintiff may, before taking objection under paragraph (9), inspect the file or record produced to the Registrar and notify the Registrar thereafter of any objection the plaintiff has to inspection by any other party, provided that the plaintiff makes that inspection and notifies that objection in writing within seven days after the day specified in the subpoena for production of the file or record to the Registrar."

- (7) In Rule 42.10(10) of the Principal Rules, for "paragraph (8) or (9)" **substitute** "paragraph (8), (9) or (9.1)".
- (8) In Rule 42.10(12) of the Principal Rules, for "paragraph (8) or (9)" **substitute** "paragraph (8), (9) or (9.1)".
- (9) For Rule 42.10(16) of the Principal Rules **substitute**—
- "(16) Subject to any order of the Court, the Registrar—
- (a) may in his discretion return to the person named any document produced by him in compliance with the subpoena;
 - (b) shall, upon returning the document, inform the person named that the subpoena for production remains in force until the trial or other determination of the proceeding; and
 - (c) may specify a date by which the document is to be produced again to the Registrar in compliance with the subpoena."

(10) In Rule 42.10(17) of the Principal Rules, for "The Registrar" **substitute** "Subject to paragraph (17.1), the Registrar".

(11) After Rule 42.10(17) of the Principal Rules **insert**—

"(17.1) In an urgent case and at the request of—

 - (a) the person named; or

- (b) in the case of any hospital or medical file or record concerning the plaintiff or his condition, the plaintiff—

the Registrar may return a document under paragraph (16) without first giving notice under paragraph (17), but in such a case, after returning the document, the Registrar shall give notice to the party who filed the subpoena that the document has been returned."

- (12) In Rule 42.10(18) of the Principal Rules, for "paragraphs (16) and (17)" **substitute** "paragraphs (16), (17) and (17.1)".

9. Affidavit sworn before party

Rule 43.10 of the Principal Rules is **revoked**.

10. Substitution of Order 44

For Order 44 of the Principal Rules **substitute**—

'ORDER 44

EXPERT EVIDENCE

44.01 Definitions

In this Order, unless the context or subject-matter otherwise requires—

"expert" means a person who has specialised knowledge based on the person's training, study or experience;

"opinion" includes more than one opinion;

"the code" means the expert witness code of conduct in Form 44A.

44.02 Application

- (1) This Order applies to a proceeding however commenced.
- (2) This Order does not apply—
 - (a) to the evidence of a party who would, if called as a witness at the trial, be qualified to give evidence as an expert in respect of any question in the proceeding; or
 - (b) to a person engaged as an expert before 1 November 2003 and Order 44, as in force immediately before 1 November 2003, continues to apply to that person.
- (3) With respect to the opinion of a medical practitioner, in a proceeding for medical negligence in which the plaintiff claims damages for or in respect of bodily injury this Order applies to an opinion on the liability of any party but does not otherwise apply to a medical report to which Order 33 applies.

44.03 Report of expert

- (1) Unless otherwise ordered, a party who intends at trial to adduce the evidence of a person as an expert shall—
 - (a) as soon as practicable after the engagement of the expert and before the expert makes a report under this Rule, provide the expert with a copy of the code; and
 - (b) not later than 30 days before the day fixed for trial, serve on each other party, a report by the expert in accordance with paragraph (2) and deliver a copy for the use of the Court.
-

- (2) The report shall state the opinion of the expert and shall state, specify or provide—
- (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read the code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which the opinion is based (a letter of instructions may be annexed);
 - (e)
 - (i) the reasons for,
 - (ii) any literature or other materials utilised in support of,
 - (iii) a summary of—
the opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the enquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

- (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (j) whether an opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
- (3) If the expert provides to a party a supplementary report, including a report indicating that the expert has changed his opinion on a material matter expressed in an earlier report—
- (a) that party shall forthwith serve the supplementary report on all other parties; and
 - (b) in default of such service, the party and any other party having a like interest shall not use the earlier report or the supplementary report at trial without the leave of the Court.
- (4) Any report provided by the expert pursuant to this Rule shall be signed by the expert and shall be accompanied by clear copies of any photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter to which the report refers.

44.04 Other party's report as evidence

Unless otherwise ordered, a party may put in evidence a report served on him by another party under this Order.

44.05 No evidence unless disclosed in report

Save with the leave of the Court or by consent of the parties affected, a party shall not except in cross-examination adduce any evidence from a person as an expert at the trial of a proceeding unless the substance of the evidence is contained within a report or reports which the party has served under this Order.

44.06 Conference between experts

- (1) The Court may direct expert witnesses—
 - (a) to confer; and
 - (b) to provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for their not agreeing.
 - (2) The Court may specify the matters on which the experts are to confer.
 - (3) An expert witness may apply to the Court for further directions.
 - (4) The Court may direct the legal representatives of a party—
 - (a) to attend the conference;
 - (b) not to attend the conference;
 - (c) to attend or not to attend at the option of the party whom they represent.
 - (5) Subject to paragraph (1)(b), except as the parties affected agree in writing, no evidence shall be admitted of anything said or done by any person at the conference.
 - (6) An agreement reached during the conference shall not bind a party except in so far as the party agrees in writing.!
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11. Amendment to Forms 42E and 42F—Subpoena before Registrar

- (1) In Form 42E to the Principal Rules, after the paragraph commencing "If this subpoena" **insert—**

"If compliance with the subpoena requires the production of a document which is not in writing (such as a photograph, computer disk, diskette, audio-tape, video-tape etc.—see **Interpretation of Legislation Act 1984**, section 38) then, provided the original is held by you until trial, a copy only need be produced to the Registrar. If a copy is produced, it must be clearly marked as such and it may be used by the Registrar for the purposes of inspection and, if necessary, copying."

- (2) In Form 42F to the Principal Rules, after the paragraph commencing "If this subpoena" **insert—**

"If compliance with the subpoena requires the production of a document which is not in writing (such as a photograph, computer disk, diskette, audio-tape, video-tape etc.—see **Interpretation of Legislation Act 1984**, section 38) then, provided the original is held by the corporation until trial, a copy only need be produced to the Registrar. If a copy is produced, it must be clearly marked as such and it may be used by the Registrar for the purposes of inspection and, if necessary, copying."

- (3) In Forms 42E and 42F to the Principal Rules, in note 2 of the Further Notes **insert—**

"However, if you are the plaintiff in this proceeding and this subpoena seeks from another person the production of a hospital or medical file or record concerning you or your condition, you may, before taking objection, inspect the file or record produced to the Registrar and, after such inspection, notify any objection you may have to inspection of that file or record by any other party, *provided that* you make your inspection and notify your objection, if any, in writing *within seven days after* the day specified in the subpoena for production."

12. New Form 44A

After Form 43A to the Principal Rules **insert**—

"FORM 44A

Rule 44.01

EXPERT WITNESS CODE OF CONDUCT

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
2. An expert witness is not an advocate for a party.
3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
 - (e)
 - (i) the reasons for,
 - (ii) any literature or other materials utilised in support of,
 - (iii) a summary of—
each such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant

- have, to the knowledge of the expert, been withheld from the Court;
- (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
 - (j) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
4. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
 5. If directed to do so by the Court, an expert witness shall—
 - (a) confer with any other expert witness; and
 - (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
 6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement."

Dated: 25 September 2003

MICHAEL ROZENES, <i>Chief Judge</i>	M. J. STRONG
F. G. DYETT	B. STOTT
JOHN K. NIXON	J. H. BARNETT
W. FAGAN	G. D. LEWIS
T. A. NEESHAM	R. G. WILLIAMS
J. R. HANLON	MARGARET RIZKALLA

T. G. WODAK	S. M. COHEN
WILLIAM R. WHITE	M. E. SEXTON
A. P. DUCKETT	F. E. HOGAN
J. M. PANNAM	I. E. LAWSON
IAN C. ROBERTSON	G. GULLACI
G. R. ANDERSON	P. J. COISH
LANSSELL PILGRIM	K. R. HOWIE
JOHN BOWMAN	J. A. CAMPTON
R. LEWITAN	W. A. WILMOTH
J. NICHOLSON	

ENDNOTES

¹ Rule 4: S.R. No. 20/1999. Reprint No. 2 incorporating amendments as at 13 March 2003.