

Circuit Family Court Dublin Circuit

Practice and Procedure Update – MOTION FOR ORDER IN AGREED TERMS (motion to rule terms of settlement)

Order 59 of the Circuit Court Rules deals with Family Law applications. A recent change to Order 59 has made it much easier for practitioners to rule terms of settlement. In this article **Keith Walsh** sets out the basics and provides the precedents required:

1. The Circuit Court Rule

Order 59, r 35 was introduced by the Circuit Court Rules (Family Law) (SI 207/ 2017) which came into effect on 14 June 2017. SI 207/2017 substantially changed the previous Order 59 and one of the innovations was a motion in agreed terms to rule terms of settlement. Prior to the introduction of r 35 it was the practice to rule consent terms using default of defence motions where possible.

Order 59 Rule 35 states:

(1) In any case in which the parties are agreed in respect of all of the reliefs being sought, the Applicant or the Respondent may, subject to the provisions of the following sub-rules of this Rule, by notice of motion, to be served on the other party and, where relief pursuant to section 12 and/or 13 of the 1995 Act and section 17 of the 1996 Act is sought, on the trustees of the pension scheme concerned, not less than 14 clear days before the hearing, apply to the Court for judgment in agreed terms.

(2) An application mentioned in sub-rule (1) shall, unless the Court otherwise directs, be grounded, inter alia, upon: (i) an affidavit exhibiting the agreed terms, and (ii) an affidavit or updated Affidavit of Means of each party, sworn in each case not earlier than six months before the date on which the motion is issued.

(3) On the hearing of the application the Court may, upon hearing such evidence, oral or otherwise, as may be adduced: (i) give judgment in the terms agreed between the parties, or (ii) adjourn the application and direct the attendance of a party or other person, or the giving of further evidence on the application, as the Court may require, or (iii) give directions in relation to the service of a Notice of Trial or Notice to fix a date for Trial.

(4) Where an agreement or consent to the making of an order under this rule is given in writing by a party who does not intend to appear on the hearing of the motion, such agreement or consent shall be verified on affidavit or otherwise verified or authenticated in such manner as the Court considers sufficient. (5) Where an order to be sought under this rule includes an order for pension relief, a draft of such order which has, so far as the pension relief sought is concerned, been served on the trustees of the pension scheme in question, shall be handed into Court on the hearing of the application.

2. The documents and proofs required:

(a) a notice of motion;

(b) where pension orders are sought, a notice to trustees must be served not less than 14 clear days before the hearing date and the trustees should be put on notice of the hearing date;

(c) an affidavit exhibiting the agreed terms;

(d) an affidavit or updated affidavit of means of both parties, sworn within six months of the date the motion was issued;

(e) where a party does not intend to appear at the hearing of the motion, the agreement or consent must be verified on affidavit or otherwise verified or authenticated in such manner as the court considers sufficient;

(f) a draft order for pension relief which has been served on the pension trustees should be handed into court on the hearing of the application.

In addition, although not mentioned specifically in Ord 59, r 35 other essential proofs to have at/before the hearing if possible are:

(g) an affidavit of service of the notice to trustees should be filed on or before the return date on the motion;

(h) in addition to serving the draft order for pension relief on the pension trustees, it should also be served on the other solicitor/party if unrepresented and a letter sought from the trustees confirming that the orders sought in the draft pension adjustment order are capable of implementation by them. If such a letter is forthcoming then the court should be in a position to rule the pension adjustment orders on the return date. The original letter from the pension trustees should be handed into the court. It is also important to have a statement of benefits for all pensions as this is currently required by some Circuit Court Judges.

An alternative way of proceeding is to have terms of consent ruled by way of judgment in default of appearance or defence as set out in Order 59, r 68(2)(b) However, this judgment in default jurisdiction is not available after the filing of a defence.

3. Frequently asked Questions and Answers

When is a notice of motion to rule terms of consent not required ?

- Where there is already a hearing date allocated, however it is good practice to let the Court or Circuit Family Court office know in advance that the matter has settled and will not be contested on the date in question and will simply be a ruling.

Who drafts the notice of motion and grounding affidavit to rule terms of consent?

- The usual practice where family law matters are compromised is for the solicitor/counsel for the Applicant to initiate the application to rule the terms of consent and draft the notice of motion and grounding affidavit

Should the terms of consent be typed and if so, by whom ?

- Yes the terms of consent should be typed by the solicitors for the Applicant and it is good practice to send the typed copy to the other solicitor in advance of submitting it to the Circuit Court office.

Is a book of pleadings necessary when ruling terms of consent and if so, should it be handed in on the return date ?

- It is good practice for the Applicant to prepare a book of pleadings in advance of the hearing/ruling date and to send a copy of the index to the other side and if possible to lodge the book in advance of the hearing/ruling date.

Keith Walsh is Chair of the Law Society of Ireland's Child and Family Law Committee and the author of 'Divorce and Judicial Separation Proceedings in the Circuit Court: A Guide to Order 59' published by Bloomsbury Professional, 2019.