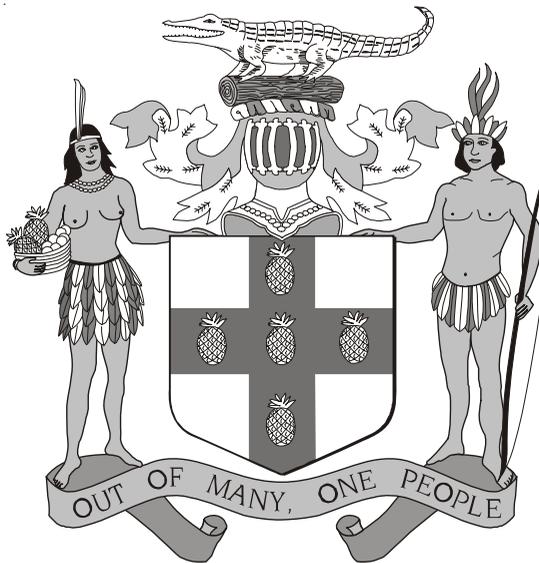


**SUPREME COURT OF JAMAICA
CIVIL PROCEDURE RULES 2002**

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CIVIL PROCEDURE RULES 2002

REVISED, AS AT SEPTEMBER 18, 2006

Published on behalf of the Government of Jamaica by
The Caribbean Law Publishing Company Limited
Kingston, Jamaica

First published in Jamaica 2002 by
The Caribbean Law Publishing Company
11 Cunningham Avenue
PO Box 686
Kingston 6

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ISBN 976-8167-29-7

A catalogue of record of this book is available from the
National Library of Jamaica

Typeset by Shelly-Gail Folkes

Set in Stone Informal 10pt
Printed in the United States of America

The Judicature (Rules of Court) Act

[The Civil Procedure Rules 2002]

In exercise of the powers conferred upon the Rules Committee of the Supreme Court by Section 4 of the Judicature (Rules of Court) Act, the following Rules are hereby made:

CIVIL PROCEDURE RULES, 2002

1. These Rules may be cited as the Civil Procedure Rules, 2002, and shall come into operation, subject to the transitional provisions contained in part 73, on January 1, 2003.
2. All Rules of Court relating to the procedure in civil proceedings in the Supreme Court, save for those relating to insolvency (including winding up of Companies and bankruptcy), and matrimonial proceedings are hereby revoked.

September 16, 2002

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Formal Approval

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PREFACE

Although these rules are long overdue, they are, in a sense, quite timely. Various steps are being taken to modernize and improve the Court system in Jamaica, and the implementation of these rules is a vital step in this process.

As Part I indicates, the “overriding objective” of these rules is to enable the Court “to deal with cases justly”. The rules seek to achieve this objective in various ways, including:

- Simplifying the language and procedures used in the Courts so that members of the public, in particular, can more easily understand the process;
- Reducing delays and adjournments so that matters will be disposed of expeditiously;
- Increasing the Court’s role in the management of cases; and
- Allowing for greater use of modern technology.

The Rules Committee recognizes that this is an ongoing process. These rules will require some fundamental changes in the way in which civil proceedings in the Supreme Court and Court of Appeal are pursued, and no doubt flaws and ways to improve them will be identified. We hope however, that these rules will represent a big step forward in the administration of justice in Jamaica.

Lensley Wolfe, O.J.
Chief Justice of Jamaica &
Chairman of the Rules Committee of the Supreme Court

Many persons contributed to the preparation of these rules. I would, like to acknowledge, in particular, the contributions of Justice Dick Greenslade of the UK, Michael Hylton, Q.C., Charles Piper, Carol Aina, and the members of the various drafting sub-committees, the members of the Rules Committee and the many members of the bar who made useful comments and suggestions as the rules were developed.

L.W.

PART 1

The Overriding Objective

Contents of this Part

The overriding objective	Rule 1.1
Application of overriding objective by the court	Rule 1.2
Duty of parties	Rule 1.3

The overriding objective

- 1.1 (1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.
- (2) Dealing justly with a case includes -
- (a) ensuring, so far as is practicable, that the parties are on an equal footing and are not prejudiced by their financial position;
 - (b) saving expense;
 - (c) dealing with it in ways which take into consideration -
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly; and
 - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application of overriding objective by the court

- 1.2 (18/9/2006) The court must seek to give effect to the overriding objective when interpreting these rules or exercising any powers under these rules.

Duty of parties

- 1.3 It is the duty of the parties to help the court to further the overriding objective.

PART 2

Application and Interpretation of these Rules

Contents of this Part

Citation and commencement	Rule 2.1
Application of these Rules	Rule 2.2
Application of Interpretation Act	Rule 2.3
Definitions	Rule 2.4
Who may exercise the powers of the court	Rule 2.5
Court staff	Rule 2.6
Court's discretion as to where, when and how it deals with cases	Rule 2.7

Citation and Commencement

- 2.1 (1) These Rules may be cited as the Civil Procedure Rules 2002.
- (2) They come into force, subject to the transitional provisions contained in Part 73, on the 1st January 2003.
- (3) A reference to a rule as CPR xx or rule xx is a reference to a rule so numbered in these Rules.

Application of these Rules

- 2.2 (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the court.
- (2) “**Civil proceedings**” include Judicial Review and applications to the court under the Constitution under Part 56.
- (3) These Rules do not apply to the following proceedings -
- (a) insolvency (including winding up of Companies);
- (18/9/2006) (b) proceedings when the court acts as a Prize Court; and
- (c) any other proceedings in the court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.
- (4) Notwithstanding anything in Part 73 these Rules apply to all old

(17/2/2003)

proceedings save for those in which a trial date has been fixed for the Hilary Term 2003 and save for applications which have already been filed and fixed for hearing during Hilary Term, 2003.

Application of Interpretation Act

2.3 The Interpretation Act applies to the interpretation of these Rules.

Definitions

2.4

In these Rules -

“**ADR**” or “**ADR procedure**” means any procedure for alternative dispute resolution including, in particular, mediation;

“**ancillary claim**”, “**ancillary claimant**”, “**ancillary defendant**” and “**second ancillary defendant**” have the meanings given in rule 18.1; “**applicant**” has the meaning given in rule 11.2;

“**bailiff**” includes any other officer charged with the execution of judgments by or under the authority of the court;

“**body corporate**” means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

“**certificate of value**” has the meaning given in rule 8.10;

“**Chief Justice**” includes, in relation to any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice;

“**claim**” and “**claim form**” are to be construed in accordance with Part 8;

“**claim for a specified sum of money**” means -

- (a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract ; and
- (b) for the purposes of Parts 12 (default judgment) and 14 (judgment on admissions) , a claim for -
 - (i) the cost of repairs executed to a vehicle;
 - (ii) the cost of repairs executed to any property in, on or a butting a road; or
 - (iii) any other actual financial loss other than loss of wages or other income, claimed as a result of damage which it is alleged to have been caused in an accident as a result of the defendant’s negligence where the amount of each item in the claim is specified and copies of receipted bills for

the amounts claimed are attached to the claim form or particulars of claim;

“claim for personal injuries” means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death and **“personal injuries”** includes any disease and any impairment of a person’s physical or mental condition;

“claimant” means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

“court” means the Supreme Court;

“defendant” means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

“FAX” means the making of a facsimile copy of a document by the transmission of electronic signals;

“filing” is to be construed in accordance with rule 3.7;

“fixed date claim form” is a claim form in form 2 upon which there is stated a date, time and place for the first hearing of the claim;

“full court” means three judges of the court sitting together;

“judge”-

- (a) includes the Chief Justice; but
- (b) does not include a master or registrar except where required by the context;

“judgment creditor” and **“judgment debtor”** have the meanings given them in rule 43.1(2);

“jurisdiction” means, unless the context otherwise requires, Jamaica and any part of the territorial waters of Jamaica;

“limited company” means a body corporate that is incorporated or continued under the Companies Act;

“mediation” refers to a dispute resolving process in which a neutral third party called the “mediator” facilitates and co-ordinates the negotiations of parties in dispute with a view to resolving, or reducing the extent of, the dispute;

“minor” means a person who has not attained the age of 18 years;

“month” means a calendar month;

“next friend” has the meaning given by Part 23;

“order” includes a judgment, decree, direction, award or declaration;

“the overriding objective” means the objective set out in rule 1.1;

“party” includes both the party to the claim and any attorney-at-law on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the attorney-at-law only;

“patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act is incapable of managing his or her own affairs;

“period for filing a defence” has the meaning given by rule 10.3;

“registry” refers to -

- (a) the place where documents are filed and processed; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6(1);

“respondent” has the meaning given by rule 11.2;

“statement of case” means -

- (a) a claim form, particulars of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court; and

“statutory rate of interest” means the rate of interest on judgment debts that may be prescribed for the time being under the Judicature (Supreme Court) Act.

Who may exercise the powers of the court

- 2.5 (1) Except where any enactment, rule or practice direction provides otherwise the functions of the court may be exercised in accordance with these Rules and any direction made by the Chief Justice by -
- (a) a single judge of the court;
 - (b) a master; or
 - (c) a registrar.
- (2) The Chief Justice may by direction allocate the work of the court between judges, masters and registrars.
- (3) Where -

- (a) a trial has been commenced but not completed by a judge;
or
 - (b) any enactment or rule requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim was tried, then if -
 - (i) the judge dies or is incapacitated;
 - (ii) the judge ceases to be a judge of the court; or
 - (iii) for any other reason it is impossible or inconvenient for the judge to act in the claim, the Chief Justice may nominate some other judge to retry or complete the trial of the claim or to hear any application.
- (4) Where a judge has been appointed under paragraph (3) to complete the trial of proceedings he or she may admit such evidence as is agreed upon in writing by all the parties without recalling the relevant witnesses.
- (5) Paragraphs (3) and (4) apply to trials or other hearings by a master or registrar as if “master” or “registrar”, as the case may be, were substituted for “judge”

Court staff

- 2.6 (1) Where these Rules refer to an act being done by the registry or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.
- (2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.
- (3) Where a step may be taken by a member of the court staff -
 - (a) that person may consult a judge, master or registrar before taking the step; and
 - (b) that step may be taken by a judge, master or registrar instead of a member of the court staff.

Court’s discretion as to where, when and how it deals with cases

- 2.7 (1) The court may deal with a case at any place and time that it considers appropriate.

- (2) In considering what place or time may be appropriate the court must consider the convenience of such place or time to the parties and their attorneys-at-law and to any witnesses.
- (3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.
- (4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

PART 3

Time, Documents

Contents of this Part

Time - court to state calendar date	Rule 3.1
Time - computation	Rule 3.2
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Hearings in vacations	Rule 3.4
Time - vacations	Rule 3.5
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Forms	Rule 3.10
Statements of case - address for service	Rule 3.11
Statements of case - certificate of truth	Rule 3.12
Failure to give certificate of truth	Rule 3.13
(17/2/2003) Right to inspect etc. certain documents filed in court office	Rule 3.14

Time - court to state calendar date

- 3.1 When giving or making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable, state-
- (a) the calendar date; and
 - (b) the time of day,
- by which the act must be done.

Time - computation

- 3.2 (1) This rule shows how to calculate any period of time for doing any act which is fixed -
- (a) by these Rules;

- (b) by any practice direction; or
 - (c) by any judgment or order of the court.
- (2) All periods of time expressed as a number of days are to be computed as clear days.
- (3) In this rule “**clear days**” means that in computing the number of days -
- (a) the day on which the period begins; and
 - (b) if the end of the period is defined by reference to an event, the day on which that event occurs or should occur, are not included.

Examples

- (a) Document served by post deemed to be served 14 days after posting: document posted on 1st September, deemed served on 16th September.
 - (b) Document must be filed at least 3 days before the hearing: application is to be heard on Friday 20 October, the last date for filing the document is Monday 16 October.
- (4) Where the specified period -
- (a) is 7 days or less; and
 - (b) includes
 - (i) a Saturday or Sunday; or
 - (ii) any other day on which the registry is closed, that day does not count.

Example

Notice of application must be given not less than 7 days before a hearing: hearing on Friday 20th October; notice must be given not later than Tuesday 10th October.

- (5) When the period specified by -
- (a) these Rules;
 - (b) a practice direction; or
 - (c) any judgment or order,
- for doing any act at the registry ends on a day on which the registry is closed, it shall be in time if done before close of business on the next day on which the registry is open.
- (6) When the period specified for doing any act which does not need to be done at court ends -
- (a) on a Saturday or Sunday; or
 - (b) on any public holiday,
- it must be done before 4 p.m. on the next ordinary business day.

Terms

- 3.3 (17/2/2003) There are three terms in each year as follows :-
- (a) The Michaelmas Term, commencing on the 16th September and ending on the 20th December;
 - (b) The Hilary Term, commencing on the 7th of January and ending on the Friday before Good Friday; and
 - (c) The Easter Term, commencing on the Wednesday after Easter Monday and ending on the 31st July.
- Provided that, if the 16th September or the 7th January falls on a Saturday or Sunday then the term shall start on the following Monday.

Hearings in vacations

- 3.4 (1) In this Part “**vacation**” means a period between the end of one term and the beginning of the next and “**long vacation**” means the vacation beginning on the 1st August in each year.
- (2) During vacations the court may sit to hear and determine such trials and applications (including part heard trials and applications) as the court may direct.
- (3) A party may apply to the court for any trial to take place or application heard in vacation.
- (4) Any such application may be determined by a judge.

Time - vacations

- 3.5 (18/9/2006) (1) During the long vacation, the time prescribed by these Rules for filing and serving any statement of case does not run.
- (2) However this rule does not override any order of the court which specifies a date for service of a statement of case.

Documents

- 3.6 (1) So far as is practicable, every document prepared for use in the Supreme Court must be on “letter size” paper; approximately 11 inches (28cm) long by 8.5 inches (21.5cm) wide. Margins of 1" (2.5 cm) must be left at top and bottom and of 1.5" (3.5 cm) at each side.
- (2) The Chief Justice may by practice direction -

- (a) require any document filed or to be used at court to be in such format as he may prescribe to facilitate electronic recording or filing of that document;
 - (b) prescribe the conditions under which documents may be served or filed electronically; and
 - (c) provide for documents to be sealed or signed by electronic means.
- (3) Every document to be filed at the court must -
- (a) be headed with the -
 - (i) full title of the proceedings; and
 - (ii) title of the document;
 - (b) state the -
 - (i) name;
 - (ii) business address;
 - (iii) reference (if any);
 - (iv) telephone number; and
 - (v) FAX number if the party wishes to accept service by fax

of the person or persons filing it;
 - (c) contain its date;
 - (d) (except in the case of an affidavit) be signed by the person filing it; and
 - (e) state the name of the party on whose behalf it is filed.
- (4) Where a document is signed the full name of the signatory must be set out legibly below the signature.

(17/2/2003)

Filing of documents

- 3.7 (1) A document may be filed by -
- (a) delivering it;
 - (b) posting it ; or
 - (c) (except in the case of a claim form) sending it by FAX, to the registry where the claim is proceeding or intended to proceed.
- (2) A document is filed on the day when it is received at the registry or, where it is received at a time when the registry is closed for whatever reason, on the next day on which the registry is open.
- (3) Where a fee is to be paid a document is not to be treated as filed until -
- (a) the fee is paid; or

- (b) an undertaking to pay the fee acceptable to the registrar is received.

(Rule 42.5 deals with the drawing and filing of judgments and orders.)

Filing and service by FAX

3.8 In addition to any conditions contained in a practice direction any document -

- (a) filed; or
- (b) served,

by FAX, must include a cover page stating -

- (i) the name, address and telephone number of the sender;
- (ii) the date and time of transmission;
- (iii) the total number of pages transmitted, including the cover page;
- (iv) the number of the FAX machine at which documents may be received; and
- (v) the name and telephone number of a person to contact if problems occur in transmission.

Sealing of documents issued by court

3.9 (1) The court must seal the following documents on issue -

- (a) the claim form; and
- (b) all judgments, orders or directions of the court.

(2) The court may place the seal on any document by -

- (a) hand; or
- (b) printing a facsimile of the seal on the document electronically or by any other means.

(3) All judgments and orders and directions of the court must also be signed by the registrar or by the judge or master making it.

(4) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

(Rule 3.6.(2) empowers the Chief Justice to make a practice direction dealing with electronic filing, service, signature and sealing of documents.)

Forms

3.10 (1) The forms in Appendices 1, 2, 3, 4 and 5 to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.

(18/9/2006)

- (2) A form may be varied if the variation is required by the circumstances of a particular case.
- (3) However, a form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice direction gives to the intended recipient of the form.
- (4) Where these Rules require a party to send a blank form to any other party, that party must send it to the other without variation except the insertion of the title of the case and the court address to which that document is to be returned.
- (5) A form marked with the word 'Seal' must bear the seal of the court. (Rule 3.6(2) empowers the Chief Justice to make a practice direction dealing with electronic sealing of documents.)

Statements of case - address for service

- 3.11
- (1) Every statement of case must contain an address within the jurisdiction at which the party filing the statement of case will accept service of documents.
 - (2) That address for service must also state -
 - (a) (if given by an attorney-at-law), the name or reference (if any) of the person who is dealing with the matter; and
 - (b) the telephone number and (if applicable) the FAX number of the attorney-at-law filing the document or of the party if in person.
 - (3) A party must notify the court and all other parties immediately if the address for service is changed and any document sent to the original address before notice of such change is received by the party serving the documents is regarded as validly served. ("Statement of case" is defined in rule 2.4, Part 63 deals with the procedure on change of attorney-at-law.)

Statements of case - certificate of truth

- 3.12
- (1) Every statement of case must be verified by a certificate of truth.
 - (2) The general rule is that the certificate of truth must be signed by the lay party personally.
 - (3) Where it is impracticable for the lay party personally to sign the certificate required by paragraph (1) it may be given by that person's attorney-at-law.
 - (4) A certificate of truth given by the attorney-at-law must also certify-

- (a) the reasons why it is impractical for the lay party to give the certificate; and
 - (b) that the certificate is given on the lay party's instructions.
- (5) Where a statement of case is changed under Part 20 the amended statement of case must be verified by a certificate of truth.
- (6) Information given under Part 34 (whether voluntarily or following an order of the court) must be verified by a certificate of truth.
- (7) A certificate of truth by a lay party personally must be in the following form -
- "I [*name*] certify that I believe that the facts stated in this [*name document*] are true."
- (8) A certificate given by the attorney-at-law for a party must be in the following form -
- "I [*name of the individual attorney-at-law giving the certificate*] certify that -
- (a) the [*claimant or as the case may be*] states that he believes that the facts stated in this [*name document*] are true; and
 - (b) this certificate is given on the [*claimant's or as the case may be*] instructions. The [*claimant or as the case may be*] cannot give the certificate because [*state reason*]."

Failure to give certificate of truth

- 3.13 (1) The court may strike out any statement of case which has not been verified by a certificate of truth.
- (2) Any party may apply for an order under paragraph (1).

Right to inspect. etc certain documents filed in court office

- 3.14 (1) On payment of the prescribed fee, any person is entitled, during office hours, to search for, inspect and take a copy of any of the following documents filed in the court office, namely –
- (17/2/2003)
- (a) a claim form:
 - (b) a notice of appeal:
 - (c) a judgement or order: and
 - (d) with the leave of the court, which may be granted on an application made without notice, any other document.
- (2) Nothing in paragraph (1) prevents a party in any proceedings from searching for, inspecting and taking a copy of any affidavit or other document filed in the court office in those proceedings or

filed before the commencement of those proceedings but with a view to its commencement.

- (3) Any document filed in or in the custody of a court office must not be taken out of the court office without the leave of the court unless the document is to be sent to another court office.

PART 4

Practice Directions

Contents of this Part

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Date from which practice directions take effect	Rule 4.4
Compliance with practice directions	Rule 4.5

Who may issue practice directions

- 4.1 Practice directions may be issued only by the Chief Justice after
(18/9/2006) consultation with the judges.

Scope of practice directions

- 4.2 (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.
- (2) Where there is no express provision in these rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the court.

Publication of practice directions

- 4.3 Practice directions must forthwith be -
- (a) published in the Gazette; and
 - (b) made available at the registry.

Date from which practice directions take effect

- 4.4 A practice direction takes effect from the date specified in the direction or from the date of publication under rule 4.3(a) whichever is the later.

Compliance with practice directions

- 4.5 (1) A party must comply with any relevant practice directions unless there are good reasons for not doing so.
- (2) A party may apply to the court to be excused from complying with a practice direction or to ask for time to comply.
- (18/9/2006)
- (3) The court may make an order under Part 26 (Case Management - Powers of the Court) or Part 64 (Costs - General) against a party who fails to comply with a practice direction.

PART 5

Service of Claim Form within Jurisdiction

Contents of this Part

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Service of claim form, normal method

- 5.1 (1) The general rule is that a claim form must be served personally on each defendant.
- (2) The defendant must be served with a copy of the claim form sealed by the court in accordance with rule 3.9 (sealing of documents issued by court).

(Part 6 deals with service of other documents, service on the Crown is dealt with in section 14 of the Crown Proceedings Act, rule 3.6(2) enables the Chief Justice to make practice directions as to the electronic service of documents.)

Particulars of claim to be served with claim form

- 5.2 (1) The general rule is that the claimant's particulars of claim must be served with the claim form.
- (2) However the claim form may be served without the particulars of claim in accordance with rule 8.2 (particulars of claim to be issued and served with claim form).
- (3) In this Part reference to service of the claim form requires that -
- (a) the particulars of claim; or
 - (b) where these Rules so require, an affidavit or other document; and
 - (c) a copy of any order or the certificate and application made under rule 8.2,
- must be served with the claim form unless the particulars of claim is contained in the claim form.

Method of personal service

- 5.3 A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

Permitted place of service

- 5.4 Except where permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction.

Proof of personal service

- 5.5 (1) Personal service of the claim form is proved by an affidavit sworn by the server stating -
- (a) the date and time of service;
 - (b) the precise place or address at which it was served;
 - (c) the precise manner by which the person on whom the claim form was served was identified; and
 - (d) precisely how the claim form was served.
- (2) Where the person served was identified by another person, there must also be filed, where practicable, an affidavit by that person-

- (a) proving the identification of the person served; and
 - (b) stating how the maker of the affidavit was able to identify the person served.
- (3) Where the server identified the person to be served by means of a photograph or description, there must also be filed an affidavit by a person -
- (a) verifying the description or photograph as being of the person intended to be served; and
 - (b) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

Service on attorney-at-law

- 5.6 (1) Where an attorney-at-law -
- (a) is authorised to accept service of the claim form on behalf of a party; and
 - (b) has notified the claimant in writing that he or she is so authorised, the claim form must be served on that attorney-at-law and personal service is not required.
- (2) Where a claim form is sent to a party's attorney-at-law who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the attorney-at-law certifies that he or she accepts service.
- (3) Where an attorney-at-law -
- (a) has given notice to the claimant under paragraph (1) (b) of this rule;
 - (b) has been duly served with the claim form; and
 - (c) fails to file an acknowledgment of service within the time limited by rule 9.3,
- the claim form is deemed to have been served on the defendant on the date of which that defendant's attorney-at-law was served.

Service on limited company

- 5.7 Service on a limited company may be effected -
- (a) by sending the claim form by telex, FAX, prepaid registered post, courier delivery or cable addressed to the registered office of the company;
 - (b) by leaving the claim form at the registered office of the company;

- (c) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company;
- (d) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim; or
- (e) in any other way allowed by an enactment.

Service on firm or partnership

- 5.8 (1) Service on a firm or partnership may be effected -
- (a) by serving the claim form personally on any partner of the firm;
 - (b) by serving the claim form personally on a manager of the firm at any place of business of the firm or partnership which has a real connection with the claim; or
 - (c) in any other way allowed by any enactment.
- (2) Where the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

Service on body corporate

- 5.9 Service on a body corporate (other than a limited company) may be effected -
- (a) by sending the claim form by telex, FAX, prepaid registered post, courier delivery or cable addressed to the principal office of the body corporate;
 - (b) by leaving the claim form at the registered office of the body corporate;
 - (c) by serving the claim form personally on any principal officer of the body corporate; or
 - (d) in any other way allowed by any enactment.
- In this rule “**principal officer**” means the mayor, chairman or president of the body, or the town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

Service on minors and patients

- 5.10 (1) Paragraphs (2) to (5) specify the persons on whom a claim

form must be served if it would otherwise be served on a minor or patient.

- (2) A claim form which would otherwise be served on a minor who is not also a patient must be served on -
 - (a) one of the minor's parents or guardians; or
 - (b) if there is no parent or guardian, on the person with whom the minor resides or in whose care the minor is.
- (3) Where a person is authorised under the Mental Health Act to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.
- (4) Where there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.
- (5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).
- (6) The court may order that, although paragraphs (2) to (5) have not been complied with, the claim form is to be treated as properly served.
- (7) An application for an order under paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit. (Part 23 deals generally with parties who are minors or patients.)

Proof of postal service

- 5.11 (1) Service by registered post is proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.
- (2) The affidavit must exhibit a copy of the claim form and state -
 - (a) the date and time of posting; and
 - (b) the address to which it was sent.

Proof of service by FAX

- 5.12 (1) Service by FAX is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.
- (2) The affidavit must exhibit -
 - (a) a copy of the document served;
 - (b) a copy of any cover sheet to that document; and
 - (c) a copy of the transmission record,

and must state -

- (i) the date and time of transmission; and
 - (ii) the FAX number to which it was sent.
- (Rule 3.8 contains general provisions as to service of documents by FAX.)

Alternative methods of service

- 5.13 (1) Instead of personal service a party may choose an alternative method of service.
- (2) Where a party -
- (a) chooses an alternative method of service; and
 - (b) the court is asked to take any step on the basis that the claim form has been served,
- the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.
- (3) An affidavit under paragraph (2) must -
- (a) give details of the method of service used;
 - (b) show that -
 - (i) the person intended to be served was able to ascertain the contents of the documents; or
 - (ii) it is likely that he or she would have been able to do so;
 - (c) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents; and
 - (d) exhibit a copy of the documents served.
- (4) The registry must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must -
- (a) consider the evidence; and
 - (b) endorse on the affidavit whether it satisfactorily proves service.
- (5) Where the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the registry must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days notice to the claimant.
- (6) An endorsement made pursuant to 5.13(4) may be set aside on good cause being shown.

(18/9/2006)

Power of court to make order for service by specified method

- 5.14 (1) The court may direct that service of a claim form by a method specified in the court's order be deemed to be good service.
- (2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit -
- (a) specifying the method of service proposed; and
 - (b) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and particulars of claim.

Proof of service by specified method

- 5.15 Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

Service of claim form by contractually agreed method

- 5.16 (1) This rule applies where a contract contains a term specifying how any proceedings under the contract should be served.
- (2) A claim form containing a claim in respect of a contract may be served by any method permitted by that contract.
- (3) Where the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.
- (4) Where the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

Service of claim form on agent of principal who is out of jurisdiction

- 5.17 (1) Where the conditions specified in paragraph (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent within the jurisdiction.
- (2) The court may not make an order under this rule unless it is satisfied that -
- (a) the defendant cannot be served within the jurisdiction;

- (b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and
- (c) at the time of the application -
 - (i) the agent's authority had not been terminated; or
 - (ii) the agent is still in business relations with the defendant.
- (3) An application may be made without notice but must be supported by evidence on affidavit.
- (4) An order under this rule must state the periods within which the defendant must file -
 - (a) an acknowledgment of service; and
 - (b) a defence.
- (5) When the court makes an order under this rule, the claimant must serve the agent with -
 - (a) the order;
 - (b) the claim form; and
 - (c) the particulars of claim,and at the same time send to the defendant a copy of each document at the defendant's address out of the jurisdiction.

Service of claim form for possession of vacant land

- 5.18
- (1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where -
 - (a) there is no person in occupation of the land; and
 - (b) service cannot otherwise be effected on the defendant.
 - (2) The court may direct that a claim form and particulars of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more specified newspapers of general circulation in the area in which the land is situated.
 - (3) An application for an order under this rule -
 - (a) may be made without notice; but
 - (b) must be supported by evidence on affidavit that -
 - (i) there is no person in occupation of the land; and
 - (ii) that there is no other method of serving the defendant.

Deemed date of service

- 5.19 (1) A claim form that has been served within the jurisdiction by prepaid registered post is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6.
- (2) Where an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat -
- (a) the date of filing the acknowledgment of service; or
 - (b) (if earlier) the date shown on the acknowledgment of service for receipt of the claim form,
- as the date of service.
- (3) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

PART 6

Service of other Documents

Contents of this Part

Who is to serve documents other than claim form	Rule 6.1
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Address for serving such documents	Rule 6.3
Address for serving documents where no address for service is given	Rule 6.4
Service of documents on person who is not a party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8

Who is to serve documents other than claim form

- 6.1 (1) Any judgment or order which requires service must be served by the party obtaining that judgment or order unless the court orders otherwise.
- (2) Any other document must be served by a party, unless -
- (a) a rule otherwise provides; or
 - (b) the court orders otherwise.

Method of service

- 6.2 Where these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods -
- (a) any means of service in accordance with Part 5;
 - (b) leaving it at or sending it by prepaid post or courier delivery to any address for service in accordance with rule 6.3(1);
 - (c) (where rule 6.3(2) applies) FAX; or

- (d) other means of electronic communication if this is permitted by a relevant practice direction, unless a rule otherwise provides or the court orders otherwise.

(Rule 3.6(2) enables the Chief Justice to make practice directions as to the electronic service of documents.)

Address for serving such documents

- 6.3 (1) Documents must be delivered, posted or sent by courier delivery to a party at any address for service within the jurisdiction given by that party.
- (2) Where a party's address for service includes a FAX number, documents may be sent by FAX to that number.
- (3) Where a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in Rule 6.4.

Address for serving documents where no address for service is given

- 6.4 (1) Where no address is given for service, the document may be served by leaving it, posting it or by courier delivery at or to -
 - (a) the business address of any attorney-at-law who purports to act for the party in the proceedings;
 - (b) in the case of an individual, that person's usual or last known place of residence;
 - (c) in the case of a proprietor of a business, that person's
 - (i) usual or last known place of residence; or
 - (ii) place of business or last known place of business;or
 - (d) in the case of a firm or partnership, either-
 - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim; or
 - (ii) the usual or last known place of residence of one of the partners.
- (2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

Service of documents on person who is not a party

6.5 Where documents are to be served on a person who is not a party, such documents must be served by one of the methods specified in Part 5.

Deemed date of service

6.6 (1) A document which is served within the jurisdiction in accordance with these Rules shall be deemed to be served on the day shown in the following table -

(18/9/2006)	Method of Service	Deemed date of service
	Post	21 days after posting.
	Registered Post	21 days after the date indicated on the Post Office receipt.
	Courier Delivery	3 business days after the date indicated on the courier receipt.
	Leaving document at a permitted address	the business day after leaving the document.
	FAX	(a) if it is transmitted on a business day before 4 pm: the day of transmission; or (b) in any other case, the business day after the day of transmission.
	Other electronic method	the business day after transmission.

(2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.

(3) In this rule “**business day**” means any day other than -

- (i) a Saturday, Sunday or Public Holiday; or
- (ii) any other day on which the registry is closed.

Proof of service

6.7 Where proof of service of any document is required this may be done by any method of proving service set out in Part 5.

Power of court to dispense with service

- 6.8
- (1) The court may dispense with service of a document if it is appropriate to do so.
 - (2) An application for a an order to dispense with service may be made without notice.

PART 7

Service of Court Process out of Jurisdiction

Contents of this Part

Scope of this Part	Rule 7.1
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Service of claim form through foreign governments etc.	Rule 7.9
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Service of claim form on State where court permits service out of jurisdiction	Rule 7.11
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Undertaking to be responsible for expenses of Minister with responsibility for foreign affairs	Rule 7.13
Service of court process other than claim form	Rule 7.14
Proof of service	Rule 7.15

Scope of this Part

- 7.1 (1) This Part contains rules about -
- (a) the circumstances in which court process may be served;
 - (b) how to obtain the permission of the court to serve; and
 - (c) the procedure for serving court process, out of the jurisdiction.

- (2) In this Part references to service or filing copies of the claim form include -
- (a) the particulars of claim (unless contained in the claim form); or
 - (b) an affidavit in support of the claim if these Rules so require; and
 - (c) if permission has been given under rule 8.2 to serve the claim form without the particulars of claim, a copy of the order giving such permission; or
 - (d) where appropriate, the certificate and application for permission under rule 8.2.

General rule as to service of claim form out of jurisdiction

- 7.2 A claim form may be served out of the jurisdiction only if
- (a)
 - (i) rule 7.3 or 7.4 allows; and
 - (ii) the court gives permission, or
 - (b) service in Admiralty Proceedings is permitted by rule 70.5.

Service of claim form out of jurisdiction in specified proceedings

- 7.3 (1) The court may permit a claim form to be served out of the jurisdiction in the circumstances listed in this rule.

Features which may arise in any type of claim

- (2) A claim form may be served out of the jurisdiction with the permission of the court where -
- (a) a claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction;
 - (b) a claim is made for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction;
 - (c) a claim is made against someone on whom the claim form has been or will be served, and -
 - (i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and
 - (ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim; or

- (d) a claim is an ancillary claim and the person to be served is a necessary or proper party to the claim against the ancillary claimant.

(Part 18 deals with ancillary claims and defines “ancillary claimant”.)

Claims about contracts

- (3) A claim form may be served out of the jurisdiction with the permission of the court where -
 - (a) a claim is made to enforce, rescind, dissolve or otherwise affect a contract or to obtain any other remedy in respect of a breach of contract and (in either case) the contract -
 - (i) was made within the jurisdiction;
 - (ii) was made by or through an agent trading or residing within the jurisdiction;
 - (iii) was to be wholly or partly performed within the jurisdiction;
 - (iv) is by its terms or by implication governed by the law of Jamaica; or
 - (v) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;
 - (b) a claim is made in respect of a breach of contract committed within the jurisdiction; or
 - (c) the claim is for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (a) or (b).

Claims in tort

- (4) A claim form may be served out of the jurisdiction with the permission of the court where a claim in tort is made and -
 - (a) the damage was sustained within the jurisdiction; or
 - (b) the damage sustained resulted from an act committed within the jurisdiction.

Enforcement

- (5) A claim form may be served out of the jurisdiction with the permission of the court where a claim is made to enforce any judgment or arbitral award made within the jurisdiction.

Claims about property within the jurisdiction

- (6) A claim form may be served out of the jurisdiction with the permission of the court where -
- (a) the whole subject matter of the proceedings is -
 - (i) land; or
 - (ii) the perpetuation of testimony relating to land, located within the jurisdiction;
 - (b) a claim is made in order to interpret, rectify, set aside or enforce a document, obligation or liability affecting land located within the jurisdiction; or
 - (c) a claim is made -
 - (i) for a debt secured on land;
 - (ii) to assert, declare or determine rights in or over land; or
 - (iii) to obtain authority to dispose of land;and (in any of these cases) the land is located within the jurisdiction.

Claims about trusts etc.

- (7) A claim form may be served out of the jurisdiction with the permission of the court where -
- (a) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of an written instrument where -
 - (i) the trusts ought to be executed according to the law of Jamaica; and
 - (ii) the person on whom the claim form is to be served is a trustee of the trusts;
 - (b) a claim is made for -
 - (i) any remedy which might be obtained in proceedings for the administration of the estate of; or
 - (ii) in probate proceedings as defined in Part 68 relating to, a person who died domiciled within the jurisdiction;
 - (c) a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of acts committed within the jurisdiction; or
 - (d) a claim is made for restitution where the defendant's

alleged liability arises out of acts committed within the jurisdiction.

Miscellaneous statutory proceedings

- (8) A claim form may be served out of the jurisdiction where the claim is brought under any enactment enabling service out of the jurisdiction in accordance with the provisions of that statute.

Admiralty proceedings

- (9) This rule does not apply to an Admiralty claim in rem.

Proceedings which include other types of claim

- 7.4 Where the claimant makes a claim which falls within -
- (a) rule 7.3(3) (claims about contracts);
 - (b) rule 7.3(4) (claims in tort); or
 - (c) rule 7.3(7)(c) (claims against the defendant as a constructive trustee),
- the court may grant any claim for a remedy which -
- (i) does not fall within rule 7.3; but
 - (ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

Permission to serve claim form out of jurisdiction

- 7.5 (1) An application for permission to serve out of the jurisdiction may be made without notice but must be supported by evidence on affidavit stating -
- (a) the grounds on which the application is made and the paragraph or paragraphs of rule 7.3 relied on;
 - (b) that in the deponent's belief the claimant has a claim with a realistic prospect of success;
 - (c) in what place, within what country, the defendant may probably be found; and
 - (d) where the application is made under rule 7.3(2)(d), the grounds for the deponent's belief that the conditions are satisfied.

- (2) Where the application is made in respect of a claim referred to in rule 7.3(2)(c), the affidavit must also state the grounds on which the deponent believes that there is between the claimant and the person on whom the claim form has been, or will be served, a real issue which it is reasonable for the court to try.
- (3) The court may not give permission unless satisfied that Jamaica is the proper place in which to bring the claim.
- (4) An order granting permission to serve the claim form out of the jurisdiction must state the periods after service of the claim form within which the defendant must -
 - (a) file an acknowledgment of service in accordance with Part 9; and
 - (b) file a defence in accordance with Part 10.
- (5) The general rule is that an acknowledgment of service or defence must be filed within the following periods after service of the claim form -

place of service	time for acknowledgment of service	time for defence
USA, Canada and Caribbean states	28 days	56 days
Europe (not including Russia)	42 days	70 days
Elsewhere	56 days	84 days.

- (6) However, the court may direct that some other periods be substituted.

Acknowledgment of service and defence where claim form served out of the jurisdiction

- 7.6 A claim form to be served out of the jurisdiction must be amended to state the periods after service of the claim form within which-
 - (a) the acknowledgment of service; and
 - (b) the defence,
 must be filed.

Application to set aside service of claim form under rule 7.3

- 7.7 (1) Any person on whom a claim form has been served out of the

jurisdiction under rule 7.3 may apply to set aside service of the claim form.

- (2) The court may set aside service under this rule where -
 - (a) service out of the jurisdiction is not permitted by the rules;
 - (b) the case is not a proper one for the court's jurisdiction; or
 - (c) the claimant does not have a reasonable prospect of success in the claim.
- (3) This rule does not limit the court's power to make an order under rule 9.6 (procedure for disputing the court's jurisdiction).

Method of service of claim form - general provisions

- 7.8
- (1) Subject to the following paragraphs of this rule, where a claim form is to be served out of the jurisdiction, it may be served -
 - (a) by personal service effected by the claimant or his or her agent;
 - (b) in accordance with the law of the country in which it is to be served; or
 - (c) by a method provided for by -
 - (i) rule 7.9 (service through foreign governments etc);
or
 - (ii) rule 7.11 (service on a State).
 - (2) Nothing in this Part or in any court order authorises or requires any person to do anything in the country where the claim form is to be served which is against the law of that country.

Service of claim form through foreign governments, etc.

- 7.9
- (1) This rule does not apply to service in -
 - (a) the United Kingdom, the Isle of Man or the Channel Islands;
 - (b) any independent Commonwealth country; or
 - (c) the Republic of Ireland,
unless the claim form is to be served in accordance with paragraph (3).
 - (2) The methods of service permitted by this rule are in addition to method of service permitted under rule 7.8(1)(a) or (b).

Service under a Civil Procedure Convention

- (3) A claim form to be served on a defendant in any country which is a party to a Civil Procedure Convention (to which Jamaica is also a party) providing for service of court process in that country may be served, if the law of that country permits -
- (i) through the judicial authorities of that country; or
 - (ii) through the Jamaican consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served); or

Service where there is no applicable Convention

- (4) A claim form to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service of court process in that country may be served, if the law of that country so permits -
- (i) through the government of that country, where that government is willing to serve it; or
 - (ii) through the Jamaican consular authority in that country.

Procedure where claim form is to be served through foreign governments, etc.

- 7.10 (1) This rule applies where the claimant wishes to serve the claim form -
- (a) through the judicial authorities of the country where the claim form is to be served;
 - (b) through the Jamaican consular authority in that country;
 - (c) through the authority designated under any relevant Civil Procedure Convention (to which Jamaica is a party) in respect of that country; or
 - (d) through the government of that country.
- (2) Where this rule applies, the claimant must file -
- (a) a request for service of the claim by the claimant's chosen method;
 - (b) a copy of the claim form;
 - (c) an additional copy of the claim form for each person to be served; and
 - (d) any translation required by rule 7.12.

- (3) When the claimant files the documents specified in paragraph (2) the registry must -
 - (a) seal the copy of the claim form; and
 - (b) send the documents filed to the Minister with responsibility for foreign affairs with a request that he arrange for the claim form to be served -
 - (i) by the method indicated in the request for service filed under paragraph (2); or
 - (ii) where the request indicates alternative methods, by the most convenient method.
- (4) An official certificate which -
 - (a) states that the claim form has been served in accordance with this rule either personally or in accordance with the law of the country in which service was effected;
 - (b) specifies the date on which the claim form was served; and
 - (c) is made by -
 - (i) the Jamaican consular authority in the country where the claim form was served;
 - (ii) the government or judicial authorities in that country; or
 - (iii) any other authority designated in respect of that country under any relevant Civil Procedure Convention,is evidence of the facts stated in the certificate.
- (5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

Service of claim form on a State where court permits service out of jurisdiction

- 7.11
- (1) This rule applies where a claimant wishes to serve a claim form on a State.
 - (2) Where that State has agreed to a method of service other than a method permitted by this Part, the claim may be served either by the method agreed or in accordance with the other rules in this Part.
 - (3) The claimant must file at the registry -
 - (a) a request for service to be arranged by the Minister with responsibility for foreign affairs;

- (b) a copy of the claim form; and
 - (c) any translation required by virtue of rule 7.12.
- (4) The registry must send documents filed under this rule to the Minister with responsibility for foreign affairs with a request that the minister arrange for the claim form to be served.
- (5) An official certificate by the Minister with responsibility for foreign affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.
- (6) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

Translation of claim form

- 7.12 (1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 7.10 or rule 7.11 must be accompanied by a translation of the claim form.
- (2) The translation must be -
- (a) in the official language of the country in which it is to be served; or
 - (b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the claim form is to be served.
- (3) Every translation filed under this rule must be certified by the person making it to be a correct translation, and the certificate must state -
- (a) the name of the person making the translation; and
 - (b) his or her -
 - (i) address; and
 - (ii) qualifications for making the translation.
- (4) Where the claim form is to be served -
- (a) in a country of which English is an official language; or
 - (b) by the Jamaican consular authority,
- the claimant is not required to file a translation of a claim form filed under rule 7.10 (service through foreign governments judicial authorities, etc.,) unless a relevant Civil Procedure Convention expressly requires a translation.
- (5) The claimant is not required to file a translation of a claim form filed under rule 7.11 (service on a State) where English is an official language of the State where the claim form is to be served.

Undertaking to be responsible for expenses of Minister with responsibility for foreign affairs

- 7.13 (1) A person filing a request for service under rule 7.10 (procedure where claim form is to be served through foreign governments, judicial and consular authorities etc.,) or rule 7.11 (service on a State) must undertake in the request -
- (a) to be responsible for all expenses incurred by the Minister with responsibility for foreign affairs; and
 - (b) on being informed of the amount of those expenses -
 - (i) to pay that amount to the Accountant General; and
 - (ii) to notify the Foreign Affairs Ministry of the payment and produce a copy of the receipt of the Accountant General.
- (2) The claimant may take no further step in the proceedings until the claimant files at the registry an affidavit confirming compliance with paragraph (1) (b) and exhibiting a copy of the receipt of the Accountant General.

Service of court process other than a claim form

- 7.14 (1) An application, order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.
- (2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly rules 7.8 to 7.13 apply.

Proof of service

- 7.15 Where -
- (a) a hearing is fixed when the claim is issued;
 - (b) the claim form is served on a defendant out of the jurisdiction; and
 - (c) that defendant does not appear at the hearing,
- the claimant may take no further steps against that defendant until the claimant files written evidence showing that the claim form has been duly served.

PART 8

How to Start Proceedings

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The Claimant - how to start proceedings

- 8.1 (1) A claimant who wishes to start proceedings must file in the registry of the court at The Supreme Court, King Street, Kingston (or at such other place as the Rules Committee may determine) the original and not less than one copy for each defendant (for sealing) of -

- (a) the claim form; and
- (b) unless either rule 8.2(1)(b) or 8.2(2) applies-
 - (i) the particulars of claim; or
 - (ii) where any rule or practice direction so requires or allows, an affidavit or other document giving the details of the claim required under this Part.
- (2) Proceedings are started when the claim form is filed.
(Rule 3.7 defines when a document is filed.)
- (3) A claim form must be in Form 1 except in the circumstances set out in paragraph (4).
- (4) Form 2 (fixed date claim form) must be used -
 - (a) in mortgage claims;
 - (b) in claims for possession of land;
 - (c) in hire purchase claims;
 - (d) where the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact;
 - (e) whenever its use is required by a rule or practice direction; and
 - (17/2/2003) (f) where by any enactment proceedings are required to be commenced by petition, originating summons or motion.
(For the procedure under a fixed date claim see rule 27.2.)
- (5) A person who seeks a remedy -
 - (a) before proceedings have been started; or
 - (b) in relation to proceedings which are taking place, or will take place, in another jurisdiction, must seek that remedy by an application under Part 11.

Particulars of claim to be issued and served with claim form

- 8.2 (1) A claim form may be issued and served without the particulars of claim (or affidavit or other document required by rule 8.1(1)(b)(ii)) only if -
- (a) the claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8, 8.9 and 8.10; or
 - (b) the court gives permission.
- (2) However in a case of emergency when it is not practicable to obtain the permission of the court a claimant may issue and serve the claim form without the particulars of claim (or affidavit or other document required or permitted by rule 8.1(1)(b)(ii)) provided that the claimant -

- (a) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and
- (b) serves a copy of -
 - (i) the certificate; and
 - (ii) the application for permission, with the claim form.
- (3) Where a claim form is issued under paragraph (2) the claimant may take no further steps except to serve the claim form until permission is given.
- (4) The court may give permission under paragraph (1)(b) only if it is satisfied that -
 - (a) the claim form must be issued as a matter of urgency and that it is not practicable for the claimant to prepare a particulars of claim or affidavit; or
 - (b) a relevant limitation period is about to expire and the claimant has obtained legal advice relating to the claim for the first time within the 28 days prior to the date that the claimant wishes to file the claim.
- (5) An application for permission may be made without notice but must be supported by evidence on affidavit.
- (6) Any order giving permission for the claim form to be served without the particulars of claim or affidavit or other document required by rule 8.1(b)(ii) must state a date by which that document must be served.
- (7) Such date must in no case be more than 56 days from the date of issue of the claim form.
- (8) A copy of the order or the certificate and application under paragraph (2) must be served with the claim form.
- (9) The claimant must file a copy of the particulars of claim or other document required by rule 8.1(b)(ii) served in accordance with paragraph (6) supported by an affidavit proving service.
(Rule 5.5 deals with proof of personal service, rule 5.11 deals with proof of postal service, where appropriate and rule 5.12 deals with proof of service by FAX where permissible.)

Right to make a claim which includes two or more claims

- 8.3 A claimant may use a single claim form to include all, or any, other claims which can be conveniently disposed of in the same proceedings.

Claim not to fail by adding or failing to add parties

- 8.4 (1) The general rule is that a claim will not fail because -
- (a) a person was added as a party to the proceedings who should not have been added; or
 - (b) a person who should have been made a party was not made a party to the proceedings.
- (2) However -
- (a) where a claimant claims a remedy to which some other person is jointly entitled all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and
 - (b) if any such person does not agree to be a claimant, that person must be made a defendant unless the court orders otherwise.
- (3) Any number of claimants or dependants may be joined as parties to the claim.
- (17/2/2003)
- (4) This rule does not apply in administration or probate proceedings. (Rules 67.2 and 68.3 deal with parties in such proceedings.)

Special rules about parties in claims for wrongful interference with goods

- 8.5 (1) A claimant in a claim for wrongful interference with goods must, in the particulars of claim, state the name and address of every person who, to his knowledge, has or claims an interest in the goods and who is not a party to the claim.
- (2) A defendant to a claim for wrongful interference with goods may apply for a direction that another person be made a party to the claim to establish whether the other person -
- (a) has a better right to the goods than the claimant; or
 - (b) has a claim which might render the defendant doubly liable.
- (3) Where the person referred to in paragraph (2) fails to attend the hearing of the application, or comply with any directions, the court may order that he is deprived of any claim against the defendant in respect of the goods.

Declaratory judgment

- 8.6 A party may seek a declaratory judgment and the court may make a binding declaration of right whether or not any consequential relief is or could be claimed.

What must be included in the claim form

- 8.7 (1) The claimant must in the claim form (other than a fixed date claim form) -
- (a) include a short description of the nature of the claim;
 - (b) specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled);
 - (c) give -
 - (i) the claimant's normal place of residence or business; and
 - (ii) an address for service in accordance with rule 3.11; and
 - (d) if an individual, state his or her occupation.
- (2) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.
- (3) A claimant who is seeking interest must -
- (a) say so in the claim form, and
 - (b) include in the claim form or particulars of claim details of -
 - (i) the basis of entitlement;
 - (ii) the rate;
 - (iii) the date from which it is claimed;
 - (iv) the date to which it is claimed; and
 - (v) where the claim is for a specified sum of money,
 - the total amount of interest claimed to the date of the claim; and
 - the daily rate at which interest will accrue after the date of the claim.
- (4) A claimant seeking to recover goods must state the value of the goods.
- (5) A claimant may make a claim for a specified sum of money in a foreign currency but must state the equivalent sum in Jamaican currency and the date and basis on which the calculation was made.
- (6) A claimant who -
- (a) claims in a representative capacity; or
 - (b) sues a defendant in a representative capacity,
- must state what that capacity is.

(Rule 3.12 requires the claim form to include a certificate of truth, rule 8.5 deals with information required in claims for wrongful interference with goods, Part 21 deals with representative parties.)

Contents of fixed date claim form

- 8.8 Where the claimant uses form 2, the claim form must state -
- (a) the question which the claimant wants the court to decide;
 or
 - (b) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
 - (c) where the claim is being made under an enactment, what that enactment is;
 - (d) where the claimant seeks possession from a tenant,
 - (i) whether the claim relates to premises in relation to which there is an exemption certificate pursuant to the provisions of the Rent Restriction Act; and
 - (ii) if not, the relevant ground or grounds on which the claimant relies.
 - (e) where the claimant
 - (i) is claiming in a representative capacity; or
 - (ii) sues a defendant in a representative capacity, what that capacity is.

(Rule 3.12 requires the claim form to contain a certificate of truth.)

Claimant's duty to set out case

- 8.9 (1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.
- (2) Such statement must be as short as practicable.
- (3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.
- (4) Where the claim seeks recovery of any property, the claimant's estimate of the value of that property must be stated.
- (5) The particulars of claim must include a certificate of truth in accordance with rule 3.12.

Consequences of not setting out case

- 8.9A The claimant may not rely on any allegation or factual argument
(18/9/2006) which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission.

Certificate of value (small claims)

- 8.10 (1) In any claim in which -
- (a) the quantum of damages alone determines whether the claim should be brought in the court or the Resident Magistrate's Court; and
 - (b) where the amount of any damages claimed is not specified, the claim form must include a certificate by the claimant that the damages claimed exceed the civil jurisdiction of the Resident Magistrate's Court.
- (2) The court may transfer any claim in which the amount claimed does not exceed the civil jurisdiction of the Resident Magistrate's court to that court.

Special requirements applying to claims for personal injuries

- 8.11 (1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.
- (2) The claimant's date of birth or age must be stated in the claim form or particulars of claim.
- (3) Where the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from a medical practitioner relating to the personal injuries alleged in the claim.
- (4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.
- (5) The claimant must include in or attach to the claim form or particulars of claim, a schedule of any special damages claimed.

Relator claims

- 8.12 No person's name may be used in any claim as a relator unless that person has given written authority for that person's name to be used and the authority is filed at the registry before the claim is issued.

Service of claim form

- 8.13 After the claim form has been issued it may be served on the defendant in accordance with Part 5 (service of claim form) or Part 7 (service out of the jurisdiction).

Time within which claim form may be served

- 8.14 (1) The general rule is that a claim form must be served within 12 months after the date when the claim was issued or the claim form ceases to be valid.
- (2) The period for -
- (a) service of an Admiralty claim form in rem; or
 - (b) service of a claim form out of the jurisdiction,
- (18/9/2006) is 12 months.
- (Part 7 deals with service out of the jurisdiction; Part 70 deals with Admiralty proceedings.)

Extension of time for serving a claim form

- 8.15 (1) The claimant may apply for an order extending the period within which the claim form may be served.
- (2) The period by which the time for serving the claim form is extended may not be longer than 6 months on any one application.
- (3) An application under paragraph (1) -
- (a) must be made within the period -
 - (i) for serving the claim form specified by rule 8.14; or
 - (ii) of any subsequent extension permitted by the court, and
 - (b) may be made without notice but must be supported by evidence on affidavit.
- (4) The court may make an order for extension of validity of the claim form only if it is satisfied that -
- (a) the claimant has taken all reasonable steps -
 - (i) to trace the defendant; and
 - (ii) to serve the claim form, but has been unable to do so; or
 - (b) there is some other special reason for extending the period.
- (5) Where an order is made extending the validity of the claim form -
- (a) the claim form must bear a certificate by the claimant or the claimant's attorney-at-law showing the period for which the validity of the claim form has been extended; and
 - (b) a sealed copy of any order made must be served with the claim form
- (6) No more than two extensions may be allowed unless the court is satisfied that -

- (a) the defendant is deliberately avoiding service; or
- (b) there is some other compelling reason for so doing.

Defence form etc., must be served with claim form

- 8.16 (1) When a claim form is served on a defendant, it must be accompanied by -
- (a) a form of acknowledgment of service (form 3 or 4);
 - (b) a form of defence (form 5);
 - (c) the prescribed notes for defendants (form 1A or 2A);
 - (d) a copy of any order made under rules 8.2 or 8.13; and,
 - (e) if the claim is for money and the defendant is an individual, a form of application to pay by instalments (form 6);
- (2) There must be inserted on each form -
- (a) the address of the registry to which the defendant is to return the forms;
 - (b) the title of the claim; and
 - (c) the reference number of the claim.
- (3) Where there is a standard defence form appropriate to the particular case set out in a practice direction, the form sent to the defendant must be in a standard form of that type.

PART 9

Acknowledgment of Service and Notice of Intention to Defend

Contents of this Part

Scope of this Part	Rule 9.1
Filing acknowledgment of service and consequence of not doing so	Rule 9.2
The period for filing acknowledgment of service	Rule 9.3
Contents of acknowledgment of service	Rule 9.4
Right to dispute jurisdiction of court not taken away by acknowledgment of service	Rule 9.5
Procedure for disputing court's jurisdiction, etc.	Rule 9.6

Scope of this Part

- 9.1 (1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a judgment in default of acknowledgment of service being obtained.
(Part 12 deals with default judgments.)
- (2) Where by any enactment provision is made for the entry of an appearance, an acknowledgment of service must be used.
(Part 14 deals with the cases where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.)
- (17/2/2003)

Filing acknowledgment of service and consequence of not doing so

- 9.2 (1) A defendant who wishes -
- (a) to dispute the claim; or
 - (b) to dispute the court's jurisdiction,
- must file at the registry at which the claim form was issued an acknowledgment of service in form 3 or 4 containing a notice of intention to defend and send a copy of the acknowledgment of

service to the claimant or the claimant's attorney-at-law.

- (18/9/2006)
- (2) A claimant must serve copies of any acknowledgment of service on all other defendants who have been served with the claim form.
 - (3) A defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at, or sending it by post or FAX to, the relevant registry.
 - (4) An acknowledgment of service has no effect until it is received at the registry.
 - (5) However the defendant need not file an acknowledgment of service if a defence is filed and served on the claimant or the claimant's attorney-at-law within the period specified in rule 9.3.
 - (6) Where a defendant fails to file either an acknowledgment of service or a defence, judgment may be entered against that defendant if Part 12 allows it.

The period for filing acknowledgment of service

- 9.3
- (1) The general rule is that the period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.
 - (2) Paragraph (1) does not apply where -
 - (a) the claim form is served outside the jurisdiction in accordance with Part 7; or
 - (b) The claim form is served on an agent of an overseas principal under rule 5.17.
 - (3) Where permission has been given under rule 8.2 for a claim form to be served without a particulars of claim, the period for filing an acknowledgment of service is to be calculated from the date when the particulars of claim is served.
 - (4) A defendant may file an acknowledgment of service at any time before a request for default judgment is received at the registry out of which the claim form was issued.
(Rules 7.5(4) and (5) and 5.17(4) deal with the time for filing an acknowledgment of service in those cases, rule 59.2 makes special provision for extending the time for the Crown to acknowledge service.)

Contents of acknowledgment of service

- 9.4
- (1) A defendant acknowledging service -
 - (a) must state in the acknowledgment of service the date on which the defendant received the claim form;

- (b) may state in the acknowledgment of service that all or part of the claim is admitted;
- (c) who admits part of the claim under paragraph (b), must state the amount admitted; and
- (d) who is an individual and admits all or part of a claim for a specified sum of money, may file with the acknowledgment of service-
 - (i) proposals for payment of any sums admitted; and
 - (ii) details of the defendant's financial circumstances.

(Part 14 deals with the way in which such proposals are decided.)
- (2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence.

(Rule 10.3 sets out the time for filing a defence.)
- (3) The defendant or the defendant's attorney-at-law must sign the acknowledgment of service.
- (4) The defendant must include in the acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

Right to dispute jurisdiction of court not taken away by acknowledgment of service

- 9.5 A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.

Procedure for disputing court's jurisdiction etc

- 9.6 (1) A defendant who-
- (a) disputes the court's jurisdiction to try the claim; or
 - (b) argues that the court should not exercise its jurisdiction, may apply to the court for a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.
- (3) An application under this rule must be made within the period for filing a defence.

(17/2/2003)

(Rule 10.3 sets out the period for filing a defence.)
- (4) An application under this rule must be supported by evidence on affidavit.
- (5) A defendant who -
- (a) files an acknowledgment of service; and

- (b) does not make an application under this rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.
- (6) Any order under this rule may also -
 - (a) strike out the particulars of claim;
 - (b) set aside service of the claim form;
 - (c) discharge any order made before the claim was commenced or the claim form served; and
 - (d) stay the proceedings.
- (7) Where on application under this rule the court does not make a declaration, it -
 - (a) must make an order as to the period for filing a defence; and
 - (b) may -
 - (i) treat the hearing of the application as a case management conference; or
 - (ii) fix a date for a case management conference.

(Part 26 sets out powers which the court may exercise on a case management conference.)
- (8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph (7) (a) and such period may be extended only by an order of the court.

(Rule 10.3(3) deals with an application to stay proceedings where there is a binding agreement to arbitrate.)

PART 10

Defence

Contents of this Part

Scope of this Part	Rule 10.1
The defendant - filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant's duty to set out case	Rule 10.5
Special requirements applying to claims for personal injuries	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Defence of tender	Rule 10.8
Reply to defence	Rule 10.9

Scope of this Part

- 10.1 The rules in this Part set out the procedure for disputing the whole or part of a claim.
(Part 18 deals with the procedure for making a counterclaim.)

The defendant - filing defence and the consequences of not doing so

- 10.2 (1) A defendant who wishes to defend all or part of a claim must file a defence (which may be in form 5).
- (2) However where -
- (a) a claim is commenced by a fixed date claim in form 2 and there is served with that claim form an affidavit instead of a particulars of claim; or
 - (b) where any rule requires the service of an affidavit, the defendant may file an affidavit in answer instead of a defence.

- (3) In this Part the expression “**defence**” includes an affidavit filed under paragraph (2)
- (4) In particular, a defendant who admits liability but wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.
(Part 14 deals with the procedure to admit all or part of the claim.)
- (5) Where a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered against that defendant if Part 12 allows it.

The period for filing defence

- 10.3
- (1) The general rule is that the period for filing a defence is the period of 42 days after the date of service of the claim form.
 - (2) Where permission has been given under rule 8.2 for a claim form to be served without a particulars of claim, the period for filing a defence is the period of 42 days after the service of the particulars of claim.
 - (3) Where the defendant within the period set out in paragraph (1) or (2) makes an application under the Arbitration Act to stay the claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to 14 days after the determination of that application.
 - (4) The general rule is subject to the following rules -
 - (a) rules 7.5(4) and (5) (which specify how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);
 - (b) rule 9.6(8) (which provides that, where the defendant makes an application disputing the court’s jurisdiction, he need not file a defence before the hearing);
 - (c) rule 5.17(4) (which requires the court to specify the period for responding to the particulars of claim when it makes an order for service on an agent of a principal outside the jurisdiction); and
 - (d) rule 15.4(2) (which extends the time for defence where a claimant seeks summary judgment).
 - (5) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2), (3) or (4).
 - (6) The parties may not make more than two agreements under paragraph (5).

- (7) The maximum total extension of time that may be agreed is 56 days.
- (8) The defendant must file details of such an agreement.
- (9) The defendant may apply for an order extending the time for filing a defence.

Service of copy of defence

- 10.4 (1) On filing a defence, the defendant must also serve a copy on every other party.
(18/9/2006)
- (2) The claimant must serve a copy of each defence on every other defendant who has filed an acknowledgement of service or a defence.

Defendant's duty to set out case

- 10.5 (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
- (2) Such statement must be as short as practicable.
 - (3) In the defence the defendant must say -
 - (a) which (if any) of the allegations in the claim form or particulars of claim are admitted;
 - (b) which (if any) are denied; and
 - (c) which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove.
 - (4) Where the defendant denies any of the allegations in the claim form or particulars of claim-
 - (a) the defendant must state the reasons for doing so; and
 - (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.
 - (5) Where, in relation to any allegation in the claim form or particulars of claim, the defendant does not -
 - (a) admit it; or
 - (b) deny it and put forward a different version of events, the defendant must state the reasons for resisting the allegation.
 - (6) The defendant must identify in or annex to the defence any document which the defendant considers to be necessary to the defence.

- (7) A defendant who defends in a representative capacity, must say-
 - (a) what that capacity is; and
 - (b) whom the defendant represents.
- (8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.12

Special requirements applying to claims for personal injuries

- 10.6
- (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.
 - (2) Where the claimant has attached to the claim form or particulars of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must state in the defence -
 - (a) whether all or any part of the medical report is agreed; and
 - (b) if any part of the medical report is disputed, the nature of the dispute.
 - (3) Where -
 - (a) the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries; and
 - (b) the defendant has obtained such a report, the defendant must attach that report to the defence.

Consequences of not setting out defence

- 10.7
(18/9/2006)
- The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.

Defence of tender

- 10.8
- (1) The defence of tender is not available unless the defendant pays into -
 - (a) court; or
 - (b) with the agreement of the claimant or the permission of the court, an interest bearing account,the amount alleged to have been tendered within the period for filing a defence.

- (2) Where the claimant does not give notice accepting the payment into court within 28 days of service of the defence, the defendant may apply for payment out of the monies.
(Rule 10.3 states the period for filing a defence, Part 36 deals with payments into court.)

Reply to defence

- 10.9 (1) A claimant may file a reply within 14 days of service of the defence.
(18/9/2006) (Rule 18.9 deals with service of a defence to counterclaim.)
- (2) A reply must contain a certificate of truth in accordance with rule 3.12.
 - (3) No further statement of case may be filed or served except in accordance with Part 18 or Part 34.

PART 11

General Rules about Applications for Court Orders

Contents of this Part

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Contents of notice of application	Rule 11.10
Service of notice of application	Rule 11.11
Powers of court in relation to conduct of application	Rule 11.12
Consequence of not asking for order in application	Rule 11.13
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Service of application where order made on application made without notice	Rule 11.15
Applications to set aside order made on application made without notice	Rule 11.16
Power of court to proceed in absence of party	Rule 11.17
Application to set aside or vary order made in absence of party	Rule 11.18

Scope of this Part

- 11.1 This Part deals with applications for court orders made before, during or after the course of proceedings.

Applicants and respondents

- 11.2 In this Part -
- “**applicant**” means a person who seeks a court order by making an application;
- and -
- “**respondent**” means -
- (a) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application ; and
 - (b) such other person as the court may direct is to be served with the application.

Applications to be dealt with at case management conference

- 11.3 (1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.
- (2) Where an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances.

Time when application is made

- 11.4 Where an application must be made within a specified period, it is so made if it is received by the registry or made orally to the court within that period.

Where to make application

- 11.5 (1) The general rule is that an application must be made to the registry where the claim was issued.
- (2) Where the claim has been transferred to another registry the application must be made to that registry.
- (3) An application made before a claim has been issued must be made to the registry where it is likely that the claim to which the application relates will be made.

Application to be in writing

- 11.6 (1) The general rule is that an application must be in writing.
- (2) An application may be made orally if -
- (a) this is permitted by a rule or practice direction; or
 - (b) the court dispenses with the requirement for the application to be made in writing.

What application must include

- 11.7 (1) An application must state -
- (a) what order the applicant is seeking;
 - (b) briefly, the grounds on which the applicant is seeking the order; and
 - (c) the applicant's estimate of the likely length of hearing.
- (2) The applicant must file with the application or not less than 3 days before the hearing of the application a draft of the order sought and serve a copy on all respondents to whom notice is given.
- (3) However, if the application is made without notice, the draft order must be filed with the application.

Notice of application

- 11.8 (1) The general rule is that the applicant must give notice of the application to each respondent.
- (2) An applicant may make an application without giving notice if this is permitted by -
- (a) a rule; or
 - (b) a practice direction.
- (3) Notice of the application must be included in the form used to make the application (form 7).

Evidence in support of application

- 11.9 (1) The applicant need not give evidence in support of an application unless it is required by -
- (a) a rule;
 - (b) a practice direction; or
 - (c) a court order.
- (2) Evidence in support of an application must be contained in an affidavit unless -

- (a) a rule;
 - (b) a practice direction; or
 - (c) a court order,
- otherwise provides.
(Part 30 deals with affidavit evidence.)

Contents of notice of application

- 11.10 (1) The notice must state the date, time and place when the application is to be heard.
- (2) Where there is not to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.
(Rule 11.14 sets out the circumstances in which there may not be a hearing.)

Service of notice of application

- 11.11 (1) The general rule is that a notice of an application must be served-
- (a) as soon as practicable after the day on which it is issued; and
 - (b) at least 7 days before the court is to deal with the application.
- (2) However the period in paragraph (1) (b) does not apply where any rule or practice direction specifies some other period for service.
- (3) Where -
- (a) notice of an application has been given, but
 - (b) the period of notice is shorter than the period required, the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.
- (4) The notice must be accompanied by -
- (a) any evidence in support; and
 - (b) a copy of any draft order which the applicant has attached to the application.
- (5) The notice must be served in accordance with Part 6 unless any respondent is not a party, in which case the notice must be served in accordance with Part 5.

Powers of court in relation to conduct of application

- 11.12 (1) The court may -
- (a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;
 - (b) require a party to produce documents or things at such a hearing; and
 - (c) question any party or witness at such a hearing.
- (2) The court may question a party or witness -
- (a) orally; or
 - (b) by putting written questions and asking the witness to give written answers.
- (3) Any party may then cross examine the witness.
- (4) The court may exercise any power which it might exercise at a case management conference.

Consequence of not asking for order in application

- 11.13 An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

Applications which may be dealt with without hearing

- 11.14 The court may deal with an application without a hearing if -
- (a) no notice of the application is required;
 - (b) the parties agree;
 - (c) the court considers that the application can be dealt with over the telephone or by other means of communication;
 - (d) the parties have agreed to the terms of an order -
 - (i) which does not come within rule 27.11(1); and
 - (ii) the application (or a copy of the application) is signed by the attorneys-at-law for all parties to the application; or
 - (e) the court does not consider that a hearing would be appropriate.

(17/2/2003)

(Rules 2.7(3) and (4) contain powers to enable the court to deal with applications by electronic means. Rule 42.7 deals with consent orders.)

Service of application where order made on application made without notice

- 11.15 After the court has disposed of an application made without notice, the applicant must serve a copy of the application and any evidence in support on all other parties.

Application to set aside or vary order made on application made without notice

- 11.16 (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.
- (2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.
- (3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.

Power of the court to proceed in the absence of party

- 11.17 Where the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in the absence of that party.

Application to set aside or vary order made in the absence of party

- 11.18 (1) A party who was not present when an order was made may apply to set aside that order.
- (2) The application must be made not more than 14 days after the date on which the order was served on the applicant.
- (3) The application to set aside the order must be supported by evidence on affidavit showing -
- (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other order might have been made.

PART 12

Default Judgments

Contents of this Part

Scope of this Part	Rule 12.1
Claims where default judgment may not be obtained	Rule 12.2
Claims where permission required	Rule 12.3
Conditions to be satisfied - judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied - judgment for failure to defend	Rule 12.5
Admission of part - request for time to pay	Rule 12.6
Procedure	Rule 12.7
Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10
Interest	Rule 12.11
Costs	Rule 12.12
Defendant's rights following default judgment	Rule 12.13

Scope of this Part

- 12.1 (1) This Part contains provisions under which a claimant may obtain judgment without trial where a defendant -
- (a) has failed to file an acknowledgment of service giving notice of intention to defend in accordance with Part 9; or
 - (b) has failed to file a defence in accordance with Part 10.
- (2) Such a judgment is called a “**default judgment**”.

Claims where default judgment may not be obtained

- 12.2 A claimant may not obtain default judgment where the claim -
- (a) is a fixed date claim;

- (b) is an admiralty claim in rem; or
- (c) a claim in probate proceedings.

(Rule 68.52 deals with probate proceedings, rule 70.12 makes special provision for default judgment in admiralty cases.)

Claims where permission required

- 12.3 (1) A claimant who wishes to obtain a default judgment on any claim which is -
- (a) a claim against a State; or
 - (b) a claim against a minor or patient as defined in rule 2.4, must obtain the court's permission.
- (Part 23 deals with proceedings involving a minor or patient.)
- (2) In this rule a “**State**” means a sovereign power under the Diplomatic Immunities and Privileges Act.
- (3) Where an application is made against a State for a default judgment where the defendant has failed to file an acknowledgment of service-
- (a) the application may be made without notice, but the court hearing the application may direct that a copy of the notice of application be served on the State;
 - (b) if the court -
 - (i) grants the application; or
 - (ii) directs that a copy of the notice of application be served on the State,
 the judgment or notice of application (and the evidence in support) may be served out of the jurisdiction without any further order;
 - (c) where sub-paragraph (b) permits a judgment or a notice of application to be served out of the jurisdiction, the procedure for serving the judgment or the notice of application is the same as for serving a claim form under Part 7 except where an alternative method of service has been agreed.
- (4) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of the Diplomatic Immunities and Privileges Act must obtain the court's permission.
- (5) An application under paragraphs (3) or (4) must be supported by evidence on affidavit.
- (Rule 12.9(2) contains restrictions on a default judgment where it is sought against some but not all defendants.)

- (6) For the avoidance of doubt, rule 12.3(1) shall apply to proceedings against the crown.
- (18/9/2006)

Conditions to be satisfied - judgment for failure to file acknowledgment of service

12.4 The registry at the request of the claimant must enter judgment against a defendant for failure to file an acknowledgment of service, if -

- (a) the claimant proves service of the claim form and particulars of claim on that defendant ;
- (b) the period for filing an acknowledgment of service under rule 9.3 has expired;
- (c) that defendant has not filed -
 - (i) an acknowledgment of service; or
 - (ii) a defence to the claim or any part of it;
- (d) where the only claim is for a specified sum of money apart from costs and interest, that defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- (e) that defendant has not satisfied in full the claim on which the claimant seeks judgment; and
- (f) (where necessary) the claimant has permission to enter judgment.

(Rules, 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and particulars of claim. Part 14 deals with requests for time to pay.)

Conditions to be satisfied - judgment for failure to defend

12.5 The registry must enter judgment at the request of the claimant against a defendant for failure to defend if -

- (a) the claimant proves service of the claim form and particulars of claim on that defendant; or
- (b) an acknowledgment of service has been filed by the defendant against whom judgment is sought; and
- (c) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (d) that defendant has not -

- (i) filed a defence within time to the claim or any part of it (or such defence has been struck out or is deemed to have been struck out under rule 22.2(6));
- (18/9/2006)

- (ii) where the only claim is for a specified sum of money, filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - (iii) satisfied the claim on which the claimant seeks judgment; and
- (18/9/2006) (e) there is no pending application for an extension of time to file the defence.

Admission of part - request for time to pay

- 12.6 (1) This rule deals with the situation where -
- (a) the defendant is an individual who has admitted liability to pay either -
 - (i) part only of a claim for a specified sum; or
 - (ii) a specified sum towards a claim for an unspecified sum of money;
 - (b) that defendant has not filed a defence; and
 - (c) the claimant does not accept the sum admitted.
- (2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered against that defendant for -
- (a) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4, or
 - (b) where the claim is for an unspecified sum, the payment of an amount to be decided by the court.
- (3) Where the defendant has requested time to pay, that request must be dealt with -
- (a) if the claim is for a specified sum, in accordance with rules 14.9, 14.10, and 14.11; or
 - (b) if the claim is for an unspecified sum, when damages are assessed in accordance with rule 16.3.

Procedure

- 12.7 A claimant applies for default judgment by filing a request in form 8. (Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.)

Claim for specified sum of money

- 12.8 (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.
- (2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either -
- (a) the sum of money claimed together with interest at the statutory rate from the date of the claim to the date of entering judgment; or
 - (b) the sum of money claimed and for interest to be assessed.
- (3) Where a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum. (Rule 2.4 defines "claim for a specified sum of money".)

Claim against more than one defendant

- 12.9 (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.
- (2) Where a claimant applies for a default judgment against one of two or more defendants -
- (a) if the claim can be dealt with separately from the claim against the other defendants -
 - (i) the court may enter judgment against that defendant; and
 - (ii) the claimant may continue the proceedings against the other defendants; or
 - (b) if the claim cannot be dealt with separately from the claim against the other defendants -
 - (i) the court may not enter judgment against that defendant; and
 - (ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants
- (3) Where a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this

Part against a defendant unless -

- (a) the claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or
- (b) the court gives permission.

Nature of default judgment

12.10 (1) Default judgment -

- (a) on a claim for a specified sum of money, shall be judgment for payment of that amount or, where part has been paid, the amount certified by the claimant as outstanding-
 - (i) (where the defendant has applied for time to pay under Part 14) at the time and rate ordered by the court; or
 - (ii) (in all other cases) at the time and rate specified in the request for judgment.

(Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim, Part 65 deals with the quantification of costs.)

- (b) on a claim for an unspecified sum of money, shall be judgment for the payment of an amount to be decided by the court.

(Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.)

- (c) on a claim for goods shall be -
 - (i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;
 - (ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or
 - (iii) if the court gives permission, a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

- (2) An application for permission to enter a default judgment under paragraph (1) (c) (iii) must be supported by evidence on affidavit.
- (3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgment has been sought even though that defendant has failed to file an acknowledgment of service or a defence.

- (4) Default judgment where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the particulars of claim.
- (5) An application for the court to determine the terms of the judgment under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 (service of application where order made on application made without notice) does not apply.

Interest

- 12.11 (1) A default judgment shall include judgment for interest for the period claimed where -
- (a) the claim form includes a claim for interest;
 - (b) the claim form or particulars of claim includes the details required by rule 8.7(3); and
 - (c) the request for default judgment states the amount of interest to the date it was filed.
- (2) Where the claim includes any other claim for interest, the default judgment shall include judgment for an amount of interest to be decided by the court, or at the statutory rate.

Costs

- 12.12 (1) A default judgment shall include fixed costs under rules 65.4 and 65.5 unless the court assesses the costs.
- (2) An application to assess costs must be on notice to the defendant. (Rule 65.8 deals with the assessment of costs.)

Defendant's rights following default judgment

- 12.13 Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are -
- (a) costs;
 - (b) the time of payment of any judgment debt;
 - (c) enforcement of the judgment; and
 - (d) an application under rule 12.10(2).
- (Part 13 deals with setting aside or varying default judgments.)

PART 13

Setting Aside or Varying Default Judgment

Contents of this Part

Scope of this Part	Rule 13.1
Cases where court must set aside default judgment	Rule 13.2
Cases where court may set aside or vary default judgment	Rule 13.3
Application to vary or set aside default judgment – procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing to be treated as case management conference	Rule 13.6
Abandoned claims to be restored if judgment set aside	Rule 13.7

Scope of this Part

- 13.1 The rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).
(Part 47 deals with variation of the terms of a judgment as to time and method of payment.)

Cases where court must set aside default judgment

- 13.2 (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because -
- (a) in the case of a failure to file an acknowledgment of service, any of the conditions in rule 12.4 was not satisfied;
 - (b) in the case of judgment for failure to defend, any of the conditions in rule 12.5 was not satisfied; or

- (c) the whole of the claim was satisfied before judgment was entered.
- (2) The court may set aside judgment under this rule on or without an application.

Cases where court may set aside or vary default judgment

- 13.3 (1) The court may set aside or vary a judgement entered under Part 12 if the defendant has a real prospect of successfully defending the claim.
(18/9/2006)
- (2) In considering whether to set aside or vary a judgment under this rule, the court must consider whether the defendant has:
(18/9/2006)
- (a) applied to the court as soon as is reasonably practicable after finding out that judgment has been entered.
 - (b) given a good explanation for the failure to file an acknowledgement of service or a defence, as the case may be.
- (3) Where this rule gives the court power to set aside a judgment, the court may instead vary it.
(Rule 26.1(3) enables the court to attach conditions to any order.)

Applications to vary or set aside judgment - procedure

- 13.4 (1) An application may be made by any person who is directly affected by the entry of judgment.
- (2) The application must be supported by evidence on affidavit.
 - (3) The affidavit must exhibit a draft of the proposed defence.

Court to impose condition as to filing of defence

- 13.5 Where judgment is set aside under rule 13.3, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

Hearing to be treated as case management conference

- 13.6 (1) When judgment is set aside under rule 13.3 the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.

- (2) Where it is not possible to deal with the matter justly at that time, the registry must fix a date, time and place for a case management conference and give notice to the parties.

(Part 26 deals with the powers of the court on a case management conference, Part 27 deals with the procedure for case management conferences.)

Abandoned claims to be restored if judgment set aside

- 13.7 Where the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

PART 14

Judgment on Admissions

Contents of this Part

Making an admission	Rule 14.1
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Requests for time to pay - procedure where time and rate agreed	Rule 14.10
Requests for time to pay - procedure where time and rate not agreed	Rule 14.11
Right to re-determination	Rule 14.12
Variation of order	Rule 14.13

Making an admission

- 14.1 (1) A party may admit the truth of the whole or any part of any other party's case.
- (2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.
- (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.
- (4) The defendant may do this in accordance with the following rules-

- (a) rule 14.6 (admission of whole of claim for specified sum of money);
 - (b) rule 14.7 (admission of part of claim for money only); or
 - (c) rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).
- (5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgment of service has expired.
(Rule 9.3 specifies the time for filing an acknowledgment of service, rule 65.8 deals with assessed costs.)
- (6) The court may allow a party to amend or withdraw an admission.

Satisfaction

- 14.2 (1) Where the defendant pays the claimant the sum claimed together with interest (if claimed) and the fixed costs as set out on the claim form within the period for filing an acknowledgment of service under rule 9.3 -
- (a) the claim is stayed; and
 - (b) the claimant must forthwith file and serve a notice of discontinuance.
- (2) Rule 37.6 (liability for costs) does not apply to a notice of discontinuance served under this rule.
- (3) Where the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within 7 days of payment, the defendant may apply in writing to the court for the claim to be recorded as satisfied.
- (4) The registry must serve a copy of the application on the claimant with a notice requiring the claimant to notify the court within 14 days whether the claimant disputes that the claim has been satisfied.
- (5) Where there is no dispute, the registry must record that the claim has been satisfied.
- (6) Where the claimant disputes satisfaction, the registry must fix a hearing to consider the application and give not less than 7 days notice of the date, time and place of such hearing to the claimant and defendant.

Admissions where party a minor or patient

- 14.3 Judgment may not be entered on an admission where -
- (a) the defendant is a minor or patient; or
 - (b) the claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.
- (Rule 23.12 deals with compromise of claims made by or against a minor or patient.)

Admission by notice in writing - application for judgment

- 14.4 (1) Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.
- (2) The terms of the judgment shall be such as it appears to the court that the applicant is entitled to on the admission.

Admission in whole or in part of money claim

- 14.5 On receipt of an admission of the whole or part of a claim for money under rule 14.1(3), the registry must send to the claimant a copy of such admission and any request for time to pay under rule 14.9.

Admission of whole of claim for specified sum of money

- 14.6 (1) This rule applies where -
- (a) the only remedy which the claimant is seeking is payment of a specified sum of money;
 - (b) the defendant admits the whole of the claim in the acknowledgment of service; and
 - (c) the defendant has not requested time to pay.
- (2) The claimant may file a request for judgment in form 9 for the amount claimed, interest and fixed costs under rule 65.4 and may specify -
- (a) the date on which the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid if by instalments.
- (3) The registry must enter judgment in accordance with the request. (Rule 2.4 defines “a claim for a specified sum of money” and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.)

Admission of part of claim for money only

- 14.7 (1) This rule applies where -
- (a) the only remedy which the claimant is seeking is payment of money;
 - (b) the defendant admits -
 - (i) a specified sum of money; or
 - (ii) a specified proportion of a claim for an unspecified sum of money, in the acknowledgment of service or defence; and
 - (c) the defendant has filed a defence as to the amount not admitted.
- (Where the defendant does not file a defence the claimant will be entitled to default judgment in accordance with rule 12.5.)
- (2) Within 21 days of receiving an acknowledgment of service containing a notice of admission under paragraph (1)(b) the claimant must serve on the defendant a notice stating that -
- (a) the amount or proportion admitted in satisfaction of the claim is accepted; or
 - (b) the proceedings are to continue, and file a copy of such notice at the registry.
- (3) Where the claimant does not file at the registry the notice under paragraph (2) within 21 days after receipt of the acknowledgment of service -
- (a) the claim is stayed until the notice is filed; and
 - (b) any party may apply for the stay to be lifted.
- (4) Where the defendant has not requested time to pay under rule 14.9, the claimant may file a request for judgment in form 9 for the amount admitted, interest and fixed costs and may specify -
- (a) the date on which the judgment debt is to be paid; or
 - (b) the time and rate at which it is to be paid by instalments.
- (5) The registry must enter judgment in accordance with the request.
- (6) Where the claimant gives notice accepting the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be decided by the court and costs.
- (7) Where the claimant files notice under paragraph (2) that the claim is to continue, the registry must fix a date, time and place for a case management conference.
- (Part 27 sets out the procedure relating to a case management conference, rule 65.4 deals with fixed costs.)

(17/2/2003)

Admission of liability to pay whole of claim for unspecified sum of money

- 14.8 (1) This rule applies where -
- (a) the only remedy the claimant seeks is the payment of money;
 - (b) the amount of the claim is not specified;
 - (c) in the acknowledgment of service the defendant admits liability -
 - (i) to pay the whole of the claim; and
 - (ii) does not offer to pay a specified sum of money or a proportion of the claim in satisfaction of the claim; and
 - (d) the defendant has not requested time to pay under rule 14.9.
- (2) The claimant may file a request for judgment in form 7.
- (3) The registry must enter judgment in accordance with the request.
- (4) Judgment will be for an amount to be decided by the court and costs.
- (Rule 16.3 deals with how the court decides the amount of the judgment, Part 65 deals with the quantification of costs.)

Requests for time to pay

- 14.9 (1) A defendant who -
- (a) makes an admission under rules 14.6, 14.7 or 14.8; and
 - (b) is an individual,
- may make a request for time to pay.
- (2) A request for time to pay is a proposal -
- (a) about the date for payment; or
 - (b) to pay by instalments at a rate specified in the request.
- (3) The defendant's request for time to pay must be -
- (a) filed with the admission;
 - (18/9/2006) (b) accompanied by a statement of his or her financial position in form 9A.
- (4) The statement under paragraph (3)(b) must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgment.
- (5) Where -

- (a) the request for time to pay relates to a claim for an unspecified sum of money; and
- (b) the court must assess damages under rule 14.8(4), the court must deal with the request for time to pay when it assesses damages.

Requests for time to pay - procedure where time and rate agreed

- 14.10 (1) This rule applies where -
- (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
 - (b) the defendant -
 - (i) admits the whole of a claim for a specified sum of money; or
 - (ii) offers to pay a specified sum; and
 - (iii) requests time to pay or makes an offer to pay by instalments; and
 - (c) the claimant in the request for judgment on the admission in form 7 accepts the defendant's offer as to the amount, time and rate of payment.
- (2) Where this rule applies, judgment on the admission shall be judgment for the specified sum of money admitted (less any payments made), interest and fixed costs under rule 65.4 to be paid at the agreed time and rate.

Requests for time to pay - procedure where time and rate not agreed

- 14.11 (1) This rule applies where -
- (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;
 - (b) the defendant -
 - (i) admits the whole of a claim for a specified sum of money; or
 - (ii) offers to pay a specified sum; and
 - (iii) requests time to pay or makes an offer to pay by installments; and
 - (c) The claimant accepts the sun admitted but does not accept the defendant's offer as to the amount, time and rate of payment.
- (18/9/2006)

- (2) Where this rule applies, the claimant must state in the request for judgment in form 7 the reasons for objecting to the defendant's proposals as to payment.
- (3) The court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs under rules 65.4 and 65.5 on such terms as it sees fit.
- (4) The general rule is that the court should enter judgment under paragraph (3) without a hearing.
- (5) Where the court decides to deal with the matter at a hearing, it must give the each party at least 7 days notice of the date, time and place of the hearing.
- (6) Where there is a hearing, the court must determine whether to make an order for the costs of the application, by whom the costs should be paid and assess such costs under rule 65.8.
(The claimant is entitled to fixed costs on the judgment in accordance with Appendix A to Part 65.)

Right to re-determination

- 14.12
- (1) Where the court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be re-determined by the court at a hearing.
 - (2) An application for re-determination must be made within 14 days after service of the judgment on the applicant.
 - (3) At the hearing the court may confirm the judgment or make such other order as to the time and rate of payments as it considers just.
 - (4) The court must determine whether to make an order for costs, by whom the costs should be paid and assess such costs under rule 65.8.

Variation of Order

- 14.13
- (1) Either party may apply to vary an order made under this Part.
 - (2) An application by a defendant must be made in accordance with Part 47.

PART 15

Summary Judgment

Contents of this Part

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is not available	Rule 15.3
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Evidence for purposes of summary judgment hearing	Rule 15.5
Powers of the court on application for summary judgment	Rule 15.6

Scope of this Part

- 15.1 This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

Grounds for summary judgment

- 15.2 The court may give summary judgment on the claim or on a particular issue if it considers that -
- (a) the claimant has no real prospect of succeeding on the claim or the issue; or
 - (b) the defendant has no real prospect of successfully defending the claim or the issue.
- (Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.)

Types of proceedings for which summary judgment is not available

- 15.3 The court may give summary judgment in any type of proceedings except -

- (a) proceedings for redress under the Constitution;
- (b) proceedings against the Crown;
- (c) proceedings by way of fixed date claim;
- (d) proceedings for -
 - (i) false imprisonment;
 - (ii) malicious prosecution; and
 - (iii) defamation;
- (e) admiralty proceedings in rem; and
- (f) probate proceedings (other than under rule 68.56 (summary proceedings)).

Procedure

- 15.4 (1) Except in the case of a counterclaim a claimant may not apply for summary judgment until the defendant against whom the application is made has filed an acknowledgment of service.
(18/9/2006)
- (2) If a claimant applies for summary judgment before a defendant against whom the application has been made has filed a defence, that defendant's time for filing a defence is extended until 14 days after the hearing of the application.
 - (3) Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.
 - (4) The notice under paragraph (3) must identify the issues which it is proposed that the court should deal with at the hearing.
 - (5) The court may exercise its powers without such notice at any case management conference.
(Part 11 contains general rules about applications.)

Evidence for the purpose of summary judgment hearing

- 15.5 (1) The applicant must -
- (a) file affidavit evidence in support with the application; and
 - (b) serve copies on each party against whom summary judgment is sought, not less than 14 days before the date fixed for hearing the application.
- (2) A respondent who wishes to rely on evidence must -
- (a) file affidavit evidence; and
 - (b) serve copies on the applicant and any other respondent to the application, not less than 7 days before the summary judgment hearing.

Powers of the court on application for summary judgment

- 15.6 (1) On hearing an application for summary judgment the court may-
- (a) give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end;
 - (b) strike out or dismiss the claim in whole or in part;
 - (c) dismiss the application;
 - (d) make a conditional order; or
 - (e) make such other order as may seem fit.
- (2) Where summary judgment is given on a claim, the court may stay execution of that judgment until after the trial of any ancillary claim made by the defendant against whom summary judgment is given.
(“Ancillary claim” is defined in rule 18.1.)
- (3) Where the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

PART 16

Assessment of Damages

Contents of this Part

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for unspecified sum of money	Rule 16.3
Assessment of damages after a direction for trial of issue of quantum	Rule 16.4

Scope of this Part

- 16.1 This Part deals with the procedure by which a hearing to assess damages is fixed.

Assessment of damages after default judgment

- 16.2 (1) An application for a default judgment to be entered under rule 12.10(1)(b), must state-
- (a) whether or not the claimant is in a position to prove the amount of the damages; and, if so
 - (b) the claimant's estimate of the time required to deal with the assessment.
- (2) Unless the application states that the claimant is not in a position to prove the amount of damages, the registry must fix a date for the assessment of damages and give the claimant not less than 14 days notice of the date, time and place fixed for the hearing.
- (3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.
- (4) The registry must then fix:
- (a) The date for the hearing of the assessment;
 - (b) A date by which standard disclosure and inspection must take place;
- (18/9/2006)

- (c) A date by which witness statements must be filed and exchanged; and
- (d) A date by which a listing questionnaire must be filed.
(Rules 27.12 and 27.13 deal with the listing questionnaire and the procedure for fixing a date for a trial.)

Assessment of damages after admission of liability on claim for unspecified sum of money

- 16.3
- (1) This rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.
 - (2) An application for judgment to be entered for damages to be assessed on an admission under Part 14 must -
 - (a) state whether or not the claimant is in a position to prove the amount of damages; and, if so
 - (b) give an estimate of the time required to deal with the assessment.
 - (3) Unless the application states that the claimant is not in a position to prove the amount of damages, the registry must fix a date for the assessment of damages and give the parties not less than 14 days notice of the date, time and place fixed for the hearing.
 - (4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.
 - (5) The registry must then fix either -
 - (a)
 - (i) a period within which the assessment of damages will take place, and
 - (ii) a date by which the listing questionnaire is to be filed at the registry by the claimant; or
 - (b) a case management conference, and give notice to the parties.
 - (6) The defendant is entitled to cross examine any witness called on behalf of the claimant and to make submissions to the court but is not entitled to call any evidence unless the defendant has filed a defence setting out the facts the defendant seeks to prove.
 - (7) The court must also deal with any request under Part 14 for time to pay.

Assessment of damages after direction for trial of issue of quantum

- 16.4 (1) This rule applies where the court makes a direction for the trial of an issue of quantum.
- (2) The direction may be given at -
- (a) a case management conference;
 - (b) the hearing of an application for summary judgment; or
 - (c) the trial of the claim or of an issue, including the issue of liability.
- (3) On making such a direction the court must exercise the powers of a case management conference and in particular may give directions about -
- (a) disclosure under Part 28;
 - (b) service of witness statements under Part 29; and
 - (c) service of expert reports under Part 32.
- (4) The court must also fix -
- (a) a date by which the claimant is to file the listing questionnaire at the registry; and
 - (b) a period within which the assessment of damages is to commence.

(Rules 27.12 and 27.13 deal with the listing questionnaire and the procedure for fixing a date for a trial.)

PART 17

Interim Remedies

Contents of this Part

Orders for interim remedies	Rule 17.1
Time when order for interim remedy may be made	Rule 17.2
How to apply for interim remedy	Rule 17.3
Interim injunctions and similar orders	Rule 17.4
Interim payments - general procedure	Rule 17.5
Interim payments - conditions to be satisfied and matters to be taken into account	Rule 17.6
Manner of payment	Rule 17.7
Non-disclosure of interim payment	Rule 17.8
Powers of court where it has made order for interim payment	Rule 17.9
Power of court to order early trial	Rule 17.10

Orders for interim remedies

- 17.1 (1) The court may grant interim remedies including -
- (a) an interim injunction;
 - (b) an interim declaration;
 - (c) an order
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and

- (vi) for the payment of income from a relevant property until a claim is decided;
 - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
 - (e) an order to deliver up goods;
 - (f) an order (referred to as a “**freezing order**”) -
 - (i) restraining a party from removing from the jurisdiction assets located there; and/or
 - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;
 - (g) an order directing a party -
 - (i) to provide information about the location of relevant property or assets ; or
 - (ii) to provide information about relevant property or assets, which are or may be the subject of an application for a freezing order;
 - (h) an order (referred to as a “**search order**”) requiring a party to admit another party to premises for the purpose of preserving evidence etc.;
 - (i) an order (referred to as an “**order for interim payment**”) under rules 17.5 and 17.6 for payment by a defendant of a sum on account of any damages debt or other sum which the Court may find the defendant liable to pay;
 - (j) an order for interim costs;
 - (k) an order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party’s right to the fund;
 - (l) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if that party does so, the property shall be given up to that party; and
 - (m) an order directing a party to prepare and file accounts relating to the dispute.
- (2) In paragraph (1)(c) and (g), “**relevant property**” means property which is the subject of a claim or as to which any question may arise on a claim.
- (3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

- (4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.
- (5) The Chief Justice may issue a practice direction as to the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

Time when an order for interim remedy may be made

- 17.2 (1) An order for an interim remedy may be made at any time, including -
- (a) before a claim has been made; and
 - (b) after judgment has been given.
- (2) However -
- (a) paragraph (1) is subject to any rule which provides otherwise;
 - (b) the court may grant an interim remedy before a claim has been made only if -
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice;
 - (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service in accordance with Part 9.
- (3) Where the court grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and serve a claim form by a specified date.
- (4) Where no claim has been issued the application must be made in accordance with the general rules about applications contained in Part 11.

How to apply for interim remedy

- 17.3 (1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.
- (2) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.
- (3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

Interim Injunctions and similar orders

- 17.4 (1) This rule deals with applications for -
- (a) an interim injunction under rule 17.1(1)(a);
 - (b) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(c)(i);
 - (c) an order authorising a person to enter any land or building for the purpose of carrying out an order under paragraph (b);
 - (d) a freezing order under rule 17.1(1)(f); and
 - (e) a search order under rule 17.1(1)(h).
- (2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.
- (3) An application for an interim order under this rule may in the first instance be made on 3 days notice to the respondent.
- (4) The court may grant an interim order for a period of not more than 28 days (unless any of these Rules permits a longer period) under this rule on an application made without notice if it is satisfied that -
- (a) in a case of urgency, no notice is possible; or
 - (b) that to give notice would defeat the purpose of the application.
- (5) On granting an order under paragraph (4) the court must -
- (a) fix a date for further consideration of the application; and
 - (b) fix a date (which may be later than the date under paragraph (a)) on which the injunction or order will terminate unless a further order is made on the further consideration of the application.
- (6) When an order is made under paragraph (4), the applicant must serve the respondent personally with -
- (a) the application for an interim order;
 - (b) the evidence on affidavit in support of the application;
 - (c) any interim order made without notice; and
 - (d) notice of the date, time and place on which the court will further consider the application,
- not less than 7 days before the date fixed for further consideration of the application.
- (7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders.

Interim payments - general procedure

- 17.5 (1) In this rule and in rules 17.6 to 17.10 the term “**claimant**” includes a defendant who counterclaims.
- (2) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made.
(Rule 9.3 sets out the period for filing an acknowledgment of service.)
- (3) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.
- (4) Notice of an application for an order must be -
- (a) served not less than 14 days before the hearing of the application; and
 - (b) supported by evidence on affidavit.
- (5) The affidavit must -
- (a) briefly describe the nature of the claim and the position reached in the proceedings;
 - (b) state the claimant’s assessment of the amount of damages or other monetary judgment that are likely to be awarded;
 - (c) set out the grounds of the application;
 - (d) exhibit any documentary evidence relied on by the claimant in support of the application; and
 - (e) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the person or persons for whom and on whose behalf the claim is brought; and
- (6) Where the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must -
- (a) file the evidence on affidavit; and
 - (b) serve copies on every other party to the application, not less than 7 days before the hearing of the application.

Interim payments - conditions to be satisfied and matters to be taken into account

- 17.6 (1) The court may make an order for an interim payment only if -
- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

- (b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for any amount found due to be paid;
 - (c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;
 - (d) except where paragraph (3) applies, it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or
 - (e) the following conditions are satisfied -
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also being sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.
- (2) In addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant is -
- (a) insured in respect of the claim;
 - (b) a public authority; or
 - (c) a person whose means and resources are such as to enable that person to make the interim payment.
- (3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if -
- (a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and
 - (b) paragraph (2) is satisfied in relation to each defendant.
- (4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5) The court must take into account -
- (a) contributory negligence (where applicable); and
 - (b) any relevant set-off or counterclaim.

Manner of payment

- 17.7 (1) The general rule is that an interim payment is to be made to the claimant.
- (2) However the court may order that the interim payment or part of it be paid into court.
- (3) Where an order is made under paragraph (2), the claimant may apply for the whole or any part of the money in court to be paid out.
- (4) An application under paragraph (3) may be made without notice but the court may direct that notice be given to the defendant.
- (5) The court may order that an interim payment be made in one sum or by instalments.
- (6) An order for interim payments made under rule 17.6(1)(e) may direct that periodical payments be made during the continuance of the proceedings.
- (7) The court may direct that repayment of the interim payment, with or without interest, be secured

Non-disclosure of interim payment

- 17.8 Neither the fact nor the amount of any interim payment is to be disclosed to the court until all issues of liability and quantum have been determined.

Powers of court where it has made order for interim payment

- 17.9 (1) Where a defendant has been ordered to make an interim payment, or has in fact voluntarily made an interim payment, the court may make an order to adjust the interim payment.
- (2) The court may in particular -
- (a) order all or part of the interim payment to be repaid;
 - (b) vary or discharge the order for interim payment; or
 - (c) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment.
- (3) The court may make an order under this rule -
- (a) without an application by a party if it makes the order when it disposes of the claim or any part of it; or
 - (b) on an application by a party made at any time.

Power of Court to order early trial, etc

- 17.10 On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may in particular give directions for an early trial of the claim or any part of the claim.

PART 18

Ancillary Claims

Contents of this Part

Scope of this Part	Rule 18.1
Ancillary claim to be treated as claim for purposes of these Rules	Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant	Rule 18.3
Adding other defendants to counterclaim	Rule 18.4
Procedure for making ancillary claim	Rule 18.5
Service of ancillary claim form	Rule 18.6
Counterclaim may survive claim	Rule 18.7
Defence to ancillary claim	Rule 18.8
Matters relevant to whether ancillary claim should be dealt with separately from main claim	Rule 18.9
Effect of service of ancillary claim form	Rule 18.10
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.11
Procedural steps on service of ancillary claim form on person who is not party	Rule 18.12
Case management where there is defence to ancillary claim	Rule 18.13

Scope of this part

- 18.1 (1) This part deals with ancillary claims.
- (2) An “**ancillary claim**” is any claim other than a claim by a claimant against a defendant or a claim for a set off contained in a defence and includes -
- (a) a counterclaim by a defendant against the claimant or against the claimant and some other person;
 - (b) a claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

- (c) a claim by an ancillary defendant against any other person (whether or not already a party).
- (3) In this Part -
“**ancillary claimant**” means a person who makes an ancillary claim; and
“**ancillary defendant**” means the defendant to that claim.
- (4) Where an ancillary defendant makes an ancillary claim against a further person that person is to be called the “**second** (or as the case may be) **ancillary defendant**”.

Ancillary claim to be treated as claim for purposes of these Rules

- 18.2
- (1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules, except as provided by this Part.
 - (2) Particulars of an ancillary claim must be contained in or served with the ancillary claim form in form 10.
 - (3) An ancillary claim form must include -
 - (a) the ancillary claimant’s address for service in accordance with rule 3.11; and
 - (b) a certificate of truth in accordance with rule 3.12.
 - (4) The following rules do not apply to ancillary claims -
 - (a) rules 8.14 and 8.15 (time within which a claim may be served);
 - (17/2/2003) (b) Part 12 (default judgment) applies to an ancillary claim only if it is a counterclaim
 - (c) Part 14 (admissions) other than rule 14.1(1) and (2) (which provide that a party may admit in writing the truth of another party’s case), rule 14.3 (admissions where a party a patient or minor) and rule 14.4 (admission by notice in writing - application for judgment); and
 - (d) rules 27.3(1) - (5) (case management).
(Rule 18.11 makes special provision for judgment on an ancillary claim other than a counterclaim.)
 - (5) Where the ancillary claim is a counterclaim by the defendant against a claimant (with or without any other person) the claimant is not required to file an acknowledgment of service and therefore Part 9 (Acknowledgment of Service) does not apply to the claimant.

Defendant's claim for contribution or indemnity from co-defendant

- 18.3 (1) A defendant who has filed an acknowledgment of service or a defence may make an ancillary claim for contribution or indemnity against another defendant by -
- (17/2/2003) (a) filing a notice in form 10 containing a statement of the nature and grounds of the claim; and
- (b) serving the notice on the other defendants.
- (2) Rule 18.5 does not apply to an ancillary claim under this rule. (Part 9 deals with filing an acknowledgment of service and Part 10 with filing a defence.)

Adding other defendants to counterclaim

- 18.4 (1) Where the defendant to the claim says that someone else is liable on the counterclaim as well as the claimant, the defendant may add that other person as a defendant to the counterclaim.
- (2) Where a person so added is not already a party, the defendant must add that other person's name to the title of the claim as "defendant to the counterclaim".
- (Rule 18.12 deals with the documents to be served on a defendant who is not already a party.)

Procedure for making ancillary claim

- 18.5 (1) A defendant may make an ancillary claim without the court's permission if -
- (a) in the case of a counterclaim, it is filed with the defence; or
- (b) in any other case, the ancillary claim form is filed before or at the same time as the defence is filed.
- (This rule does not apply to an ancillary claim under rule 18.4.)
- (2) Where either -
- (a) rule 18.3; or
- (b) paragraph (1),
- does not apply, an ancillary claim may be made only if the court gives permission.
- (3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.
- (4) The applicant must attach to the application a draft of the proposed ancillary claim form and ancillary particulars of claim.

- (5) The ancillary claim is made when the ancillary claim form is issued.
(18/9/2006)
("Ancillary claim" is defined in rule 18.1(1).)

Service of ancillary claim form

- 18.6 (1) An ancillary claim which may be made without the court's permission must be served on the person against whom it is made within 14 days after the date the defendant files a defence.
- (2) The ancillary claimant must serve with the ancillary claim form -
- (a) a form for defending the claim; and
 - (b) a form of acknowledgment of service.
- (3) Where the court gives permission to make an ancillary claim it must at the same time give directions as to the service of the ancillary claim form.
- (4) A copy of the ancillary claim form and ancillary particulars of claim (if any) must be served on all other parties.

Counterclaim may survive claim

- 18.7 The defendant may continue a counterclaim even if -
- (a) the court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or
 - (b) the claim is stayed, discontinued or dismissed.

Defence to ancillary claim

- 18.8 (1) A person against whom an ancillary claim is made may file a defence.
- (2) The period for filing a defence is the period of 42 days after the date of service of the ancillary claim.
- (3) Subject to rule 18.2(4)(b), the rules relating to a defence to a claim apply to a defence to an ancillary claim.
(18/9/2006)
- (4) An ancillary defence must include -
- (a) the ancillary defendant's address for service in accordance with rule 3.11; and
 - (b) a certificate of truth in accordance with rule 3.12.

Matters relevant to the question whether an ancillary claim should be dealt with separately from the main claim

- 18.9 (1) This rule applies when the court is considering whether to -
- (a) permit an ancillary claim to be made;
 - (b) dismiss an ancillary claim; or
 - (c) require the ancillary claim to be dealt with separately from the claim.
- (Rules 26.1(f) and (i) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.)
- (2) The court must have regard to all the circumstances of the case including-
- (a) the connection between the ancillary claim and the claim;
 - (b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;
 - (c) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim; and
 - (d) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings -
 - (i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant; or
 - (ii) to which the proposed ancillary defendant is already a party but also in some further capacity.

Effect of service of ancillary claim form

- 18.10 (1) A person on whom an ancillary claim form is served becomes a party to the proceedings if that person is not already a party.
- (2) When an ancillary claim form is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the claim form.

Special provisions relating to judgment on failure to file defence to ancillary claim

- 18.11 (1) This rule applies to an ancillary claim other than a counterclaim if the ancillary defendant fails to file a defence in respect of the ancillary claim within the permitted time.
(Rule 18.8(2) deals with the time for filing a defence to an ancillary claim.)
- (2) The ancillary defendant is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and
- (3) Subject to paragraph (4), if judgment under Part 12 is given against the ancillary claimant, he or she may apply to enter judgment against the ancillary defendant in respect of the ancillary claim.
- (4) The ancillary claimant may not enter judgment under paragraph (3) without the court's permission if the ancillary claimant -
- (a) has not satisfied the default judgment under Part 12; or
 - (b) wishes to obtain judgment for -
 - (i) any remedy other than a contribution or an indemnity; or
 - (ii) a sum exceeding that for which judgment has been entered against the ancillary claimant.
- (5) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that the ancillary defendant-
- (a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;
 - (b) gives a good explanation for the failure to file a defence; and
 - (c) has a real prospect of successfully defending the ancillary claim.

Procedural steps on service of ancillary claim form on person who is not party

- 18.12 An ancillary claimant who serves an ancillary claim form on a person who is not already a party must also serve a copy of -
- (a) every statement of case which has already been served in the proceedings; and
 - (b) such other documents as the court may direct.

Case management where there is defence to ancillary claim

- 18.13 (1) Where a defence is filed to an ancillary claim the court must consider the future conduct of the proceedings and give appropriate directions.
- (2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.
- (3) In giving directions under this rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

PART 19

Addition and Substitution of Parties

Contents of this Part

Scope of this Part	Rule 19.1
Change of parties - general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding or substituting parties after end of relevant limitation period	Rule 19.4

Scope of this Part

- 19.1 This Part deals with the addition or substitution of parties after proceedings have been commenced.

Change of parties - general

- 19.2 (1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.
- (2) The claimant does so by filing at the registry an amended claim form and particulars of claim and Parts 5 and 7 (service of claim form), Part 9 (acknowledgment of service and notice of intention to defend), Part 10 (defence) and Part 12 (default judgments) apply to the amended claim form as they do to a claim form.
(Part 18 deals with counterclaims and the adding of additional parties by a defendant.)
- (3) The court may add a new party to proceedings without an application, if -
- (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
 - (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

- (4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.
- (5) The court may order a new party to be substituted for an existing one if -
 - (a) the existing party's interest or liability has passed to the new party;
 - or
 - (b) the court can resolve the matters in dispute more effectively by substituting the new party for the existing party.

Procedure for adding and substituting parties

- 19.3 (1) The court may add, substitute or remove a party on or without an application.
- (2) **An application for permission to add, substitute or remove a party may be made by -**
- (a) an existing party; or
 - (b) **a person who wishes to become a party.**
- (3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.
- (4) **No person may be added or substituted as a claimant unless that person's written consent is filed with the registry.**
- (5) **The court may add, remove or substitute a party at or after the case management conference.**
- (18/9/2006)
- (6) An order for the addition, substitution or removal of a party must be served on -
- (a) all parties to the proceedings;
 - (b) any party added or substituted; and
 - (c) any other person affected by the order.
- (7) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about -
- (a) filing and serving the claim form and any statements of case on any new defendant;
 - (b) serving relevant documents on the new party; and
 - (c) the management of the proceedings,
- and subject to such directions rule 19.2(2) applies.
- (8) Where -

- (a) the court makes an order for the addition or substitution of a new defendant; and
- (b) the claim form is served on the new defendant, these Rules apply to the new defendant as they apply to any other defendant.

Special provisions about adding or substituting parties after end of relevant limitation period

- 19.4
- (1) This rule applies to a change of parties after the end of a relevant limitation period.
 - (2) The court may add or substitute a party only if -
 - (a) the relevant limitation period was current when the proceedings were started; and
 - (b) the addition or substitution is necessary.
 - (3) The addition or substitution of a party is necessary only if the court is satisfied that -
 - (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
 - (b) the interest or liability of the former party has passed to the new party; or
 - (c) the claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant.

PART 20

Amendments to Statements of Case

Contents of this Part

Amendments to statements of case without permission	Rule 20.1
Power of court to disallow amendments made without permission	Rule 20.2
Consequential amendments	Rule 20.3
Amendments to statements of case with permission	Rule 20.4
Procedure on amendment	Rule 20.5
Amendments to statements of case after end of relevant limitation period	Rule 20.6

Amendments to statements of case without permission

- 20.1 A party may amend a statement of case at any time before the case management conference without the court's permission unless the amendment is one to which either -
- (a) rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or
 - (b) rule 20.6 (amendments to statements of case after the end of a relevant limitation period),
- applies.

Power of court to disallow amendments made without permission

- 20.2 (1) Where a party has amended a statement of case where permission is not required, the court may disallow the amendment with or without an application.

- (2) A party may apply to the court for an order under paragraph (1)-
 - (a) at the case management conference; or
 - (b) within 14 days of service of the amended statement of case on that party.

Consequential amendments

- 20.3 (1) A defendant served with an amended particulars of claim or a claimant served with an amended counterclaim may amend the defence once without permission within 28 days of service of the amended particulars of claim or counterclaim as the case may be.
- (2) A claimant who has served a reply who is served with an amended defence may amend the reply once without permission within 28 days of the service of the amended defence.

Amendments to statements of case with permission

- 20.4 (1) An application for permission to amend a statement of case may be made at the case management conference.
 - (2) Statements of case may only be amended after a case management conference with the permission of the court.
- (18/9/2006)
- (3) Where the court gives permission to amend a statement of case it may give directions as to -
 - (a) amendments to any other statement of case; and
 - (b) the service of any amended statement of case.

Procedure on amendment

- 20.5 (1) The party amending a statement of case must forthwith -
 - (a) file the amended statement of case at the registry; and
 - (b) serve a copy on all other parties.
- (2) An amended statement of case must include a certificate of truth in accordance with rule 3.12.

Amendments to statements of case after end of relevant limitation period

- 20.6 (1) This rule applies to an amendment in a statement of case after the end of a relevant limitation period.
- (2) The court may allow an amendment to correct a mistake as to the

name of a party but only where the mistake was -

- (a) genuine; and
- (b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

PART 21

Representative Parties

Contents of this Part

Representative claimants and defendants - general	Rule 21.1
Appointment of representative claimant or defendant - procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after party's death	Rule 21.8
Power of court to strike out claim after death of claimant	Rule 21.9

Representative claimants and defendants - general

- 21.1 (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, where 5 or more persons have the same or a similar interest in the proceedings.
- (2) The court may appoint -
- (a) one or more of those persons; or
 - (b) a body having a sufficient interest in the proceedings, to represent all or some of the persons with the same or similar interest.

- (3) A representative under this rule may be either a claimant or a defendant.

Appointment of representative claimant or defendant - procedure

- 21.2 (1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.
- (2) An application for such an order may be made by -
- (a) any party;
 - (b) any person or body who wishes to be appointed as a representative party; or
 - (c) any person who is likely to be a party to proceedings.
- (3) An application for such an order -
- (a) must be supported by affidavit evidence; and
 - (b) must identify every person to be represented, either
 - (i) individually; or
 - (ii) by description, if it is not practicable to identify a person individually.
- (4) An application to appoint a representative defendant must be on notice to the claimant.
- (5) An application to appoint a representative claimant may be made without notice.
- (6) The court may direct that notice of an application be given to such other persons as it thinks fit.
- (7) Where the court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

Consequence of order appointing representative party

- 21.3 (1) Where there is a representative claimant or defendant, a judgment or order of the court binds everyone whom that party represents.
- (2) It may not however be enforced against a person not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.
- (3) An application for permission must be supported by evidence on affidavit and must be served on each person against whom it is wished to enforce the judgment.
- (4) On considering an application under this rule the court may -

- (a) take into account any facts or matters particular to any one or more of the persons against whom it is sought to enforce the judgment or order; and
 - (b) determine any issue arising on the application either -
 - (i) summarily; or
 - (ii) by trial,
- and, if the issue is to be determined by trial, give such directions as are appropriate to secure a just, economic and speedy decision upon the issue.

Representation of persons who cannot be ascertained, etc., in proceedings about estates, trusts and construction of written instruments

- 21.4 (1) This rule applies only to proceedings about -
- (a) the estate of someone who is dead;
 - (b) property subject to a trust; or
 - (c) the construction of a written instrument.
- (2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where -
- (a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;
 - (b) the person, or the class or some member of it, though ascertained cannot be found; or
 - (c) it is expedient to do so for any other reason.
- (3) An application for an order to appoint a representative party under this rule may be made by -
- (a) any party; or
 - (b) any person who wishes to be appointed as a representative party.
- (4) A representative appointed under this rule may be either a claimant or a defendant.
- (5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

Compromise of proceedings to which rule 21.4 applies

- 21.5 (1) Where -
- (a) a compromise is proposed in proceedings to which rule 21.4 applies;
 - (b) some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings;
 - (c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and
 - (d) the court is satisfied that the compromise will be for the benefit of the absent persons, the court may approve the compromise.
- (2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.
- (3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

Representation of beneficiaries by trustees

- 21.6 (1) A claim may be made by or against a person in his, her or its capacity as a trustee, executor or administrator.
- (2) Where a claim is so made, there is no need for a beneficiary also to be a party.
- (3) The court may direct that notice of the proceedings be given to a beneficiary.
- (4) A decision of the court in such proceedings binds a beneficiary unless the court otherwise orders.
- (5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator -
- (a) either -
 - (i) could not; or
 - (ii) did not in fact, represent the interest of the beneficiary; or
 - (b) has acted fraudulently.

Proceedings against estate of deceased person

- 21.7 (1) Where in any proceedings it appears that a deceased person was interested in the proceedings then, if the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.
- (2) A person may be appointed as a representative if that person -
- (a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and
 - (b) has no interest adverse to that of the estate of the deceased person.
- (3) The court may make such an order on or without an application.
- (4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.
- (5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

Power of court to give directions to enable proceedings to be carried on after party's death

- 21.8 (1) Where a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.
- (2) An order under this rule may be made on or without an application.

Power of court to strike out claim after death of claimant

- 21.9 (1) Where a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.
- (2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court may direct.
- (3) The general rule is that if the court makes an order on an application under this rule it shall be that unless the personal representatives or some other person on behalf of the estate apply to be substituted

under rule 19.3 or for directions under rule 21.8 by a specified date, the claim be struck out.

- (4) The court may give directions under rule 21.8 at the hearing of an application under this rule.

PART 22

Miscellaneous Rules about Parties

Contents of this Part

Right to act in person	Rule 22.1
Partners	Rule 22.2
Person carrying on business in a name not his or her own	Rule 22.3
Bodies Corporate	Rule 22.4

Right to act in person

- 22.1 Subject to the provisions of this Part and Part 23 (minors and patients) any person may begin, defend or carry on proceedings in person or by an attorney-at-law.

Partners

- 22.2 (1) Persons claiming to be entitled, or alleged to be liable, as partners may sue or be sued in the firm name if -
- (a) the firm name is the name of the firm in which they were partners; and
 - (b) they carried on business in that name within the jurisdiction, when the right to claim arose.
- (2) Where partners sue or are sued in the firm name they must, if any other party so demands in writing, immediately -
- (a) file; and
 - (b) deliver to that party,
a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.
- (3) Where the partners do not comply with a demand under paragraph (2), the court on application by any other party may order them to file and serve such a statement and to certify it to be true.
- (4) An application under paragraph (3) may be made without notice.

- (5) The party making the application must -
 - (a) certify that the party has made a demand in writing;
 - (b) state the date of the demand; and
 - (c) certify that the other party has not complied.
- (6) Where the partners do not comply within 21 days after service of the order any claim or defence brought by them is deemed to be struck out and rule 26.5 (judgment without trial after striking out) applies.
- (7) A duly authorised employee of a partnership or firm may -
 - (a) conduct proceedings on behalf of the partnership or firm;
 - or
 - (b) represent it in court with the court's permission.
- (8) Wherever practicable, permission under paragraph (7) (b) should be sought at a case management conference or pre-trial review. (Rule 43.9 deals with enforcement of a judgment against a partnership or by a firm against one of its members.)

Person carrying on business in a name not his or her own

- 22.3 (1) A claim may be made by or against a person -
- (i) carrying on business within the jurisdiction; or
 - (ii) who was carrying on business within the jurisdiction when the right to claim arose -
 - (a) in that person's own name;
 - (b) in that person's own name, followed by the words "trading as X.Y.";
 - (c) as "X.Y." followed by the words "(a trading name)";
 - or
 - (d) as "X.Y." followed by the words "a firm".
- (2) Where a claim is made by or against a person in his or her business name, rule 22.2 (partners) applies as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

Bodies Corporate

- 22.4 (1) Subject to any statutory provision to the contrary, a duly authorised director or other officer of a body corporate may conduct proceedings on its behalf.

- (2) A body corporate must be represented by an attorney-at-law at any hearing in open court unless the court permits it to be represented by a duly authorised director or other officer.
- (3) Permission to represent the body corporate at the trial should wherever practicable be sought at a case management conference or pre-trial review.
- (4) In considering whether to give permission the court must take into account all the circumstances including the complexity of the case.
- (5) In paragraphs (1) and (2) “**duly authorised**” means authorised by the body corporate to conduct the proceedings on it’s behalf.

PART 23

Minors and Patients

Contents of this Part

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5
Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to change next friend or to prevent a person acting as a next friend	Rule 23.9
Appointment of next friend by court order - supplementary	Rule 23.10
Procedure where appointment of next friend ceases	Rule 23.11
Compromise etc. by or on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

Scope of this Part

- 23.1 (1) This Part -
- (a) contains special provisions which apply in proceedings involving minors and patients; and

- (b) sets out how a person becomes the next friend of a minor or patient.

(Rule 5.10 contains provisions about the service of documents on minors and patients, rule 14.3 contains restrictions on entering judgment on an admission where a party is a minor or patient.)

- (2) In this Part, “**the Act**” means the Mental Health Act.

Requirement of next friend in proceedings by or against minors or patients

- 23.2 (1) A minor or patient must have a next friend to conduct proceedings on his or her behalf.
- (2) However, on the application of a minor, the court may make an order permitting the minor to conduct proceedings without a next friend.
- (3) An application for an order under paragraph (2) -
 - (a) if the minor has a next friend must be on notice to that next friend; and
 - (b) if there is no next friend may be made without notice.
- (4) Where -
 - (a) the court has made an order under paragraph (2); and
 - (b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor,the court may appoint a person to be the minor’s next friend.
- (5) The next friend must sign any certificate of truth under rule 3.12 on behalf of the minor or patient.

Stage of proceedings at which next friend becomes necessary

- 23.3 (1) A minor or patient must have a next friend in order to issue a claim except where the court has made an order under rule 23.2(2).
- (2) A person may not -
 - (a) make any application against a minor or patient before proceedings have started; or
 - (b) take any step in proceedings except -
 - (i) issuing and serving a claim form against a minor or patient; or
 - (ii) applying for the appointment of a next friend under rule 23.8, until the minor or patient has a next friend.

- (3) Where a person, other than a minor, becomes a patient during proceedings no party may take any step in the proceedings apart from applying to the court for the appointment of a next friend until the patient has a next friend.
- (4) Any step other than an application -
 - (a) under rule 23.2(2);
 - (b) for the appointment of a next friend under paragraphs (2) (b) or (3),
 taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

Who may be minor's next friend

- 23.4 A person who satisfies the conditions set out in rule 23.6 may act as a minor's next friend without a court order, unless -
- (a) the court has already appointed a next friend; or
 - (b) the court makes or has made an order under rule 23.9 (court's power to change next friend or to prevent a person acting as a next friend).

Who may be patient's next friend

- 23.5 (1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.
- (2) Where nobody has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's next friend without a court order.

Conditions for being next friend

- 23.6 A person may act as a next friend if that person -
- (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and
 - (b) has no interest adverse to that of the minor or patient.

How person becomes next friend without court order

- 23.7 (1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.
- (2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.
- (3) Any other person must file a certificate that that person satisfies the conditions specified in rule 23.6.
- (4) A person who is to act as a next friend for a claimant must file -
- (a) the authorisation; or
 - (b) the certificate under paragraph (3),
- at the time when the claim is made.
- (5) A person who is to act as a next friend for a defendant must file -
- (a) the authorisation; or
 - (b) the certificate under paragraph (3), at the time when the next friend first takes a step in the proceedings on behalf of the defendant.
- (6) The next friend must -
- (a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 (service of claim form on minors or patients) the claim form should be served; and
 - (b) file an affidavit of service.

How person becomes next friend by court order

- 23.8 (1) The court may make an order appointing a next friend with or without an application.
- (2) An application for an order appointing a next friend may be made by -
- (a) a person who wishes to be a next friend, or
 - (b) a party.
- (3) Where -
- (a) a person makes a claim against a minor or patient;
 - (b) the minor or patient has no next friend; and
 - (c) either -
 - (i) someone who is not entitled to be a next friend

- files a defence; or
- (ii) the claimant wishes to take some step in the proceedings, the claimant must apply to the court for an order appointing a next friend for the minor or patient.
- (4) An application for an order appointing a next friend must be supported by evidence on affidavit.
- (5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 23.6.

Court's power to change next friend or to prevent a person acting as a next friend

- 23.9
- (1) The court may -
 - (a) direct that a person may not act as a next friend;
 - (b) terminate a next friend's authority to act; or
 - (c) appoint a new next friend in substitution for an existing one.
 - (2) The court may make an order under paragraph (1) with or without an application.
 - (3) An application for an order under paragraph (1) must be supported by evidence on affidavit.
 - (4) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed fulfils the conditions specified in rule 23.6.

Appointment of next friend by court order - supplementary

- 23.10
- (1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 (service of claim form on minors or patients) the claim form should have been served.
 - (2) An application for an order under rule 23.9 (substitution of next friend) must also be served on; -
 - (a) the person who is, or who purports to act as, next friend; and
 - (b) the person who it is proposed should act as next friend if that person is not the applicant.

- (3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

Procedure where appointment as next friend ceases

- 23.11
- (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.
 - (2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.
 - (3) An application for an order under paragraph (2) may be made by -
 - (a) the former patient;
 - (b) the next friend; or
 - (c) a party,and must be supported by evidence on affidavit.
 - (4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties -
 - (a) stating that the appointment of the next friend has ceased;
 - (b) giving an address for service; and
 - (c) stating whether or not he or she chooses to carry on the proceedings.
 - (5) Where the notice is not served within 28 days after the appointment of the next friend ceases the court may, on application, strike out any claim or defence brought or filed by the minor or patient.
 - (6) The liability of a next friend for costs continues until -
 - (a) the minor or patient serves the notice referred to in paragraph (4); or
 - (b) the next friend serves notice on the other parties that the appointment has ceased.

Compromise etc., by or on behalf of minor or patient

- 23.12
- (1) Where a claim is made -
 - (a) by or on behalf of a minor or patient; or
 - (b) against a minor or patient,no settlement, compromise or payment and no acceptance of money paid into court shall be valid, so far as it relates to the

claim by, on behalf of, or against the minor or patient, without the approval of the court.

- (2) Where -
- (a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and
 - (b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim, the claim may be made by a fixed date claim form (form 2) which may -
 - (i) include a request to the court for approval of the settlement; and
 - (ii) be filed jointly by the claimant and defendant.

**Control of money recovered by
or on behalf of minor or patient**

- 23.13 (1) Where in any proceedings -
- (a) money is recovered by or on behalf of or for the benefit of a minor or patient; or
 - (b) money paid into court is accepted by or on behalf of a minor or patient, that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.
- (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

PART 24

Security for Costs

Contents of this Part

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Enforcing order for security for costs	Rule 24.4

Scope of this Part

- 24.1 (1) This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.
- (2) In this Part references to “**claimant**” and “**defendant**” are to be construed as references to the person (however described) who is in the position of claimant or defendant, as the case may be, in the proceedings in question, including proceedings on a counterclaim.
- (Additional provision is made in the Companies Act for security to be ordered against an insolvent claimant company.)

Application for order for security for costs

- 24.2 (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant’s costs of the proceedings.
- (2) Where practicable such an application must be made at a case management conference or pre-trial review.
- (3) An application for security for costs must be supported by evidence on affidavit.
- (4) Where the court makes an order for security for costs, it will -
- (a) determine the amount of security; and
 - (b) direct -
 - (i) the manner in which; and
 - (ii) the date by whichthe security is to be given.

Conditions to be satisfied

- 24.3 The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that -
- (a) the claimant is ordinarily resident out of the jurisdiction;
 - (b) the claimant is a company incorporated outside the jurisdiction;
 - (c) the claimant -
 - (i) failed to give his or her address in the claim form;
 - (ii) gave an incorrect address in the claim form; or
 - (iii) has changed his or her address since the claim was commenced,
 with a view to evading the consequences of the litigation;
 - (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;
 - (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;
 - (f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or
 - (g) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court.

Enforcing order for security for costs

- 24.4 On making an order for security for costs the court must also order that -
- (a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order; and/or
 - (b) that if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.

PART 25

Case Management

Contents of this Part

(18/9/2006)	Court's duty to actively manage cases	Rule 25.1
	Settlement week	Rule 25.2

The objective

Court's duty to actively manage cases

25.1 The court must further the overriding objective by actively managing cases, this may include -

- (a) encouraging the parties to co-operate with each other in the conduct of proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (18/9/2006) (d) deciding the order in which issues are to be resolved;
(Part 74 deals with mediation)
- (e) encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;
- (f) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
- (i) dealing with as many aspects of the case as is practicable on the same occasion;
- (j) dealing with the case or any aspect of it, where it appears

appropriate to do so, without requiring the parties to attend court;

- (k) making appropriate use of technology;
- (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and
- (m) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application.

(The overriding objective is set out in Part 1.)

Settlement week

- 25.2 (1) In this rule “**settlement week**” means a period in which a number of judges or attorneys-at-law are designated by the Chief Justice to hold dispute resolution conferences to deal with specified claims.
(18/9/2006)
- (2) The Chief Justice may make provision by practice direction from time to time for the holding of a settlement week.

PART 26

Case Management - The Court's Powers

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The court's general powers of management

- 26.1 (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any enactment
- (2) Except where these Rules provide otherwise, the court may -
- (a) transfer proceedings to the Family Court or a Resident Magistrate's Court;
 - (b) consolidate proceedings;
 - (c) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;
 - (d) adjourn or bring forward a hearing to a specific date;
 - (e) stay the whole or part of any proceedings generally or until a specified date or event;
 - (f) decide the order in which issues are to be tried;
 - (g) direct a separate trial of any issue;

- (h) try two or more claims on the same occasion;
- (i) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;
- (j) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (k) exclude an issue from determination if it can do substantive justice between the parties on the other issues and determining it would therefore serve no worthwhile purpose;
- (l) require the maker of an affidavit or witness statement to attend for cross-examination;
- (m) require any party or a party's attorney-at-law to attend the court;
- (n) deal with a matter without the attendance of any parties;
- (o) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;
- (p) instead of holding an oral hearing, deal with a matter on written representations submitted by the parties;
- (q) direct that any evidence be given in written form;
- (r) where there is a substantial inequality in the proven financial position of each party and the court considers it just to do so, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;
- (s) where two or more parties are represented by the same attorney-at-law-
 - (i) direct that they be separately represented; and
 - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged and make any consequential order as to costs thrown away;
- (t) where the court considers it just to do so, give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;
- (u) direct that notice of any proceedings or application be given to any person; or
- (v) take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.

(17/2/2003)

- (3) When the court makes an order or gives a direction, it may
 - (a) make it subject to conditions; and
 - (b) specify the consequence of failure to comply with the order or condition.
- (4) The conditions which the court may impose include -
 - (a) requiring a party to give security;
 - (b) requiring a party to give an undertaking;
 - (c) requiring the payment of money into court or as the court may direct;
 - (d) requiring a party to pay all or part of the costs of the proceedings; and
 - (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.
- (5) Where a party pays money into court following an order under paragraphs (3) and (4)(c), that money shall be security for any sum payable by that party to another party in the proceedings subject to the right of a defendant under rule 36.6(2) to treat all or part of any money paid into court as a payment in support of an offer to settle.

(Parts 35 and 36 deal with offers to settle and payments into court.)
- (6) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (7) A power of the court under these Rules to make an order includes a power to vary or revoke that order.
- (8) In special circumstances on the application of a party the court may dispense with compliance with any of these Rules.

Court's power to make orders of its own initiative

- 26.2
- (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.
 - (2) Where the court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.
 - (3) Such opportunity may be to make representations orally, in writing, telephonically or by such other means as the court considers reasonable.
 - (4) Where the court proposes -

- (a) to make an order of its own initiative; and
 - (b) to hold a hearing to decide whether to do so,
- the registry must give each party likely to be affected by the order at least 7 days notice of the date, time and place of the hearing.

Sanctions - striking out statement of case

- 26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -
- (a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;
 - (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
 - (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
 - (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.
- (2) Where -
- (a) the court has struck out a claimant's statement of case;
 - (b) the claimant is ordered to pay costs to the defendant; and
 - (c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts, the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

Court's general power to strike out statement of case

- 26.4 (1) Where a party has failed to comply with any of these Rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".
- (2) Such an application may be made without notice but must be accompanied by -
- (a) evidence on affidavit which -

- (i) identifies the rule or order which has not been complied with;
 - (ii) states the nature of the breach; and
 - (iii) certifies that the other party is in default; and
- (b) a draft order.
- (3) The registry must refer any such application immediately to a judge, master or registrar who may -
 - (a) grant the application;
 - (b) seek the views of the other party; or
 - (c) direct that an appointment be fixed to consider the application.
- (4) Where an appointment is fixed under paragraph (3)(c) the court must give 7 days notice of the date, time and place of such appointment to all parties
- (5) An “unless order” must identify the breach and require the party in default to remedy the default by a specified date.
- (6) The general rule is that the respondent should be ordered to pay the costs of such an application.
- (7) Where the defaulting party fails to comply with the terms of any “unless order” made by the court that party’s statement of case shall be struck out.
- (8) Rules 26.9 (general power to rectify) shall not apply.
(Rule 11.16 deals with applications to set aside any order made on an application made without notice.)

Judgment without trial after striking out

- 26.5
- (1) This rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the “unless order” by the specified date.
 - (2) Where the party against whom the order was made does not comply with the order, any other party may ask for judgment to be entered and for costs.
 - (3) A party may obtain judgment under this rule by filing a request for judgment.
 - (4) The request must -
 - (i) prove service of the “unless order”;
 - (ii) certify that the right to enter judgment has arisen because the court’s order was not complied with; and

- (iii) state the facts which entitle the party to judgment.
- (5) Where the party applying for judgment is the claimant and the claim is for -
 - (a) a specified sum of money;
 - (b) an amount of money to be decided by the court;
 - (c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
 - (d) any combination of these remedies, judgment shall be in accordance with the terms of the particulars of claim together with any interest and costs after giving credit for any payment that may have been made.
- (6) Where the party applying for judgment is the claimant and the claim is for some other remedy the judgment shall be such as the court considers that the claimant is entitled to.
- (7) Where a defendant seeks to obtain judgment on the claim, judgment shall be for costs to be taxed.
- (8) Where a decision of the court is necessary in order to decide the terms of the judgment the party making the request must apply for directions.

(Part 65 deals with the quantification of costs.)

Setting aside judgment entered after striking out

- 26.6 (1) A party against whom the court has entered judgment under rule 26.5 when the right to enter judgment had not arisen may apply to the court to set it aside.
- (2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.
- (3) Where the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside judgment.
- (4) Where the application to set aside is made for any other reason, rule 26.8 (relief from sanctions) applies.

Sanctions have effect unless defaulting party obtains relief

- 26.7 (1) Where the court makes an order or gives directions the court must whenever practicable also specify the consequences of failure to comply.
- (2) Where a party has failed to comply with any of these Rules, a direction or any order, any sanction for non-compliance imposed

by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 shall not apply.

- (3) Where a rule, practice direction or order -
 - (a) requires a party to do something by a specified date; and
 - (b) specifies the consequences of failure to comply, the time for doing the act in question may not be extended by agreement between the parties.

Relief from sanctions

- 26.8 (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be -
 - (a) made promptly; and
 - (b) supported by evidence on affidavit.
- (2) The court may grant relief only if it is satisfied that -
 - (a) the failure to comply was not intentional;
 - (b) there is a good explanation for the failure; and
 - (c) the party in default has generally complied with all other relevant rules, practice directions orders and directions.
- (3) In considering whether to grant relief, the court must have regard to -
 - (a) the interests of the administration of justice;
 - (b) whether the failure to comply was due to the party or that party's attorney-at-law;
 - (c) whether the failure to comply has been or can be remedied within a reasonable time;
 - (d) whether the trial date or any likely trial date can still be met if relief is granted; and
 - (e) the effect which the granting of relief or not would have on each party.
- (4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

General power of the court to rectify matters where there has been a procedural error

- 26.9 (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.

- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.
- (3) Where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
- (4) The court may make such an order on or without an application by a party.

PART 27

Case Management Conferences - Procedure

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Scope of this Part

- 27.1 This Part deals with the procedures by which the court will manage cases.

Fixed date claims - first hearing

- 27.2 (1) When a fixed date claim is issued the registry must fix a date, time and place for the first hearing of the claim.
- (2) That date shall be not less than four weeks nor more than eight weeks from the date on which the fixed date claim form is issued unless the court otherwise directs

- (3) The general rule is that the claimant must serve the fixed date claim form not less than 14 days before the first hearing.
- (4) However the general rule is subject to any rule or statutory provision which specifies a different period.
- (5) The court may on or without an application direct that shorter notice be given -
 - (a) if the parties agree; or
 - (b) in urgent cases.
- (6) Where the defendant does not file an acknowledgment of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing.
- (7) At the first hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.
- (8) The court may, however, treat the first hearing as the trial of the claim if it is not defended or the court considers that the claim can be dealt with summarily.

Case management conference

- 27.3
- (1) The general rule is that the registry must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.
 - (2) Where the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.
 - (3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.
 - (4) However a party may apply to the court to fix a case management conference before a defence is filed.
 - (5) The application may be without notice but must state the reasons for the application.
 - (6) The registry must give all parties not less than 14 days notice of the date, time and place of the case management conference.
 - (7) However the court may with or without an application direct that shorter notice be given -

- (a) if the parties agree; or
 - (b) in urgent cases.
- (8) The general rule is that costs incurred in attending a case management conference are costs in the claim .
- (9) However the court may make some other order where the case management conference has to be adjourned due to the failure of one or more parties to -
- (a) attend the hearing; or
 - (b) co-operate fully in achieving the objective of the case management conference.

Dispensing with case management conference

- 27.4 (1) On the application of a party the court may dispense with a case management conference if it is satisfied that -
- (a) the case may be dealt with justly without a case management conference; and
 - (b) the cost of the case management conference to the parties is disproportionate to the value of the proceedings and the benefits that might be achieved by a case management conference; or,
 - (c) in any case, the case should be dealt with as a matter of urgency.
- (2) Where the court dispenses with a case management conference, it must immediately -
- (a) give directions in writing about the preparation of the case; and
 - (b) set a timetable for the steps to be taken between the giving of directions and the trial; and
 - (c) fix a date for a pre-trial review unless it is satisfied that the case may be dealt with justly without a pre-trial review; and
 - (d) in any event, fix
 - (i) the trial date, or
 - (ii) the period within which the trial is to take place; and, in either case,
 - (iii) the date by which a listing questionnaire is to be filed by the parties at the registry.
- (3) The registry must serve the directions made under paragraph (2) on all parties and give notice of -

- (a) the trial date or trial period; and
- (b) the date on which the listing questionnaire is to be filed by the parties.

Transfer from Resident Magistrate's Court

27.5 On receipt of a claim transferred from a Resident Magistrate's Court under the Resident Magistrates Act, section 130, the registry must forthwith fix a case management conference and give notice of the date, time and place for such conference to all parties to the claim.

Small money claims

27.6 Where -

- (a) the parties consent;
- (b) the court is satisfied that it can deal with the claim justly in a summary manner;
- (c) the claim is for a specified sum of money, interest and costs only; and
- (d) that sum of money does not exceed \$2,000,000, the court may without a hearing -
 - (i) dispense with a case management conference and pre-trial review;
 - (ii) fix the trial date and dispense with a listing questionnaire under rule 27.12;
 - (iii) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1; and
 - (iv) give any directions that will assist in the speedy and just trial of the claim including any direction that might be given under this Part or Part 38 (pre-trial review).

Who is to conduct case management conference

27.7 The judge or master who conducts the case management conference may not try the claim except -

- (a) administrative law proceedings under Part 56;

- (b) admiralty proceedings under Part 70;
- (c) claims tried in the Commercial Division under Part 71; or
- (d) where all parties consent.

Attendance at case management conference or pre-trial review

- 27.8 (1) Where a party is represented by an attorney-at-law, that attorney-at-law or another attorney-at-law who is fully authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.
- (18/9/2006) (2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the attorney-at-law) must attend the case management conference.
- (3) However the court may dispense with the attendance of a party or representative.
- (4) Where the case management conference or pre-trial review is not attended by the attorney-at-law and the party or a representative the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (Case management - the court's powers) or Part 64 (Costs).
- (5) Provided that the court is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules, then
- (a) if the claimant does not attend, the court may strike out the claim; and
 - (b) if any defendant does not attend, the court may enter judgment against that defendant in default of such attendance.
- (6) The provisions of rule 39.6 (application to set aside judgment given in party's absence) apply to an order made under paragraph (5) as they do to failure to attend a trial.

Orders to be made at case management conference

- 27.9 (1) The general rule is that at a case management conference the court must consider whether to give directions for -

- (a) standard disclosure and inspection;
 - (b) service of witness statements; and
 - (c) service of experts' reports (if any),
by dates fixed by the court.
- (2) The court may also give directions for the preparation of -
- (a) an agreed statement of facts;
 - (b) an agreed statement of issues;
 - (c) an agreed statement of the basic technical, scientific or medical matters in issue; and
 - (d) an agreed statement as to any relevant specialist area of law,
- (18/9/2006) which statement does not bind the trial judge.
- (3) The court must direct whether the trial is to be before -
- (a) judge alone;
 - (b) judge with a common jury; or
 - (c) judge with a special jury.
- (4) The court must fix a date for a pre-trial review unless it is satisfied that, having regard to the value, importance and complexity of the case, it may be dealt with justly without a pre-trial review.
- (5) The court must in any event, -
- (a) fix -
 - (i) the trial date, or
 - (ii) the period within which the trial is to commence; and
 - (iii) the date by which a listing questionnaire is to be filed at the court by the parties; and
 - (b) direct which party must draft the order.
- (6) The claimant or such other party as the court may direct must serve the order containing the directions made on all other parties giving notice of -
- (a) the trial date or trial period;
 - (b) the date of any pre trial review; and
 - (c) the date by which the listing questionnaire is to be filed by the parties.

Adjournment of case management conference

- 27.10 (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

- (2) Where the court is satisfied that -
 - (a) the parties are in the process of negotiating, or are likely to negotiate, a settlement; or
 - (b) the parties are attending, or have arranged to attend, a form of ADR procedure, the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the ADR procedure to continue.
- (3) Where the case management conference is adjourned under paragraph (2) each party must notify the registry promptly if the claim is settled.
- (4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.
- (5) So far as practicable, any adjourned case management conference and procedural applications made prior to a pre-trial review must be heard and determined by the judge, master or registrar who conducted the first case management conference.

Variation of case management timetable

- 27.11
- (1) A party must apply to the court if that party wishes to vary a date which the court has fixed for -
 - (a) a case management conference;
 - (b) a party to do something where the order specifies the consequences of failure to comply;
 - (c) a pre-trial review;
 - (d) the return of a listing questionnaire; or
 - (e) the trial date or trial period.
 - (2) No date set by the court or these Rules for doing any act may be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).
 - (3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.
(Rule 42.7 deals with consent orders.)
 - (4) A party who applies after that date must apply -
 - (a) for relief from any sanction to which the party has become subject under these Rules or any court order; and
 - (b) for an extension of time.
(Rule 26.8 provides for applications for relief from sanctions.)
 - (5) The parties may agree to vary a date in the timetable other than

- one mentioned in paragraphs (1) or (2).
- (6) Where the parties so agree, they must -
- (a) file a consent application for an order to that effect; and
 - (b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence, and the timetable is accordingly varied unless the court directs otherwise.

Listing Questionnaire

- 27.12 (1) Each party must file the completed listing questionnaire in form 11 at the registry by the date directed under rule 27.9(5)
- (2) Where -
- (a) a party
 - (i) fails to file the completed questionnaire at the registry by the date fixed under rule 27.9(5)(c); or
 - (ii) fails to give all the information requested by the listing questionnaire; or
 - (b) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case, the registry may fix a listing appointment and direct any or all of the parties to attend the appointment.
- (3) The registry must give all parties at least 7 days notice of the date, time and place of the listing appointment.
- (4) Any party at fault must attend the listing appointment.
- (5) At the appointment the court must -
- (a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and
 - (b) where the listing appointment has been fixed under paragraph (2)(a), order the party at fault to pay the costs of the hearing unless there is a special reason why it should not make such an order.
- (6) Apart from the requirement to complete a listing questionnaire the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

Fixing trial date

- 27.13 (1) As soon as practicable after -
- (a) each party has returned a completed listing questionnaire to the registry, or
 - (b) the court has held a listing appointment under rule 27.12(3), the registry must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.
- (2) The general rule is that the registry must give the parties at least 8 weeks notice of the date of the trial.
- (3) The court may however give shorter notice -
- (a) if the parties agree; or
 - (b) in urgent cases.

PART 28

Disclosure and Inspection of Documents

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Scope of this Part

- 28.1 (1) This Part contains rules about the disclosure and inspection of documents.
- (2) In this Part "**document**" means anything on or in which information of any description is recorded; and "**copy**" in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- (3) A party "**discloses**" a document by revealing that the document exists or has existed.
- (4) For the purposes of this Part a document is "**directly relevant**" only if -
- (a) the party with control of the document intends to rely on it;
 - (b) it tends to adversely affect that party's case; or
 - (c) it tends to support another party's case.

Duty of disclosure limited to documents which are or have been in party's control

- 28.2 (1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.
- (2) For this purpose a party has or has had control of a document if -
- (a) it is or was in the physical possession of that party;
 - (b) that party has or has had a right to possession of it; or
 - (c) that party has or has had a right to inspect or take copies of it.

Disclosure of copies

- 28.3 (1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.
- (2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

Standard disclosure - what documents are to be disclosed

- 28.4 (1) Where a party is required by any direction of the court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

- (2) The court may dispense with or limit standard disclosure.
- (3) The parties may agree in writing to dispense with or limit standard disclosure.

Duty of search

- 28.5
- (1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 28.4.
 - (2) The factors relevant in deciding the reasonableness of a search include the following -
 - (a) the number of documents involved;
 - (b) the nature and complexity of the proceedings;
 - (c) the ease and expense of retrieval of any particular document; and
 - (d) the significance of any document which is likely to be located during the search.
 - (3) Where a party has not searched for a category or class of document on the grounds that it would be unreasonable to do so, this must be stated in that party's list of documents which must identify the category or class of document.

Specific disclosure

- 28.6
- (1) An order for specific disclosure is an order that a party must do one or more of the following things -
 - (a) disclose documents or classes of documents specified in the order; or
 - (b) carry out a search for documents to the extent stated in the order and disclose any documents located as a result of that search.
 - (2) An order for specific disclosure may be made on or without an application.
 - (3) An application for specific disclosure may be made without notice at a case management conference.
 - (4) An application for specific disclosure may identify documents -
 - (a) by describing the class to which they belong; or
 - (b) in any other manner.
 - (5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

Criteria for ordering specific disclosure

- 28.7 (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
- (2) It must have regard to-
- (a) the likely benefits of specific disclosure;
 - (b) the likely cost of specific disclosure; and
 - (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.
- (3) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may however make such an order on terms that the party seeking that order must pay the other party's costs of such disclosure in any event.

Procedure for disclosure

- 28.8 (1) Paragraphs (2) to (5) set out the procedure for disclosure.
- (2) Each party must make, and serve on every other party, a list of documents in form 12.
- (3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.
- (4) The list must state -
- (a) what documents are no longer in the party's control;
 - (b) what has happened to those documents; and
 - (c) where each such document then is to the best of the party's knowledge, information or belief.
- (5) It must include documents already disclosed.
- (6) A list of documents served by a company, firm, association or other organisation must -
- (a) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and
 - (b) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

Duty of attorney-at-law

- 28.9 The attorney-at-law for a party must -
- (a) explain to the maker of the list of documents -
 - (i) the necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
 - (ii) the possible consequences of failing to do so; and
 - (b) certify on the list of documents under rule 28.8(2) that the explanation required by paragraph (1) has been given.

Maker of list to certify understanding of duty of disclosure

- 28.10 (1) The maker of the list must certify in the list of documents - (a) that he or she understands the duty of disclosure; and (b) that to the best of the maker's knowledge the duty has been carried out.
- (2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.8(6)(a)
- (3) Where it is impracticable for the maker of the list to sign the certificate required by paragraph (1) it may be given by that party's attorney-at-law.
- (4) A certificate given by the attorney-at-law must also certify -
- (a) the reasons why it is impractical for the maker of the list to give the certificate; and
 - (b) that the certificate is given on the instructions of the maker of the list.

Disclosure in stages

- 28.11 The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

Inspection and copying of listed documents

- 28.12 (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents -

- (a) which are no longer in the physical possession of the party who served the list; or
 - (b) for which a right to withhold from disclosure is claimed.
- (2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.
 - (3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the notice is received.
 - (4) Where the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested not more than 7 days after the date on which the notice was received.

Duty of disclosure continuous during proceedings

- 28.13
- (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.
 - (2) Where documents to which that duty extends come to a party's notice at any time during the proceedings, that party must immediately notify every other party and serve a supplemental list of those documents.
 - (3) The supplemental list must be served not more than 14 days after the documents to which that duty extends have come to the notice of the party required to serve it.

Consequence of failure to disclose documents under order for disclosure

- 28.14
- (1) A party who fails to give disclosure by the date ordered or to permit inspection may not rely on or produce any document not so disclosed or made available for inspection at the trial.
 - (2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out.
 - (3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.
 - (4) The general rule is that the court will deal with such an application without attendance but the court may -

- (a) require the applicant to attend to support the application;
or
 - (b) direct that a hearing be fixed and that notice of the date, time and place of such hearing be given to the respondent.
- (5) On an application under paragraph (2) the court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.
- (Rule 11.16 deals with applications to set aside order made on application without notice; Rule 26.5 deals with judgment after striking out; Rule 26.8 deals with applications for relief.)

Claim of right to withhold disclosure or inspection of document

- 28.15 (1) A person who claims a right to withhold disclosure or inspection of a document, class of document or part of a document must -
- (a) make such claim for the document; and
 - (b) state the grounds on which such a right is claimed, in the list or otherwise in writing to the person wishing to inspect the document.
- (2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.
- (3) A person who applies under paragraph (2) must -
- (a) identify the document, documents or parts of documents for which a right to withhold disclosure is claimed; and
 - (b) give evidence on affidavit showing -
 - (i) that the applicant has a right or duty to withhold disclosure; and
 - (ii) the grounds on which such right or duty is claimed.
- (4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be -
- (a) served on; nor
 - (b) open for inspection by, any person.
- (5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that such document be disclosed or made available for inspection.
- (6) On hearing such an application the court must make an order that

the document be disclosed unless it is satisfied that there is a right to withhold disclosure.

- (7) Where a person -
 - (a) claims a right to withhold inspection; or
 - (b) applies for an order permitting that person not to disclose the existence of, a document or part of a document, the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.
- (8) On considering any application under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.

Restrictions on use of a privileged document inspection of which has been inadvertently allowed

- 28.16 Where a party inadvertently allows a privileged document to be inspected, the party who has inspected it may use it or its contents only with -
- (a) the permission of the court; or
 - (b) the agreement of the party disclosing the document.

Documents referred to in statements of case, etc

- 28.17
- (1) A party may inspect and copy a document mentioned in -
 - (a) the claim form;
 - (b) a statement of case;
 - (c) a witness statement or summary;
 - (d) an affidavit; or
 - (e) an expert's report.
 - (2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.
 - (3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.
 - (4) Where the party who wishes to inspect the document undertakes to pay the reasonable cost of copying, the party who, or whose witness, mentioned the document must supply the other with a copy of each documents requested not more than 7 days after the date on which the undertaking was received.

Subsequent use of disclosed documents

- 28.18 (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed except where-
- (a) the document has been read to or by the court, or referred to, in open court; or
 - (b) (i) the party disclosing the document and the person to whom the document belongs; or
 - (ii) the court, gives permission.
- (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.
- (3) An application for such an order may be made -
- (a) by a party; or
 - (b) by any person to whom the document belongs.

Notice to prove document

- 28.19 (1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this part unless that party serves notice that the document must be proved at trial.
- (2) A notice to prove a document must be served not less than 42 days before the trial.

Notice to admit or produce documents

- 28.20 (1) A party ("**the first party**") may serve notice on another party ("**the second party**") requiring the second party to admit the authenticity of any document specified in the notice.
- (2) A notice under paragraph (1) must be served not less than 42 days before the trial.
- (3) The second party may give notice to the first party within 21 days of service of the notice under paragraph (1) that the authenticity of the document is not admitted.
- (4) Unless the second party gives notice under paragraph (3) that party shall be deemed to have admitted the authenticity of the documents specified in the notice under paragraph (1) unless the court otherwise orders.

- (5) A party may serve on another party a notice requiring that party to produce at the trial any documents specified in the notice.
- (6) A notice under paragraph (5) must be served not less than 42 days before the trial.

PART 29

Evidence

Contents of this Part

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Power of court to control evidence

- 29.1 (1) The court may control the evidence to be given at any trial or hearing by giving appropriate directions as to -
- (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues;
 - and
 - (c) the way in which the evidence is to be placed before the court, at a case management conference or by other means.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may limit cross-examination.

Evidence at trial - general rule

- 29.2 (1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved -
- (a) at trial, by their oral evidence given in public; and
 - (b) at any other hearing, by affidavit.
- (2) The general rule is subject -
- (a) to any provision to the contrary contained in these Rules or elsewhere; and
 - (b) to any order of the court.
- (3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.
(Part 30 deals with affidavit evidence.)

Evidence by video link or other means

- 29.3 The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

Requirement to serve witness statements

- 29.4 (1) In this Part a "**witness statement**" means a written statement -
- (a) signed by the person making it; and
 - (b) containing the evidence which it is intended that that person will give orally.
- (2) Where the person making the statement is illiterate or blind the statement must be made in the presence of a witness who must certify that -
- (a) the statement was read to the person making the statement in the presence of the witness; and
 - (b) the person making the statement -
 - (i) appeared to understand it; and
 - (ii) signed the statement or made his or her mark in the presence of the witness.
- (3) The court may order a party to serve on any other party witness statements setting out the evidence on which that party intends to rely at the trial or other hearing.
- (4) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

(Rule 29.7 provides a procedure that may be adopted when one party is and the other party is not prepared to serve witness statements.)

- (5) The court may give directions as to -
- (a) the order in which witness statements are to be served; and
 - (b) when they are to be filed.
- (6) A party may apply for permission to file supplemental witness statements.

(18/9/2006)

Form of witness statements

- 29.5 (1) A witness statement must -
- (a) give the name, address and occupation of the witness;
 - (b) so far as reasonably practicable, be in the intended witness's own words;
 - (c) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document;
 - (d) not include any matters of information or belief which are not admissible and, where admissible, state the source of any matters of information or belief;
 - (e) be dated;
 - (f) be signed or otherwise authenticated by the intended witness; and
 - (g) include a statement by the intended witness that the intended witness believes the statements of fact in it to be true.
- (2) The court may order that any inadmissible scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

Witness summaries

- 29.6 (1) A party who is -
- (a) required to serve; but
 - (b) not able to obtain,
- a witness statement may serve a witness summary instead.
- (2) That party must certify on the witness summary the reason why a witness statement could not be obtained.
- (3) A "**witness summary**" is a summary of -

- (a) the evidence, so far as is known, which would otherwise be included in a witness statement; or
 - (b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.
- (4) Unless the court orders otherwise a witness summary must include the name and address of the intended witness or other sufficient means of identifying him or her.
- (5) A witness summary must be served within the period in which a witness statement would have had to be served.
- (6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where party does not serve witness statements) and 29.8 (witness to give evidence) apply to the summary.

Procedure where one party does not serve witness statement by date directed.

- 29.7 (1) This rule applies where -
- (a) one party ("**the first party**") is able and prepared to comply with the order to serve witness statements; and
 - (b) the other party fails to make reasonable arrangements to exchange statements.
- (2) The first party may comply with the requirements of this Part by -
- (a) filing the witness statements in a sealed envelope at the registry by the date directed; and
 - (b) giving notice to all other parties that the witness statements have been filed.
- (3) The statements filed pursuant to paragraph (2) must not be disclosed to any other party until that party certifies that witness statements or summaries in respect of all witnesses upon whose evidence that party intends to rely have been served.

Use at trial of witness statements which have been served

- 29.8 (1) Where a party -
- (a) has served a witness statement or summary; and
 - (b) wishes to rely on the evidence of the witness who made the statement, that party must call the witness to give evidence unless the court orders otherwise or it puts the

- statement in as hearsay evidence.
- (2) Where a witness is called to give oral evidence under paragraph (1), his or her witness statement shall stand as evidence in chief unless the court orders otherwise.
 - (3) Where a party who has served a witness statement does not -
 - (a) intend to call that witness at the trial; or
 - (b) put the witness statement in as hearsay evidence,
 any other party may put the witness statement in as hearsay evidence.
 - (4) Where a party -
 - (a) has served a witness summary; and
 - (b) does not intend to call that witness at the trial,
 that party must give notice to that effect to all other parties not less than 28 days before the trial.

Amplifying witness statements at trial

- 29.9
- (1) A witness giving oral evidence may with the permission of the court -
 - (a) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;
 - (b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or
 - (c) comment on evidence given by other witnesses.
 - (2) The court will give permission under paragraph (1) only if it considers that there is good reason not to confine the evidence of the witness to the contents of the witness statement.

Cross Examination on witness statement

- 29.10
- (1) Where a witness is called to give evidence at trial, he or she may be cross - examined on the evidence set out in that witness's statement, whether or not the statement or any part of it was referred to during the witness's evidence in chief.
 - (2) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.
 - (3) Where the court gives permission under paragraph (2) but the person in question does not attend as required by the order, his or her evidence may not be used unless the court gives permission.

Consequence of failure to serve witness statement or summary

- 29.11 (1) Where a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court then the witness may not be called unless the court permits.
- (2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

Use of witness statements for other purposes

- 29.12 (1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.
- (2) Paragraph (1) does not apply if and to the extent that -
- (a) the witness gives consent in writing to some other use of it;
 - (b) the court gives permission for some other use; or
 - (c) the witness statement has been put in evidence at a hearing held in public.

Notice to admit facts

- 29.13 (1) A party may serve notice on another party requiring that other party to admit the facts or the part of the first party's case specified in the notice.
- (2) A notice to admit facts must be served no later than 42 days before the trial.
- (3) Where the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only -
- (a) in the proceedings in which the notice is served; and
 - (b) by the party who served the notice.
- (4) Where the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon that party, the court may order the party served with the notice to pay the costs incurred by the party serving the notice.

Availability of witness statements for inspection

- 29.14 (1) A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the court otherwise directs.

- (2) Any person may ask for a direction that a witness statement is not open to inspection.
- (3) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of -
 - (a) the interests of justice;
 - (b) the public interest;
 - (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of any confidential information (including information relating to personal financial matters) in the statement; or
 - (e) the need to protect the interests of any minor or patient.
- (4) The court may exclude from inspection words or passages in the statement.

PART 30

Affidavits

Contents of this Part

Affidavit evidence	Rule 30.1
Form of affidavits	Rule 30.2
Contents of affidavits	Rule 30.3
Making of affidavits	Rule 30.4
Documents to be used in conjunction with affidavits	Rule 30.5
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Affidavit evidence

- 30.1 (1) The court may require or permit evidence to be given by affidavit instead of, or in addition to, oral evidence.
- (2) In this Part "**deponent**" means the maker of an affidavit.
- (3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.
- (4) Such an application must be made not less than -
- (a) in the case of a trial, 21 days; or
 - (b) in the case of any other hearing, 7 days,
- before the date of the hearing at which it is intended to cross-examine the deponent.
- (5) Where the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.
- (6) The general rule is that an affidavit must be filed before it may be used in any proceedings.
- (7) However in a case of urgency the court may make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

Form of affidavits

- 30.2 Every affidavit must -
- (a) be headed with the title of the proceedings;
 - (b) be in the first person and state the name address and occupation of the deponent and, if more than one, of each of them;
 - (c) state if any deponent is employed by a party to the proceedings;
 - (d) be divided into paragraphs numbered consecutively; and
 - (e) be marked on the top right hand corner of the affidavit with -
 - (i) the party on whose behalf it is filed;
 - (ii) the initials and surname of the deponent;
 - (iii) (where the deponent swears more than one affidavit in any proceedings), the number of the affidavit in relation to the deponent;
 - (iv) the identifying reference of each exhibit referred to in the affidavit;
 - (v) the date when sworn; and
 - (vi) the date when filed.

Example:

"Claimant: N. Berridge: 2nd: NB 3 and 4:1.10.98: 3.10.98."

Contents of affidavit

- 30.3 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
- (2) However an affidavit may contain statements of information and belief -
- (a) where any of these Rules so allows; and
 - (b) where the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates-
 - (i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and
 - (ii) the source for any matters of information and belief.
- (3) The court may order that any scandalous, irrelevant or otherwise

oppressive matter be struck out of any affidavit.

- (4) No affidavit containing any alteration may be used in evidence unless all such alterations have been initialled both by the deponent and by the person before whom the affidavit was sworn.

Making of affidavits

- 30.4 (1) An affidavit must -
- (a) be signed by each deponent;
 - (b) be sworn or affirmed by each deponent;
 - (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and
 - (d) contain the full name of the person before whom it was sworn or affirmed.
- (2) The statement authenticating the affidavit ("the jurat") must follow immediately from the text and not be on a separate page.
- (3) No affidavit may be admitted into evidence if sworn or affirmed before the attorney-at-law of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney-at-law.
- (4) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that -
- (a) the affidavit was read to the deponent by him or her or in his or her presence;
 - (b) the deponent appeared to understand it; and
 - (c) the deponent signed or made his or her mark in his presence.
- (5) A person may make an affidavit outside the jurisdiction in accordance with -
- (a) this Part; or
 - (b) the law of the place where the affidavit is made.
- (6) Subject to section 22(4) of the Judicature (Supreme Court) Act, any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

(18/9/2006)

Documents to be used in conjunction with affidavit

- 30.5 (1) Any document to be used in conjunction with an affidavit must be exhibited to it.
- (2) Where there are two or more such documents, those documents may be included in a bundle which is in date or some other convenient order and is properly paginated.
- (3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by other parties before the hearing and by the court at the hearing.
- (4) Each exhibit or bundle of exhibits must be -
- (a) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and
 - (b) marked
 - (i) in accordance with rule 30.2(e); and
 - (ii) prominently with the exhibit mark referred to in the affidavit.

Service of affidavit

- 30.6 (1) The general rule is that a party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.
- (2) The general rule applies whether the affidavit was made in the proceedings or in some other proceedings.
- (3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

PART 31

Miscellaneous Rules about Evidence

Contents of this Part

Use of plans, photographs etc., as evidence	Rule 31.1
Evidence of questions of foreign law	Rule 31.2
Evidence of consent of trustee to act	Rule 31.3

Use of plans, photographs etc., as evidence

- 31.1 (1) A party who intends to rely at a trial on evidence which -
- (a) is not to be given orally, and
 - (b) is not contained in a witness statement, affidavit or expert report, must disclose his intention to the other parties in accordance with this rule.
- (2) Where a party fails to disclose the intention to rely on the evidence referred to in paragraph (1), the evidence may not be given.
- (3) Subject to paragraphs (4) and (5), a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.
- (4) Where-
- (a) there is no order for service of witness statements; or
 - (b) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement, that party must disclose the evidence at least 21 days before the hearing at which it is proposed to put in the evidence.
- (5) Where the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.
- (6) Where a party has disclosed the intention to put in the evidence referred to in paragraph (1) that party must give every other party

an opportunity to inspect the evidence and to agree to its admission without proof.

Evidence on questions of foreign law

- 31.2 (1) This rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.
- (2) A party who intends to adduce evidence on foreign law must first give any other party notice of the intention.
- (3) Notice under paragraph (2) must be given not less than 42 days before the hearing at which the party proposes to adduce the evidence.
- (4) The notice must -
- (a) specify the question on which the evidence is to be adduced; and
 - (b) have attached a document which forms the basis of the evidence.

Evidence of consent of trustee to act

- 31.3 A document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

PART 32

Experts and Assessors

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Way in which expert witness's duty to court is to be carried out	Rule 32.4
Expert witness's right to apply to court for directions	Rule 32.5
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General requirement for expert evidence to be given in written report	Rule 32.7
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Use by one party of expert witness's report disclosed by another	Rule 32.16
Appointment of assessor	Rule 32.17
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Scope of this Part

- 32.1 (1) This Part deals with the provision of expert evidence to assist the court.

- (2) In this Part "**expert witness**" is a reference to an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

General duty of court and of parties

- 32.2 Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

Expert witness's overriding duty to court

- 32.3
- (1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.
 - (2) This duty overrides any obligations to the person by whom he or she is instructed or paid.

Way in which expert witness's duty to court is to be carried out

- 32.4
- (1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert witness uninfluenced as to form or content by the demands of the litigation.
 - (2) An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the expert witness's expertise.
 - (3) An expert witness must state the facts or assumptions upon which his or her opinion is based. The expert witness must not omit to consider material facts which could detract from his or her concluded view.
 - (4) An expert witness must state if a particular matter or issue falls outside his or her expertise.
 - (5) Where the opinion of an expert witness is not properly researched, then this must be stated with an indication that the opinion is no more than a provisional one.
 - (6) Where the expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.
 - (7) Where after service of reports an expert witness changes his or her opinion on a material matter, such change of view must be communicated to all parties.

Expert witness's right to apply to court for directions

- 32.5 (1) An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her -
- (a) functions as an expert witness; or
 - (b) duty to the court.
- (2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.
- (3) The court may direct that -
- (a) notice of the application be given to any party; or
 - (b) a copy of the application and any directions given be sent to any party.

Court's power to restrict expert evidence

- 32.6 (1) No party may call an expert witness or put in an expert witness's report without the court's permission.
- (2) The general rule is that the court's permission is to be given at a case management conference.
- (3) When a party applies for permission under this rule -
- (a) that party must name the expert witness and identify the nature of the expert witness's expertise; and
 - (b) any permission granted shall be in relation to that expert witness only.
- (4) No oral or written expert witness's evidence may be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.
- (5) The court must direct by what date such report must be served.
- (6) The court may direct that part only of an expert witness's report be disclosed.

General requirement for expert evidence to be given in written report

- 32.7 (1) Expert evidence is to be given in a written report unless the court directs otherwise.
- (2) This rule is subject to any enactment restricting the use of "hearsay evidence".

Written questions to expert witnesses

- 32.8 (1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.
- (2) Written questions under paragraph (1) -
- (a) may be put once only;
 - (b) must only be in order to clarify the report; and
 - (c) must be put within 28 days of service of that expert witness's report, unless -
 - (i) the court permits; or
 - (ii) the other party agrees.
- (3) An expert witness's answers to questions under this rule shall be treated as part of that expert witness's report.
- (4) Where -
- (a) a party has put a written question to an expert witness instructed by another party in accordance with this rule; and
 - (b) the expert witness does not answer the question, the court may make one or more of the following orders, namely that -
 - (i) the party who instructed the expert witness may not rely on the evidence of the expert witness;
 - (ii) that party may not recover the fees and expenses of the expert witness from any other party; or
 - (iii) the party asking the questions may seek to obtain answers from another expert witness.
- (5) This rule also applies where evidence from a single expert witness is to be used under rule 32.9.

Court's power to direct evidence by single expert witness

- 32.9 (1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.
- (2) The parties wishing to submit the expert evidence are called "**the instructing parties**".
- (3) Where the instructing parties cannot agree who should be the expert witness, the court may -
- (a) select the expert witness from a list prepared or identified by the instructing parties; or

- (b) direct that the expert witness be selected in such other manner as the court may direct.
- (4) The court may vary a direction given under this rule.
- (5) The court may appoint a single expert witness -
 - (a) instead of the parties instructing their own expert witnesses; or
 - (b) to replace experts instructed by the parties.

Instructions to single expert witness

- 32.10
- (1) Where the court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.
 - (2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.
 - (3) The court may give directions about the arrangements for -
 - (a) the payment of the expert witness's fees and expenses; and
 - (b) any inspection, examination or experiments which the expert witness wishes to carry out.
 - (4) The court may, before an expert witness is instructed -
 - (a) limit the amount that can be paid by way of fees and expenses to the expert witness; and
 - (b) direct that the instructing parties pay that amount into court in such proportions as may be directed.
 - (5) Unless the court otherwise directs, the instructing parties are jointly and severally liable for the payment of the expert witness's fees and expenses.
 - (6) This does not affect any decision as to the party who is ultimately to bear the costs of the single expert witness.

Power of Court to direct party to provide an expert report

- 32.11
- (1) Where a party (the "**first party**") has access to information which is not reasonably available to the other party, the court may order the first party -
 - (a) to arrange for an expert witness to prepare a report on any matter;
 - (b) if appropriate, to arrange for an examination to be carried

- out in relation to that matter; and
 - (c) to file the report and serve a copy on any other party.
 - (2) The court's powers under this rule may be exercised only on the application of a party.

Expert witness's reports to be addressed to court

32.12 An expert witness must address his or her report to the court and not to any person from whom the expert witness has received instructions.

Contents of report

- 32.13 (1) An expert witness's report must -
- (a) give details of the expert witness's qualifications;
 - (b) give details of any literature or other material which the expert witness has used in making the report;
 - (c) say who carried out any test or experiment which the expert witness has used for the report;
 - (d) give details of the qualifications of the person who carried out any such test or experiment;
 - (e) where there is a range of opinion on the matters dealt within in the report -
 - (i) summarise the range of opinion; and
 - (ii) give reasons for his or her opinion, and
 - (f) contain a summary of the conclusions reached.
- (2) At the end of an expert witness's report there must be a statement that the expert witness-
- (a) understands his or her duty to the court as set out in rules 32.3 and 32.4;
 - (b) has complied with that duty;
 - (c) has included all matters within the expert witness's knowledge and area of expertise relevant to the issue on which the expert evidence is given; and
 - (d) has given details in the report of any matters which to his or her knowledge might affect the validity of the report.
- (3) There must be also attached to an expert witness's report copies of-
- (a) all written instructions given to the expert witness;
 - (b) any supplemental instructions given to the expert witness

- since the original instructions were given; and
 - (c) a note of any oral instructions given to the expert witness, and the expert witness must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert witness, the party's attorney-at-law or any other person acting on behalf of the party.
- (4) Where an expert report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.
- (5) Where it is not practicable to provide a copy of the documents referred to in paragraph (4), such documents must be made available for inspection by the other party or any expert witness instructed by that party within 7 days of a request so to do.

Meeting of expert witnesses

- 32.14
- (1) The court may direct a meeting of expert witnesses of like speciality for the purpose of requiring the expert witnesses to -
 - (a) identify the issues relevant to their expertise in the proceedings; and
 - (b) where possible, reach agreement on an issue.
 - (2) The court may specify the issues which the expert witnesses must discuss.
 - (3) The contents of the discussion between the expert witnesses shall not be referred to at the trial unless the parties agree.
 - (4) The meeting may take place personally, over the telephone or by any other suitable means.
 - (5) After the meeting the expert witnesses must prepare for the court a statement of -
 - (a) any issues within their expertise on which they agree; and
 - (b) any such issues on which they disagree and their reasons for disagreeing.
 - (6) Instead of, or in addition to, such statement the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.
 - (7) The statement referred to in paragraph (6) must be as short as practicable.

Consequence of failure to disclose expert witness's report

- 32.15 (1) A party who fails to comply with a direction to disclose an expert witness's report may not use the report at the trial or call the expert witness unless the court gives permission.
- (2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.
(Rule 26.8 deals with applications for relief.)

Use by one party of expert witness's report disclosed by another

- 32.16 Where a party has disclosed an expert report, any other party may use that report as evidence at the trial.

Appointment of assessor

- 32.17 (1) The court may appoint an assessor to-
- (a) assist the court in understanding technical evidence;
 - (b) provide a written report; or
 - (c) advise the judge at the trial with regard to evidence of expert witnesses called by the parties.
- (2) On making an order under paragraph (1), the court must decide
- (a) what fee is to be paid to the assessor; and
 - (b) by whom.
- (3) This does not affect any decision as to the party who is ultimately to bear the cost of the assessor.
- (4) The court may order any party to deposit in the registry a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.
- (5) The assessor shall assist the court in dealing with a matter in which the assessor has skill and experience.
- (6) All communications apart from written instructions between the court and an assessor must be in open court.
- (7) An assessor shall take such part in the proceedings as the court may direct and in particular the court may -
- (a) direct the assessor to prepare a report for the court on any matter at issue in the proceedings; and
 - (b) direct the assessor to attend the whole or any part of the trial to advise the court on any such matter.

- (8) Before requesting a written report or opinion from an assessor the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.
- (9) Where the assessor prepares a report for the court before the trial has begun -
 - (a) the court must send a copy to each of the parties; and
 - (b) the parties may use it at trial.
- (10) Before giving judgment the court must provide the parties with the questions asked of, and any opinion given by, the assessor and give them an opportunity to make submissions.

Cross-examination of court expert

- 32.18 An expert or an assessor appointed by the court who gives oral evidence may be cross-examined by any party.

PART 33

Court Attendance by Witnesses and Depositions

Contents of this Part

Scope of this Part	Rule 33.1
<i>Witness Summons</i>	
Witness summonses	Rule 33.2
Issue of witness summonses	Rule 33.3
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Travelling expenses and compensation for loss of time	Rule 33.5
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Use of deposition at hearing	Rule 33.13
Where person to be examined is out of jurisdiction - letter of request	Rule 33.14
<i>Production hearing</i>	
Early appointment to produce documents	Rule 33.15

Scope of this Part

- 33.1 (1) This Part provides for -
- (a) the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) a party to obtain evidence prior to a hearing.
- (2) In this Part, reference to a hearing includes a reference to the trial.

Witness Summons

Witness summonses

- 33.2 (1) A witness summons is a document issued by the court requiring a witness to attend court or in chambers -
- (a) to give evidence; or
 - (b) to produce documents to the court.
- (2) A witness summons must be in form 13.
- (3) There must be a separate witness summons for each witness.
- (4) A witness summons may require a witness to produce documents to the court either on-
- (a) the date fixed for the trial or the hearing of any application in the proceedings; or
 - (b) such other date as the court may direct.

Issue of witness summonses

- 33.3 (1) A witness summons is issued on the date entered on the summons by the registry.
- (2) A party must obtain permission from the court when that party wishes to have -
- (a) a witness summons issued less than 21 days before the date of the hearing; or
 - (b) a summons issued for a witness to attend court to give evidence or to produce documents
 - (i) on any date except the date fixed for the trial; or
 - (ii) at any hearing except the trial.
- (3) An application for permission under paragraph (2) may be without notice but must be supported by evidence on affidavit.
- (4) The court may set aside or vary a witness summons.
- (5) An application to set aside or vary a witness summons may be made by -
- (a) any party; or
 - (b) the witness to whom the summons is addressed.

Time for serving witness summonses

- 33.4 (1) The general rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.

- (2) The court may direct that a witness summons shall be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.
- (3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.
- (4) A witness summons which is -
 - (a) served in accordance with this rule; and
 - (b) requires the witness to attend court to give evidence,is binding until the conclusion of the hearing at which the attendance of the witness is required.

Travelling expenses and compensation for loss of time

- 33.5 At the time of service of a witness summons the witness must be offered or paid -
- (a) a sum reasonably sufficient to cover his or her subsistence and expenses in travelling to and from the court; and
 - (b) such sum by way of compensation for loss of time as may be specified in a practice direction.

Depositions

Evidence by deposition before examiner

- 33.6
- (1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.
 - (2) A person from whom evidence is to be obtained following any order under this rule is referred to as a "**deponent**" and the evidence is referred to as a "**deposition**".
 - (3) An order under this rule shall be for a deponent to be examined on oath before -
 - (a) a judge;
 - (b) a master;
 - (c) a registrar;
 - (d) a resident magistrate; or
 - (e) an attorney-at-law who has practised for at least five years, ("**the examiner**").
 - (4) The order must state
 - (a) the name of the examiner; and
 - (b) the date, time and place of the examination.

- (5) An order under paragraph (1) may be made on such terms as the court considers just, including -
 - (a) an order for disclosure of documents under Part 28 before the examination takes place; and
 - (b) requiring the production of any document which the court considers may be necessary for the purposes of the examination.
- (6) Rule 2.7 (court's discretion as to where, when and how it deals with cases) applies to an examination under this rule.
- (7) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.5.
- (8) An application may be made by any party whether or not that party would otherwise call the witness.
- (9) Where the application is made by the party who would otherwise call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.
- (10) The party who applied for the order under paragraph (1) must supply to the examiner copies of such documents in the proceedings as are necessary for the examiner to understand the matters at issue in the proceedings.
(Part 29 contains general rules about witness statements and witness summaries.)

Conduct of examination

- 33.7
- (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.
 - (2) Where all the parties are present, the examiner may, with the consent of the parties, conduct the examination of a person not named in the order for examination.
 - (3) The examiner may conduct the examination in private if he or she considers it appropriate to do so.
 - (4) The examiner must ensure that a full record is taken of the evidence given by the witness.
 - (5) Where any person being examined objects to answer any question put to him or her, the ground of the objection and the answer to any such question must be set out in the deposition or in a statement annexed to the deposition.

- (6) The examiner must send the original deposition to the registry and a copy of the deposition to -
 - (a) every party to the proceedings; and
 - (b) the deponent.
- (7) Where the witness or any attorney-at-law present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he or she may-
 - (a) endorse on the copy deposition the corrections which in his or her opinion should be made;
 - (b) file the endorsed copy deposition; and
 - (c) serve a copy of it on all other parties.

Evidence without examiner being present

- 33.8
- (1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.
 - (2) Where such an order is made then, subject to any directions that may be contained in the order -
 - (a) the party whose witness is to be examined must provide a means of recording the evidence of the witness;
 - (b) an attorney-at-law for any party may administer the oath to a witness;
 - (c) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the attorney-at-law for the party whose witness was examined;
 - (d) the attorney-at-law for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined; and
 - (e) where the witness or any attorney-at-law present at the hearing is of the opinion that the transcript does not accurately represent any evidence given that person may-
 - (i) endorse on the copy transcript the corrections which in his or her opinion should be made;
 - (ii) file the copy transcript; and
 - (iii) serve a copy of it on all other parties.

Enforcing attendance of witness

- 33.9 (1) Where a person served with a witness summons to attend before an examiner -
- (a) fails to attend; or
 - (b) refuses to be sworn or to affirm for the purpose of the examination; or
 - (c) refuses to answer any lawful question or produce any document at the examination,
- the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.
- (2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, or to be sworn or to affirm or to answer any question or produce any document as the case may be.
- (3) An application for an order under this rule may be made without notice.
- (4) Any order made by the court must be served personally on the person served with the witness summons and be endorsed with a notice in the first form given in rule 53.3(b).
- (5) A person who wilfully disobeys an order made against him under paragraph (4) is guilty of contempt of court.
- (6) The court may order the person against whom an order is made under paragraph (4) to pay any costs resulting from -
- (a) the failure to attend before the referee;
 - (b) the refusal to be sworn or affirm for the purposes of the inquiry; or
 - (c) the refusal to answer any lawful question or produce any document at the inquiry.

(Part 53 deals with the procedure relating to an application to commit a person for contempt of court.)

Special Report

- 33.10 The examiner may make a special report to the court with regard-
- (a) to the absence; or
 - (b) the conduct of any person present when the deposition was taken.

Fees and expenses of examiner

- 33.11 (1) On appointing an examiner the court must fix the fee to be paid to the examiner for carrying out the examination.
- (2) The party who obtained the order must also pay the fee and all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.
- (3) This does not affect any decision as to the party who is ultimately to bear the costs of the examination.
- (4) The examiner need not send the deposition to the court unless the fee is paid.
- (5) The court may order the party who obtained the order for examination to deposit in the registry a specified sum in respect of the examiner's fees.
- (6) Where the court does so the examiner will not be asked to act until the sum has been deposited.

Order for payment of examiner's fees

- 33.12 (1) The examiner may report to the court the fact that any fees or expenses due to him or her have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.
- (2) An order under paragraph (1) may be enforced as a money judgment.

Use of deposition at hearing

- 33.13 (1) A deposition ordered under rule 33.8 or 33.9 may be given in evidence at the trial unless the court orders otherwise.
- (2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party.
- (3) That party must serve the notice at least 21 days before the day fixed for the hearing.
- (4) The court may require a deponent to attend the hearing and give evidence orally.

Where person is out of the jurisdiction - letter of request

- 33.14 (1) Where a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.
- (2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.
- (3) Where the government of the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.
- (4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.
- (5) Where the court makes an order for the issue of a letter of request, the party who sought the order must file -
- (a) the following documents and, except where paragraph (6) applies, a translation of them -
 - (i) a draft letter of request;
 - (ii) a statement of the issues relevant to the proceedings; and
 - (iii) a list of questions or the subject matter of questions to be put to the person to be examined; and
 - (b) an undertaking to be responsible for the expense of the Minister with responsibility for foreign affairs.
- (6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

Production hearing

Early appointment to produce documents

- 33.15 (1) The court may permit a party to issue a witness summons requiring any person to attend at a date, time or place (a “**production hearing**”) specified in the summons other than the date of the trial for the purpose of producing one or more documents.
- (2) The only documents that a summons under this rule can require a person to produce are documents which that person could be compelled to produce at the trial.

PART 34

Requests for Information

Contents of this Part

Right of parties to obtain information	Rule 34.1
Orders compelling reply to request for information	Rule 34.2
Information obtained under Part 34 not to be used in other proceedings	Rule 34.3
Certificate of Truth	Rule 34.4

Right of parties to obtain information

- 34.1 (1) This Part contains rules enabling a party to obtain from any other party information about any matter which is in dispute in the proceedings.
- (2) To obtain the information referred to in paragraph (1) the party seeking the information must serve a request identifying the information sought on other party.

Orders compelling reply to request for information

- 34.2 (1) Where a party does not give information which another party has requested under rule 34.1 within a reasonable time, the party who served the request may apply for an order compelling the other party to do so.
- (2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.
- (3) When considering whether to make an order the court must have regard to -
- (a) the likely benefit which will result if the information is given;
 - (b) the likely cost of giving it; and

- (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

Information obtained under Part 34 not to be used in other proceedings

- 34.3 A party may use information obtained -
- (a) in response to a request under rule 34.1; or
 - (b) in compliance with an order under rule 34.2,
- only in the proceedings in which the request or order was made.

Certificate of Truth

- 34.4 Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12.

PART 35

Offers to Settle

Contents of this Part

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle covers interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance - generally	Rule 35.11
Effect of acceptance where there are more than two parties	Rule 35.12
Costs of offeror and offeree where offer is accepted- defendant's offer	Rule 35.13
Costs of offeror and offeree where offer is accepted - claimant's offer	Rule 35.14
Position where offer not accepted - general rules	Rule 35.15

Scope of this Part

- 35.1 (1) This Part contains rules about -
- (a) offers to settle proceedings which a party may make to another party; and
 - (b) the consequences of such offers.
- (2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.

- (3) The rules in this Part are subject to rule 23.12 (compromise etc., by or on behalf of a minor or patient).
(Part 14 contains procedures enabling a defendant to admit all or part of a claim. Part 36 deals with payments into court.)

Introductory

- 35.2 (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.
- (2) The party who makes the offer is called the "**offeror**".
- (3) The party to whom the offer is made is called the "**offeree**".
- (4) An offer to settle is made when it is served on the offeree.

Making offer to settle

- 35.3 (1) A party may make an offer to another party which is expressed to be "without prejudice" but in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to -
- (a) the allocation of the costs of the proceedings; and
- (b) (in the case of an offer by the claimant) the question of interest on damages.
- (2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

Time when offer to settle may be made

- 35.4 A party may make an offer to settle under this Part at any time before the beginning of the trial.

Procedure for making offer to settle

- 35.5 (1) An offer to settle must be in writing.
- (2) The offeror must serve the offer on the offeree and a copy on all other parties.
- (3) Neither -
- (a) the fact; nor
- (b) the amount,
- (17/2/2003) of the offer or any payment into court in support of the offer is to be communicated to the court before all questions of liability and

the amount of money to be awarded (other than costs and interest) have been decided.

- (4) Paragraph (3) does not apply -
- (a) to an offer which has been accepted; or
 - (b) where a defence of tender before claim has been pleaded.

Extent to which offer to settle covers interest, costs or counterclaim

- 35.6 (1) An offer to settle a claim for damages must state whether or not the amount offered includes -
- (a) interest; or
 - (b) costs.
- (2) Where the offer includes interest or costs, it must state the amount which is included for each.
- (3) Where there is a counterclaim as well as a claim, the offer must state -
- (a) in the case of an offer by the claimant, whether or not it takes into account the counterclaim; or
 - (b) in the case of an offer by the defendant, whether or not it takes into account the claim,
- and in each case in what amount.

Offer to settle made after interim payment

- 35.7 Where an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

Offer to settle part of a claim

- 35.8 (1) An offer to settle must state whether or not it covers the whole or part of the claim.
- (2) Where it does not state that it is to cover part only of the claim, it is to be taken to cover the whole claim.
- (3) Where the offer covers only part or parts of the claim it must -
- (a) identify the part or parts of the claim in respect of which it is made; and

- (b) if more than one, state what is offered in respect of each part covered by the offer.

Time limit for accepting an offer to settle

- 35.9
- (1) The offeror may state in the offer that it is open for acceptance until a specified date.
 - (2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.
 - (3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.
 - (4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.

Procedure for acceptance

- 35.10
- (1) To accept an offer a party must -
 - (a) serve written notice of acceptance on the offeror; and
 - (b) send a copy of the notice to any other party.
 - (2) The offeree accepts the offer when notice of acceptance is served on the offeror.
 - (3) Where an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 (compromise etc. by or on behalf of minor or patient) applies -
 - (a) the offer or payment may be accepted only with the permission of the court; and
 - (b) no payment out of any sum in court may be made without a court order.

Effect of acceptance - generally

- 35.11
- (1) Where the offeree accepts an offer which is not limited in accordance with rule 35.8(3), the claim is stayed upon the terms of the offer.
 - (2) Where the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.
 - (3) In any other case the proceedings are stayed to the extent that they are covered by the terms of the offer.

- (4) Where the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.
(Rule 23.12 deals with the settlement of proceedings involving minors and patients.)
- (5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.
- (6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.
(Part 36 deals with payments into court.)
- (7) Where an offer is accepted but its terms are not complied with, any stay arising on acceptance ceases to have effect and -
- (a) the proceedings or the part which was stayed may continue; and
 - (b) either party may apply to the court to enforce those terms.
- (8) Where a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

Effect of acceptance where there are more than two parties

- 35.12 (1) Where there is more than one defendant whom the claimant says are jointly and severally, or severally, liable and -
- (a) the claimant agrees to settle the claim as against one or more, but not all of them; and
 - (b) the claimant discontinues the claim against any other defendant, the claimant is liable to pay the costs of that defendant unless the court otherwise orders.
(Part 37 deals with discontinuance.)
- (2) Where a claimant accepts an offer made by one of a number of joint defendants -
- (a) paragraph (1) shall not apply; and
 - (b) the defendant who made the offer is liable for the costs of the other joint defendants.
- (3) Where -
- (a) there is more than one claimant; and

- (b) one or more, but not all, of them agree to settle, the others may continue the proceedings.

Costs of offeror and offeree where offer is accepted - defendant's offer

- 35.13 (1) Where -
- (a) the defendant makes an offer to settle; and
 - (b) the claimant accepts the offer within any period stated for accepting it and before the beginning of the trial, the claimant is entitled to his costs to the day when he accepts the offer.
- (2) Where the court or the defendant permits a claimant to accept an offer after the time stated for accepting it the general rule is that-
- (a) the claimant is entitled to costs to the end of the period stated for accepting the offer; and
 - (b) the defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer, unless the court orders otherwise.
- (3) Where the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue -
- (a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and
 - (b) unless the court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

Costs of offeror and offeree where offer is accepted - claimant's offer

- 35.14 Where the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

Position where offer not accepted - general rules

- 35.15 (1) The general rule for defendant's offers is that, where the defendant makes an offer to settle which is not accepted and -
- (a) in the case of an offer to settle a claim for damages, the court awards less than 85% of the amount of the defendant's offer; or
 - (b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant's offer, the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted without the court's permission.
- (2) Where a claimant makes an offer to settle and -
- (a) in the case of an offer to settle a claim for damages, the court awards an amount which is equal to or more than the amount of the offer; or
 - (b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant's offer, the court may, in exercising its discretion as to interest, allow interest on the damages at a rate of 20% per annum.
- (3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.
- (4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account -
- (a) the terms of any offer;
 - (b) the stage in the proceedings at which the offer was made;
 - (c) the information available to the offeror and the offeree at the time that the offeror made the offer; and
 - (d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.
- (5) This rule applies to offers to settle at any time, including before proceedings were started.

PART 36

Payments into Court to Support Offers under Part 35 and under Court Order

Contents of this Part

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under Fatal Accidents Acts	Rule 36.7

Scope of this part

- 36.1 (1) This part deals with payments into court made -
- (a) to support an offer of payment under Part 35;
 - (b) in accordance with an order of court; or
 - (c) to support a defence of tender.
- (2) A defendant is not obliged to make a payment into court to support an offer under Part 35.
- (3) With -
- (a) the permission of the court; or
 - (b) the agreement of the claimant,
- a defendant may pay money in support of an offer of payment into an interest bearing account with an authorised financial institution on such terms as to -
- (i) the names of the account holders; and
 - (ii) the terms on which money may be paid out of the account,
- as may be ordered by the court or agreed between the parties.

- (4) In paragraph (3) an "**authorised financial institution**" means a bank licensed to carry on banking business under the Banking Act, a building society registered and incorporated under the Building Societies Act or any person licensed under the Protection of Depositors Act to carry on the business of accepting deposits.

Payments into court to support offers to settle

- 36.2 (1) A defendant who offers to settle the whole or part of proceedings may pay money into court in support of the offer.
- (2) A defendant may not pay money into court unless he or she certifies that the payment is -
- (a) in support of an offer to settle;
 - (b) made under a court order; or
 - (c) made to support a defence of tender.
- (3) No payment into court may be made until a claim is issued.
- (4) A payment into court to support an offer may be made -
- (a) when the offer is made; or
 - (b) at any time while the offer is outstanding.
- (5) A defendant who pays money into court must -
- (a) serve notice of payment in on the claimant; and
 - (b) file a copy of such notice with a statement of the date (if any) until which the offer is open for acceptance under rule 35.9(1).
- (17/2/2003)
- (6) A defendant who pays money to court pursuant to this rule may withdraw all or part of the money at any time without permission.
- (7) If a defendant withdraws the money paid into court before the date specified under rule 35.9(1), the payment in will have no consequences adverse to the claimant.
- (8) If a defendant withdraws the money paid into court after the date specified under 35.9(1), the withdrawal shall have no consequences adverse to the defendant.

Right to payment out on acceptance of offer

- 36.3 (1) The general rule is that a claimant who accepts an offer to settle-
- (a) within the period stated for accepting it; or
 - (b) where no such period is stated in the defendant's offer,
- is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.

- (2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted within any period stated in the offer for accepting it.
- (3) The general rule is qualified by rule 36.4.

Cases where payment out requires court order

- 36.4 (1) Where a claimant accepts money paid into court -
- (a) by one or more, but not all, of a number of defendants;
 - (b) with a defence of tender before claim;
 - (c) to settle a claim to which
 - (i) Part 23 (claims by minors and patients); or
 - (ii) rule 36.7 (proceedings under Fatal Accidents Acts) apply; or
 - (d) after the end of the period stated for accepting it, the money in court may only be paid out under an order of the court.
- (2) An order under paragraph (1) (c) may not be made by consent.
- (3) Where -
- (a) a claimant accepts money paid into court after the trial has begun; and
 - (b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed,
- the money in court may only be paid out under an order of the court.
- (4) An order under this rule must deal with the costs of the proceedings which have been stayed.

Money paid into court under order

- 36.5 (1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.
- (2) Money paid into court under a court order may not be paid out unless the court gives permission.
- (3) Paragraph (2) does not apply where -
- (a) the money is paid into court by a defendant;
 - (b) in accordance with rule 36.6(2), that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and
 - (c) the claimant accepts the offer to settle.

Money paid into court as condition for permission to defend or to continue to defend

- 36.6 (1) This rule applies where the court makes an order permitting a defendant -
- (a) to defend; or
 - (b) to continue to defend,
- on condition that he makes a payment into court.
- (2) Where -
- (a) a defendant makes such a payment into court; and
 - (b) makes an offer to settle (whether before or after the order to pay money into court),
- the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.
- (3) To do this the defendant must -
- (a) file a notice that the defendant so chooses; and
 - (b) at the same time, serve a copy of it on every other party to the proceedings.

Proceedings under the Fatal Accidents Acts

- 36.7 (1) Where -
- (a) a single sum of money is paid into court in satisfaction of proceedings arising under the Fatal Accidents Act; and
 - (b) that sum is accepted, the court must apportion that sum between the different causes of action either when -
 - (i) giving directions under rule 23.13; or
 - (ii) when authorising its payment out of court.
- (2) Where in such proceedings -
- (a) a claim is made by more than one person; and
 - (b) a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons,
- the court must apportion the payment between those persons.

PART 37

Discontinuance

Contents of this Part

Scope of this Part	Rule 37.1
Right to discontinue claim	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6
Discontinuance and subsequent proceedings	Rule 37.7
Stay of remainder of partly discontinued proceedings where costs not paid	Rule 37.8

Scope of this Part

- 37.1 (1) The rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.
- (2) A claimant who -
- (a) claims more than one remedy; and
 - (b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies,
- is not treated as discontinuing part of a claim for the purposes of this Part.
- (Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgment or otherwise.)

Right to discontinue claim

- 37.2 (1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.
- (2) However -
- (a) a claimant needs permission from the court if he wishes to

- discontinue all or part of a claim in relation to which -
 - (i) the court has granted an interim injunction; or
 - (ii) any party has given an undertaking to the court;
 - (b) a claimant who has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) may discontinue only if -
 - (i) the defendant who made the payment consents in writing; or
 - (ii) the court gives permission; and
 - (c) where there is more than one claimant, a claimant may not discontinue unless -
 - (i) every other claimant consents in writing; or
 - (ii) the court gives permission.
- (3) Where there is more than one defendant, the claimant may discontinue all or part of the claim against all or any of the defendants.

Procedure for discontinuing

- 37.3
- (1) To discontinue a claim or any part of a claim a claimant must -
 - (a) serve a notice of discontinuance on every other party to the claim;
 - and
 - (b) file a copy of it.
 - (2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.
 - (3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.
 - (4) Where the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.
 - (5) Where there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.
 - (6) A notice of discontinuance which does not specify against which defendants it is intended to discontinue is deemed to discontinue the claim or that part of the claim specified in the notice against all defendants.

Right to apply to have notice of discontinuance set aside

- 37.4 (1) Where the claimant discontinues without the consent of the defendant or the permission of the court, any defendant who has not consented may apply to have the notice of discontinuance set aside.
- (2) The defendant may not apply under this rule more than 28 days after the date when the notice of discontinuance was served on that defendant.

Effect of discontinuance

- 37.5 (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(a).
- (2) The claim or the relevant part of the claim is brought to an end as against that defendant on that date.
- (3) However, this does not affect -
- (a) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside; or
 - (b) any proceedings relating to costs.

Liability for costs

- 37.6 (1) Unless -
- (a) the parties agree; or
 - (b) the court orders otherwise,
- a claimant who discontinues is liable for the costs of the defendant against whom the claim is discontinued incurred on or before the date on which notice of discontinuance was served.
- (2) Where a claim is only partly discontinued -
- (a) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and
 - (b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

Discontinuance and subsequent proceedings

37.7 Where -

- (a) a claimant discontinues a claim after the defendant against whom the claim is discontinued has filed a defence; and
- (b) the claimant makes a subsequent claim -
 - (i) against the same defendant;
 - (ii) arising out of facts which are the same or substantially the same as those relating to the discontinued claim, and
 - (iii) the claimant has not paid the defendant's costs of the discontinued claim,

the court may stay the subsequent claim until such time as the costs of the discontinued claim are paid

Stay of remainder of partly discontinued proceedings where costs not paid

37.8 (1) This rule applies where -

- (a) proceedings are partly discontinued;
- (b) a claimant is liable to pay costs under rule 37.6; and
- (c) the claimant fails to pay those costs within 21 days of -
 - (i) the date on which the parties agreed the sum payable by the claimant; or
 - (ii) the date on which the court taxed the costs.

(2) Where this rule applies, the court may stay the remainder of the proceedings until the claimant pays the whole of the costs which he is liable to pay under rule 37.6.

PART 38

Pre-Trial Review

Contents of this Part

Scope of this Part	Rule 38.1
Direction for pre-trial review	Rule 38.2
Rules relating to case management conference to apply	Rule 38.3
Who is to conduct pre-trial review	Rule 38.4
Parties to prepare pre-trial memorandum	Rule 38.5
Scope of pre-trial review	Rule 38.6
Directions at pre-trial review	Rule 38.7

Scope of this Part

- 38.1 This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

Direction for pre-trial review

- 38.2 (1) At any case management conference and at any subsequent hearing in the proceedings other than the trial the court must consider whether a pre-trial review should be held to enable the court to deal justly with the proceedings.
- (2) A party may apply for a direction that a pre-trial review be held.
- (3) An application for a pre-trial review must be made not less than 60 days before the trial date or the beginning of any trial period fixed under rules 27.4(2)(d) or 27.7(5).
- (4) The registry must give each party not less than 14 days notice of the date, time and place for the pre-trial review.
- (5) The general rule is that the costs incurred in attending a pre-trial review are costs in the claim.
- (6) However the court may make some other order where the pre-trial

review has to be adjourned due to the failure of one or more parties to-

- (a) attend the hearing; or
- (b) co-operate fully in achieving the objective of the pre-trial review.

Rules relating to case management conferences to apply

38.3 Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

Who is to conduct pre-trial review

38.4 The judge who conducts the pre-trial review may try the claim.

(1/1/2003)

Parties to prepare pre-trial memorandum

- 38.5
- (1) The parties must seek to agree and file at the registry a pre-trial memorandum not less than 7 days before the date fixed for the pre-trial review.
 - (2) Where the parties are not able to agree such a memorandum each party must file its own memorandum and serve a copy on all other parties not less than 3 days before the date fixed for the pre-trial review.
 - (3) A pre-trial memorandum must contain -
 - (a) a concise statement of the nature of the proceedings,
 - (b) details of any admissions made;
 - (c) the factual and legal contentions of the party or parties filing it; and
 - (d) a statement of the issues to be determined at the trial.
 - (4) The pre-trial memorandum must be accompanied by a copy of such documents that are intended to be used at trial which may be of assistance in settling the claim.

Scope of Pre-trial Review

- 38.6 At the pre-trial review the parties must be prepared to address -
- (a) the possibility of settlement of any or all of the issues in the claim;
 - (b) the possibility of referring any unsettled issues to a form of alternative dispute resolution;

- (c) the simplification of the issues in the claim;
- (d) agreement of any expert evidence;
- (e) the appointment of a court expert to give evidence as to any contested matters of expertise;
- (f) the possibility of admissions which may shorten the trial;
- (g) the issue of liability;
- (h) the amount of damages, if claimed;
- (i) the estimated duration of trial;
- (j) the need for interpreters at the trial; and
- (k) any other matter that may promote the fair, expeditious and economic disposition of the claim.

Directions at pre-trial review

- 38.7 (1) At the pre-trial review the court must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.
- (2) In particular the court may -
- (a) direct either party to provide further information to the other;
 - (b) give directions for the filing by each party and service on all other parties of one or more of -
 - (i) a skeleton argument;
 - (ii) a chronology of relevant events;
 - (iii) a summary of any legal propositions to be relied on at the trial; and
 - (iv) a list of authorities which it is proposed to cite in support of those propositions;
 - (c) direct the parties jointly to prepare one or more of -
 - (i) a core bundle of documents (that is, a bundle containing only such documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);
 - (ii) an agreed statement of facts;
 - (iii) an agreed statement of the basic technical, scientific or medical matters in issue; and
 - (iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;

- (d) direct when and by whom the documents listed in paragraph (c) should be filed at the court;
- (e) give directions as to the extent to which evidence may be given in written form;
- (f) direct whether or not there shall be any opening or closing addresses and the time to be allocated to each;
- (g) give directions as to the procedure to be followed at the trial;
- (h) decide on the total time to be allowed for the trial; and
- (i) direct how that time shall be allocated between the parties.

PART 39

Trial

Contents of this Part

Documents for use at trial	Rule 39.1
General rule - hearing to be in public	Rule 39.2
Cross examination	Rule 39.3
Written submissions	Rule 39.4
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Adjournment of trial	Rule 39.7
Inspection	Rule 39.8
Dismissal of claim after decision on a preliminary issue	Rule 39.9
Impounded documents	Rule 39.10
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Documents for use at trial

- 39.1 (1) This rule takes effect subject to any orders made on a pre-trial review.
- (2) Not less than 21 days before the date fixed for hearing all parties must inform the claimant of the documents that they wish to have included in the bundle of documents to be used at the trial.
- (3) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.
- (4) The bundle of documents should separate those which are agreed and those which are not agreed.
- (5) The claimant must paginate and index the bundle of documents.
- (6) Not less than 10 days before the date fixed for the trial the claimant must file at the registry -
- (a) a bundle comprising copies of -

- (i) the claim form;
 - (ii) all statements of case;
 - (iii) any requests for information and the replies; and
 - (iv) any documents which the parties were ordered to file under rule 38.7(2)(b); and
 - (v) the pre-trial memorandum or memoranda.
- (b) a second bundle comprising copies of -
- (i) all witness statements;
 - (ii) all expert reports;
 - (iii) any agreed statements under rule 38.7(2)(c)(ii)-(iv)
- (c) the bundle referred to in paragraph (2); and
- (d) if the bundles exceed 100 pages of documents in total, a core bundle (that is, a bundle containing only such documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).
- (7) There must be excluded from the bundles prepared under this rule -
- (a) any applications or orders relating to interim payments under Part 17; and
 - (b) any offers to settle under Part 35 or notices of payment into court under Part 36, and any reference to any such payments or offers must be excised from any document contained in the bundles.
- (8) Where only a counterclaim is to be tried references in this rule to the "**claimant**" should be construed as reference to the defendant. (Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases.)

General rule - hearing to be in public

- 39.2 (1) The general rule is that a hearing is to be in public.
- (2) A hearing, or any part of it, may be in private if -
- (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) a private hearing is necessary to protect the interests of any minor or patient;
 - (d) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

- (e) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (f) the court considers this to be necessary in the interests of justice.
- (3) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

Cross-examination

39.3 The court may limit examination, cross-examination or re-examination of any witness.

Written Submissions

- 39.4 (1) The parties may, with the consent of the judge, file written submissions-
- (a) instead of; or
 - (b) in addition to, closing speeches.
- (2) Such written submissions must be filed within 7 days of the conclusion of the trial or such shorter period as the judge may direct.

Failure of party to attend trial

- 39.5 Provided that the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules -
- (a) if no party appears at the trial the judge may strike out the claim and any counterclaim; or
 - (b) if one or more, but not all parties appear the judge may proceed in the absence of the parties who do not appear.

Application to set aside judgment given in party's absence

- 39.6 (1) A party who was not present at a trial at which judgment was given or an order made in its absence may apply to set aside that judgment or order.

- (2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.
- (3) The application to set aside the judgment or order must be supported by evidence on affidavit showing -
 - (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other judgment or order might have been given or made.

Adjournment of trial

- 39.7
- (1) The judge may adjourn a trial on such terms as the judge thinks just.
 - (2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the registry.

Inspection

- 39.8
- The judge and jury (if any) trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

Dismissal of claim after decision on a preliminary issue

- 39.9
- Where the court considers that a decision made on an issue substantially disposes of the claim or makes a trial unnecessary, it may dismiss the claim or give such other judgment or make such other order as may be just.

Impounded document

- 39.10
- (1) Documents impounded by order of the court must not be released from the custody of the court except in compliance -
 - (a) with a court order; or
 - (b) with a written request made by the Director of Public Prosecutions.
 - (2) A document released from the custody of the court under paragraph(1)(b) must be released into the custody of the person who requested it.
 - (3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

Exhibits

- 39.11 (1) Exhibits which are handed in and proved during the course of a trial or other hearing must be kept in the custody of the court until the conclusion of the trial or other hearing unless the judge otherwise directs.
- (2) After the conclusion of the trial each party must obtain the return of such exhibits which were handed in by that party.
- (3) Each party must preserve exhibits returned under paragraph (2) for the period in which any appeal may take place.

PART 40

Appointment of Referee to Inquire and Report

Contents of this Part

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Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6

Power to order trial before referee

- 40.1 Where -
- (a) the parties agree;
 - (b) the court considers that the claim requires -
 - (i) prolonged examination of documents; or
 - (ii) scientific or local investigation which cannot conveniently be carried out by the court; or
 - (c) the matters in dispute are wholly or mainly a matter of account, the court may order the claim or any issue or allegation to be tried by a referee.

Reference to referee for inquiry and report

- 40.2 The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

Appointment of referee

- 40.3 (1) The general rule is that the appointment of a referee under rule 40.1 or 40.2 must be made at a case management conference or pre-trial review.

- (2) The referee shall be such person as -
 - (a) is agreed by the parties or,
 - (b) if they fail to agree, is selected by the court in accordance with paragraph (3).
- (3) Where the parties cannot agree who should be the referee, the court may -
 - (a) select the referee from a list prepared or identified by the parties; or
 - (b) direct that the referee be selected in such other manner as the court may direct
- (4) The court must identify the question or issue upon which the referee is to report.
- (5) The court must decide -
 - (a) what fee is to be paid to the referee; and
 - (b) by whom.
- (6) This does not affect any decision as to the party who is ultimately to bear the referee's fee.

Conduct of reference

- 40.4
- (1) For the purpose of the inquiry the referee has the same powers as the court other than the power to commit.
 - (2) Unless the court otherwise orders the referee must adopt the simplest, least expensive and most expeditious method of conducting the reference.
 - (3) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties and any witnesses.
 - (4) Where a person served with a witness summons to appear before a referee -
 - (a) fails to attend;
 - (b) refuses to be sworn or affirm for the purposes of the inquiry; or
 - (c) refuses to answer any lawful question or produce any document at the inquiry,the referee must sign and file a certificate of such failure or refusal.
 - (5) Any party may apply to the court for an order requiring the person served with the witness summons to attend, or to be sworn or affirmed, or answer any question or produce any document as the case may be.

- (6) An application for an order under paragraph (5) may be made without notice but must be supported by evidence on affidavit.
- (7) In the case of non-attendance, the affidavit must prove -
 - (a) service of the witness summons; and
 - (b) that the person served with the witness summons was paid or offered the payments required by rule 33.5.
- (8) Such an order must be served personally on the person served with the witness summons and be endorsed with a notice in accordance with the first form in rule 53.3(b).
- (9) A person who wilfully disobeys an order made against him or her under paragraph (5) is guilty of contempt of court.
- (10) The court may order the person against whom an order is made under this rule to pay any costs resulting from -
 - (a) the failure to attend before the referee;
 - (b) the refusal to be sworn or affirm for the purposes of the inquiry; or
 - (c) the refusal to answer any lawful question or produce any document at the inquiry.

(Part 53, Section 2, deals with the procedure to apply to commit a person for contempt of court.)

Report following reference

- 40.5
- (1) The report of the referee is to be made to the court.
 - (2) The referee must supply a copy of the report to each party.
 - (3) The referee may in his report -
 - (a) submit any question for the decision of the court; or
 - (b) make a special statement of facts from which the court may draw inferences.

Consideration of report by the court

- 40.6
- (1) Upon receipt of the report of the referee, the registry must fix a date, time and place for consideration of the report by the court.
 - (2) The registry must give 14 days notice to the parties of such consideration.
 - (3) The court may -
 - (a) adopt the report in whole or in part;
 - (b) vary the report;
 - (c) ask the referee to explain any part of the report;

- (d) remit any question or issue for further consideration;
- (e) decide the question or issue on the evidence taken by the referee; or
- (f) direct that additional evidence be given to the court.

PART 41

Accounts and Inquiries

Contents of this Part	
Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Omissions etc. in account	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7
Guardian's accounts	Rule 41.8

Scope of this Part

- 41.1 (1) This Part deals with claims -
- (a) for an account; or
 - (b) for some other relief which requires the taking of an account.
- (2) A claim for an account must be made by fixed date claim supported by evidence on affidavit.
(Rule 8.1 deals with the issue of a fixed date claim and rule 27.2 deals with the first hearing of such a claim.)

Directions for account

- 41.2 (1) Where a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.
- (2) The court may make any one or more of the following orders, namely that-
- (a) any preliminary issue of fact be tried;
 - (b) an account be taken;

- (c) inquiries be made; or
 - (d) any amount shown to be due to a party on the account be paid by a date specified in the order.
- (3) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.
- (4) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or vouched.
- (5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objections that any party may take.

Verification of account

- 41.3 (1) When there has been a direction for an account to be taken, the accounting party must make out its account and verify it by affidavit exhibiting it.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy on all other parties.

Omissions etc, in account

- 41.4 Any party (the “**first party**”) who claims that there are omissions or challenges any item in the account must give notice to the accounting party with -
- (a) the best particulars that the first party can give of the omission or error; and
 - (b) the grounds for alleging it.

Allowances

- 41.5 In taking any account all just allowances shall be made.

Delay

- 41.6 Where there is undue delay in taking the account, the court may-
- (a) require the accounting party, or any other party, to explain the delay;

- (b) give directions to -
 - (i) stay; or
 - (ii) expedite the taking of the account; or
- (c) direct -
 - (i) any other party; or
 - (ii) the Director of State Proceedings, to take over conduct of the account; and
- (d) make such order for costs as is just.

Distribution before entitlement ascertained

- 41.7
- (1) This rule applies where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in ascertaining the other persons.
 - (2) The court may order immediate payment of their shares to the persons who have been ascertained.
 - (3) The court need not reserve any part of those shares to meet any subsequent costs of ascertaining the other persons.

Guardian's accounts

- 41.8
- The accounts of a guardian of a minor's estate are to be verified and passed in the same manner as that provided in Part 51 for a receiver's accounts or in such other manner as the court may direct.

PART 42

Judgments and Orders

Contents of this Part

Scope of this Part	Rule 42.1
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Practice forms to be used where available	Rule 42.3
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Drawing and filing of judgments and orders	Rule 42.5
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Correction of errors in judgments or orders	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy order on person not a party	Rule 42.12
Matters occurring after judgment: stay of execution	Rule 42.13

Scope of this part

- 42.1 (1) This Part contains rules about judgments and orders made by the court.
- (2) They do not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question.

Parties present when order made to be bound

- 42.2 A party who is present whether in person or by attorney-at-law when the judgment given or order was made is bound by the terms of a judgment or order whether or not the judgment or order is served.

Practice forms to be used where available

- 42.3 Where there is a practice form for a judgment or order of any description, a judgment or order of that description must be in that form.

Standard requirements

- 42.4 (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is -
- (a) a default judgment under Part 12;
 - (b) a judgment entered on an admission or following a court order under rules 14.6, 14.7, 14.8, 14.10 and 14.11; or
 - (c) a consent order under rule 42.7.
- (2) Every judgment or order must -
- (a) be signed by the registrar or by the judge or master who made it;
 - (b) be sealed by the court; and
 - (c) bear the date on which it was given or made.

Drawing and filing of judgments and orders

- 42.5 (1) The judge or master trying a claim or hearing an application must ensure that a minute of order is prepared and signed by him or her.
- (2) Subject to paragraph (5), every judgment or order must be drawn up and filed at the registry by the party on whose claim or application the order was made, unless -
- (a) the court directs another party to draft and file it;
 - (b) another party with the permission of the court agrees to draft and file it;
 - (c) the court dispenses with the need to draw the judgment or order; or
 - (d) it is a consent order under rule 42.7.
- (3) Where a party fails to file a draft of an order within 7 days after the direction was given, any other party may draw and file the order.
- (4) A party who drafts an order must file sufficient copies for service on all parties who are to be served.
- (5) An order -

- (a) extending time for taking any act in the proceedings; or
 - (b) giving permission for -
 - (i) the issue of any writ of execution other than a writ of attachment;
 - (ii) the amendment of any statement of case;
 - (iii) the filing of any document; or
 - (iv) for any act to be done by an officer of the court other than an attorney-at-law, which does not contain any other terms or directions other than as to costs
- need not be drawn up.
- (6) The party on whose application such an order was made must give written notice to any party who was not present when the order was made.

Service of judgments and orders

- 42.6 (1) Unless the court otherwise directs the party filing a draft judgment or order in accordance with rule 42.5 must serve the judgment or order on -
- (a) every other party to the claim in which the judgment or order is made; and
 - (b) any other person on whom the court orders it to be served.
(Part 6 deals with service.)
- (2) Where a party is acting by an attorney-at-law, the court may direct that any judgment or order be served on the lay party personally as well as on the attorney-at-law.

Consent judgments and orders

- 42.7 (1) This rule applies where -
- (a) none of these Rules prevents the parties agreeing to vary the terms of any court order; and
 - (b) all relevant parties agree the terms in which judgment should be given or an order made.
- (2) Except as provided by paragraphs (3) and (4), this rule applies to the following kinds of judgment or order -
- (a) a judgment for -
 - (i) the payment of a debt or damages (including a judgment or order for damages or the value of

- goods to be assessed);
- (ii) The delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; and
- (iii) costs.
- (b) an order for -
 - (i) the dismissal of any claim, wholly or in part;
 - (ii) the stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a “Tomlin Order”);
 - (iii) the stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is payable on a stated date or by instalments specified in the order;
 - (iv) setting aside or varying a default judgment under Part 13;
 - (v) the payment out of money which has been paid into court;
 - (vi) the discharge from liability of any party;
 - (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed; and
 - (viii) any procedural order other than one falling within rules 26.7(3) or 27.8(1) and (2).
- (3) This rule does not apply -
 - (a) where any party is a litigant in person;
 - (b) where any party is a minor or patient;
 - (c) in Admiralty proceedings; or
 - (d) where the court’s approval is required by these Rules or any enactment before an agreed order can be made.
- (4) This rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.
- (5) Where this rule applies the order must be -
 - (a) drawn in the terms agreed;
 - (b) expressed as being “By Consent”;
 - (c) signed by the attorney-at-law acting for each party to whom the order relates; and
 - (d) filed at the registry for sealing.

Time when judgment or order takes effect

- 42.8 A judgment or order takes effect from the day it is given or made unless the court specifies that it is to take effect on a different date.

Time for complying with judgment or order

- 42.9 A party must comply with a judgment or order immediately, unless-
- (a) the judgment or order specifies some other date for compliance;
 - (b) the court varies the time for compliance including specifying payment by instalments; or
 - (c) the claimant, on requesting judgment in default under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance.

Correction of errors in judgments or orders

- 42.10 (1) The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- (2) A party may apply for a correction without notice.

Cases where court gives judgment both on claim and counterclaim

- 42.11 (1) This rule applies where the court gives judgment for specified amounts both for the claimant on the claim and the defendant on the counterclaim.
- (2) Where there is a balance in favour of one of the parties, the court may order the party whose judgment is for the lesser amount to pay the balance.
- (3) In a case to which this rule applies, the court may make against the claimant and the defendant (whether or not it makes an order under paragraph (2)) separate orders as to damages and costs.

Service of copy order on person not a party

- 42.12 (1) Where in a claim an order is made which may affect the rights of persons who are not parties to the claim, the court may at any

time direct that a copy of any judgment or order be served on any such person.

- (2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.
- (3) The copy order must be endorsed with a notice in form 14.
- (4) The court may dispense with service of the copy order or judgment if it appears impracticable to serve that person.
- (5) Any person so served, or on whom service is dispensed with, -
 - (a) is bound by the terms of the judgment or order; but
 - (b) may apply within 28 days of being served to discharge, vary or add to the judgment or order; and
 - (c) may take part in any proceedings under the judgment or order.

Matters occurring after judgment: stay of execution

- 42.13 A judgment debtor may apply to the court to stay execution or other relief on the grounds of -
- (a) matters which have occurred since the date of the judgment or order; or
 - (b) facts which arose too late to be put before the court at trial, and the court may grant such relief, upon such terms, as it thinks just.

PART 43

Enforcement - General Provisions

Contents of this Part

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of setting aside judgment or order	Rule 43.5
Court's powers where person ordered to do act fails to comply	Rule 43.6
Judgment for sum in foreign currency	Rule 43.7
Enforcement by or against person who is not a party	Rule 43.8
Enforcement against partnership	Rule 43.9
Enforcement of awards, etc., made by outside bodies	Rule 43.10
Execution or signing of document or instrument	Rule 43.11

Scope of this part

- 43.1 (1) This Part deals generally with the enforcement of judgments and orders.
- (2) In this Part and in Parts 44 to 53 -
“**judgment creditor**” means the person who is entitled to enforce a judgment or order; and
“**judgment debtor**” means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment .

Procedure for beginning enforcement

- 43.2 (1) The general rule is that, once a judgment or order has become

enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate form of request.

- (2) Where any of these Rules requires permission to begin enforcement proceedings the judgment creditor must first obtain that permission.
- (3) The judgment creditor must produce with the request -
 - (a) the judgment or order which the judgment creditor seeks to enforce; and
 - (b) where required, the order giving permission to begin enforcement proceedings.

Judgment subject to condition

- 43.3
- (1) A person who has a judgment or order subject to the fulfilment of a condition may not enforce the judgment or order unless -
 - (a) the condition is fulfilled; or
 - (b) the court gives permission for the judgment or order to be enforced.
 - (2) Where a person has the benefit of a judgment or order subject to fulfilment of a condition and there is a failure to fulfil that condition, then unless the court otherwise orders -
 - (a) that person loses the benefit of the judgment or order; and
 - (b) any other person interested under the judgment or order may take any steps which -
 - (i) are warranted by the judgment or order; or
 - (ii) which might have been taken if the judgment or order had not been given.

Separate enforcement for costs

- 43.4 A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

Effect of order setting aside judgment or order

- 43.5
- (1) The general rule is that if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.
 - (2) The court may however direct that an order remains in force.

Court's powers where person ordered to do act fails to comply

- 43.6 (1) Where -
- (a) the court orders a party to do an act; but
 - (b) that party does not do it,
- the judgment creditor may apply for an order that -
- (i) the judgment creditor; or
 - (ii) some person appointed by the court,
- may do the act.
- (2) The court may order the judgment debtor to pay the costs and expenses of the person who does the act.

Judgment for sum in foreign currency

- 43.7 (1) This rule has effect where the court gives judgment for a sum expressed in a currency of a country other than Jamaica.
- (2) The judgment creditor must when commencing enforcement proceedings file a certificate stating the Bank of Jamaica weighted average selling rate for the unit of foreign currency in which the judgment is expressed at the close of business on the previous business day.

Enforcement by or against person who is not a party

- 43.8 (1) A judgment or order in favour of a person who is not a party may be enforced in the same way as a judgment or order in favour of a party.
- (2) A judgment or order against a person who is not a party may be enforced in the same way as a judgment or order against a party.

Enforcement against Partnership

- 43.9 (1) This rule has effect where the court gives a judgment or makes an order against a firm or partnership.
- (2) A judgment creditor may enforce the judgment or order against -
- (a) any of the firm's property; or
 - (b) any person who -
 - (i) has acknowledged service as a partner in the firm;
 - (ii) has admitted in a statement of case to being a partner in the firm;

- (iii) was adjudged by the court to be a partner; or
 - (iv) was served within the jurisdiction or, with the permission of the court under Part 7, out of the jurisdiction with the claim form as a partner.
- (3) In a case to which paragraph (2) does not apply the judgment creditor may issue enforcement proceedings against a person whom it claims to be a partner if it has the court's permission to do so.
- (4) Notice of an application for permission must be served on the person against whom the judgment creditor seeks to enforce judgment and must be supported by evidence on affidavit.
- (5) A judgment or order given or made -
- (a) on a claim by or against a firm against or by a member of the firm; or
 - (b) on a claim by another firm against a firm where the two firms have one or more partners in common,
- may not be enforced without the permission of the court.

Enforcement of awards, etc., made by outside bodies

- 43.10 (1) This rule has effect -
- (a) as to the enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and
 - (b) as to the registration of such an award so that it may be enforceable as if it were an order of the court.
- (2) In this rule -
“award” means the award, order or decision which it is sought to enforce; and
“outside body” means any authority other than the court.
- (3) The general rule is that an application -
- (a) for permission to enforce an award; or
 - (b) to register an award,
- may be made without notice but must be supported by evidence on affidavit.
- (4) The general rule does not apply where a rule or statutory provision requires notice to be given.
- (5) The applicant must -
- (a) exhibit to the affidavit the award or a copy of it;
 - (b) if the award is for the payment of money, certify the amount

- remaining due to the applicant; and
- (c) give an address for service on the person against whom the applicant seeks to enforce the award.

Execution or signing of document or instrument

- 43.11 (1) This rule applies where the court -
- (a) has made a judgment or order for -
 - (i) the execution or signature of a document; or
 - (ii) the endorsement of a negotiable instrument; or
 - (b) has ordered that land be conveyed or transferred by one person to another,
- and the person ordered to execute the document, indorse the negotiable instrument or convey or transfer the property fails or neglects to do so.
- (2) Any party interested in having the document or transfer executed or instrument endorsed may prepare a document or instrument in accordance with the terms of the judgment or order and tender the same to the court for execution or endorsement.
 - (3) The signature of such document or instrument by a judge or registrar has the same effect as the execution, signature or endorsement by the person ordered to execute or endorse the document or instrument.

PART 44

Oral Examination in Aid of Enforcement

Contents of this Part

Scope of this Part	Rule 44.1
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Order for oral examination	Rule 44.4
Warrant of arrest to compel attendance of judgment debtor	Rule 44.5
Conduct of oral examination	Rule 44.6
Preservation of property	Rule 44.7
Order for payment by instalments	Rule 44.8
Financial position notice	Rule 44.9

Scope of this part

- 44.1 This Part deals with the examination of a judgment debtor on the application of a judgment creditor to obtain information as to -
- (a) what property or means the judgment debtor has; and
 - (b) what debts are owing to the judgment debtor,
- to assist in enforcing a judgment. Such an examination is called an “oral examination”.

Who may be orally examined

- 44.2 The following persons may be ordered to attend an oral examination-
- (a) the judgment debtor; or
 - (b) an officer or former officer of a judgment debtor which is a body corporate.
- (“the examinee”)

Procedure to obtain order for oral examination

- 44.3 (1) An application for an order that a person attend an oral examination may be made without notice.
- (2) Where permission is required to enforce the judgment a copy of the permission must be attached to the application.
- (3) Where the application for the order is against an officer of a body corporate the application must be supported by evidence on affidavit showing that the person to be orally examined is such an officer.
- (4) An application under this rule may be considered by the registrar.

(18/9/2006)

Order for oral examination

- 44.4 (1) The order in form 15 must state the date, time and place of the examination.
- (2) The order may direct the examinee to produce at the examination any books or documents in the possession of the judgment debtor relevant to the matters set out in rule 44.1.
- (3) The judgment creditor must serve the order personally on the examinee not less than 7 days before the date fixed for the examination.
- (4) The judgment creditor must file an affidavit of service not less than 3 days before the date fixed for the examination.

Warrant of arrest to compel attendance of judgment debtor

- 44.5 (1) Where the court is satisfied that -
- (a) the order under rule 44.4 has been served on the judgment debtor; and
- (b) the debtor is about to leave Jamaica and is unlikely to appear in obedience to the order,
- it may issue a warrant for the arrest of the judgment debtor and for his custody in the debtor's prison until the date fixed for the examination under rule 44.4(1) and for him to be brought before the court on that date and time.
- (2) The court may discharge an order under paragraph (1) upon such terms (if any) as it considers just.

(18/9/2006)

Conduct of oral examination

- 44.6 (1) The examination may take place before the registrar or an officer of the court authorised by the Chief Justice (“**the examiner**”).
- (2) The examination must be on oath or affirmation.
- (3) The statement made by the examinee must be taken down, read to the examinee who must be asked to sign it.
- (4) Where the examinee refuses to sign the statement it must be signed by the examiner and certified to be a true record of the examination.
- (5) The examiner may adjourn the examination to a judge if -
- (a) the examinee -
 - (i) fails to attend;
 - (ii) refuses to be sworn or affirm; or
 - (iii) refuses to answer any question, or
 - (b) the examiner considers a freezing order to be appropriate in all the circumstances.
- (A freezing order is defined in Part 17 which sets out the procedure for obtaining such an order.)
- (6) The notice of the adjourned hearing must be in form 16.
- (7) The judgment creditor must -
- (a) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in rule 53.3(b) not less than 7 days before the adjourned examination; and
 - (b) file an affidavit proving service of form 16.
- (18/9/2006)

Preservation of property

- 44.7 The court may upon the date and time fixed for the adjourned examination make a freezing order under rule 17.1(1)(f).

Order for payment by instalments

- 44.8 Where the parties agree that the judgment debt should be paid by instalments or at some future date the registry may draw an order to that effect.

Financial position notice

- 44.9 (1) Where the judgment to be enforced is a money judgment, the judgment creditor may serve, in addition to an order for an oral
- (18/9/2006)

examination, a financial position notice in form 17A requiring a judgment debtor to complete a statement of his financial position in the practice form and serve it on the judgment creditor within 14 days of service.

- (2) The judgment creditor may file a notice at the registry if satisfied with the information provided by the judgment debtor.
- (3) Where satisfied with the information provided, the judgment creditor must notify the person to be examined that he or she need not then attend the examination.
- (4) Where the judgment debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1).

PART 45

How Judgments may be Enforced

Contents of this part

Scope of this Part	Rule 45.1
How money judgments may be enforced	Rule 45.2
Enforcement of orders for payment of money into court	Rule 45.3
Enforcement of judgments and orders for possession of land	Rule 45.4
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Enforcement of judgments and orders requiring person to do act within specified time or not to do act	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act	Rule 45.7
Special cases of money debt enforceable by committal	Rule 45.8

Scope of this Part

- 45.1 (1) This Part sets out the ways in which judgments may be enforced. It has effect subject to -
- (a) the powers of the court under the Debtors Act to commit to prison a judgment debtor who makes default in paying any judgment debtor; and
 - (b) any enactment relating to bankruptcy or winding up of companies.
- (2) In this Part and in Parts 46 to 53 -
- (a) reference to a writ or order includes reference to a writ or order in aid of execution; and
 - (b) reference to -

- (i) “**confiscation of assets**” is a reference to the procedure formerly known as “sequestration”; and
- (ii) “**commissioner for confiscation**” is a reference to what was formerly a “sequestrator”.

How money judgments may be enforced

- 45.2 A judgment or order for payment of a sum of money other than an order for payment of money into court may be enforced by -
- (a) an order for the seizure and sale of goods under Part 46;
 - (b) a charging order under Part 48;
 - (c) an order for attachment of debts under Part 50;
 - (d) the appointment of a receiver under Part 51;
 - (e) a Judgment Summons under Part 52; or
 - (f) an order for sale of land under Part 55.

Enforcement of orders for payment of money into court

- 45.3 (1) An order for the payment of money into court may be enforced by-
- (a) the appointment of a receiver under Part 51;
 - (b) an order for confiscation of assets under Part 53; or
 - (c) a committal order under Part 53.
- (2) An order for confiscation of assets or committal under paragraphs (1) (b) or (c) may be made only if payment has not been made within the time or by the date specified in the judgment or order.

Enforcement of judgments and orders for possession of land

- 45.4 (1) A judgment or order for the possession of land may be enforced by -
- (a) a writ of possession of land;
 - (b) a confiscation of assets order under Part 53; or
 - (c) an order for committal to prison under Part 53.
- (2) An order for confiscation of assets or committal under paragraph(1) (b) or (c) may only be made only if possession has not been given within the time or by the date specified in the judgment or order.
- (3) A writ of possession may include provision for enforcing payment of any money ordered to be paid.

Enforcement of judgments and orders for delivery of goods

- 45.5 (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.
- (2) Where it gives the judgment debtor the choice, the means of enforcement are -
- (a) a writ of delivery to recover the goods or their assessed value under Part 46; or
 - (b) a writ of specific delivery for the recovery of specified goods under Part 46.
- (3) A judgment creditor may only obtain a writ of specific delivery under paragraph (2)(b) if the court gives permission under paragraph (5)(b).
- (4) Where the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods, that judgment or order may not be enforced by order of committal under Part 53.
- (5) Where -
- (a) the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods; or
 - (b) on an application by the judgment creditor the court makes an order requiring the judgment debtor to deliver the goods to the judgment creditor within a specified time or by a specified date, the means of enforcing the judgment or order are orders -
 - (i) for recovery of specified goods under Part 46;
 - (ii) for committal under Part 53; or
 - (iii) for confiscation of assets under Part 53.
- (6) An order for confiscation of assets or committal under paragraphs (5)(b) or (c) may only be made if delivery has not been made within the time or by the date specified in the judgment or order.
- (7) A writ of delivery or special delivery may include provision for enforcing payment of any money ordered to be paid.
- (8) A judgment or order for payment of the assessed value of goods may be enforced as any other money judgment.

Enforcement of judgments and orders requiring person to do act within specified time or not to do act

- 45.6 A judgment or order which requires a person -

- (a) to do an act within a specified time or by a specified date;
or
- (b) to abstain from doing an act,
may be enforced by an order -
 - (i) for committal to prison; or
 - (ii) for confiscation of assets,
under Part 53.

Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act

- 45.7 (1) Where the court -
- (a) gives a judgment or makes an order such as is mentioned in rule 45.6; and
 - (b) the judgment or order requires a body corporate to do or abstain from that act, it may make an order under Part 53 -
 - (i) for the committal to prison or for confiscation of assets against an appropriate person; or
 - (ii) for confiscation of assets of the body corporate.
- (2) In this rule “**appropriate person**” means a director or other officer of the body corporate.

Special cases of money debt enforceable by committal

- 45.8 (1) This rule applies where -
- (a) a trustee or other person acting in a fiduciary capacity is ordered to pay money in his possession or under his control within a limited period or by a certain date; or
 - (b) an attorney at law is ordered to pay costs for misconduct as an attorney at law, and that person (“**the judgment debtor**”) does not pay it within the period or by the date stated or, in the case of an attorney-at-law, does not pay it within any period or by any time stated or, where no such time or date is fixed by the court, within 14 days after service of the judgment or order.
- (2) In such cases the order may be enforced by committal under Part 53.
- (3) The Court may commit the judgment debtor for a period of up to

one year or until the judgment or order is satisfied whichever may first occur.

- (4) Imprisonment under this rule does not operate to satisfy the debt.
- (5) A person imprisoned under this rule must be discharged from custody upon a certificate that the judgment debt and costs have been satisfied.

PART 46

General Rules about Writs of Execution

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Meaning of “writ of execution”.

- 46.1 In these Rules a “writ of execution” means any of the following -
- (a) an order for the seizure and sale of goods (form 18);
 - (b) a writ of possession (form 19);
 - (c) an order for the sale of land ;
 - (d) a writ of delivery (whether it is -
 - (i) an order for recovery of specified goods in form 20; or
 - (ii) an order for the recovery of goods or their assessed value in form 21); and
 - (e) an order for confiscation of assets.
- (Enforcement by an order for confiscation of assets is dealt with under Part 53.)

Permission required to enforce in certain cases

- 46.2 (1) A writ of execution may not be issued without permission where -
- (a) six years have elapsed since the judgment was entered;
 - (b) the judgment creditor is no longer entitled to enforce the order;
 - (c) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against it;
 - (d) the judgment debtor has died and the judgment creditor wishes to enforce against assets of the deceased person which have passed to that person’s personal representatives since the date of the order;
 - (e) the goods against which it is wished to enforce the judgment or order are in the hands of a receiver or confiscator appointed by the court;
 - (f) the judgment was made subject to conditions;
 - (g) any statutory provision requires the permission of the court to be obtained before judgment is enforced; or
 - (h) where any goods sought to be seized under a writ of execution are in the hands of a receiver or commissioner for confiscation appointed by the court.
- (2) A writ of execution in aid of another writ of execution may not issue without permission of the court.

Application for permission to enforce

- 46.3 (1) An application for permission to issue a writ of execution may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.
- (2) On an application for permission the applicant must satisfy the court or the registrar that it is entitled to proceed to enforce the judgment or order, and, in particular -
- (18/9/2006)
- (a) where the judgment is a money judgment, as to -
 - (i) the amount originally due; and
 - (ii) the amount due and the amount of interest due at the date of the application;
 - (b) where rule 46.2(a) applies, the reasons for the delay;
 - (c) where rule 46.2(b) or (c) applies, as to the change that has taken place;
 - (d) where rule 46.2(d) or (e) applies, that a demand to satisfy the judgment or order has been made on the person holding the assets and that that person has refused or failed to do so;
 - (e) that the applicant is entitled to enforce the judgment; and
 - (f) that the person against whom enforcement is sought is liable to satisfy the judgment.
- (18/9/2006) (3) An application under this rule may be considered by the registrar.
- (4) Any permission given by the court or the registrar shall have effect for one year only.

Amount to be recovered on enforcement

- 46.4 (1) A judgment creditor may recover on a writ of execution -
- (a) the balance of any money judgment (including costs);
 - (b) fixed costs in accordance with rule 65.3; and
 - (c) interest on a money judgment.
- (2) The rate of interest payable on a judgment debt is the statutory rate of interest unless the court has directed that some other rate shall apply.
- (3) Unless the court otherwise orders, the amount for which a writ of execution may be issued may include the unpaid fixed costs and fees of any previous enforcement proceedings on the same judgment.

Enforcement of judgment or order requiring the judgment debtor to do two or more different things

- 46.5 Where a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain -
- (a) a single writ of execution to enforce every part of the judgment or order; or
 - (b) separate writs of execution to enforce one or more parts of it.

Enforcement of judgment for payment by instalments

- 46.6 (1) This rule has effect where the court has made an order for payment by instalments of -
- (a) a sum of money; or
 - (b) the value of goods assessed after the court has made an order for the recovery of goods or their assessed value, and the judgment debtor has failed to pay one or more instalments.
- (2) The judgment creditor may issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount outstanding under the judgment and not merely the instalment(s) in arrear.

No writ of execution for goods or payment of assessed value unless court has assessed value.

- 46.7 A judgment creditor may not issue a writ of delivery for the recovery of goods or payment of their assessed value unless that value has previously been assessed by the court or an order has been made under rule 45.5(5)(b).

Order for specific delivery

- 46.8 (1) Where the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue an order for delivery of specified goods without the alternative of payment of the assessed value.
- (2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgment of service.

Period for which writ of execution is valid

- 46.9 (1) A writ of execution is valid for a period of twelve months beginning with the date of its issue.
- (2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.
(Rule 46.17 extends the period of validity of a writ of execution where there are interpleader proceedings.)

Renewal of writ of execution

- 46.10 (1) The judgment creditor may apply for the renewal of a writ of execution.
- (2) The general rule is that an application for renewal must be made within the period for which the writ is valid.
- (3) Where the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor has -
- (a) taken all reasonable steps to execute the writ or some part of it; and
 - (b) been unable to do so.
- (4) An application for renewal may be made without notice but must be supported by evidence on affidavit.
- (5) The judgment creditor must state in his evidence under paragraph (4) whether or not he is aware of any other judgment creditor and, if so, give such details of which he is aware as to the money due from the judgment debtor to each such judgment creditor.
- (6) On such an application the court must have regard to the interests of any other judgment creditor of whose existence it is aware.

Period for which the court may renew writ of execution

- 46.11 On an application for renewal of a writ of execution the court may renew it for a period of not more than 6 months.

Effective date of renewed writ unchanged

- 46.12 (1) The renewal of a writ of execution does not change its effective date.
- (2) The effective date is therefore still that of the writ as originally issued.

- (3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

Execution of order for seizure and sale

- 46.13
- (1) The order may not be enforced between the hours of 6 p.m. and 6 a.m.
 - (2) The bailiff executing the order must seize, take and levy on all goods and chattels of the judgment debtor except -
 - (a) the clothing and bedding of the judgment debtor and his family;
 - (b) the tools and implements of trade of the judgment debtor to a value of \$30,000, or
 - (c) goods and chattels which in the opinion of the bailiff are not of sufficient value to meet the costs of removal and sale.
 - (3) Goods and chattels taken in execution must be sold by public auction but may not be sold until -
 - (a) the sale has been advertised in at least one newspaper of daily circulation in the area in which the goods were seized; and
 - (b) (except in the case of goods of a perishable nature), not less than five days have elapsed from the date of seizure.
 - (4) However, the judgment creditor may apply to the court to direct an earlier sale.
 - (5) Until sale the goods seized must be deposited by the bailiff in some fit place or may remain in the custody of any fit person he shall put in possession of such goods.
 - (6) The bailiff executing the order must seize and take any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialities or guarantees for money and shall hold the same as security for the amount directed to be levied
 - (7) The judgment creditor may sue in the name of the judgment debtor or in the name of any person in whose name the judgment debtor might have sued, for the recovery of the sum, or sums secured or made payable by any such bill of exchange or other security.

Sale of property seized

46.14 Property seized shall be sold by public auction unless the court permits sale in some other manner.

Order for sale otherwise than by public auction

- 46.15 (1) The judgment creditor or the bailiff may apply for an order that goods or chattels seized should be sold otherwise than by public auction.
- (2) The application must be supported by evidence on affidavit.
- (3) The bailiff must prepare a list setting out the names and addresses of every person on whose behalf any other order for seizure and sale of goods has been issued and delivered to the bailiff and must send a copy of the list to the judgment creditor unless the application has been made by the bailiff.
- (4) The applicant must give not less than 5 days notice of the application to the judgment debtor and every other person named on the list prepared under paragraph (3).
- (5) All persons served under paragraph (4) may attend and be heard on the application.
- (6) The applicant must produce the list prepared under paragraph (3) at the hearing of the application.

Payment of monies received to the Accountant-General

46.16 Any monies received following execution or sale under rules 46.13, 46.14 and 46.15 must be paid to the Accountant General.

Claims to goods seized under writ of execution.

- 46.17 Where -
- (a) goods are seized under a writ of execution; and
- (b) some person other than the judgment creditor or judgment debtor subsequently claims any of them,
- the validity of the writ of execution is extended until the end of twelve months from the conclusion of interpleader proceedings on that claim.
- (Part 54 deals with interpleader proceedings.)

Suspension of writ of execution at request of judgment creditor

46.18 The judgment creditor may ask the bailiff to suspend execution.

Return to writ of execution

- 46.19 (1) A judgment creditor who has issued a writ of execution may serve a notice on the bailiff requiring the bailiff to make a return of the manner in which it has been executed.
- (2) Where the bailiff fails to comply with the notice within 14 days the judgment creditor may apply to the court for an order directing the bailiff to comply.

Small claims: costs

46.20 No fees, costs or other expenses may be levied where the judgment debt is less than \$5,000.

Variation of Terms of Judgments and Suspension of Orders for Seizure and Sale of Goods and Orders of Delivery and Possession

Contents of this Part

Scope of this Part	Rule 47.1
Applications to vary time and method of payment or suspend order for seizure and sale of goods or delivery	Rule 47.2
Procedure	Rule 47.3
Application for re-determination of court's decision	Rule 47.4
Where judgment creditor objects to variation or suspension	Rule 47.5
Pre-suspension costs	Rule 47.6
Suspension of Order for Possession	Rule 47.7
Judgment creditor's right to re-issue writ of execution	Rule 47.8

Scope of this Part

- 47.1 This Part deals with -
- (a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and
 - (b) suspension of orders for the seizure and sale of goods and orders of delivery and possession.

Applications to vary time and method of payment or suspend order for seizure and sale of goods or order of delivery.

- 47.2 (1) This rule applies to -
- (a) judgments for payment of a sum of money;
 - (b) judgments for the delivery of goods or payment of their value;
 - (c) orders for seizure and sale of goods; and
 - (d) writs of delivery where the defendant has the alternative of paying the assessed value.
- (2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence on affidavit.

(18/9/2006)

Procedure

- 47.3 (1) The judgment debtor must serve the application to vary or suspend on the judgment creditor.
- (2) The judgment creditor may file and serve on the judgment debtor objections to the application.
- (3) Where the judgment creditor does not do so before the end of 14 days from the date of service of the application, the court may make an order in the terms for which the judgment debtor asks.
- (4) Where the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court -
- (a) may decide the rate and time of payments; and
 - (b) (where appropriate) may make an order suspending the writ of execution on those terms.
- (5) The court may make this decision without a hearing.
- (6) The registry must serve a copy of the order made under paragraph (3) or (4) on the judgment creditor and judgment debtor.

Application for re-determination of court's decision

- 47.4 (1) The judgment creditor or the judgment debtor may apply to the court to re-determine the decision.
- (2) The application may not be made more than 14 days after the date of service of the court's order under rule 47.3(6).
- (3) The registry must fix a hearing and give the judgment creditor and judgment debtor not less than 7 days notice of the date, time and place of the hearing.

Where judgment creditor objects to variation or suspension

- 47.5 Where the judgment creditor gives the court notice that it does not agree to any variation as to the time or method of payment or suspension of the writ of execution on any terms, the registry must fix a hearing and give the judgment creditor and judgment debtor not less than 7 days notice of the date, time and place of the hearing.

Pre-suspension costs

- 47.6 Where the court hears an application to vary the judgment or suspend a writ of execution it may add to the judgment debt -
- (a) the costs of the application for variation or suspension; and
 - (b) any costs or fees incurred by the judgment creditor in connection with any writ of execution.

Suspension of Order for Possession

- 47.7 (1) A judgment debtor may apply to the court to suspend execution of an order for possession.
- (2) The court may suspend execution of an order for possession on such terms as appear to be just.

Judgment creditor's right to re-issue writ of execution

- 47.8 (1) A judgment creditor may re-issue a writ of execution where -
- (a) execution has been suspended on terms; and
 - (b) the judgment debtor has not complied with those terms.
- (2) The re-issued order has the same priority as the original order.

PART 48

Charging Orders

Contents of this Part	
Scope of this Part and definitions	Rule 48.1
How to apply for charging order	Rule 48.2
Evidence in support of application for charging order	Rule 48.3
Single charging order for more than one judgment debt	Rule 48.4
Procedure for making provisional charging order	Rule 48.5
Interested persons	Rule 48.6
Service of provisional charging order and of copies	Rule 48.7
Making of final charging order	Rule 48.8
Effect of provisional or final charging order	Rule 48.9
Discharge or variation of final charging order	Rule 48.10
Enforcement of charging order by sale	Rule 48.11

Scope of this Part and definitions

- 48.1 (1) This Part deals with the enforcement of a judgment debt by charging
- (a) land;
 - (b) stock (including stock held in court) ; and
 - (c) other personal property.
- (2) In this Part -
- “**land**” includes any interest in land; and
 - “**stock**” includes shares, securities and dividends arising therefrom.

How to apply for charging order

- 48.2 (1) The application is to be made without notice but must be supported
(18/9/2006) by evidence on affidavit.
- (2) An application for a charging order relating to stock may incorporate an application for an order for sale of such stock under rule 48.11.

Evidence in support of application for charging order

- 48.3 (1) This rule sets out the evidence required to support an application for a charging order.
- (2) The affidavit must -
- (a) state the name and address of the judgment debtor;
 - (b) identify the judgment or order to be enforced;
 - (c) state that the applicant is entitled to enforce the judgment;
 - (d) certify the amount remaining due under the judgment;
 - (e) where the application relates to land, identify that land;
 - (f) where the application relates to stock -
 - (i) identify the company and the stock of that company to be charged;
 - (ii) identify any person who has responsibility for keeping a register of the stock;
 - (iii) state whether any person other than the judgment debtor is believed to have an interest in that stock whether as a joint owner, a trustee or a beneficiary; and
 - (iv) if so, give the names and addresses of such persons and details of their interest;
 - (g) in the case of any other personal property -
 - (i) identify that property; and
 - (ii) state whether any other person is believed to have an interest in the property; and
 - (h) state that to the best of the deponent's information and belief the debtor is beneficially entitled to all or some part of the land, stock or personal property as the case maybe.

Single charging order for more than one judgment debt

- 48.4 A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

Procedure for making provisional charging order

- 48.5 (1) In the first instance the court must deal with an application for a charging order without a hearing and may make a provisional charging order.
- (2) On the application of the judgment creditor the court may grant an injunction to secure the provisional charging order.
- (3) An application for an injunction may be made without notice and may remain in force until 7 days after the making of an order under rule 48.8(4).
- (4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.

Interested persons

- 48.6 (1) The persons specified in paragraph (2) have an interest in the charging order proceedings as well as the judgment creditor and the judgment debtor and are referred to in this Part as “**the interested persons**”.
- (2) The interested persons are -
- (a) any person who owns the land, stock or assets to be charged jointly with the judgment debtor;
 - (b) the company whose stock is to be charged;
 - (c) any person who is responsible for keeping the register of stock for that company;
 - (d) if the stock is held under a trust, the trustees or such of them as the court may direct;
 - (e) if the stock is held by the judgment debtor as a trustee, such of the other trustees and beneficiaries as the court may direct;
 - (f) if the stock is held in court, the registrar; and
 - (g) any other person who has an interest in the personal property to be charged.

Service of provisional charging order and of copies

- 48.7 (1) Where the court makes a provisional charging order the judgment creditor must serve on the judgment debtor in accordance with Part 5 -
- (a) the order; and
 - (b) a copy of the affidavit in support of the application for the order.

- (2) The judgment creditor must also serve a copy of the order on the interested persons listed in the affidavit filed in support of the application.
- (3) Any interested person other than the company and the person responsible for keeping the register must be served personally.
- (4) The order and copy orders must be served not less than 28 days before the hearing.
- (5) The judgment creditor must file an affidavit of service not less than 7 days before the hearing.

Making of final charging order

- 48.8
- (1) This rule deals with -
 - (a) the filing of objections to a provisional charging order; and
 - (b) the making of a final charging order.
 - (2) The following persons may file objections to a provisional charging order -
 - (a) the judgment creditor;
 - (b) the judgment debtor; and
 - (c) any interested person.
 - (3) The objection must be filed not less than 14 days before the hearing under paragraph (4).
 - (4) At the hearing, if satisfied that the provisional charging order has been served on the judgment debtor, the court has power to -
 - (a) make a final charging order;
 - (b) discharge the provisional charging order; or
 - (c) give directions for the resolution of any objections that cannot be fairly resolved summarily.
 - (5) Where the court makes an order under paragraph (4) (c) it may continue any injunction made under rule 48.5 until 7 days after the application is finally determined.
 - (6) A copy of the charging order must be served by the judgment creditor on -
 - (a) the judgment debtor;
 - (b) any interested person who has filed an objection; and
 - (c) in the case of stock -
 - (i) the company; and
 - (ii) any person who has responsibility for keeping a register of the stock.

- (7) Every copy of the charging order served on -
- (a) the company; and
 - (b) any person who has responsibility for keeping a register of the stock, must contain a stop notice.
- (Part 49 deals with the effect of a stop notice.)

Effect of provisional or final charging order

- 48.9 (1) No disposition by a judgment debtor of an interest in property subject to a provisional or final charging order is valid against the judgment creditor.
- (2) No person or body on whom an order was served under rule 48.6(2)(c) or (d) may permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.
- (3) Where after service of the order the person or body listed in rule 48.6(2)(c) or (d) makes a transfer or payment prohibited by paragraph (2), that person or body is liable to pay the judgment creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy the judgment debt and costs.

Discharge or variation of final charging order

- 48.10 (1) An application to discharge or vary a final charging order may be made by -
- (a) the judgment creditor;
 - (b) the judgment debtor; or
 - (c) any interested person.
- (2) Notice of application must be served on the -
- (a) judgment creditor if made by the judgment debtor;
 - (b) judgment debtor if made by the judgment creditor; or
 - (c) judgment creditor and judgment debtor if made by an interested person.
- (3) Any order must be served on every person on whom the final charging order was served.

Enforcement of charging order by sale

- 48.11 (1) This rule applies where a judgment creditor wishes to enforce a charging order by sale.

- (2) The judgment creditor may apply to the court for an order for sale.
- (3) The application must be supported by evidence on affidavit.
- (4) Notice must be served on the judgment debtor.
- (5) The court may give such directions as seem appropriate to secure the expeditious sale of the land, stock or property charged at a price that is fair to both judgment creditor and debtor.

PART 49

Stop Notices and Stop Orders

Contents of this Part

Scope of this Part	Rule 49.1
Right to apply for stop notice	Rule 49.2
Procedure for obtaining stop	Rule 49.3
Service	Rule 49.4
Ammendment of stop notice	Rule 49.5
Withdrawal or discharge of stop notice	Rule 49.6
Stop Orders	Rule 49.7
Procedure on application for stop order	Rule 49.8
Power to vary or discharge stop order	Rule 49.9

Scope of this Part

- 49.1 (1) This Part sets out a procedure enabling a person by obtaining a stop notice or stop order -
(18/9/2006)
- (a) to be notified of proposed dealings relating to stock; or
 - (b) to prevent certain specified steps to be taken with regard to stock or funds in court.
- (2) In this part -
- “**stock**” includes shares, securities and dividends arising therefrom.
 - “**stop notice**” means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;
 - “**stop order**” means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps; and
 - “**the specified steps**” mean -
 - (a) the registration of any transfer of the stock;

- (b) in the case of stock or funds in court, the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof; or
- (c) the making of any payment by way of dividend, interest or otherwise in respect of the stock.

Right to apply for stop notice

49.2 Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

Procedure for obtaining stop notice

- 49.3 (1) Anyone who wants the registry to issue a stop notice (“**the applicant**”) may obtain one by filing a notice in form 21A.
(18/9/2006)
- (2) The applicant must also file an affidavit which -
 - (a) identifies the stock;
 - (b) identifies the applicant’s interest in it; and
 - (c) gives an address for service for the applicant.
 - (3) The registry must then issue a stop notice.

Service

- 49.4 (1) The applicant must serve a copy of -
 - (a) the stop notice; and
 - (b) his affidavit,on the company and any keeper of the register on whom he would have had to serve a charging order relating to the stock in accordance with rule 48.6.
- (2) After that, so long as the stop notice is in force, neither the company or the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification of the proposed registration or other step to the applicant.

Amendment of stop notice

- 49.5 (1) Where a stop notice describes any stock incorrectly, the applicant may ask the registry to issue an amended notice.
- (2) The application may be made without notice.

- (3) Rule 49.4 applies to an amended notice as it applies to the original notice.

Withdrawal or discharge of stop notice

- 49.6
- (1) The person on whose behalf the registry issued a stop notice may withdraw it by filing a notification of withdrawal in the court and serving a copy on every person on whom the stop notice was served.
 - (2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates the court may by order discharge or vary the notice.
 - (3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.
 - (4) The application must be supported by evidence on affidavit.

Stop orders

- 49.7
- (1) The court may make a stop order relating to -
 - (a) stock; or
 - (b) funds in court.
 - (2) The stop order may prohibit the taking of any of the specified steps.

Procedure on application for stop order

- 49.8
- (1) Any person claiming to be beneficially entitled to stock may apply for a stop order.
 - (2) In the case of money in court any person -
 - (a) who has a mortgage or charge on the interest of any person in funds in court;
 - (b) to whom that interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to that interest, may apply for a stop order.
 - (3) Notice of an application for a stop order must be served by the applicant at least 7 days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court on the registrar.

Power to vary or discharge stop order

49.9 The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

PART 50

Attachments of Debts

Contents of this Part

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Scope of this Part

- 50.1 (1) This Part provides a procedure under which a judgment creditor can obtain payment of all or part of a judgment debt from a person within the jurisdiction who owes the judgment debtor money.
- (2) The person who is said to owe the judgment debtor money is called “**the garnishee**”.
- (3) An order of the court is required. This order is called an “**attachment of debts order**”.
- (4) The attachment of debts order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debts proceedings as well as the judgment debt.
(The fixed costs are set out in Appendix A to Part 65.)

Circumstances in which court may make order for attachment of debt

- 50.2 (1) The attachment of debt procedure may not be used where the order is to pay money into court.
- (2) An attachment of debt order can be made only against a garnishee who is within the jurisdiction.
- (3) A debt may be attached if it is -
- (a) due or accruing to the judgment debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or
 - (b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.

Procedure - making of provisional order.

- 50.3 (1) The application may be made without notice but must be supported by evidence on affidavit.
(18/9/2006)
- (2) Where the court or the registrar considers that on the evidence submitted the judgment creditor is entitled to an attachment of debt order, it must make a provisional order.
- (3) It is to do this without a hearing.
- (4) The registry must state in the provisional order the date, time and place of the hearing.
- (5) An application under this rule may be considered by the registrar.

Money in bank accounts, etc

- 50.4 An attachment of debt order may be made in respect of any type of debt including money standing to the credit of any account of the judgment debtor with a bank, other deposit taking institution or building society.

Joint funds

- 50.5 (1) This rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.
- (2) The evidence in support of the application must state -

- (a) the names and addresses of the person or persons who own the fund jointly with the judgment debtor;
 - (b) details of the joint fund; and
 - (c) if the applicant claims that the judgment debtor is entitled to more than an equal share in the fund, the grounds for that claim.
- (3) Each owner of the fund must be served with the provisional attachment of debt order and the evidence in support.

Presumption of equal shares in a joint fund

- 50.6 (1) The general rule is that a fund held jointly by the judgment debtor and another person or persons is to be presumed to be owned in equal shares.
- (2) Any person served under rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.

Attachment of debts owed by firm

- 50.7 (1) This rule applies to the attachment of debts due or accruing due from a firm carrying on business within jurisdiction.
- (2) Such debts may be attached even if one or more members of the firm is resident outside the jurisdiction.
- (3) A provisional order under rule 50.3 must be served on -
- (a) a member of the firm; or
 - (b) some other person having the control or management of the partnership business, in the jurisdiction.
- (4) Any member of the garnishee may attend a hearing of an application for an attachment of debt order.

Service of provisional order

- 50.8 (1) The judgment creditor must serve the provisional attachment of debt order.
- (2) It must be served first on the garnishee not less than 21 days before the hearing.
- (3) It must be served personally on the garnishee unless paragraph (4) applies.

- (4) Where the garnishee is a bank, building society or other financial institution, the provisional attachment of debt order must be served on its principal or registered office and also the branch at which the judgment debtor's account is kept if that address is known to the judgment creditor.
- (5) Secondly, it must be served personally on the judgment debtor.
- (6) It must be served on the judgment debtor not less than 7 days after it has been served on the garnishee and not less than 7 days before the hearing.
- (7) The court may direct that service on the judgment debtor be dispensed with.

Effect of provisional order

- 50.9
- (1) This rule sets out the effect of a provisional attachment of debt order.
 - (2) It becomes binding on the garnishee as soon as it is served on the garnishee.
 - (3) The garnishee must not pay anything to the judgment creditor until the provisional order is made final.
- (18/9/2006)
- (4) The garnishee must not pay anything to the judgment debtor or on his behalf except to the extent that the garnishee's debt to the judgment debtor is greater than the amount indicated in the provisional order.
 - (5) If the garnishee pays anyone but the judgment creditor the garnishee may have to make a further payment to the judgment creditor in accordance with the terms of any final attachment of debt order that the court may make.

Hearing to consider making final order

- 50.10
- At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may -
- (a) make a final attachment of debts order;
 - (b) discharge the provisional order; or
 - (c) give directions for the resolution of any dispute.

Claim to a debt by person other than judgment debtor

- 50.11 (1) This rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgment debtor -
- (a) is or claims to be entitled to the debt; or
 - (b) has or claims to have a charge or lien on it.
- (2) In this rule “**lien**” means a right to retain possession of goods to protect the debt.
- (3) Where this rule has effect, the court may require the judgment creditor to serve notice of -
- (a) the application for an attachment of debt order; and
 - (b) any hearing fixed by the court,
- on any person who may have such an interest as is set out in paragraph (1).
- (4) The notice must be served personally unless the person is a body corporate.
- (5) Notice must also be served on -
- (a) the judgment debtor; and
 - (b) the garnishee.
- (6) A notice under this rule must contain a warning to every person on whom it is served that, if that person does not attend court, it may proceed to decide the issue in that person’s absence.

Enforcement against garnishee

- 50.12 Where a garnishee does not fulfil the terms of an attachment of debt order, the judgment creditor may issue enforcement proceedings against the garnishee.

Discharge of garnishee’s debt to judgment debtor

- 50.13 (1) This rule has effect where -
- (a) the garnishee pays money to the judgment creditor in compliance with an attachment of debts order; or
 - (b) the attachment of debts order is enforced against the garnishee.
- (2) The garnishee’s liability to the judgment debtor is then discharged to the extent of the amount paid by, or recovered from the garnishee.

- (3) This rule has effect even if the court later sets aside the attachment of debts order or the original judgment or order.

Costs of attachment proceedings

- 50.14
- (1) This rule contains general provisions about the costs of attachment of debt proceedings.
 - (2) The judgment creditor's costs are those fixed by Appendix A to Part 65 unless the court makes some other order.
 - (3) The judgment creditor may retain the costs out of the money recovered through the attachment of debts order.
 - (4) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.
 - (5) A garnishee who appears at attachment of debt proceedings may deduct the costs before paying any sum over to the judgment creditor in pursuance of the attachment of debts order.
 - (6) Costs payable under paragraph (5) must be assessed under rule 65.8 if not agreed.

Money in court

- 50.15
- (1) No attachment of debts order may be made in respect of money in court standing to the credit of the judgment debtor.
 - (2) The judgment creditor may however apply for an order that sufficient of the money in court to satisfy the judgment and the fixed costs of the application be paid to the judgment creditor.
 - (3) Notice of the application must be given to the registrar and any person who has an interest in the fund.
 - (4) Until hearing of the application the money to which it relates must not be paid out of court.
(The fixed costs are set out in Appendix A to Part 65.)

PART 51

Appointment of Receiver

Contents of this Part

Scope of this Part	Rule 51.1
Application for appointment of receiver and injunction	Rule 51.2
Conditions for appointment of receiver	Rule 51.3
Giving of security by receiver	Rule 51.4
Remuneration of receiver	Rule 51.5
Service of order	Rule 51.6
Receiver's powers	Rule 51.7
Accounts of receiver	Rule 51.8
Payment of balance into court	Rule 51.9
Default by receiver	Rule 51.10

Scope of this Part

- 51.1 This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor.

Application for appointment of a receiver and injunction

- 51.2 (1) An application for the appointment of a receiver must be supported by evidence on affidavit.
- (2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.
- (3) Where an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.
- (Rules 17.3 and 17.4 deal with applications for interim injunctions.)

Conditions for appointment of a receiver

- 51.3 In deciding whether to appoint a receiver to recover a judgment debt the court must have regard to -
- (a) the amount of the judgment debt;
 - (b) the amount likely to be obtained by the receiver; and
 - (c) the probable cost of appointing and remunerating the receiver.

Giving of security by receiver

- 51.4
- (1) The general rule is that a person may not be appointed receiver until that person has given security.
 - (2) The court may however dispense with security.
 - (3) The order appointing the receiver must state the amount of the security.
 - (4) The security must be by guarantee unless the court allows some other form of security.
 - (5) The guarantee or other security must be filed at the registry.

Remuneration of receiver

- 51.5 The receiver may be allowed such remuneration as the court may direct.

Service of order

- 51.6 The applicant must serve a copy of the order appointing a receiver on the receiver and all other parties to the proceedings in which the receiver has been appointed.

Receiver's powers

- 51.7 A receiver's powers operate to the exclusion of the powers of the judgment debtor for the duration of the receiver's appointment.

Accounts of receiver

- 51.8 (1) The order appointing a receiver must direct on what dates the receiver must file accounts.

- (2) Unless the court orders otherwise the account must be verified by affidavit.
- (3) The receiver must serve a copy of the account on the applicant.
- (4) The applicant must obtain an appointment to pass the account.
- (5) The passing of the account must be verified by a registrar.

Payment of balance into court

51.9 The receiver must pay into court or to such person or persons as the court may direct any balance shown on the accounts under rule 51.8 as due from the receiver within 7 days of the passing of any account.

Default by receiver

- 51.10 (1) This rule applies if the receiver -
- (a) fails to submit an account by the date ordered;
 - (b) fails to attend for the passing of any account; or
 - (c) fails to pay into court or as directed any balance shown on the account as due from him or her.
- (2) The applicant must ask the registry to fix a hearing for the receiver to show cause for the receiver's failure.
- (3) The registry must issue a notice stating the date, time and place of the hearing to show cause.
- (4) The applicant must serve the notice on the receiver not less than 7 days before the hearing.
- (5) At the hearing the court may -
- (a) give directions to remedy the default; or
 - (b) give directions for the discharge of the receiver;
 - (c) appoint another receiver;
 - (d) disallow any remuneration claimed by the receiver; and
 - (e) order the receiver to -
 - (i) pay the costs of the applicant; and
 - (ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

PART 52

Judgment Summons

Contents of this Part	
Scope of this Part	Rule 52.1
Issue of judgment summons	Rule 52.2
Service of judgment summons	Rule 52.3
Hearing of judgment summons	Rule 52.4
Failure to comply with instalment order	Rule 52.5
Restored hearing of judgment summons	Rule 52.6
Satisfaction of debt	Rule 52.7

Scope of this Part

52.1 This Part deals with applications to commit a judgment debtor for non payment of a debt where this is not prohibited by the Debtors Act.

(Section 2 of the Debtors Act lists the circumstances in which committal for debt is still possible. Committal is dependant on the court being satisfied that the judgment debtor has since the date of the judgment had the means to pay the judgment debt but has refused or neglected to do so.)

Issue of judgment summons

- 52.2 (1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in form 22 and must state -
- (a) the date and details of the judgment or order requiring payment of the debt;
 - (b) what payments have been made by the judgment debtor; and
 - (c) the amount of interest claimed to the date of the application and the daily rate thereafter.
- (2) The registry must
- (a) fix a date for hearing of the judgment summons;

- (18/9/2006)
- (b) seal the judgment summons; and
 - (c) return the judgment summons to the judgment creditor for service.

Service of judgment summons

- 52.3
- (1) The judgment creditor must serve the judgment debtor with the judgment summons in accordance with Part 5 not less than 7 days before the date fixed for the hearing of the application to commit.
 - (2) The judgment creditor must file an affidavit of service not less than 3 days before the hearing.

Hearing of judgment summons

- 52.4
- At the hearing of the judgment summons, the court may -
- (a) if satisfied that all reasonable efforts have been made to serve the judgment debtor and that -
 - (i) the summons has come to the knowledge of the judgment debtor; or
 - (ii) the judgment debtor is wilfully evading service, proceed in the absence of the judgment debtor as if the judgment debtor had been personally served;
 - (b) receive evidence as to the means of the judgment debtor in any manner that it thinks just; and
 - (c) if satisfied that the judgment debtor has had, since the making of the judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same.
 - (i) commit the judgment debtor to a prison for a term not exceeding six weeks or until the judgment or order is sooner satisfied;
 - (ii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;
 - (iii) make an order for payment of the judgment debt by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor;
 - (iv) adjourn the hearing of the summons to a fixed date; or
 - (v) dismiss the judgment summons.

Failure to comply with terms of instalment order

- 52.5 Where the judgment debtor fails to comply with the terms of the judgment summons the judgment creditor may -
- (a) where a suspended committal order has been made, apply to commit the judgment debtor in accordance with the provisions of Part 53 (committal orders);
 - (b) where an order has been made under rule 52.4(c)(iii) apply to the registry in writing to restore the judgment summons; or
 - (c) issue a further judgment summons.

Restored hearing of judgment summons

- 52.6 (1) The judgment creditor must -
- (a) serve the notice of the restored hearing of a judgment summons in accordance with Part 5 not less than 7 days before the date fixed for hearing; and
 - (b) file an affidavit of service not less than 3 days before the hearing.
- (2) At the restored hearing the court may exercise any of its powers under rule 52.4.

Satisfaction of debt

- 52.7 (1) Imprisonment under this Part does not operate to satisfy the debt.
- (2) A person imprisoned under this part must be discharged from custody upon a certificate under section 3 of the Debtors Act -
- (a) signed by the registrar or the judgment creditor; and
 - (b) addressed to the Commissioner for Corrections that the judgment debt and costs have been satisfied.

PART 53

Committal and Confiscation of Assets

Contents of this part

Section 1

Committal etc for breach of order

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Committal for Contempt

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Section 3

General

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Discharge of person committed	Rule 53.18

Section 1

Committal etc for breach of order

Scope of this Section

- 53.1 This Section deals with the power of the court to commit a person to prison or to make an order confiscating assets for failure to comply with -
- (a) an order requiring that person; or
 - (b) an undertaking by that person, to do an act-
 - (i) within a specified time;
 - (ii) by a specific date; ornot to do an act.

Order specifying time for act to be done

- 53.2 (1) Where a judgment or order specifies the time or date by which an act must be done the court may by order specify another time or date by which the act must be done.
- (2) Where a judgment or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.
- (3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgment debtor.
- (4) An application for an order under this rule may be made without notice but the court may direct that notice be given to the judgment debtor.
- (5) Any order made under this rule must be served in the manner required by rule 53.3 (in the case of an individual judgment creditor) or 53.4 (enforcement against an officer of a body corporate).

When committal order or confiscation of assets order may be made

- 53.3 Subject to rule 53.5, the court may not make a committal order or a confiscation of assets order unless-

- (a) the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;
- (b) at the time that order was served it was endorsed with a notice in the following terms:
“NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to be imprisoned or to have your assets confiscated.”,
 or, in the case of an order served on a body corporate, in the following terms:
“NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to have your assets confiscated.”; and
- (c) where the order requires the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

Committal order or confiscation of assets order against officer of body corporate

- 53.4 Subject to rule 53.5, the court may not make a committal order or a confiscation of assets order against an officer of a body corporate unless -
- (a) a copy of the order requiring the judgment debtor to do an act within a specified time or to not to do an act has been served personally on the officer against whom the order is sought;
 - (b) at the time that order was served it was endorsed with a notice in the following terms:
“NOTICE: If [name of body corporate] fails to comply with the terms of this order it will be in contempt of court and you [name of officer] may be liable to be imprisoned or have your assets confiscated.”; and
 - (c) Where the order required the judgment debtor or do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

Making committal order or confiscation of assets order when judgment or order not served

- 53.5 (1) This rule applies where the judgment or order has not been served.
- (2) Where the order required the judgment debtor not to do an act, the court may make a committal order or confiscation of assets order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by -
- (a) being present when the order was made; or
 - (b) being notified of the terms of the order by post, telephone, FAX or otherwise.
- (3) The court may make an order dispensing with service of the judgment or order under rules 53.3 or 53.4 if it thinks it just to do so.

Undertakings

- 53.6 (18/9/2006) An undertaking given to the court must if practicable be given in writing and a copy of the undertaking endorsed with a notice in accordance with rules 53.3(b) or 53.4(b) must, if practicable, be served on the person giving the undertaking.

Application for committal order or confiscation of assets order

- 53.7 (1) The application must specify -
- (a) the precise term of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken; and
 - (b) the exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor.
- (2) The application must be verified by affidavit.
- (3) The applicant must prove -
- (a) service of the order endorsed with the notice under rule 53.3(b) or rule 53.4(b);
 - (b) if the order required the judgment debtor not to do an act, that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.5; or
 - (c) that it would be just for the court to dispense with service.

Service of notice of hearing

- 53.8 (1) The judgment creditor must serve on the judgment debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or confiscation of property order notice of the application for the committal order not less than 7 days before the date fixed for hearing.
- (2) Where the notice of application is served on the judgment debtor less than 7 days before the hearing the court may direct that in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.
- (3) The notice of application must be served in accordance with Part 5.
- (4) A copy of the evidence in support must be served with the notice of application.
- (18/9/2006)
- (5) The registry must fix a hearing of the application.
- (6) The notice of hearing must be served on the judgment debtor or the officer of a body corporate personally not less than 3 days before the adjourned hearing.

Section 2 Committal for Contempt

Scope of this Section

- 53.9 (1) This Section deals with the exercise of the power of the court to punish for contempt.
- (2) In addition to the powers set out in rule 53.10, the court may -
- (a) fine the contemnor;
 - (b) take security for good behaviour;
 - (c) make a confiscation of assets order;
 - (d) issue an injunction.
- (3) Nothing in this Section affects the power of the Court to make an order of committal of its own initiative against a person guilty of contempt in the face of the court.

Application

- 53.10 (1) An application under this Section must be made -
- (a) in the case of contempt committed within proceedings in the court, by application under Part 11; or
 - (b) in any other case, by a fixed date claim form,

setting out the grounds of the application and supported, in each case, by evidence on affidavit.

- (2) The general rule is that the claim form or application, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be punished.
- (3) However the court may dispense with service under this rule if it thinks it just to do so.
- (4) An application in respect of contempt committed in proceedings in the court or in any inferior court or tribunal may be heard by a judge of the court.

Hearing of application

- 53.11
- (1) The general rule is that the application must be heard in open court.
 - (2) However, the court may exclude from the hearing of the application any persons other than the parties or their legal representatives where the court considers it necessary to exclude such persons in the following cases -
 - (a) where -
 - (i) the defence of the state;
 - (ii) public safety;
 - (iii) public order;
 - (iv) public moralityare involved;
 - (b) where the application arises out of proceedings relating to the wardship, adoption, guardianship, custody, maintenance or upbringing of a minor or rights of access to a minor;
 - (c) where the application arises out of proceedings relating to a patient;
 - (d) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
 - (e) in the interests of the administration of justice or the protection of the private lives of persons concerned in the proceedings.
 - (3) Where the court hears an application in private under paragraph (2) and decides to make an order for committal, it must state in open court -

- (a) the name of the person committed;
 - (b) the general terms of the nature of contempt of court in respect of which the order has been made; and
 - (c) the term for which that person has been committed.
- (4) Except with the permission of the court hearing the application, no grounds may be relied on at the hearing except grounds set out in the application or claim form.
- (5) The court must permit the person sought to be committed to give oral evidence on his or her own behalf if that person so wishes.

Section 3

General

Scope of this Section

- 53.12 (1) This Section sets out rules common to applications under Sections 1 and 2 of this Part.
- (2) In this Section “**judgment debtor**” includes the defendant or respondent to an application under rule 53.10.

Powers of the court

- 53.13 Where satisfied that the notice of application has been duly served, the court may-
- (a) make a committal order for a fixed term against a judgment debtor who is an individual;
 - (b) make a confiscation of assets order against a judgment debtor who is an individual or a body corporate;
 - (c) make committal order for a fixed term against an officer of a judgment debtor which is a body corporate;
 - (d) make a confiscation of assets order against an officer of a judgment debtor which is a body corporate;
 - (e) adjourn the hearing of the application to a fixed date;
 - (f) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;
 - (g) make a suspended committal order or confiscation of assets order on such terms as the court considers just; or
 - (h) dismiss the application,
- and may make such order as to costs as it considers to be just.

Restoration of adjourned hearing

- 53.14 (1) Where an application for a committal order or a confiscation of assets order has been adjourned under rule 53.9(e), the registry may fix a date for the adjourned hearing.
- (2) An application for a date to be fixed -
- (a) may be made without notice; but
 - (b) must be supported by evidence on affidavit specifying -
 - (i) the precise term or terms of the undertaking which it is alleged that the judgment debtor has disobeyed; and
 - (ii) the exact nature of the alleged breach or breaches of the undertaking by the judgment debtor.
- (3) The notice of the restored hearing must -
- (a) state the date, time and place of the restored hearing; and
 - (b) be served on the judgment debtor or the officer of a body corporate personally not less than 3 days before the adjourned hearing.
- (4) A copy of the evidence under paragraph (2) must be served with the notice.

Application for enforcement of suspended committal order or order for confiscation of assets

- 53.15 (1) Where the court has imposed terms under rule 53.9(g) and the judgment creditor alleges that the judgment debtor has failed to comply with the terms imposed the judgment creditor may apply for the suspended order to be enforced.
- (2) The application must specify -
- (a) the precise term or terms of the suspended order which it is alleged that the judgment debtor has disobeyed; and
 - (b) the exact nature of the alleged breach or breaches of the terms of suspended order by the judgment debtor.
- (3) The application must be verified by affidavit.

Power to suspend execution of committal order

- 53.16 (1) The court making an order for committal may direct that execution of the order be suspended for such period and on such terms and conditions as it may specify in the order.

- (2) Where a direction is made under paragraph (1), the applicant must, unless the court otherwise directs, serve on the person against whom the order is made a notice informing that person of the terms of the direction under that paragraph.

Special provisions relating to order for confiscation

- 53.17 (1) A confiscation order binds the property subject to the order from the date of its issue.
- (2) The confiscation order must be directed to one or more commissioners (in these Rules called the “**commissioner for confiscation**”) appointed by the court.
- (3) The commissioner for confiscation has power -
- (a) to enter upon all land or interests in land of the judgment debtor;
 - (b) to take all rents and profits of such land or interests in land; and
 - (c) to take possession of all the judgment debtor’s personal estate,
- and to keep such assets under their control until the court orders otherwise.
- (4) The court may order payment of all costs, including such reasonable remuneration of the commissioner for confiscation as the court may approve, out of the proceeds of the confiscation.
- (5) Such costs are to be taxed.
- (6) Neither -
- (a) the commissioner for confiscation; or
 - (b) the judgment creditor,
- may sell any property seized under an order for confiscation without the permission of the court.
- (7) An application for permission must be supported by evidence on affidavit.

Discharge of person committed

- 53.18 (1) The court may, on the application of any person committed to prison under this Part, discharge him or her.
- (2) Where -
- (a) an order for committal has been made under this Part for failure to comply with a judgment or order to deliver any thing to any person or to deposit it in court or elsewhere; and

- (b) a confiscation order has also been issued to enforce that judgment or order,
then,
- (i) the commissioners appointed under the order of confiscation may take possession of that thing as if it were the property of the person committed;
 - (ii) the court may discharge the person in custody; and
 - (iii) the court may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

PART 54

Interpleader

Contents of this Part

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

Scope of this Part

- 54.1 (1) This Part deals with the situation where -
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and proceedings are taken, or are likely to be taken, against that person by two or more persons making adverse claims in respect of the debt, money, goods or chattels ; or
 - (b) a claim is made by a person other than the judgment debtor to any money, goods or chattels seized or intended to be seized by the bailiff or the proceeds or value of such goods or chattels.
- (2) The person under a liability under paragraph (1) (a) or the bailiff may apply for relief.
- (3) That procedure is called an “**interpleader**”.

Claim to goods taken in execution.

- 54.2 (1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the bailiff or to the proceeds or value of such goods or chattels must give written notice to the bailiff.

- (2) The notice must -
 - (a) give that person's name and address for service;
 - (b) identify the money, goods or chattels claimed; and
 - (c) set out the grounds of the claim.
- (3) Forthwith on receipt of the claim the bailiff must give written notice to the judgment creditor.
- (4) Within 7 days after receiving the notice the judgment creditor must give notice to the bailiff admitting or disputing the claim.
- (5) Where the judgment creditor gives notice admitting the claim -
 - (a) the judgment creditor is liable only for the fees and expenses of the bailiff incurred before the bailiff receives the notice;
 - (b) the bailiff must withdraw from possession of the money, goods or chattels; and
 - (c) the bailiff may apply to the court for an order restraining any claim being brought in respect of having taken possession of the money, goods or chattels.
- (6) Where the judgment creditor gives notice disputing the claim or fails to give notice and the claim is not withdrawn, the bailiff may apply to the court for relief under this Part.

How to interplead

- 54.3
- (1) A person interpleads by filing an application for relief by way of interpleader.
 - (2) The application must be filed in the registry.
 - (3) An application other than by the bailiff must be supported by evidence on affidavit that the applicant -
 - (a) claims no interest in the subject matter in dispute other than for charges or costs;
 - (b) does not collude with any of the persons making claim to that subject-matter; and
 - (c) is willing to pay or transfer that subject-matter into court or dispose of it as the court may direct.

Service of Interpleader application

- 54.4
- (1) An application by the bailiff must be served on the judgment creditor and on the person claiming the money, goods or chattels.

- (2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.
- (3) The application must be served not less than 14 days before the date fixed for hearing of the application.

Powers of court

- 54.5 (1) Where -
- (a) the application is by the bailiff;
 - (b) all the claimants consent or any claimant requests; or
 - (c) the facts are not in dispute and the question at issue between the claimants is solely one of law
- the court may summarily determine the question in issue between the parties.
- (2) On any other application the court may order that -
- (a) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the applicant for relief; or
 - (b) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.
- (3) Where a person making a claim to any money, goods or chattels who has been served with the application -
- (a) fails to attend the hearing; or
 - (b) fails to comply with any order made by the court, the court may make an order barring that person and any persons claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and all persons claiming under the applicant.
- (4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

Power to order sale of goods taken in execution

- 54.6 On an application by a bailiff who has seized any goods or chattels where a person claims to be entitled to such goods by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

PART 55

Sale of Land by Order of Court

Contents of this Part

Scope of this Part	Rule 55.1
Application for order for sale	Rule 55.2
Hearing of application	Rule 55.3
Order for sale	Rule 55.4
Directions	Rule 55.5
Further directions	Rule 55.6
Title to property sold	Rule 55.7

Scope of this Part

- 55.1 (1) This Part deals with the sale of land -
- (a) under any enactment which authorises the court to order a sale; or
 - (b) when it appears to the court to be necessary or expedient that the land should be sold whether to enforce a judgment or for any other reason.
- (2) In this Part “**land**” includes any interest in, or right over, land.

Application for order for sale

- 55.2 (1) An application for an order for sale must be supported by affidavit evidence.
- (2) The evidence under paragraph (1) must -
- (a) identify the land in question; and
 - (b) state -
 - (i) the reason for seeking an order for sale;
 - (ii) the grounds on which it is said that the court should order a sale of the land;
 - (iii) the full names and addresses of all persons who to the knowledge or belief of the applicant have an interest in the land;

- (iv) the nature and extent of each such interest;
 - (v) the proposed method of sale and why such method will prove most advantageous;
 - (vi) any restrictions or conditions that should be imposed on the sale for the benefit of any adjoining land of the judgment debtor or otherwise; and
 - (vii) who it is proposed should have conduct of the sale; and
- (c) exhibit a current valuation of the land by a qualified land valuer or surveyor.
- (4) The application and copies of the evidence in support must be served in accordance with Part 5 on the judgment debtor and every person who has an interest in the land.

Hearing of application

55.3 The court on hearing the application may -

- (a) direct that notice be given to any person who appears to have an interest in the land but has not been served with the application and adjourn the application to a fixed date;
- (b) order the sale of the land or a specified part of the land;
- (c) direct who shall have conduct of the sale; and
- (d) order that any person -
 - (i) in possession; or
 - (ii) in receipt of the rents or profits,

of the land or any part of the land do deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court may direct;

- (e) suspend any such order on such terms as the court thinks fit; or
- (f) dismiss the application.

Order for sale

55.4 On making an order for sale, the court may -

- (a) permit the person having conduct of the sale to sell the land in such manner as that person thinks fit; or
- (b) direct the manner in which the land is to be sold.

Directions

- 55.5 The court may give directions for the purpose of the sale, including -
- (a) fixing any reserve or minimum price for such sale;
 - (b) obtaining further evidence as to the valuation of the land;
 - (c) settling the particulars and conditions of sale;
 - (d) fixing the remuneration of the auctioneer or estate agent dealing with the sale;
 - (e) requiring payment of the net proceeds of sale into court or otherwise;
 - (f) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;
 - (g) how the net proceeds of sale should be applied; and
 - (h) certification of the result of the sale.

Further directions

- 55.6 Any party or the person having the conduct of the sale may apply to the court to vary the directions or to make further directions.

Title to property sold

- 55.7 (1) After sale of any property in accordance with this part, the court must grant to the purchaser a certificate that that person has purchased the property.
(18/9/2006)
- (2) The certificate under paragraph (1) must be in form 22A and be prepared by the party obtaining the order.
 - (3) When duly stamped as a conveyance or assignment of that property the certificate -
 - (a) is to be deemed to be a valid transfer or assignment of the property sold;
 - (b) may be recorded in the same manner as any deed of conveyance or assignment; and
 - (c) upon presentation for registration to the Registrar of Titles under the Registration of Titles Act, shall be registered accordingly.

PART 56

Administrative Law

Contents of the Part

Scope of this Part	Rule 56.1
Who may apply for judicial review	Rule 56.2
Judicial review - application for leave	Rule 56.3
Judicial review - hearing of application for leave	Rule 56.4
Where leave refused or granted on terms	Rule 56.5
Delay	Rule 56.6
Proceedings by way of claim which should be application for administrative order	Rule 56.7
Constitution of court	Rule 56.8
How to make an application for administrative order	Rule 56.9
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First hearing	Rule 56.13
Procedural applications	Rule 56.14
Hearing of application for administrative order	Rule 56.15
Special provisions relating to orders for judicial review	Rule 56.16

Scope of this part

- 56.1 (1) This Part deals with applications -
- (a) for judicial review;
 - (b) by way of originating motion or otherwise for relief under the Constitution;
 - (c) for a declaration or an interim declaration in which a party is the State, a court, a tribunal or any other public body; and

- (d) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.
- (2) In this part such applications are referred to generally as **“applications for an administrative order”**.
- (3) **“Judicial Review”** includes the remedies (whether by way or writ or order) of -
 - (a) certiorari, for quashing unlawful acts;
 - (b) prohibition, for prohibiting unlawful acts; and
 - (c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.
- (4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant -
 - (a) an injunction;
 - (b) restitution or damages; or
 - (c) an order for the return of any property, real or personal.

Who may apply for judicial review

- 56.2
- (1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.
 - (2) This includes -
 - (a) any person who has been adversely affected by the decision which is the subject of the application;
 - (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
 - (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
 - (d) any statutory body where the subject matters falls within its statutory remit;
 - (e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application; or

- (f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.

Judicial Review - application for leave

- 56.3 (1) A person wishing to apply for judicial review must first obtain leave.
- (2) An application for leave may be made without notice.
- (3) The application must state -
- (a) the name, address and description of the applicant and respondent;
 - (b) the relief, including in particular details of any interim relief, sought;
 - (c) the grounds on which such relief is sought;
 - (d) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;
 - (e) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;
 - (f) whether any time limit for making the application has been exceeded and, if so, why;
 - (g) whether the applicant is personally or directly affected by the decision about which complaint is made; or
 - (h) where the applicant is not personally or directly affected, what public or other interest the applicant has in the matter;
 - (i) the name and address of the applicant's attorney-at-law (if applicable); and
 - (j) the applicant's address for service.
- (4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

Judicial Review - hearing of application for leave

- 56.4 (1) An application for leave to make a claim for judicial review must be considered forthwith by a judge of the Court.
- (2) The judge may give leave without hearing the applicant.

- (3) However, if -
- (a) the judge is minded to refuse the application;
 - (b) the application includes a claim for immediate interim relief; or
 - (c) it appears that a hearing is desirable in the interests of justice,
- (17/2/2003) the judge must direct that a hearing be fixed.
- (4) The judge may direct that notice of the hearing be given to the respondent or the Attorney General.
- (5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.
- (6) The judge may allow the application to be amended.
- (7) Where the applicant seeks an order for certiorari relating to any matter in respect of which there is a right of appeal subject to a time limit, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (8) The judge may grant leave on such conditions or terms as appear just.
- (9) Where the application is for an order (or writ) of prohibition or certiorari, the judge must direct whether or not the grant of leave operates as a stay of the proceedings.
- (10) The judge may grant such interim relief as appears just.
- (11) On granting leave the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for a judicial review should take place.
- (12) Leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave.
- (18/9/2006)

Where leave refused or granted on terms

- 56.5 (1) Where the application for leave is refused by the judge or is granted on terms (other than under rule 56.4(12)), the applicant may renew it by applying -
- (a) in any matter involving the liberty of the subject or in any criminal cause or matter, to a full court; or
 - (b) in any other case to a single judge sitting in open court.
- (2) A single judge may refer the application to a full court.

- (3) No application not involving the liberty of the subject or a criminal cause or matter may be renewed after a hearing.
- (4) An applicant may renew his application by lodging in the registry notice of his intention.
- (5) The notice under paragraph (4) must be lodged within 10 days of service of the judge's refusal or conditional leave on the applicant.
- (6) The court hearing an application for leave may permit the application under rule 56.3 to be amended.

Delay

- 56.6
- (1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose
 - (2) However the court may extend the time if good reason for doing so is shown.
 - (3) Where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.
- (18/9/2006)
- (4) Paragraphs (1) to (3) are without prejudice to any time limits imposed by any enactment.
 - (5) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to -
 - (a) cause substantial hardship to or substantially prejudice the rights of any person; or
 - (b) be detrimental to good administration.

Proceedings by way of claim which should be application for administrative order

- 56.7
- (1) This rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting such claim are such that the only or main relief is an administrative order.
 - (2) The court may at any stage direct that the claim is to proceed by way of an application for an administrative order.
 - (3) Where the appropriate administrative order would be for judicial review the court may give leave for the matter to proceed as if an

- application had been made under rule 56.3.
- (4) Where the court makes an order under paragraph (2) it must give such directions as are necessary to enable the claim to proceed under this Part.

Constitution of court

- 56.8 (1) In any matter involving the liberty of the subject and in any criminal cause or matter an application for judicial review for which leave has been granted must be made to a full court.
- (2) Any other application may be heard by a single judge in open court unless the court directs that it be heard -
- (a) by a judge in chambers; or
 - (b) by a full court.

How to make an application for administrative order

- 56.9 (1) An application for an administrative order must be made by a fixed date claim in form 2 identifying whether the application is for -
- (a) judicial review;
 - (b) relief under the Constitution;
 - (c) a declaration; or
 - (d) some other administrative order (naming it),
- and must identify the nature of any relief sought.
- (2) The claimant must file with the claim form evidence on affidavit.
- (3) The affidavit must state -
- (a) the name, address and description of the claimant and the defendant;
 - (b) the nature of the relief sought identifying -
 - (i) any interim relief sought; and
 - (ii) whether the claimant seeks damages, restitution, recovery of any sum due or alleged to be due or an order for the return of property, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;
 - (c) in the case of a claim under the Constitution, setting out the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;
 - (d) the grounds on which such relief is sought;

- (e) the facts on which the claim is based;
 - (f) the claimant's address for service; and
 - (g) giving the names and addresses of all defendants to the claim.
- (4) The general rule is that the affidavit must be made by the claimant or where the claimant is not an individual by an appropriate officer of the body making the claim.
 - (5) Where the claimant is unable to make the affidavit it may be made by some other person on the claimant's behalf but must state why the claimant is unable to make the affidavit.
 - (6) On issuing the claim form the registry must fix a date for a first hearing which must be endorsed on the claim form.
 - (7) The general rule is that the first hearing must take place no later than 4 weeks after the date of issue of the claim.
 - (8) However, any party may apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application for an administrative order.
 - (9) The application may be without notice but must be supported by evidence on affidavit.

Joinder of claims for other relief

- 56.10 (1) The general rule is that, where not prohibited by substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that -
- (a) arises out of; or
 - (b) is related or connected to,
- the subject matter of an application for an administrative order.
- (2) In particular the court may award -
- (a) damages;
 - (b) restitution; or
 - (c) an order for return of property,
- to the claimant on a claim for Judicial Review or for relief under the constitution if -
- (i) the claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
 - (ii) the facts set out in the claimant's affidavit or statement of case justify the granting of such

- remedy or relief; and
 - (iii) the court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.
- (3) The court may however at any stage -
- (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or
 - (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and
 - (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

Service of claim form for administrative order

- 56.11 (1) The claim form and the affidavit in support must be served on all persons directly affected not less than 14 days before the date fixed for the first hearing.
- (2) Where the application -
- (a) relates to any proceedings in or before a court; and
 - (b) has the object either -
 - (i) to compel the court or an officer of the court to do any act relating to; or
 - (ii) to quash those proceedings,
- the claim form and affidavit in support must be served on the clerk or registrar of the court and on the judge if any objection is taken to the conduct of the judge.
- (3) A claim form relating to an application for relief under the Constitution must be served on the Attorney General.
- (4) Where leave has been given to make a claim for judicial review the claimant must also serve a copy of -
- (a) the application for leave;
 - (b) the affidavit in support; and
 - (c) the order giving leave.
- (5) The claimant must file at the registry not less than 7 days before the date fixed for the first hearing an affidavit which -
- (a) gives the names and addresses of all defendants who have been served with the claim;

- (b) states the date and place of service on each such defendant;
 - (c) where applicable, states when the claim form was served on the Attorney General; and
 - (d) if any defendant has not been served, states that fact and the reason for it.
- (7) Where the judge considers that any person who should have been served has not been served, the judge may adjourn the first hearing to a fixed date and give directions for service.
(Part 5 deals generally with the service of claims.)

Evidence in answer

56.12 Any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 (defence) apply to such affidavit.

First hearing

- 56.13 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.
- (2) In particular the judge may -
- (a) make orders for -
 - (i) witness statements or affidavits to be served;
 - (ii) cross-examination of witnesses;
 - (iii) disclosure of documents; and
 - (iv) service of skeleton arguments;
 - (b) allow the claimant to -
 - (i) amend any claim for an administrative order;
 - (ii) substitute another form of application for that originally made; or
 - (iii) add or substitute a claim for relief other than an administrative order;
 - (c) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;
 - (d) direct whether any person or body having such interest-
 - (i) is to make submissions by way of written brief; or
 - (ii) may make oral submissions at the hearing; and
 - (e) direct that claims by one or more persons or bodies or

against one or more persons in respect of the same office made on the same grounds be consolidated or heard together.

Procedural Applications

56.14 Wherever practicable any procedural application during a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.

Hearing of application for administrative order

- 56.15 (1) At the hearing of the application the court may allow any person who or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.
- (2) Such a person or body must make submissions by way of a written brief unless the court orders otherwise.
- (3) The court may grant any relief that appears to be justified by the facts proved before the court whether or not such relief should have been sought by an application for an administrative order.
- (4) The court may, however, make such orders as to costs as appear to the court to be just including a wasted costs order.
- (5) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

(Part 64 deals with the court's general discretion as to the award of costs, rules 64.13 and 64.14 deal with wasted costs orders.)

Special provisions relating to orders for judicial review

- 56.16 (1) Where the claimant seeks an order or writ of certiorari to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless -
- (a) before the trial the claimant has lodged with the registry a copy of the order, etc., verified by affidavit; or
- (b) can account for the failure to do so to the satisfaction of the court.

- (2) Where the claim is for an order or writ of certiorari, the court may if satisfied that there are reasons for quashing the decision to which the claim relates -
- (a) direct that the proceedings be quashed on their removal to the court; and
 - (b) may in addition remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the court

PART 57

Habeas Corpus

Contents of this Part

Scope of this Part	Rule 57.1
Application for issue of writ of Habeas Corpus	Rule 57.2
Powers of court	Rule 57.3
Service of writ	Rule 57.4
Return to writ	Rule 57.5
Powers of court on hearing writ	Rule 57.6
Bringing up prisoner to give evidence etc.,	Rule 57.7

Scope of this Part

- 57.1 This Part deals with applications for the issue of a writ of Habeas Corpus and proceedings upon such a writ.

Application for issue of writ for Habeas Corpus

- 57.2 (1) An application for the issue of a writ for Habeas Corpus ad subjiciendum must be made to the court.
- (2) An application under paragraph (1) may be made without notice but must be supported by evidence on affidavit.
- (3) Such evidence must be given by the person restrained stating how that person is restrained.
- (4) However, if the person restrained is not able to make the affidavit it may be made by some person on that person's behalf and must state why the person restrained is not able to make the affidavit.
- (5) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers.

Powers of court

- 57.3 (1) The court may -
- (a) forthwith make an order for the writ in form 23 to issue; or
 - (b) adjourn the application and give directions for notice to be given
 - (i) to the person against whom the issue of the writ is sought; and
 - (ii) to such other person as the court may direct
- (2) The court may also order that the person restrained be released.
- (3) An order under paragraph (2) is sufficient warrant to any person for the release of the person under restraint.
- (4) On making an order for the writ to issue the court must give directions as to the date, time and place of hearing.

Service of writ

- 57.4 (1) The general rule is that the writ must be served personally on the person to whom it is directed.
- (2) Where it is not possible to serve that person personally or if that person is the keeper of a prison or other public official the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.
- (3) Where the writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with paragraph (1) or (2).
- (4) Each person served must also be served with -
- (a) a copy of the evidence filed under rule 57.2(2); and
 - (b) a notice in the form included in form 23 of the date and time on, and place at, which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceedings for committal may be taken.

Return to writ

- 57.5 (1) Each person served must endorse on or annex to the writ a return stating each cause of detention of the person restrained.
- (2) The return may be amended or another substituted with the permission of the court.

Powers of court on hearing writ

- 57.6 On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.

Bringing up prisoner to give evidence, etc.

- 57.7 An application for -
- (1) a writ of habeas corpus ad testificandum;
- (2) a writ of habeas corpus ad respondendum; or
- (3) for an order to bring up a prisoner to give evidence otherwise than by writ for habeas corpus,
- may be made without notice to a judge in chambers but must be supported by evidence on affidavit.

PART 58

Bail Applications

Contents of this Part

Scope of this Part	Rule 58.1
How to apply to the court	Rule 58.2
Hearing of application	Rule 58.3

Scope of this Part

- 58.1 (1) This Part deals with applications to the court to review a decision by a magistrate about bail.
- (2) “**Magistrate**” means a resident magistrate or a justice of the peace; and “**the commissioner**” means the Commissioner for Corrections.

How to apply to the court

- 58.2 (1) An application under this Part must be in form 23A.
(18/9/2006) (2) Where the applicant -
- (a) is in custody; and
 - (b) is not represented by an attorney-at-law,
- the application must be lodged with the commissioner.
- (3) The commissioner must forthwith file the application at the registry.
- (4) Where the applicant is -
- (a) represented by an attorney-at-law; or
 - (b) not in custody,
- the applicant must file the application at the registry.
- (5) The registry must immediately-
- (a) send a copy of the application to the Director of Public Prosecutions;
 - (b) fix a date, time and place to hear the application; and
 - (c) give notice of such time date and place to -
 - (i) the applicant;

- (ii) the Director of Public Prosecutions; and
- (iii) if the applicant is in custody, to the commissioner.

Hearing of application

- 58.3
- (1) The application is to be heard by a judge in chambers.
 - (2) The judge may grant or refuse bail or vary the conditions.
 - (3) The applicant or, if the applicant is in custody and is not represented, the registry must serve a copy of any order on -
 - (a) the commissioner;
 - (b) the magistrate who made the decision under review.

PART 59

Proceedings by and against the Crown

Contents of this Part

Scope of this Part	Rule 59.1
Claimant's duty to give particulars	Rule 59.2

Scope of this Part

- 59.1 (1) This Part deals with claims to which the Crown is a party.
(2) In this Part “the Act” means the Crown Proceedings Act.

Claimant's duty to give particulars

- 59.2 (1) Where a claim is made in proceedings against the Crown, the claim form or particulars of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the government department and officers of state involved.
- (2) At any time during the period for filing an acknowledgment of service under rule 9.3 the defendant may request information under Part 34.
- (3) The defendant's time for filing an acknowledgment of service is then extended until 4 days after -
- (a) the defendant gives notice in writing to the claimant that it is satisfied with the information supplied; or
 - (b) the court on the application of the claimant decides that no further information is reasonably required.
- (4) The defendant's time for filing and serving a defence under rule 10.3 is extended to 28 days after the time for filing an acknowledgment of service under paragraph (3).

PART 60

Appeals to the Court

Contents of this Part

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of grounds of appeal	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8
Right of minister to be heard	Rule 60.9

Scope of this Part

- 60.1 (1) This Part deals with appeals to the court from any tribunal or person under any enactment other than an appeal by way of case stated.
(Part 61 deals with applications to the court by way of case stated.)
- (2) In this Part-
“**tribunal**” means any tribunal other than a court of law established under an enactment;
“**clerk to the tribunal**” means the clerk, secretary or other person responsible for the administration of the tribunal; and
“**decision**” means the order, determination, decision or award appealed against.
- (3) This Part takes effect subject to any provisions in the relevant enactment.

How to appeal to the court

- 60.2 (1) An appeal to the court is made by issuing a fixed date claim form in form 2 to which must be annexed the grounds of appeal.

- (2) The appellant's grounds of appeal must state -
- (a) the decision against which the appeal is made;
 - (b) the name of the tribunal or person whose decision is being appealed;
 - (c) the enactment enabling an appeal to be made to the court;
 - (d) the facts found by that tribunal; and
 - (e) the grounds of the appeal identifying -
 - (i) any finding of fact; and
 - (ii) any finding of law,
 which the claimant seeks to challenge.
- (3) The date for the first hearing must not be less than 28, nor more than 56, days after issue of the claim form.
 (The procedure relating to fixed date claims is dealt with in rules 8.1(5) and 27.2; Part 56 deals with applications to quash a decision by way of certiorari.)

Effect of appeal

- 60.3 The making of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless -
- (a) the court, or
 - (b) the tribunal or person whose decision is being appealed, so orders.

Persons on whom claim form must be served

- 60.4 The claimant must serve the claim form and grounds of appeal on -
- (a) the clerk to the tribunal, minister or other person by whom the decision appealed against was made; and
 - (b) every other party to the proceedings in which the decision was made.

Time within which claim form must be served

- 60.5 The claim form and grounds of appeal must be served within 28 days of the date on which notice of the decision was given to the claimant.

Amendment of grounds of appeal

- 60.6 (1) The appellant may amend the grounds of appeal without permission not less than 7 days before the first hearing.

- (2) Permission to amend the grounds of appeal may be given at the first hearing.
- (3) The court may not give permission to amend the grounds of appeal after the first hearing unless the appellant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.

First hearing

- 60.7
- (1) The appellant must file at the registry a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than 7 days before the first hearing.
 - (2) Where the court does not hear the appeal at the first hearing it must fix a date, time and place for the full hearing.

Hearing of appeal

- 60.8
- (1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.
 - (2) The court may receive further evidence on matters of fact.
 - (3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.
 - (4) The court may -
 - (a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed;
 - (b) make such further or other order as the case requires; or
 - (c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.
 - (6) The court is not bound to allow an appeal because of -
 - (a) a misdirection; or
 - (b) the improper admission or rejection of evidence,unless it considers that a substantial wrong or a miscarriage has been caused.

Right of minister to be heard

- 60.9
- A minister is entitled to be heard on any appeal against a decision made by that minister.

PART 61

Appeals to the Court by way of Case Stated

Contents of this Part

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom claim form must be served	Rule 61.3
Time within which claim form must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings to determine a case	Rule 61.6
Determination of case	Rule 61.7

Scope of this Part

- 61.1 (1) This Part deals with the way in which the court determines -
- (a) (i) a case stated; or
 - (ii) a question of law referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person; or
 - (b) an application for an order directing a minister, magistrate, judge of a tribunal, tribunal or other person to refer a question of law to the court by way of case stated, where under any enactment the court has power to determine such matters.
- (2) In this Part -
- “**case**” includes a special case; and
 - “**clerk to the tribunal**” means the clerk, secretary or other person responsible for the administration of the tribunal; and
 - “**enactment**” includes the Constitution ;
 - “**tribunal**” means -
 - (a) in relation to proceedings brought under the Constitution, a court other than the court, the Court of Appeal or a court martial; and

- (b) in relation to any other proceedings, any tribunal other than a court of law constituted by or under any enactment.

Application for order to state a case

- 61.2 (1) An application to the court -
- (a) for an order directing a minister, magistrate, judge of tribunal, tribunal or other person to state a case for determination by the court; or
 - (b) to refer a question of law to the court by way of case stated, is made by a fixed date claim in form 2 which must -
 - (i) state the grounds of the application;
 - (ii) identify the question of law upon which it is sought to have a case stated; and
 - (iii) set out any reasons given by the minister, magistrate, judge of tribunal, tribunal or other person for the refusal to state a case.
- (2) The registry must fix a date for a hearing of the application and endorse on the claim form the date, time and place of that hearing.
- (3) The claimant must file at the court office a copy of the proceedings to which the claim relates not less than 7 days before the date fixed for the hearing.

Persons on whom claim form must be served

- 61.3 The claimant must serve the claim form -
- (a) where the application relates to a claim brought under the Constitution on -
 - (i) the Attorney General;
 - (ii) the clerk to the tribunal; and
 - (iii) every other party to the proceedings to which the application relates; and
 - (b) in any other claim on -
 - (i) the minister; or
 - (ii) the clerk to the tribunal; or
 - (iii) other person whose decision is questioned; and
 - (iv) every other party to the proceedings to which the application relates.

Time within which claim form must be served

- 61.4 The claimant must serve the claim form within 14 days of the date on which notice of refusal to state a case was given to the claimant.

Signing and service of case

- 61.5 (1) A case stated by a tribunal must be signed by the magistrate, judge, chairman or president of the tribunal.
- (2) A case stated by any other person must be signed by that person.
- (3) The case must be served -
- (a) if it relates to a claim brought under the Constitution, on the Attorney General and on all parties to the proceedings to which the case relates; or
- (b) if it relates to other claims on all parties to the proceedings to which the case relates.

How to commence proceedings to determine a case

- 61.6 (1) Proceedings to determine a case must be commenced by issuing a fixed date claim in form 2.
- (2) The claim form may be issued by -
- (a) any party on whom a case was served under rule 61.5(3); or
- (b) where a minister, magistrate, judge of a tribunal, a tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court,
- that person or tribunal.
- (3) The claim form must have the case stated annexed.
- (4) The claim form, or a particulars of claim issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.
- (5) Such contentions may be in the form of a skeleton argument.
- (6) The registry must fix a date, time and place for the determination of the case.
- (7) The claim form must be served on the persons set out in rule 61.5(3).
- (8) It must be served within 14 days after the service of the case stated.

Determination of case

- 61.7 (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.
- (2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.
- (3) The court may draw inferences of fact from the facts stated in the case.
- (4) A minister is entitled to be heard on any case stated by that minister.

PART 62

Appeals from Registrars

Contents of this Part

Scope of this Part	Rule 62.1
Who is to hear appeal	Rule 62.2
How to appeal	Rule 62.3
Contents of Notice of Appeal	Rule 62.4
Time for filing Notice of Appeal	Rule 62.5
Action by court on receipt of notice of appeal	Rule 62.6
Service of Notice of Appeal	Rule 62.7
General powers of judge hearing appeal	Rule 62.8
Hearing of appeal	Rule 62.9
Failure of party to attend appeal	Rule 62.10
Application to set aside decision made in party's absence	Rule 62.11

Scope of this part

- 62.1 (1) This Part sets out the procedure for appeals from a decision of a registrar made otherwise than following an application under Part 11 or at a case management conference under Part 27.
- (2) In this Part -
“**appellant**” means the party who first files a notice of appeal;
“**respondent**” means any other party to the claim in which the appeal is made whether or not that party also files a notice of appeal.

Who is to hear appeal

- 62.2 An appeal against a decision of a registrar is to be heard by a single judge of the court.

How to appeal

- 62.3 An appeal is made by filing a notice of appeal in form 24 at the registry and takes effect on the day that it is received at the registry.

Contents of Notice of Appeal

- 62.4 (1) The appellant must in the notice of appeal in form 24 give details of -
(18/9/2006)
- (a) the decision or part of the decision which is being appealed identifying so far as practicable -
 - (i) any finding of fact; and
 - (ii) any finding of law,which the appellant seeks to challenge;
 - (b) the grounds of the appeal; and
 - (c) the precise form of the order the appellant seeks.
- (2) A copy of the order which is the subject of the appeal must wherever practicable be attached to the notice of appeal.
- (3) The notice of appeal must -
- (a) be signed by the appellant or the appellant's attorney-at-law;
 - (b) give the details required by rule 3.11 (2); and
 - (c) state the
 - (i) names and addresses; and
 - (ii) the attorney-at-laws and their addresses for service, of all other parties affected by the appeal.
- (4) The grounds of appeal under paragraph (1) (b) must set out-
- (a) concisely;
 - (b) under distinct heads; and
 - (c) in consecutively numbered paragraphs, the grounds on which the appellant relies without any argument or narrative.
- (5) The notice must contain a statement of truth in accordance with rule 3.12.

Time for filing Notice of Appeal

- 62.5 (1) The notice of appeal must be filed at the registry within 7 days of the date the decision appealed against was made.
- (2) The court below may extend the times set out in paragraph (1).

Action by court on receipt of notice of appeal

- 62.6 Upon the notice of appeal being filed the registry must forthwith appoint a date, time and place for the appeal and endorse the same upon the notice of appeal.

Service of Notice of Appeal

- 62.7 The notice of appeal endorsed with the date, time and place appointed to hear the appeal must be served -
- (a) on all parties to the proceedings before the registrar who may be directly affected by the appeal; and
 - (b) on any other person if the judge so directs, as soon as possible after the notice has been filed but, in any event, not later than 5 days before the date fixed for the hearing of the appeal.

General powers of the judge hearing an appeal

- 62.8 (1) In relation to an appeal the judge may exercise any power that might be exercised by the registrar whose decision is being challenged.
- (2) The judge may -
- (a) give permission for a party to amend a notice of appeal
 - (b) strike out the whole or part of a notice to appeal;
 - (c) impose conditions upon which an appeal may be brought.
 - (d) affirm, set aside or vary any decision made or given by the registrar;
 - (e) give any decision which, in his or her opinion, ought to have been made by the registrar;
 - (f) remit the matter for determination by the registrar;
 - (g) make an order for the costs of the appeal and the proceedings before the registrar.
- (3) The judge may exercise his or her powers in relation to the whole or any part of a decision of a registrar.

Hearing of appeals

- 62.9 (1) An appeal is by way of re-hearing.
- (2) At the hearing of the appeal the appellant may not rely on a matter not contained in the notice of appeal unless -

- (a) it was relied on by the registrar; or
 - (b) the judge permits.
- (3) However the judge -
- (a) is not confined to the grounds set out in the notice of appeal or counter-notice, but
 - (b) may not make a decision on any ground not set out in the notice of appeal unless all parties to the appeal have had sufficient opportunity to contest such ground.
- (4) In considering whether to receive evidence which was not before the registrar, the judge must consider whether the evidence should have been put before the registrar.
- (5) The judge may draw any inference of fact which he or she considers is justified on the evidence.

Failure of a party to attend the appeal

- 62.10 (1) Where neither party appears at the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these Rules, the judge may strike out the appeal and any counter appeal.
- (2) Where only one party appears, the judge may proceed in the absence of the other if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

Application to set aside decision made in party's absence

- 62.11 (1) A party who was not present at an appeal at which a decision was made or the appeal struck out in the absence of that party may apply to a judge to set aside that order.
- (2) The application must be made within 14 days after the date on which the order was served on the applicant.
- (3) The application to set aside the order must be supported by evidence on affidavit showing -
- (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other decision might have been made.

PART 63

Change of Attorneys-At-Law

Contents of this Part

Scope of this Part	Rule 63.1
Change of attorney-at-law	Rule 63.2
Notice of appointment of attorney-at-law	Rule 63.3
Party acting in person	Rule 63.4
Application by another party to remove attorney-at-law from record	Rule 63.5
Application by attorney-at-law to be removed from record	Rule 63.6
Time when notice or order takes effect	Rule 63.7

Scope of this Part

- 63.1 This Part deals with the procedure where -
- (a) there is a change of attorney-at-law;
 - (b) an attorney-at-law acts in the place of a party in person; or
 - (c) a party who has previously acted by an attorney-at-law acts in person.

Change of attorney-at-law

- 63.2 When a party changes its attorney-at-law, the new attorney-at-law must
- (a) file a notice of change which states the attorney-at-law's business name, address, telephone number and FAX number (if any);
 - (b) serve a copy of the notice on every other party and the former attorney-at-law; and.
 - (c) file a certificate of service.

Notice of appointment of attorney-at-law

- 63.3 Where a person who has previously acted in person instructs an attorney-at-law, that attorney-at-law must -
- (a) file notice of acting at the registry which states the attorney-at-law's business name, address, telephone number and FAX number (if any);
 - (b) serve a copy of the notice on every other party; and
 - (c) file an affidavit of service.

Party acting in person

- 63.4 (17/2/2003) Where a party who has previously been represented by an attorney-at-law decides to act in person, that party must -
- (a) file notice of acting in person at the registry which states that party's residential or business address, an address for service within the jurisdiction, telephone number and FAX number (if any);
 - (b) serve a copy of the notice on every other party and the former attorney-at-law; and
 - (c) file an affidavit of service.

Application by another party to remove name of attorney-at-law from the record

- 63.5 (1) Where -
- (a) an attorney-at-law on record for a party has -
 - (i) died;
 - (ii) become bankrupt;
 - (iii) failed to take out a practising certificate;
 - (iv) been removed from the roll; or
 - (v) cannot be found; and
 - (b) notice of a new attorney-at-law under rule 63.2 or of the party acting in person under rule 63.4 has not been received, any other party may apply to the court for an order declaring that the attorney-at-law in question has ceased to act.
- (2) An application under this Part must be supported by evidence on affidavit and must be served on the attorney-at-law (if practicable) and personally on the client.

- (3) Any order made must be served by the applicant on the attorney-at-law or former attorney-at-law (if practicable) and personally on the client.
- (4) The applicant must file an affidavit of service of the order.

Application by attorney-at-law to be removed from the record

- 63.6
- (1) An attorney-at-law who wishes to be removed from the record as acting for a party may apply to the court for an order that he or she be removed from the record.
 - (2) The application must be on notice to the client or former client and to all other parties.
 - (3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.
 - (4) Any order made must be served by the applicant on the other parties' attorneys-at-law and on the former client.
 - (5) The applicant must file an affidavit of service of the order.
- (18/9/2006)

Time when notice or order takes effect

- 63.7
- No notice under rule 63.2, 3 or 4, or order under rule 63.5 or 6 takes effect until all relevant persons have been served.

PART 64

Costs - General

Contents of this Part

Scope of this Part	Rule 64.1
Definitions and application	Rule 64.2
Orders about costs	Rule 64.3
Costs where there is an appeal	Rule 64.4
Entitlement to recover costs	Rule 64.5
Successful party generally entitled to costs	Rule 64.6
Two or more parties having same interest	Rule 64.7
Duty of attorney-at-law to notify client	Rule 64.8
Costs against person who is not a party	Rule 64.9
Costs of trustee or personal representative	Rule 64.10
Costs where money is payable by or to a minor or patient	Rule 64.11
Special costs certificates	Rule 64.12
Wasted costs orders	Rule 64.13
Wasted costs orders - procedure	Rule 64.14

Scope of this Part

- 64.1 This Part contains general rules about costs and the entitlement to costs. Part 65 deals with the quantification of such costs.

Definitions and application

- 64.2 (1) In this Part and Part 65, unless the context otherwise requires -
“**basic costs**” has the meaning placed on it by rule 65.10;
“**certificate of costs**” means a certificate signed by the registrar stating the amount of costs, including General Consumption Tax, recoverable by the receiving party who elects to receive basic costs under rule 65.10 or has costs taxed under rule 65.13;

“costs” include an attorney-at-law’s charges and disbursements, fixed costs, basic costs, summarily assessed costs and taxed costs; “fixed costs” has the meaning placed on it by rule 65.4, 5 and 6; “fund” includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in his capacity as such;

“paying party” means a party liable to pay costs;

“receiving party” means a party entitled to be paid costs;

“summary assessment” means the procedure by which the court, when making an order about costs, orders payment of a sum of money under rule 65.8 or 65.9 instead of fixed costs or “taxation”; and

“taxation” means the procedure by which the amount of costs is decided by the registrar in accordance with Section 2 of Part 65

(2) Where costs of-

(a) arbitration proceedings; or

(b) proceedings before a tribunal or other statutory body; or

(c) an attorney-at-law to his client,

are to be taxed they must be taxed in accordance with Section 2 of Part 65.

(3) Costs authorised to be recovered under a certificate of costs signed by the registrar may be enforced in the same way as a judgment or order for the payment of a sum of money.

(Rule 45.2 sets out the ways in which money judgments may be enforced.)

Orders about costs

64.3 The court’s powers to make orders about costs include power to make orders requiring any person to pay the costs of another person arising out of or related to all or any part of any proceedings.

Costs where there is an appeal

64.4 The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

Entitlement to recover costs

64.5 (1) A person may not recover the costs of proceedings from any other

- party or person except by virtue of -
- (a) an order of the court;
 - (b) a provision of these Rules; or
 - (c) an agreement between the parties.
- (2) Where the court makes an order which does not mention costs no party is entitled to costs in relation to that order except the costs of -
- (a) a case management conference; or
 - (b) a pre-trial review,
- the costs of which are costs in the claim (unless the court makes some other order).
- (Part 27 deals with case management conferences and Part 38 with pre-trial reviews.)

Successful party generally entitled to costs

- 64.6 (1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
(Rule 65.8(3)(a) contains special rules where a separate application is made which could have been made at a case management conference or pre-trial review.)
- (2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.
- (3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.
- (4) In particular it must have regard to -
- (a) the conduct of the parties both before and during the proceedings;
 - (b) whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;
 - (c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 and 36);
 - (d) whether it was reasonable for a party -
 - (i) to pursue a particular allegation; and/or
 - (ii) to raise a particular issue;
 - (e) the manner in which a party has pursued -
 - (i) that party's case;
 - (ii) a particular allegation; or
 - (iii) a particular issue;

- (f) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his or her claim; and
- (g) whether the claimant gave reasonable notice of intention to issue a claim.

(Rule 65.8 sets out the way in which the court may deal with the costs of procedural hearings other than a case management conference or pre-trial review.)

- (5) The orders which the court may make under this rule include orders that a party must pay -
 - (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings;
 - (g) costs limited to basic costs in accordance with rule 65.10; and
 - (h) interest on costs from or until a certain date, including a date before judgment.
- (6) Where the court would otherwise consider making an order under paragraphs (5)(c) to (f), it must instead, if practicable, make an order under paragraph (5)(a) or (b).
- (7) Where the court has ordered a party to pay costs, it may make an interim order requiring the paying party to pay a fixed sum on account by a date stated in the order before the costs are taxed.
- (8) Where a party entitled to costs is also liable to pay costs the registrar may tax the costs which that party is liable to pay and either -
 - (a) set off the amount taxed against the amount the party is entitled to be paid and direct that party to pay any balance; or
 - (b) delay the issue of a certificate for the costs to which the party is entitled until the amount which that party is liable to pay is paid.

Two or more parties having the same interest

- 64.7 Where two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

Duty of attorney-at-law to notify client

- 64.8 Where -
- (a) the court makes a costs order against a legally represented party; and
 - (b) the party is not present when the order is made, that party's attorney-at-law must notify his or her client in writing of the costs order no later than 7 days after the attorney receives notice of the order.

Costs against person who is not a party

- 64.9 (1) This rule applies where -
- (a) an application is made for; or
 - (b) the court is considering whether to make, an order that a person who is not a party to the proceedings nor the attorney-at-law to a party should pay the costs of some other person.
- (2) Any application by a party must be on notice to the person against whom the costs order is sought and must be supported by evidence on affidavit.
- (3) If the court is considering making an order against a person it must give that person notice of the fact that it is minded to make such an order.
- (4) A notice under paragraph (2) or (3) must state -
- (a) the grounds of the application or on which the court is minded to make the order; and
 - (b) the date, time and place at which that person may attend to show cause why the order should not be made.
- (5) The -
- (a) registry, in the case of paragraph (3); or
 - (b) party seeking the order under paragraph (2),
- must serve the notice on the person against whom the costs order is sought and all parties to the proceedings not less than 14 days before the date fixed for hearing the application.

Costs of trustee or personal representative

- 64.10 (1) This rule applies where a person is or has been a party to any proceedings in the capacity of trustee or personal representative.
- (2) The general rule is that where the trustee or personal representative

is entitled to be paid the costs of the proceedings out of any fund held by trustee or personal representative in that capacity, those costs shall be assessed on the basis set out in rules 65.17(1) and (2).

- (3) The court may order otherwise if a trustee or personal representative has acted for a benefit other than that of the fund.

Costs where money is payable by or to a minor or patient

- 64.11 (1) This rule applies to any proceedings where a party is a minor or patient and -
- (a) money is ordered or agreed to be paid to, or for the benefit of, that party; or
 - (b) money is ordered to be paid by or on behalf of the minor or patient.
- (“Minor and “patient” are defined in rule 2.4.)
- (2) The general rule is that -
- (a) the court must order a taxation of the costs payable by any party who is a minor or patient to his attorney-at-law; and
 - (b) on a taxation under paragraph (a), the registrar must also tax any costs payable to that party in the proceedings, unless the registrar has issued a default costs certificate in relation to those costs under rule 65.21.
- (3) Where -
- (a) a claimant is a minor or patient; and
 - (b) a taxation has taken place under paragraph (2)(a),
- the only amount payable by the child or patient to his or her attorney-at-law is the amount which the registrar certifies as payable.
- (This rule applies to a counterclaim by or on behalf of minor or patient by virtue of rule 18.2(3).)

Special costs certificates

- 64.12 (1) When making an order as to the costs of an application in chambers the court may grant a “special costs certificate”.
- (2) In considering whether to grant a special costs certificate the court must take into account -
- (a) whether the application was or was reasonably expected to be contested;

- (b) the complexity of the legal issues involved in the application;
and
 - (c) whether the application reasonably required the citation of authorities and skeleton arguments.
- (3) The court, having regard to the matters set out in rule 65.17(3), may direct that the costs of the attendance of more than -
- (a) one attorney-at-law on the hearing of an application; or
 - (b) two attorneys-at-law at the trial,
- be allowed.
- (The grant of a “special costs certificate” entitles the receiving party to a higher level of basic costs under Appendix B, Table 2 to this Part.)

Wasted costs orders

- 64.13 (1) In any proceedings the court may by order -
- (a) disallow as against the attorney-at-law’s client; and/or
 - (b) direct the attorney-at-law to pay,
- the whole or part of any wasted costs.
- (2) “**Wasted costs**” means any costs incurred by a party -
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of such attorney-at-law; or
 - (b) which, in the light of any act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.

Wasted costs orders - procedure

- 64.14 (1) This rule applies where -
- (a) an application is made for; or
 - (b) the court is considering whether to make without an application, an order under rule 64.13(1).
- (2) Any application by a party must -
- (a) be on notice to the attorney-at-law against whom the wasted costs order is sought; and
 - (b) be supported by evidence on affidavit setting out the grounds on which the application is made.
- (3) If the court is considering making such an order without an application it must give the attorney-at-law notice of the fact that it is minded to make such an order.

- (4) A notice under paragraph (3) must state the grounds on which the court is minded to make the order.
- (5) A notice under paragraph (2) or (3) must state a date, time and place at which the attorney-at-law may attend to show cause why a wasted costs order should not be made.
- (6) 7 days notice of the hearing must be given to the attorney-at-law against whom the wasted costs order is sought and all parties to the proceedings.

PART 65

Costs - Quantification

Contents of this Part

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Scope of this Part

- 65.1 This Part deals with the ways in which any costs awarded by the court are quantified.

Section 1

Quantification - General

Ways in which costs are quantified

- 65.2 Costs of proceedings under these Rules are to be quantified as follows -
- (a) where rules 65.4, 65.5 and 65.6 (fixed costs) apply, in accordance with the provisions of those rules.
 - (b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, the costs are to be taxed in accordance with rule 65.13 unless -
 - (i) those costs have been summarily assessed under rule 65.8 or 65.9; or
 - (ii) the receiving party has elected to receive basic costs under rule 65.10.

Fixed costs

- 65.3 Rules 65.4, 65.5 and 65.6 deal with fixed costs.

When defendant only liable for fixed commencement costs

- 65.4 (1) Where -
- (a) the only claim is for a specified sum of money; and
 - (b) the defendant pays to the claimant the money claimed within 14 days after service of particulars of claim on him, together with the fixed commencement costs stated in the claim form,
- the defendant is not liable for any further costs unless the court orders otherwise.
- (2) Where -
- (a) the claimant gives notice of acceptance of a payment into court in satisfaction of the whole claim;
 - (b) the only claim is for a specified sum of money; and
 - (c) the defendant made the payment into court within 14 days after service of the particulars of claim on him, together with the fixed commencement costs stated in the claim form,
- the defendant is not liable for any further costs unless the court orders otherwise.
- (3) The fixed commencement costs are set out in Table 1 of Appendix A to this Part.

Costs on entry of judgment

- 65.5 Where -
- (a) the claimant has claimed fixed commencement costs under rule 65.4;
- and
- (b) judgment is entered in the circumstances specified in Table 2 of Appendix A to this Part,
- the amount to be included in the judgment in respect of the claimant's attorney-at-law's costs is the aggregate of -
- (i) the fixed commencement costs; and
 - (ii) the relevant amount shown in Table 2 in Appendix A to this Part.

Costs of enforcement proceedings

- 65.6 Unless the court has
- (a) summarily assessed the costs under rule 65.9; or
 - (b) directed that the costs be taxed,

the costs of enforcement proceedings are to be determined in accordance with Table 3 of Appendix A to this Part.

Procedure for quantifying costs

- 65.7 (1) Where the court orders a party to pay costs (other than fixed costs) to another party it may either -
- (a) make a summary assessment of the costs under rule 65.9;
 - or
 - (b) order that the costs be taxed by the registrar, unless any rule, practice direction or enactment provides otherwise.
- (2) On making an order for costs to be taxed, the court may order that the paying party pay a specified sum on account of costs by such date as the court may order.

Assessed costs - procedural applications and enforcement

- 65.8 (1) On determining any application except at a case management conference, pre-trial review or the trial, the court must decide which party, if any, should pay the costs of that application, and may
- (a) summarily assess the amount of such costs in accordance with rule 65.9; and
 - (b) direct when such costs are to be paid.
- (2) In deciding what party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.
- (3) The court must however take account of all the circumstances including the factors set out in rule 64.6(4) but where the application is -
- (a) one that could reasonably have been made at a case management conference or pre-trial review;
 - (b) to extend the time specified for doing any act under these Rules or an order or direction of the court;
 - (c) to amend a statement of case; or
 - (d) for relief under rule 26.8 (relief from sanctions),
- the court must order the applicant to pay the costs of the respondent unless there are special circumstances.
(Rule 27.12(5)(b) makes special provision for the costs of a listing appointment.)

Summary Assessment of costs

- 65.9 (1) In summarily assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing or otherwise dealing with the matter in respect of which costs are to be assessed and must allow such sum as it considers fair and reasonable.
- (2) A party seeking assessed costs must supply to the court and to all other parties a brief statement showing -
- (a) the disbursements incurred; and
 - (b) the basis on which that party's attorney-at-law's costs are calculated.
- (3) In summarily assessing the costs the court may take into account the basic costs set out in Appendix B to this Part.

Basic Costs

- 65.10 (1) Where a court has made an order for costs in favour of a party and has not summarily assessed those costs, the receiving party may, instead of seeking a taxation of those costs, elect to recover basic costs in accordance with this rule.
- (2) A receiving party who elects to recover basic costs may file a certificate of costs certifying how much costs are payable in accordance with Appendix B to this Part.
- (3) The certificate may include General Consumption Tax where recoverable.
- (4) The registrar, if satisfied that the certificate includes only such items as are appropriate must sign the certificate.
- (5) If the registrar is not satisfied in accordance with paragraph (4), the registrar must direct that the receiving party either -
- (a) attend before the registrar; or
 - (b) commence taxation proceedings in accordance with rule 65.18
- (6) The paying party may, within 14 days of service of the certificate of costs under this rule, apply to the registrar to amend the certificate stating the grounds for such amendment.
- (7) The registrar may direct that -
- (a) receiving and paying parties attend before the registrar in which case the certificate of costs may not be enforced until confirmed or amended by the registrar; or

- (b) the receiving party commence taxation proceedings, in which case the registrar must revoke the certificate of costs.

Attendance of more than two attorneys-at-law at trial

- 65.11 On assessing the amount of basic costs under rule 65.10 or taxing a bill of costs under rule 65.13 no fee may be allowed for the attendance of more than -
- (i) one attorney-at-law on the hearing of an application; or
 - (ii) two attorneys-at-law at the trial,
- unless -
- (a) the court has so directed under rule 64.12(3) when making the order for costs ; or
 - (b) the registrar is satisfied that it would be reasonable, having regard to the matters set out in rule 65.17, to allow such fee.

Time for complying with an order for costs

- 65.12 A party must comply with an order for the payment of costs within 14 days of -
- (a) the date of the judgment or order if it states the amount of those costs; or
 - (b) if the amount of those costs (or part of them) is determined in accordance with rule 65.10 (basic costs) or rule 65.13 (taxation - general), the date of the certificate which states the amount.

Taxation - general

- 65.13 (1) This rule applies where an order for costs has been made and -
- (a) such costs have not been summarily assessed under rule 65.8 or 9; and
 - (b) the receiving party's attorney-at-law has not elected to receive basic costs under rule 65.10.
- (2) Such costs must be taxed in accordance with Section 2 of this Part.

Section 2

Taxation Procedure

Scope of this Section

- 65.14 (1) This Section deals with -
- (a) the procedure by which a bill of costs is taxed;
 - (b) the procedure for appealing the taxation of a bill of costs; and
 - (c) the issue of costs certificates
- (2) On a taxation of an attorney-at-law's costs payable by his or her client the expression -
- “receiving party” means the attorney-at-law; and
- “paying party” means the client.

Time when taxation may be carried out

- 65.15 The general rule is that the costs of any proceedings or any part of the proceedings are not to be taxed until the conclusion of the proceedings but the court may order them to be taxed immediately.

No stay of taxation where there is an appeal

- 65.16 Taxation is not stayed pending an appeal unless the court or the Court of Appeal so orders.

Basis of Quantification

- 65.17 (1) Where the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount -
- (a) that the court deems to be reasonable; and
 - (b) which appears to the court to be fair both to the person paying and the person receiving such costs.
- (2) Where the costs to be taxed are claimed by an attorney-at-law from his or her client, these costs are to be presumed -
- (a) to have been reasonably incurred if they were incurred with the express or implied consent of the client;
 - (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client; and
 - (c) to have been unreasonably incurred if -

- (i) they are of an unusual nature or amount; and
 - (ii) the attorney-at-law did not inform his or her client that the client might not recover them all from the other party.
- (3) In deciding what would be reasonable the court must take into account all the circumstances, including -
- (a) any orders that have already been made;
 - (b) the conduct of the parties before as well as during the proceedings;
 - (c) the importance of the matter to the parties;
 - (d) the time reasonably spent on the matter;
 - (e) whether the cause or matter or the particular item is appropriate for a senior attorney-at-law or an attorney-at-law of specialised knowledge;
 - (f) the degree of responsibility accepted by the attorney-at-law;
 - (g) the care, speed and economy with which the matter was prepared;
 - (h) the novelty, weight and complexity of the matter; and
 - (i) in the case of costs charged by an attorney-at-law to his or her client -
 - (i) subject to section 21 of the Legal Profession Act, any agreement that may have been made as to the basis of charging;
 - (ii) any agreement about the seniority of attorney-at-law who should carry out the work;
 - (iii) whether the attorney-at-law advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the matter.
- (4) The registrar on taxation may not allow an attorney-at-law less than the rates set out in Appendix B.
- (5) In this rule the expression "court" includes a registrar.

Commencement of taxation proceedings

- 65.18 (1) Taxation proceedings are commenced by the receiving party -
- (a) filing the bill of costs at the registry; and
 - (b) serving a copy of the bill on the paying party.

- (2) The bill of costs must be filed and served not more than three months after the date of the order or event entitling the receiving party to costs.
- (3) A bill of costs need not be in any particular form but must contain a general description of the work done in relation to which the costs are claimed and must -
 - (a) contain sufficient detail and information to justify the amount being claimed by the receiving party;
 - (b) indicate the total amount being claimed by the receiving party; and
 - (c) in the event that it contains a claim for General Consumption Tax, indicate the GCT reference number of the receiving party.
- (4) A bill of costs may -
 - (a) indicate the time spent by the receiving party's attorney(s)-at-law on each item, or category of work and the hourly rate claimed; or
 - (b) indicate that the total sum claimed in the bill of costs or any part of the bill is a stated multiple of a sum indicated in Appendix B to this Part on the basis of one or more of the factors set out in rule 65.17(3).
- (5) If a bill of costs contains more detail than is necessary, the registrar may disallow all or part of the costs of taxation that might otherwise be awarded to the receiving party.
- (6) The bill of costs served on the paying party or parties must contain or have attached to it a notice notifying the paying party of the need to serve points of dispute under rule 65.20 and the consequences of not doing so.

Consequences of failure to commence taxation proceedings in time

- 65.19
- (1) Where the receiving party fails to commence taxation proceedings in accordance with rule 65.18(2) the paying party may apply for an order requiring the receiving party to commence taxation proceedings within such time as the registrar may specify.
 - (2) On an application under paragraph (1), the registrar may direct that, unless the receiving party commences taxation proceedings by a date specified by the registrar, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

- (3) Whether or not an order is made under paragraph (2), the court may -
- (a) disallow all or part of statutory interest on the costs in respect of any period of delay;
 - (b) disallow all or part of the costs of taxation that might otherwise be awarded to the receiving party.

Points of dispute and consequence of not serving

- 65.20 (1) The paying party and any other party to the taxation proceedings may dispute any item in the bill of costs by filing points of dispute and serving a copy on -
- (a) the receiving party; and
 - (b) every other party to the taxation proceedings.
- (2) Points of dispute must -
- (a) identify each item in the bill of costs which is disputed;
 - (b) state the reasons for the objection; and
 - (c) state the amount (if any) which the party serving the points of dispute considers should be allowed on taxation in respect of that item.
- (3) The period for filing and serving points of dispute is 28 days after the date of service of the copy bill in accordance with paragraph (1).
- (4) If a party files and serves points of dispute after the period set out in paragraph (3), that party may not be heard further in the taxation proceedings unless the registrar gives permission.
- (5) The receiving party may file a request for a default costs certificate if -
- (a) the period set out in paragraph (3) for serving points of dispute has expired; and
 - (b) no points of dispute have been served on the receiving party.
- (6) If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the registrar may not issue the default costs certificate.

How to obtain default costs certificate

- 65.21 (1) A receiving party who is permitted by rule 65.20 to obtain a default costs certificate does so by filing -
- (a) an affidavit proving -
 - (i) service of the copy bill of costs; and
 - (ii) that no points of dispute have been received by

- the receiving party; and
- (b) a draft default costs certificate in form 26 for signature by the registrar.
- (2) The registrar must then sign the default costs certificate.
- (3) A default costs certificate will include an order to pay the costs to which it relates.

Setting aside default costs certificate

- 65.22
- (1) The paying party may apply to set aside the default costs certificate.
 - (2) The registrar must set aside a default costs certificate if the receiving party was not entitled to it.

Taxation hearing

- 65.23
- (1) Where points of dispute are served, the receiving party may apply for a taxation hearing by filing a notice of taxation.
 - (2) The receiving party must do so within three months of the service of the points of dispute.
 - (3) Where the receiving party fails to do so -
 - (a) the paying party may apply for an order that unless the receiving party applies for a taxation hearing by a specified date the registrar may disallow all or part of the costs which the receiving party would otherwise be entitled to receive; and
 - (b) in any event the registrar may disallow all or part of -
 - (i) the costs of taxation; and
 - (ii) any interest that the receiving party would otherwise have been entitled to receive on the costs.
 - (4) The receiving party must serve notice of the taxation hearing on each paying party who has served points of dispute under rule 65.21 not less than 14 days before the taxation hearing.
 - (5) No person other than -
 - (a) the receiving party; and
 - (b) a party who has served points of dispute under rule 65.21, may be heard at the taxation hearing unless the registrar gives permission.
 - (6) Only items specified in the points of dispute may be raised at the taxation hearing unless the registrar gives permission.

Interim costs certificates

- 65.24 (1) The registrar may at any time after the receiving party has applied for a taxation hearing -
- (a) issue an interim costs certificate in form 27 for such sum as the registrar considers appropriate;
 - (b) amend or cancel an interim costs certificate.
- (2) An interim costs certificate will include an order to pay the sum certified in the certificate.
- (3) The registrar may order the sum certified in the certificate to be paid into court.

Final costs certificates

- 65.25 (1) The receiving party must file a final costs certificate in form 28 at the time of or within 14 days after the end of the taxation hearing.
- (2) If the final costs certificate is in order, the registrar must sign and issue it to the receiving party.
- (3) Paragraph (2) is subject to any order made by the court that a certificate is not to be issued until other costs have been paid.
- (4) A final costs certificate will include an order to pay the costs to which it relates.

Appeals against taxation

Right to appeal

- 65.26 The -
- (a) receiving party; and
 - (b) any paying party who has served points of dispute,
- may appeal against a decision of a registrar in the taxation proceedings.

Court to hear appeal

- 65.27 (1) An appeal against a decision of a registrar on taxation is to a judge of the court.
- (2) The Chief Justice may from time to time nominate a judge of the court to hear appeals against taxation.

Appeal procedure

- 65.28 (1) The appellant must file an appeal notice in form 29 within 14 days after the date of the decision the appellant wishes to appeal against.
- (2) The appeal notice must -
- (a) specify each item in the taxation which is appealed; and
 - (b) state the grounds of the appeal in respect of each item
- (2) On receipt of the appeal notice, the registry must fix a date, time and place for the hearing of the appeal.
- (3) The appellant must forthwith serve a copy of the appeal notice showing the date, time and place of the hearing of the appeal on all other parties to the taxation.
- (4) At least 14 days notice of the hearing of the appeal must be given

Powers of the court on appeal

- 65.29 On an appeal from a registrar the judge will -
- (a) re-hear the proceedings which gave rise to the decision appealed against so far as is necessary to deal with the items specified in the appeal notice; and
 - (b) make any order or give any directions as he or she considers appropriate.

APPENDIX A

TABLE 1
Fixed costs on commencement of a claim

(1)	Where the claim form is served by any method other than personal service -	\$8,000
(2)	Where the claim form is served personally and there is only one defendant -	\$10,000
(3)	Where there is more than one defendant, for each additional defendant served at a different address -	\$2,000

TABLE 2
Fixed costs on entry of judgment

(1)	Where judgment in default of an acknowledgment of service is entered under rule 12.4 on claim for money only	\$12,000
(2)	Where judgment in default of a defence is entered under rule 12 on claim for money only	\$14,000
(3)	Where judgment is entered under rule 14.6 (judgment on admission of whole of claim for specified sum), rule 14.5 (judgment on admission of part of claim for money only) and claimant accepts the defendant's proposal as to the manner of payment, or rule 14.10 (requests for time to pay - procedure where time and rate agreed)	\$18,000
(4)	Where judgment is entered under rule 14.11 (requests for time to pay - procedure where time and rate not agreed) and court decides the date or times of payment	\$18,000

TABLE 3
Fixed costs of enforcement proceedings

(1)	For filing a request for the issue of a writ of execution -	\$4,000
(2)	For each attendance at a hearing of - (i) an oral examination; (i) an application to suspend a writ of execution; or (ii) an application for time to pay where the debt is admitted	\$8,000
(3)	For the costs of the judgment creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under rule 50.15 -	\$5,000
(4)	For the costs of the judgment creditor where allowed in an application for a charging order	\$8,000
(5)	In addition, for the personal service of any application requiring such service	\$2,000

Appendix B

TABLE 1
Table of Basic costs

Basic costs for claim from issue of proceedings to:

(1)	entry of final judgment after uncontested assessment of damages under Part 14	\$40,000
(2)	case management conference	\$40,000
(3)	entry of final judgment in contested assessment of damages to end of first day plus for each additional day's hearing	\$52,000 \$24,000
(4)	entry of final judgment in contested assessment of damages - (two attorneys-at-law) to end of first day plus for each additional day's hearing	\$76,000 \$48,000
(5)	entry of final judgment after trial to end of first day plus for each additional day's hearing.	\$64,000 \$24,000
(6)	entry of final judgment after trial - (two attorneys-at-law) to end of first day plus for each additional day's hearing .	\$94,000 \$48,000

TABLE 2
Additional fees to be added to the fees in Table 1

(1)	For appearance in open court where trial adjourned without hearing	\$12,000
(2)	For appearance in chambers where application adjourned without hearing	\$4,000
(3)	For attendance at pre-trial review	\$24,000
(4)	For attendance at hearing in chambers, less than two hours no special costs certificate	\$8,000
(5)	For attendance at hearing in chambers less than two hours if special costs certificate more than two hours in any other case	\$16,000
(6)	For attendance in chambers more than two hours special costs certificate	\$24,000
(7)	For preparing costs certificate	\$4,000
(8)	Searches in the Registry, at the Island Record Office, National Land Agency or any other public office	\$1,000 per hour
(9)	Making copies	\$10 per page

APPENDIX C

Rates to be allowed to attorneys-at-law on taxation

- | | | |
|-----|---|---------------------|
| (1) | Preparing bill of costs | \$5,000 to \$15,000 |
| (2) | Attendance at taxation | \$5,000 to \$15,000 |
| (3) | All other work reasonably required to be done by an attorney-at-law | \$4,000 per hour |

NOTE: The rates in these appendices have been calculated on the basis of an hourly rate of \$4,000.

PART 66

Mortgage Claims

Contents of this Part

Scope of this Part	Rule 66.1
Mortgage claim to be by fixed date claim	Rule 66.2
Evidence at first hearing	Rule 66.3
Claim for possession or payment of mortgage debt	Rule 66.4

Scope of this Part

- 66.1 (1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief -
- (a) payment of moneys secured by a mortgage;
 - (b) sale of a mortgaged property;
 - (c) foreclosure;
 - (d) possession of a mortgaged property;
 - (e) redemption of a mortgage;
 - (f) release from the mortgage; and
 - (g) delivery of possession by the mortgagor,
- which are referred to in this part as “**mortgage claims**”.
- (2) In this part -
- “**mortgage**” includes a legal or equitable mortgage and a legal or equitable charge;
 - “**mortgagor**” means the person who has granted a mortgage of the mortgaged property; and
 - “**mortgagee**” means the person to whom the mortgage was granted.
- (3) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

Mortgage claim to be by fixed date claim

- 66.2 (1) A mortgage claim is made by issuing a fixed date claim in form 2.
 (2) Notice of the claim must be given to all other mortgagees of the land.
 (The procedure relating to fixed date claims is dealt with in rules 8.1 and 27.2.)

Evidence at first hearing

- 66.3 A claimant who seeks final judgment at the first hearing must -
- (a) file evidence on affidavit in support of the claim; and
 - (b) serve -
 - (i) a copy of the affidavits; and
 - (ii) a notice stating what relief is sought,
 with the claim form; and
 - (c) file an affidavit of service of the claim form and of the affidavits not less than 7 days before the first hearing.

Claim for possession or payment of mortgage debt

- 66.4 (1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form evidence by affidavit -
- (a) exhibiting a copy of the original mortgage;
 - (b) exhibiting a copy of any other document which sets out the terms of the mortgage;
 - (c) giving particulars of -
 - (i) the amount of the advance;
 - (ii) the interest payable under the mortgage;
 - (iii) the amount of any periodic payments required to be made stating whether or not such payments include interest;
 - (iv) the amount of repayments that have been made;
 - (v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit;
 - (vi) the amount remaining due under the mortgage; and
 - (vii) where the claim includes a claim for interest to judgment the daily rate at which such interest accrues; and

- (d) where the claimant seeks possession of the mortgaged property -
 - (i) stating the circumstances under which the right to possession arises; and
 - (ii) giving details of any person other than the defendant and the defendant's family who to the claimant's knowledge is in occupation of the mortgaged property.
- (2) Where the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of a notice when and how that notice was served.

PART 67

Administration Claims

Contents of this Part

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Scope of this Part

- 67.1 (1) This Part deals with -
- (a) claims for -
 - (i) the administration of the estate of a deceased person; and
 - (ii) the execution of a trustunder the direction of the court, referred to as “**administration claims**”; and
 - (b) claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.
- (2) Such claims must be brought by a fixed date claim in form 2.

Parties

- 67.2 (1) An administration claim or a claim under rule 67.4 may be brought by -
- (a) any executor or administrator of the relevant estate;
 - (b) any trustee of the relevant trust; or
 - (c) any person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust.

- (2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.
- (3) The general rule is that the claimant need not join any person having a beneficial interest under the estate or trust as a defendant.
- (4) However -
 - (a) the claimant may make any such person a defendant; and
 - (b) the court may direct that any such person be made defendant.

Claims by third parties

- 67.3 (1) This rule applies where -
- (a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a deceased person; and
 - (b) a person not a party to the claim makes a claim against the estate.
- (2) No person other than the executors or administrators may appear in proceedings relating to that claim unless the court otherwise directs.

Determination of questions without administration claim

- 67.4 (1) An executor, administrator or trustee may issue a claim for -
- (a) the determination of any question; or
 - (b) any relief,
- without bringing an administration claim.
- (2) The “**determination of any question**” includes -
- (a) any question arising in the administration of the estate of a deceased person;
 - (b) any question arising in the execution of, or under, a trust;
 - (c) any question as to the composition of any class of persons having a claim against -
 - (i) the estate of a deceased person;
 - (ii) a beneficial interest in the estate of a deceased person; or
 - (iii) any property subject to a trust; and
 - (d) any question as to the rights or interests of a person

- claiming to be -
- (i) a creditor of the estate of a deceased person;
 - (ii) entitled under a will or on the intestacy of a deceased person; or
 - (iii) beneficially entitled under a trust.
- (3) “**Any relief**” includes an order -
- (a) requiring an executor, administrator or trustee to furnish and verify accounts;
 - (b) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee;
 - (c) directing a person to do or abstain from doing a particular act in the capacity as executor, administrator or trustee;
 - (d) approving any sale, purchase, compromise or other transaction by a person in the capacity as executor, administrator or trustee; or
 - (e) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust, which the court could order to be done if the estate or trust were being administered or executed under the direction of the court.

Judgments and orders in administration claims

- 67.5 (1) The court need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.
- (2) Where an administration claim is brought by -
- (a) a creditor of the estate of a deceased person;
 - (b) a person claiming to be entitled under the will or the intestacy of a deceased person; or
 - (c) a person claiming to be beneficially entitled under a trust, and the claimant alleges that no, or no sufficient, accounts have been furnished by the executors, administrator or trustees, the court may -
 - (i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant; or
 - (ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an

order for the administration of the estate and include an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed without the court's permission.

Conduct of sale of trust property

67.6 Where in an administration claim an order is made for the sale of any property vested in executors, administrators or trustees they are to have conduct of the sale unless the court otherwise directs.

PART 68

Probate

Section 1

NON-CONTENTIOUS PROBATE RULES

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Section 1

NON-CONTENTIOUS PROBATE RULES

Scope of this Section

- 68.1 (1) This Section sets out the procedure for -
- (a) obtaining -
 - (i) probate of the will; and
 - (ii) letters of administration of the estate,
 of a deceased person where there is no dispute as to the right of the applicant to obtain such a grant;
 - (b) lodging a caution against the grant of probate or administration and warning the cautioner; and
 - (c) issuing citations.
- (2) Section 2 of this Part deals with contentious probate claims.

Interpretation

- 68.2 In this Section -
- “**administration**” means a grant of letters of administration of the estate of the deceased;
- “**citor**” means the person who issues a citation;
- “**grant**” means a grant of probate or administration;
- “**gross value**” means the value of the estate without deduction for debts, incumbrances and funeral expenses;

“**probate**” means a grant of probate of the will (and codicils, if any) of the deceased; and
“**will**” includes any codicil to the will unless the context otherwise requires.

Effect of these Rules

68.3 Subject to the provisions of this Section the other provisions of these Rules apply with any necessary modifications to non-contentious probate matters save that the provisions of rule 3.5 (time - vacations) shall not prevent time from running in the long vacation.

Forms

68.4 A form referred to by number means the form so numbered in Appendix 2 to these Rules with such variations as in a particular case the registrar may direct or approve.

Where applications to be made

68.5 Applications for the grant of probate or administration must be made to the registrar of the court, King Street, Kingston where all cautions, warnings, citations, acknowledgments of service and notices of application under this section must be filed.

Address for service

68.6 All -
(a) applications for a grant; and
(b) notices of application,
made by an attorney-at-law must contain an address for service for that attorney-at-law.

How to apply for probate

68.7 (1) An executor who seeks probate of the will of a deceased person must file at the registry -
(a) an oath in form P.1;
(b) the will marked in accordance with rule 68.16;
(c) evidence of the death of the deceased in accordance with rule 68.10;
(d) draft grant in form P.2 with Kalamazoo copy;

- (e) where appropriate, affidavit of delay under rule 68.22; and
 - (f) if required by the registrar, the appropriate affidavits under rule 68.13.
- (2) Where, on an application for probate, power to apply for probate is to be reserved to such other of the executors as have not renounced probate, the oath must state that notice of the application has been given to the executor or executors to whom power is to be reserved.
- (3) The registrar may dispense with giving notice under paragraph (2) if satisfied that giving the notice would -
- (a) be impracticable; or
 - (b) cause unreasonable delay or expense.
- (4) Where an application is made for probate by one or more, but not all, executors named in the will and power is not reserved to the other executors, the applicant must account for the absence of the other named executors by exhibiting to the oath -
- (a) evidence of the death of the executor; or
 - (b) a certified copy of the Deed of Renunciation made by that executor.

How to apply for administration with the will

- 68.8 (1) A person who seeks administration with the will annexed of the estate of a deceased person must file at the registry -
- (a) an oath in form P.3;
 - (b) the will marked in accordance with rule 68.16;
 - (c) evidence of the death of the deceased in accordance with rule 68.10;
 - (d) draft grant in form P.4 with Kalamazoo copy;
 - (17/2/2003) (e) copy of the advertisements under rule 68.35(1);
 - (f) where required, the certificate of the Administrator-General under rule 68.19;
 - (g) where appropriate, affidavit of delay under rule 68.22; and
 - (h) if required by the registrar, the appropriate affidavits under rule 68.13.
- (2) The applicant must account for any named executors by exhibiting to the oath -
- (a) evidence of the death of the executor; or

- (b) a certified copy of the Deed of Renunciation made by that executor.

How to apply for administration

- 68.9 A person who seeks administration of the estate of a deceased person must file at the registry -
- (a) an oath in form P.5;
 - (b) evidence of the death of the deceased in accordance with rule 68.10;
 - (c) draft grant in form P.6 with Kalamazoo copy;
 - (d) copy of the advertisements under rule 68.36(1);
 - (e) where required, the certificate of the Administrator-General under rule 68.19; and
 - (f) where appropriate, affidavit of delay under rule 68.22.

Proof of death

- 68.10 The applicant for a grant must prove the death of the deceased by -
- (a) filing a certified copy of the deceased's death certificate with the oath;
 - (b) (if a certified copy of the death certificate is not available) filing an affidavit from a person present at the funeral of the deceased stating that fact and that he or she saw the body interred; or
 - (c) if evidence under paragraph (a) or (b) is not available the applicant must apply to the registrar for directions as to the form which evidence of death should take.

Order of priority for grant where deceased left a will

- 68.11 The person or persons entitled to a grant is to be determined in accordance with the following order of priority -
- (a) the executor;
 - (b) any residuary legatee or devisee holding in trust for any other person;
 - (c) any other residuary legatee or devisee; or
 - (d) where the residue is not wholly disposed of by will, any person entitled to share in the undisposed of residue

(including the Administrator General when claiming bona vacantia on behalf of the Crown), provided that -

- (i) unless the registrar otherwise directs, a residuary legatee or devisee who has a vested interest is to be preferred to one entitled on the happening of a contingency;
- (ii) where the residue is not in terms wholly disposed of, the registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the known estate, allow a grant to be made to any legatee or devisee entitled to, or to share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;
- (e) the personal representative of any residuary legatee or devisee (but not one for life, or one holding in trust for any other person) entitled to share in any residue not disposed of by the will;
- (f) any other legatee or devisee (including one for life or one holding in trust for any other person) or any creditor of the deceased, provided that, unless the registrar otherwise directs, a legatee or devisee whose interest in a legacy or devise is vested is to be preferred to one entitled contingently;
- (g) the personal representatives of any other legatee or devisee (but not one for life or one holding in trust for any other person) or of any creditor of the deceased.

Grants to attesting witness

68.12 Where a gift to any person fails because he or she has attested the will, that person is not entitled to a grant as a beneficiary.

Evidence as to due execution of will

- 68.13 (1) Paragraph (2) of this rule applies where -
- (a) a will contains no attestation clause;
 - (b) the attestation clause is insufficient; or
 - (c) it appears to the registrar that there is doubt about the due execution of the will.

- (2) The registrar may require -
- (a) an affidavit of due execution from-
 - (i) one or more of the attesting witnesses in form P.11;
or
 - (ii) (if no attesting witness is conveniently available)
from any other person who was present when the will was made; or
 - (b) if no evidence under paragraph (a) can be obtained, the registrar may accept -
 - (i) evidence on affidavit in form P.8 showing that the will is in the handwriting of the deceased; or
 - (ii) evidence on affidavit of any matter which may raise a presumption in favour of due execution of the will,
and may require that notice of the application be given to any person who may be prejudiced by the will.
- (3) Where a will is undated the registrar may require a search to be made for subsequent wills and evidence to be supplied in form P.9.

Wills of soldiers etc.

- 68.14 Where the deceased dies domiciled in Jamaica and it appears to the registrar that there is prima facie evidence that a will is one to which the Wills Act, section 7, applies, the will may be admitted to proof without an affidavit under rule 68.13 if -
- (a) the registrar is satisfied on evidence -
 - (i) that it was signed by the testator; or
 - (ii) if unsigned, it is in the testator's handwriting; or
 - (b) if oral, the provisions of rule 68.17 are complied with.

Alterations

- 68.15 (1) Where the will or codicil contains obliterations, interlineations or other alterations, the applicant must file evidence in form P.10 showing that the alterations were present when the will or codicil was executed unless -
- (a) the alterations are trivial and of no practical importance;
 - (b) the alterations are evidenced by the initials of the attesting witnesses; or

- (c) the alterations have been confirmed by the re-execution of the will or by the execution of a codicil.
- (2) The registrar must give directions as to the form in which the will is to be proved.

Marking and exhibiting of wills, facsimiles and engrossments

- 68.16 (1) The general rule is that every will for which an application for grant is made must be marked by the signatures of the applicant and where rule 68.13 applies one of the attesting witnesses to the will in accordance with form P.11 .
- (17/2/2003)
- (2) The will must be exhibited to any affidavit which may be required under this Section as to the validity, terms, condition or date of execution of the will.
 - (3) The registrar may allow a facsimile copy of a will to be marked or exhibited instead of the original will.
 - (4) Where the registrar considers that in any particular case a facsimile copy of the original will would not be satisfactory for purposes of record, he or she may require an engrossment suitable for facsimile reproduction to be lodged.
 - (5) Where a will contains alterations which are not to be admitted to proof; an engrossment of the will in the form in which it is to be proved must be filed.
 - (6) Any engrossment filed in accordance with this rule must reproduce the punctuation, spacing and division into paragraphs of the will and must follow continuously from page to page on both sides of the paper.
 - (7) Where a will is not available because it is retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof.

Oral wills and copies of wills

- 68.17 (1) An application for an order admitting to proof -
- (i) an oral will;
 - (ii) a will contained in a copy; or
 - (iii) a reconstruction of a will,
- where the original is not available, must be supported by such evidence on affidavit as the applicant can adduce as to-

- (a) the will's existence after the date of the testator's death or, where there is no such evidence, the facts on which the applicant relies to rebut the presumption that the will has been revoked by destruction;
 - (b) in the case of an oral will, the contents of that will; and
 - (c) in respect of a reconstruction of a will, the accuracy of that reconstruction.
- (2) The registrar may -
- (a) require additional affidavit evidence as to -
 - (i) due execution of the will; or
 - (ii) the accuracy of the copy; and
 - (b) direct that notice of the application be given to any persons who might be prejudiced by the application.

Order of priority in case of intestacy

- 68.18 (1) Where the deceased died without leaving a will the right to a grant of administration is to be determined in accordance with the following order of priority -
- (a) the surviving spouse of the deceased;
 - (b) the children of the deceased and the issue of any child who died before the deceased;
 - (c) the father and mother of the deceased;
 - (d) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased;
 - (e) brothers and sisters of the half blood and the issue of any deceased brother or sister of the half blood who died before the deceased;
 - (f) grandparents;
 - (g) uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased;
 - (h) uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half blood who died before the deceased;
- (2) A person applying for a grant of administration
- (a) must in his or her oath account for all persons entitled to a grant in priority to him or her, but

- (b) subject to rule 68.21(2), need not obtain the consent of any person in the same or any lower degree of priority.
- (3) In default of any person having a beneficial interest in the estate the Administrator-General is entitled to a grant if he claims bona vacantia on behalf of the Crown.
- (4) Where -
 - (a) a minor is entitled to a share in the estate; and
 - (b) under the terms of the Intestates' Estates and Property Charges Act, section 12, the Administrator General is under a duty to apply for a grant,
 any other person wishing to apply for a grant must apply to the court for an order permitting him or her to do so.
- (5) If none of the persons entitled to a grant under paragraphs (1) and (3) are capable of or prepared to apply for the grant, a grant may be made to -
 - (i) any creditor of the deceased; or
 - (ii) any person who has no immediate beneficial interest in the estate but may have such an interest in the event of an addition to the estate.
- (6) The personal representatives of -
 - (i) a person who would have been entitled to a grant in accordance with paragraph (1); or
 - (ii) a creditor,
 have the same right to a grant as the person whom he or she represents provided that the persons mentioned in sub-paragraphs (b) to (h) of paragraph (1) are to be preferred to the personal representatives of a spouse who has survived the deceased but died without taking a grant.

Certificate of Administrator-General

- 68.19 (1) This rule applies where under the terms of the Administrator-General's Act, section 12 or the Intestates' Estates and Property Charges Act, section 12, the Administrator-General is under a duty to apply for letters of administration and where no minor is entitled to any share of the estate.
(Rule 68.18(4) deals with the situation where there is a minority interest.)
- (2) Before applying for a grant of administration, the applicant must file with the Administrator-General -
 - (a) a declaration setting out

- (i) details of the estate of the deceased;
 - (ii) details of all persons who are or would have been, had they not died before the deceased, entitled to a grant; and
 - (iii) in the case of those persons who would have been entitled to apply in priority to the applicant, the reasons why those persons cannot apply;
- (b) a copy of the oath.
- (3) Where the Administrator-General is satisfied that the applicant is entitled to a grant he may, without prejudice to his right to apply for a grant himself, issue a certificate consenting to the making of a grant to him or her.

Joinder of administrator

- 68.20 (1) A person entitled in priority to a grant of administration may, without leave, apply for a grant with a person entitled in a lower degree, provided that there is no other person entitled in a higher degree to the person to be joined, unless every such person has renounced.
- (2) Where paragraph (1) does not apply, an application to join another person must be made to the registrar.
- (3) Such an application may be made without notice but must be supported by evidence on affidavit and the consent of the person proposed to be joined as administrator.

Grants where two or more persons entitled in same degree

- 68.21 (1) A grant may be made to any person entitled to it without the consent of any other persons entitled in the same degree.
- (2) The applicant must give not less than 14 days notice to each other person entitled in the same degree before applying for a grant unless the registrar dispenses with the need for such notice
- (3) The registrar may require the applicant to file an affidavit of service of the notice or notices under paragraph (2).
- (4) Any person challenging the right of a person in the same degree to a grant of administration may apply to the registrar for directions.
- (5) No grant may be issued until the application is finally disposed of.

Delay

68.22 Where an application for a grant is made for the first time more than three years after the death of the deceased, the applicant must file an affidavit explaining the delay.

Grants to attorneys

- 68.23 (1) Where the person entitled to apply for a grant resides outside Jamaica, grants of administration for the use and benefit of that person may be made to his or her attorney acting under a duly recorded Power of Attorney.
- (2) Where the donor of the power is an executor, notice of the application must be given to any other executor unless the registrar otherwise directs.
- (3) A grant to an attorney may be limited until a further grant is made or in such other way as the registrar may direct.

Grant in additional name

- 68.24 Where a grant is sought in a name in addition to the true name of the deceased, the applicant must give evidence on affidavit -
- (a) stating the true name of the deceased;
 - (b) defining any part of the estate which was held in a name other than the deceased's true name; and
 - (c) stating any other reason for the inclusion of the other name in the grant.

Grants where deceased died domiciled outside Jamaica

- 68.25 (1) This rule applies where the deceased died domiciled outside Jamaica.
- (2) If the deceased left a will in the English language which is admissible to proof, probate may be granted to the person named as executor.
- (3) If the will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, probate may be granted to that person.
- (4) Where the whole or substantially the whole of the estate in Jamaica consists of real property, a grant may be made to the person who

would have been entitled to a grant had the deceased died domiciled in Jamaica

- (5) In any other case the registrar may order that the grant be issued to any of -
 - (a) the persons entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;
 - (b) where there is no such person, to the person beneficially entitled to the estate by the law of the place where the deceased died domiciled and, if more than one, to such of them as the registrar may direct; or
 - (c) such other person as the registrar may direct.

Resealing of grants under the Probate (Re-sealing) Act

- 68.26 (1) An application under the Probate (Re-sealing) Act (“**the Act**”) for the resealing of a grant may be made by the person to whom the grant was made or by any agent of that person authorised in writing to apply.
- (2) The applicant must advertise the application in form P.12 once in the Gazette or such other newspaper as the registrar may direct
- (3) The application is made by filing -
 - (a) an application on oath in form P.13 exhibiting a certified copy of the original grant;
 - (b) a copy of any will to which it relates;
 - (c) a copy of the advertisement under paragraph (2);
 - (d) where the application to reseal a grant is made more than three years after the death of the deceased, an affidavit explaining the delay.
- (4) An application by a creditor under section 5 of the Act is to be made to the registrar.
- (5) An application under paragraph (4) may be made without notice but must be supported by evidence on affidavit setting out details of the creditor’s claim.
- (6) In any case the registrar may require such further evidence as seems to him necessary, especially where the evidence of domicile in the affidavit differs from that in the grant.
- (7) If it appears that the deceased was not at the time of his or her death domiciled within the jurisdiction of the court which issued the grant, the grant may not be resealed unless it is such as would

- have been made by the Jamaican court.
- (8) The registrar must send notice of the resealing to the court which made the grant.
 - (9) Where the registrar receives notice of the resealing of a grant issued in Jamaica, notice of any amendment or revocation of the grant must be sent to the court by which it was resealed.

Evidence of foreign law

68.27 Where evidence of foreign law is required on any application for a grant the registrar may accept an affidavit from a lawyer in the country concerned whom, having regard to the particulars of the deponent's knowledge or experience given in the affidavit, the registrar regards as suitably qualified to give expert evidence of the law in question.

Grant to minor

- 68.28 (1) Subject to the Intestates' Estates and Property Charges Act, section 12, where the only person who would otherwise be entitled to a grant is a minor, a grant of administration for the use and benefit of the minor, limited until he attains the age of eighteen years, shall (subject to paragraph (2)) be granted in the following order of priority -
- (a) to the parents of the minor jointly;
 - (b) to the statutory or testamentary guardian; or
 - (c) to any guardian appointed by a court of competent jurisdiction.
- (Rule 68.18(4) deals with the situation where, because a minor is entitled to a share in the estate, the Administrator-General is under a duty to apply for the grant unless the court orders otherwise.)
- (2) However, where the minor is a sole executor and has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor, limited until he or she attains the age of eighteen years, shall be granted to the person entitled to the residuary estate unless the registrar otherwise directs.

Grant where minor a co-executor

- 68.29 (1) Where one or more minors has been appointed as executor jointly with other executors, probate may be granted to the executors

who are not minors with power reserved to the minor executor or executors who shall be entitled to apply for probate on attaining the age of eighteen years.

- (2) Where the executor or executors who are not minors renounce or, on being cited to accept or refuse a grant, fail to make an effective application for a grant, an appointment may be made under the terms of rule 68.28.

Grant where person entitled mentally incapable

- 68.30 (1) This rule applies where the registrar is satisfied that a person who would otherwise have been entitled to apply for a grant is by reason of mental incapacity incapable of managing his or her own affairs
- (2) A grant may only be made under this rule if -
 - (a) the absence of all persons entitled to apply for a grant in the same degree as the patient have been accounted for; or
 - (b) the registrar otherwise directs.
 - (3) A grant of administration for the use and benefit of the patient, limited until further grant is made or in such other way as the registrar may direct, may be granted in the following order of priority -
 - (a) to any person authorised under the Mental Health Act or any other relevant statutory authority;
 - (b) to the person entitled to the residuary estate of the deceased; or
 - (c) to such person or persons as the registrar may by order direct.

Limited grants

- 68.31 (1) Any limited grant must state clearly the limitation imposed on that grant.
(18/9/2006)
- (2) An application to appoint an administrator pendente lite may be made to the court in circumstances where there are pending proceedings affecting the estate and an unlimited grant of administration cannot be issued until the said proceedings have been determined.
 - (3) An application to appoint an administrator pendente lite may be

made by any party interested in the estate including a beneficiary, creditor or executor.

- (4) An application to appoint an administrator pendente lite must state the name and address of the proposed administrator, who must be unconnected with the estate or the pending proceedings, and is to be supported by the following:
 - (a) an affidavit setting out full particulars of the deceased's estate, details of the pending proceedings and the reason for the application;
 - (b) an affidavit by the proposed administrator setting out his qualification, willingness to act as administrator pendente lite and an oath to the court that he will collect and preserve the assets of the estate, administer the estate according to law and render a just and true account of his administration whenever required by law to do so, and
 - (c) an affidavit by an individual unconnected with the estate or the pending proceedings swearing to the integrity of the proposed administrator and setting out the proposed administrator's suitability for the appointment.
- (5) An application may be made to the Registrar for a grant of probate or administration with the will annexed of a duplicate, facsimile, photocopy or reconstructed will, codicil or other testamentary instrument where the original has been destroyed, lost or is unavailable for whatever reason until the original or a more authentic copy is found or produced.
 - (a) Before such an application is made the applicant must first obtain permission from the court to prove the said document.
 - (b) The oath to lead the grant in relation to the said document must exhibit a copy of the order granting permission.

Settled land

- 68.32 (1) In this rule "settled land" means land vested in the deceased which was settled prior to his or her death and not by his or her will and which remains settled land after his or her death.
- (2) The person or persons entitled to a grant limited to settled land are to be determined in accordance with the following order of priority, namely -

- (a) the trustees of the settlement at the time of the application for the grant;
 - (b) the personal representatives of the deceased.
- (3) Where the same person or persons are entitled to a grant in respect of both free estate and also settled land, a grant expressly including the settled land may issue to them.
- (4) Where there is settled land and a grant is made in respect of the free estate only, the grant must expressly exclude the settled land.

Renunciation of probate and administration

- 68.33 (1) An executor who wishes to renounce probate of a will must do so using form P.14 and in accordance with the Executors (Renunciation) Act.
- (2) An executor who renounces probate does not thereby renounce any right to a grant of administration unless he or she expressly renounces that right.
- (3) A person entitled to a grant of administration who wishes to renounce administration must do so in form P. 15 or P.16 as appropriate.
- (4) A person who has renounced administration (with or without the will annexed) in one capacity may not obtain administration in another capacity without the permission of the registrar.
- (5) The right of a minor executor to probate on attaining the age of eighteen may not be renounced by any person on his behalf except a guardian appointed under rule 68.28(1)(c) and authorised by the registrar to renounce on behalf of the minor.
- (6) The general rule is that a renunciation may be retracted with the permission of the registrar.
- (7) However the registrar may not give permission to retract a renunciation after a grant has been made to some other person unless exceptional circumstances are shown.
- (8) Where probate has been renounced, any person who subsequently applies for a grant must exhibit to his or her oath a certified copy of the renunciation.

Notice to Crown of intended application for a grant

- 68.34 Where the Crown is, or may be, beneficially interested in the estate of a deceased, notice of an intended application for grant must be

given to the Administrator-General and no grant may be made until 28 days after notice has been given.

Duty of the registrar on receiving application for grant

- 68.35 (1) No grant may issue until -
- (a) in the case of probate, 7 days after the death of the deceased; and
 - (b) in the case of administration (including a grant of administration with the will annexed), the application has been published for two successive weeks in the Gazette, unless the registrar otherwise directs.
- (2) The registrar must not allow any grant to issue until all inquiries which he or she may see fit to make have been satisfactorily answered.
- (3) The registrar may require the person applying for a grant to issue a witness summons to any person who may be able to assist the registrar carrying out his or her duty under paragraph (2).
- (4) Where an affidavit of due execution is not available from one of the attesting witnesses as required by rule 68.13(1), the registrar may require notice of the application to be given to any person who may be prejudiced by the will.
- (5) Where the registrar after considering the evidence, is satisfied that a will was not duly executed, he or she must refuse probate and mark the will accordingly.
- (6) Where -
- (a) the will appears to have been executed -
 - (i) by a blind or illiterate person; or
 - (ii) by another person at the direction and in the presence of the testator ; or
 - (b) there is any other reason to raise doubt as to the testator having had knowledge of the contents of the will, the registrar must satisfy him or herself that the testator had such knowledge.
- (7) Where a will contains any reference to another document in such terms as suggest that the document ought to be incorporated into the will, the registrar must require such document to be produced and may call for such evidence with regard to the incorporation of the document as seems fit.

- (8) Where the registrar considers that the appearance of the will suggests attempted revocation by burning, tearing or by other means, the registrar may require evidence to displace any presumption of revocation.
- (9) Where there is a doubt as to the date on which a will was executed, the registrar may require such evidence as appears to him or her to be necessary to establish the true date of execution.

Action after grant made

- 68.36 (1) Immediately upon the grant of probate or administration with the will annexed the registrar must -
- (a) record the will and any codicil in the registry; and
 - (b) transmit the original will and any codicil to the Record Office.
- (2) The registrar must -
- (a) maintain a register of probate and administration in which all grants must be recorded;
 - (b) allow public inspection of the register at all reasonable hours; and
 - (c) permit the taking of copies on payment of the prescribed fee.

Amendment and revocation of grant

- 68.37 (1) Where satisfied that it is appropriate to do so, the registrar may make an order amending or revoking a grant.
- (2) An application for an order under paragraph (1) may be made without notice but must be supported by evidence on affidavit.
- (3) The registrar may require notice of the application to be given to any person.
- (4) Unless the person to whom the grant was made -
- (a) applies for; or
 - (b) consents to,
- the revocation or amendment, such an order may be made only in exceptional circumstances.

Cautions

- 68.38 (1) Any person who wishes to oppose a grant may enter a caution in form P.17 at the registry giving an address for service.

- (2) A caution remains in force for six months only.
- (3) A caution may be renewed for a further period of six months by filing a written request for extension.
- (4) The registrar must maintain a register of cautions and a search of the index must be made whenever an application for a grant is received.
- (5) The registrar may not allow any grant to be sealed (other than a grant ad colligenda bona) if he or she has knowledge of an effective caution.
- (6) A cautioner may withdraw the caution by giving notice to the registry at any time before filing an acknowledgment of service under rule 68.39(2) and the caution ceases to have effect.
- (7) A cautioner withdrawing a caution must give notice to the person warning the caution.

Warning of cautions

- 68.39 (1) Any person claiming an interest in the estate may cause a warning to be issued to the cautioner.
- (2) He or she does this by filing a warning in Form P.18 at the registry-
 - (a) stating his or her interest in the estate;
 - (b) if claiming under a will or codicil, stating the date of that will or codicil; and
 - (c) requiring the cautioner to -
 - (i) file an acknowledgment of service; and
 - (ii) give particulars of any contrary interest in the estate.
 - (3) The registrar must then sign the warning and the person warning the caution must serve it on the cautioner at the address given in accordance with rule 68.38(1).

Opposing a grant

- 68.40 (1) A person who wishes to oppose a grant must -
- (a) file an acknowledgment of service in form P.19 at the registry;
 - (b) serve a copy of the acknowledgment of service on the cautioner;
- and

- (c) issue and serve on the cautioner an application for directions.
- (2) He or she must do this not later than 14 days after the service of the warning.
- (3) If no acknowledgment of service is filed within the period stated in paragraph (2), the person warning the caution may file an affidavit proving service of the warning and the caution ceases to have effect.
- (4) Any caution in force when an application for directions is issued remains in force until the commencement of a probate claim unless, upon giving directions, the registrar orders that the caution cease to have effect.
- (5) Where a probate claim is commenced -
 - (a) the claimant must give notice of the claim -
 - (i) to every cautioner, other than the claimant in that claim whose caution remains in force; and
 - (ii) to any subsequent cautioner;
 - (b) the costs of filing a caution and warning that caution are costs in the claim; and
 - (c) no grant may be sealed until an application is made by the person shown to be entitled by the decision of the court in that claim unless the registrar by order made application otherwise directs.
- (6) Upon an application for a grant being made by the person shown to be entitled by the decision of the court in the claim any caution-
 - (a) entered by the claimant; or
 - (b) in respect of which notice of the claim has been given under paragraph (5) (a), ceases to have effect.

Citations

- 68.41
- (1) Before issuing a citation the citor must enter a caution.
 - (2) The citation must be verified by affidavit.
 - (3) The citation must be settled by the registrar.
 - (4) Every citation must be served personally on the person cited unless the registrar directs some other form of service.
 - (5) An application under paragraph (4) need not be on notice but must be supported by evidence on affidavit.
 - (6) However, a citation against all persons in general is served by the insertion of the citation in the Gazette.

- (7) The citor must lodge with the citation every will referred to in the citation unless -
 - (a) it is not in the citor's possession; and
 - (b) the registrar is satisfied that it is impractical for it to be lodged.
- (8) Any person upon whom a citation is served may file an acknowledgment of service in form P.19 at the registry and must serve a copy of the acknowledgment of service on the citor.
- (9) The time within which such acknowledgment of service must be filed and served is 14 days from the date of service or publication of the citation.
- (10) Any caution in force at the commencement of citation proceedings remains in force until an application for a grant is made by the person shown to be entitled by the decision of the court in such proceedings unless -
 - (a) withdrawn in accordance with rule 68.38(6); or
 - (b) the registrar otherwise orders following an application on notice.
- (11) Upon an application being made under paragraph (10) any caution entered by a person who had notice of the proceedings ceases to have effect.

Citation to accept or refuse a grant

- 68.42
- (1) Any person who would be entitled to a grant in the event of the person cited renouncing his or her rights to a grant may issue a citation to accept or refuse a grant.
 - (2) Where power to make a grant to an executor has been reserved, a citation calling on him or her to accept or refuse a grant may be issued by -
 - (a) the executors who have proved the will;
 - (b) the survivor of such executors; or
 - (c) the executors of the last surviving executor who has proved the will.
 - (3) Where an executor has started to administer the estate of the deceased prior to obtaining probate, a citation calling on him to show cause why he or she should not be ordered to take a grant may be issued by any person interested in the estate.
 - (4) A citation under paragraph (3) may not be issued -
 - (a) until 6 months have expired from the death of the

- deceased; or
 - (b) while any proceedings as to the validity of the will are pending.
- (5) Any person served with a citation may file an acknowledgment of service in form P.19 and must serve a copy of such acknowledgment on the citor.
- (6) The time for filing and serving an acknowledgment of service is 14 days from service of the citation.
- (7) After filing an acknowledgment of service a person cited may apply to the registrar for an order for a grant to him or herself.
- (8) An application under paragraph (7) may be made without notice but must be supported by affidavit evidence.

Citation to propound a will

- 68.43 (1) A citation to propound a will may be issued at the request of any person having an interest contrary to that will.
- (2) The citation must be directed to and served on the executors named in the will and to all persons interested under the will.
- (3) Any person served with a citation may file an acknowledgment of service and must serve a copy of such acknowledgment on the citor.
- (4) The time for filing and serving an acknowledgment of service is 14 days from service of the citation.

Default of acknowledgment of service of citation

- 68.44 (1) Where no acknowledgment of service has been filed in accordance with rule 68.41(8) and (9), the citor may -
- (a) in the case of a citation under rule 68.42(1), apply to the registrar for a grant to him or herself;
 - (b) in the case of a citation under rule 68.42(2), apply to the registrar for an order that a note be made on the grant that -
 - (i) the executor in respect of whom power was reserved has been duly cited;
 - (ii) that executor has not filed an acknowledgment of service; and
 - (iii) his or her rights in respect of the executorship have wholly ceased.

- (c) in the case of a citation under rule 68.42(3), apply to the registrar on notice for an order requiring the person cited to take a grant within a specified time or for a grant to the person cited or to some other person specified in the application.
- (2) Where the person cited has filed an acknowledgment of service but -
- (i) has not applied for a grant under rule 68.42(7); or
 - (ii) has failed to proceed with his or her application with reasonable diligence,
- the citor may -
- (a) in the case of a citation under rule 68.42(1), apply to the registrar on notice to the person cited for a grant to him or herself;
 - (b) in the case of a citation under rule 68.42(2), apply to the registrar on notice to the person cited for an order striking out the acknowledgment of service and that a note be made on the grant that -
 - (i) the executor in respect of whom power was reserved has been duly cited;
 - (ii) that executor has not filed an acknowledgment of service; and
 - (iii) his or her rights in respect of the executorship have wholly ceased.
 - (c) in the case of a citation under rule 68.43(3), apply to the registrar on notice to the person cited for an order requiring the person cited to take a grant within a specified time or for a grant to the person cited or to some other person specified in the application.
- (3) Where -
- (a) no acknowledgment of service is filed in accordance with rule 68.43(2); and
 - (b) the time limited for service under rule 68.43(3) has expired,
- the citor may -
- (i) where no person has acknowledged service, apply to the registrar for an order for a grant as if the will were invalid; or
 - (ii) where no person who has acknowledged service

proceeds with reasonable diligence to propound the will, apply to the registrar on notice to every person cited who has acknowledged service for an order for a grant as if the will were invalid.

- (4) Any application under this rule must be supported by an affidavit showing due service of the citation on each person who has not acknowledged service.

Application for an order to attend for examination or for summons to bring in will

- 68.45
- (1) An application requiring a person to attend for examination may be made to the registrar on notice to such person.
 - (2) An application for a witness summons to bring in the will may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.
 - (3) The witness summons shall be in form P.20.
 - (4) A person served with a witness summons who denies that the will is in his or her possession or control may file an affidavit to that effect.

Emergency grants (Grants ad colligenda bona)

- 68.46
- An application for an emergency grant may be made to the registrar and must be supported by evidence on affidavit setting out the grounds of the application.

Application for leave to swear to death

- 68.47
- (1) An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the registrar.
 - (2) The application must be supported by evidence on affidavit -
 - (a) giving details of any policies of insurance effected on the life of the presumed deceased; and
 - (b) the grounds for supposing the presumed deceased to be dead.
 - (3) The registrar may require further evidence to be given on affidavit.

Administration De Bonis Non Administratis

(18/9/2006)

- 68.48 (1) An application for a grant of administration de bonis non administratis may be made to the Registrar in circumstances where a grant of administration has been issued by the court but the grantee, through death or other reason, has failed to complete the winding-up of the estate.
- (2) The oath to lead the grant must contain, among other things, the following:
- (a) proof of previous grants issued by the court;
 - (b) details of the unadministered part of the estate;
 - (c) an explanation or reason for the previous grantees failing to complete the winding-up of the estate, and
 - (d) a statement that there is no personal representative either in his own right or by the chain of representation.

Chain of Representation

(18/9/2006)

- 68.49 (1) An application for a grant of probate may be made by an executor (the “second executor”) in relation to any estate (the “principal estate”) that was being handled by his predecessor (the “first executor”) where the principle of the chain of representation is applicable.
- (2) In order for the second executor to obtain a grant of probate the second executor must:
- (a) obtain probate of the first executor’s will;
 - (b) file an oath in relation to the principal estate; and
 - (c) file a draft grant naming the second executor as executor by representation for the principal estate.
- (3) The oath to lead the grant to the second executor in the principal estate must contain the following:
- (a) proof of the grant of probate to the first executor;
 - (b) details of the unadministered part of the principal estate;
 - (c) an exhibited copy of the grant of probate to the second executor in the first executor’s estate, and
 - (d) a statement that the first executor was the last or sole surviving executor under the will of the deceased testator in relation to the principal estate.
- (4) Where the second executor has applied for a grant of probate it will not be necessary for the will of the deceased testator in relation to the principal estate to be marked by the second executor or any of the attesting witnesses.

Double Probate

(18/9/2006)

- 68.50 (1) An application may be made for a grant of double probate where two or more executors have been appointed under a will and one or more have obtained a grant of probate with power reserved to the other(s).
- (2) The grant of double probate is issued to the executor(s) to whom power was reserved when the first grant was issued.
- (3) The oath to lead the grant of double probate must contain the following:
- (a) proof of the first grant issued indicating that power was reserved to the executor(s) applying for the grant of double probate, and
 - (b) details of the unadministered part of the estate.
- (4) Where double probate is being sought the will or a certified copy must be marked only by the executor(s) seeking the grant.

Cessate Grant

(18/9/2006)

- 68.51 (1) An application for a cessate grant may be made to the Registrar where a limited grant has expired or ceased to operate for any reason and the applicant wishes to take a grant of representation in his own right.
- (2) The oath to lead the cessate grant must contain the following:
- (a) proof of the first grant issued, and
 - (b) details of the unadministered part of the estate.

Certified Grant of Probate from other Jurisdictions

(18/9/2006)

- 68.52 (1) Where a grant of probate has been issued in another jurisdiction and the grantee wishes to obtain a grant of administration in Jamaica in the same estate and re-sealing is not applicable or possible, the grantee, or his duly appointed agent may apply to the registrar for a grant of probate of the relevant will.
- (2) Where an application is being made pursuant to this rule the applicant must swear an oath in form P. 1 and include details of the estate and expenses in Jamaica and exhibit a copy of the relevant grant and will duly certified by the court of issue.
- (3) Where an application is being made pursuant to this rule:
- (a) no affidavit of due execution will be required;
 - (b) no affidavit in proof of death will be required, and
 - (c) it will not be necessary for the certified copy will to be marked by anyone.

Hearing of applications

- 68.53 (1) All applications must be made in the first instance to the registrar in form P.21.
- (2) The registrar may direct that any notice of application be served on such persons as he or she may direct.
- (3) The registrar may make any order where the application is unopposed.
- (4) Where an application is opposed the registrar must give directions and adjourn the application to the judge.
- (5) The registrar may at any time refer any application under this Section to a judge.

Section 2

CONTENTIOUS PROBATE PROCEEDINGS

Scope of this Section

- 68.54 (1) This Section contains rules about -
- (a) probate claims
 - (b) claims and applications to
 - (i) substitute another person for a personal representative; or
 - (ii) remove a personal representative,
 which in this Part are referred to as “**probate proceedings**”.
- (2) Non-contentious proceedings are dealt with in Section 1.
- (3) In this Section -
- “**grant**” means a grant of probate of the will of, letters of administration with the will annexed or letters of administration of the estate of, the deceased,
- “**probate claim**” means a claim for-
- (i) the grant of probate of the will in solemn form, or letters of administration of the estate of a deceased person;
 - (ii) the revocation or amendment of such a grant;
 - (iii) for a decree pronouncing for or against the validity of an alleged will, not being a claim which is non-contentious or common form probate business;
- “**personal representative**” means the executor of the will of, or

administrator of the estate of a deceased person;
“**testamentary document**” means a will or draft will, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed; and
“**will**” includes a codicil.

How to commence probate proceedings

- 68.55 (1) Probate proceedings must be begun by issuing a fixed date claim form in form 2.
- (2) The claim form must be marked at the top “In the estate of [xx] deceased (Probate)”
- (3) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the deceased person to which the claim relates.
- (4) The claimant must -
- (a) file a particulars of claim with the claim form; and
 - (b) give notice of the claim to -
 - (i) every cautioner, other than the claimant, whose caution remains in force; and
 - (ii) to any subsequent cautioner.
- (5) Unless the court otherwise directs no grant may be made until the probate proceedings have been disposed of.
- (6) The defendant must file an acknowledgment of service in accordance with Part 9.

Parties

- 68.56 (1) In proceedings for revocation of a grant every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant must be made a party.
- (2) Any claim form issued by any person other than the executors, administrators or trustees must be served on the executors, administrators or trustees as the case may be.
- (3) The claimant must give notice to every person who may be affected by probate proceedings, either as a beneficiary under a will in issue or under an intestacy, who is not joined as a party.
- (4) The court may direct -

- (a) that any person be joined as a party; or
- (b) that notice of the claim be given to any person.

Testamentary documents

- 68.57 (1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.
- (2) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgment of service must swear an affidavit-
- (a) describing any testamentary document of the deceased person, whose estate is the subject of the action, of which he or she has any knowledge or, if such be the case, stating that he or she knows of no such document, and
 - (b) if either party has knowledge of any such document which is not in his or her possession or under his or her control-
 - (i) giving the name and address of the person in whose possession or under whose control it is; or
 - (ii) that he or she does not know the name or address of that person.
- (3) The affidavit must be sworn by the party or, in the case of a minor or patient, by that party's next friend unless the court otherwise orders.
- (4) Unless the court otherwise directs -
- (a) the claimant must lodge his or her affidavit and any testamentary documents in his or her possession when the claim form is issued; and
 - (b) the defendant must lodge his or her affidavit and any testamentary documents in his or her possession when filing an acknowledgment of service.
- (5) Where any testamentary document required by this rule to be lodged or any part of it is written in pencil, then, unless the court otherwise directs, a facsimile copy of that document, or of the page or pages containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.
- (6) Except with the leave of the court, no party to probate proceedings may be allowed to inspect an affidavit filed, or any testamentary document lodged, by any other party to the proceedings under this rule, until an affidavit sworn by the first party containing the information referred to in paragraph (1) has been filed.

Lodgment of grant in applications for revocation or rectification

- 68.58 (1) This rule applies to applications for revocation of a grant.
- (2) If the claimant is an executor or administrator, the claimant must lodge the grant at the court when the claim form is filed.
- (3) If the grant is in the possession or under the control of any defendant, that defendant must lodge it at the court when filing his or her acknowledgment of service.
- (4) Any person who fails to comply with paragraph (2) or (3) may, on the application of any party to the proceedings, be ordered by the court to lodge the grant within a specified time.
- (5) Where an order is made under paragraph (4), the person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.

Application for order to bring in will etc.

- 68.59 (1) The court may order that any person -
- (a) attend court for examination and to answer questions; and
- (b) bring in any testamentary document in the possession or control of that person,
- if there are reasonable grounds for believing that that person has knowledge of any testamentary document.
- (2) Where there are reasonable grounds for believing that a person has in his or her possession, custody or power any testamentary document, the court may direct that a witness summons be issued to that person ordering him or her to bring in that document.
- (3) Any party to probate proceedings may apply for an order under paragraph (1) or (2).
- (4) An application for an order under paragraph (1) or (2) -
- (a) may be made without notice; but
- (b) must be supported by evidence on affidavit setting out the grounds of the application.
- (5) Any person against whom a witness summons is issued under paragraph (2) who denies that the testamentary document referred to in the witness summons is in his or her possession, power or control may file written evidence to that effect and apply for the witness summons to be set aside.

- (6) A notice of application under paragraph (5) must be served on the party making the application under paragraph (3).

Contents of statements of case

- 68.60 (1) Where any party disputes the interest of another party in the estate that party must state this in his or her statement of case setting out reasons for the dispute.
- (2) In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in that party's statement of case that if the allegations made therein are proved, he or she would be entitled to an interest in the estate.
- (3) Any party who contends that -
- (a) a will was not duly executed;
 - (b) at the time of the execution of a will the testator -
 - (i) did not know and approve of its contents; or
 - (ii) was not of sound mind, memory and understanding; or
 - (c) the execution of a will was obtained by undue influence or fraud,
- must specify the nature of the case on which he or she intends to rely giving particulars of the facts and matters relied on.
- (4) (a) A defendant may state in his or her defence that the defendant does not raise any positive case but requires the will to be proved in solemn form.
- (b) The court will not then make an order for costs against that defendant unless it considers that there was no reasonable ground for opposing the will.

Substitution and removal of personal representatives

- 68.61 (1) This rule applies to applications for substitution or removal of a personal representative.
- (2) An application under paragraph (1) must be made -
- (a) if in existing proceedings, by an application under Part 11; or
 - (b) in any other case, by a fixed date claim form.
- (3) The claim form (or application) must be accompanied by -

- (a) a sealed or certified copy of probate or letters of administration; and
- (b) an affidavit setting out the grounds of the application and the following information so far as is known to the claimant or applicant -
 - (i) brief details of the property comprised in the estate, with an approximate estimate of the capital value and of any income derived from it;
 - (ii) brief details of any liabilities of the estate;
 - (iii) the names and addresses of the persons who are in possession of any documents relating to the estate;
 - (iv) the names of the beneficiaries and their respective interests in the estate; and
 - (v) the name, address and occupation of any proposed substituted personal representative.
- (4) An application for the appointment of a substituted personal representative must be accompanied by -
 - (a) a signed consent; and
 - (b) evidence on affidavit as to the fitness to act, of the proposed substituted personal representative.
- (5) The personal representative must produce to the court the grant of representation to the deceased's estate at the hearing of the application.

Failure to file acknowledgment of service or defence

- 68.62
- (1) Part 12 does not apply to probate proceedings.
 - (2) Where any of several defendants to probate proceedings fails to file an acknowledgment of service or to file and serve a defence, the claimant may -
 - (a) after the time for entering an acknowledgment of service or filing a defence has expired; and
 - (b) upon filing an affidavit proving due service of the claim form and particulars of claim on that defendant, proceed with the claim as if that defendant had entered an acknowledgment of service.
 - (3) Where the defendant, or all the defendants, to probate proceedings, fails or fail to file an acknowledgment of service or file and serve a defence, then, unless on the application of the claimant the court

orders the claim to be dismissed or discontinued, the claimant may apply to the court at the first hearing for-

- (a) the claim to be dealt with summarily at that hearing; or
 - (b) a trial date to be fixed and any necessary directions to be given.
- (4) Before applying for an order under paragraph (3) the claimant must file an affidavit proving due service of the claim form and particulars of claim on the defendant.
- (5) Where the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

Counterclaim

68.63 A defendant to probate proceedings who alleges that he or she has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the proceedings must add to the defence a counterclaim for that relief or remedy.

Case management - the first hearing

68.64 At the first hearing of the claim the court will consider -

- (a) whether any person who is, or may be, affected by the claim should be -
 - (i) joined as a party; or
 - (ii) given notice of the claim; and
- (b) whether to make an order under rule 21.4 (representation of parties who cannot be ascertained).

Administration pending determination of probate proceedings

68.65 (1) Any party may apply for an order for the grant of administration pending the determination of a probate proceedings.

(2) If an order is made under paragraph (1) -

- (a) Part 51 applies as if the administrator were a receiver appointed by the court; and
- (b) where the court allows the administrator remuneration

under rule 51.5, it may make an order that such remuneration be paid out of the estate.

- (3) An appointment as administrator under this rule ceases when a final order is made in the probate proceedings but may be continued by the court pending the hearing of any appeal.
- (4) Wherever practicable any application under this rule should be made at the first hearing of the claim.

Summary judgment

- 68.66
- (1) Part 15 applies to an application for an order pronouncing a will in solemn form.
 - (2) The affidavit in support of an application for summary judgment must prove due execution of the will.
 - (3) Where rule 68.55(4) applies, the defendant may require the witnesses who attested the will to attend court for cross-examination.

Discontinuance and dismissal

- 68.67
- (1) Part 37 does not apply to probate proceedings.
 - (2) At any stage of the proceedings the court, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service may order -
 - (a) the proceedings to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just,
 - (b) that a grant of probate of the will, or letters of administration of the estate of the deceased person, as the case may be, be made to the person entitled.

Compromise of claim: trial on affidavit evidence

- 68.68
- (1) Where, whether before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may -
 - (a) order the trial of the proceedings on affidavit evidence (which will lead to a grant in solemn form);
 - (b) order that the claim be discontinued or dismissed under rule 68.62 (which will lead to grant in common form); or

- (c) pronounce for or against the validity of one or more wills.
- (2) An application for an order under paragraph (1)(c) must be supported by evidence on affidavit identifying the relevant beneficiaries and exhibiting the written consent of each of them.

Probate counterclaim in other claims

- 68.69 (1) In this rule “**probate counterclaim**” means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in rule 68.49(1).
- (2) Subject to the following paragraph, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.
- (3) A probate counterclaim must contain a statement of the nature of the interest of each party in the estate of the deceased person to which the probate counterclaim relates.

PART 69

Defamation Claims

Contents of this Part

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Scope of this Part

69.1 These Rules apply to claims for libel or slander subject to the rules in this Part.

Claimant's particulars of claim

- 69.2 The particulars of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8 -
- (a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified; and
 - (b) where the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, give particulars of the facts and matters relied on in support of such sense; and
 - (c) where the claimant alleges that the defendant maliciously published the words or matters, give particulars in support of the allegation.

Defendant's statement of case

- 69.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that,
- (a) in so far as the words complained of consist of statements of fact, they are true in substance and in fact; and
 - (b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or
 - (c) pleads to like effect,
- must give particulars stating -
- (i) which of the words complained of are alleged to be statements of fact; and
 - (ii) the facts and matters relied on in support of the allegation that the words are true.

Ruling on meaning

- 69.4 (1) At any time after the service of the particulars of claim, either party may apply to a judge sitting in private for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statements of case.
- (2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statements of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

Payments into court and offers

- 69.5 Where the claimant claims against several defendants sued jointly and accepts money paid into court under Part 36 or a written offer under Part 35 by any one or more but not all of those defendants, the claim must be stayed against that defendant or those defendants only, but -
- (a) the sum recoverable under any judgment in favour of the claimant against any other defendant must not exceed the amount (if any) by which the amount of the damages

- exceeds the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and
- (b) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either -
- (i) the damages awarded exceed the amount paid into court or offered; or
 - (ii) the court is satisfied that there were reasonable grounds to continue the claim against the other defendant or defendants.

Statement in open court

- 69.6 Where a defamation claim is settled before trial either party may apply to a judge in chambers for leave to make a statement in open court in terms agreed by the judge.

Requests for Information

- 69.7 In a defamation claim where the defendant states that the words or matters complained of -
- (a) are fair comment on a matter of public interest; or
 - (b) were published on a privileged occasion,
- the claimant may not make a request for information under Part 34 as to the defendant's sources of information or grounds of belief.

Evidence in mitigation of damages

- 69.8 A defendant who does not in the defence assert the truth of the statement of which complaint is made may not give evidence in chief -
- (a) as to the circumstances under which the libel or slander was published;
- or
- (b) as to the character of the claimant,
- with a view to mitigating damages unless particulars are given in a witness statement served at least 42 days before the trial.

PART 70

Admiralty Claims

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Scope of this Part

- 70.1 (1) This Part applies to Admiralty proceedings including those proceedings listed in rule 70.2 and any other Admiralty jurisdiction of the court.
- (2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part.

- (3) In this Part -
- “**the Act**” means the Shipping Act;
- “**bailiff**” means the bailiff for the Resident Magistrates Court for Kingston;
- “**claim in rem**” means any such claim as is mentioned in rule 70.3;
- “**caution against arrest**” means such a caution entered in the Register under rule 70.10;
- “**caution against release and payment**” means such a caution entered in the Register under rule 70.11;
- “**collision claim**” means a claim for damage, loss of life, personal injury arising out of -
- (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre; and
 - (iii) non-compliance with the collision regulations
- “**collision regulations**” means regulations made under s.228 of the Act;
- “**Jamaican waters**” has the meaning given it by section 2 of the Act;
- “**Register**” means the book in which cautions issued under this Part are entered;
- “**salvage claim**” means a claim -
- (a) for or in the nature of salvage;
 - (b) to annul or modify a contract relating to salvage under s.363 of the Act;
 - (c) for an interim payment for salvage under s.376 of the Act;
 - (d) to apportion salvage between the owner, master and other persons under ss 372, 387 or 389 of the Act;
 - (d) to approve the amount of security to be paid for the release of a ship or other property under s.385 of the Act;
 - (e) arising out of or connected with any contract for salvage services; and
 - (f) in the nature of salvage not covered by paragraphs (a) to (e) above, or any corresponding claim in connection with an aircraft.
- “**ship**” includes every description of vessel used in navigation and, where the context so admits, includes an aircraft and for the purpose of this definition “**vessel**” includes -
- (a) every description of watercraft, however propelled or

- moored, including a barge, hydrofoil and hovercraft and every other type of non-displacement craft, anything constructed or used to carry persons or goods by water, and a seaplane on or in water;
- (b) a hulk, store ship or other similar vessel without means of propulsion; and
 - (c) such other thing constructed or adapted for floating or being submerged in water as the Minister may by order specify as a vessel for the purpose of any provision of the Act.

Claims to be dealt with under this Part

70.2

The following claims, questions and proceedings, namely -

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship including power -
 - (i) to settle any account outstanding and unsettled between the parties in relation to the ship; and
 - (ii) to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
- (d) any claim for damage received by a ship;
- (e) any claim for damage done by a ship;
- (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of -
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship or in the loading, carriage

- or disembarkation of persons on, in or from the ship;
- (g) collision claims;
- (h) any claim for loss or damage to goods carried in a ship;
- (i) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (j) salvage claims;
- (k) any claim in the nature of towage in respect of a ship or an aircraft;
- (l) any claim in the nature of pilotage in respect of a ship or an aircraft;
- (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
- (n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (o) subject to any limitations imposed by the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged to be due by way of wages);
- (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (q) any claim arising out of an act which is or is claimed to be a general average act;
- (r) any claim arising out of bottomry;
- (s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;
- (t) applications under -
 - (i) s.66 of the Act for the sale of a ship and consequent directions
 - (ii) s.68 of the Act for an order prohibiting for a specified time the transfer of a ship;
- (u) any claim in relation to a dispute between an owner or master of a ship or a seaman arising out of their relationship as such;
- (v) the ascertainment of the costs of detention and inspection of a ship under s.298 of the Act; and
- (w) limitation claims

in relation to -

- (i) all ships or aircraft whether of Jamaica or not and whether registered or not and wherever the residence or domicile of their owners may be;
- (ii) all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
- (iii) (so far as they relate to mortgages or charges) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law, are to be dealt with as admiralty claims.

Admiralty claims in rem

- 70.3
- (1) This rule applies to claims in rem.
 - (2) A claim in rem is started by the issue of a claim form in rem (form A.1).
 - (3) The claimant may be named or described, but if not named in the claim form must identify himself by name if requested to do so by any other party.
 - (4) The defendant must be named or described in the claim form.
 - (5) Subject to rule 70.5, the particulars of claim must be contained in or served with the claim form.
 - (6) An acknowledgment of service (form A.2) must be filed within 14 days after service of the claim form.
 - (7) The person acknowledging service must identify himself by name.
 - (8) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

Service of claim form in rem

- 70.4
- (1) The claim form in rem may be served in one of the following ways-
 - (a) on the property against which the claim is brought by fixing a copy of the claim form -
 - (i) on the outside of the property in a position which may reasonably be expected to be seen; or
 - (ii) where the property is freight, either

- on the cargo in respect of which the freight was earned; or
 - on the ship on which the cargo was carried
- (b) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the claim form with that person
- (c) where the property has been sold by the bailiff, by filing the claim form at the court;
- (d) where there is a notice against arrest, on the person named in the notice as being authorised to accept service;
- (e) on any attorney-at-law authorised to accept service;
- (f) under rule 5.16 (service of claim form by contractually agreed method); or
- (g) in any other manner as the court may direct provided that the property against which the claim is brought, or part of it, is within the jurisdiction of the court.
- (2) Where the property -
- (a) is to be arrested; or
- (b) is already arrested in current proceedings, the bailiff will serve the claim form in rem if the claimant-
- (i) requests the court to do so; and
 - (ii) files an undertaking to pay on demand all expenses incurred by the bailiff in respect of service of the claim form in rem..
- (3) In all other cases the claim form must be served by the claimant.
- (4) Where the claim form in rem is served by the bailiff he must endorse on the claim form the following particulars -
- (a) where it was served;
 - (b) the property on which it was served;
 - (c) the day of the week and the date on which it was served;
 - (d) the manner in which it was served; and
 - (e) the name and address of the person effecting service.
- (5) The claim form must be served within 12 months after the date of issue and rule 8.14 is modified accordingly.

Service of claim form out of jurisdiction

- 70.5 (1) A claim form in rem may not be served out of the jurisdiction unless -
- (a) the defendant has submitted to or agreed to submit to the

- jurisdiction; and
 - (b) the court gives permission in accordance with Part 7.
- (2) A claim form in respect of a collision or limitation claim may be served out of the jurisdiction if -
- (a) the defendant's habitual residence or place of business is within the jurisdiction;
 - (b) the facts out of which the claim arises took place within Jamaican waters; or
 - (c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined by the court.
- (3) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.5.
- (4) Where permission to serve a claim form out of the jurisdiction is given, the court will specify the period after service of the claim form within which -
- (a) the acknowledgment of service; and
 - (b) where appropriate, the collision statements of case, must be filed and served

Collision claims

- 70.6 (1) This rule applies to collision claims.
- (2) A claim form need not contain or be followed by particulars of claim and rule 8.2 does not apply.
- (3) An acknowledgment of service must be filed.
- (4) A party who wishes to dispute the court's jurisdiction must make an application under rule 9.6 within 2 months after filing his acknowledgment of service and rule 9.6(3) is accordingly modified.
- (5) Every party must -
- (a) within 2 months after the defendant files the acknowledgment of service; or
 - (b) where the defendant applies under rule 9.6, within 2 months after the court has decided the application under that rule,
- file at the court a completed collision statement of case containing the following information, namely -

Part One

- (a) the names of the ships which came into collision and their ports of registry;
- (b) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
- (c) the date and time (including the time zone) of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind;
- (f) the state of the weather;
- (g) the state, direction and force of the tidal or other current;
- (h) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (i) the lights or shapes (if any) carried by the ship;
- (j)
 - (i) the distance and bearing of the other ship if and when her echo was first observed by radar;
 - (ii) the distance, bearing and approximate heading of the other ship when first seen;
- (k) what lights or shapes or combinations of lights or shapes (if any) of the other ship were first seen;
- (l) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (m) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in paragraph (h) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;
- (n) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact, what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
- (o) what sound signals (if any) were given, and when; and
- (p) what sound signals (if any) were heard from the other ship, and when.

Part Two

- (a) any other facts and matters upon which the party filing the collision statement of case relies;
 - (b) all allegations of negligence or other fault which the party filing the collision statement of case makes; and
 - (c) the remedy which the party filing the collision statement of case claims.
- (6) The collision statement of case must contain a certificate of truth in accordance with rule 3.12.
- (7) When he files his collision statement of case each party must give notice to every other party that he has done so.
- (8) Within 14 days after the last collision statement of case is filed each party must serve a copy of his collision statement of case on every other party.
- (9) Where, in a collision claim in rem (“the original claim”) -
- (a) an ancillary claim under Part 18 claim is made; and
 - (b)
 - (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
 - (ii) the party bringing the ancillary claim is unable to arrest a ship or otherwise obtain security, the party bringing the ancillary claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.
- (10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for loss of life or personal injury) -
- (a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;
 - (b) that offer is not accepted; and
 - (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.
- (11) Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs -
- (a) the offeror will be entitled to -
 - (i) all his costs from 21 days after the offer was made; and

- (ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and
- (b) all other parties to whom the offer was made -
 - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
 - (ii) will not be entitled to their costs after that time.
- (12) An offer under paragraph (10) must be in writing and must contain -
 - (a) an offer to settle liability at stated percentages;
 - (b) an offer to pay costs in accordance with the same percentages;
 - (c) a term that the offer remain open for 21 days after the date it is made; and
 - (d) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

Arrest

- 70.7
- (1) In a claim in rem -
 - (a) a claimant; and
 - (b) a judgment creditor,
 may apply to have the property proceeded against arrested.
 - (2) The application must be in form A.3.
 - (3) A party making an application for arrest must -
 - (a) request a search to be made in the Register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and
 - (b) file an affidavit in accordance with paragraph (4)
 - (4) The affidavit under paragraph (3) must state -
 - (a) in every claim -
 - (i) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, the name of that ship;
 - (ii) the nature of the property to be arrested and, if the property is a ship, the name of that ship and her port of registry; and

- (iii) the amount of security sought, if any; and
 - (b) in a claim against a ship under rules 70.2 (e) to (s) -
 - (i) the name of the person who would be liable on the claim if it were not commenced in rem;
 - (ii) that the person referred to in sub-paragraph (i) was, when the right to bring the claim arose either-
 - the owner or charterer of; or
 - in possession or in control of,
 the ship in connection with which the claim arose; and
 - (iii) that at the time the claim form was issued the person referred to in sub-paragraph (i) was either-
 - the beneficial owner of all the shares in the ship in respect of which the warrant is required; or
 - the charterer of it under a charter by demise; and
 - (c) in the cases set out in rules 70.7(6) and (7) that the relevant notice has been sent or served, as appropriate.
- (5) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.
- (6) A warrant of arrest may not be issued against a ship owned by a State where by any convention or treaty, Jamaica has undertaken to minimise the possibility of arrest of ships of that State until -
- (18/9/2006)
- (a) notice in form A5 has been served on a consular officer at the consular office of that State in Kingston or the port at which it is intended to arrest the ship; and
 - (b) a copy of that notice is attached to any affidavit under paragraph (4) (b).
- (Sections 15(2) and (3) and 16(2) of the Maritime Areas Act make particular provision as to the arrest of foreign ships.)
- (7) Except -
- (a) with the permission of the court; or
 - (b) where notice has been given under paragraph (6),
- a warrant of arrest may not be issued in a claim in rem against a foreign ship registered at a port of a State having a consulate in the jurisdiction until the expiration of 2 weeks after notice that the proceedings have been commenced has been sent to the consular

- officer.
- (8) A warrant of arrest is valid for 12 months but may only be executed if the claim form -
- (a) has been served; or
 - (b) remains valid for service at the date of execution.
- (9) Property may only be arrested by the bailiff.
- (10) Property is arrested -
- (a) by service on it of an arrest warrant in accordance with rule 70.4(1); or
 - (b) where it is not reasonably practicable to serve the warrant, by service of notice of issue of the warrant either -
 - (a) in the manner set out in rule 70.4(1) on the property; or
 - (b) by giving notice to those in charge of the property
- (10) Property under arrest -
- (a) may not be moved unless the court orders otherwise; and
 - (b) may be immobilised or prevented from sailing in such manner as the bailiff may consider appropriate.
- (11) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

Directions as to property under arrest

- 70.8 (1) The bailiff may at any time apply to the court for directions with regard to any property under arrest.
- (2) The bailiff may, and if the court so directs must, give notice of an application under paragraph (1) to any or all of the persons referred to in paragraph (3).
- (3) The bailiff must send by post a copy of any order made on an application under paragraph (1) to all persons who, in relation to the property under arrest, have -
- (a) entered a caution which is still in force;
 - (b) caused a warrant for the arrest of the property to be executed by the bailiff;
 - (c) acknowledged issue or service of the claim form in any claim in which the property is under arrest; or
 - (d) intervened in any claim in which the property is under arrest.

- (4) A person other than the bailiff may apply for directions under this rule.
- (5) An application under paragraph (4) must be served on the bailiff and all persons referred to in paragraph (3) unless the court otherwise orders.
- (6) An application for an order dispensing with service may be made without notice.

Security in claim in rem

- 70.9
- (1) This rule applies if, in a claim in rem, security has been given to-
 - (a) obtain the release of property under arrest; or
 - (b) prevent the arrest of property.
 - (2) The court may order that the -
 - (a) amount of security be reduced and may stay the claim until the order is complied with; or
 - (b) claimant may arrest or re-arrest the property proceeded against to obtain further security.
 - (3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property at the time -
 - (a) of the original arrest; or
 - (b) security was first given (if the property was not arrested).

Cautions against arrest

- 70.10
- (1) Any person may file a request for a caution against arrest.
 - (2) When a request under paragraph (1) is filed the court will enter the caution in the Register if the request is in form A6 and -

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 - (a) the person filing the request undertakes -
 - (i) to file an acknowledgment of service; and
 - (ii) to give sufficient security to satisfy the claim with interest and costs; or
 - (b) where the person filing the request has constituted a limitation fund in accordance with Part XIII of the Act he-
 - (i) states that such a fund has been constituted; and
 - (ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.
 - (3) A caution against arrest -

- (a) is valid for 12 months after the date it is entered in the Register; but
- (b) may be renewed for a further 12 months by filing a further request.
- (4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).
- (5) Property may be arrested if a caution against arrest has been entered in the Register but the court may order that -
 - (a) the arrest be discharged; and
 - (b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

Release and cautions against release

- 70.11
- (1) Where property is under arrest -
 - (a) an in rem claim form may be served upon it; and
 - (b) it may be arrested by any other person claiming to have an in rem claim against it.
 - (2) Any person who -
 - (a) claims to have an in rem right against any property under arrest; and
 - (b) wishes to be given notice of any application in respect of that property or its proceeds of sale, may file a request for a caution against release.
 - (3) When a request under paragraph (2) is filed, a caution against release will be entered in the Register.
 - (4) Property will be released from arrest if -
 - (a) it is sold by the court;
 - (b) the court orders release on an application made by any party;
 - (c)
 - (i) the arresting party; and
 - (ii) all persons who have entered cautions against release, file a request for release; or
 - (d) any party files -
 - (i) a request for release (containing an undertaking); and
 - (ii) consents to the release of the arresting party and all persons who have entered cautions against release.

- (5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.
- (6) The court may not make an order under paragraph (5) if satisfied that there was good reason to -
- (a) request the entry of; and
 - (b) maintain the caution.
- (7) Any person -
- (a) interested in property under arrest or in the proceeds of sale of such property; or
 - (b) whose interests are affected by any order sought or made, may be made a party to any claim in rem against the property or proceeds of sale.
- (8) Where -
- (a)
 - (i) a ship is not under arrest but cargo on board her is; or
 - (ii) a ship is under arrest but cargo on board her is not; and
 - (b) persons interested in the ship or cargo wish to discharge the cargo, they may, without being made parties, request the bailiff to authorise steps to discharge the cargo.
- (9) If -
- (a) the bailiff considers a request under paragraph (8) reasonable; and
 - (b) the applicant gives an undertaking in writing acceptable to the bailiff to pay -
 - (i) his fees; and
 - (ii) all expenses to be incurred by him or on his behalf on demand, the bailiff will apply to the court for an order to permit the discharge of the cargo.
- (10) Where persons interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in paragraph (9)(b), they may -
- (a) be made parties to the claim; and
 - (b) apply to the court for an order for -
 - (i) discharge of the cargo; and
 - (ii) directions as to the fees and expenses of the bailiff with regard to the discharge and storage of the cargo.

Judgment in default

- 70.12 (1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of -
- (a) an acknowledgment of service only if -
 - (i) the defendant has not filed an acknowledgment of service; and
 - (ii) the time for doing so set out in rule 70.3(6) has expired; and
 - (b) defence only if -
 - (i) a defence has not been filed; and
 - (ii) the relevant time limit for doing so has expired.
- (2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 70.6(5) may obtain judgment in default of a collision statement of case only if -
- (a) the party against whom judgment is sought has not filed a collision statement of case; and
 - (b) the time for doing so set out in rule 70.6(5) has expired.
- (3) An application for judgment in default -
- (a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing -
 - (i) a notice of application;
 - (ii) an affidavit proving service of the claim form; and
 - (iii) evidence on affidavit proving the claim to the satisfaction of the court; and
 - (b) under paragraph (2) in any other claim must be made in accordance with Part 12 with any necessary modifications.
- (4) A notice of application seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register.
- (5) The court may set aside or vary any judgment in default entered under this rule.
- (6) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where -
- (a) the claim form has been served on that party;
 - (b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 70.10(2)(a)(ii); and
 - (c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

Sale by court, priorities and payment out

- 70.13 (1) An application for an order for the survey, appraisalment or sale of a ship may be made in a claim in rem at any stage by any party.
- (2) A notice of application concerning -
- (i) the sale of the property under arrest; or
 - (ii) the proceeds of sale of property sold by the court,
- (a) must be served on -
- (i) all parties to the claim;
 - (ii) all persons who have requested cautions against release with regard to the property or the proceeds of sale; and
 - (iii) the bailiff; and
- (b) will be heard in public.
- (3) If the court makes an order for sale, it may -
- (a) set a time within which notice of claims against the proceeds of sale must be filed; and
 - (b) the time and manner in which such notice must be advertised.
- (4) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (3) apply to the court for the determination of priorities.
- (5) An notice of application under paragraph (4) must be served on all persons who have filed a claim against the property.
- (6) Where the proceeds of sale are -
- (a) paid into court by the bailiff; and
 - (b) in a foreign currency, the funds are to be placed on a one day call interest bearing account.
- (7) A party may apply to place foreign currency on a longer term deposit account.
- (8) Where an order is made under paragraph (7), the party who made the application must give notice of the placement to all parties interested in the fund.
- (9) Payment out of the proceeds of sale will be made only to judgment creditors and -
- (a) in accordance with the determination of priorities; or
 - (b) as the court orders.

Limitation claims

- 70.14 (1) This rule applies to limitation claims.
- (2) The claim form in a limitation claim in form A.4 must be accompanied by an affidavit -
- (a) setting out the facts on which the claimant relies; and
 - (b) stating the names and addresses (if known) of all persons (other than named defendants) who, to the knowledge of the claimant, have claims against him in respect of the occurrence to which the claim relates.
- (3) The -
- (a) claimant; and
 - (b) at least one defendant,
- must be named in the claim form, but all other defendants may be described.
- (4) The claim form -
- (a) must be served on all named defendants and any other defendant who requests service upon him; and
 - (b) may be served on any other defendant.
- (5) An acknowledgment of service is not required.
- (6) Every defendant upon whom a claim form is served must
- (a) within 28 days of service file -
 - (i) a defence; or
 - (ii) a notice that he admits the right of the claimant to limit liability; or
 - (b) if he wishes to -
 - (i) dispute the jurisdiction of the court; or
 - (ii) argue that the court should not exercise its jurisdiction, apply to the court under rule 9.6
- (7) Where one or more named defendants admits the right to limit -
- (18/9/2006)
- (a) the claimant may apply for a restricted limitation decree in form A7; and
 - (b) the court will issue a decree in form A7 limiting liability only against those named defendants who have admitted the claimant's right to limit liability.
- (8) A restricted limitation decree -
- (a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and
 - (b) need not be advertised, but a copy must be served on the defendants to whom it applies.

- (9) Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability -
- (a) the claimant may apply to the court for a general limitation decree; and
 - (b) the court will issue a limitation decree.
- (10) Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant -
- (a) may apply for a general limitation decree; and
 - (b) must within 7 days after -
 - (i) the date of the filing of the defence of the defendant last served; or
 - (ii) the expiry of the time for doing so,
 apply for a case management conference to be fixed.
- (11) At the case management conference the court may -
- (a) grant a general limitation decree; or
 - (b)
 - (i) order service of a defence;
 - (ii) order disclosure by the claimant; or
 - (iii) make such other case management directions as may be appropriate.
- (12) When a limitation decree is granted the court -
- (a) may -
 - (i) order that any proceedings relating to any claim arising out of the occurrence be stayed;
 - (ii) order the claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of claims against which liability is limited; or
 - (iii) if the decree is a restricted limitation decree, distribute the limitation fund; and
 - (b) will, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.
- (13) When the court grants a general limitation decree the claimant must -
- (a) advertise it in such manner and within such time as the court directs; and
 - (b) file -
 - (i) a declaration that the decree has been advertised

- in accordance with paragraph (a); and
 - (ii) copies of the advertisements.
- (14) No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on -
 - (a) the limiting party; and
 - (b) all other defendants except where the court orders otherwise.
- (15) Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.
- (16) An application under paragraph (16) must be supported by an affidavit -
 - (a) stating that the applicant has a claim against the claimant arising out of the occurrence; and
 - (b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.
- (17) A limitation claim for -
 - (a) a restricted decree may be brought by counterclaim; and
 - (b) a general decree may only be brought by counterclaim with the permission of the court.
- (18) Nothing in this rule prevents limitation being relied on by way of defence.

Limitation Claim - payment into court

- 70.15 (1) The claimant may constitute a limitation fund by paying into court, the Jamaican dollar equivalent of the number of units of account to which the claimant claims to be entitled to a limitation of liability under the Act together with interest thereon from the date of the occurrence giving rise to its liability to the date of payment into court.
- (2) A limitation fund may be established before or after a limitation claim has been started.
- (3) Where the claimant does not know the appropriate equivalent of the said number of units of account on the date of payment into court he may calculate the same on the basis of the latest available published Jamaican dollar equivalent of the units of account as fixed under sections 405 and 407 of the Act.

- (4) In the event of the appropriate dollar equivalent of a unit of account on the date of payment into court being different from that used under paragraph (3), the claimant may -
- (a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under paragraph (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or
 - (b) apply to the court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).
- (5) An application under paragraph (4) (b) -
- (a) may be made without notice, but
 - (b) must be supported by evidence on affidavit proving the appropriate dollar equivalent of the appropriate number of units of account on the date of payment into court.
- (6) The claimant must give notice in writing to every named defendant of,
- (a) any payment in to court specifying -
 - (i) the date of payment in;
 - (ii) the amount paid in;
 - (iii) the amount and rate of interest included; and
 - (iv) the period to which the interest relates.
 - (b) any excess amount (and interest) paid out to him under paragraph (4) (b)
- (7) If a limitation claim is not commenced within 75 days after the date the fund was established -
- (a) the fund will lapse; and
 - (b) all money in court (including interest) will be repaid to the person who made the payment into court.
- (8) Money paid into court under paragraph (1) will not be paid out except under an order of the court.

Stay of proceedings

- 70.16 Where the court orders a stay of any claim in rem -
- (a) any property under arrest in the claim remains under arrest; and
 - (b) any security representing the property remains in force, unless the court orders otherwise.

Case management

- 70.17 (1) Parts 25 to 27 and 39 apply to admiralty claims except that the date, time and place for a case management conference must be fixed by the registry -
- (i) in any claim other than one to which rule 70.5 (collision claims), rule 70.14 (limitation claims) or rule 70.19 (apportionment of salvage) apply, on the filing of a defence; or
 - (ii) where rule 70.5 (collision claims) applies, on the filing of the first collision statement of case.
- (2) At the case management conference the court must determine whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.
- (3) Rules 38.5, 38.6 and 39.1 apply to admiralty claims subject to the following and any other necessary modifications -
- (a) the bundles referred to in rule 38.7 and 39.1 must include any collision statements of case; and
 - (b) where trial with one or more assessors has been ordered an additional set of bundles of the documents listed in rule 39.1 as amended by sub-paragraph (a) must be lodged for each assessor.

Assessors

- 70.18 (1) The court may sit with assessors when hearing -
- (a) collision claims; or
 - (b) other claims involving issues of navigation or seamanship, and the parties are not permitted to call expert witnesses unless the court orders otherwise.
- (2) Where the claim has been ordered to be tried with an assessor the attorney-at-law for the party with conduct of the claim must file in the registry an undertaking to pay the proper fees and expenses of such assessor or assessors.

Claims for the apportionment of salvage

- 70.19 (1) This rule applies to applications under ss. 372, 387 and 389 of the Act.
- (2) Proceedings for the apportionment of salvage, the aggregate amount of which has already been ascertained, must be commenced by a fixed date claim form.

- (3) The claimant need not file or serve particulars of claim but must file an affidavit in support of his claim.
- (4) At the first hearing the court may -
 - (a) exercise any jurisdiction conferred by the Act; or
 - (b) give directions as at a case management conference.

Other admiralty claims

- 70.20
- (1) This rule applies to admiralty claims other than -
 - (a) claims in rem;
 - (b) collision claims;
 - (c) claims for the apportionment of salvage; and
 - (d) limitation claims.
 - (2) Such claims are commenced by filing a claim form in accordance with Part 8.
 - (3) The claimant may be named or may be described but, if not named in the claim form, must identify himself by name if requested to do so by any other party.
 - (4) The defendant must be named in the claim form.
 - (5) Any person who files a defence must identify himself by name in his defence.

Undertakings

- 70.21
- (1) Any undertaking to the bailiff required by this Part must be given-
 - (a) in writing and to his satisfaction; and
 - (b) in accordance with such other arrangements as he may require.
 - (2) Any party who is dissatisfied with a direction given by the bailiff may apply to the court for directions.

PART 71

Commercial Division

Contents of this Part

Scope of this Part	Rule 71.1
Constitution of Commercial Division	Rule 71.2
Commercial proceedings	Rule 71.3
The commercial list	Rule 71.4
Entry of claims in the commercial list	Rule 71.5
Transfer of claims to the commercial list	Rule 71.6
Case management	Rule 71.7
Dispensation with statements of case	Rule 71.8

Scope of this Part

- 71.1 (1) This Part deals with the -
- (a) composition of the Commercial Division;
 - (b) types of proceedings to be assigned to the Commercial Division; and
 - (c) procedures to be adopted in the Commercial Division.
- (2) The other parts of these Rules apply to commercial proceedings as defined in rule 71.3 subject to the provisions of this Part.

Constitution of Commercial Division

- 71.2 (1) The Chief Justice may assign any one or more judges of the court to constitute the Commercial Division of the court.
- (2) The Chief Justice may appoint a judge assigned to the Commercial Division to be in charge of the Commercial list.

Commercial proceedings

- 71.3 In this Part “**commercial claim**” includes any case arising out of trade and commerce in general and any case relating to -

- (a) admiralty proceedings;
(Part 70 deals with procedure in admiralty proceedings.)
 - (b) contracts relating to ships and shipping;
 - (c) contracts relating to aircraft;
 - (d) the international carriage of goods by land, sea, air or pipeline;
 - (e) the exploitation of oil and gas reserves;
 - (f) insurance and reinsurance;
 - (g) banking, negotiable instruments, financial services and international credit;
 - (h) the purchase and sale of commodities;
 - (i) hire purchase transactions;
 - (j) the operation of international markets and exchanges;
 - (k) the construction and performance of business documents and contracts including agency;
 - (l) questions connected with or arising from commercial arbitrations;
 - (m) franchising agreements; and
 - (n) any other matter or any question of facts or law which is particularly suitable for decision by a judge of the Commercial Division,
- and “**commercial proceedings**” has a corresponding meaning.

The commercial list

- 71.4 (1) There shall be a list called “**the commercial list**” in which commercial claims in the court may be entered for trial in the Commercial Division.
- (2) The Chief Justice shall assign a judge to be in charge of the commercial list for such period as the Chief Justice may determine.
- (3) The judge in charge of the commercial list shall have control of all proceedings in the Commercial Division.

Entry of claims in the commercial list

- 71.5 (1) Any claim form in commercial proceedings must be marked in the top left hand corner with the words “Commercial Division” and on the issue of the claim the proceedings must be entered into the commercial list.
- (2) Where a claim form is to be marked in accordance with paragraph

- (1), any application before the issue of a claim shall be made to a judge assigned to the Commercial Division.
- (3) Where the judge hearing the application considers that the claim should not be assigned to the commercial list, he may transfer the application to be heard by a judge not assigned to the division or to a master.

Transfer of claims to the commercial list

- 71.6 (1) A party may apply at or before the case management conference for any claim to be transferred to the Commercial List.
- (2) The application other than at a case management hearing must be made to a judge assigned to the Commercial Division.

Case management

- 71.7 (1) The provisions of Part 27 shall apply to the case management of commercial claims.
- (2) All case management hearings and applications in the course of the proceedings must be heard by the judge in the charge of the commercial list or a judge assigned by him.
- (3) However -
- (a) if an application is urgent and no judge assigned to the Commercial Division is available the application may be made to some other judge of the court or a master; and
- (b) unless the judge in charge of the commercial list otherwise orders, all proceedings for the enforcement of a judgment or order for the payment of money may be dealt with by a master or registrar.
- (4) A judge assigned to the Commercial Division may order proceedings in the commercial list to be removed from the list.

Dispensation with statements of case

- 71.8 A judge assigned to the Commercial Division may at any time, before or after the issue of a claim form, order that proceedings in the commercial list be tried without the filing or service of a particulars of claim or defence or any other statement of case.

PART 72

Reciprocal Enforcement of Judgments

Contents of this Part

Scope of this Part	Rule 72.1
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Register of judgments	Rule 72.5
Notice of registration	Rule 72.6
Application to set aside registration	Rule 72.7
Issue of execution	Rule 72.8
Certified copy of Court judgment for enforcement in another country	Rule 72.9

Scope of this Part

- 72.1 (a) This Part deals with the procedure under which under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the court for enforcement within Jamaica.
- (b) In this Part “**the Acts** “ means the Judgments and Awards (Reciprocal Enforcement) Act and the Judgments (Foreign) (Reciprocal Enforcement) Act.
- (c) This Part takes effect subject to the requirements of the Acts.

Application for registration

- 72.2 An application to have a judgment registered in the Court may be made without notice but must be supported by an affidavit -
- (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in English certified by a notary public or authenticated by affidavit;

- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
- (c) stating to the best of the information or belief of the deponent -
 - (i) that the judgment creditor is entitled to enforce the judgment; and either
 - (ii) that at the date of the application the judgment has not been satisfied; or
 - (iii) the amount in respect of which it remains unsatisfied; and, in either case,
 - (iv) that the judgment may be ordered to be registered for enforcement under the Acts; and
 - (v) that the registration would not be, or be liable to be, set aside under either Act; and
- (d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application.

Security for costs

72.3 The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration

- 72.4
- (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.
 - (2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.
 - (3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.
 - (4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

- (5) The court hearing the application may direct that notice be given to any person.

Register of judgments

- 72.5
- (1) A register of the judgments ordered to be registered must be kept in the registry.
 - (2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration

- 72.6
- (1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.
 - (2) Service of such a notice out of the jurisdiction is permissible without leave, and rules 7.8, 7.9 and 7.10 apply to such a notice as they apply in relation to a claim form.
 - (3) The notice of registration must state -
 - (a) full particulars of the judgment registered and the order for registration,
 - (b) the name and address of the judgment creditor or of the judgment creditor's attorney-at-law or agent on whom any summons issued by the judgment debtor may be served;
 - (c) the right of the judgment debtor to apply to have the registration set aside; and
 - (d) the period within which an application to set aside the registration may be made.

Application to set aside registration

- 72.7
- (1) An application to set aside the registration of a judgment must be supported by evidence on affidavit.
 - (2) Where the court hearing an application to set aside the registration of a judgment is satisfied that the judgment falls within any of the cases in which a judgment may not be registered under the provisions of the Acts it must set aside the registration.
 - (3) Where the court hearing an application to set aside the registration of a judgment is satisfied that -
 - (a) it is not just or convenient that the judgment should be enforced within the jurisdiction; or

- (b) there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

Issue of execution

- 72.8
- (1) Execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 72.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of the extended period.
 - (2) Where an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after the application is finally determined.
 - (3) Any party wishing to issue execution on a registered judgment must file at the registry an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

Certified copy of court judgment for enforcement in another country

- 72.9
- (1) An application under section 12 of the Judgments (Foreign) (Reciprocal Enforcement) Act for a certified copy of a judgment entered in the court for the purpose of enforcement in some other country may be made without notice supported by affidavit evidence.
 - (2) The certified copy of the judgment must be an office copy sealed with the seal of the court and indorsed with a certificate signed by a registrar that it is a true copy of a judgment obtained in the court and that it is issued in accordance with the Act.

PART 73

Transitional Provisions

Contents of this Part

Scope of this Part	Rule 73.1
New proceedings	Rule 73.2
Old Proceedings	Rule 73.3
Application to restore proceedings	Rule 73.4
Exercise of discretion	Rule 73.5

Scope of this Part

- 73.1 (1) This Part deals with the extent to which the former rules remain in force after these Rules come into force and the way in which actions, matters and other proceedings in existence as at the commencement date become subject to these Rules.
- (2) Any reference to the Judicature (Civil Procedure Code) Act in any statute or rule is to be deemed to be a reference to these Rules.
- (3) In this Part -
“**commencement date**” means the 1st January 2003;
“**old proceedings**” mean any proceedings commenced before the commencement date.

New proceedings

- 73.2 (1) These Rules apply to all proceedings commenced on or after the commencement date.

Old proceedings

- 73.3 (1) These Rules do not apply to any old proceedings in which a trial date has been fixed to take place within the first term after the commencement date unless that date is adjourned and a judge shall fix the date.

- (2) Where any old proceeding has been adjourned part heard, the trial judge may give directions as to the future conduct of the proceedings or direct that a pre-trial review is fixed.
- (3) Where in any old proceedings an application is made to adjourn a trial date, the hearing of the application is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.
- (4) Where in any old proceedings a trial date has not been fixed to take place within the first term after the commencement date, it is the duty of the claimant to apply for a case management conference to be fixed.
- (18/8/2006) (5) A defendant has a duty to apply for a case management conference if he has an ancillary claim under Part 18.
- (6) When an application under paragraph (4) is received, the registry must fix a date, time and place for a case management conference under Part 27 and the claimant must give all parties at least 28 days notice of the date, time and place fixed for the case management conference.
- (7) These Rules apply to old proceedings from the date that notice of the case management conference is given.
- (8) Where no application for a case management conference to be fixed is made by 31st December 2003 the proceedings (including any counterclaim, third party or similar proceedings) are struck out without the need for an application by any party.
- (17/2/2003) (9) A striking out pursuant to rule 73.3(8) will be without prejudice to the defendants ability to claim costs.
- (17/2/2003)

Application to restore proceedings

- 73.4
- (1) A list of all proceedings which have been struck out under rule 73.3(7) must be displayed in a prominent position in the registry between 1st January 2004 and 31st March 2004.
 - (2) The fact that the list under Paragraph (1) has been displayed must be advertised in newspaper of general circulation on at least three occasions not less than 2 weeks apart.
 - (3) Any party to proceedings which have been struck out under rule 73.3(7) may apply to restore the proceedings.
 - (4) The application must be made by 1st April 2004.
 - (5) The application must be on notice to all other parties and must be

- supported by evidence on affidavit.
- (6) The court may restore the proceedings only if -
 - (a) a good reason is given for failing to apply for a case management conference under rule 73.3(4);
 - (b) the applicant has a realistic prospect of success in the proceedings; and
 - (c) the other parties to the proceedings would not be more prejudiced by granting the application than the applicant by refusing it.
 - (7) Any order restoring the proceedings may be made on such terms as the court thinks just.
 - (8) These Rules apply to any proceedings restored under this rule.

Exercise of discretion

- 73.5 Where the former rules still apply and the court has to exercise its discretion it may take into account the principles set out in these Rules and, in particular, Parts 1 and 25.

PART 74

Mediation

(18/9/2006)

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Objective

- 74.1 This part establishes automatic referral to mediation in the civil jurisdiction of the court for the following purposes:
- a) improving the pace of litigation;
 - b) promoting early and fair resolution of disputes;
 - c) reducing the cost of litigation to the parties and the court system;
 - d) improving access to justice;
 - e) improving user satisfaction with dispute resolution in the justice system; and
 - f) maintaining the quality of litigation outcomes through a mediation referral agency appointed to carry out the objects of this part.

Interpretation

- 74.2 (1) “Mediation” refers to a dispute-resolving process in which a neutral third party called the “Mediator” facilitates and coordinates negotiations by parties in a dispute with a view to resolving or reducing the extent of the dispute.
- (2) Mediations shall be conducted by persons on the approved roster of mediators referred to in rule 74.7.
- (3) “Mediation referral agency” means the Dispute Resolution Foundation or any other body appointed by the Rules Committee of the Supreme Court.
- (4) In this part, “parties” means parties to mediation proceedings.

Scope and Application of this Part

- 74.3 (1) Subject to paragraph (2), this part applies to all matters arising in the civil jurisdiction of the court except for:
- a) fixed date claims under Rule 8.1;
 - b) administrative law proceedings under Part 56;
 - c) writs of Habeas Corpus under Part 57;
 - d) bail applications under Part 58;
 - e) non-contentious probate proceedings under Part 68; and
 - f) admiralty proceedings under Part 70.
- (2) A judge or master may by order direct a mediation in any proceedings.
- (3) In any proceedings in which a case management conference has not been fixed before September 18, 2006, the matter shall be automatically referred to mediation:
- a) if there is only one defendant, upon a defence being filed;
 - b) if there is more than one defendant, after defences have been filed on behalf of all defendants or 30 days after the first defence is filed, whichever is earlier.
- (4) A matter may be referred to mediation at any time prior to a pre trial review by the consent of the parties.
- (5) A matter may be referred to mediation at any time by order of a judge or master.
- (6) If a matter is being referred to mediation pursuant to paragraph 3, the registrar must complete form M1 and deliver the form to a mediation referral agency and serve a copy on the parties.
- (7) If the matter is being referred to mediation pursuant to paragraph 4 or 5, the claimant must complete form M1, file a copy in court

and deliver the form to a mediation referral agency.

- (8) Forms applicable to this Part are set out at Appendix 4.

Dispensing with mediation

- 74.4 (1) The court may postpone or dispense with a reference to mediation if it is satisfied that:
- a) good faith efforts to settle have been made and were not successful;
 - b) the costs of mediation would be disproportionate to the value of the claim or the benefits that might be achieved by mediation;
 - c) the case involves a matter of public policy and mediation may not be appropriate; or
 - d) for some other good or sufficient reason, mediation would not be appropriate.
- (2) When the court dispenses with mediation, a case management conference should be scheduled, where appropriate.
- (3) Applications to postpone or dispense with mediation and all other applications under this Part may be heard on paper.

Mediation Referral Agency

- 74.5 (1) "Mediation" referral agencies will coordinate and deliver approved services including:
- a) compiling and keeping a current roster of mediators;
 - b) assigning mediators pursuant to rule 74.7;
 - c) monitoring the performance of the mediators on its roster;
 - d) training mediators;
 - e) providing facilitation and advice to the Chief Justice; and
 - f) any other services as may be required and as are consistent with this part.

Selection of mediators and scheduling of mediations

- 74.6 (1) When a matter has been referred to mediation, the parties shall attempt to agree to three mediators on the approved roster of mediators and on proposed dates for the mediation.
- (2) Not later than 28 days after a referral to mediation, the claimant party shall, on form M2,
- a) where agreement has been reached between the parties, notify the mediation referral agency and all other

- claimants and defendants who have filed defences but against whom judgment has not been entered, of the name(s) of the mediator(s) selected and the proposed date of the mediation; or
- b) where no agreement has been reached, apply to the mediation referral agency for the appointment of a mediator and the scheduling of the mediation.
- (3) Where the claimant does not take the appropriate action under rule 2 within the time indicated, a defendant must do so within 7 days of the expiration of the period provided in rule 2.
- (4) Within 7 days of receiving an application on form M2, the mediation referral agency must:
- a) appoint a mediator from the roster;
- b) give notice to the parties on form M3 of the name, address and telephone number of the mediator appointed, and the date, time and place appointed for the mediation;
- (5) Where a mediation referral agency has received notice of a referral to mediation on form M1, but has not received a form M2 from either a claimant party or a defendant party within 35 days of the date of referral, the mediation referral agency must proceed as set out in paragraph 4.
- (6) Where the parties have agreed on a mediator or mediators, the referral agency must appoint one of the persons agreed so long as one of the mediators agreed is available and willing to accept the appointment.
- (7) At least 7 days notice must be given by the mediator to each party of any change in the date, time or place appointed for the mediation.
- (8) Within 7 days of receiving a form M3, any party can object to the mediator appointed. In the event of an objection, the mediation referral agency must appoint another mediator.

Mediators

- 74.7 (1) The registrar must maintain and have available for inspection by the public:
- a) An approved roster of mediators who have been certified by a mediation referral agency and approved by the Chief Justice;
- b) standards of certification which mediators must meet before being certified;

- c) a code of conduct for mediators approved by the Chief Justice; and
 - d) a schedule of fees for mediators.
- (2) Every mediator who conducts a mediation pursuant to this Part must comply with the provisions of this Part, the standards of certification and the code of conduct.

Timing of mediation

- 74.8 (1) Every mediation must be completed within 90 days of the date of referral.
- (2) The parties can agree to extend the time for completion by a further 30 days;
- (3) Where the parties have agreed to an extension of time pursuant to rule 2, they must notify the registrar in writing before the expiration of 90 days from the referral date.

Attendance at mediations

- 74.9 (1) All parties along with their attorneys-at-law (where represented) must attend all mediation sessions.
- (2) Where a party is not a natural person, the person attending on behalf of that party must be authorized to settle the dispute or be in a position to obtain such authority during the mediation or within 3 days of the mediation.
- (3) If additional dates are scheduled for the mediation, the mediator shall immediately notify the mediation referral agency and the parties.

Conduct of the mediation

- 74.10 (1) Each party shall deliver to the mediator no later than 7 days before the date fixed for the mediation, a completed form M4 and copies of that party's statements of case.
- (2) The parties and their attorneys-at-law shall, at the first mediation session, execute an agreement absolving the mediator from any liability arising out of or relating to the mediation.
- (3) A mediator may:
- a) assist the parties by meeting with them together or separately to encourage and facilitate discussion between

- them in an attempt to reach a mutually acceptable resolution of the dispute or any part of it; or
- b) adopt any procedure that is just to the parties to facilitate and encourage an early settlement of one or more issues in dispute between them.
- (4) Mediation is a confidential process such that:
- a) discussions during the mediation and documents prepared solely for the purposes of the mediation are confidential and may not be disclosed in any other proceedings or context;
 - b) no party or attorney-at-law representing a party may at any subsequent trial or hearing of the claim refer to any matters disclosed by them or any other party at the mediation;
 - c) the mediator may not disclose to any other person or be required to give evidence about any matters disclosed by any party at the Mediation;
 - d) the mediator shall not be required to provide consultation notes, evidence or an opinion, touching on the subject matter of the mediation in any proceedings; and
 - e) the mediator's report shall be absolutely privileged, unless it becomes an order of the court pursuant to rule 74.12.
 - f) Nothing in this rule 74.10 (4) is intended to affect any duty to disclose under any other rule.
- (5) Any agreement reached by the parties at the mediation shall be recorded in writing and signed by the parties and their attorneys-at-law (if any).

Report of mediator

- 74.11 (1) Subject to any extension pursuant to rule 74.8 (2), within 8 days of the completion of the mediation and in any event, within 98 days of the referral, the mediator shall file a report in form M5 at the registry, indicating:
- a) the date(s) of the mediation;
 - b) the persons receiving notice and the date of notification of the last mediation session;
 - c) the persons who attended the mediation;
 - d) whether agreement was reached; and
 - e) where no agreement or a partial agreement was reached,

whether the parties are prepared to continue with mediation and the mediator considers that there are reasonable prospects of an agreement being reached if an extension of time is granted.

- (2) Where an agreement is reached between the parties, the signed written agreement shall accompany the report or be filed at the registry not later than 30 days after the completion of the mediation, unless it is a term of the agreement that it remains confidential.
- (3) Where the written agreement does not accompany the report but it is to be filed, the mediator shall indicate in the report who will be responsible for filing the written agreement.

Action by the court after filing of report

- 74.12
- (1) Where an agreement has been reached, the court must make an order in the terms of the report [pursuant to rule 42.7].
 - (2) Where the report states that no mediation has taken place or that no agreement was reached, the Registrar must immediately fix a case management conference, pursuant to rule 27.3 and give notice to the parties as required by that rule.

Costs of mediation

- 74.13
- (1) The costs of mediation under this part including any payment made by a party to a mediation referral agency in respect of mediators' fees will be costs in the claim unless otherwise agreed by the parties.
 - (2) The fees payable to mediators shall be as set out in the schedule of fees prepared by the Rules Committee of the Supreme Court and referred to in rule 74.7.
 - (3) The Rules Committee may review the schedule of fees on an annual basis.
 - (4) Mediators' fees shall be paid by the parties to the mediator or to the mediation referral agency not later than 7 days before the date(s) scheduled for the mediation.

Sanctions

- 74.14
- (1) In the event that a party, an attorney-at-law representing a party or a mediator shall fail to comply with any of the requirements of

- this Part, any other party or the mediation referral agency may apply to the courts;
- (2) The application must be supported by an affidavit setting out the nature of the alleged failure.
 - (3) Notice of the application and a copy of the affidavit must be served on every other party.
 - (4) The court may make such order and impose such sanctions as may be permitted under these rules, including, but not limited to, costs.
 - (5) Where the mediator's report indicates that the claimant party did not attend the mediation, the court may, on the application of a defendant party, strike out the claim.
 - (6) Where the mediator's report indicates that a defendant party did not attend the mediation, the court may, on the application of a claimant party, strike out the defence and enter judgment against that defendant.
 - (7) An application under paragraph 5 or 6 above shall be supported by evidence on affidavit that the claimant party or defendant party, as the case may be:
 - a) did not attend the mediation; and
 - b) had notice of the date, time and place of the mediation as required by rule 74.6 (4).
 - (8) The provisions of rules 12.3 (cases in which permission required), 12.8 (claim for a specified sum of money), 12.9 (claim against more than one defendant), 12.10 (nature of default judgment), 12.11 (interest), 12.12 (costs) and 12.13 (defendant's rights following default judgment) shall apply to a judgment entered pursuant to paragraph 6.
 - (9) In addition to the court's powers under paragraph (4), where a mediator fails to comply with any of the requirements of this Part, the court may direct that the mediator should be removed from the approved roster of mediators.

Relief from Sanctions

- 74.15
- (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction under this Part must be:
 - a) made promptly; and
 - b) supported by evidence on affidavit.
 - (2) The court may grant relief if it is satisfied that:
 - a) the failure to comply was not intentional;

- b) there is a good explanation for the failure; or
 - c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.
- (3) In considering whether to grant relief, the court must have regard to –
- a) the interests of the administration of justice;
 - b) whether the failure to comply was due to the party or that party's attorney-at-law;
 - c) whether the failure to comply has been or can be remedied within a reasonable time;
 - d) whether the trial date or any likely trial date can still be met if relief is granted; and
 - e) the effect which the granting of relief or not would have on each party.
- (4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

Use of Mediator's reports for research and evaluation

- 74.16 (1) For purposes of research and evaluation by persons authorized by the Chief Justice, mediators' reports may be disclosed after removal of all information which may identify the parties, and after any other editing which may be necessary to preserve confidentiality.

PART 75

Review of Inmates Held at the Court's Pleasure

(18/9/2006)

Contents of this Part

Scope of the Part	Rule 75.1
Application for Review	Rule 75.2
Service of Notice	Rule 75.3
Representation	Rule 75.4
Procedure at the Hearing	Rule 75.5
Powers of the Court	Rule 75.6
Adjournment	Rule 75.7
Decision	Rule 75.8

Scope of this Part

- 75.1 This Part deals with applications for the review of inmates held at the court's pleasure.

Application for review

- 75.2 (1) An application for the review of inmates held at the court's pleasure must be made to the Supreme Court.
- (2) The application must be by notice in form XX and must be supported by an affidavit.
- (3) The general rule is that an application shall not be made until 5 years has elapsed since the applicant was first detained at the court's pleasure.
- (4) The general rule is that an application may not be made less than 2 years after the previous application by that applicant.
- (5) The court may, in exceptional circumstances, consider applications made after shorter time periods than are indicated in paragraphs 3 and 4.
- (6) Within 30 days of the filing of the application, the Superintendent of the relevant correctional centre shall submit to the Supreme Court:

- a. A psychiatric report on the applicant.
- b. A report from the Superintendent on the applicant.

Service of Notice

- 75.3 (1) Within 7 days of receipt of the notice, the Registrar shall list the case for review within 60 days.
- (2) The Registrar shall serve the Director of Public Prosecutions with the notice, the affidavit in support, the reports referred to in Rule 74.2 and any other documents filed in the matter.

Representation

- 75.4 (1) The applicant may appoint an attorney or other person to act as his representative and he shall give notice of the name, address and occupation of the person so appointed at the same time of the notice or within 14 days of the notice.
- (2) Where the applicant has not appointed a representative within this period, the Registrar of the Supreme Court shall, with the applicant's consent, appoint an attorney or other person to act on his behalf.

Procedure at the Hearing

- 75.5 (1) The application shall be heard by a single Judge of the Supreme Court.
- (2) Where the applicant is a child or the interests of justice so require, the hearing shall be in chambers.
- (3) The Judge may admit to the hearing of such persons on such terms and conditions as he considers appropriate.
- (4) At the beginning of the hearing, the Judge shall explain the order of proceedings which he proposes to adopt.
- (5) The Judge shall conduct the hearing in such a manner as he considers most suitable to the clarification of the issues before him and generally to the just handling of the case.
- (6) The applicant and all other parties shall be entitled to appear and be heard at the hearing and to take such part in the proceedings as the Judge considers appropriate, and the parties may:-
- i. Make submissions;

- ii. Call witnesses; and
 - iii. Put questions to any witness appearing at the hearing.
- (7) The Judge may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law, but no person shall be compelled to give evidence or produce any document which he could not be compelled to give or produce on the trial of an action in the Supreme Court.
- (8) The Judge may require, any witness or other person he thinks appropriate to leave the hearing where argument is being heard or evidence is being examined.
- (9) After all the evidence has been heard, the applicant's attorney or the applicant shall be given a further opportunity to address the Judge.

Powers of the Court

- 75.6 The Court may:
- (1) Release the applicant unconditionally;
 - (2) Release the applicant on parole with conditions; or
 - (3) Dismiss the application with or without such recommendations as the court deems fit.

Adjournment

- 75.7
- (1) On adjourning the hearing, the Judge shall give such directions as he considers appropriate for ensuring the prompt consideration of the case at a resumed hearing.
 - (2) In any case where a hearing is adjourned without a resumed hearing date having been fixed by way of direction given under paragraph (2), the Registrar shall give the parties not less than 14 days notice, or such shorter notice to which all parties may consent, of the date, time and place of the resumed hearing.

Decision

- 75.8 The decision of the Judge shall be recorded in writing with reasons dated and signed by the Judge and communicated in writing to the parties not more than 14 days after the end of the hearing.

PART 76

Matrimonial Proceedings

(18/9/2006)

Contents of this Part

Scope of this Part

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Service out of the jurisdiction	Rule 76.9
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General provisions relating to dissolution of marriage	Rule 76.14
Rescission of decrees nisi	Rule 76.15
Where petition is not pursue	Rule 76.16
Transitional Provisions	Rule 76.17
Forms	Rule 76.18

Scope of this Part

- 76.1 This Part deals with proceedings for:
- (a) dissolution of marriage;
 - (b) nullity of marriage;
 - (c) presumption of death and dissolution of the marriage;

- (d) custody, maintenance, education of and access to children;
- (e) division of property; and
- (f) all other matrimonial proceedings

Definitions

76.2

In this Part:

“**answer**” means the document setting out the response of a respondent to an application for a decree of dissolution of marriage, a decree of presumption of death and dissolution of the marriage or a decree of nullity of marriage and includes a cross petition, and is to be read as being a defence, where any other Part of these rules applies.

“**claimant**” includes a person who makes a claim in matrimonial proceedings.

“**child of the family**” means a child of one party to the marriage who has been accepted as one of the family by the other party.

“**matrimonial proceedings**” means:

1. proceedings for dissolution of marriage;
2. proceedings for nullity of marriage;
3. proceedings for presumption of death and dissolution of the marriage;
4. proceedings for custody, maintenance, education of and access to children;
5. proceedings for division of property; and
6. all other proceedings authorized by the Matrimonial Causes Act and any other Act which authorises the pursuit of a matrimonial cause.

[Note: “matrimonial cause” is defined in the Matrimonial Causes Act]

“**party**” means a petitioner, a claimant, an applicant, a respondent, a defendant, an intervener or an attorney-at-law on record for a party unless any rule specifies or it is clear from the context that it relates to the client or to the attorney-at-law only.

“**petition**” is the document by which all proceedings for dissolution of marriage, nullity of marriage and presumption of death and dissolution of the marriage are commenced and is a statement of case.

“**petitioner**” means the party to a marriage who applies to the

Court for a decree of dissolution of marriage, a decree of nullity of marriage or a decree of presumption of death and dissolution of the marriage and is to be regarded as being a claimant where any other Part of these rules applies

“**relevant child**” means a child who is:

- (a) a child of both parties to the marriage in question; or
- (b) a child of one party to the marriage who has been accepted as one of the family by the other party,

and in paragraphs (a) and (b) of this definition “child” includes an adopted child and a child of a void marriage.

“**respondent**” means the party to a marriage who defends or otherwise responds to the petitioner’s application for a decree of dissolution of the marriage, a decree of nullity of marriage or a decree of presumption of death and dissolution of marriage including a party who cross petitions, and is to be regarded as being a defendant where any other Part of these rules applies.

“**statement of case**” includes a petition, an answer or an answer and cross petition.

Application of other parts of these rules

- 76.3 (1) Subject to paragraph 2 the other provisions of these rules, with the necessary modifications, apply to matrimonial proceedings.
- (2) The following provisions of these rules do not apply to matrimonial proceedings:

Part 3	Time Documents
Rule 3.10	Forms except where specifically included in this Part
Part 7	Service of Court process out of the jurisdiction
Part 8	How to start proceedings
Rule 8.11	Special requirements applying to claims for personal injuries
Rule 8.12	Realtor claims
Rule 8.13	Service of claim form
Rule 8.14(2)(a)	Period for service of Admiralty claim form
Part 12	Default Judgments
Part 13	Setting aside or varying default

	judgments
Part 56	Administrative Law
Part 57	Habeas Corpus
Part 58	Bail Application
Part 59	Proceedings by and against the Crown
Part 60	Appeals to the Court
Part 61	Appeals to the Court by way of Case Stated
Part 66	Mortgage Claims
Part 68	Probate
Part 69	Defamation Claims
Part 70	Admiralty Claims
Part 71	Commercial Division
Part 73	Transitional provisions

Commencement of proceedings

- 76.4 (1) Proceedings for dissolution of marriage, for nullity of marriage and for presumption of death and dissolution of the marriage must be commenced by petition in forms No. MP 1, MP 2 and MP 3, respectively.
- (2) A petition for dissolution of marriage must state:
- a) the names of the parties to the marriage, the place of the marriage and the marriage officer who performed the marriage;
 - b) the date and place of birth of each of the parties;
 - c) if the parties have lived as man and wife in the jurisdiction, the principal permanent address within the jurisdiction at which they lived;
 - d) where it is alleged that the Court has jurisdiction based on domicile, the country in which the petitioner and the respondent respectively are domiciled;
 - e) where it is alleged that the Court has jurisdiction based on residence, the places of residence and the date on which the same commenced, of the petitioner and respondent respectively throughout the previous period of one year ending with the date of presentation of the petition;
 - f) the occupation and residence of the petitioner and of the respondent at the time of the presentation of the petition;

- g) whether there is any relevant child of the marriage and, if there is, the name and date of birth of each relevant child;
 - h) whether to the knowledge of the petitioner there is any child living at the date of the presentation of the petition, being the child of the petitioner or the child of the respondent born during the marriage as a result of the union by that party with a person outside of the marriage and, if so, the name, date of birth and address of the child, or so much of this information as is known;
 - i) if it be the case, that there is a dispute whether a child is a child of the family;
 - j) whether or not there are or have been any proceedings in any court in Jamaica or elsewhere with reference to the marriage or to any relevant child or between the petitioner and the respondent with reference to any property of either or both of them and, if so-
 - (i) the nature of the proceedings
 - (ii) the date and effect of any decree or order
 - (iii) in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order;
 - k) if it be the case, that the marriage has broken down irretrievably;
 - l) the circumstances in which the marriage is alleged to have broken down irretrievably, including the date of separation; and
 - m) whether or not there is a reasonable likelihood of cohabitation being resumed.
- (3) A petition for a decree of nullity of marriage must state the matters set out in rule 76.4(2) (a) to (j) and the facts on which it is being alleged that the marriage should be annulled.
- (4) A petition for a decree of presumption of death and dissolution of the marriage must state the matters set out in rule 76.4(2) (a) to (j) and:
- a) the last place at which the parties to the marriage cohabited;
 - b) the circumstances in which the parties ceased to cohabit;
 - c) the date when and place where the respondent was last seen or heard of;

- d) the steps which have been taken to ascertain the location of the respondent;
 - e) the reason for suspecting that the respondent is deceased;
 - f) whether there are any surviving children of the respondent and whether it is likely that they or any of them are entitled to succeed to any part of or the whole of the respondent's estate, whether by reason of a will or on intestacy; and
 - g) the full details including the names, ages and addresses of all persons who have or are likely to have an interest in the respondent's estate.
- (5) A petition for a decree of dissolution of marriage, for a decree of nullity of marriage or for a decree of presumption of death and dissolution of the marriage may include a claim for maintenance, custody, education of or access to children, division of property and any other relief relating to matters concerning the marriage, the union between the parties or any relevant children.
- (6) In any case where the claim is for maintenance, custody, education of or access to children, the petition must contain a statement in general terms of the financial resources of both parties.
- (7) Where a petition for a decree of dissolution of marriage, for a decree of nullity of marriage or for a decree of presumption of death and dissolution of the marriage discloses that there are relevant children who are minors (or are under the age of twenty-one and are being educated in an institution of tertiary education), the petition must be accompanied by an affidavit signed by the petitioner.
- (8) The affidavit accompanying the petition must set out particulars of the arrangements for the care, maintenance, education and upbringing of any relevant child and must state whether any relevant child is suffering from any disability and the nature of such disability.
- (9) The affidavit accompanying the petition must be in form no. MP 4.
- (10) A petition must conclude with:
- (a) a summary of the relief being claimed; and
 - (b) the names and addresses of the persons to be served, indicating if any of them is a person under disability.
- (11) A petition must be signed by the petitioner.
- (12) A petition is presented when it is filed in the registry.
- (a) The petitioner must file the original and sufficient copies of the petition to facilitate service;

- (b) Upon filing, the registry must give to the petition a number to distinguish it, seal as many copies of it as are required for service and certify them to be true copies;
 - (c) The original petition must be retained and recorded in the registry and the date on which it was filed and sealed must be recorded on it, signifying the date of the commencement of the proceedings.
- (13) Any document filed or issued out of the registry in connection with the same proceedings or any further proceedings connected with the same proceedings and parties, must have placed on it the distinguishing number allotted by the registry to the petition.
- (14) Every document commencing matrimonial proceedings must, upon being filed, have included on it a notice containing the information set out in the notes to the applicable form and, must contain a certificate of truth.
- (15) Nothing in these rules precludes the commencement of any matrimonial proceedings, other than proceedings for the dissolution of the marriage, nullity of marriage and presumption of death and dissolution of marriage, by fixed date claim form.
(Rule 8.1(4)(f) indicates the procedure where an enactment specifies the originating process)

Application for Dissolution of marriage prior to expiration of two years of marriage

- 76.5 (1) Permission to present a petition for dissolution of marriage before the expiration of two years from the date of marriage, must be sought by application supported by affidavit under part 11.
- (2) The affidavit accompanying the application under rule 76.5(1) must:
- (i) provide proof of the marriage;
 - (ii) set out the special circumstances that are relied upon to justify the hearing of the petition;
 - (iii) give particulars of any attempted reconciliation;
 - (iv) state whether there is any reasonable likelihood of a reconciliation;
 - (v) state whether there are any relevant children and, if so, give particulars of their names, dates of birth and the circumstances relating to their care, upbringing and maintenance, including their

- education; and
- (vi) exhibit a copy of the proposed petition.
- (3) Within 14 days of being served with an application under rule 76.5(1) the respondent may file an affidavit in response and the applicant may reply to the respondent's affidavit within 7 days of being served with such affidavit.
- (4) No further affidavit may be filed without the permission of the court.
- (5) The application under rule 76.5(1) must be set down for hearing before a Judge in chambers who may make such order or give such direction as seems fit, having regard to all the circumstances.

Applications for court orders

- 76.6 (1) Where in any petition or fixed date claim form a part of the relief claimed is custody, maintenance, education of or access to children or division of property, such relief may be granted upon an application for court orders.
- (2) It is the duty of the parties in all applications and responses, to set out in detail the facts and circumstances in support of or in opposition to the claim being made in the application.
[Note: Part 11 applies to all applications for court orders]

Service

- 76.7 (1) Unless otherwise authorized by this Part, service of:
- (i) a petition for dissolution of marriage; or
- (ii) a petition for nullity of marriage,
- must be effected personally upon the respondent.
- (2) A petition for a decree of presumption of death and dissolution of the marriage must be served on any person who has or is likely to have an interest in the respondent's estate and by two publications in consecutive weeks in a newspaper that is published in the place where the respondent was last known to reside.
- (3) If it is intended to pursue the application in default, an application for the court's order or directions in relation thereto, must be filed by the petitioner and served in the manner set out in paragraph 2.
- (4) A petitioner, applicant or claimant who intends to serve a document

commencing proceedings may accompany the process server for the purpose of identifying the person to be served.

- (5) Service by a petitioner, applicant or claimant is not to be regarded as proper service.
- (6) Service is proved by an affidavit made by the person who served the document setting out:
 - (i) the document served.
 - (ii) where service is on an individual, the date time and place of service.
 - (iii) where service is on an individual, the means by which the person served was identified.
 - (iv) where service is by advertisement, the date or dates of the advertisement and the newspaper in which it was published and exhibiting same.
 - (v) where service is by fax or by any other means, full particulars of the service or the manner in which it is believed that notice of the proceedings or application is likely to have come to the party intended to be served.
 - (vi) such other information as is necessary to satisfy the court that the document served is likely to have come to the attention of the party intended to be served or that there has been compliance with an order giving permission to effect service by the method adopted.

Substituted Service

- 76.8
- (1) An application for permission to substitute for personal service some other method of service within the jurisdiction may be made without notice.
 - (2) An application for permission to substitute another form of service for personal service must be accompanied by an affidavit setting out:
 - (a) the reason for seeking to adopt a form of service other than personal service;
 - (b) the attempts, if any, which have been made to effect personal service;
 - (c) if no attempts have been made to effect personal service,

- the reasons for declining to do so; and
 - (d) the reasons for believing that the proposed method of service is likely to cause the document to come to the attention of the person to be served;
 - (3) On an application for permission to substitute another form of service for personal service within the jurisdiction the Court may permit the applicant to effect service by:
 - (a) delivering the document to be served to a relative or other person connected to the party to be served, if satisfied that the document is reasonably likely to come to the attention to the party to be served;
 - (b) advertisement; or
 - (c) such other method as to the court is likely to bring the existence and nature of the proceedings to the attention of the party to be served.

Service out of the jurisdiction

- 76.9 (1) A petition or fixed date claim form or other document in a matrimonial proceeding may be served out of the jurisdiction without permission.
- (2) The respondent or defendant in such proceedings must file an acknowledgement of service within the following periods after service of the petition or fixed date claim form:

place of service	time for acknowledgement of service
USA, Canada and Caribbean States	28 days
Europe (not including Russia)	42 days
Elsewhere	56 days

Acknowledgment of Service – service within the jurisdiction

- 76.10 A respondent or defendant served within the jurisdiction with a document commencing proceedings must file an Acknowledgment of Service in form No. MP 5 within 14 days of being served.

Response to claim

- 76.11 (1) The respondent or defendant in any matrimonial proceeding may answer or defend the claim by filing and delivering to the petitioner, claimant or applicant:
- (i) an answer or an answer with cross petition in form No. MP 6, in response to a petition;
 - (ii) an affidavit or affidavits, in response to the affidavit accompanying a fixed date claim form or any application for court orders; or
 - (iii) a defence, where the question arising on a fixed date claim form and supporting affidavit is likely to involve a substantial dispute of fact.
- (2) The time for filing any of the documents in paragraph (1) is within 28 days of being served with the document commencing the proceedings.
- (3) Upon the expiration of the time limited for the filing of an acknowledgment of service or:
- (i) an answer in response to a petition;
 - (ii) an affidavit or defence in response to a fixed date claim form; or
 - (iii) an affidavit in response to an application for court order, the petitioner, claimant or applicant, as the case may be, is at liberty to proceed in default against the party served.

Proceedings in default

- 76.12(1) The petitioner for a decree of dissolution of marriage may proceed in default by filing an application to dispense with a hearing in form No. MP 7 accompanied by affidavit evidence of:
- (i) the marriage;
 - (ii) service of the petition;
 - (iii) the failure to acknowledge service or file an answer;
 - (iv) the fact that there are no relevant children of the marriage or, where there are children of the marriage, attesting to arrangements which have been made for their care, maintenance and upbringing sufficient to satisfy a Judge that in the circumstances the welfare of the relevant children

- is adequately protected;
 - (v) the circumstances giving rise to the breakdown of the marriage;
 - (vi) attempts at reconciliation without success; and
 - (vii) service of the application on any party who has filed acknowledgement of service.
- (2) A proposed decree nisi in form No. MP 8 with all necessary modifications relating to the circumstances of the case, must be filed with the application.
- (3) The application to dispense with the hearing of the petition must be referred to a Judge who may consider the application on paper and may:
 - (a) dispense with the hearing of the petition;
 - (b) grant, defer or refuse the decree nisi;
 - (c) determine that a hearing, whether of the petition or any claim being pursued, is required and, if so, schedule such hearing ; or
 - (d) issue such directions for the future conduct of the proceedings as may seem fit.
- (4) Where the decree nisi is being granted the Judge must:
 - (a) certify that, having regard to the evidence on oath of the applicant, the arrangements for the maintenance, care and upbringing of any relevant children are satisfactory or are the best that may be devised in the circumstances; and
 - (b) make such order as to the custody, care, maintenance and upbringing of any relevant children as, in all the circumstances, may seem fit;
- (5) When granting a decree nisi, the Judge must sign the proposed decree filed in connection with the application to dispense with the hearing of the petition, after which the decree is to be sealed by the court and issued to the petitioner.
- (6) Where an application on a fixed date claim form or an application for court orders remains undefended, at the first hearing or any subsequent hearing, the Judge, if satisfied that the defendant or respondent has had due notice of the claim, may consider the application and make such order as seems fit, including an order giving directions for the future conduct of the proceedings.

Trial of Issues

- 76.13 (1) In any case where an answer, defence or affidavit is filed in response to any document commencing proceedings, the registrar must schedule:
- (a) a case management conference, where the response is in the form of an answer, an answer and cross petition or a defence; or
 - (b) a date for the hearing, in the case of any other application.
- (2) Where any matrimonial proceeding is to be heard, a party may request of the registrar that the hearing be conducted at a sitting of the court other than in Kingston.
- (3) Every such request must be considered by the registrar having regard to:
- (a) the address of the parties;
 - (b) the location of the attorneys-at-law having conduct of the proceedings on behalf of each party;
 - (c) the location of actual or potential witnesses;
 - (d) the facilities for trial of the issues at the suggested location;
 - (e) the date scheduled for hearing;
 - (f) the financial circumstances of either or both of the parties to the proceedings; and
 - (g) any other facts which in the opinion of the registrar ought properly to be considered.
- (4) With or without a request made pursuant to rule 76.12(2), the registrar may schedule the hearing of any matrimonial proceeding or issue in such proceedings to be held in any place where a circuit court is held.
- (5) Notice of the hearing at the scheduled place must be given to all other parties.

General provisions relating to dissolution of marriage

- 76.14 (1) A marriage in respect of which a decree nisi is granted is not dissolved until a decree absolute has been granted by the Court.
- (2) A decree nisi for nullity of marriage must be in form No. MP 9.
- (3) A decree nisi for dissolution of marriage on any ground other than for nullity of marriage must be in form No. MP 8.
- (4) There must be a period of at least six (6) weeks between the grant

of the decree nisi and the application for decree absolute, during which period, any person who shows by evidence to the satisfaction of the Court that there is reasonable grounds to believe that the decree nisi should not have been granted, may make application to have the decree nisi set aside.

- (5) Any person who intends to make an application under paragraph (4) must first file an acknowledgment of service.
- (6) The court may extend or abridge the time for the making of any application under paragraph (4), if it is satisfied that there is good reason for doing so.
- (7) Either party to the marriage may make application for a decree nisi to be made absolute.
- (8) An application to make a decree nisi absolute must be accompanied by affidavit evidence attesting to the following:
 - (a) whether after diligent search, there has been any application to set aside the grant of the decree nisi;
 - (b) whether there was at the date of the decree nisi and whether there is at the time of the application to make the decree nisi absolute, any relevant children;
 - (c) if there are relevant children who are over the age of eighteen but are under the age of twenty-one years, whether the said children or any of them are pursuing tertiary education;
 - (d) the arrangements for the maintenance, care and upbringing of the relevant children, if any, or otherwise as provided by Section 27(1)(b) of the Matrimonial Causes Act; and
 - (f) the reasons for any delay in excess of one year from the date of the decree nisi for the making of the application for decree absolute;
- (9) A proposed decree absolute in form No. MP 10 with all necessary modifications applicable to the circumstances of the case must be filed with the application to make a decree nisi absolute.
- (10) The application for a decree absolute must be referred to a Judge who may consider same on paper and may:
 - (a) grant or defer the granting of the decree absolute;
 - (b) refer the determination of any issue relating to the custody, care, maintenance and upbringing of any relevant child to be heard separately and give directions for the future conduct of such a hearing; or

- (c) issue such directions for the future conduct of the proceedings as may seem fit.
- (11) Where the decree absolute is being granted the Judge must:
 - (a) certify that, having regard to the evidence on oath of the applicant, the arrangements for the maintenance, care and upbringing of the relevant children are satisfactory or are the best that may be devised in the circumstances; and
 - (b) make such order as to the custody, care, maintenance and upbringing of any relevant children as, in all the circumstances, may seem fit;
- (12) When granting the decree absolute, the Judge must sign the proposed decree filed in connection with the application, after which the decree is to be sealed by the Court and issued to the party who made the application.
- (13) The death of a party to a marriage after the grant of a decree nisi but before the grant of the decree absolute operates to finalise the dissolution of the marriage and, upon receiving satisfactory affidavit evidence of the fact of the death of the party, the registrar must endorse the records to that effect.

Rescission of decrees nisi

- 76.15
- (1) An application to rescind a decree nisi under section 18 of the Matrimonial Causes Act must be supported by affidavit evidence of the facts and circumstances upon which the Court is being asked to grant the order being sought.
 - (2) The application may be made by the parties to the marriage jointly, in which event service of notice of the application is not required.
 - (3) Where the application is being made by one party to the marriage, seven days notice of the application must be given by the applicant to the respondent.
 - (4) An application to rescind a decree nisi under section 19 of the Matrimonial Causes Act must be supported by affidavit setting out in detail the facts being relied upon in support of the application.
 - (5) Where, at the hearing of such an application, it appears that the question for decision is likely to involve a substantial dispute of fact, the court may make such order or give such directions for the future conduct of the proceedings as may seem fit.

- (6) Any person who intends to make an application under section 19 of the Matrimonial Causes Act must first file an acknowledgment of service.

Where petition is not pursued

- 76.16 Where any petition for dissolution of marriage, nullity of marriage or presumption of death and dissolution of the marriage is not pursued for a period of one year, the registrar may refer same to a Judge who may make such order or give such directions relating to the proceedings as may be just.

Transitional Provisions

- 76.17
- (1) This Part applies to all matrimonial proceedings commenced on or after the 18th day of September 2006.
 - (2) The Matrimonial Causes Rules, 1998 will continue to apply to all matrimonial proceedings commenced prior to September 18, 2006, until April 16 2007.
 - (3) Subject to paragraph (4), as of April 16 2007, this Part applies to all matrimonial proceedings.
 - (4) In exceptional circumstances the Matrimonial Proceedings Rules, 1998 may continue after April 16 2007 to apply to proceedings commenced prior to September 18, 2006 with the permission of a Judge.

Forms

- 76.18 The forms in Appendix 5 together with such other applicable practice forms as are provided for must be used in matrimonial proceedings with necessary modification.

Lensley Wolfe, O.J.
Chief Justice

Ian Forte, O.J.
President of the
Court of Appeal

Marva McIntosh
Supreme Court Judge

B. St. Michael Hylton, Q.C.
Solicitor General

Hugh M. Salmon
Director of State Proceedings

Lloyd Barnett, O.J.
Attorney-at-law

Hilary Phillips, Q.C.
Attorney-at-law

Dorothy Lightbourne
Attorney-at-law

Leo O'Brien Williams
Attorney-at-law

Charles Piper
Attorney-at-law

Appendix 1

General Forms

General Forms

Form 1	Claim Form	Rule 8.1(3)
Form 1A	Prescribed Notes for Defendants (Claim Form)	Rule 8.16(1)(c)
Form 2	Fixed Date Claim Form	Rule 8.1(4)
Form 2A	Prescribed Notes for Defendants (Fixed Date Claim Form)	Rule 8.16(1)(c)
Form 3	Acknowledgement of Service of Claim Form	Rule 8.16(1)(a)
Form 4	Acknowledgement of Service of Fixed Date Claim Form	Rule 8.16(1)(a)
Form 5	Defence	Rule 8.16(1)(b)
Form 6	Application to Pay by Instalments	Rule 8.16(1)(e)
Form 7	Notice of Application for Court Orders	Rule 11.8(3)
Form 8	Request for Default Judgment	Rule 12.7
Form 9	Request for Entry of Judgment on Admission	Rule 14.6(2)
Form 9A	Statement of Financial Position	Rule 14.9(3)
Form 10	Ancillary Claim Form	Rule 18.2(2)
Form 11	Listing Questionnaire	Rule 27.12(1)
Form 12	List of Documents	Rule 28.8(2)
Form 13	Witness Summons	Rule 33.2(2)
Form 14	Notice of Judgment or Order to person not a party	Rule 42.12(3)
Form 15	Order for Oral Examination	Rule 44.4(1)
Form 16	Notice of Adjourned Hearing	Rule 44.6(6)
Form 17	Financial Position Notice	Rule 44.9(1)
Form 17A	Statement of Financial Position	Rule 44.9(1)
Form 18	Order for Seizure and Sale of Goods	Rule 46.1(a)
Form 19	Writ of Possession	Rule 46.1(b)
Form 20	Order for Recovery of Specified Goods	Rule 46.1(d)(i)
Form 21	Order for Recovery of Goods or their Assessed Value	Rule 46.1(d)(ii)
Form 21A	Stop Notice	Rule 49.3(1)
Form 22	Judgment Summons	Rule 52.2(1)
Form 22A	Certificate of Sale of Land	Rule 55.7(2)
Form 23	Writ of Habeas Corpus	Rule 57.3(1)(a)
Form 23A	Application to Review Magistrates Decision about Bail	Rule 58.2
Form 24	Notice of Appeal	Rule 62.3
Form 25	Basic Costs Certificate	Rule 65.10(2)
Form 26	Default Costs Certificate	Rule 65.21(b)
Form 27	Interim Costs Certificate	Rule 65.24(1)(a)
Form 28	Final Costs Certificate	Rule 65.25(1)
Form 29	Appeal Notice (Costs)	Rule 65.28(1)



CLAIM FORM

Form 1 [Rule 8.1(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN

CLAIMANT

AND

DEFENDANT

The Claimant, A.B. (full name and if an individual, state occupation) of (full address) claims against the Defendant, C.D. (full name) of (full address) (Insert brief details of the nature of the claim and state any specific remedy that you are seeking.)

The following is to be completed only where the claim is for a specific sum)

	\$
Amount claimed	
Together with interest from to date (Daily rate since today = \$ per day)	
Court Fees	
Attorney's Fixed Costs on issue	
Total Amount claimed	

I certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the

day of

20

.....
Claimant's Signature

NOTICE TO THE DEFENDANT

See the notes in form 1A served with this Claim Form.

This Claim Form must contain or have served with it either a Particulars of Claim or a copy of a court order entitling the Claimant to serve the Claim Form without a Particulars of Claim.

If you do not complete the form of Acknowledgment of Service served on you with this Claim Form and deliver or send it to the registry (address below) so that it is received within FOURTEEN days of service of the Claim Form on you, the Claimant will be entitled to apply to have judgment entered against you. See Rules 9.2(5) and 9.3(1).

The form of Acknowledgment of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to this claim.

This Claim Form has no validity if it is not served within six months of the date below unless it is accompanied by an order extending the same. See Rule 8.14(1)

[SEAL]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 – 9, fax (876)967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on Public Holidays.

Dated the _____ of _____ 20_____

The Claimant's address for service is..... /or is that of his Attorney-at-Law (specify address of Claimant or name of Attorney-at-Law having conduct of the case as appropriate with telephone and facsimile numbers).

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim).



PRESCRIBED NOTES FOR DEFENDANTS (CLAIM FORM)

Form 1A [Rule 8.16(1)(c)]

This Form is important.

When you get this document you should consider getting legal advice.

ACTION TO BE TAKEN ON RECEIPT OF THIS FORM

The Claimant is making a claim against you in the court. **If you do nothing, judgment may be entered against you.** That means that the Claimant will be entitled to take steps to enforce payments from you of any money he is claiming and you will have no right to be heard except as to the amount of any costs claimed and the way in which you can pay the judgment unless you apply to set judgment aside.

WHAT CAN YOU DO

You can:

A. Defend the claim

If you would like to do this you must:

- (i) Complete the form of Acknowledgement of Service and return it to the registry so that they receive it within **FOURTEEN DAYS** of the date on which you received this Form; and
- (ii) Provided that a Particulars of Claim was served on you with the Claim Form, complete the form of Defence, form 5, or submit some other form of Defence showing why you dispute the claim, giving full details of all the facts on which you intend to rely if there is a trial. This must be delivered or sent to the registry so that they receive it within **FORTY TWO DAYS** of the date on which you received this Form and a copy must be served on the Claimant's Attorney-at-Law (or the Claimant if he has no Attorney-at-Law) at the given address.

Note, where permission has been given under rule 8.2 for a Claim Form to be served without a Particulars of Claim, the period for filing a Defence is the period of **FORTY TWO DAYS** after the service of the Particulars of Claim.

After you have filed your Defence you will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried. You must attend that hearing.

B. Admit the whole of the Claim

Complete the form of Acknowledgement of Service stating that you admit to the claim and return it to the registry so that they receive it within FOURTEEN DAYS of the date on which you received this Form.

If you can pay the amount stated on the Claim Form including fees, costs and interest you should pay this to the Claimant within FOURTEEN DAYS and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the Claim Form.

If you cannot pay this sum in full you may apply to pay by instalments. If you wish to do so you must complete form 6 and return this to the court with your Acknowledgment of Service.

C. Admit part of the claim and defend the rest

Complete the form of Acknowledgement of Service stating how much you admit and return it to the registry so that they receive it within FOURTEEN DAYS of the date on which you received this form AND complete the Defence form, form 5.

You may also:-

Pay the amount that you admit directly to the Claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated under B.

D. Make a claim against the Claimant

If you would like to do this you must:

- (i) Complete the form of Acknowledgement of Service and return it to the registry so that they receive it within FOURTEEN DAYS of the date on which you received this Form; and
- (ii) Provided that a Particulars of Claim was served with the Claim Form, complete the form of Defence, form 5, giving details of your defence if any to the claim as under A above and also the

claim that you are making against the Claimant and return it to the registry so that they receive it within FORTY TWO DAYS of the date on which you received this Form.

Note, where permission has been given under rule 8.2 for a Claim Form to be served without a Particulars of Claim, the period for filing a Defence is the period of FORTY TWO DAYS after the service of the Particulars of Claim.

If you admit the Claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim, you **may** pay the difference between the amount that the Claimant claims from you and the amount that you claim from him, directly to the Claimant OR apply to pay the sum by instalments. If you wish to pay by instalments, you should follow the procedure directed under B.

You will then be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried. You must attend that hearing.

REMEMBER, IF YOU DO NOTHING, JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT ANY FURTHER WARNING.

Copies of forms may be obtained from the registry or at www.sc.gov.jm



FIXED DATE CLAIM FORM

Form 2 [Rule 8.1(4)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

The Claimant, A.B. (full name and if an individual, state occupation) of (full address) claims against the Defendant, C.D. (full name) of (full address) (Insert brief details of the nature of the claim and state any specific remedy that you are seeking.)

I certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the day of 20

.....
Claimant's Signature

NOTICE TO THE DEFENDANT

The first hearing of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the day of 20 , at a.m/p.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

- If you do attend, the judge may
- (a) deal with the claim, or
 - (b) give directions for the preparation of the case for a further hearing.

A Particulars of Claim or an Affidavit giving full details of the Claimant's claim should be served on you with this Claim Form. If this has not been done and there is no order permitting the Claimant not to serve the Particulars of Claim or Affidavit you should contact the court immediately.

You should complete the form of Acknowledgement of Service served on you with this Claim Form and deliver it to the registry (address below) so that they receive it within FOURTEEN days of service of this Claim Form on you. The form of Acknowledgement of Service may be completed by you or an Attorney-at-Law, acting for you. See Rules 9.3(1) and 9.4(3).

You should consider obtaining legal advice with regard to this claim. See notes in form 2A served with this Claim Form.

This Claim Form has no validity if it is not served within six months of the date below unless it is accompanied by an order extending that time. See Rule 8.14(1)

[SEAL]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 – 9, fax (876) 967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays except on Public Holidays.

Dated the _____ of _____ 20____

The Claimant's address for service is..... /or is that of his Attorney-at-Law (specify address of Claimant or name of Attorney-at-Law having conduct of the case as appropriate with telephone and facsimile numbers).

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim).



PRESCRIBED NOTES FOR DEFENDANTS (FIXED DATE CLAIM FORM)

Form 2A [Rule 8.16(1)(c)]

This Form is important.

When you get this document you should consider getting legal advice.

The Claimant is seeking an order from the court as set out in the Claim Form on the basis of the facts or evidence set out in the Particulars of Claim or Affidavit which was served with it. The Claimant will not be entitled to enter judgment against you without a hearing.

You may:

A. Admit the Claim

If so, you should complete and return the form of Acknowledgement of Service to the registry within FOURTEEN DAYS stating this. You may attend the first hearing if you wish to do so.

B. Dispute the Claim

If so, you should complete and return the form of Acknowledgement of Service as under A. You should also file at the registry and serve on the Claimant's Attorney-at-Law (or the Claimant if he has no Attorney-at-Law):

- (a) a Defence if the Claim Form was accompanied by the Claimant's Particulars of Claim, or
- (b) an Affidavit in answer if the Claim Form was accompanied by an Affidavit sworn by or on behalf of the Claimant. See Rule 10.2(2)

within FORTY TWO DAYS of the day on which the Claim Form was served on you. Your Defence or Affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

C. Make a claim against the Claimant

If so, you should complete and return the form of Acknowledgement of Service as under A. You must file a Particulars of Claim (a counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within FORTY TWO DAYS of the date on which the claim form was served on you. The Particulars of Claim should set out ALL the facts on which you rely in disputing any part of the Claimant's claim against you.

YOU SHOULD ALSO ATTEND THE FIRST HEARING. IF YOU DO NOT THE JUDGE MAY DEAL WITH THE CLAIM IN YOUR ABSENCE.

Copies of forms may be obtained from the registry or at www.sc.gov.jm



ACKNOWLEDGEMENT OF SERVICE OF CLAIM FORM

Form 3 [Rule 8.16(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

WARNING: If this form is not fully completed and returned to the registry at the address below within FOURTEEN DAYS of service of the Claim Form on you, the Claimant will be entitled to apply to have the judgment entered against you. See Rules 9.2(5) and 9.3(1). If he does so you will have no right to be heard by the court except as to the costs or the method of paying any judgment unless you apply to set judgment aside.

1. Have you received the Claim Form with the above claim number? YES/NO
2. If so, when? _/_/___
3. Did you also receive the Claimant's Particulars of Claim? YES/NO
4. If so, when? _/_/___
5. Are your names properly stated on the Claim Form? YES/NO
If not, what are your full names?
.....
6. Do you intend to defend the claim? YES/NO
If so you must file a Defence within 42 days of the service of this claim on you. See Rule 10.3(1)
7. Do you admit to the whole of the claim? YES/NO
If you do you should consider to either:
(a) pay the claim directly to the Claimant or his attorney-at-law, or

(b) complete the application form to pay the claim by instalments.

If you pay the whole claim together with the costs and interest as shown on the Claim Form within 14 days, you will have no further liability for costs.

8. Do you admit any part of the claim? YES/NO

If you do you may -

(a) pay the money that you admit directly to the Claimant or his attorney-at-law, or

(b) complete the application form to pay him by instalments

9. If so how much do you admit?

If you dispute the balance of the claim you must also file a Defence within 42 days of service of the Claim Form on you or judgment may be entered against you for the whole amount claimed.

10. What is your own address?
.....
.....

11. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.

.....
.....
.....

Dated day of 20

Signed

[Defendant in Person]

[Defendant's Attorney-at-law]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Acknowledgement of Service).



ACKNOWLEDGEMENT OF SERVICE OF FIXED DATE CLAIM FORM

Form 4 [Rule 8.16(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

WARNING: This form should be completed and returned to the registry at the address Below within FOURTEEN days of service of the Claim Form on you. See Rule 9.3(1). However, the Claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

1. Have you received the Claim Form with the above number? YES/NO

2. If so when did you receive it? ___/___/___

3. Did you also receive the Claimant's Particulars of Claim or Affidavit in support? YES/NO

4. If so, on what date did you receive them? ___/___/___

5. Are your names properly stated on the Claim Form?
If not what are your full names? YES/NO
.....

6. Do you want to defend the claim? YES/NO
If so you should file a Defence or Affidavit in answer within 42 days
of the service of the Claim Form on you. See Rule 10.3(1)

7. Do you admit the whole claim? YES/NO

8. Do you admit any part of the claim? YES/NO

9. If so what do you admit?

.....

10. What is your own address?

.....

.....

.....

11. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.

.....

.....

.....

Dated day of 20

Signed.....

[Defendant in person]

[Defendant's attorney-at-law]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Acknowledgement of Service).



DEFENCE

Form 5 [Rule 8.16(1)(b)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

I dispute the claim on the following grounds -

I certify that all the facts set out in my Defence are true to the best of my knowledge information and belief.

Dated day of 20

Signed
Defendant

COUNTERCLAIM

I claim against the Claimant

(Set out details of the remedy or relief sought)

on the following grounds -

I certify that all the facts set out in my counterclaim are true to the best of my knowledge, information and belief and that I am entitled to the remedy claimed

Signed
Defendant

Dated day of 20

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Defence)

NOTES:

- (a) The Defendant may set out his defence in any way he chooses - it is not necessary to use this form.
- (b) The Defendant must state-
 - which allegations in the claim he admits
 - which he denies
 - which he neither admits or denies because he does not know whether they are true
 - identify any documents which he considers necessary to his case
- (c) The Defendant must give his reasons for denying any allegations made by the Claimant.
- (d) The Defendant must set out clearly all the facts on which he relies to dispute the Claim and must set out any different version of the events on which he relies.
- (e) The Defendant may not be allowed at the trial to give evidence about any fact which is not set out in the defence.
- (f) If the Defendant wishes to counterclaim he must-
 - specify any remedy that he seeks against the claimant
 - include a short statement of all facts on which he relies
 - identify any documents which he considers necessary to his case
- (g) Where the Defendant is represented by an attorney-at-law, he must also sign the Form and give his address for service.
- (h) A Defendant who defends in a representative capacity must say:-
 - what that capacity is and
 - whom he represents.

(c)	Other income	\$.....
	Total Income	\$.....

14. My regular expenses are as follows:

(a)	Mortgage	\$.....
(b)	Rent	\$.....
(c)	Electricity	\$.....
(d)	Water	\$.....
(e)	Cooking Gas	\$.....
(f)	Telephone	\$.....
(g)	Hire Purchase payments	\$.....
(h)	Food	\$.....
(i)	School Fees	\$.....
(j)	Travelling Expenses	\$.....
(k)	Children's clothing	\$.....
(l)	Maintenance Payments	\$.....
(m)	Others (do not include court orders and debts listed in 14, 15 and 16)	
	\$.....
	\$.....
	\$.....
	\$.....
	Total Expenses	\$.....

15. I am in arrears as follows:

(a)	Rent arrears	\$.....
(b)	Mortgage arrears	\$.....
(c)	Water arrears	\$.....
(d)	Electricity arrears	\$.....
(e)	Telephone arrears	\$.....
(f)	Maintenance arrears	\$.....
(g)	Others	
	\$.....
	\$.....
	\$.....
	\$.....
	Total arrears	\$.....

16. I am making court ordered payments as follows: (specify particular case(s) and instalments or amounts ordered to be paid)

17. I have loans and credit card debts as follows:

.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....

Of the above payments I am behind with payments to
(Please list)

.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....

I declare that the details I have given above are true to the best of my knowledge.

Dated day of 20

Signed.....
Applicant

NOTICE:

This application will be heard by [the Judge in Chambers] [Master] on
day the day of at am/pm

If you do not attend this hearing an order may be made in your absence.

NB. This notice of application must be served as quickly as possible on the
Respondent to the application.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)



NOTICE OF APPLICATION FOR COURT ORDERS

Form 7 [Rule 11.8(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

The Applicant, A.B. (full name) of (full address) seeks the following order(s):

[List the Court Order(s) being sought]

The ground(s) on which the Applicant is seeking the order(s) is/are as follows:

[Briefly state the grounds on which the order(s) is/are being sought]

The Applicant estimates the likely length of the hearing to be:

[Insert number of days, hours or minutes as the case may be]

NOTICE:

This Application will be heard by [a Judge in Chambers] [Master] [Registrar] on the day of 20 at the Supreme Court, King Street, Kingston at in the morning/afternoon. If you do not attend this hearing either personally or by an attorney-at-law an order may be made in your absence.

Notice of this application is being given to the following persons:

[List the name and address for service of each Respondent except in circumstances where the Application is permitted without giving Notice. If application is being made without notice, state that "IT IS NOT INTENDED TO GIVE NOTICE OF THIS APPLICATION PURSUANT TO... (and here state the rule or practice direction under which this is permitted)]

NB. This Notice of Application must be served as quickly as possible on the Respondent to the Application – (See Rule 11.11)

Dated the day of 20

Signed.....
[Applicant or Attorney-at-Law for Applicant]

The Registry of the Court is situate at King Street, Kingston, telephone numbers (876) 922-8300-9, fax (876) 967-0669. The office is open between 9:00 a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the claim number.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the application)



REQUEST FOR DEFAULT JUDGMENT

Form 8 [Rule 12.7]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

The Claimant requests entry of judgment against the Defendant in default of –

Acknowledgement of service YES/NO

Defence YES/NO

(In case of failure to enter Acknowledgement of Service)
Evidence of service of the Claim Form and Particulars of Claim is filed with this form..

(In case of failure to serve Defence)
I certify that -

- (a) the time for the Defendant to file and serve his Defence has expired (including any extension of time agreed between the parties); and
- (b) that no Defence or Counterclaim has been served on me/us; and
- (c) that the Defendant has not paid any monies in settlement of the claim except such sum as is stated below.
- (d) (where appropriate) permission to enter judgment was given by the court on(date)

Judgement should be entered for:

Amount claimed	\$.....
Together with interest from to date	
(Daily rate since = \$ per day)	\$.....
Court fees on claim	\$.....

Attorneys-at-Law's fixed costs on issue	\$.....
Together with interest from date of issue to today	\$.....
Attorney-at-Law's fixed costs on entering judgment	\$.....
Total	\$.....
Less paid since issue of claim	\$.....
Amount for which judgment is to enter	\$.....

to be paid [forthwith] [on _____ (state date)] or by weekly/monthly

instalments of \$.....

Dated the _____ day of _____ 20____

(Signed).....
[Attorney-at Law for the Claimant]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the request)

NOTES:

Where the Request for Default Judgment concerns an unspecified sum of money, the following additional information is required (Rule 16.2):

- (a) whether or not the Claimant is in a position to prove the amount of the damages; and, if so
- (b) the Claimant's estimate of the time required to deal with the assessment

A Claimant who is not in a position to prove damages must state the period of time that will lapse before this can be done.



REQUEST FOR ENTRY OF JUDGMENT ON ADMISSION

Form 9 [Rule 14.6(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

The Claimant requests entry of judgment against the Defendant on his admission.-

(Admission of whole debt)

A. Judgment should be entered for:

Amount claimed	\$.....
Together with interest from to date (Daily rate since = \$ per day)	\$.....
Court fees on claim	\$.....
Attorneys-at-Law's fixed costs on issue	\$.....
Together with interest from date of issue to today	\$.....
Attorney-at-Law's fixed costs on entering judgment	\$.....
Total	\$.....
Less paid since issue of claim	\$.....
Amount for which judgment is to enter	\$.....

(Admission to part of debt)

B. Judgment should be entered for:

Amount admitted by Defendant	\$.....
Together with interest from to date (Daily rate since = \$ per day)	\$.....
Court fees on claim	\$.....

Attorneys-at-Law's fixed costs on issue (These must be fees and costs appropriate to the amount admitted)	\$.....
Together with interest from date of issue to today	\$.....
Attorney-at-Law's fixed costs on entering judgment (These must be fees and costs appropriate to the amount admitted)	\$.....
Total	\$.....
Less paid since issue of claim	\$.....
Amount for which judgment is to enter	\$.....

C. (i) I accept the Defendant's offer to pay the amount due
on (date)
or, by instalments of \$ per week/month

And ask for judgment to be entered accordingly [the first payment to be on (date)]

OR

(ii) I do not accept the Defendant's proposal for payment of the amount due but would accept -
payment on (date)
or by instalments of \$ per week/month
the first payment to be on (date)

OR

(iii) I do not accept the Defendant's proposals for payment and ask for judgment to be entered for the balance due to be paid forthwith.

D. (in cases (ii) and (iii) above) My reasons for objecting to the Defendant's proposals are:

I do not accept that the defendant's financial statement is correct in the following ways:

Dated the _____ day of _____ 20____

Signed.....
[Attorneys-at-Law for the Claimant]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the request)



STATEMENT OF FINANCIAL POSITION

Form 9A [Rule 14.9(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

I, A.B. (Full names), of (Full address) (Occupation)
being duly sworn make oath and say as follows:

[Note that you are required to indicate clearly which of any choices given below are applicable to your circumstances. Where the issue raised in any item is inapplicable, state "n/a" to mean "not applicable"]

1. My financial position is as set out below.
2. I am [Married] [Single] [Other]
[Specify by striking out the item which does not apply]
3. I am years of age.
4. My dependents are as follows:
[Note: If you have no dependents, state "none" in the line above]

Dependents: Children: [State names and ages]

Other dependents: [State names and give details]

5. I am [employed] [self employed] [unemployed] [a pensioner]
[Specify by striking out the items that do not apply]
6. My employer's address is
- [if self employed] My business address is

- [if unemployed] The name of my last employer is
of
and I ceased being employed there (or to her/him) in the month
of 20....

7. (a) My usual take home pay is; or \$.....
(b) My pension is \$.....
(c) Other income \$.....
Total Income \$.....

8. The nature of my employment [or business, if self-employed] is
[Specify by striking out the portion above which does not apply]

9. [If self employed] The receipts of the business for the past twelve
months is \$

10. I have the following additional source(s) of income
[Give full details of income from any source other than that stated above and,
if none, indicate in the line above]

11. I have the following:
- cash in the sum of \$ at the [give particulars
of financial institution(s)]
 - stocks or shares valued at \$ in
[give particulars of the number of shares and the companies in which
such stocks or shares are held]
 - other personal property

12. I own the following real estate:
[give particulars of all real estate owned by you and state whether jointly
owned with any other person(s)]

13. My regular monthly expenses are as follows:
- (a) Mortgage \$.....
 - (b) Rent \$.....
 - (c) Electricity \$.....
 - (d) Water \$.....
 - (e) Cooking Gas \$.....
 - (f) Telephone \$.....
 - (g) Hire Purchase repayments \$.....
 - (h) Food \$.....
 - (i) School Fees and expenses \$.....
 - (j) Children's clothing \$.....

- (k) Maintenance Payments for housing \$.....
- (l) Maintenance Payments for family \$.....
- (m) Travelling Expenses \$.....
- Total monthly expenses**

- (n) Others
[do not include court orders and debts listed in 14, 15 and 16]
- \$.....
- \$.....
- \$.....
- \$.....
- Total other expenses** \$.....

14. I am in arrears as follows:

- (a) Rent arrears \$.....
- (b) Mortgage arrears \$.....
- (c) Water arrears \$.....
- (d) Electricity arrears \$.....
- (e) Telephone arrears \$.....
- (f) Maintenance arrears \$.....
- (g) Others
- \$.....
- \$.....
- \$.....
- Total arrears** \$.....

15. I am making court ordered payments \$.....
as follows: \$.....
[specify particular case(s) and instalments or amounts ordered to be paid]

16. I have loans and credit card debts as follows:
..... \$.....
..... \$.....
..... \$.....

17. I am behind with loan and/or credit card payments as follows:
[Please list and give particulars]
..... \$.....
..... \$.....
..... \$.....

18. I make this statement with the knowledge that the Court will rely upon it to make decisions which will affect the resolution of these proceedings. I understand that I may be prosecuted and be subject to the sanctions of the criminal law in the event that it is determined that I have made any false statement herein or that I have omitted to state any material fact of which I am aware at the time of making this statement. I certify that the contents of this statement are correct.

Sworn to by the said)
at)
this day of)
before me:

.....
Justice of the Peace for the parish of

The Registry of the Court is situate at King Street, Kingston, Jamaica and is open between the hours of 9:00 a.m. and 4:00 p.m. Monday to Friday except public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the Claim Number.

Filed by of Attorneys-at-Law
for the Claimant, whose address for service is that of his said Attorneys-at-Law.



ANCILLARY CLAIM FORM

Form 10 [Rule 18.2(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

To of

This claim has been brought by the Claimant against the Defendant in accordance with the Claim Form and Particulars of Claim served with this notice. Copies of the Defendant's Particulars of Claim (the Defendant's Defence) and of all other statements of case that have been filed in these proceedings are also served with this notice.

The Defendant claims against you on the grounds that:

- (a)
- (b)
- (c)

[The Defendant will also ask the court to determine the following matters not only between the Claimant and the Defendant but also between Defendant and you:

]

If you wish to dispute the Claimant's claim against the Defendant or the Defendant's claim against you, you must -

- (a) send or deliver a completed form of Acknowledgement of Service to the registry so that it is received by them within 14 days; and
- (b) send or deliver a Defence to this claim to the court so that it is received by them within 42 days of the day on which this claim was served on you. Rule 18.8(2). You must also serve a copy of your Defence on the Defendant's Attorneys-at-Law whose address will be given below.

If you do not file a Defence you will -

- (a) be deemed to have admitted the Defendant's claim against you; and
- (b) be bound by any judgment or decision in the main proceeding in so far as it is relevant to any claim made against you and judgment may be entered against you.

Dated

(SEAL)

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim).



LISTING QUESTIONNAIRE

Form 11 [Rule 27.12(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

WARNING: This is an important document. The information is required by the court to list your case accurately. Inaccurate information may lead to a waste of court’s time and delays to other peoples cases. Failure to return the form to the registry within **FOURTEEN DAYS** or to complete it fully will lead to a Listing Hearing being fixed. You may have to pay the costs of this hearing.

1. Have all the directions given by the court been carried out? YES/NO
2. If not, which directions have not been carried out?

Disclosure of documents	YES/NO
Inspection of Documents	YES/NO
Service of Witness Statements	YES/NO
Service of Expert Reports	YES/NO
Other (state which)	
3. Why have they not been carried out?

4. When can the directions be complied with?
5. Will any application for relief be made by you? YES/NO
6. Has A.D.R. been tried? YES/NO
7. If not, why not?

8. How many witnesses do you intend to call?
9. What is your present estimate for trial length?hours

11. Please give names, addresses and telephone numbers of any expert witness whom you intend to call to give oral evidence

12. Please state the name of the Attorney-at-Law who has conduct of this matter and give his direct telephone number or fax number.

Dated the day of 20

Signed
 Attorney-at-Law for the Claimant / Defendant
 [Claimant / Defendant in person]

This form must be returned to the registry within 14 days. [by]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document)



LIST OF DOCUMENTS

Form 12 [Rule 28.8(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

This is to be completed in accordance with an order for:

- (a) Standard disclosure YES/NO
- (b) Specific Disclosure YES/NO

Dated

and is served on behalf of the Claimant/Defendant/[Other].

I, [Claimant] [Defendant] []
certify that I have had explained to me -

- (a) the duty of standard disclosure, and
- (b) the terms of the order dated for specific disclosure
and my duty to disclose documents in accordance with that order, and
that I have complied with my duty.

(In the case of a list served by a company, firm, association or other organization, the certificate must continue -)

I am the (capacity) of the [Claimant][Defendant][other].
I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any documents which should be disclosed.

NAME

POSITION

SCHEDULE 1

PART 1

No. Details of document or class of documents

PART 2

No. Details of document or class of documents Reason for claiming a right not to disclose

SCHEDULE 2

No. Details of document or class of documents the What has happened to Documents including (to the best of my information and belief) where they are.

NOTICE TO INSPECT

The Documents listed in Part 1 of Schedule 1 may be inspected at on any normal working day between the hours of a.m. and p.m. until (date).

Dated the day of 20

Signed
[Attorney-at-Law for the Claimant / Defendant]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



WITNESS SUMMONS

Form 13 [Rule 33.2(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

To: [insert name and address of proposed witness]

We command you to attend at the Supreme Court, King Street, Kingston on the day of 20 at in the morning/afternoon and so on from day to day until the conclusion of the [here state whether for the trial or other application] in this action, to [here state whether the summons is required for the purpose of the witness giving evidence or to produce documents to the Court] on behalf of the Claimant/Defendant

This Summons is issued with the authority of the Honourable Mr. Justice Lensley Wolfe O.J., (or as the case may be) Chief Justice of Jamaica, out of the Registry of the Supreme Court, King Street, Kingston on the day of 20

.....
REGISTRAR

NB. Rule 33.3(2) deals with the need to obtain permission if Witness Summons is to be issued less than 21 days before the date for hearing. Rule 33.4 deals with the time for serving a witness summons and Rule 33.5 deals with travelling expenses and compensation for loss of time payable to witness served with a Witness Summons.

The Registry of the Court is situate at King Street, Kingston, telephone numbers (876) 922-8300-9, fax (876) 967-0669. The office is open between 9:00 a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the claim number.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



NOTICE OF JUDGMENT OR ORDER TO PERSON NOT A PARTY

Form 14 [Rule 42.12(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

To: [insert name and address of person ordered to be served]

Notice is hereby given to you of the Judgment/Order of the Honourable [insert name of the Judge who gave Judgment or made the Order and who gave direction for service] given/made on the _____ day of _____ 20____ a copy of which is attached.

You should note that the Judgment/Order affects your rights and that it has been directed by the Judge that the said Judgment/Order be served on you.

You should note also that by Rule 42.5 of the Civil Procedure Rules 2002, you are bound by the terms of the Judgment/Order but that you may apply to the Court within 28 days of being served to discharge, vary or add to the Judgment/Order and may also take part in the proceedings.

Dated the _____ day of _____ 20____

Signed

[Claimant/Defendant]

[Attorney-at-Law for Claimant/Defendant]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 – 9, Fax (876) 967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on Public Holidays.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



ORDER FOR ORAL EXAMINATION

Form 15 [Rule 44.4(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

On the application of the Judgment Creditor [here insert the name of the Judgment Creditor] made on the _____ day of _____ 20__ you [here insert the name of the Judgment Debtor or other person to be examined] are hereby ordered to attend at the Supreme Court, King Street, Kingston on _____ the day of _____ 20__ at _____ in the morning/afternoon to be examined under oath as to what property or means you [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer] have and as to any debts which are owing to you [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer].

You are directed to produce such books or documents as are in your [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer] possession which are relevant to such property or means and to any debts owing to you [or insert the name of the Judgment Debtor if the person to be examined is its officer or former officer] upon attending for the examination.

Dated the _____ day of _____ 20__

.....
JUDGE

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



NOTICE OF ADJOURNED HEARING

Form 16 [Rule 44.6(6)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

To: [insert name and address of person to be served]

Notice is hereby given to you of the adjournment of the Oral Examination which was fixed for hearing the _____ day of _____ 20____ at _____ o'clock in the morning/afternoon.

You are hereby ordered to attend the adjourned hearing to be heard by a Judge in Chambers at the Supreme Court, King Street, Kingston on _____ the day of _____ 20____ at _____ o'clock in the morning/afternoon.

The examination has been adjourned because*:

- (a) you [here insert the name of the examinee]:
 - (i) failed to attend;
 - (ii) refused to be sworn or affirm; or
 - (iii) refused to answer a question or questions; or
- (b) I, _____ [insert the name of the examiner] consider a freezing order to be appropriate in all the circumstances.

* Appropriate reason to be certified.

Dated the _____ day of _____ 20____

.....
EXAMINER

NOTICE: If you fail to comply with the terms of this order you will be in contempt of court and may be liable to be imprisoned or to have your assets confiscated.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



FINANCIAL POSITION NOTICE

Form 17 [Rule 44.9(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

To:

An application has been made to orally examine you as to [your income, assets and liabilities] [the income assets and liabilities of the [Defendant] [Claimant] company] and the means by which judgment debt may be paid. There is served with this notice an order giving the date, time, and place of the oral examination.

You are required to complete and return the attached questionnaire concerning [your means] [the means of the company]. A copy will be sent to the judgment creditor and the judgment creditor may withdraw its application for an oral examination if satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required you must attend court on the date, time, and place stated in the attached order. If you fail to do so further proceedings may be taken which may result in you being imprisoned.

Dated

[SEAL]

Registrar

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



STATEMENT OF FINANCIAL POSITION

Form 17A [Rule 44.9(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO

BETWEEN
AND

CLAIMANT
DEFENDANT

I, A.B. (Full names), of (Full address) (Occupation)
being duly sworn make oath and say as follows:

[Note that you are required to indicate clearly which of any choices given below are applicable to your circumstances. Where the issue raised in any item is inapplicable, state "n/a" to mean "not applicable"]

1. My financial position is as set out below.

2. I am [Married] [Single] [Other]
[Specify by striking out the item which does not apply]

3. I am years of age.

4. My dependents are as follows:
[Note: If you have no dependents, state "none" in the line above]

Dependents: Children: [State names and ages]

Other dependents: [State names and give details]

5. I am [employed] [self employed] [unemployed] [a pensioner]
[Specify by striking out the items that do not apply]

6. My employer's address is
- [if self employed] My business address is

- [if unemployed] The name of my last employer is
of
and I ceased being employed there (or to her/him) in the month
of 20....

7. (a) My usual take home pay is; or \$.....
(b) My pension is \$.....
(c) Other income \$.....
Total Income \$.....

8. The nature of my employment [or business, if self-employed] is
[Specify by striking out the portion above which does not apply]

9. [If self employed] The receipts of the business for the past twelve
months is \$

10. I have the following additional source(s) of income
[Give full details of income from any source other than that stated above and,
if none, indicate in the line above]

11. I have the following:
- cash in the sum of \$ at the [give particulars
of financial institution(s)]
 - stocks or shares valued at \$ in
[give particulars of the number of shares and the companies in which
such stocks or shares are held]
 - other personal property

12. I own the following real estate:
[give particulars of all real estate owned by you and state whether jointly
owned with any other person(s)]

13. My regular monthly expenses are as follows:
- (a) Mortgage \$.....
 - (b) Rent \$.....
 - (c) Electricity \$.....
 - (d) Water \$.....
 - (e) Cooking Gas \$.....
 - (f) Telephone \$.....
 - (g) Hire Purchase repayments \$.....
 - (h) Food \$.....
 - (i) School Fees and expenses \$.....
 - (j) Children's clothing \$.....

- (k) Maintenance Payments
 - for housing \$.....
- (l) Maintenance Payments for family \$.....
- (m) Travelling Expenses \$.....
- Total monthly expenses**

- (n) Others
 - [do not include court orders and debts listed in 14, 15 and 16]
 - \$.....
 - \$.....
 - \$.....
 - \$.....
 - Total other expenses** \$.....

14. I am in arrears as follows:

- (a) Rent arrears \$.....
- (b) Mortgage arrears \$.....
- (c) Water arrears \$.....
- (d) Electricity arrears \$.....
- (e) Telephone arrears \$.....
- (f) Maintenance arrears \$.....
- (g) Others
 - \$.....
 - \$.....
 - \$.....
- Total arrears** \$.....

15. I am making court ordered payments \$.....
 as follows: \$.....
 [specify particular case(s) and instalments or amounts ordered to be paid]

16. I have loans and credit card debts as follows:
 \$.....
 \$.....
 \$.....

17. I am behind with loan and/or credit card payments as follows:
 [Please list and give particulars]
 \$.....
 \$.....
 \$.....

18. I make this statement with the knowledge that the Court will rely upon it to make decisions which will affect the resolution of these proceedings. I understand that I may be prosecuted and be subject to the sanctions of the criminal law in the event that it is determined that I have made any false statement herein or that I have omitted to state any material fact of which I am aware at the time of making this statement. I certify that the contents of this statement are correct.

Sworn to by the said)
at)
this day of)
before me:

.....
Justice of the Peace for the parish of

The Registry of the Court is situate at King Street, Kingston, Jamaica and is open between the hours of 9:00 a.m. and 4:00 p.m. Monday to Friday except public holidays. When corresponding with the Court, please address forms or letters to the Registrar and quote the Claim Number.

Filed by of Attorneys-at-Law
for the Claimant, whose address for service is that of his said Attorneys-at-Law.



ORDER FOR SEIZURE AND SALE OF GOODS

Form 18 [Rule 46.1(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

The [Claimant] [Defendant] on the _____ day of _____ 20____ having obtained judgment against the [Defendant] [Claimant] in this action for \$ _____ and \$ _____ for costs

And it having been made to appear to the satisfaction of the court that the said judgment remains wholly or partially unsatisfied

The Bailiff **IS HEREBY ORDERED** to seize and sell such of the goods and chattels of the [Defendant] [Claimant] as shall be subject to execution and apply the proceeds of such sale in satisfaction of the said judgment under the further order of the court.

Dated the _____ day of _____ 20____

.....
JUDGE / REGISTRAR

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



WRIT OF POSSESSION

Form 19 [Rule 46.1(b)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

Request for Issue of Writ Possession

To the Court

I _____ of _____ [Attorney(s)-at-Law for the _____]
[_____ in person] apply for the issue of a Writ of Possession against
the judgment debtor to recover possession of the land and property known as
(description of property) and also to recover the sum stated below.

Amount of judgment (if any)	\$.....
Costs	\$.....
Interest	\$.....
Rent/mense profits to date	\$.....
Total sum due	\$.....
Less: Paid since judgment	\$.....
Balance of judgment now due	\$.....
Plus: Fee on issue	\$.....
Attorney-at-Law 's cost on issue	\$.....
Amount for which writ to issue	\$.....

I certify that

- (a) the Claimant is entitled to possession and that the Defendant has not complied with any conditions upon which the order for possession was suspended;
- (b) the balance of judgment and rent/mense profits now due is as shown above.

Dated the _____ day of _____ 20____

Signed
[Attorney-at-Law for the Claimant]

Writ of Possession

To: The Bailiff of the Parish of

You are required to take possession of the property known as (Description of property) and to deliver the same to the Claimant or the Claimant's representative and also to levy the sum stated above together with interest at the rate of % per annum from the day of 200_ until payment together with bailiff's's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interests to the Claimant.

Dated

[SEAL]

Notice to Judgment Debtor

Notice of taking possession

You have failed to give up possession of the property described overleaf and the Bailiff is authorised to enter the land to take possession of the property and deliver possession to the Claimant.

Notice of levy

The Bailiff has levied on your goods in order to discharge the judgment for [arrear of rent] [damages] [rent] [mense profit] and [costs]. This means that you must not dispose of them as the Bailiff may have to take them and sell them, at a public auction.

Payment of the money judgment

If you are able to pay the money judgment in full, the Bailiff will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the Bailiff's fees. You will be given a receipt for any money that you pay.

If your goods are removed:

- (i) you will be given a list of the goods removed
- (ii) the goods will not be sold for at least [] days - unless they are perishable
- (iii) you will be given [] days notice of the date and place of sale
- (iv) further fees may be charged and added to your debt
- (v) these fees could include the cost of removing the goods and fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and expenses incurred in removing the goods or advertising the sale.

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



ORDER FOR RECOVERY OF SPECIFIED GOODS

Form 20 [Rule 46.1(d)(i)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

The [Claimant] [Defendant] on the _____ day of _____ 20____ having obtained judgment in this action against the [Defendant] [Claimant] for the delivery of the goods or payment of their assessed value

And it having been made to appear to the satisfaction of the Court that the said judgment remains wholly or partially unsatisfied,

Pursuant to the application of the [Claimant] [Defendant] for the delivery of specified goods without the alternative of the assessed value

The Bailiff **IS HEREBY ORDERED** to seize and deliver to the [Claimant] [Defendant] the following goods or chattels:

[here list the specified goods or chattels which are the subject of the judgment and which are to be recovered]

which the said [Defendant] [Claimant] was ordered to deliver to the said [Claimant][Defendant] in this action.

Dated the _____ day of _____ 20____

.....
JUDGE

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



ORDER FOR RECOVERY OF GOODS OR THEIR ASSESSED VALUE

Form 21 [Rule 46.1(d)(ii)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

The [Claimant] [Defendant] on the _____ day of _____ 20____ having obtained judgment in this action against the [Defendant] [Claimant] for the delivery of goods or payment of their assessed value

And it having been made to appear to the satisfaction of the Court that the said judgment remains wholly or partially unsatisfied

And the Court having been satisfied that the value of the goods the subject of the judgment have been assessed in the sum of \$ _____ ,

The Bailiff **IS HEREBY ORDERED** to seize and sell such of the goods and chattels of the [Defendant] [Claimant] as shall be subject to execution and apply the proceeds of such sale in satisfaction of the judgment or any balance outstanding not exceeding the assessed value of the goods the subject of the judgment, under the further order of the court.

Dated the _____ day of _____ 20____

.....
JUDGE

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).



STOP NOTICE

Form 21A Rule 49.3 (1)

To:

[insert name and address of person or body to whom the notice is addressed]

TAKE NOTICE

[insert name and address of the applicant]

claims to be beneficially entitled to an interest in the following securities:

[specify the stock, giving the name (s) in which they stand]

This Notice requires you to refrain from -

- (1) registering a transfer or charge of the stock specified above; or
- (2) paying any dividend or interest in respect of the stock [delete if inappropriate]

without first giving 14 days' notice in writing to the said [insert the applicant's name] of the above address.

Dated the _____ day of _____ [20__]

.....

REGISTRAR

THIS NOTICE is filed by _____ of _____ whose telephone numbers are _____ fax No. _____ Attorneys-at-Law for the Applicant whose address for service is that of its said Attorneys-at-Law.



JUDGMENT SUMMONS

Form 22 [Rule 52.2(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

Notice is hereby given to you [insert the name and address of the Judgment Debtor] of the hearing of the application of the [insert name and address of Judgment Creditor] to be heard at the Supreme Court, King Street, Kingston on the day of 20 at in the morning/afternoon for an Order that you be committed to prison for non-payment of the debt which you have been ordered to pay pursuant to the Judgment/Order of the Honourable [insert the name of the Judge] given on the day of 20 particulars of which Judgment/Order and payment (if any) are as follows:

	\$
Amount of judgment	
Amount of payments made to date	
Amount of interest being claimed to date	
Balance outstanding on judgment debt	
Daily rate at which interest (accrues \$ per day)	

The likely length of the hearing is estimated to be: **[insert number of days, hours or minutes as the case may be]**

NOTICE: If you do not attend this hearing either personally or by an attorney-at-law an order may be made in your absence.

Dated the of 20

Signed
[Applicant or Attorney-at-Law for Applicant]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the document).

NOTES:

This certificate must be granted to the Purchaser after the sale of any property in accordance with Part 55 of the Civil Procedure Rules (Sale of Land by Order of Court).

When duly stamped as a conveyance or assignment of the property, this certificate is to be deemed a valid transfer of the property and may be recorded in the same way as a deed of conveyance or assignment. (Rule 55.7(3)).

Upon presentation to the Registrar of Titles for registration under the Registration of Titles Act, this certificate shall be registered as a valid transfer or assignment (Rule 55.7 (3)).

Filed by: (specify the name, address, telephone number(s) and fax number(s) of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)



WRIT OF HABEAS CORPUS

Form 23 [Rule 57.3(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

To: [insert name of official in charge of Prisons]

We command you that you bring and have in [insert the particular Court/Chambers and/or Judge] in our Supreme Court at King Street, Kingston [or other address if different] on the day of 20 at

o'clock in the morning/afternoon [insert name of person restrained] who it is said is detained in your custody by whatsoever name he may be called in [insert the name and address of the prison or facility at which person restrained is detained] together with details of the date and cause of his having been taken and detained, so that our Court [or insert the name of the Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

This Writ is issued with the authority of the Honourable Mr. Justice Lensley Wolfe O.J., (or as the case may be) Chief Justice of Jamaica, out of the Registry of the Supreme Court, King Street, Kingston.

TAKE NOTICE that if you fail to produce the said before the court on the date and at the time stated above the court may commit you to prison for your contempt in not obeying the order.

Dated (SEAL)

.....
REGISTRAR

Filed by (specify name and address of Attorney-at-law or firm of Attorneys-at-law filing the document)



APPLICATION FOR REVIEW OF MAGISTRATE'S DECISION ABOUT BAIL

Form 23A (Rule 58.2)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

(insert name)

APPLICANT
RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS

TAKE NOTICE that the Applicant hereby requests a review by the Court of the decision of the Honourable [insert name of resident magistrate or justice of the peace] given on the _____ day of _____ 20____ in [set out particulars of the charge and the court in which the decision was made]

The application will be heard on the _____ day of _____ 20____ at _____ am/pm.

1. The details of the order made in relation to bail are as follows:
2. The grounds on which it is contended that the decision should be varied or revoked are:
[set out grounds]
3. The order which is sought is that:
[set out proposed order]
4. Any specific power which the court is asked to exercise.

Dated the _____ day of _____ 20____

Signed.....



DEFAULT COSTS CERTIFICATE

Form 26 [Rule 65.21(b)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

The [Claimant] [Defendant], not having filed points of dispute, he/she is hereby ordered to pay costs in the sum of \$ _____ to the [Defendant] [Claimant].

Dated the _____ day of _____ 20____

REGISTRAR

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Certificate).



FINAL COSTS CERTIFICATE

Form 28 [Rule 65.25(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

I HEREBY certify that on the day of , costs were taxed in the sum of \$ and the [Claimant] [Defendant] is hereby ordered to pay that sum to the [Defendant] [Claimant].

Dated the day of 20

REGISTRAR

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Certificate).



APPEAL NOTICE (COSTS)

Form 29 [Rule 65.28(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

TAKE NOTICE that on the _____ day of _____, 200_, a Judge in Chambers at the Supreme Court will hear the [Claimant's][Defendant's] appeal against the decision of the Registrar on taxation on the day of _____ 200_.

The items in the taxation which are being appealed and the grounds of appeal in relation to each are as follows:

- 1.
- 2.

TO: The Claimant/Defendant
c/o Attorney-at-Law

Dated the _____ day of _____ 20

.....
Attorney-at-Law for Claimant/Defendant

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the appeal).

Appendix 2

Probate Forms

Probate Forms

Form P.1	Oath of Executors	Rule 68.7(1)(a)
Form P.2	Grant of Probate	Rule 68.7(1)(d)
Form P.3	Oath of Administrator with Will Annexed	Rule 68.8(1)(a)
Form P.4	Grant of Administration with the Will Annexed	Rule 68.8(1)(d)
Form P.5	Oath of Administrators	Rule 68.9(a)
Form P.6	Grant of Administration	Rule 68.9(c)
Form P.7	Affidavit of Due Execution	Rule 68.13(2)(a)(i)
Form P.8	Affidavit as to Handwriting	Rule 68.13(2)(b)(i)
Form P.9	Affidavit of Search	Rule 68.13(3)
Form P.10	Affidavit of Plight and Condition	Rule 68.15(1)
Form P.11	Marking of Will	Rule 68.16(1)
Form P.12	Advertisement (Resealing)	Rule 68.26(2)
Form P.13	Application to Reseal Grant	Rule 68.26(3)(a)
Form P.14	Renunciation of Probate	Rule 68.33(1)
Form P.15	Renunciation of Administration with Will Annexed	Rule 68.33(3)
Form P.16	Renunciation of Administration	Rule 68.33(3)
Form P.17	Caution	Rule 68.38(1)
Form P.18	Warning to Cautioner	Rule 68.39(2)
Form P.19	Acknowledgment of Service (Probate)	Rule 68.40(1)(a)
Form P.20	Witness Summons to bring in Will	Rule 68.45(3)
Form P.21	Notice of Application	Rule 68.48(1)
Form P.22	Consent of Beneficiary	Rule 68.21(a)
Form P.23	Affidavit of Testamentary Documents	Rule 68.52(2)



OATH OF EXECUTORS

Form P.1 [Rule 68.7(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased
I/We

1. *(full names of executor)* of *(address)* *(occupation)*
 2. *(full names of executor)* of *(address)* *(occupation)*
 3. *(full names of executor)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -
 - (1) I/we believe the annexed paper writing marked "A" to contain the true and original last Will and Testament [and codicil] of the deceased *(name of deceased)* who died on day of _____ 20 , at *(state address)* domiciled in Jamaica.
 - (2) The annexed document marked "B" is a certified copy of the death certificate of the deceased.
 - (3) To the best of my knowledge, information and belief there was [no] land vested in the deceased which was settled previously to [his][her] death and not by [his][her] will and which remained settled land notwithstanding [his][her] death.
 - (4) There is [no] minority and [no] life interest in the estate of the deceased.
 - (5) I/we am/are the executor(s) [one/some of the executors] therein named.
 - (6) Notice was given to the executors to whom power has been reserved namely *(names)* on day of _____ 20 .
 - (7) The [certified copy of the death certificate of] [deed of renunciation of probate made by] *(name of executor who has died or renounced probate)* is annexed and marked "C".
 - (8) I /we will faithfully collect, get in and administer according to law all the real and personal estate of the deceased.
 - (9) I/we will render a just and true account of my/our executorship whenever required by law to do so.
 - (10) To the best of my/our knowledge, information and belief-
 - (a) the gross personal estate of the deceased passing under the grant amounts to \$ _____ and the net personal estate amounts to \$ _____ ; and
 - (b) the deceased did not die possessed of any real estate.
- OR
- (b) the gross real estate of the deceased passing under the grant amounts to \$ _____ and the net real estate amounts to \$ _____ ; and
 - (c) the gross annual value of the real estate amounts to \$ _____ .

Sworn/Affirmed at _____
 on the _____ day _____ *(signed)*
 of _____ 20 _____
 Before me,
 Justice of the Peace
 Filed by _____ attorneys-at-law whose address for service is _____



GRANT OF PROBATE

Form P.2 [Rule 68.7(1)(d)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of (*state full names*); late of (*state address*), deceased

BE IT KNOWN that on the day of 20 , the last Will and Testament [with a codicil] dated the day of 19/20 a true copy of which is annexed hereto of (*state full names of deceased*) late of (*address*) deceased, who died on [or about] the day of 20 , was proved and registered in the Court, and that administration of all the real and personal estate which by law devolves on and vests in the personal representative of the said deceased was granted by the Court to (*full names of executor(s)*) the sole [joint] executor[s] named in the said will, [he][she] having first sworn well and faithfully to administer the same according to law and to render a just and true account of all the real and personal estate of the said deceased whenever required by law so to do.

Registrar

Extracted by of attorney-at-law for the said executor[s].



OATH OF ADMINISTRATORS WITH THE WILL ANNEXED

Form P.3 [Rule 68.8(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I/We

1. *(full names of administrator)* of *(address)* *(occupation)*
2. *(full names of administrator)* of *(address)* *(occupation)*
3. *(full names of administrator)* of *(address)* *(occupation)*, make oath and say [do solemnly and sincerely affirm] that -
 - (1) I/we believe the annexed paper writing marked "A" to contain the true and original last Will and Testament [and codicil] of the deceased *(name of deceased)* who died on day of 20 , at *(state address)* domiciled in Jamaica *(state status of deceased, eg spinster, widower and, where necessary, account for any class entitled in priority to the applicants)*.
 - (2) The annexed document marked "B" is a certified copy of the death certificate of the deceased.
 - (3) To the best of my/our knowledge, information and belief there was [no] land vested in the deceased which was settled previously to [his][her] death and not by [his][her] will and which remained settled land notwithstanding [his][her] death.
 - (4) There is [no] minority and [no] life interest in the estate of the deceased.
 - (5) The executor(s) named in the will [died without having taken probate of the will and the certified copy of [his][her][their] death certificates are] [renounced probate of the will and a certified copy of the deed of renunciation is] annexed and marked "C".
 - (6) I am/we are the *(show entitlement to grant, e.g the residuary legates and devisees named in the will)* of the deceased and, to the best of my/our knowledge information and belief, there is no other person entitled in priority to a grant of administration with the will annexed.
 - (7) I/we will faithfully collect, get in and administer according to law the real and personal estate effects of the deceased.
 - (8) I/we will render a just and true account of my/our administration whenever required by law to do so.
 - (9) To the best of my/our knowledge, information and belief-
 - (a) the gross personal estate of the deceased passing under the grant amounts to \$ and the net personal estate amounts to \$; and
 - (b) the deceased did not die possessed of any real estate.

OR

(b) the gross real estate of the deceased passing under the grant amounts to \$ and the net real estate amounts to \$; and

(c) the gross annual value of the real estate amounts to \$.

Sworn/Affirmed at

on the day

of 20

(signed)

Before me,

Justice of the Peace

Filed by

attorneys-at-law whose address for service is



GRANT OF ADMINISTRATION WITH THE WILL ANNEXED

Form P.4 [Rule 68.8(1)(d)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

BE IT KNOWN that *(state full names of deceased)* late of *(address)* deceased who died on [or about] the day of 20 , made and duly executed his last Will and Testament [and codicil] dated the day of 19/20 and therein named *(executor(s) named in will)* Executor [did not therein name any executor] and BE IT FURTHER KNOWN that on the day of 20 , a grant of administration with the will annexed (copy of which will [and codicil] is annexed hereto) of all the real and personal estate which by law devolves on and vests in the personal representative of the said deceased was granted by the Court to *(full names of administrator(s))* the *(state capacity in which the grant is taken)* of the deceased, [he] [she] having first sworn well and faithfully to administer the same according to law and to render a just and true account of all the real and personal estate of the said deceased whenever required by law so to do.

Registrar

Extracted by
for the said administrator[s]

of

attorney-at-law



OATH OF ADMINISTRATORS

Form P.5 [Rule 68.9(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of (*state full names*); late of (*state address*), deceased

I/We

1. (*full names of administrator*) of (*address*) (*occupation*)
2. (*full names of administrator*) of (*address*) (*occupation*)
3. (*full names of administrator*) of (*address*) (*occupation*) make oath and say [do solemnly and _____ sincerely affirm] that -
 - (1) (*full names of deceased*) late of (*state address*) deceased died intestate on the day of _____ 20 at (*state place of death*) domiciled in Jamaica, a (*state status of deceased, eg spinster, widower and, where necessary, account for any class entitled in priority to the applicants, eg "without issue or parent"*).
 - (2) The annexed document marked "A" is a certified copy of the death certificate of the deceased.
 - (3) To the best of my/our knowledge, information and belief there was [no] land vested in the deceased which was settled previously to [his][her] death and not by [his][her] will and which remained settled land notwithstanding [his][her] death.
 - (4) There is [no] minority and [no] life interest in the estate of the deceased.
 - (5) I am/we are the (*state relationship to deceased showing entitlement to grant*) of the deceased and to the best of my/our knowledge information and belief there is no other person entitled in priority to share in [his][her] estate by virtue of any enactment.
 - (6) I/we will faithfully collect, get in and administer according to law the real and personal estate effects of the deceased.
 - (7) I/we will render a just and true account of my/our administration whenever required by law to do so.
 - (8) To the best of my/our knowledge, information and belief-
 - (a) the gross personal estate of the deceased passing under the grant amounts to \$ _____ and the net personal estate amounts to \$ _____; and the deceased did not die possessed of any real estate.
 - (b) _____

OR

 - (b) the gross real estate of the deceased passing under the grant amounts to \$ _____ and the net real estate amounts to \$ _____; and
 - (c) the gross annual value of the real estate amounts to \$ _____.

Sworn/Affirmed at
on the _____ day
of _____ 20____

(*signed*)

Before me,
Justice of the Peace

Filed by

attorneys-at-law whose address for service is



GRANT OF ADMINISTRATION

Form P.6 [Rule 68.9(c)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

BE IT KNOWN that on the _____ day of _____ 20____, a grant of administration of all the real and personal estate which by law devolves and vests in the personal representatives of *(state full names of deceased)* late of *(address)* deceased, who died intestate on [or about] the _____ day of _____ 20____, were granted by the Court to *(full names of administrator(s))* of *(address)* the *[state relationship]* of the said deceased, [he][she] having first sworn well and faithfully to administer the same according to law and to render a just and true account of all the real and personal estate of the said deceased whenever required by law so to do.

Registrar

Extracted by _____ of
attorney-at-law for the said administrator[s].



AFFIDAVIT OF DUE EXECUTION

Form P.7 [Rule 68.13(2)(a)(i)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I *(state full names)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -

(1) I am one of the attesting witnesses to the [last Will and Testament] [and codicil] of the deceased, *(full names)* deceased. The said [will] [codicil] is hereto exhibited and marked "A".

(2) The deceased executed the said [will][codicil] on the day of the date thereof by [signing his/her name [at the foot or end thereof] [in the Testimonium Clause thereof][in the Attestation clause thereof] as it now appears]

OR

[acknowledging his/her signature by referring to it and pointing to it at the foot or the end of it as it now appears *(or state other position)*]

OR

[by making his/her mark at the foot or at the end of it as it now appears *(or state other position)*],

meaning and intending the same to be his/her final signature of the [will] [codicil] in the presence of *(name of other witness)* and me, both of us being present at the same time and we thereupon attested and subscribed the said [will][codicil] in the presence of the deceased.]

Sworn/Affirmed at
on the day
of 20

(signed)

Before me,
Justice of the Peace

Filed by

attorneys-at-law whose address for service is



AFFIDAVIT AS TO HANDWRITING

Form P.8 [Rule 68.13(2)(b)(i)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I *(state full names)* of *(address)* *(occupation)* make oath and say [do solemnly and sincerely affirm] that -

- (1) I knew and was well acquainted with the deceased *(state full names)* late of *(state address)*, deceased, who died on the day of 20 for *(state period)* prior to his/her death.
- (2) During that period I have frequently seen him/her write and also sign his/her name so that I am well acquainted with the manner and character of his/her handwriting and signature.
- (3) I have carefully perused and inspected the paper writing produced to me marked "A" , purporting to be and contain the [last Will and Testament][codicil] of the said deceased dated the day of 19 /20 .
- (4) I verily believe the signature *(set out mode of signature)* to the said [will][codicil] to be the true and proper handwriting and signature of the said deceased.

Sworn/Affirmed at
on the day
of 20
Before me,
Justice of the Peace

(signed)

Filed by

attorneys-at-law whose address for service is



AFFIDAVIT OF SEARCH

Form P.9 [Rule 68.13(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I *(state full names)* of *(address)* make oath and say [do solemnly and sincerely affirm] that -

- (1) I am the sole executor (one of the executors) named in the paper writing hereto annexed and marked "A" purporting to be and contain the [last Will and Testament][and codicil] of *(full names)* late of *(address)* deceased, who died on the day of *20* .
- (2) Having regard to the fact that the [will][codicil] is not dated I have made inquiries of *(full names and address)* the attorney-at-law of the said deceased and have also made diligent search in all places where the deceased normally kept papers of any importance to ascertain whether he/she had or had not left any other will or codicil but I have been unable to discover any such will or codicil.
- (3) I verily believe that the deceased died without having left any will, codicil or testamentary paper whatever other than the said will [and codicil].

Sworn/Affirmed at
on the day
of 20
Before me,
Justice of the Peace

(signed)

Filed by

attorneys-at-law whose address for service is



AFFIDAVIT AS TO PLIGHT AND CONDITION

Form P.10 [Rule 68.15(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I *(state full names)* of *(address)* make oath and say [do solemnly and sincerely affirm] that -

- (1) I am the sole executor (one of the executors) named in the paper writing hereto exhibited and marked "A" purporting to be and contain the [last Will and Testament][and codicil] of *(full names)* late of *(address)* deceased, who died on the day of 20 , the said will being dated the day of 19 /20 .
- (2) I have carefully perused and examined the said [will][codicil] and particularly observed that *(set out all relevant evidence including details of the finding of the will and of its condition when found including particulars of any alterations and what has happened to the will since it was found)*.
- (3) The [will][codicil] is now in all respects in the same state, plight and condition as when found after the death of the deceased save as stated above.

Sworn/Affirmed at
on the day
of 20
Before me,
Justice of the Peace

(signed)

Filed by

attorneys-at-law whose address for service is



MARKING OF WILL

Form P.11 [Rule 68.16(1)]

(a) Executor or Administrator's Oath

"A"

This is the paper writing referred to in the Oath of (*full names of executor or administrator*) [sworn] [affirmed] the day of 20 as containing the true and original last Will and Testament [and codicil] of (*name of deceased*) late of (*address*) in the parish of (*name*) (*occupation of deceased*) bearing date the day of 19/20 and marked "A" for identification.

Signed (*Executor*)

Signed
Justice of the Peace

(b) Affidavit by attesting witness etc

"A"

This is the paper writing referred to in the [affidavit] [affirmation] of (*full names of attesting witness*) [sworn] [affirmed] the day of 20 (*full names*) as containing the true and original last Will and Testament [and codicil] of (*name of deceased*) late of (*address*) in the parish of (*name*) (*occupation of deceased*) bearing date the day of 19/20 and as being marked "A" for identification.

Signed (*deponent*)

Signed
Justice of the Peace



APPLICATION TO RESEAL GRANT

Form P.13 [Rule 68.26(3)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

I *(full names of applicant(s))* of *(address)* make oath and say [do solemnly and sincerely affirm] that -

1. A grant of probate of the last Will and Testament [grant of administration of the estate] of *(full names of deceased)* late of *(address)*, deceased was granted to me *(or full names of executor or administrator where application made by agent)* by the Court at _____ on the _____ day of _____ 19/20 .
2. A copy of the will to which the grant relates is annexed and marked "A".
3. A certified copy of the said grant is annexed and marked "B"
4. At the date of [his][her] death the deceased was domiciled in *(state place)* within the jurisdiction of the said Court.
5. The annexed notice marked "B" was inserted in the [Gazette][*name of newspaper*] on the _____ day of _____ 20 .
6. [I am the agent lawfully appointed by the said *(full names of executor/administrator)* and am authorised to apply to this Court to reseal the said grant.]
7. To the best of my/our knowledge, information and belief-
 - (a) the gross personal estate of the deceased in Jamaica passing under the grant amounts to \$ _____ and the net personal estate amounts to \$; and
 - (b) the deceased did not die possessed of any real estate in Jamaica.
 OR
 - (b) the gross real estate of the deceased in Jamaica passing under the grant amounts to \$ _____ and the net real estate amounts to \$ _____; and
 - (c) the gross annual value of the real estate in Jamaica amounts to \$ _____ .

Sworn [affirmed] by the said

(name of applicant)

Before me,

Justice of the Peace

Filed by

attorneys-at-law whose address for service is



RENUNCIATION OF ADMINISTRATION WITH WILL ANNEXED

Form P.15 [Rule 68.33(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of (*state full names*); late of (*state address*), deceased

WHEREAS (*full names of deceased*) late of (*address*), deceased, died on the
day of 20 , and

WHEREAS by his last Will and Testament [and codicil] dated the
day of 19 /20 [he][she] appointed (*full names of appointed executors*) of
(*address*)
as [sole] executor[s] who predeceased the deceased and me, (*full names*) as residuary
legatee and devisee (*or as the case may be*)

NOW I/we the said (*full names*) of (*full address*) hereby DECLARE that I/we hereby
renounce all my/our right and title to a grant of letters of administration with the will
annexed of the estate of the deceased.

IN WITNESS WHEREOF I/we have set my/our hand(s) and seal(s) this
day of 20 .

Signed, sealed and delivered
by the said (*full names*)
in the presence of
(*witness*)

(*signed*)

Filed by

attorneys-at-law whose address for service is



RENUNCIATION OF ADMINISTRATION

Form P.16 [Rule 68.33(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

WHEREAS *(full names of deceased)* late of *(address)*, deceased, died on the
day of 20 , intestate, and

WHEREAS I *(full names)* of *(address)* am *(relationship and capacity in which entitled to administration)* of the deceased,

NOW I hereby renounce all my right and title to a grant of letters of administration of
the estate of the said deceased,

IN WITNESS WHEREOF I have set my hand and seal this day of 20 .

Signed, sealed and delivered

by the said *(full names)*

(signed)

in the presence of

(witness)

Filed by

attorneys-at-law whose address for service is



CAUTION

Form P.17 [Rule 68.38(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

Let no grant be sealed in the Estate of *(state full names)*; late of *(state address)*, deceased, who died on the day of 20 without notice to *(name of person on whose behalf caution entered)*

Dated this day of 20 .

(Signed)

(to be signed by the cautioner or his or her attorney-at-law)

whose address for service is

[Attorney-at-law for the said *(name of cautioner)*] [in person]



WARNING TO CAUTIONER

Form P.18 [Rule 68.39(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

To *(name of cautioner)* of *(address)* a party who has entered a caution in the estate of the above named deceased

You have 14 days (starting on the day on which this warning was served on you)

- (a) to file an acknowledgment of service either in person or by your attorney-at-law at the registry setting out what interest you have in the estate of the above-named deceased contrary to the party at whose instance this warning is issued; or
- (b) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a notice of application for directions by the registrar.

If you fail to do either of these, the court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caution.

Dated the _____ day of _____ 20____

Issued at the instance of

[here set out the name and interest (including the date of the will or codicil, if any, under which the interest arises) of the party warning, the name of his or her attorney-at law and the address for service, if the party warning is acting in person this must be stated.]

Registrar

The **Registry** is at King Street, Kingston, Jamaica telephone number (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays except Public Holidays.



ACKNOWLEDGMENT OF SERVICE (PROBATE)

Form P.19 [Rule 68.40(1)(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased
[caution no. dated the day of 20 .]
[citation dated the day of 20 .]

Full names and address of person warning [or citor]

(here set out the interest of the person warning or citor as shown in the warning or citation.)

Full names and address of cautioner [or person cited]

(here set out the interest of the cautioner or person cited, stating the date of the will (if any) under which such interest arises)

The above-named [cautioner][or person cited] acknowledges service of the [warning]
[citation] dated on the day of 20 .

(signed)

[attorney-at-law for the] [the cautioner] [person cited] [in person]
whose address for service is

This acknowledgment of service must be filed at the registry and a copy served on the person warning or citor.

The **Registry** is at King Street, Kingston, Jamaica telephone number (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays except Public Holidays.



WITNESS SUMMONS TO BRING IN WILL

Form P.20 [Rule 68.45(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of *(state full names)*; late of *(state address)*, deceased

WITNESS SUMMONS

To *(Witness' full names)*

of *(Witness' address)*

WHEREAS it appears from the affidavit of *(full names)* of *(address)* that you have in your possession, power or control a document being or purporting to be the [will] [codicil] [*specify other testamentary document*] of *(full names of deceased)* *(state, if known, the date of the will etc.)*

You are summoned to attend at the Registry of the Supreme Court at King Street, Kingston, Jamaica within eight days after the service of this summons and bring in and leave at the registry the said original document.

If the document is not in your possession, power or control you must within eight days after service of this summons file at the registry an affidavit to that effect stating what knowledge you have of the document and of in whose possession, power or control it may now be.

IF YOU DO NOT COMPLY WITH THIS SUMMONS YOU WILL BE GUILTY OF CONTEMPT OF COURT AND MAY BE IMPRISONED

(SEAL)

DATED

This summons was issued on the application of *(full names)* whose Attorney-at-law is of

Tel.

Fax.

The **Registry** is at King Street, Kingston, Jamaica telephone number (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays except Public Holidays.



NOTICE OF APPLICATION

Form P.21 [Rule 68.48(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

In the Estate of (*state full names*); late of (*state address*), deceased

TAKE NOTICE that I/we intend to apply to the [registrar][judge] at the Supreme Court, King Street, Kingston on day the day of 20 , at a.m/p.m

for -

- (a) Directions
- (b) An order that (*set out terms of order sought*)

The grounds of this application are -
(*set out grounds of application*)

A draft of the order sought is attached.

AND FURTHER TAKE NOTICE that if you do not attend at the time and place stated above the court may make such order as it thinks fit in your absence.

Dated

Signed

[Attorneys at law for]

[in person]

The applicant's address for service is:

The **Registry** is at King Street, Kingston, Jamaica telephone number (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00a.m. to 4:00 p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays except Public Holidays.



NOTICE OF APPLICATION

Form P.22 [Rule 68.21(a)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

In the Estate of (state full name), late
of (state address), deceased.

I, (state full name), being duly sworn make oath and say as follows:

1. My address is (state address) and I am a (state occupation).
2. I am the (state capacity eg "widow(er)) of the deceased (state full name) late of (state address) who died on theday of and I am entitled to apply for a grant of administration in the said estate.
3. I DO HEREBY CONSENT to (state full name, occupation and address of applicant) applying for a grant of administration in the said estate.

SWORN by the said etc.

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)



AFFIDAVIT OF TESTAMENTARY DOCUMENTS

Form P.23 [Rule 68.52(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

In the Estate of (state full name), late of
(state address), deceased

I, (state full name), being duly sworn make oath and say as follows:

1. My address is (state address) and I am a (state occupation) and the [Claimant][Defendant] herein.
2. I have no knowledge of any testamentary document of (state full name of deceased) late of (state address), the deceased in this claim SAVE AND EXCEPT (describe testamentary document including date if known).
3. The said testamentary document is in my possession and under my control.

OR

The said testamentary document is in the possession and under the control of (state name and address if known).

4. (If applicable) I exhibit hereto marked "A" for identification a copy of the said testamentary document.

SWORN by the said etc.

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)

Appendix 3

Admiralty Forms

Admiralty Forms

Form A.1	Admiralty Claim Form in Rem	Rule 70.3(2)
Form A.2	Acknowledgement of Service of Admiralty Claim Form in Rem	Rule 70.3(6)
Form A.3	Warrant for Arrest (Admiralty)	Rule 70.7(2)
Form A.4	Admiralty Limitation Claim	Rule 70.14(4)
Form A.5	Notice to the Consular Officer of Intention to Apply for Warrant of Arrest	Rule 70.7(6)
Form A.6	Request for Caution Against Arrest	Rule 70.10(1)
Form A.7	Request for Caution Against Arrest	Rule 70.14(7)(a)(b)



ADMIRALTY CLAIM FORM IN REM

Form A.1 [Rule 70.3(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

BETWEEN

CLAIMANT

AND

DEFENDANT

Admiralty claim in rem against [The ship "x" or other res]

The Claimant, A.B. (full name) of (full address) claims against the Defendant, C.D. (full name) of (full address) (Insert brief details of the nature of the claim and state any specific sum that you are seeking.)

	\$
Amount claimed	
Together with interest from to date (Daily rate from today = \$ per day)	
Court Fees	
Attorney-at-Law's Fixed Costs on Issue	
Total Amount claimed	

NOTICE TO THE DEFENDANTS being the owners of and the other persons interested in the ship of the port [or cargo or as may be]

If you do not complete the form of Acknowledgement of Service served on you with this Claim Form and deliver or send it to the registry within FOURTEEN DAYS of service of this Claim Form on you, the Claimant will be entitled to apply to have judgment entered against you for the amount claimed. If the res described in this Claim Form is then under arrest of the court it may be sold by order of the court.

The form of Acknowledgement of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it not served within [12] months of the date below unless you are also served with an order that extends the time for service.



ACKNOWLEDGEMENT OF SERVICE OF ADMIRALTY CLAIM FORM IN REM

Form A.2 [Rule 70.3(6)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

BETWEEN

CLAIMANT

AND

DEFENDANT

WARNING: If this form is not fully completed and returned to the court at the address below within FOURTEEN DAYS of service of the Claim Form on you, the Claimant will be entitled to apply to have the judgment entered against you. See Rules 9.2(5) and 9.3(1). If he does so you will have no right to be heard by the court except as to the costs or the method of paying any judgment unless you apply to set judgment aside.

- 1. Have you received the Claim Form with the above claim number? YES/NO
- 2. If so, when? _/_/_
- 3. Did you also receive the Claimant’s Particulars of Claim? YES/NO
- 4. If so, when? _/_/_
- 5. Are your names properly stated on the Claim Form? YES/NO

If not, what are your full names?

.....

- 6. Do you intend to defend the claim? YES/NO
If so you must file a Defence within 42 days of the service of this claim on you.
See Rule 10.3(1)
- 7. Do you admit to the whole of the claim? YES/NO
If you do you should consider to either:
 - (a) pay the claim directly to the Claimant or his attorney-at-law, or
 - (b) complete the application form to pay the claim by instalments.

If you pay the whole claim together with the costs and interest as shown on the Claim Form within 14 days, you will have no further liability for costs.

8. Do you admit any part of the claim? YES/NO

If you do you may -

- (a) pay the money that you admit directly to the Claimant or his attorney-at-law, or
- (b) complete the application form to pay him by instalments

9. If so how much do you admit?

If you dispute the balance of the claim you must also file a Defence within 42 days of service of the Claim Form on you or judgment may be entered against you for the whole amount claimed.

10. What is your own address?

.....
.....

11. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.

.....
.....
.....

Dated the day of 20

Signed
[Defendant in Person][Defendant's Attorney-at-law]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim)



WARRANT FOR ARREST (ADMIRALTY)

Form A.3 [Rule 70.7(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

Request For Warrant Of Arrest

We of
[Attorneys-at-Law] for the Claimant request a warrant to arrest (description of property,
giving name and port if a ship)

Dated

(Signed)

Warrant Of Arrest

To: the Bailiff for the Parish of

You are required to arrest the ship of the port of

[and the cargo now or lately laden in her together with the freight due for the
transportation of it,] or [and the freight due for the transportation of the cargo now or
lately laden in her] and to keep the same under safe arrest until you receive further
orders from the Court.

The Claimant claims:

Date

Taken out by of (Tel.) (Fax.)

[Attorneys-at-Law for the Claimant]

[Bailiff's indorsement as to service]

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law
filing the application).



ADMIRALTY LIMITATION CLAIM

Form A.4 [Rule 70.14(4)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

LIMITATION CLAIM FORM

The Claimant, A.B. (full name) of (full address)
claims against the Defendant, C.D. (full name) of (full address)
(Insert brief details of the nature of the claim and state any specific remedy that you are seeking.)

NOTICE TO THE DEFENDANT

Unless you admit the claim against you, you must complete the form of Acknowledgement of Service served on you with this Claim Form and deliver or send it to the court's office so that it is received within 14 days of service of this Claim Form on you.

If you fail to do so the Claimant may proceed with the claim without further notice to you. The form of Acknowledgement of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to this claim.

This Claim Form has no validity if it is not served within [twelve] months of the date below unless you are also served with an order that extends the time for service.

Dated

[SEAL]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 – 9, Fax (876) 967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00a.m. to 3:00p.m. on Fridays, except on Public Holidays.

The Claimant's address for service is:

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim).



NOTICE TO CONSULAR OFFICER OF INTENTION TO APPLY FOR WARRANT OF ARREST

Form A.5 Rule 70.7(6)(a)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN ADMIRALTY

To the Consular Officer of (name of State)
The Ship or Motor Vessel (give name)
of the Port of (give details)

TAKE NOTICE that (name or description of party seeking arrest)
did on the day of 20 (or intends to) institute proceedings in the
Supreme Court against the above-mentioned ship in respect of a claim (or counter-
claim) for (state nature of claim or counterclaim)

and intends to apply to the Court to arrest the ship.

Dated the day of 20

Signed.....
Attorneys-at-Law for

THIS NOTICE is filed by of whose telephone
numbers are fax No. Attorneys-at-
Law for the Claimant/Defendant-Counterclaimant whose address for service is
that of its said Attorneys-at-Law.

Filed by of whose telephone numbers
are fax No. Attorneys-at-Law for
the Claimant/Defendant whose address for service is that of its said Attorneys-at-
Law.



REQUEST FOR CAUTION AGAINST ARREST

Form A.6 Rule 70.10(1)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA IN ADMIRALTY

TO: The Registrar
The Supreme Court
King Street
Kingston

[Description of property giving name, if a ship]

I/We (*give name*) of

[Attorneys-at-Law for _____ of _____]

hereby request a caution against the arrest of (*description of property giving name, if a ship*) and undertake to acknowledge issue or service of the claim form in any action that may be begun in this Court against the (*give name*) and give security in the action in the sum not exceeding (*enter amount*) or to pay that sum into court.

I/We consent that the claim form and any other documents in the action may be left for me/us at (*enter address*).

Dated the _____ day of _____ 20____

Signed

Filed by _____ of _____ whose telephone numbers are _____ fax No. _____ Attorneys-at-Law for the Claimant/Defendant whose address for service is that of its said Attorneys-at-Law.

accordance with the Act is _____ Special Drawing Rights and that the liability of the Claimants to the above named Defendants is \$ (*enter amount*) _____ together with simple interest thereon from the (*enter date of collision*) _____ to this day and no more (*or as may be agreed between the parties to the claim*)

3. The Claimants having constituted a Limitation Fund by payment into court of the amount on the (*enter date of payment into court*) _____, all further proceedings against them by the above named Defendants arising out of this occurrence be stayed.
4. The fund in Court including all accrued interest to the date of payment out to be paid out and distributed as follows: (*give details*)
5. The costs of this application be

.....
Judge/Registrar

Filed by _____ of _____ Attorneys-at-Law for the Claimant/
Defendant whose address for service is that of its said Attorneys-at-Law.

Appendix 4

Mediation Forms

Mediation Forms

Form M.1	Referral to Mediation	Rule 74.3
Form M.2	Notice of name of Mediator and Date of Session	Rule 74.6
Form M.3	Notice of name of Mediator Selected	Rule 74.6(4)
Form M.4	Statements of Issues	Rule 74.10
Form M.5	Report of Mediator	Rule 74.11



REFERRAL TO MEDIATION

Form M.1 [Rule 74.3]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

Part 1. Case & Claimant

Please indicate how Referral Process was initiated (check one)

- If a below - to be filled out and signed by Registrar

- If b or c below - to be filled out by Attorney-at-law for Claimant - or by Claimant if unrepresented

<input type="checkbox"/> a. automatic referral pursuant to rule 74.3(3)	<input type="checkbox"/> c. by Master or Judge by Order pursuant to rule 74.3(5)
<input type="checkbox"/> b. by the consent of the parties pursuant to rule 74.3(4)	Date Signature _____ (if a above signature of Registrar)

2. The Claimant agrees to have the case referred to mediation (check box)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	3. Date dd__mm__yyyy__
---	---	---------------------------

4. Name of Claimant where unrepresented (please print & sign) _____ _____ _____	Or	5. Name of Claimant's Attorney-at-law (please print & sign) _____ _____ _____
--	----	--

6. Address of Claimant: _____ _____ a. Phone: _____ b. Fax: _____ c. E-mail _____	7. Address of Claimant's Attorney-at-law: _____ _____ a. Phone: _____ b. Fax: _____ c. E-mail _____
--	--

Part 2. Defendant

9. The Defendant agrees to have the case referred to mediation (check box)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	10. Date of consent: dd__mm__yyyy____
--	---	--

11. Name of Defendant where unrepresented (please print and sign) _____ _____	Or	12. Name of Defendant's Attorney-at-law (please print and sign) _____ _____
---	----	---

13.. Address of Defendant: _____ _____ a. Phone: _____ b. Fax: _____ c. E-mail _____	14. Address of Defendant's Attorney-at-law: _____ _____ a. Phone: _____ b. Fax: _____ c. E-mail _____
---	--

Part 3. Registry

15. Date of Claim	16. Date of Defence	17. Deadline for Mediation (90 days from today's date)
-------------------	---------------------	--

18. Application to postpone or dispense with mediation made: (Signature)	19. Mediation Referral Agency is hereby authorized to arrange mediation in this case. (Signature)	20. Date of Referral dd__mm__yyyy____
--	---	--

 Claimant (or Claimant's Attorney-at-Law)

 Defendant (or Defendant's Attorney-at-Law)

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)



NOTICE OF NAME OF MEDIATOR AND DATE OF SESSION

Form M.2 [Rule 74.6]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

TO: MEDIATION REFERRAL AGENCY
Address
Tel:
Fax:
E-mail:

I certify that:

1. The parties have chosen the following mediator (s) in order of preference from the roster for the mediation in this matter.
2. The mediation can take place on the following date (s):

OR

3. The Parties have been unable to agree on a mediator and request the appointment of a mediator and scheduling of a mediation pursuant to Rule 74.6 (6)

I declare that the information given above is true to the best of my knowledge.

Dated the day of _____ 20____

Signed.....
Claimant's / Defendant's Attorney-at-law

Note:- Form M2 must be filed no later than 28 days after a referral to Mediation by the Claimant, if the Claimant fails to comply with Rule 74.6 a defendant must do so within 7 days of the expiration of this period.

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)



STATEMENT OF ISSUES

Form M.4 [Rule 74.10]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN
AND

CLAIMANT
DEFENDANT

To be provided to mediator and each party or to their attorney-at-law (where represented) no later than seven days before the date fixed for the mediation session by each claimant and defendant.

The claimant or defendant states that the following factual or legal issues are in dispute and remain to be resolved.

Issues, positions and interests should be stated briefly and numbered consecutively.

1. Factual issues in dispute
2. Legal issues in dispute
3. Party's position and interests (what the party hopes to achieve)
4. Attached documents

Attached to this Form are the pleadings filed by me, other documents of central importance in the action: (please list here)

(Date)

(Party's signature)

(Name, address, telephone number and fax of Attorney-at-Law of party filing statement of issues, and of party)

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)



REPORT OF MEDIATOR

Form M.5 [Rule 74.11]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

**BETWEEN
AND**

**CLAIMANT
DEFENDANT**

1. Attendance

The following persons attended the mediation:

- (a) Claimant:(name)
- (b) Claimant's Attorney-at-law: (name)
- (c) Defendant(s): (name)
- (d) Defendant's Attorney-at-law: (name)
- (e) Other persons: (name)

2. Mediation was held on [all dates]

3. [Where one or more parties did not attend] —Notice of the final session for mediation was provided to: _____ on (date) .

4. Tick Boxes

- (a) At least one party did not attend so the mediation was aborted.
- (b) The parties met, but were unable to arrive at an agreement.
- (c) The parties arrived at a partial settlement.
- (d) The parties and the mediator met and the mediator considered that there are reasonable prospects of agreement and an extension of time is required and requested.
- (e) The parties have reached full agreement and a copy of the agreement
 - i. is attached, or
 - ii. will be provided by (name) _____ within 30 days of the completion of mediation or
 - iii. the claim and defence are herein settled, and the parties will keep the agreement confidential as evidenced by the signatures appended hereto.

Signed by Mediator (name) (address) (date)

Signed by Claimant or attorney-at-law (name) (address) (date)

Signed by Defendant or attorney-at-law (name) (address) (date)

Note: The Report of Mediator must be filed in the Supreme Court Registry within 98 days of the date of referral see M1 form

Filed by (specify name and address of the Attorney-at-Law or firm of Attorneys-at-Law filing the document)

Appendix 5

Matrimonial Proceedings Forms

Matrimonial Proceedings Forms

Form MP. 1	Petition for Dissolution of Marriage	Rule 76.4(1)
Form MP. 2	Petition for Nullity of Marriage	Rule 76.4(1)
Form MP. 3	Petition for Presumption of Death and Dissolution of Marriage	Rule 76.4(1)
Form MP. 4	Affidavit Accompanying Petition	Rule 76.4(9)
Form MP. 5	Acknowledgment of Service	Rule 76.10
Form MP. 6	Answer in Response to Petition	Rule 76.11(1)
Form MP. 7	Application to Dispense with a Hearing	Rule 76.12(1)
Form MP. 8	Decree Nisi for Dissolution of Marriage	Rule 76.12(2)
Form MP. 9	Decree Nisi for Nullity of Marriage	Rule 76.14(2)
Form MP.10	Decree Absolute	Rule 76.14(9)

9. [Where appropriate – see rule 76.4(6)] The financial resources of the Respondent are as follows:
[give particulars of Respondent’s financial resources]
10. There is a dispute between the Petitioner and the Respondent as to whether a child [name and, if known, date of birth of child] is a child of the family. The nature of the dispute is that [briefly state nature of dispute].
[or]
There is no dispute between the Petitioner and the Respondent as to whether any child is a child of the family.
11. There have been proceedings in the [state which court] with reference to [state whether relating to the marriage, the relevant child or children of the marriage and/or to property of either the Petitioner or the Respondent or both of them] as follows:
[state nature of proceedings]
[state the date and effect of any decree or order]
[in the case of proceedings with reference to the marriage, state whether there has been any resumption of cohabitation since the making of the decree or order]
12. The marriage between the Petitioner and the Respondent has broken down irretrievably.
13. The following are the circumstances in which the Petitioner considers the marriage to have broken down irretrievably:
[set out circumstances including any attempts at reconciliation]
14. [State whether or not there is a reasonable likelihood of cohabitation being resumed]

The Petitioner therefore seeks the following relief:
[Set out relief being claimed]

Note: rule 76.4(5) permits the inclusion in the petition of claims for such matrimonial proceedings relief as is appropriate.

The following is the person to be served with this Petition and who is not under disability:

The Respondent
[name of Respondent]
[Address of Respondent]

I certify that the facts set out in the Petition are to the best of my knowledge, true.

Dated this day of , 20

Petitioner

Notice to the Respondent

See rule 76.4(14) and the following notes served with this Petition.

This Petition must be personally served unless otherwise permitted by an order of the Court or permitted by rule 76.9 (service out of the jurisdiction).

Rule 76.11 sets out the procedure for responding to the claim and requires you to file an Acknowledgment of Service within [state number of permitted days] of being served with the Petition, if you wish to respond to the claim. An Acknowledgment of Service is Form MP 5 in the Matrimonial Proceedings Forms at Part 76 of the Civil Procedure Rules, 2002 as amended.

If you do not complete the form of Acknowledgment of Service and deliver or send it to the registry (address below) so that it is received within [state number of days permitted] of being served with the Petition, the Petitioner will be entitled to proceed in default against you. See rule 76.12.

The form of Acknowledgment of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to the claim contained in the Petition.

[SEAL]

The Registry is at The Supreme Court, Public Buildings, King Street, Kingston, telephone numbers (876) 922-8300 –9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays, except on Public Holidays.

The Petitioner's address for service is.../or is that of his/her Attorney-at-Law[specify the name and address of Petitioner's Attorney-at-Law or firm of Attorneys-at-Law as appropriate with telephone and fax numbers]

Filed by [specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Petition]

10. There is a dispute between the Petitioner and the Respondent as to whether a child [name and, if known, date of birth of child] is a child of the family. The nature of the dispute is that [briefly state nature of dispute].
 [or]
 There is no dispute between the Petitioner and the Respondent as to whether any child is a child of the family.
11. There have been proceedings in the [state court] with reference to [state whether to the marriage, the relevant child or children of the marriage and/or to property of either the Petitioner or the Respondent or both of them] as follows:
 [state nature of proceedings]
 [state the date and effect of any decree or order]
 [in the case of proceedings with reference to the marriage, state whether there has been any resumption of cohabitation since the making of the decree or order]
12. The marriage is void because [set out the grounds for alleging that the marriage is void]
[See section 4 of the Matrimonial Causes Act, 1989]
13. The following are the facts being relied upon by the Petitioner in support of the claim that the marriage should be annulled:
 [set out facts]
14. The Petitioner therefore seeks the following relief:
 [Set out relief being claimed]

Note: Rule 76.4(5) permits the inclusion in the petition of claims for such matrimonial proceedings relief as is appropriate.

The following is the person to be served with this Petition and who is not under disability:

The Respondent
 [name of Respondent]
 [Address of Respondent]

I certify that the facts set out in the Petition are to the best of my knowledge, true.

Dated this day of , 20

Petitioner

Notice to the Respondent

See rule 76.4(14) and the following notes served with this Petition.

This Petition must be personally served unless otherwise permitted by an order of the Court or permitted by rule 76.9 (service out of the jurisdiction).

Rule 76.11 sets out the procedure for responding to the claim and requires you to file an Acknowledgment of Service within [state number of days permitted] of being served with the Petition, if you wish to respond to the claim. An Acknowledgment of Service is Form MP 5 in the Matrimonial Proceedings Forms at Part 76 of the Civil Procedure Rules, 2002 as amended.

If you do not complete the form of Acknowledgment of Service and deliver or send it to the registry (address below) so that it is received [state number of days permitted] of being served with the Petition, the Petitioner will be entitled to proceed in default against you. See **rule 76.12**.

The form of Acknowledgment of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to the claim contained in the Petition.

[SEAL]

The Registry is at The Supreme Court, Public Buildings, King Street, Kingston, telephone numbers (876) 922-8300 –9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays, except on Public Holidays.

The Petitioner's address for service is.../or is that of his/her Attorney-at-Law [specify the name and address of Petitioner's Attorney-at-Law or firm of Attorneys-at-Law as appropriate with telephone and fax numbers]

Filed by [specify name, address, telephone and fax numbers of the Attorney-at-Law or firm of Attorneys-at-Law filing the Petition].

9. [Where appropriate – see rule 76.4(6)] The financial resources of the Respondent are as follows:
 [give particulars of Respondent’s financial resources]
10. There is a dispute between the Petitioner and the Respondent as to whether a child [name and, if known, date of birth of child] is a child of the family. The nature of the dispute is that [briefly state nature of dispute].
 [or]
 There is no dispute between the Petitioner and the Respondent as to whether any child is a child of the family.
11. There have been proceedings in the [state court] with reference to [state whether to the marriage, the relevant child or children of the marriage and/or to property of either the Petitioner or the Respondent or both of them] as follows:
 [state nature of proceedings]
 [state the date and effect of any decree or order]
 [in the case of proceedings with reference to the marriage, state whether there has been any resumption of cohabitation since the making of the decree or order]
12. The Petitioner has reasonable grounds for believing that the Respondent is deceased.
13. The Respondent was last seen [or heard of] by the Petitioner on the [state the date] at [state the place] and, since that date, the Petitioner has taken the following steps to locate him:
 [set out steps taken to ascertain location of Respondent]
14. The Petitioner believes that the Respondent is deceased because [give reasons].
15. The Respondent has [state number of surviving children] all of whom are likely to be entitled to succeed to the whole of or a part of his estate by reason of his/her Will or by reason of intestacy [as is appropriate]
 [or]
 The Respondent has no surviving children.
16. The following are the details of all persons who are known by the Petitioner to have an interest in the Respondent’s estate:
 [set out full details including names, ages and addresses of all such persons]
17. The Petitioner therefore seeks the following relief:
 [Set out relief being claimed]

Note: Rule 76.4(5) permits the inclusion in the petition of claims for such matrimonial proceedings relief as is appropriate.

The following is/are the person(s) to be served with this Petition and who is/are not under disability [or is/are under disability, as is appropriate] - **See rule 76.7(2) and (3)**.

I certify that the facts set out in the Petition are to the best of my knowledge, true.

Dated this day of , 20

Petitioner

Notice to Person(s) being served

See rule 76.4(14) and the following notes served with this Petition.

This Petition must be personally served unless otherwise permitted by an order of the Court.

Rule 76.11 sets out the procedure for responding to the claim and requires you to file an Acknowledgment of Service within [state number of days permitted] of being served with the Petition, if you wish to respond to the claim. An Acknowledgment of Service is Form MP 5 in the Matrimonial Proceedings Forms at Part 76 of the Civil Procedure Rules, 2002 as amended.

If you do not complete the form of Acknowledgment of Service and deliver or send it to the registry (address below) so that it is received within [state number of days permitted] of being served with the Petition, the Petitioner will be entitled to proceed in default against you. **See rule 76.12.**

The form of Acknowledgment of Service may be completed by you or an Attorney-at-Law acting for you.

You should consider obtaining legal advice with regard to the claim contained in the Petition.

[SEAL]

The Registry is at The Supreme Court, Public Buildings, King Street, Kingston, telephone numbers (876) 922-8300 – 9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays, except on Public Holidays.

The Petitioner's address for service is.../or is that of his/her Attorney-at-Law[specify the name and address of Petitioner's Attorney-at-Law or firm of Attorneys-at-Law as appropriate with telephone and fax numbers]

Filed by [specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Petition]



AFFIDAVIT ACCOMPANYING PETITION

Form MP.4 [Rule 76.4(9)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

BETWEEN
A N D

PETITIONER
RESPONDENT

I, [full name of deponent] being duly sworn, make oath and say as follows:

1. I reside and have my true place of abode and postal address at [state full address] in the parish of [state parish] and I am a [state occupation] and I am the Petitioner.
2. The following are the particulars of the arrangements for the care, maintenance, education and upbringing of the relevant child [or children or for any child under 21 years of age who is being educated in an institution of tertiary education]:
 - A. **Residence**
[set out particulars of current living circumstances]
 - B. **Education**
[set out details of current education and future prospects]
 - C. **Financial Provision**
[give full particulars of financial arrangements for maintenance]
 - D. **Custody and Access**
[set out the arrangements which are in place for custody and access, where necessary]
 - E. **Health**
[give particulars of the child/children's general state of health]
3. The said child/children is/are not suffering from any disabilities.
[or]
[Name of child] suffers from [state disability] and is being treated by [give full details of the treatment and general care relating to the disability].

SWORN by the said [name of Petitioner])
at)
this day of 200)
before me:)

.....
Justice of the Peace for the parish of

Filed by [specify name, address, telephone and fax numbers of Attorney-at-Law or firm of Attorneys-at-Law filing the Petition]



ACKNOWLEDGEMENT OF SERVICE IN MATRIMONIAL PROCEEDINGS

Form MP.5 [Rule 76.10]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

WARNING: If this form is not fully completed and returned to the Registry at the address below within fourteen (14) days of the date of service of the Petition on you or such longer time as is permitted by an order or rule under **rule 76.8 - substituted service or rule 76.9 - service out of the jurisdiction**, the Petitioner will be entitled to apply to proceed in default against you - **see rules 9.2(5) and 76.12**. If the Petitioner does so, you will have no right to be heard by the court unless you are applying to set aside any order it may have made.

- 1. Have you received the Petition with the above claim number? YES/NO
- 2. If so, give the date on which it was served / /
- 3. Are your names correctly stated on the Petition? YES/NO
If not, what are your full names?

.....

- 4. Do you intend to defend the claim? YES/NO
If so you must file an Answer, Defence or Affidavit [see rule 76.11] within 28 days of the service of the Petition or other document commencing the proceedings on you, unless a longer time is permitted by an order or rule [see rule 76.8 - substituted service and rule 76.9 - service out of the jurisdiction].
- 5. Do you admit to the whole of the claim? YES/NO
- 6. Do you admit any part of the claim? YES/NO

If you do please set out below the parts of the claim to which you admit:

- (a)
- (b)
- (c)
- (d)
- (e)

7. What is your address?
.....
.....
.....
.....
.....

8. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from the other parties or from the court. You should also give your telephone number and fax number, if any.

.....
.....
.....
.....
.....

Dated day of 20

Signed

[Respondent in Person]
[or]
[Respondent's Attorney-at-law]

The Registry is at The Supreme Court, Public Buildings, King Street, Kingston, telephone numbers (876) 922-8300 –9, fax (876) 967-0669. The office is open between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays, except on Public Holidays.

Filed by [specify name, address, telephone numbers and fax number of Attorney-at-Law or firm of Attorneys-at-Law filing the Acknowledgement of Service].



ANSWER [OR ANSWER AND CROSS-PETITION]

Form MP.6 [Rule 76.11(1)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

The Respondent, [name of the Respondent], in answer to the Petition, says that:

1. He/she admits the allegations made in paragraphs ____ of the Petition.
2. He/she denies the matters set out in paragraphs ____ of the Petition because [state the reason for denying the allegations].
3. He/she does not admit the allegations made in paragraphs ____ of the Petition because [state the reasons for not admitting the allegations].
4. With respect to the Petitioner's claim for ____ the Respondent says that the Petitioner is not entitled to same because:
[set out the grounds on which it is contended that the Petitioner is not entitled to any part of his/her claim].
5. The Respondent relies upon the following further facts:
6. For the reasons set out in paragraphs ____ of this Answer, the Respondent says that the Petitioner is not entitled to the relief claimed.
[where the Respondent wishes to Cross Petition]

Cross-Petition

7. The Respondent relies upon the facts set out in paragraphs ____ of the Answer in support of his/her claim.
8. In addition, the Respondent says that [set out any additional facts in support of the cross-petition].
9. [If separation is admitted, state whether or not there is a reasonable likelihood of cohabitation being resumed and why]
10. For the reasons set out in paragraphs 7 to 8 [or 9] of this Cross-Petition, the Respondent seeks the following relief:
(1) the claim of the Petitioner be rejected and the Petition be dismissed; or

- (2) the marriage be dissolved on the ground that —____
- (3) the Respondent may be granted [set out any claim for additional relief].

I certify that the facts set out in the Answer [or Answer and Cross Petition, as appropriate] are to the best of my knowledge, true.

Dated this day of , 20

RESPONDENT

Filed by [specify name, address, telephone numbers and fax numbers of Attorney-at-Law or firm of Attorneys-at-Law filing the Answer].



NOTICE OF APPLICATION TO DISPENSE WITH HEARING

Form MP.7 [Rule 76.12]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

The Petitioner, [name of Petitioner] seeks an Order that:

1. the hearing of the Petition for dissolution of the marriage which took place on the [state date of marriage] be dispensed with;
2. the relief sought in the Petition be granted;
3. there be such further or other relief as may be just.

The ground on which the Petitioner seeks the said Order is that the Respondent, who was served on the [day, month and year] has failed to file an Acknowledgment of Service [or an Answer as the case may be] and, pursuant to Part 76.12 of the Civil Procedure Rules, 2002 as amended, the Petitioner desires to proceed in default.

NOTE: This application is to be referred to a Judge to be considered on paper.

DATED the day of , 20

Petitioner
[or]
Petitioner's Attorneys-at-Law

FILED by [name, address, telephone and fax numbers of the Attorney-at-Law or firm of Attorneys-at-Law acting on the Petitioner/Applicant's behalf].



DECREE NISI FOR DISSOLUTION OF MARRIAGE

Form MP.8 [Rule 76.12(2) and 76.14(3)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

The day of 20

Justice [leave blank in default proceedings]

Having been satisfied that:

1. the marriage of the Petitioner and the Respondent has irretrievably broken down.
2. the Petitioner and the Respondent have lived apart for a continuous period of one year immediately preceding the presentation of the Petition.
3. there is no reasonable likelihood of cohabitation between the Petitioner and the Respondent.
4. [Where applicable]

The arrangements for the care and upbringing of the relevant children namely, born on the day of [month and year] and born on the day of [month and year] are the best that can be devised in the circumstances.

[or]

Custody of the relevant children namely, born on the day of [month and year] and born on the day of [month and year] ought to be granted to the Petitioner.

[or]

Access to the relevant children namely, born on the day of [month and year] and born on the day of [month and year] should be granted to the Respondent.

[or]

The Petitioner is entitled to a 50% share and interest in all that parcel of land registered at Volume Folio of the Register Book of Titles presently registered in the name of the Respondent as sole proprietor.

[or otherwise as is appropriate]

HEREBY DECREES that:

- A. the marriage which took place on the _____ day of [month and year] at between [Petitioner's full name] and [Respondent's full name] at [location and parish] be dissolved unless sufficient cause be shown to the Court within six (6) weeks from the making of this Decree why this Decree should not be made absolute.
- B. Custody of the relevant children namely, [state name of child] born on the _____ day of [month and year] and [state name of child] born on the _____ day of [month and year] ought to be granted to the Petitioner.
[or]
Access to the relevant children namely, [state name of child] born on the _____ day of [month and year] and [state name of child] born on the _____ day of [month and year] is granted to the Respondent.
[or]
The Petitioner is entitled to a _____ % share and interest in all that parcel of land registered at Volume _____ Folio _____ of the Register Book of Titles presently registered in the name of the Respondent as sole proprietor.
[or]
The Petitioner is directed to make application for a hearing in chambers relating to the issues of custody, maintenance, access, education and property division raised in the Petition.
[or otherwise as is appropriate]

JUDGE

NOTES:

1. A party to the marriage who marries again before this decree is made absolute (unless the other party has died) commits the offence of bigamy.
2. If before this decree is made absolute, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit in the registry giving particulars of the date and place of death.
3. If the parties to the marriage become reconciled before this decree is made absolute, application must be made to the Court for rescission of this decree before it is made absolute.

Filed by [specify name, address telephone numbers and fax number(s) of Attorney-at-Law or firm of Attorneys-at-Law filing the document]



DECREE NISI FOR NULLITY OF MARRIAGE

Form MP.9 [Rule 76.14(2)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

The day of 20

Justice [leave blank in default proceedings]

Having been satisfied that the ground of nullity relied on in the Petition dated the d a y of [month and year] namely, [set out the ground briefly] was proved **HEREBY DECREES** that, unless sufficient cause is shown to the court within six (6) weeks from the date of this decree why this decree should not be made absolute:

1. the marriage which took place on the day of [month and year] between [Petitioner's full name] and [Respondent's full name] at [place and location] is declared to have been by law null and void;
2. the Petitioner is pronounced to be free of all responsibilities of the marriage with the Respondent;
3. [Where applicable]
The arrangements for the care and upbringing of the relevant children namely, [state name of child] born on the day of [month and year] and [state name of child] born on the day of [month and year] are the best that can be devised in the circumstances.

[or]

Custody of the relevant children namely, [state name of child] born on the day of [month and year] and [state name of child] born on the day of [month and year] is granted to the Petitioner.

[or]

Access to the relevant children namely, [state name of child] born on the day of [month and year] and [state name of child] born on the day of [month and year] is granted to the Respondent.

[or]

The Petitioner is entitled to a % share and interest in all that parcel of land registered at Volume Folio of the Register Book of Titles presently registered in the name of the Respondent as sole proprietor.
[or otherwise as is appropriate]

JUDGE

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DECREE ABSOLUTE

Form MP.10 [Rule 76.14(9)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. M of

**BETWEEN
AND**

**PETITIONER
RESPONDENT**

A Decree Nisi for Dissolution [or Nullity] of Marriage having been granted in these proceedings on the day of [month and year] by the Honourable Justice by which it was decreed that the marriage which took place on the day of [month and year] at [state place] between [Petitioner's full name] and [Respondent's full name] [select from the following as is applicable]

be dissolved on the ground that it had broken down irretrievably [where the circumstances are that the marriage has broken down irretrievably]

[or]

is null and void [in the case of nullity of marriage]

[or]

be dissolved by reason of the presumed death of the Respondent [where the circumstances are those of presumption of death and dissolution of the marriage]

and no cause having been shown to the Court why the said decree should not be made absolute, the Court now pronounces and declares the said marriage be dissolved and the said Decree Nisi to become a Decree Absolute.

Dated this day of 20

JUDGE

Filed by [specify name, address, telephone and fax numbers of the Attorney-at-Law or firm of Attorneys-at-Law filing the document]

