

FAMILY PROCEEDINGS RULES, 1998

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Part 1

The Overriding Objective

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The overriding objective

- 1.1 (1) The overriding objective of these Rules is to enable the court to deal with family matters -
- (a) justly; and
 - (b) in a way which, in proceedings affecting any child of the family, gives first and paramount consideration to the welfare of that child.
- (2) Dealing justly with the 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; and
 - (b) encouraging settlement of any disputes by negotiation or mediation or other means; and
 - (c) saving expense; and
 - (d) dealing with cases in ways which are proportionate
 - (i) to the complexity of the issues; and
 - (ii) to the financial position of each party; and
 - (e) ensuring that it is dealt with expeditiously; and
 - (f) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases
- (3) Giving first and paramount consideration to the welfare of any child of the family where any question relating to the custody or supervision of, or access to, that child is concerned includes -
- (a) seeking so far as practicable to encourage -
 - (i) better relationships between parents and others involved in caring for the child and in particular communication and cooperation with regard to the parenting of such child; and
 - (ii) improving and developing the relationship between each parent and others and the child;

- (b) taking account of all the circumstances including in particular-
 - (i) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); and
 - (ii) his physical, emotional and educational needs; and
 - (iii) his cultural and ethnic background; and
 - (iv) the likely effect on him of any change in his circumstances; and
 - (v) his age, sex, background and any characteristics of his which the court considers relevant; and
 - (vi) any harm which he has suffered or is at risk of suffering; and
 - (vii) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

Application by the court of the overriding objective

- 1.2 The court shall seek to give effect to the overriding objective when it -
 - (1) exercises any discretion given to it by the Rules; or
 - (2) interprets the meaning of any rule.

Duty of the parties

- 1.3 The parties are required to help the court to further the overriding objective.

Part 2

Application and Interpretation of the Rules

Contents of this Part

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Citation and Commencement

- 2.1 (1) These Rules may be cited as the Family Proceedings Rules 1998.
- (2) These Rules shall:-
- (a) come into force on a date in 2003 to be fixed by the Rules Committee save and except Rules 37.1 to 37.11 which shall come into force on a subsequent date to be determined by the Rules Committee;

Application of the Rules

- 2.2 (1) These Rules as amended apply to any family matter commenced in the Registry of the Supreme Court, Port of Spain on or after the date of the coming into force of these Rules.
- (2) Subject to subrule (3), these Rules shall also apply to family matters commenced before the date of the coming into force of these Rules if
-
- (a) any party to such matters at any time after the close of the pleadings and before the case has been listed for trial, files a request at the court office for a directions hearing under Part 13; or
- (b) (i) some step required to be taken by a party has not been taken within six months of the time prescribed for taking it; or
- (ii) a case has not been listed for trial for more than three years after being set down for trial, and

the court office issues a notice to all parties requiring them to attend a directions hearing.

- (3) Save as provided in subrule (2) above, the relevant rules of court and other statutory provisions shall continue to apply to family matters commenced in the Supreme Court before the coming into force of these Rules.
- (4) "**Family Matter**" means any cause, matter or legal proceeding -
- (a) in connection with or arising out of matrimonial or other domestic relationships between different sex couples; or
 - (b) concerning the welfare, maintenance, guardianship, paternity, custody of or access to children;
- and, in particular, to relevant proceedings under the following statutes -
- (i) Matrimonial Proceedings and Property Act, Chap. 45:51;
 - (ii) Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08
 - (iii) Maintenance Orders (Enforcement) Act, Chap. 45:53;
 - (iv) Status of Children Act, Chap. 46:07;
 - (v) (Attachment of Earnings (Maintenance) Act, No 14 of 1988;
 - (vi) Cohabital Relationships Act, No 30 of 1998.
 - (vii) Adoption of Children Act, Chap. 46:03;
 - (viii) Age of Majority Act, Chap 46:06;
 - (ix) Infants Act Chap. 46:02;
 - (x) Wills and Probate Ordinance Chap. 8:02;
 - (xi) Married Persons Act, Chap. 45:50.
 - (xii) Children's Authority Act, No 64 of 2000 (when proclaimed)
 - (xiii) Children's Community Residences, Foster Homes and Nurseries Act, No 65 of 2000 (when proclaimed)
 - (xiv) Adoption of Children Act, No 67 of 2000 (when proclaimed)
 - (xv) Children Act, Chap. 46:01
 - (xvi) Maintenance Orders (Facilities for Enforcement) Act, No 12 of 2000 (when proclaimed)
 - (xvii) Part VIII, Succession Act, 1981
 - (xviii) Administration of Estates Ordinance Cap. 8 No.1

- (xix) Orisa Marriage Act 1999
- (xx) Muslim Marriage and Divorce Act, Chap. 45:02
- (xxi) Hindu Marriage Act, Chap. 45:03
- (xxii) Marriage Act Chap. 45:01
- (xxiii) Habeas Corpus Act, Chap. 8:01

- (5) "**The principal act**" means the Matrimonial Proceedings and Property Act, Chap 45:51.
- (6) A reference to a rule as FPR xx or to rule xx is a reference to the rule so numbered in these Rules.
- (7) A reference to a rule as CPR xx is a reference to a rule so numbered in the Civil Proceedings Rules 1998 and shall be of no effect until the Civil Proceedings Rules 1998 come into force.

Definitions

2.3 In these Rules -

"**adopted**" shall be construed in the same way as any grammatical derivative of 'adopter' as defined by section 2 of the Adoption of Children Act;

"**answer**" is the means by which a respondent defends a petition for divorce, judicial separation or nullity whether or not it includes a cross-petition for divorce etc.,

"**applicant**" and "**respondent**" have the meanings given by rule 8.2; "**assess**" in relation to costs means the taxation of costs as provided for in the Matrimonial Causes Rules and the Rules of the Supreme Court 1975."

"**cause**" means any proceedings for a decree of divorce, of nullity, of judicial separation or of presumption of death and dissolution of marriage and includes an application under s.5 of the principal act;

"**certificate of marriage**" means a certificate of marriage certified by the Registrar General or, in the case of any overseas marriage, by the appropriate authority in the country where the marriage took place;

"**Chief Justice**" includes, in relation to any period in which the office of Chief Justice shall be vacant, the person for the time being performing the functions of the Chief Justice ;

"**child**" in relation to one or both of the parties includes a child born out of wedlock or an adopted child of that party or of both parties;

"**child of the family**" in relation to the parties to a marriage or to unmarried persons means -

- (a) a child of both of those parties; and
- (b) any other child who has been treated by both of those parties as a child of the family;

“cohabitant” has the meaning given to it by the Cohabitation Relationships Act, 1998 or the meaning given to it by Part VIII of the Succession Act, 1981 or the meaning given to it by the Administration of Estates Ordinance Cap 8 No 1 as the context requires;

"**court**" means the High Court;

"**cross-petition**" means a petition for divorce, judicial separation or nullity made by a respondent whether or not contained in an answer;

"**defended cause**" means a cause which is not an undefended cause;

“decree proceedings” means proceedings in which a party is seeking a decree.”

"**filing**", in relation to a document, means delivering it or posting it to the appropriate court office and shall not be complete until the document is received at that office;

"**guardian ad litem**" means a person appointed to separately represent the interests of a child;

“Marshal” includes a Deputy Marshal.

"**master**", subject to any direction under rule 2.4(2), includes assistant master;

"**minor**" means a person under 18 years of age;

"**next friend**" has the meaning given by Part 5;

"**notice of intention to defend**" has the meaning assigned to it by Part 10;

"**order**" includes any judgment, order, decision, direction or decree;

"**the overriding objective**" means the objective set out in rule 1.1;

"**patient**" means a person who by reason of mental disorder within the meaning of the Mental Health Act Chap 28:02 is incapable of managing his own affairs;

"**petition**" is the means by which a party to a marriage seeks a decree of divorce, judicial separation or nullity;

“practice form” means a form which the Chief Justice designates by practice direction to be a practice form.

"**relevant child**" means in relation to the parties to a marriage -

- (a) any minor child of the family who is -
 - (i) under the age of sixteen; or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
- (c) any other child of the family to whom the court by an order under Section 47(1) of the principal act directs that Section 47 should apply.

“Registrar” includes Deputy Registrar and Assistant Registrar

"**undefended cause**" has the meaning given it by rule 17.1; and

"**welfare**" includes the custody and education of a child and financial provision for him.

Who may exercise the power of the court

- 2.4 (1) Except where statute, rule or practice direction provide otherwise, the functions of the High Court may be exercised by any judge or master of that court.
- (2) The Chief Justice may by direction allocate the work of the court between judges and masters.

Court staff

- 2.5 (1) Where these Rules refer to the court office or require or permit an act of a formal or administrative character, that act may be performed by a member of the court staff authorised 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 by the Chief Justice.

Court's discretion as to where it deals with cases

- 2.6 (1) The court may deal with a case at any place that it considers appropriate.
- (2) In considering what place may be appropriate the court shall consider the convenience of such place to any child of the parties, the parties and their attorneys.

Time - court to state calendar dates and time

- 2.7 When making any judgment, order or direction which imposes a time limit for doing any act the court shall state the calendar date by which such act is to be done.

Time - computation

- 2.8 (1) This rule shows how to calculate any period of time for doing any act which is fixed -
- (a) by these Rules; or
 - (b) by any Practice direction; or
 - (c) by any order or direction of the court.
- (2) All periods of time expressed as a number of days shall be computed as clear days.
- (3) In this rule 'clear days' means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

Examples

- (a) Notice of an application shall be served at least 3 days before the hearing.
Application is to be heard on Friday 20 October,
The last date for service is Monday 16 October.
- (4) Where the specified period -
is 5 days or less; and includes
(i) a Saturday or Sunday; or
(ii) any other day on which the court office is closed,
that day does not count.
- (5) When the period fixed -
(a) by these Rules; or
(b) by any practice direction; or
(c) by any order,
for doing any act at court ends on a day on which the court office is closed, it is in time if done before 4 p.m. on the next day on which the court office is open.
- (6) When the period fixed by these Rules; or
(a) any practice direction; or
(b) by any order,
for doing any act which does not need to be done at court ends -
(i) on a Saturday or Sunday; or
(ii) on any public holiday; or
(iii) on Carnival Monday or Carnival Tuesday
it shall be done before 4 p.m. on the next ordinary business day.

Meaning of 'month'

- 2.9 Where 'month' occurs in any order or any other document, it means a calendar month.

Documents

- 2.10 (a) So far as is practicable, every document prepared for use in the court shall be on "letter size" paper; approximately 11 inches long by 8.5 inches wide. Margins of 1" (25 mm) shall be left at top and bottom and of 1.5" (38 mm) at each side.
- (b) Every document to be filed at the court shall be headed with the title of the proceedings and -
(i) a description of the document; and
(ii) a statement of the nature of the case; and
(iii) be endorsed with the name; and
- firm name; and
 - bar number; and

- address; and
 - telephone and fax numbers, if any;
and
 - E mail address, if any,
- of the attorney filing the document, and (where
an advocate attorney has been instructed -
- the name
 - bar number; and
 - telephone and fax numbers, if any;
and
 - E mail address, if any, of that
attorney.

Part 3

Forms

Contents of this Part

Forms-Chief Justice designates practice forms	Rule 3.1
Forms	Rule 3.2

Forms- Chief Justice designates practice forms

- 3.1 The Chief Justice may by practice direction give directions for the use of any form which shall be designated a practice form.

Forms

- 3.2
- (1) where appropriate, practice forms shall be used in the cases to which they apply.
 - (2) Any reference to a form followed by a number is a reference to the appropriate practice form.
 - (3) A form may be varied if the variation is required by the circumstances of a particular case;
 - (4) Notwithstanding subrule (3), a form shall not be varied so as to leave out any information or guidance which the form gives to the intended recipient of the form.
 - (5) Where these Rules require a party to send a blank form to any other party, he shall send it without variation except the insertion of the title of the case and the court address to which that document is to be returned.
 - (6) A form marked with the word 'Seal' shall bear the seal of the Supreme Court.

Part 4

Practice directions and Guides

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
Practice guides	Rule 4.6

Who may issue practice directions

4.1 Practice directions may only be issued by the Chief Justice.

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 shall be-
- (a) published in the Trinidad and Tobago Gazette; and
 - (b) displayed and made available at each court office.

Date from which practice directions take effect

4.4 A practice direction takes effect from the date of publication in the Trinidad and Tobago Gazette unless the direction gives some other date.

Compliance with practice directions

- 4.5 (1) A party shall comply with any relevant practice directions unless there are good reasons for not doing so.
- (2) If a party fails to comply with a practice direction, the court may make an order against him under Part 15 (Case Management - the court's Powers) or Part 36 (Costs - General).

Practice guides

- 4.6 (1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation.
- (2) Parties shall have regard to any relevant practice guide.
- (3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 15 (Case Management - the Court's Powers) or Part 36 (Costs - General).

Part 5

Representation of Minors or Patients

Contents of this Part

Scope of this Part	Rule 5.1
Requirement of next friend in proceedings by or against minors	Rule 5.2
Stage of proceedings at which next friend necessary	Rule 5.3
Who may be a minor's next friend	Rule 5.4
Who may be a patient's next friend	Rule 5.5
Conditions for being a next friend without a court order	Rule 5.6
How a person becomes a next friend without a court order	Rule 5.7
How a person becomes a next friend by court order	Rule 5.8
Court's power to change next friend or to prevent a person acting as next friend	Rule 5.9
Appointment of next friend by court order - supplementary	Rule 5.10
Procedure where appointment of next friend ceases	Rule 5.11
Compromise etc., on behalf of minor or patient	Rule 5.12
Control of money to be paid to or for a minor or patient	Rule 5.13
Separate representation of a minor	Rule 5.14

Scope of this part

- 5.1 This Part -
- (a) contains special provisions which apply in proceedings to which minors and patients are parties; and
 - (b) sets out how a person becomes a minor's or patient's next friend; and
 - (c) deals with the separate representation of minors.
(Rule 6.5 contains provisions about the service of documents on minors and patients)

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

- 5.2
- (1) A minor or patient shall have a next friend to conduct proceedings on his behalf.
 - (2) However the court may, on the application of a minor, make an order permitting the minor to conduct proceedings

- without a next friend.
- (3) An application for an order under paragraph (2) 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) A next friend shall act by an attorney at law.

Stage of proceedings at which next friend necessary

- 5.3
- (1) A minor or patient shall have a next friend in order to issue proceedings except where the court has made an order under rule 5.2(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 petition or application; or
 - (ii) applying for the appointment of a next friend under rule 5.8until the minor or patient has a next friend.
 - (3) If a person 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 taken before a minor or patient has a next friend shall be of no effect unless the court otherwise orders.

Who may be a minor's next friend

- 5.4
- (1) A minor's next friend may be a person appointed by the court.
 - (2) A person who satisfies the conditions set out in rule 5.6(2) may act as a minor's next friend without a court order appointing him, unless -
 - (a) the court has already appointed a next friend; or
 - (b) the court makes or has made an order under rule 5.9 (court's power to change next friend or to prevent a person acting as a next friend).

Who may be a patient's next friend

- 5.5 (1) A person authorised under Part VII of the Mental Health Act, Chap 28:02 to conduct legal proceedings in the name of the patient or on his behalf, is entitled to be the next friend of the patient in any proceedings to which his authority extends.
- (2) If no one is authorised under paragraph (1), -
- (a) the Chief State Solicitor, if he consents, is to be the next friend of the patient.
 - (b) a person who satisfies the conditions set out in rule 5.6(2) may apply under rule 5.8 to be a patient's next friend.

Conditions for being a next friend without a court order

- 5.6 (1) Paragraph (2) specifies the conditions to be satisfied for the purposes of -
- (a) rule 5.4(2), (minor's next friend without court order);
 - (b) rule 5.5(2), (patient's next friend without order if nobody is authorised under Part VII of the Mental Health Act, Chap 28:02 or the Chief State Solicitor does not consent to act).
- (2) A person may act as a next friend if he -
- (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 a person becomes a next friend without court order

- 5.7 (1) If the court has not appointed a next friend, a person who wishes to act as next friend shall follow the procedure set out in this rule.
- (2) A person authorised under Part VII of the Mental Health Act 1975 shall file an official copy of the order or other document which constitutes his authorisation to act.
- (3) Any other person shall -
- (a) file a certificate that he satisfies the conditions specified in rule 5.6(2); and
 - (b) serve a copy of the certificate on every person on whom, in accordance with rule 6.5 (service of petition on minors and patients) the petition or application should have been served.
- (4) A person who is to act as a next friend for an applicant or petitioner shall file -
- (a) the authorisation; or
 - (b) the certificate under paragraph (3); and
 - (c) a certificate stating that the certificate under

paragraph (3) has been served in accordance with paragraph (3)(b) at the time when the petition or application is issued.

- (5) A person who is to act as a next friend for a respondent shall file -
- (a) the authorisation; or
 - (b) the certificate under paragraph (3); and
 - (c) a certificate stating that the certificate under paragraph (3) has been served in accordance with paragraph (3)(b) at the time when he first takes a step in the proceedings on behalf of the respondent.

How a person becomes a next friend by court order

- 5.8 (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 issues a petition or application against a minor or patient; and
 - (b) the minor or patient has no next friend; and
 - (c) either -
 - (i) someone who is not entitled to be a next friend files an answer, cross-petition or evidence in answer to an application; or
 - (ii) the petitioner or applicant wishes to take some step in the proceedings,the petitioner or applicant shall 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 shall be supported by evidence.
- (5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 5.6(2).

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

- 5.9 (1) The court may -
- (a) direct that a person may not act as a next friend; or
 - (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) shall be supported by evidence.
 - (4) An application to appoint a next friend in substitution for an existing one shall be made on notice to the existing next friend.
 - (5) The court may not appoint a next friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 5.6(2).

Appointment of next friend by court order - supplementary

- 5.10
- (1) An application for an order under rule 5.8 or 5.9 shall be served on every person on whom, in accordance with rule 6.5 (service on parent, guardian etc.), the petition should have been served.
 - (2) An application for an order under rule 5.9 (change of next friend) shall also be served on the person who is or who purports to act as next friend.
 - (3) On an application for an order under rule 5.8 or 5.9, the court may appoint the person proposed or any other person.

Cessation of appointment as next friend

- 5.11
- (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of 18.
 - (2) When a party 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; or
 - (b) the next friend; or
 - (c) a party.
 - (4) The party in respect of whom the appointment to act has ceased shall serve notice on the other parties -
 - (a) stating that the appointment of his next friend has ceased;
 - (b) giving his address for service; and
 - (c) stating whether or not he chooses to carry on the proceedings.
 - (5) If he does not do so within 28 days after the appointment of

the next friend terminates the court may, on application, strike out any petition, application or answer brought by him.

- (6) The liability of a next friend for costs continues until -
 - (a) the minor or patient for whom he acted as next friend serves the notice referred to in paragraph (4); or
 - (b) the next friend serves notice on the other parties that his appointment to act has ceased.

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

5.12 Where financial relief is claimed by or on behalf of a minor or patient, no settlement, compromise or payment shall be valid, so far as it relates to that person's application, without the approval of the court.

Control of money to be paid to or for a minor or patient

- 5.13 (1) Where in any proceedings money is to be paid to or on behalf of or for the benefit of a minor or patient that money shall 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 shall be wholly or partly paid into court and invested or otherwise dealt with.

Separate representation of a minor

- 5.14 (1) If in any matter the court considers that a minor should be separately represented it may -
 - (a) appoint the Chief State Solicitor to act as guardian ad litem if he consents; or
 - (b) if he does not, on the application of -
 - (i) a party; or
 - (ii) a person who wishes to act as guardian ad litem,appoint a guardian ad litem with authority to take part in the proceedings on the minor's behalf.
 - (c) A person may act as a guardian ad litem if he
 - (i) can fairly and competently take part in proceedings on behalf of the minor; and
 - (ii) has no interest adverse to that of the minor.
- (2) The court shall direct that a minor be separately represented on any application for a variation of settlement order unless it is satisfied that any proposed variation will not adversely affect the rights or interests of that minor.

Part 6

Service of Petition

Contents of this Part

Scope of this part	Rule 6.1
Service of petition, normal method	Rule 6.2
Method of personal service	Rule 6.3
Proof of personal service	Rule 6.4
Service of petition etc., on children and patients	Rule 6.5
Power of court to make order for service by a specified method	Rule 6.6
Service out of Trinidad and Tobago	Rule 6.7
Translation of petition etc., where served out of Trinidad and Tobago	Rule 6.8
Power of court to dispense with service	Rule 6.9

Scope of this Part;

6.1 This Part deals with the service of a petition.

Service of petition. normal method

- 6.2 (1) The general rule is that the petition shall be served personally;
- (2) Service may be effected by the marshal or his assistant or some other person deputed by the marshal on behalf of the petitioner.
- (3) Service may not be effected by the petitioner but the petitioner may be present when service is effected.

Method of personal Service

6.3 Personal service shall be effected by delivering to and leaving with the person to be served a copy of the petition sealed by the court or other document to be served.

Proof of personal service

- 6.4 (1) Personal service of any document may be proved by an affidavit sworn by the server of the document stating-
- (a) the date and time of service; and
- (b) the precise place or address at which it was served;
- and

- (c) precisely how the respondent or co-respondent was identified.
- (2) Where the respondent or co-respondent was identified by another person (including a petitioner or respondent) that person shall also make an affidavit showing precisely how that person was able to identify the respondent.
- (3) Where the server identified the respondent or co-respondent by means of a photograph or description there shall also be filed an affidavit by a person verifying the description or photograph of the respondent and showing how that person is able to do so.
- (4) Where the service was effected by a marshal a certificate of service may be filed in the place of the affidavit by the server.

Service of petition on minors and patients

- 6.5 (1) Paragraphs (2) to (5) specify the persons on whom a petition shall be served if it would otherwise be served on a minor or patient.
- (2) A petition which would otherwise be served on a minor who is not also a patient shall be served on one of the minor's parents or guardians or, if there is no parent or guardian, on the person with whom the minor resides (other than the petitioner) or in whose care the minor is.
- (3) A copy of the petition shall also be served on a respondent or petitioner who is a minor but not also a patient.
- (4) If a person is authorised under Part V11 of the Mental Health Act, Chap 28:02 to conduct the proceedings in the name of the patient or on his behalf, a petition shall be served on that person.
- (5) If there is no person so authorised, a petition shall be served on the person with whom the patient resides (other than the respondent) or in whose care the patient is.
- (6) The court may order that, although paragraphs (2) to (4) have not been complied with, the petition is to be treated as if it has been properly served.
- (7) The court may make an order permitting the petition to be served on the minor or patient, or on some other person other than the person specified in paragraphs (2) to (5).
- (8) An application for an order under paragraph (7) may be made without notice.
(Part 5 deals generally with parties who are minors and patients)

Power of court to make an order for service by a specified method

- 6.6 (1) The court may direct that a petition may be served by a method specified in the court's order.
- (2) An application for an order to serve by a specified method may be made without notice, but shall be supported by evidence specifying the method of service and showing that that method of service is likely to enable the respondent or co-respondent to ascertain the contents of the petition.

Service out of Trinidad and Tobago – general provisions

- 6.7 (1) A petition or any other document in family proceedings may be served on a person out of Trinidad and Tobago by any method approved by the Court upon an *ex parte* application.
- (2) An order made under subrule (1) shall fix a time for giving notice of intention to defend.

Translation of petition where party being served does not understand English

- 6.8 (1) Where there is reason to believe that the respondent or co-respondent does not understand English, every copy of the petition shall be accompanied by a translation of the petition, notice of proceedings and acknowledgment of service forms.
- (2) The translation shall be in a language which the respondent or co-respondent will understand.
- (3) The petitioner shall file evidence to show that the respondent or co-respondent understands the language into which the petition has been translated.
- (4) Every translation filed under this rule shall be certified by the person making it to be a correct translation, and the certificate shall state -
- (a) the name of the person making the translation; and
 - (b) his address; and
 - (c) his qualifications for making a translation.

Power of court to dispense with service

- 6.9 (1) The court may dispense with service of a petition if it is appropriate to do so.
- (2) An application for an order to dispense with service may be made without notice but shall be supported by evidence showing that it is appropriate to make such an order.

Part 7

Service of other documents

Contents of this Part

Scope of this Part	Rule 7.1
Who is to serve documents other than the petition	Rule 7.2
Method of service	Rule 7.3
Address for serving such documents	Rule 7.4
Service of documents on a non-party	Rule 7.5
Address for serving documents where no address for service is given	Rule 7.6
Deemed date for service by post	Rule 7.7

Scope of this Part

- 7.1 This part deals with the service of any document other than a petition, or an application under part 11 (applications relating to children) or Part 12 (financial application) which is not made in pending proceedings.

Who is to serve documents other than the petition

- 7.2 (1) Any decree, direction or order shall be served by the court, unless the court orders otherwise.
- (2) Any other document other than a petition that requires service shall be served by a party, unless the court orders otherwise.

Method of Service

- 7.3 Service is to be effected by delivery, facsimile transmission, or prepaid post, unless the court orders otherwise

Address for serving such documents

- 7.4 (1) If a party has an attorney on record for him , the documents shall be posted or delivered to the attorney at his address.
- (2) If a party is acting in person and has given an address for service the documents shall be posted or delivered to him at that address.
- (3) If a party's address for service includes a number for facsimile transmission the documents may be so transmitted to him at that number.

Service of documents on a person not a party

7.5 If the court or a party is to serve documents on a person who is not a party such documents shall be served by one of the methods specified in Part 6.

Method of serving documents where no address for service is given

- 7.6 (1) If a party to be served has not given an address to which documents for him may be sent, the documents shall be served by posting them to or delivering them at
- (i) the business address of any attorney who is acting for him in the proceedings; or
 - (ii) the party's usual place of residence
- (2) The provisions of Part 6 may be applied to such a document as if it was a petition.

Deemed date for service by post

7.7 Any document served by pre-paid post under this Part is deemed to be served on the fourteenth day after posting.

Part 8

General Rules about Applications for Court Orders other than Decrees of Divorce etc.,

Contents of this Part

Scope of this Part	Rule 8.1
Applicants and respondents	Rule 8.2
Where to make applications	Rule 8.3
Application in writing	Rule 8.4
Notice of application and evidence in support	Rule 8.5
Time when an application is made	Rule 8.6
What an application for a procedural order shall include	Rule 8.7
Contents of notice of application for procedural order	Rule 8.8
Service of notice of application	Rule 8.9
Powers of the court in relation to the conduct of an application	Rule 8.10
Consequence of not asking for an order in an application	Rule 8.11
Applications which may be dealt with without a hearing	Rule 8.12
Service of application where order made on application made without notice	Rule 8.13
Applications to set aside or vary order made on application made without notice	Rule 8.14
Power of court to proceed in the absence of party	Rule 8.15
Application for leave to present a petition for divorce within 1 year of marriage	Rule 8.16

Scope of this Part

8.1 This Part deals with applications for court orders made before or during the course of proceedings. It does not deal with applications for a decree of divorce, judicial separation or nullity, such applications being made by petition in accordance with Part 9. It deals generally with applications for children orders and financial relief orders which are dealt with in more detail by Parts 11 and 12 respectively.

Applicants and respondents

8.2 "**Applicant**" means a person who seeks a court order by making an application; and

"**respondent**" means the person against whom the order is sought, whether or not such party is named as respondent in any petition for divorce etc., and such other person as the court may direct.

Where to make an application

- 8.3 (1) The general rule is that an application should be made to the court office where the proceedings were issued.
- (2) If the proceedings have been transferred to another court office the application should be made to that court office.

Application in writing

- 8.4 (1) The general rule is that an application shall 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.

Notice of application and evidence in support

- 8.5 (1) The general rule is that the applicant shall 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) Evidence in support of an application is not needed unless it is required by -
- (a) a rule; or
 - (b) a practice direction; or
 - (c) court order.
- (4) Notice of the application shall be included in the form used to make the application.
- (5) Where evidence in support is required it shall be given by affidavit.

Time when an application is made

- 8.6 Where an application shall be made within a specified period it is so made if it is received by the court office or made to the court within that period.

What an application for a procedural order shall include

- 8.7 (1) This rule deals with applications for procedural orders made before or during the course of proceedings. It does not deal with applications for orders relating to the custody of or access to children or for financial relief.
- (2) An application for a procedural order shall state -
- (a) what order the applicant is seeking; and
 - (b) briefly, why the applicant is seeking the order.
- (3) The applicant shall include with or attach to the application a draft of the order he is seeking.
- (4) Either the applicant or his attorney shall certify on the application that he believes any facts stated in the application are true.

(Part 11 deals with applications relating to the custody of or access to children, Part 12 deals with applications for financial relief)

Contents of notice of application for procedural order

- 8.8 (1) The notice shall state whether there will be a hearing.
(Rule 8.12 sets out the circumstances in which there may not be a hearing)
- (2) If there is to be a hearing the notice shall state the date time and place of the hearing.
- (3) If there is not to be a hearing, the notice shall state how the court will deal with the application.

Service of notice of application

- 8.9 (1) Notice of an application shall be served
- (a) forthwith upon issue; and
 - (b) at least 3 days before the court is to deal with the application.
- (2) The notice shall be accompanied by
- (a) a copy of the application (where the notice and the application are not contained on the same form); and
 - (b) any evidence in support; and
 - (c) a copy of any draft order which the applicant has attached to his application.
- (3) The notice shall be served in accordance with Part 7.

Powers of the court in relation to the conduct of an application

- 8.10 (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 the production of documents or things at such a hearing.
 - (c) question any party or witness at such a hearing.
 - (2) The court may examine a party or witness -
 - (a) orally, or
 - (b) by putting written questions to him and asking him to give written answers to the questions.
 - (3) Any party may then cross-examine the witness.
 - (4) The court may exercise any power which it might exercise at a directions hearing.

Consequence of not asking for an order in an application

8.11 An applicant may not ask for an order for which he has not asked in his application unless the court permits him to do so.

Applications which may be dealt with without a hearing

- 8.12 (1) The court may deal with an application without a hearing if -
- (a) the parties agree that the court should dispose of its application without a hearing; or
 - (b) the court considers that the application can be dealt with over the telephone or by other means of communication; or
 - (c) the parties have agreed to the terms of an order and the application (or a copy of the application) is signed by all parties to the application or their attorneys; or
 - (d) the court does not consider that a hearing would be appropriate.
- (2) Where an order is made without a hearing under paragraph (1) (d) either party may apply to set aside the order.
- (3) An application under paragraph (2) shall be made within 14 days of the service of the order in question.

Service of application where order made on application made without notice

- 8.13 (1) After the court has disposed of an application made without notice, in addition to serving a copy of any order made, a copy of the application and any evidence in support shall be served on all parties.
- (2) When such an application is made the applicant shall file sufficient copies of the application and evidence in support for

- service on all other parties who may be affected by the order.
- (3) Where an urgent application is made without notice and the applicant undertakes to file evidence after the hearing he shall serve copies of the application and evidence on all other parties affected by the order.

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

- 8.14 (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 shall make such an application not more than 7 days after the date on which the order was served on him.
- (3) An order made on an application of which notice was not given shall contain a statement of the right to make an application under this rule.

Power of the court to proceed in the absence of a party

- 8.15 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 his absence.

Application for leave to present a petition for divorce within 1 year of marriage

- 8.16 (1) An application for leave to present a petition for divorce within one year of the marriage shall be supported by evidence.
- (2) The affidavit shall state -
- (a) the grounds of the application; and
 - (b) particulars of the hardship suffered by the petitioner; or
 - (c) particulars of depravity on the part of the respondent; and
 - (d) whether any, and if so what, attempts have been made at reconciliation; and
 - (e) details of any child of the family; and
 - (f) any circumstances which might assist the court to determine the effect that any order it might make might have on any child of the family.
- (3) Rule 9.5 applies to such an application as it does to a petition.
- (4) An application under this rule shall be served in accordance with Part 6.

Part 9

Petitions for divorce, judicial separation and nullity

Contents of this Part

How to commence proceedings for divorce, etc	Rule 9.1
Form of Petition	Rule 9.2
Contents of Petition	Rule 9.3
Parties	Rule 9.4
Marriage Certificate to be filed	Rule 9.5
Statement of arrangements for children	Rule 9.6
Service of Petition	Rule 9.7

How to commence proceedings for divorce, etc.,

- 9.1 (1) Proceedings for
- (a) divorce;
 - (b) judicial separation;
 - (c) nullity.
- are commenced when the court issues a petition.
- (Rule 8.16 deals with applications for permission to file a petition for divorce where less than one year has elapsed from the date of the marriage.)
- (2) A petition may be issued in any court office.
- (3) A petition is issued on the date entered on the form by the court office.
- (4) The petition may be issued if the petitioner presents to the court office -
- (a) the petition; and
 - (b) the statement of arrangements for children (if any) required by rule 9.6,
- together, in each case, with sufficient copies for service on all respondents; and
- (c) the marriage certificate required by rule 9.5, and
 - (d) a statement as to reconciliation in the appropriate practice form.

Form of petition

- 9.2 (1) The petition shall be in the appropriate practice form.
- (2) The petition shall be verified by affidavit.

Contents of petition

- 9.3 (1) The petition shall contain such information set out in Appendix A to these rules as is appropriate to the type of

- petition issued.
- (2) The petition shall state the names and addresses of all persons to be served and whether any such person is a minor or a patient.
 - (3) The petition shall end with a prayer giving details of the relief sought including -
 - (a) the nature of the decree that is sought; and
 - (b) any order sought with regard to the custody of or access to any child of the family; and
 - (c) any claim for costs.
 - (4) The petition shall give an address for service for the petitioner within 3 miles of the court office from which it is issued.
 - (5) The petitioner shall sign the petition and verify by affidavit that the contents are true.

Parties

- 9.4
- (1) The person who issues the petition is referred to as **'the petitioner'**.
 - (2) The spouse of the person who issues the petition is referred to in the proceedings based on the petition as 'the respondent'.
 - (3) Any other named person who is alleged to have committed adultery with the respondent or (in the case of an Answer) the petitioner is called **'the co-respondent'** (if male) or **'the second respondent'** (if female).
 - (4) Where the petitioner alleges that the respondent has been guilty of an improper relationship with a named person or of rape upon a person named the petitioner shall apply immediately after filing the petition for directions whether that person should be named as a co-respondent or second respondent.
 - (5) An application under paragraph (4) may be made without notice but shall be supported by evidence.

Marriage certificate to be filed

- 9.5
- (1) The general rule is that a marriage certificate shall be filed with the petition.
 - (2) However the court may give permission to issue a petition without a marriage certificate.
 - (3) An application for permission may be made without notice but shall be supported by evidence.

Statement of arrangements for children

- 9.6 (1) On issuing any petition the petitioner shall file a statement of the existing and proposed arrangements for each relevant child.
(Relevant child is defined in Part 2)
- (2) That statement shall be in the appropriate practice form.
- (3) The statement shall be signed by the petitioner and certified as true.
- (4) The statement may also be signed by the respondent spouse if that spouse agrees with the statement.

Service of petition

- 9.7 (1) The petition shall be served in accordance with Part 6.
- (2) There shall be served with the petition
- (a) the statement of arrangements for the relevant children (if any); and
 - (b) a blank form of acknowledgment of service; and
 - (c) a notice of proceedings,
- in the appropriate practice forms.

Part 10

Acknowledgment of service and Notice of Intention to Defend

Contents of this part

Scope of this part	Rule 10.1
Acknowledgment of service	Rule 10.2
Time for giving notice of intention to defend	Rule 10.3
Effect of notice of intention to defend	Rule 10.4
Petition based on separation and consent	Rule 10.5
Right of respondent etc., to be heard whether or not notice of intention to defend or answer filed	Rule 10.6
Right of respondent to file statement of arrangements for the children	Rule 10.7

Scope of this Part

- 10.1 (1) This part deals with the procedure to be adopted by a respondent on being served with the petition.
- (2) He shall enter an acknowledgement of service which may contain a notice of intention to defend if he wishes to oppose the granting of a decree to the petitioner or seek a decree himself.
- (3) In this Part "**respondent**" includes a co-respondent and a second respondent.

Acknowledgment of service

- 10.2 (1) The respondent may file an acknowledgment of service in any court office.
- (2) However that does not mean that the proceedings are to be transferred to that court office.
- (3) The court shall send to the petitioner a copy of the acknowledgment of service.

Time for giving notice of intention to defend

- 10.3 The time for giving notice of intention to defend is 8 days from the date of service of the petition.

Effect of notice of intention to defend

- 10.4 Where the respondent gives notice of intention to defend, the petitioner may not apply for any directions relating to the trial until the time for the respondent to file an answer has expired.
(Rule 19.3 states the time for filing an answer)

Petition based on separation and consent

- 10.5 (1) A respondent to a petition based on a period of separation and the consent of the respondent may give such consent in his acknowledgment of service or in any other written form.
- (2) The respondent may, however state in his acknowledgment of service that he has not consented, does not consent or no longer consents to the divorce.
- (3) The proceedings shall then be stayed if that is the only fact relied upon and the court office shall give notice of such stay to all parties.

Right of respondent to be heard whether or not notice of intention to defend given or answer filed

- 10.6 (1) Whether or not a respondent spouse files a notice of intention to defend or an answer he may be heard on -
- (a) any question relating to the custody of, or access to, any child of the family; or
- (b) any question as to whether a supervision order should be made as to any child of the family under s.50 of the principal act; or
- (c) any question of financial relief.
(Part 12 defines financial relief)
- (2) Whether or not a respondent or co-respondent files a notice of intention to defend or an answer he may be heard as to costs but may not make any allegation against a party claiming costs unless that allegation has been made in an answer other than an allegation relating to the conduct of the proceedings.

Right of respondent to file statement of arrangements for the children

- 10.7 (1) A respondent spouse may file a statement of the existing and proposed arrangements for any child of the family.
- (2) That statement shall be in the prescribed form.
- (3) The statement shall be signed by the respondent and shall be certified as true.

Part 11

Applications relating to children

Contents of this Part

Scope of this Part	Rule 11.1
How to make a child application	Rule 11.2
Injunction to restrain any person from removing a child from Trinidad and Tobago etc.,	Rule 11.3
Where to make an application	Rule 11.4
Other proceedings	Rule 11.5
Directions hearing	Rule 11.6
Service of application	Rule 11.7
Answer to application	Rule 11.8
Service of Evidence	Rule 11.9
Appointment of probation officer	Rule 11.10
Evidence of probation officer	Rule 11.11
Application by probation officer for discharge or variation of a supervision order	Rule 11.12
Court may utilise services of other persons	Rule 11.13
Mediator may not be compelled to give evidence or to Report	Rule 11.14

Scope of this Part

- 11.1 This Part deals with applications by any person relating to the welfare of any child (including any application for a paternity order) other than applications dealing solely with financial relief for a child, whether or not -
- (a) the child is a child of the family; or
 - (b) there are divorce, judicial separation or nullity proceedings pending.

How to make a child application

- 11.2 An applicant may apply by filing an application in the appropriate practice form.

Injunction to restrain any person from removing a child from Trinidad and Tobago etc.,

- 11.3 (1) An application for an injunction to restrain any person from removing a child from Trinidad and Tobago or out of the

custody, care and control of any person named in the application may be made without notice.

(2) It shall however be supported by evidence.

(Part 34 deals with applications to make a child a ward of court)

Where to make an application

11.4 The application shall be filed -

(a) if there are any other proceedings in the High Court for divorce, judicial separation, nullity or financial relief or relating to the child, in the court office in which such proceedings are pending.

(b) if there are no such proceedings, in any court office.

Other proceedings

11.5 Where at any time while an application under this part is pending there are proceedings relating to the child in any other court the applicant shall file a statement of such proceedings.

Directions hearing

11.6 (1) The general rule is that the court office shall fix a directions hearing in accordance with Part 13 and notice of the date time and place of that hearing shall be endorsed on the application.

(2) However if directions have already been given relating to the application no further directions hearing need be fixed.

Service of application

11.7 (1) If there are other proceedings in the High Court for divorce, judicial separation, nullity or relating to the child the application may be served in accordance with Part 7 at any address for service given by the respondent to the application.

(2) If there are no such proceedings the application shall be served in accordance with Part 6.

Answer to application

11.8 The respondent may file an answer to the application in the appropriate practice form.

Service of evidence

- 11.9 (1) Any party filing evidence shall immediately serve a copy of that evidence on all other parties.
- (2) Any evidence which contains an allegation of adultery or an improper association with a named person shall be served on that person together with a notice in the appropriate practice form.
- (3) Any person served with a notice under paragraph (2) may apply to intervene in the proceedings.

Appointment of probation officer

- 11.10 (1) At any directions hearing the court may consider whether a probation officer shall be appointed to inquire into the application and report to the court.
- (2) The court may at any time call for a report from a probation officer on any matter relating to the welfare of any child.
- (3) Any report by the probation officer shall be addressed to the court and filed at the court office.
- (4) Unless a judge orders otherwise the court office shall send a copy of the report to all parties.
- (5) All copies of the report shall be endorsed with a notice to the parties that the report is to be seen only by the parties and their attorneys and that disclosure to any other person without the permission of the court amounts to contempt of court.
- (6) The probation officer shall be given notice of any hearing of any proceedings with regard to which he has reported to the court.
- (7) The court office shall also send to the probation officer a copy of -
- (a) any application or evidence filed; and
 - (b) any order made by the court,
- in those proceedings.

Evidence of probation officer

- 11.11 (1) The court may take into account the contents of a report by a probation officer without that officer being sworn or giving oral evidence.
- (2) The court may direct that a probation officer attend court to give evidence.
- (3) Such a direction may be made on or without an application by a party.

- (4) Where the probation officer gives oral evidence he shall be sworn and may be cross-examined by any party.

Application by probation officer for discharge or variation of supervision order

- 11.12
- (1) An application by a probation officer for discharge or variation of a supervision order under section 50 of the principal act may be made without notice.
 - (2) The court may -
 - (a) make an order in accordance with the application; or
 - (b) fix a hearing of the application and give notice to the parents of the child, the probation officer and any guardian ad litem.

Court may utilise services of other persons

11.13 Where the court considers that it is appropriate to obtain the services of a probation officer, the court may nonetheless utilize the services of

- (a) any person whose qualifications are similar to those of a probation officer and who either-
 - (i) is a public officer; or
 - (ii) is employed on contract by the State; or
- (b) with the consent of the parties and the court, a private mediator, counsellor or other professional paid by the parties; or
- (c) mediators paid by the state

Mediator may not be compelled to give evidence or to report

11.14 Notwithstanding rule 11.13, where the court utilises the services of a mediator the court may not compel a mediator to give evidence or submit a report save that a report shall be made to the court as to whether or not the mediation resulted in agreement.

Part 12

Applications for Financial Relief

Contents of this Part

Scope of this Part	Rule 12.1
How to make application	Rule 12.2
Evidence in support of application - general	Rule 12.3
Where to make application	Rule 12.4
Directions hearing	Rule 12.5
Service of application	Rule 12.6
Applications against estate of dead spouse or former spouse	Rule 12.7
Evidence in answer - general	Rule 12.8
Evidence in answer - special requirements	Rule 12.9
Further evidence	Rule 12.10
Service of evidence	Rule 12.11
Application to approve agreement relating to financial relief	Rule 12.12
Corresponding order	Rule 12.13

Scope of this Part

- 12.1 (1) This Part deals with applications by a husband or wife or cohabitant for financial relief for him or herself or by a parent or any other person by or on behalf of a child for financial relief for that child whether or not there are divorce, judicial separation or nullity proceedings pending.
- (2) In this Part "an application for financial relief" means any application for financial provision of any nature for a spouse, cohabitant, or child and includes but is not limited to an application for one or more of the following -
- (a) an application for -
 - (i) child maintenance;
 - (ii) maintenance pending suit;
 - (iii) periodical payments;
 - (iv) secured periodical payments;
 - (v) a lump sum;
 - (vi) a transfer of property order;
 - (vii) a variation of settlement order;
 - (viii) a settlement of property order under sections 23,24, 25 and 26 of the principal act and any similar applications under other statutes;
 - (b) an avoidance of disposition order under section 44 of the principal act;

- (c) an application for neglect to maintain under section 28 of the principal act;
- (d) an application to vary, discharge, suspend or revive an order for maintenance of a spouse or child under section 31 of the principal act;
- (e) a variation of a maintenance agreement under sections 39 or 40 of the principal act;
- (f) maintenance from a deceased's estate under section 41 of the principal act or for the discharge or variation of an order under that section;
- (g) a matrimonial home order under Part IV of the principal act;
- (h) an application by a respondent under section 11 of the principal act (financial provision for the respondent where decree based on periods of separation);
- (i) an application under Part III of the Wills and Probate Ordinance, Chap. 8. No.2 or Part VIII of the Succession Act, 1981; and
- (j) an adjustment or maintenance order under the Cohabital Relationships Act, 1998.

How to make application -

- 12.2 (1) An application for financial relief shall be made by filing an application in the appropriate practice form.
- (2) An application for -
- (a) a settlement of property order; or
 - (b) a variation of settlement order; or
 - (c) a transfer of property order; or
 - (d) an avoidance of disposition order; or
 - (e) a matrimonial home order; or
 - (f) an adjustment order under the Cohabital Relationships Act, 1998
- shall state the nature of the settlement, variation or transfer proposed and identify any property involved.

Evidence in support of application - general

- 12.3 (1) An application shall be supported by an affidavit setting out the income, capital, assets and liabilities of the applicant and the grounds on which the application is made.
- (2) Where practicable the affidavit shall be in the appropriate practice form.
- (3) When there is in force an order of a court for maintenance of a spouse, cohabitant or child, the applicant shall file a copy of the order.

- (4) The applicant may file further evidence in support of the application.

Where to make application

- 12.4 The application shall be filed -
- (a) if there are any other proceedings in the High Court for divorce, judicial separation, nullity or financial relief or relating to a child of the family, in the court office in which such proceedings are pending.
 - (b) if there are no such proceedings, in any court office.

Directions hearing

- 12.5 (1) The general rule is that the court office shall fix a directions hearing in accordance with Part 13 and notice of the date time and place of that hearing shall be endorsed on the application.
- (2) However if directions have already been given relating to the application and a hearing date fixed no further directions hearing need be fixed.

Service of application

- 12.6 (1) If there are other proceedings in the High Court for divorce, judicial separation, nullity or financial relief the application may be served in accordance with Part 7 at any address for service given by the respondent to the application.
- (2) If there are no such proceedings the application shall be served in accordance with Part 6.
- (3) In addition a copy of the application and of any evidence in support shall be served by the applicant on -
- (a) in the case of an application for a variation of settlement order, on the trustees of the settlement and the settlor if living; and
 - (b) in the case of an avoidance of disposition order, on the person in whose favour the disposition is alleged to have been made; and
 - (c) in the case of an application -
 - (i) to vary a maintenance agreement after the death of a spouse, former spouse or cohabitant; and
 - (ii) for maintenance out of the estate of a spouse or former spouse or cohabitant,on the personal representatives of the spouse, former spouse or cohabitant; and

- (d) in any case, on any persons whom the court may direct.
- (4) In the case of an application for a matrimonial home order under section 56 of the principal act (vesting of tenancy of a matrimonial home) a notice in the appropriate practice form shall be served on the landlord of the dwelling house;

Proceedings against estate of dead spouse or former spouse

- 12.7
- (1) Where in any proceedings it appears that a dead person was interested in the proceedings then, if the dead respondent has no personal representatives, the court may make an order appointing someone to represent his estate for the purpose of the proceedings.
 - (2) A person may be appointed as a representative if he
 - (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 with or without an application.
 - (4) Until the court has appointed someone to represent the respondent's estate, the applicant 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 where 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 dead respondent's estate.

Evidence in answer - general

- 12.8
- (1) Unless the parties are agreed on the terms of any order as to financial relief, the respondent shall file an affidavit in the appropriate practice form within 28 days of service of the application upon him.
 - (2) Any other person who has been served with a copy of the application under rule 12.6(2) may file evidence by affidavit within 28 days of service of the application upon him.

Evidence in answer - special requirements

- 12.9 A respondent to an application -

- (a) for the alteration of a maintenance agreement after the death of one of the parties; or
 - (b) under section 41 of the principal act; or
 - (c) under Part VIII of the Succession Act, 1981 or Part III of the Wills and Probate Ordinance Chap 8:02,
- who is a personal representative of the deceased shall state -
- (i) the capital, income, assets and liabilities of the surviving spouse or former spouse so far as they are known to the applicant;
 - (ii) full particulars of the value of the deceased's estate;
 - (iii) the person or classes of persons beneficially interested in the estate, their addresses and the value of their interests so far as ascertained;
 - (iv) whether any beneficiary is a minor or patient and, if so, name him; and
 - (v) any other facts relevant to the application.

Further evidence

12.10 No further evidence may be filed without permission before the directions hearing except with the written consent of any other party.

Service of evidence

- 12.11 (1) Any party filing any evidence shall immediately serve a copy of that evidence on the other party.
- (2) Any evidence which contains an allegation of adultery or an improper association with a named person shall be served on that person together with a notice in the appropriate practice form.
- (3) Any person served with a notice under paragraph (2) may apply to intervene in the proceedings.

Application to approve agreement relating to financial relief

- 12.12 (1) This rule applies where the parties are agreed on the terms of an order for financial relief.
- (2) No such agreement for such an order is binding until approved by the court.
- (3) The parties may refer the agreement to the court by filing -
- (a) a draft order in the terms agreed -
 - (i) expressed as being 'By Consent'; and
 - (ii) signed by the attorney acting for each party and by the parties; and
 - (b) a statement or statements of the capital, income

assets and liabilities of each party in the appropriate practice form which shall set out any circumstance which either or both parties consider to be relevant to the consideration of the agreement by the court.

- (4) The statement under paragraph (3) shall be an agreed statement if practicable.
- (5) If an affidavit of means has been filed by either or both parties a statement under paragraph (3) may merely state that there has been no significant change in the financial circumstances of that party as set out in the relevant affidavit or state what changes (if any) there have been.
- (6) Each statement under paragraph (3)(b) shall be certified as correct by the party making it.
- (7) So soon as is reasonably practicable the court shall consider the terms of the agreement and the information supplied and -
 - (a) make an order in the agreed terms; or
 - (b) if the agreement relates to an order other than an order for maintenance pending suit or an order relating to financial relief for a child of the family, record its approval of the terms of the agreement; or
 - (c) fix a directions hearing and give notice to the parties.
- (8) Where the court has recorded its approval under paragraph (7)(b) the order is to be made on or after the granting of a decree nisi or a decree of judicial separation.

Corresponding order

- 12.13
- (1) This rule applies where the court has made an order for maintenance pending suit.
 - (2) The spouse in whose favour that order was made may apply for an order for periodical payments in the same amount.
 - (3) That order is called a "corresponding order".
 - (4) An application shall be in the appropriate practice form.
 - (5) The court office shall serve notice of the application on the other spouse in the appropriate practice form.
 - (6) If within 14 days of service of the notice of application that spouse does not object to the making of the corresponding order the court shall make that order.
 - (7) If that spouse objects to the making of the order the court office shall fix a directions hearing.

Part 13

Directions hearing

Contents of this Part

Scope of this Part	Rule 13.1
How a directions hearing is fixed	Rule 13.2
When directions hearing is to take place.	Rule 13.3
Service of notice of directions hearing.	Rule 13.4

Scope of this Part

- 13.1 This Part deals with the procedures whereby the court can give directions in relation to
- (a) a petition for -
 - (i) divorce;
 - (ii) judicial separation; or
 - (iii) nullity.
 - (b) any application relating to a child of the family; or
 - (c) any application for the court to make an order for financial relief; or
 - (d) any other application covered by these rules other than a procedural application.

How a directions hearing is fixed

- 13.2 Upon the filing of a petition for divorce, judicial separation or nullity or the making of
- (a) any application relating to any child of the family; or
 - (b) any application for financial relief; or
 - (c) any other application relating to a family matter,
- the court office shall fix a directions hearing unless in the case of an application the person making the application certifies that directions have already been given and a date fixed with regard to that application.

When directions hearing is to take place.

- 13.3
- (1) The court office shall fix the directions hearing to take place not more than eight weeks from the date of the issue of the petition or application.
 - (2) Any party may however apply for the date of hearing to be brought forward.
 - (3) An application to bring forward the date may be made without notice.

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Service of notice of directions hearing

- 13.4 The notice of the directions hearing shall be served with the petition or application to which it relates.

Part 14

Directions hearing - the objectives

Contents of this Part

Court's duty to manage cases

Rule 14.1

Court's duty to manage cases

- 14.1 The court shall further the overriding objective by actively managing cases. This may include -
- (a) identifying the issues at an early stage;
 - (b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others; and
 - (c) encouraging the parties to use the most appropriate form of dispute resolution including, in particular, mediation, if the court considers that appropriate and by facilitating their use of such procedures;
 - (d) encouraging the parties to co-operate with each other
 - (i) as to the parenting of any children; and
 - (ii) in the conduct of proceedings;
 - (e) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;
 - (f) deciding the order in which issues are to be resolved; and
 - (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 the parties needing to attend court;
 - (k) making appropriate use of technology;
 - (l) giving directions to ensure that the trial of the case proceeds quickly and efficiently though taking into account the particular needs of parties to matrimonial, family and similar disputes and when necessary, making interim orders; and
 - (m) ensuring that no party gains an unfair advantage by reason of his failure to give full disclosure of all relevant facts prior to the hearing of any matter.

(The overriding objective is set out in Part 1)

Part 15

Case Management and Sanctions - the Court's Powers

Contents of this Part

Court's general powers of management	Rule 15.1
Sanctions	Rule 15.2
Court's general power to strike out petition, application, etc	Rule 15.3
Setting aside order for striking out, etc	Rule 15.4
Court's powers in cases of non-compliance with rules or orders	Rule 15.5
Relief from sanctions	Rule 15.6
General power of court to rectify matters where there has been procedural error	Rule 15.7

Court's general powers of management

- 15.1 (1) The court may -
- (a) transfer the whole or any part of any proceedings from one court office to another;
 - (b) consolidate proceedings;
 - (c) extend or shorten the time for compliance with any rule, practice direction or order or direction of the court;
 - (d) adjourn or advance a hearing to a specific date.
 - (e) stay any proceedings generally or until a specified date;
 - (f) decide the order in which issues are to be tried;
 - (g) direct a separate trial of any issue;
 - (h) dismiss a petition, answer or application after a decision on a preliminary issue;
 - (i) require the maker of an affidavit to attend for cross examination;
 - (j) deal with a matter without the attendance of any parties;
 - (k) hold a hearing by telephone or use any other method of direct communication;
 - (l) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
 - (m) direct that notice of any application be given to any person; and

- (n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.
- (2) When the court makes an order, it may make the order subject to conditions.
- (3) The conditions which the court may impose include -
 - (a) a condition requiring a party to give security; and
 - (b) a condition requiring the payment of money into court or as the court may direct; and
 - (c) a condition requiring a party to pay all or part of the costs of the proceedings; and
 - (d) a condition that a party shall permit entry to property owned or occupied by him to another party or someone acting on behalf of another party.
- (4) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
- (5) Where an order is made without a hearing under paragraph (j), (k) or (l) either party may apply to set aside the order;
- (6) An application under paragraph (5) shall be made within 14 days of the service of the order in question.

Sanctions

15.2 The court may -

- (a) strike out a petition, cross-petition, answer or application or debar a respondent to an application if it appears to the court -
 - (i) that there has been a failure to comply with a rule or practice direction or with a direction given by the court in the case; or
 - (ii) that the petition or application is an abuse of the process of the court; or
 - (iii) that the petition, an answer or an application to be struck out discloses no grounds for bringing or defending the petition or application;
- (b) make a wasted costs order;
- (c) assess costs and order them to be paid immediately or within a specified time.

Court's general power to strike out petition, application, etc.,

- 15.3 (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 the

other party may apply to the court for an unless order.

- (2) An "**unless order**" is an order stating that unless the person to whom the order is addressed complies with the order in a stated time his petition, application etc., will be struck out.
- (3) Such an application may be made without notice but shall be supported by evidence which -
 - (a) identifies the rule or order which has not been complied with and the nature of the breach; and
 - (b) contains a certificate that the other party is in default.
- (4) The court office shall refer any such application immediately to a master or judge who may -
 - (i) grant the application; or
 - (ii) seek the views of the other party; or
 - (iii) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date time and place for such appointment .
- (5) The general rule is that the respondent to such an application should be ordered to pay the costs of the application.
- (6) If the defaulting party fails to comply with the terms of any 'unless order' made by the court his petition, answer, cross-petition or application is struck out or, if he be the respondent to an application, he is debarred from defending it.
- (7) Rules 15.6 and 15.7 do not apply.

Setting aside order for striking out, etc.

- 15.4
- (1) Where the court has ordered that a party's petition, answer, cross-petition or application be struck out or that he be debarred from defending an application that party may apply to the court to set the order aside.
 - (2) Rule 15.6 (relief from sanctions) applies to such an application.

Court's powers in cases of non-compliance with rules or orders

- 15.5
- (1) Where the court makes an order or gives directions the court shall whenever practicable also specify the consequences of non-compliance.

- (2) Where a party fails to comply with any of these rules or any court order, any sanction for non-compliance imposed by the rule or the court order has effect unless the party in default applies for relief and Rule 15.7 does not apply.

Relief from sanctions

- 15.6
- (1) An application for relief from any sanction imposed for a breach of any rule or court order shall be made promptly.
 - (2) An application for relief shall be supported by evidence.
 - (3) In considering whether to grant relief, the court in the exercise of its discretion may have regard to whether -
 - (a) the breach of the rule was intentional; and
 - (b) there is a good explanation for the breach; and
 - (c) the party in default has generally complied with all other relevant rules and orders; and
 - (d) the breach was due to the party or his attorney; and
 - (e) whether the breach has been or can be remedied within a reasonable time; and
 - (f) whether the hearing date can still be met if relief is granted.
 - (5) Where the relief is sought in an application relating to a child the court shall give priority to the welfare of the child.
 - (6) The court may not order the respondent to the application to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

General power of court to rectify matters where there has been error of procedure

- 15.7
- (1) This rule applies only where the consequence of non-compliance 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 non-compliance 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 non-compliance with a rule, practice direction or court order, 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 16

Directions Hearing - Procedure

Contents of this Part

Scope of this Part	Rule 16.1
Attendance at directions hearing	Rule 16.2
Dispensing with attendance at directions hearing	Rule 16.3
Purpose of directions hearing	Rule 16.4
Settlement and mediation	Rule 16.5
Arrangements for relevant children	Rule 16.6
Timetable	Rule 16.7
Adjournment of directions hearing	Rule 16.8
Variation of case management timetable	Rule 16.9
Listing questionnaire	Rule 16.10
Fixing hearing date	Rule 16.11

Scope of this Part

- 16.1 (1) This Part deals with the procedures by which the court will manage family matters.
- (2) The main method of management is by directions given at the directions hearing.

Attendance at directions hearing or pre-trial review

- 16.2 (1) If a party is represented by an attorney, an attorney who has conduct of the matter or an attorney who is fully authorised and competent to deal with the matter shall attend the directions hearing.
- (2) The general rule is that each lay party shall attend the directions hearing.
- (3) If the directions hearing is not attended by the attorney and the lay party, the court may adjourn the directions hearing to a fixed date and may exercise any of its powers under Part 15.
- (4) A directions hearing is to be in chambers.

Dispensing with attendance at directions hearing

- 16.3 The court may however dispense with a directions hearing if it is satisfied that -
- (a) the petition or cross-petition is undefended; and
- (b) there are no children of the family; and either
- (c) there are not and are not likely to be any claims for financial

- relief; or that
- (d) all financial issues have been agreed between the parties; and
- (e) in the case of decree proceedings, there is sufficient evidence of service of the petition on the respondent, co-respondent or second respondent.

Purpose of directions hearing

- 16.4 (1) At the directions hearing the court shall seek to give directions on all matters that are or may be in issue between the parties.
- (2) The court may do this even where no application has been made for a particular issue to be decided by the court.
- (3) This includes -
- (a) the petition for divorce etc.;
 - (b) the arrangements for the children under s.47 of the principal act;
 - (c) any application or anticipated application relating to any child; and
 - (d) any application or anticipated application for financial relief.
- (the procedures for dealing with the following matters are dealt with in the Parts stated -
- | | |
|--|----------|
| Custody or access to children | Part 11 |
| Financial Relief | Part 12 |
| Undefended divorce or judicial separation: | Part 17 |
| Petitions for Nullity | Part 18 |
| Defended divorce or judicial separation: | Part 19) |

Settlement and mediation

- 16.5 The court shall take all practicable steps to encourage the parties to reach agreement on any disputed matters and, in particular, may refer the parties to mediation.

Arrangements for the relevant children

- 16.6 The court shall whenever practicable consider the existing and proposed arrangements for the relevant children and -
- (a) give a certificate under s.47(1) of the principal act; or
 - (b) if it is not able to give such a certificate fix a date when further consideration may be given.

Timetable

- 16.7 (1) The court shall fix a timetable which deals -
- (a) with the order in which each disputed matter is to be tried; and
 - (b) the steps to be taken in preparation for the hearing of each such matter; and
 - (c) the dates by which each step shall be taken.
- (2) The general rule is that the court shall fix a date or dates for the hearing of each disputed matter.
- (3) However if the court is unable to fix any such date it shall
- (a) fix a period (or periods) within which the hearing of each such matter shall take place; and
 - (b) fix a date by which the court office shall send a listing questionnaire to each party.
- (4) At the last directions hearing before the hearing of any matter the court may -
- (a) direct either party to provide further information to the other; and
 - (b) give directions for the filing by each party of one or more of -
 - (i) a skeleton argument;
 - (ii) a chronology;
 - (iii) a list of authorities;
 - (iv) a core bundle of documents, (that is, a bundle containing only such documents which the judge will need to pre-read or to which it will be necessary to refer repeatedly at the hearing);
 - (v) an agreed statement of facts;
 - (vi) an agreed statement of the basic technical, scientific or medical matters in issue;
 - (c) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each; and
 - (d) give directions as to the order of the hearing; and
 - (e) decide on the total time to be allowed for the hearing; and
 - (f) direct how that time shall be allocated between the parties.

Adjournment of directions hearing

- 16.8 (1) The court shall not adjourn a directions hearing without fixing a new date time and place for the adjourned directions hearing.
- (2) Where the court is satisfied that either -
- (a) the parties are in the process of negotiating a

- settlement; or
- (b) the parties are receiving or have arranged to receive counselling; or
- (c) the parties are attending or have arranged to attend mediation.

the court may adjourn the directions hearing to a suitable date, time and place to enable negotiations, counselling or mediation to continue.

- (3) The court may give directions in writing as to the preparation of any matter for trial whenever the directions hearing is adjourned.
- (4) Each party shall notify the court office promptly if the matter has been settled.

Variation of case management timetable

- 16.9 (1) A party shall apply to the court if he wishes to vary a date which the court has fixed for -
- (a) a directions hearing; or
 - (b) the return of a listing questionnaire; or
 - (c) the hearing.
- (2) A party seeking to vary any other date in the timetable without the agreement of the other parties shall apply to the court, and the general rule is that he shall do so no later than that date.
- (3) A party who applies after that date shall apply -
- (a) for an extension of time when necessary; and
 - (b) for relief from any sanction to which he has become subject under these Rules or any court order.
- (Rule 15.6 provides for applications for relief from sanctions)
- (4) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1).
- (5) Where the parties so agree, they shall
- (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 take place,
- and the timetable is accordingly varied unless the court directs otherwise.

Listing questionnaire

- 16.10 (1) The court office shall send each party a listing questionnaire

on the date stated in the directions for the preparation of the case.

- (2) Each party shall file the completed listing questionnaire at the court office within the period of 14 days after the date on which it is served on the parties.
- (3) If -
 - (a) a party fails to return the completed questionnaire to the court office within the period of 14 days; or
 - (b) any party fails to give all the information requested by the listing questionnaire; or
 - (c) 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 court may fix a listing appointment and direct any or all the parties to attend the appointment.
- (4) The court office shall give the parties at least 7 days' notice of the date time and place of the listing appointment.
- (5) The party at fault shall attend the listing appointment.
- (6) At the appointment the court shall -
 - (a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial.
 - (b) make a wasted costs order unless there is a special reason why it should not make such an order.
- (7) 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 hearing date

- 16.11 (1) As soon as practicable after -
- (a) each party has returned a completed listing questionnaire to the court office, or
 - (b) the court has held a listing appointment under rule 16.10(3),
- the court office shall fix the date of the hearing (or, if it has already done so, confirm that date) and notify the parties
- (2) The general rule is that the court office shall give the parties at least 21 days' notice of the date of the hearing.
 - (3) The court office may however give shorter notice -
 - (a) if the parties agree; or
 - (b) in urgent cases; or
 - (c) if the court directs.

Part 17

Undefended Proceedings for Divorce or Judicial Separation - Procedure

Contents of this part

Undefended proceedings	Rule 17.1
Amendments to petition and supplemental petition	Rule 17.2
Decree Nisi or Decree of Judicial Separation	Rule 17.3
Proof of service of petition or cross-petition	Rule 17.4

Undefended proceedings

- 17.1 Proceedings are undefended if -
- (a) the respondent has not given notice of intention to defend within the time prescribed by rule 10.3; or
 - (b) no answer has been filed or any answer or cross-petition has been struck out or discontinued; or
 - (c) they proceed only on the cross-petition and no reply has been filed or any reply filed has been struck out or discontinued.

Amendments to petition and supplemental petitions

- 17.2
- (1) When proceedings are undefended a petitioner may amend his or her petition or file a supplemental petition without permission.
 - (2) The petitioner shall file the amended or supplemental petition together with sufficient copies for service (where required) on the other parties.
 - (3) The petitioner shall sign the amended petition and verify by affidavit that the contents are true.
 - (4) An amended petition or a supplemental petition shall be served on the other parties together with a notice of proceedings and acknowledgment of service at their address for service or, if there is no such address, in accordance with Part 6.
 - (5) The provisions of paragraphs (1) to (4) apply to an amended or supplemental cross-petition as they do to a petition and apply as if for 'petitioner' there were substituted 'respondent' and for 'respondent' there were substituted 'petitioner'.
 - (6) Part 10 applies to proceedings on an amended or supplemental petition as it does to proceedings on a petition.

Decree Nisi or Decree of Judicial Separation

- 17.3 (1) If it appears that -
- (a) the petition or cross-petition has been served on all parties named in the petition or cross-petition; and
 - (b) the proceedings are undefended; and
 - (c) the petitioner has established one of the facts set out in section 4(1) of the principal act,
- the general rule is that the court should pronounce the decree nisi of divorce or the decree of judicial separation at the directions hearing.
- (2) However -
- (a) no decree of judicial separation may be made until the court has made a declaration under section 47(1) of the principal act; and
 - (b) the court may in any case adjourn the granting of the decree to a fixed date.

Proof of service of petition or cross-petition

- 17.4 (1) Evidence of service of a petition may be given -
- (a) by filing an affidavit of service sworn by the server of the petition and any supporting evidence in accordance with rule 6.4; or
 - (b) by the marshal's certificate of service with any supporting evidence as to identification; or
 - (c) by filing an affidavit exhibiting the respondent's acknowledgment of service and identifying his signature on that acknowledgment; or
 - (d) by filing an affidavit showing that service has been effected in accordance with any order made under rule 6.6 (service by specified method).
- (2) Where service has been effected out of the jurisdiction, service is proved by filing an affidavit showing that service has been effected in accordance with any order made under rule 6.7.
- (3) Service of a cross-petition may be proved -
- (a) by any of the methods set out under paragraph (1); or
 - (b) by proving that the cross-petition, acknowledgment of service and notice of proceedings have been sent or delivered to the petitioner at any address given by him for service.

Part 18

Nullity Petitions

Contents of this part

Medical examination - when required, incapacity to consummate marriage	Rule 18.1
Medical examination - when required, wilful refusal to consummate marriage	Rule 18.2
Application for order	Rule 18.3
Appointment of medical examiner	Rule 18.4
Conduct of examination	Rule 18.5
Evidence of examination	Rule 18.6
Procedure on undefended nullity petition	Rule 18.7
Hearing of undefended petition	Rule 18.8

Medical examination - when required, incapacity to consummate marriage

- 18.1 (1) This rule deals with proceedings for nullity on the grounds of incapacity to consummate the marriage.
- (2) It does not apply where -
- (a) the husband (whether petitioner or respondent) is seeking the decree of nullity on that ground; or
 - (b) the wife is seeking the decree, and
 - (i) she had previously been married; or
 - (ii) she has borne a child; or
 - (iii) she has filed a statement that she is not a virgin
- unless that spouse alleges his or her own incapacity.
- (3) The spouse seeking the decree of nullity shall apply to the court to decide whether a medical examiner should be appointed to examine the parties.
- (4) That application may not be made by the petitioner before the time for filing a notice to defend has passed nor, if such notice is filed, before the time for filing an answer has passed.
- (5) An application by a respondent may not be made before he or she has filed an answer.
- (6) If the spouse seeking the decree does not make the application within a reasonable time the other spouse may apply if seeking or defending a decree.

Medical examination - wilful refusal to consummate marriage

- 18.2 (1) This rule deals with proceedings for nullity on the grounds of wilful refusal to consummate the marriage.
- (2) Either spouse may apply to the court for the appointment of a medical examiner.

Application for order

- 18.3 In an undefended cause an application under either of the two preceding rules may be made without notice.

Appointment of medical examiner

- 18.4 The court may appoint a medical examiner to examine the parties and report to the court the result of the examination.

Conduct of examination

- 18.5 (1) The general rule is that the examination should take place at the consulting rooms of the medical examiner.
- (2) The court may however direct that the medical examination take place at some other place.
- (3) Each party to be examined shall, if possible, produce to the medical examiner an identity card, driving permit or passport bearing an identifying photograph showing that he or she is the petitioner or respondent named in the order for the examination.
- (4) At the end of the examination the medical examiner shall certify that the person who has been examined has identified himself by producing an identity card, driving permit or passport bearing an identifying photograph or in what other way the person who has been examined was identified as the person named in the order for examination.
- (5) The medical examiner shall file the report at the court office in a sealed envelope.
- (6) Either party is entitled to be supplied by the examiner with a copy of the report on payment of the prescribed fee.

Evidence of examination

- 18.6 (1) If the cause is undefended the examiner is not to attend court to give evidence.
- (2) If the cause is defended the examiner is not to attend court to give evidence unless a spouse gives notice to the court and the examiner not less than 14 days before the hearing.
- (3) The court shall give such weight to the examiner's report as

it thinks fit having regard to all the circumstances of the case.

Procedure on undefended nullity petition

- 18.7 (1) The court shall give directions for the hearing of the petition at the directions hearing.
- (2) If the court is satisfied that -
- (a) the petition or answer (as the case may be) has been served; and
 - (b) the proceedings are undefended; and
 - (c) that any application for an order under rule 18.1 or rule 18.2 has been made; and
 - (d) that where an order has been made for a medical examination, the report of the medical examiner has been filed,
- the court office shall fix a date time and place for the hearing and give at least 14 days' notice to each party.
- (3) If the court is not satisfied as to any such matter it shall adjourn the directions hearing to a fixed date and -
- (a) give such directions as are needed to ensure that the petition is ready for hearing; and
 - (b) give each spouse at least 7 days' notice of the adjourned hearing.
- (4) Service of the petition shall be proved in the manner set out in rule 17.4.

Hearing of undefended petition

- 18.8 (1) If satisfied that -
- (a) the petition or answer has been served; and
 - (b) the cause is undefended; and
 - (c) the petitioner or the respondent has sufficiently proved the ground for a decree of nullity
- the court shall make a decree nisi of nullity.
- (2) The court office shall serve the decree on all parties.
- (3) If there are relevant children, the court shall also
- (a) make a declaration under section 47(1) of the principal act; or
 - (b) give notice of the date time and place fixed for the consideration of the arrangements for any child of the family.
- (4) Service of the petition may be proved in any way set out in rules 17.4(1) and 17.4(2)

Part 19

Defended causes - Procedure

Contents of this Part

Scope of this Part	Rule 19.1
Answer	Rule 19.2
Time for filing an answer	Rule 19.3
Respondent's duty to set out his case	Rule 19.4
Consequences of not setting out detailed defence	Rule 19.5
Cross-petition	Rule 19.6
Additional matters which shall be included in the answer	Rule 19.7
Answer to cross-petition	Rule 19.8
Service of answer, etc	Rule 19.9
Reply to answer	Rule 19.10
Amendments etc., to answer and reply	Rule 19.11
Directions for trial	Rule 19.12
Fixing date for trial	Rule 19.13

Scope of this Part

19.1 This Part deals with the procedure for defended petitions or answers where decrees of divorce, judicial separation **or** nullity are sought.

Answer

19.2 A respondent who wishes

- (a) to defend a petition; or
- (b) to cross-petition; or
- (c) to oppose the grant of a divorce based on 5 years' separation on grounds of grave financial or other hardship shall file an answer.

Time for filing an Answer

19.3 A respondent has 28 days from the date of service of the petition to file an answer.

Respondent's duty to set out his case

- 19.4 (1) The respondent shall include in his answer a statement of all the facts on which he relies to dispute the petition.
- (2) Such statement shall be short.
- (3) In his answer the respondent shall say -
- (a) which (if any) allegations in the petition he admits; and
 - (b) which (if any) he denies; and
 - (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the petitioner to prove.
- (4) Where the respondent denies any of the allegations in the petition-
- (a) he shall give his reasons for doing so; and
 - (b) if he intends to prove a different version of events from that given by the petitioner, he shall give his own version.
- (5) If, in relation to any allegation in the petition the respondent does not -
- (a) admit or deny it; or
 - (b) put forward a different version of events,
- he shall state each of his reasons for resisting the allegation.

Consequences of not setting out detailed defence

- 19.5 (1) The respondent may not rely on any allegation or argument which he did not mention in his answer, but which he should have mentioned there, unless the court gives him permission to do so.
- (2) The court may give the respondent such permission at a directions hearing.
- (3) The court may not give the respondent such permission after the directions hearing unless the respondent can satisfy the court that there has been a significant change in circumstances since the date of the directions hearing.

Cross-petition

- 19.6 (1) An answer which contains a prayer for divorce, judicial separation or nullity ("a cross-petition") shall also comply with rules 9.2(1), 9.3, 9.4(4), 9.6 and 9.7 as if references to a "petition" in that rule were references to a "cross-petition" and references to "petitioner" were references to "respondent".

- (2) A cross-petition shall be headed immediately below the title of the proceedings "Answer and Cross-petition".

Additional matters which shall be included in the answer

- 19.7 The respondent shall include in the answer or cross-petition an address to which documents may be sent, unless he has filed an acknowledgment of service which includes such an address.

Answer to cross-petition

- 19.8 (1) Where the respondent serves a cross-petition seeking a decree of divorce, judicial separation or nullity the petitioner may file an answer to the cross-petition.
- (2) He may do so within 14 days of the service of the answer on him.
 - (3) When the petitioner files an answer to the cross-petition, he shall also serve a copy on the other parties.
 - (4) Rules 19.5 and 19.6 apply to an answer to a cross-petition as if in those rules -
 - (a) the word "cross-petition" appeared instead of "petition"; and
 - (b) the word "respondent" appeared instead of "petitioner"; and
 - (c) the word "petitioner" appeared instead of "respondent".

Service of answer, etc

- 19.9 (1) When the respondent files an answer, he shall also serve a copy on the other parties.
- (2) A respondent who files an answer or a petitioner who files an answer to a cross-petition shall also file sufficient copies for service on all other parties.
 - (3) An answer or reply shall be served on the petitioner in accordance with rule 7.
 - (4) An answer which names a person other than the petitioner shall be served on that person in accordance with rule 6.

Reply to answer

- 19.10 (1) No reply may be filed without leave.
- (2) Such leave may only be given at a directions hearing.

Amendments etc., to answer and reply

- 19.11 (1) While a cause is defended a respondent may not after the

directions hearing under Part 16 amend an answer or cross-petition nor file a supplemental answer or cross-petition and a petitioner may not after the directions hearing under Part 16 amend a petition, an answer to a cross-petition or a reply nor file a supplemental petition without the permission of the court.

- (2) A party shall file the amended or supplemental petition, answer, cross-petition or reply together with sufficient copies for service on the other parties.
- (3) The respondent shall sign an amended cross-petition and verify by affidavit that the contents are true.
- (4) On giving permission to amend an answer or cross-petition or reply or file a supplemental cross-petition the court shall give directions for service.
- (5) The provisions of this part apply to an amended or supplemental answer as they do to an answer.
- (6) Part 10 applies to proceedings on an amended or supplemental petition or cross-petition as it does to proceedings on a petition.

Directions for trial

- 19.12
- (1) At the directions hearing the court shall take all practicable steps to promote a settlement of any disputes between the parties by negotiation, mediation or otherwise.
 - (2) The court may adjourn the directions hearing to a fixed date to enable the parties to negotiate, receive counselling or attend mediation.
 - (3) However, if there does not appear to be any prospect of settlement the court shall give such directions as appear appropriate to ensure the early and economical trial of the matter.

Fixing date for trial

- 19.13 At the directions hearing the court office shall fix a date for the trial of the cause and shall give to each party at least 28 days' notice of the date time and place of the trial.

Part 20

Disclosure and Inspection of Documents

Contents of this part

Scope of this Part	Rule 20.1
Duty of disclosure limited to documents which are or have been in party's control	Rule 20.2
Disclosure of copies	Rule 20.3
Standard disclosure	Rule 20.4
Specific disclosure	Rule 20.5
Criteria for ordering specific disclosure	Rule 20.6
Procedure for disclosure	Rule 20.7
Duty of legal practitioner	Rule 20.8
Requirement for party to certify that he understands duty of disclosure	Rule 20.9
Disclosure in stages	Rule 20.10
Inspection and copying of listed documents	Rule 20.11
Duty of disclosure continuous during proceedings	Rule 20.12
Consequence of failure to disclose documents under an order for disclosure	Rule 20.13
Claim of right to withhold disclosure or inspection of a document	Rule 20.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 20.15
Documents referred to in petition, etc.,	Rule 20.16
Subsequent use of disclosed documents	Rule 20.17
Notice to prove a document	Rule 20.18

Scope of this part

- 20.1 (1) This Part sets out 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**” 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,

but the rule of law known as "the rule in *Peruvian Guano*" does not apply.

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

- 20.2 (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 the party;
 - (b) the party has or has had a right to possession of it; or
 - (c) the party has or has had a right to inspect or take copies of it.

Disclosure of copies

- 20.3 (1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.
- (2) A party shall 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

- 20.4 Where a party is required by any direction of the court, to give standard disclosure that party shall disclose all documents which are directly relevant to the matters in question in the proceedings.

Specific disclosure

- 20.5 (1) An order for specific disclosure is an order that a party shall 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
 - (c) 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 only require disclosure of documents which are directly relevant to one or more matters in issue in the proceedings. .

Criteria for ordering specific disclosure

- 20.6
- (1) When deciding whether to make an order for specific disclosure, the court shall consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.
 - (2) It shall 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 shall pay the other party's costs of such disclosure.
 - (4) Where the court makes an order under paragraph (3) it shall assess the costs to be paid in accordance with Part 37 when Part 37 is in force.
 - (5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

Procedure for disclosure

- 20.7
- (1) Paragraphs (2) to (5) set out the procedure for disclosure.
 - (2) Each party shall make, and serve on every other party, a list of documents.
 - (3) The list shall identify the documents or categories of documents in a convenient order and manner and as concisely as possible.
 - (4) The list shall indicate -
 - (a) those documents which 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 shall include documents already disclosed.

Duty of legal practitioner

20.8 The legal representative for a party shall -

- (1) Explain to the maker of the list of documents -
 - (a) the necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and
 - (b) the possible consequences of failing to do so.
- (2) Certify on the list of documents under rule 20.7 (2) or rule 20.12 (3) that the explanation required by paragraph (1) has been given.

Requirement for party to certify that he understands duty of disclosure

- 20.9 (1) The lay party shall certify in the list of documents -
- (a) that he or she understands the duty of disclosure; and
 - (b) that to the best of that party's knowledge the duty has been carried out.
- (2) If it is impracticable for the party to sign the certificate required by paragraph (1) it may be given by that party's legal practitioner.
- (3) A certificate given by the legal practitioner shall also certify -
- (a) the reasons why it is impractical for the party to give the certificate; and
 - (b) that the certificate is given on the party's instructions.
- (Rule 15.6 deals with applications for relief.)

Disclosure in stages

20.10 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

- 20.11 (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 -

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

Duty of disclosure continuous during proceedings

- 20.12
- (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.
 - (2) If documents to which that duty extends come to a party's notice at any time during the proceedings that party shall immediately notify every other party and serve a list of those documents.
 - (3) The supplemental list shall be served not more than 14 days after the new documents have come to the notice of the party required to serve it.

Consequence of failure to disclose documents under an order for disclosure

- 20.13
- (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 or other hearing.
 - (2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's petition, cross-petition, answer or application 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 shall be supported by evidence on affidavit that the other party has not complied with the order.
 - (4) On such 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 petition, cross-petition, answer or application or some part of it be struck out. (Rule 8.14 deals with applications to set aside order made on application without notice; Rule 15.3 deals with judgement after striking out; Rule 15.6 deals with applications for relief).

Claim of right to withhold disclosure or inspection of a document

- 20.14 (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document shall -
- (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) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be served on any other person nor be open for inspection by any person.
- (4) 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.
- (5) On hearing such an application the court shall make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.
- (6) If 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.
- (7) On any hearing under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.
- (8) This rule does not affect any rule of law which permits or requires a document to be withheld on the ground that its disclosure or inspection would damage the public interest.

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

- 20.15 Where a party inadvertently allows a privileged document to

be inspected the party who has inspected it may use it only with the permission of the court or the agreement of the party disclosing the document.

Documents referred to in petition, etc.

- 20.16 (1) A party may inspect and copy a document mentioned in -
- (a) the petition;
 - (b) a cross-petition or answer or other pleading;
 - (c) a witness statement;
 - (d) an affidavit; or
 - (e) an expert's report.
- (2) A party who wishes to inspect and copy such a document shall give written notice to the party who, or whose witness, mentioned the document.
- (3) The party to whom the notice is given shall comply with the notice not more than 7 days after the date on which the notice is served.

Subsequent use of disclosed documents

- 20.17 (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;
 - (ii) the person to whom the document belongs; or
 - (iii) 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 a document

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

Part 21

Evidence

Contents of this part

Duty of court to control evidence	Rule 21.1
Evidence at hearing - general rule	Rule 21.2
Evidence by video link or other means	Rule 21.3
Evidence of foreign marriage	Rule 21.4

Duty of court to control evidence

- 21.1 It is the duty of the court to control the evidence by deciding
- (a) the issues on which it requires evidence; and
 - (b) the nature of the evidence it requires; and
 - (c) the way in which any matter is to be proved and giving appropriate directions at a directions hearing or by other means.

Evidence at hearing - general rule

- 21.2 (1) The general rule is that any fact which needs to be proved at a trial or hearing of any matter by the evidence of witnesses is to be proved by their oral evidence.
- (2) This is subject -
- (a) to any provision to the contrary contained in these rules or elsewhere; and
 - (b) to any order of the court.

Evidence by video link or other means

- 21.3 The court may allow the witness to give evidence without attending, through a video link or by any other means.

Evidence of foreign marriage

- 21.4 (1) Unless the existence and validity of the marriage is disputed, the celebration and validity of a marriage outside Trinidad and Tobago may be proved -
- (a) by the evidence of one party to the marriage; and
 - (b) by the production of a document purporting to be -
 - (i) a marriage certificate or similar document issued under the law in force in that country; or

- (ii) a certified copy of an entry in a register of marriages kept under the law in force in that country.
- (2) A document purporting to be such a certificate shall be treated as a certificate, unless it is proved not to be.
- (3) Where a document under paragraph (1)(b) is not in English it shall be accompanied by a translation.
- (4) Every translation produced under paragraph (3) shall be certified by the person making it to be a correct translation, and the certificate shall state -
 - (a) the name and address of the person making the translation; and
 - (b) his qualifications for making a translation.

Part 22

Evidence - Hearsay

Contents of this Part

Scope of this part	Rule 22.1
Service of hearsay notice	Rule 22.2
Contents of notice - statements admissible under s.37 of the Act	Rule 22.3
Contents of notice - statements admissible under s.39 of the Act	Rule 22.4
Contents of notice - statements admissible under s.40 of the Act	Rule 22.5
Reasons for not calling a person as witness	Rule 22.6
Service of counter-notice	Rule 22.7
Power of court to allow statement to be given in evidence	Rule 22.8
Notice of intention to challenge credibility of hearsay evidence	Rule 22.9

Scope of this Part

- 22.1 (1) This part deals with the admissibility of hearsay evidence.
- (2) **“Hearsay Evidence”** means a statement made otherwise than by a person while giving oral evidence in proceedings which is tendered as evidence of the matter stated.
- (3) In this Part **“the Act”** means the Evidence Act Chap 7:02
- (4) **“Hearsay Notice”** means a notice of intention to give hearsay evidence.

Service of hearsay notice

- 22.2 (1) Any party who wishes to give hearsay evidence which is admissible only by virtue of sections 37, 39 or 40 of the Act shall serve on every other party a hearsay notice.
- (2) A hearsay notice shall be served not later than the time by which witness statements are to be served or, if there are no such statements, not less than 42 days before the hearing at which the party wishes such evidence to be given unless the court gives permission.
- (3) A hearsay notice is not required where hearsay evidence is included in an affidavit for use in the proceedings.

Contents of notice - statement admissible under s.37 of the Act

- 22.3 (1) This rule applies where the statement is admissible under

s.37 of the Act.

- (2) Where the statement was not made in a document, the notice shall contain particulars of -
 - (a) the time place and circumstances at or in which the statement was made; and
 - (b) the persons by whom and to whom the statement was made; and
 - (c) the substance of the statement and so far as practicable the words used.
- (3) Where the statement was made in a document -
 - (a) a copy of the document or of the relevant part of the document shall be annexed to the notice; and
 - (b) such of the particulars required under paragraph (2)(a) and (b) as are not apparent on the face of the document shall be given.
- (4) If the party giving the notice -
 - (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 22.6 applies, the notice shall say so and state the reason(s) relied on.

Contents of notice - statement admissible under s. 39 of the Act

- 22.4
- (1) This rule applies where the statement is admissible under s.39 of the Act.
 - (2) The notice shall have annexed to it a copy of the statement or the relevant part of the statement.
 - (3) The notice shall also contain -
 - (a) particulars of -
 - (i) the person by whom the record containing the statement was compiled; and
 - (ii) the person who originally supplied the information from which the record was compiled; and
 - (iii) any other person through whom that information was supplied to the compiler; and
 - (b) a description of the duty under which any person named or particularised under paragraphs (a)(i) or (iii) was acting when -
 - (i) compiling the record; or
 - (ii) supplying the information from which the record was compiled; and
 - (c) a description of the nature of the record containing the statement; and

- (d) particulars of the time in, place at, and circumstances under which that record was compiled.
- (4) If the party giving the notice -
 - (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 22.6 applies,the notice shall say so and state the reason(s) relied on.

Contents of notice - document admissible under s. 40 of the Act

- 22.5 (1) This rule applies where the statement is admissible under s.40 of the Act.
- (2) The notice shall have annexed to it a copy of the document or the relevant part of the document containing the statement.
 - (3) The notice shall also contain -
 - (a) particulars of -
 - (i) a person who had responsibility for the management of the relevant activities for which the computer was used during the material period; and
 - (ii) a person who during that period had responsibility for the supply to the computer of the information reproduced in the statement of information from which that information was derived; and
 - (iii) a person who had responsibility for the operation of the computer during that period, and
 - (b) a statement whether or not the computer was operating properly throughout the material period and, if not, whether any failure to operate properly might have affected the production of the document containing the statement or the accuracy of its contents.
 - (4) If the party giving the notice
 - (a) does not intend to call any person of whom details are contained in the notice; and
 - (b) claims that any of the reasons set out in rule 22.6 applies,the notice shall say so and state the reason(s) relied on.

Reasons for not calling a person as witness

22.6 The reasons referred to in rules, 22.3(4)(b), 22.4(4)(b) and 22.5(4)(b), are that -

- (a) the person -
 - (i) is dead; or
 - (ii) is overseas; or
 - (iii) is unfit by reason of bodily or mental condition to attend as a witness; or
 - (iv) cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement, or
- (b) despite using reasonable diligence it has not been possible to
 - (i) identify him; or
 - (ii) find him.

Service of counter-notice

- 22.7
- (1) A party on whom a hearsay notice has been served may serve a counter-notice requiring the server of the notice to call any person named in the counter notice as a witness.
 - (2) The counter-notice shall be served within 21 days of service of the notice.
 - (3) If there is a statement in the hearsay notice that the person named in the counter-notice cannot or should not attend for a specified reason, the counter-notice shall state why that person should be required to attend.
 - (4) No counter notice may be served where there is a statement in the hearsay notice that one of the reasons in rule 22.6 applies.
 - (5) The party served with the notice may, however, apply to the court for directions as to the admissibility of the statement.
 - (6) Where a counter-notice is served no statement made by any person named in the counter-notice may be admissible unless the server of the hearsay notice -
 - (a) calls the person named; or
 - (b) applies to the court for directions as to the admissibility of the statement.
 - (7) Any application to the court under paragraph (5) or (6) shall be made at a directions hearing wherever practicable.
 - (8) No application may be made at the hearing at which the statement is, or is not, to be admitted unless the applicant can show that the application could not have been made earlier.

Power of court to allow statement to be given in evidence

- 22.8 The court may permit a party to adduce hearsay evidence falling within sections 37, 39 and 40 of the Act even though the party seeking to adduce that evidence has -
- (a) failed to serve a hearsay notice; or
 - (b) failed to comply with any requirement of a counter notice served under rule 22.7.

Notice of intention to challenge credibility of hearsay evidence

- 22.9 Where -
- (a) a party has served a hearsay notice complying with sections 37 or 39 of the Act; and
 - (b) none of the reasons under rule 22.6 applies; and
 - (c) the person who made the statement or supplied the information from which the record containing the statement was compiled is not called,
- no party may adduce any evidence under s.42 of the Act without the permission of the court, unless he gave a counter-notice in respect of that person under rule 22.7.

Part 23

Affidavits

Contents of this part

Affidavit evidence	Rule 23.1
Form of affidavits	Rule 23.2
Contents of affidavits	Rule 23.3
Documents to be used in conjunction with affidavits	Rule 23.4
Making of affidavits	Rule 23.5
Service of affidavit	Rule 23.6

Affidavit evidence

- 23.1
- (1) The court may require evidence to be given by affidavit.
 - (2) In this part "**deponent**" means the maker of the affidavit.
 - (3) Whenever an affidavit is used in evidence, any party may apply to the court for an order requiring the maker of the affidavit to attend to be cross-examined.
 - (4) If the deponent does not attend as required by the court order, his affidavit may not be used as evidence unless the court permits.
 - (5) The general rule is that an affidavit shall be filed before it may be used in any proceedings.
 - (6) In a case of urgency the court may however make an order on an affidavit which has not been filed if the party tendering it undertakes to file it before the order is drawn up.

Form of affidavits

- 23.2
- Every affidavit shall -
- (a) be headed with the title of the proceedings; and
 - (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; and
 - (c) state if any deponent is employed by a party to the proceedings; and
 - (d) be divided into paragraphs numbered consecutively; and
 - (e) be signed by the deponent or deponents; and
 - (f) be endorsed with the name of the attorney, if any, for the party on whose behalf it is filed.
 - (g) be marked on the top right hand corner of the affidavit with-
 - (i) the party on whose behalf it is filed; and
 - (ii) the initials and surname of the deponent; and
 - (iii) (where the deponent swears more than one affidavit

- in any proceedings), the number of the affidavit in relation to the deponent; and
- (iv) the identifying reference of each exhibit referred to in the affidavit; and
 - (v) the date when sworn; and
 - (vi) the date when filed.

Example:

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

Contents of affidavit

- 23.3
- (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.
 - (2) However an affidavit may contain statements of information and belief -
 - (a) where any of these Rules so allows; and
 - (b) where it is for use in any procedural or interlocutory application,provided that the source of such information and the ground of such belief are stated in the affidavit.
 - (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 by the person before whom the affidavit was sworn.

Documents to be used in conjunction with affidavit

- 23.4
- (1) Any documents to be used in conjunction with an affidavit shall be exhibited to it.
 - (2) Where there is more than one such documents they may be included in a bundle which is in date or some other convenient order and is properly paginated.
 - (3) Clearly legible photographic copies 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 should be marked in accordance with rule 23.2(g).

Making of affidavits

- 23.5
- (1) All affidavits shall be sworn or affirmed before a

Commissioner of Affidavits or if sworn or affirmed abroad, before a Notary Public.

- (2) No affidavit may be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner or associate of such attorney.
- (3) Where it appears that the deponent is illiterate or blind, the person before whom the affidavit is made shall certify in the jurat that -
 - (a) the affidavit was read in his presence to the deponent; and
 - (b) the deponent seemed perfectly to understand it; and
 - (c) the deponent made his signature or mark in his presence.

Service of affidavit

- 23.6
- (1) The general rule is that a party who is giving evidence by affidavit shall serve a copy on every other party.
 - (2) This applies whether the affidavit was made in the proceedings or in some other proceedings.
 - (3) A party does not need to serve a copy of an affidavit if he wishes to use the affidavit in support of an application to be made without notice.

Part 24

Miscellaneous Rules about evidence

Contents of this Part

Use of plans, photographs, etc as evidence	Rule 24.1
Evidence of findings on question of foreign law	Rule 24.2

Use of plans, photographs, etc as evidence

- 24.1 (1) If a party wishes to rely on evidence at a hearing which -
- (a) is not to be given orally, and
 - (b) is not contained in a witness statement
- he shall disclose his intention to the other parties in accordance with this rule.
- (2) If a party fails to disclose his intention to rely on the evidence as required by this rule, the evidence may not be given.
- (3) Where a party intends to use the evidence as evidence of any fact then, except where paragraph (5) applies, he shall disclose his intention not later than the latest date for serving witness statements.
- (4) He shall disclose the evidence at least 21 days before the hearing at which he proposes to put in the evidence, if -
- (a) there are not to be witness statements; or
 - (b) he intends to put in the evidence solely in order to disprove an allegation made in a witness statement.
- (5) Where the evidence forms part of expert evidence, he shall disclose his intention when the expert's report is served on the other party.
- (6) Where the evidence is being produced to the court for any reason other than as part of factual or expert evidence, he shall disclose his intention at least 21 days before the hearing at which he proposes to put in the evidence.
- (7) Where a party has disclosed his intention to put in the evidence he shall give every other party an opportunity to inspect it and to agree to its admission without proof.

Evidence of finding on question of foreign law

- 24.2 (1) This rule sets out the procedure which shall be followed by a party who intends to put in evidence a finding on a question

of foreign law.

- (2) He shall first give any other party notice of his intention.
- (3) He shall give the notice -
 - (a) if there are to be witness statements, not later than the latest date for serving them; or
 - (b) otherwise, not less than 42 days before the hearing at which he proposes to put the finding in evidence.
- (4) The notice shall -
 - (a) specify the question on which the finding was made; and
 - (b) have attached a document where it is reported or recorded.

Part 25

Experts and Assessors

Contents of this Part

Expert's overriding duty to court	Rule 25.1
Experts - way in which duty to court is to be carried out	Rule 25.2
Expert's right to apply to court for directions	Rule 25.3
General duty of the court and of parties	Rule 25.4
Court's power to restrict expert evidence	Rule 25.5
Particular duty of the Court with regard to medical examination of a child	Rule 25.6
Court's power to appoint a single expert	Rule 25.7
Joint instructions to experts	Rule 25.8
Expert's reports to be addressed to court	Rule 25.9
Contents of report	Rule 25.10
Use by one party of expert's report disclosed by another	Rule 25.11
Meeting of experts	Rule 25.12
Consequence of failure to disclose expert's report	Rule 25.13
Appointment of assessor	Rule 25.14
Fees for experts or assessors	Rule 25.15
Cross Examination of court expert	Rule 25.16

Expert's overriding duty to court

- 25.1 (1) It is the duty of an expert witness to help the court impartially on the matters relevant to his expertise.
- (2) This duty overrides any obligations to the person from whom he has received instructions.

Experts - way in which duty to court is to be carried out

- 25.2 (1) Expert evidence presented to the court shall be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of the litigation.
- (2) An expert witness shall provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.
- (3) An expert witness shall state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded view.

- (4) An expert witness shall make it clear if a particular matter or issue falls outside his expertise.
- (5) If an expert's opinion is not properly researched then this shall be stated with an indication that the opinion is no more than a provisional one.
- (6) If the expert cannot assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification shall be stated in the report.
- (7) If after exchange of reports an expert changes his view on a material matter such change of view shall be communicated to the other party and to the court.

Expert's right to apply to court for directions

- 25.3
- (1) An expert may apply to the court for directions to assist him in carrying out his functions as an expert and his duty to the court.
 - (2) Where an expert applies for directions under this rule, he shall give notice of the application to the party instructing him.
 - (3) The court may direct that notice be given to any other parties.

General duty of court and of parties

- 25.4 The court shall restrict expert evidence to that which is reasonably required to resolve the proceedings justly.

Court's power to restrict expert evidence

- 25.5
- (1) No party may call an expert witness or put in an expert's report without the court's permission.
 - (2) The general rule is that the court's permission should be given at a directions hearing.
 - (3) The court may give permission on or without an application.
 - (4) No oral or written expert'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 intends to give.
 - (5) The court shall direct by what date such report shall be served.
 - (6) The court may direct that that evidence be given by one or more experts -
 - (a) chosen by agreement between the parties; or
 - (b) appointed by the court; or
 - (c) appointed in such way as the court may direct.
 - (7) The court may direct that part only of an expert's report be disclosed.

Particular duty of the court with regard to medical examination of a minor

- 25.6 (1) No examination of any minor for the purpose of preparing a report for the court may take place unless the court gives permission.
- (2) The court may not permit a minor to be examined by more than one medical practitioner unless special circumstances are shown.

Court's power to appoint a single expert

- 25.7 (1) Where the court gives permission to call an expert witness or put in evidence an expert's report, it may direct that evidence is to be given by a single expert appointed -
- (a) jointly by the parties; or
 - (b) by the court; or
 - (c) in such manner as the court may direct.
- (2) If the court gives such a direction, it shall specify in it the issues on which the expert is to report.
- (3) A single expert may be appointed by the court -
- (a) instead of the parties instructing their own experts; or
 - (b) to replace experts instructed by the parties; or
 - (c) in addition to experts instructed by them; or
 - (d) to assess the evidence to be given by experts instructed by them.
- (4) Where the court gives permission to call an expert witness or put in evidence an expert's report, but does not give a direction under paragraph (1), it shall give a reason for not giving such a direction.

Joint instructions to experts

- 25.8 (1) The general rule is that
- (a) parties shall give instructions to a single expert; and
 - (b) experts instructed by the parties shall seek to carry out any examination jointly.
- (2) A party instructing an expert shall provide him with a copy of this Part and give every other party notice of -
- (a) the name and address of the expert, or
 - (b) the names and addresses of a number of experts one of whom the party intends to instruct; and
 - (c) the scope of the instructions to be given to him.
- (3) Notice under paragraph (2) shall be such as will give the other party enough time and information -
- (a) to instruct the same expert; or
 - (b) to instruct another expert to carry out an examination with the expert named in the notice; or

- (c) to instruct another expert to prepare a report jointly with that expert.

Expert's reports to be addressed to court

25.9 An expert shall address his report to the court and not to any person from whom he has received instructions.

Contents of report

- 25.10 (1) An expert's report shall -
- (a) give details of the expert's qualifications; and
 - (b) give details of any literature or other material which the expert has used in making his report; and
 - (c) say who carried out any test or experiment which the expert has used for the report; and
 - (d) give details of the qualifications of the person who carried out any such test or experiment; and
 - (e) where there is a range of opinion on the matters dealt within the report -
 - (i) summarise the range of opinion; and
 - (ii) give reasons for his opinion.
- (2) At the end of an expert's report there shall be a statement that -
- (a) the expert understands his duty to the court; and he has complied with that duty; and
 - (b) his report includes all matters relevant to the issue on which his expert evidence is given; and
 - (c) he has given details in his report of any matters which, to his knowledge, might affect the validity of his report.
- (Rules 25.1 and 2 set out the expert's duty to the court.)
- (3) There shall be also attached to an expert's report copies of -
- (a) all written instructions given to the expert; and
 - (b) any supplemental instructions given to the expert since the original instructions were given; and
 - (c) a note of any oral instructions given to the expert, and the expert shall certify that no other instructions than those disclosed have been received by him from the party instructing him, his attorney or any other person acting on behalf of the party.
- (4) Where expert evidence refers to photographs, learned literature or other similar documents, these shall be provided to the opposite party at the same time as the exchange of reports.

Meeting of experts

- 25.11 (1) The court may direct a meeting of experts of like specialty.
- (2) The court may specify the issues which the experts shall address when they meet.
- (3) Any such meeting is to be regarded as "without prejudice".
- (4) After the meeting the experts shall prepare for the court a statement -
- (a) of any issues within their expertise on which they agree; and
 - (b) of any such issues on which they disagree and their reasons for disagreeing.

Consequence of failure to disclose expert's report

- 25.12 (1) A party who fails to comply with a direction to disclose an expert's report may not use the report at the hearing or call the expert unless the court gives permission.
- (2) The court may not give permission at the hearing unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.
(Rule 15.6 deals with applications for relief.)

Appointment of assessors

- 25.13 (1) The court may appoint one or more persons to assist it as assessors.
- (2) Before doing so, it shall state the questions on which it wants assistance.

Fees for experts or assessors

- 25.14 (1) The court shall decide -
- (a) what fee is to be paid to an expert or assessor; and
 - (b) by whom it is to be paid.
- (2) This does not affect any decision as to the party who is ultimately to bear the cost of the expert or assessor.

Cross-examination of court expert

- 25.15 Where an expert appointed by the court gives oral evidence he may be cross-examined by any party.

Part 26

Court attendance by witnesses

Contents of this Part

Scope of this part	Rule 26.1
Witness summonses	Rule 26.2
Issue of witness summons	Rule 26.3
Time for serving witness summons	Rule 26.4
Who is to serve witness summons	Rule 26.5
Right of witness to travelling expenses and compensation for loss of time	Rule 26.6
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Enforcing attendance of witness	Rule 26.10
Time taken to be endorsed on deposition	Rule 26.11
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Use of deposition at trial	Rule 26.15
Restrictions on subsequent use of depositions taken for purpose of any hearing except trial	Rule 26.16
Where a person to be examined is out of jurisdiction - letter of request	Rule 26.17
Early appointment to produce documents	Rule 26.18

Scope of this part

- 26.1 This part provides -
- (a) for the circumstances in which a person may be required to attend court to give evidence or to produce a document; and
 - (b) for a party to obtain evidence before a hearing to be used at the hearing.

Witness summonses

- 26.2
- (1) A witness summons is a document issued by the court requiring a witness to attend court -
 - (a) to give evidence; or
 - (b) produce documents to the court.
 - (2) A witness summons shall be in the prescribed form.
 - (3) There shall be a separate witness summons for each witness.

- (4) A witness summons may require a witness to produce documents to the court either -
 - (a) on the date fixed for a hearing; or
 - (b) on such date as the court may direct.

Issue of witness summons

- 26.3 (1) A witness summons is issued on the date entered on the summons by the court office.
- (2) A party shall obtain permission from the court where -
 - (a) he wishes to have a witness summons issued less than 21 days before the date of the hearing; or
 - (b) he wishes to have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial.
- (3) The application may be without notice but shall be supported by evidence.
- (4) The court may set aside or vary a witness summons.

Time for serving witness summons

- 26.4 (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 may 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 for such an order may be made without notice but shall be supported by evidence.
- (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.

Who is to serve witness summons

- 26.5 (1) The general rule is that a witness summons is to be served by the party on whose behalf it is issued.
- (2) However, the marshal may serve the summons if the party on whose behalf it is issued requests the court office to do so when he issues it.

- (3) Where the marshal serves the witness summons, the party on whose behalf it is issued shall deposit in the court office the money to be paid or offered to the witness under rule 26.6.

Right of witness to travelling expenses and compensation for loss of time

- 26.6 At the time of service of a witness summons the witness shall be offered or paid -
- (a) a sum reasonably sufficient to cover his 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.

Evidence by deposition

- 26.7
- (1) A party may apply for an order for a person to be examined before a hearing.
 - (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; or
 - (b) a master; or
 - (c) an attorney who has practised for at least five years and who is appointed by the Chief Justice.
 - (3) The order may require the production of any document which the court considers is necessary for the purposes of the examination.
 - (4) The order shall state the date, time and place of the examination.
 - (5) At the time of service of the order the deponent shall be offered or paid travelling expenses and compensation for loss of time in accordance with rule 26.7.
 - (6) An application may be made by any party whether or not that party would otherwise call the witness.

Conduct of examination

- 26.8
- (1) Subject to any directions contained in the order for examination, the examination shall be conducted in the same way as if the witness were giving evidence at a trial.
 - (2) If 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 considers it appropriate to do so.
- (4) The examiner shall ensure that a full record of the evidence given by the witness is taken.
- (5) If any person being examined objects to answer any question put to him, the ground of the objection and the answer to any such question shall be set out in the deposition or in a statement annexed to the deposition.
- (6) The examiner shall state his opinion with regard to the ground of the objection but any decision on the validity of that ground shall be made by the court.
- (7) The examiner shall send a copy of the deposition to -
 - (a) every party to the proceedings; and
 - (b) to the court office; and
 - (c) to the deponent.
- (8) If the witness or any attorney present at the hearing is of the opinion that the deposition does not accurately represent the evidence he shall endorse on the copy deposition the corrections which in his opinion should be made and file the copy deposition and serve a copy of it on all other parties.

Evidence without examiner being present

- 26.9
- (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 actually 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 shall provide a shorthand writer, stenographer or stenotypist or provide another approved means of recording evidence to take down the evidence of the witness;
 - (b) an attorney of any party may administer the oath to a witness;
 - (c) the shorthand writer, stenographer or stenotypist need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined;
 - (d) the attorney whose witness was examined shall file the original transcript and deliver a true copy to all other parties and to the witness who was examined;
 - (e) if the witness or any attorney present at the hearing is of the opinion that the transcript does not accurately represent the evidence given he shall endorse on the copy transcript the corrections which in his opinion

should be made and file the copy transcript and serve a copy of it on all other parties.

Enforcing attendance of witness

- 26.10
- (1) If 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 examiner shall sign and file a certificate of his 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 but shall be supported by evidence
 - (a) of service of the witness summons; and
 - (b) that the person served with the witness summons was paid or offered the payments required by rule 26.7.
 - (4) The court may order the person against whom an order is made under this rule to pay any costs resulting from his failure or refusal.

Time taken to be endorsed on deposition

- 26.11 The examiner shall endorse on the deposition the time occupied in taking the deposition and the fees received by him.

Special report

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

Fees and expenses of examiner

- 26.13 (1) On appointing an examiner the Court shall fix the fee to be paid to the examiner for carrying out the examination.
- (2) The party who obtained the order shall also pay 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.

Order for payment of examiner's fees

- 26.14 The examiner may report to the court the fact that any fees or expenses due to him 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.

Use of deposition at hearing

- 26.15 (1) A deposition ordered under rule 26.7 may be given in evidence at the hearing unless the court orders otherwise.
- (2) A party intending to put in evidence a deposition at a hearing shall serve notice of his intention to do so on every other party.
- (3) He shall 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.

Restrictions on subsequent use of depositions taken for the purpose of any hearing except trial

- 26.16 (1) Where the court orders a party to be examined about his or any other assets for the purpose of any hearing except the trial, the deposition may be used only for the purpose of the proceedings in which the order was made.
- (2) However, it may be used for some other purpose -
- (a) by the party who was examined; or
 - (b) if the party who was examined agrees; or
 - (c) if the court gives permission.

Where a person to be examined is out of the jurisdiction - letter of request

- 26.17
- (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) If 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) If the court makes an order for the issue of a letter of request, the party who sought the order shall file -
 - (a) the following documents and, except where paragraph (6) applies, a translation of them -
 - (i) a draft letter of request; and
 - (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.

Early appointment to produce documents

- 26.18
- (1) The court may permit a party to issue a witness summons requiring -
 - (a) a party; or
 - (b) any other person,to attend at a date, time or place (a 'production hearing') specified in the summons other than the date of the hearing 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 27

Requests for information

Contents of this part

Right of parties to obtain information or documents	Rule 27.1
Orders compelling reply to request for information or documents	Rule 27.2
Time limits for applying to compel reply	Rule 27.3
Information or documents obtained under Part 27 not to be used in other proceedings	Rule 27.4

Right of parties to obtain information or documents

- 27.1 (1) This Part enables a party to obtain from any other party -
- (a) information about any matter which is in dispute in the proceedings; or
 - (b) production of any document directly relevant to the proceedings.
- (2) To do so he shall serve a request for the information or documents that he wants on that other party.
- (3) He shall state in his request precisely what information or documents he wants.
- (4) A request for production of a documents may be made instead of or in addition to an application for specific disclosure under Part 20.

Orders compelling reply to request for information or documents

- 27.2 (1) If a party does not give information or produce documents which another party has requested under rule 27.1 within a reasonable time, the party who served the request may apply for an order compelling him to do so.
- (2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the matter or to save costs.
- (3) When considering whether to make an order the court shall have regard -
- (a) to the likely benefit which will result if the information is given or documents produced; and
 - (b) to the likely cost of giving or providing it; and
 - (c) to 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 such an order.

Time limits for applying to compel reply

- 27.3 An application for an order compelling a reply to a request for information may not be made before the time for serving an answer or affidavit evidence has expired nor less than 42 days before the date fixed for the hearing.

Information or documents obtained under Part 27 not to be used in other proceedings

- 27.4 A party may use information or documents which he obtains -
- (a) in response to a request under rule 27.1; or
 - (b) in compliance with an order under rule 27.2
- only for the purpose of the proceedings in which the request or order was made.

Part 28

Stay of Proceedings (Foreign proceedings)

Contents of this Part

Scope of this Part	Rule 28.1
Application for stay	Rule 28.2
Reference by court	Rule 28.3
Change in particulars given in petition etc.,	Rule 28.4

Scope of this Part

- 28.1 (1) This part deals with proceedings under a petition where there are also proceedings in any country outside Trinidad and Tobago which -
- (a) relate to the marriage in question: and
 - b) are capable of affecting its validity or subsistence.
- (2) Such proceedings are referred to in this part as "proceedings in another jurisdiction".

Application for stay

- 28.2 Any application for a stay under paragraph 3 of the schedule to the principal act shall be made to a judge.

Reference by court

- 28.3 Where -
- (a) on a directions hearing; or
 - (b) on any other occasion,
- it appears to the court that there are proceedings in another jurisdiction, the court shall fix a directions hearing , or adjourn the directions hearing, to be heard before a judge.

Change in particulars given in petition etc.,

- 28.4 Where there is any change in the particulars given in any petition or cross-petition required by paragraph (k) of Appendix A to these Rules the parties shall immediately notify the court of the new particulars.

Part 29

The hearing

Contents of this Part

Documents for use at hearing	Rule 29.1
Failure of party to attend the hearing	Rule 29.2
Applications to set aside judgments given in party's absence	Rule 29.3
Adjournment of hearing	Rule 29.4
Inspection	Rule 29.5
Powers of judge to summons witness	Rule 29.6

Documents for use at hearing

- 29.1 (1) At least 21 days before the date fixed for the hearing all parties shall inform the petitioner or applicant of the documents that they wish to have included in the bundle of documents to be used at the hearing.
- (2) The petitioner or applicant shall prepare a bundle of all the documents which any party wishes to make use of at the hearing.
- (3) The bundle should separate documents which are agreed and those which are not agreed.
- (4) The petitioner or applicant shall paginate and index the bundle of documents.
- (5) At least 10 days before the date fixed for hearing the petitioner or applicant shall file at the court office -
- (a) a bundle comprising copies of
 - (i) any legal aid certificate;
 - (ii) the petition or application;
 - (iii) any relevant answer, cross-petition or reply;
 - (iv) any requests for information and the replies, and
 - (b) a second bundle comprising copies of
 - (i) all affidavits;
 - (ii) all expert reports; and
 - (c) a third bundle comprising the documents referred to in paragraph (2); and
 - (d) if the bundle prepared under paragraph (2) exceeds 100 pages of documents, a core bundle (that is, a bundle containing only such documents which the

court will need to pre-read or to which it will be necessary to refer repeatedly at the hearing).

Failure of party to attend hearing

- 29.2
- (1) If neither party appear at the hearing the court may strike out the petition, cross-petition or application that was to be heard.
 - (2) If only one party appears the judge may proceed in the absence of the other.

Application to set aside order given in party's absence

- 29.3
- (1) A party who was not present at a hearing at which a decree or order was given or the petition, cross-petition or application struck out in his absence may apply to set aside that order.
 - (2) The application shall be made within 7 days after the date on which the decree or order was served on the applicant.
 - (3) The application to set aside the decree or order shall be supported by evidence showing -
 - (a) a good reason for failing to attend the hearing; and
 - (b) that it is likely that had the applicant attended some other decree or order might have been given.

Adjournment of hearing

- 29.4
- (1) The court may adjourn a hearing on such terms as it thinks just.
 - (2) The court may only adjourn a hearing to a fixed date and time or to a date and time to be fixed by the court office.

Inspection

- 29.5
- The judge trying a claim may inspect any place or thing that may be relevant to any issue in the matters before him.

Powers of judge to summons witness

- 29.6
- (1) The judge may -
 - (a) issue a witness summons requiring a party or other person to attend the hearing; or
 - (b) require the production of documents or things at the hearing; or
 - (c) question any party or witness at such hearing.
 - (2) The judge may examine a party or witness -
 - (a) orally, or

- (b) by putting written questions to him and asking him to give written answers to the questions.
- (3) Any party may then cross-examine the witness.

Part 30

Decrees and Orders

Contents of this Part

Scope of this Part	Rule 30.1
Parties present when order made or notified of terms to be bound	Rule 30.2
Practice forms to be used where available	Rule 30.3
Declaration as to satisfaction with arrangements for the children	Rule 30.4
Decree nisi	Rule 30.5
Decree absolute	Rule 30.6
Standard requirements	Rule 30.7
Formal preparation and filing of decrees and orders	Rule 30.8
Service of decrees and orders	Rule 30.9
Service on a party personally	Rule 30.10
Consent orders	Rule 30.11
Time when decree or order takes effect	Rule 30.12
Time for complying with an order	Rule 30.13
Correction of errors in decrees or orders	Rule 30.14
Copies of decrees and orders	Rule 30.15

Scope of this part

- 30.1 (1) This Part sets out rules about decrees and orders.
(2) They do not apply where any other of these Rules makes a different provision in relation to the decree or order in question.

Parties present when order made or notified of terms to be bound

- 30.2 Any party is bound by the terms of any order whether or not the order is served where -
- (a) he is present whether in person or by attorney when the order was made; or
 - (b) he is notified of the terms of the order by facsimile transmission, or otherwise.

Practice forms to be used where available

- 30.3 Where there is a practice form for a decree or order of any description, a decree or order of that description shall be in that form.

Declaration as to satisfaction with arrangements for the children

30.4 A declaration by the court that it is satisfied in accordance with section 47(1) or (4) of the principal act is to be by order which shall be drawn up.

Decree nisi

30.5 A decree nisi pronounced on a petition alleging a fact stated in section 4(1)(d) or 4(1)(e) of the principal act shall state whether that fact was the only fact on which the Petitioner was entitled to rely in support of his petition.

Decree absolute

- 30.6
- (1) No decree nisi may be made absolute until the expiration of six weeks from the date it was made unless the court by special order fixes a shorter period in a particular case.
 - (2) A spouse may apply to make a decree nisi pronounced in his favour absolute by filing a notice in the appropriate practice form.
 - (3) If the notice is filed more than 12 months after the decree nisi the court may require the applicant to file an affidavit explaining the delay and may make such order on the application as it thinks fit.
 - (4) An application to make a decree absolute may be made by the spouse against whom the decree was pronounced.
 - (5) An application under paragraph (4) may not be made until three months have passed since the date on which the spouse in whose favour the decree nisi was pronounced could first have applied to make the decree absolute.
 - (6) The decree may not be made absolute unless -
 - (a) there is no appeal against the decree; and
 - (b) there is no application for -
 - (i) rehearing of the matter; or
 - (ii) rescission of the decree; and
 - (c) the time for appealing to the Court of Appeal has expired and, if extended, the time so extended has expired; and
 - (d) there is no pending application to extend the time to appeal; and
 - (e) there is no intervention to show cause against the decree being made absolute; and
 - (f) an order has been made under section 47(1) of the principal act; and
 - (g) the provisions of s.11 of the principal act do not apply or have been complied with.

Standard requirements

- 30.7 (1) Every decree nisi, decree of judicial separation or order shall state the name of the person who made it, unless it is a consent order under rule 30.11.
- (2) Every decree or order shall be sealed by the court office.

Formal preparation and filing of decree and orders

- 30.8 (1) Every judgment or order shall be settled by the court, unless the court dispenses with the need to do so.
- (2) The court may -
- (a) direct a party to draft an order
 - (b) direct the parties to file an agreed statement of its terms before settling the order.
- (3) Where a draft of an order or an agreed statement of terms is directed it shall be filed no later than 7 days from the date on which the direction was given so that the court office may seal the order.
- (4) If a party fails to file a draft of an order within 7 days after the direction was given the court may order some other party to draw and file the order.
- (5) A party who drafts an order shall file sufficient copies for service on all parties who are to be served.
- (Rule 7.1 deals with who should serve the decree or order)

Service of decrees and orders

- 30.9 The court office shall serve a copy of every decree or order on all parties.

Service on party personally

- 30.10 Where a party on whom any order is to be served is acting by an attorney, the court may order the judgment or order to be served on the lay party as if that person were acting in person.

Consent orders

- 30.11 (1) This rule applies where all parties agree the terms in which an order is to be made.
- (2) It applies to any order except -
- (a) where any of the parties is a litigant in person; or
 - (b) where any of them is a minor or patient; or
 - (c) an order by which any hearing date fixed by the court is adjourned; or

- (d) an order under section 47(1) of the principal act; or
- (e) an order for financial relief.
- (f) a decree nisi or absolute and a decree of judicial separation.

(Rule 12.12 deals with consent orders for financial relief)

- (3) Where this rule applies-
 - (a) the order which is agreed by the parties shall be drawn in the terms agreed; and
 - (b) it shall be expressed as being 'By Consent'; and
 - (c) it shall be signed by the attorney acting for each of the parties; and
 - (d) it shall be filed at the court office for entry and sealing and rule 30.8 (formal preparation and filing of decrees and orders) applies as it applies to all other orders.

Time when decree or order takes effect

30.12 A decree or order takes effect as soon as it is given or made, unless the court specifies that it is to take effect on a different date.

Time for complying with a judgment or order

30.13 A party shall comply with a judgment or order immediately, unless the court makes a different order specifying the time for compliance.

Correction of errors in decrees or orders

- 30.14 (1) The court may at any time correct (without an appeal) 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.

Copies of decrees

- 30.15 (1) The court office shall keep a central index of decrees absolute.
- (2) Any person may require a search to be made in the index upon payment of the prescribed fee, and shall be supplied with a certificate of the result of the search.
- (3) A copy of a decree absolute shall be issued to any person on payment of the prescribed fee.

Part 31

Discontinuance

Contents of this part

Scope of this part	Rule 31.1
Right to discontinue proceedings	Rule 31.2
Procedure for discontinuing	Rule 31.3
Effect of discontinuance	Rule 31.4
Liability for costs	Rule 31.5

Scope of this Part

31.1 The rules in this Part set out the procedure by which a petitioner or applicant may discontinue all or part of any proceedings or a respondent may discontinue an answer.

Right to discontinue proceedings

31.2 A petitioner or applicant may discontinue the proceedings or any part of the proceedings or a respondent his answer without the permission of the court.

Procedure for discontinuing

- 31.3 (1) To discontinue proceedings or any part of proceedings a party shall -
- (a) file a notice of discontinuance; and
 - (b) serve a copy on every other party.
- (2) The party discontinuing shall file a certificate stating that the notice of discontinuance has been served on every other party and the particulars of service in accordance with Part 7.

Effect of discontinuance

- 31.4 (1) Discontinuance takes effect on the date when the notice of discontinuance is served under rule 31.3.
- (2) The proceedings are brought to an end.
 - (3) However, this does not affect any proceedings relating to costs.

Liability for costs

31.5 Unless the court orders otherwise, a party who discontinues is

liable for the costs which any other party incurred on or before the date on which notice of discontinuance was served. The court shall assess such costs, if not agreed, under rule 37.7 when Part 37 is in force.

Part 32

Intervention to show cause why decree should not be made absolute

Contents of this Part

Scope of this Part	Rule 32.1
Procedure on intervention by the Attorney General	Rule 32.2
How any other person intervenes	Rule 32.3
Answer	Rule 32.4
Directions hearing	Rule 32.5

Scope of this Part

- 32.1 This part deals with the procedure by which
- (a) the Attorney General; or
 - (b) any other person,
- may show cause to prevent a decree nisi being made absolute.

Procedure on intervention by the Attorney General

- 32.2 (1) If the Attorney General wishes to show cause against a decree nisi being made absolute he shall give notice to the court and to the party in whose favour the decree was pronounced.
- (2) Within 28 days after giving notice under paragraph (1) the Attorney General shall file a statement setting out the grounds on which he wishes to show cause.
- (3) The Attorney General shall serve a copy of the statement on all parties to the decree proceedings.

How any other person intervenes.

- 32.3 (1) Any person other than the Attorney General who is entitled to apply and wishes to show cause against making a decree absolute shall file an affidavit stating the facts on which he relies.
- (2) The person showing cause shall serve a copy of the affidavit on all parties to the decree proceedings.

Answer

- 32.4 (1) Any party to the decree proceedings may file an affidavit in

answer.

- (2) The answer shall be filed within 28 days of service of the statement under rule 32.2(2).
- (3) The party filing the answer shall serve a copy on all other parties and on the Attorney General or the person showing cause as the case may be.
- (4) If no answer is filed within the time set out in paragraph (3) the Attorney General may apply for an order rescinding the decree and dismissing the petition.
- (5) An application under paragraph (4) shall be made without notice and be dealt with without a hearing unless the court otherwise directs.

Directions hearing

- 32.5
- (1) Where the intervention is by the Attorney General and an answer is filed the court shall fix a directions hearing and give notice to the Attorney General and all parties to the decree proceedings.
 - (2) Where any other person intervenes to show cause that person shall apply for a directions hearing within 14 days after the expiration of the time for filing an affidavit in answer.
 - (3) If no application is made under paragraph (2) the person in whose favour the decree was pronounced may apply for a directions hearing.
 - (4) The court shall give directions to secure the economic and early hearing of the notice to show cause.

Part 33

Application for a rehearing or rescission of decree

Contents of this Part

Scope of this Part	Rule 33.1
To whom application should be made	Rule 33.2
Time within which application shall be made	Rule 33.3
Evidence in support	Rule 33.4
Directions hearing	Rule 33.5
Service of application	Rule 33.6
Affidavit in answer	Rule 33.7

Scope of this Part

- 33.1 This part deals with the procedure whereby a party can apply for -
- (a) a rehearing of any matter -
 - (i) tried by a judge alone; and
 - (ii) in which no error of the court is alleged; or
 - (b) rescission of a decree under section 10 of the principal act. (Section 10 deals with the situation where a respondent has been misled into consenting to a divorce); or
 - (c) rescission of a decree of judicial separation.

To whom application should be made

- 33.2 If practicable the application shall be heard by the judge who heard the matter or granted the decree.

Time within which application shall be made

- 33.3 Unless otherwise directed an application under rule 33.1(b) and (c) shall be made within 42 days of the date when the decree was pronounced.

Evidence in support

- 33.4 The applicant shall file with the application an affidavit setting out the grounds of the application and details of any allegations made.

Directions hearing

33.5 The court office shall fix a directions hearing.

Service of application

33.6 The applicant shall serve the application together with the affidavit in support and notice of the directions hearing on all other parties to the decree proceedings .

Affidavit in answer

33.7 Any other party to the decree proceedings may file an affidavit in answer within 28 days of service of the application upon him.

Part 34

Wardship

Contents of this Part

Scope of this Part	Rule 34.1
How to make a minor a ward of court	Rule 34.2
Effect of issuing claim	Rule 34.3
Defendants to the claim	Rule 34.4
Directions hearing	Rule 34.5
Service of claim form	Rule 34.6
Action by defendant	Rule 34.7
Notification of change of address	Rule 34.8
When a minor ceases to be ward of court	Rule 34.9
Proceedings to be in private	Rule 34.10

Scope of this Part

- 34.1 (1) This Part deals with applications to make a minor a ward of court.
- (2) In this Part "the Family Law Act" means the Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chap 46:08.

How to make a minor ward of court

- 34.2 (1) An application to make a minor a ward of court is made in the appropriate practice form.
- (2) The application may be made in any court office.
- (3) The application shall be supported by evidence.
- (4) The evidence shall state -
- (a) the date of birth of the minor; and
 - (b) the whereabouts of the minor or, if it be the case, that the claimant is unaware of the whereabouts of the minor; and
 - (c) the relationship or other interest of the claimant and all other parties to the proceedings to or in the minor, unless the court otherwise directs.
- (5) In this Part references to the whereabouts of the minor include -
- (a) the address at which he is living; and
 - (b) the person with whom he is living; and
 - (c) any other information relevant to the question of where he may be found.

- (6) The claimant shall either -
 - (a) file with the appropriate application a certified copy of the birth certificate relating to the minor; or
 - (b) apply at the directions hearing for directions as to proof of birth of the minor in some other way.

Effect of issuing claim

- 34.3 (1) Upon issuing a fixed date claim in accordance with rule 34.2 the minor becomes a ward of court.
- (2) Any application relating to the guardianship of that minor shall then be made in the wardship proceedings.

Defendants to the claim

- 34.4 (1) The claimant shall join as defendants any person other than himself -
 - (a) who is a parent of the minor; and
 - (b) who is a guardian of the minor; and
 - (c) with whom the minor is living; and
 - (d) who appears to be interested in, or affected by, the application; and
 - (e) where that application is made under s.13 of the Family Law Act, the Manager of any certified school into whose care the minor has been received.
- (2) The general rule is that the minor is not to be named as a defendant to the claim.
- (3) However, if there is no person other than the minor who is a suitable defendant the claimant shall apply to the court for permission -
 - (a) to issue the claim without naming a defendant; or
 - (b) to name the minor as defendant.(Rule 6.5 deals with service on minors; Part 5 deals with representation of minors).

Directions hearing

- 34.5 (1) Upon issuing the claim the court office shall fix a directions hearing and endorse on the claim notice of the date time and place of that hearing.
- (2) The directions hearing shall not be more than 42 days after the issue of the claim form.

Service of claim form

- 34.6 (1) A sealed copy of the claim form together with a copy of the

evidence filed in support shall be served on all parties to the claim in accordance with Part 6.

- (2) The court may -
 - (a) dispense with service on any person; or
 - (b) order service on any person not originally served.

Action by defendant

- 34.7 (1) Upon service of the claim form each defendant shall forthwith file at the court office a notice stating -
- (a) his address; and
 - (b) either -
 - (i) the whereabouts of the minor; or
 - (ii) that he is unaware of the whereabouts of the minor.
- (2) The defendant shall forthwith serve a copy of the notice on the claimant unless the court otherwise directs.
- (3) The defendant may file evidence in answer to the claim.
- (4) If the defendant does so he shall serve a copy of such evidence on the claimant.

Notification of change of address

- 34.8 Where any party after the issue or service of the claim form-
- (a) changes his address; or
 - (b) becomes aware of any change in the whereabouts of the minor,
- that party shall forthwith file a notice of such change and serve a copy of the notice on all other parties unless the court otherwise directs.

When a minor ceases to be a ward of court

- 34.9 A minor ceases to be a ward of court -
- (a) if the court does not continue the wardship at the directions hearing; or
 - (b) when the court so orders; or
 - (c) when the minor attains the age of 18.

Proceedings to be in private

- 34.10 All proceedings under this Part shall be heard privately in chambers unless the court otherwise directs.

Part 35

Removal of Proceedings from the Magistrates' Court

Contents of this Part

Scope of this Part	Rule 35.1
How an application is made	Rule 35.2
Procedure where order is made	Rule 35.3

Scope of this Part

35.1 This Part deals with applications under section 46(1) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap 46:08 to remove an application from a Magistrates' Court into the High Court.

How an application is made

- 35.2 (1) An application under this Part shall be made in accordance with Part 8 (General Rules about Applications for Court Orders).
- (2) The general rule is that the application may be made without notice.
- (3) The application shall, however, be supported by evidence.
- (4) The court may direct that the application be served on any person.

Procedure where order made

- 35.3 (1) The claimant shall send a copy of the order to the Clerk of the Peace at the Magistrates' Court from which the proceedings are ordered to be removed.
- (2) On receipt of the copy order the Clerk of the Peace shall send to the High Court -
- (a) certified copies of all entries in the books of the Magistrates' Court relating to the proceedings; and
- (b) all documents filed in the proceedings.
- (3) The court shall give notice to all parties that the application is proceeding in the High Court.

Part 36

Costs - General

Contents of this Part

Scope of this part	Rule 36.1
Definitions and applications	Rule 36.2
Orders about costs	Rule 36.3
Costs where there is appeal	Rule 36.4
Entitlement to costs - general principles	Rule 36.5
Successful party generally entitled to costs	Rule 36.6
Two or more parties having same interest	Rule 36.7
Wasted costs orders	Rule 36.8
Wasted costs orders - Procedure	Rule 36.9
Duty to send copy orders to client when costs orders made against client or attorney	Rule 36.10
Order 62 of the Rules of the Supreme Court to apply	Rule 36.11
Court Fees	Rule 36.12
Registrar to fix costs in certain circumstances	Rule 36.13
Costs in decree proceedings fixed	Rule 36.14

Scope of this Part

36.1 This part contains general rules about costs and entitlement to costs.

Definitions and applications

- 36.2 (1) When Part 37 is in force, in this Part and in Part 37 unless the context otherwise requires -
"costs" include attorney's charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;
"assessed costs" and "assessment" have the meanings placed on them by rules 37.4 to 37.7
"budgeted costs" has the meaning placed on it by rule 37.8.
- (2) When Part 37 is not in force unless the context otherwise requires-
"costs" includes fees, charges, disbursements, expenses and remuneration.

Orders about costs

36.3 The court's power to make orders about costs includes power to make orders requiring a 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 appeal

36.4 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 costs - general principles

36.5 A party to proceedings may not recover the costs of those proceedings from any other party or person except by virtue of -

- (a) an order of the court; or
- (b) a provision of these Rules; or
- (c) an agreement between the parties.

Successful party generally entitled to costs

36.6

- (1) The court has a discretion whether or not to make any order as to the payment of the costs of the proceedings by one party to another.
- (2) In exercising its discretion the court may take into account -
 - (a) the fact that proceedings relating to a child were brought or defended in the perceived interest of that child; and
 - (b) the financial position of each party and the effect that any order for costs may have on the parties and in particular on any child.
- (3) If the court decides to make an order about the costs of any proceedings, the general rule is that it shall order the unsuccessful party to pay the costs of the successful party.
- (4) The court may however order a successful party to pay all or part of the costs of an unsuccessful party.
- (5) This rule gives the court power in particular -
 - (a) to order a person to pay only a specified proportion of another person's costs; or
 - (b) to order a person to pay costs from or up to a certain date only; or
 - (c) to order a person to pay costs relating only to a certain distinct part of the proceedings.

The court may not make an order under paragraphs 5(b) or 5(c) unless it is satisfied that an order under paragraph 5(a) would not be just.
- (6) In deciding who, if anyone, should be liable to pay costs the court shall have regard to all the circumstances.
- (7) In particular it shall have regard to -

- (a) the conduct of the parties;
 - (b) whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;
 - (c) whether it was reasonable for a party -
 - (i) to pursue a particular allegation; and/or
 - (ii) to raise a particular issue;
 - (d) the manner in which a party has pursued
 - (i) his case; or
 - (ii) a particular allegation; or
 - (iii) a particular issue.
- (8) The conduct of the parties includes -
- (a) conduct before, as well as during, the proceedings,
 - (b) whether either or both parties refuse unreasonably to try an alternative dispute resolution procedure.
- (When Part 37 is in force, Rule 37.6 sets out the way in which the court shall deal with the assessment of costs of procedural hearings other than a directions hearing.)

Two or more parties having the same interest

- 36.7 Where two or more parties having the same interest in relation to proceedings are separately represented they are not to be entitled to more than one set of costs unless the court so orders.

Wasted costs orders

- 36.8 (1) In any proceedings the court may by order
- (a) disallow as against the attorney's client; or
 - (b) direct the attorney 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 or any employee of such attorney; 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

- 36.9 (1) This rule applies where the court is considering whether to make an order disallowing wasted costs or for ordering that an attorney pay wasted costs to another party.

- (2) The court shall give an attorney notice of the fact that it is minded to make a wasted costs order.
- (3) The notice to the attorney shall state the grounds on which the court is minded to make the order and state a date, time and place at which the attorney may attend to show cause why the order should not be made.
- (4) The court shall give the attorney at least 7 days' notice of the hearing.
- (5) The court shall also give notice directly to the attorney's client -
 - (a) of any proceedings under this rule
 - (b) of any order made under it against his attorney.
- (6) The notice to the attorney shall be in writing unless made at the trial or hearing of the proceedings.

Duty to send copy orders to client when costs orders made against client or attorney

36.10 The court office shall send to the lay party a copy of any costs order made against him or his attorney other than at the trial or hearing of any proceedings at which he is present.

Order 62 of the Rules of the Supreme Court to apply

36.11 When Part 37 is not in force, Order 62 of the Rules of the Supreme Court is to apply mutatis mutandis

Court fees

- 36.12
- (1) The fees specified in Appendix B to these rules shall be taken in all family proceedings
 - (2) The same fees as in actions and other proceedings under the Rules of the Supreme Court for the time being in force shall be taken for any other act or matter not provided for in Appendix B

Registrar to fix costs of family proceedings in certain circumstances

- 36.13
- (1) Subject to rules 36.14(1) and 36.14(3) the costs of family proceedings shall be fixed by the Registrar by analogy to the scale of costs for the time being in force under the Rules of the Supreme Court.
 - (2) The Court may, if it thinks fit, allow to one party attorney client costs to be taxed.

Costs in decree proceedings may be fixed

- 36.14
- (1) Where the petitioner is granted a decree with costs in any undefended decree proceedings the costs shall, if his attorney so elects, be fixed in accordance with this rule
 - (2) Where costs are fixed there shall be allowed as between party and party such of the following items as are applicable:
 - (a) in respect of instructing attorney's charges-
 - (i) \$1500 or, in a higher rate case, \$1,800.00
 - (ii) if the petitioner's attorney so requests, \$220.00 in respect of any ancillary application on which a consent order for maintenance has been made;
 - (iii) \$75.00 in respect of any statement as to the arrangements for the children filed under rule 9.6(1)
 - (iv) where an affidavit of means has been filed under rule 12.3(2), \$100.00
 - (v) \$35.00 in respect of any certificate as to reconciliation filed under rule 9.1(4)(d).
 - (b) in respect of counsel's fees-
 - (i) for settling the petition, \$200.00 or, in a higher rate case, \$250.00;
 - (ii) for settling an affidavit of means filed under rule 12.3(2)
 - (iii) for giving written advice on evidence \$175.00;
 - (iv) with brief on hearing \$1000.00; and
 - (v) on conference, \$125.00;
 - (c) in respect of other disbursements-
 - (i) the court fees paid on the petitioner's behalf;
 - (ii) such sums in respect of witnesses' allowances, medical reports and the other disbursements as would have been allowed if the costs had been taxed, not exceeding, in the case of inquiry agents' fees the sum of \$1,000.00"
 - (3) A petitioner's attorney who elects to have his costs fixed under subrule (1) shall give notice to that effect to the Registrar, stating the sums which he claims should be allowed.

Part 37

Costs - Quantification

Contents of this Part

Scope of this Part	Rule 37.1
Basis of quantification	Rule 37.2
Ways in which costs are to be quantified	Rule 37.3
Assessed costs	Rule 37.4
What is included in assessed costs	Rule 37.5
Assessed costs of procedural applications	Rule 37.6
Assessment of costs - general	Rule 37.7
Budgeted costs	Rule 37.8
Client's consent to application for budgeted costs	Rule 37.9
What is included in budgeted costs	Rule 37.10
Value Added Tax	Rule 37.11
Appendix	

Scope of this Part

37.1 This part deals with the way in which any costs awarded by the court are quantified.

Basis of quantification

- 37.2 (1) Where the court has any discretion as to the amount of costs to be allowed to a party or an attorney, the sum to be allowed is the amount that the court deems to be reasonable were the work to be carried out by an attorney of reasonable competence and which appears to the court to be fair both to the person paying and the person receiving such costs.
- (2) Where the court has any discretion as to the amount of costs to be paid to an attorney by his client, the sum allowed is the amount that the court deems to be reasonable and which appears to be fair both to the attorney and the client concerned.
- (3) In deciding what would be reasonable the court shall 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 case;
 - (e) the degree of responsibility accepted by the

- attorney;
- (f) the care, speed and economy with which the case was prepared;
- (g) the novelty, weight and complexity of the case;
- (h) in the case of costs charged by an attorney to his client –
 - (i) any agreement that may have been made as to the basis of charging;
 - (ii) any agreement about what grade of attorney should carry out the work;
 - (iii) whether the attorney 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 case.

Ways in which costs are quantified.

- 37.3 If, having regard to rule 36.6, the court orders a party to pay all or any part of the costs of another party, such costs by the court shall be quantified in one of the following ways -
- (a) costs assessed by the court under rules 37.4 to 37.7 ("assessed costs"); or
 - (b) costs in accordance with a budget approved by the court under rule 37.8 ("budgeted costs").

Assessed costs

- 37.4
- (1) The general rule is that where a party is entitled to the costs of any proceedings those costs shall be assessed in accordance with Appendix A to this Part and paragraphs (2) and (3) of this rule.
 - (2) In assessing such costs where it has a discretion as to the amount to be allowed the court shall take into account the matters set out in rule 37.2.
 - (3) In particular the court shall take into account any costs that have been awarded in respect of procedural applications.
 - (4) The court may however -
 - (a) award a percentage only of such sum having taken into account the matters set out in rule 36.6(6),(7) and (8);
 - (b) order a party to pay costs -
 - (i) from or to a certain date; or
 - (ii) relating only to a certain distinct part of the proceedings,
 in which case it shall specify the percentage of the assessed costs which is to be paid by the party liable to pay such costs.

What is included in assessed costs.

- 37.5 Assessed costs include all work that is required to prepare the particular stage of the proceedings for hearing and in particular the costs involved in instructing an expert, in considering and disclosing any report made by him or arranging his attendance at the hearing and for attendance and advocacy at any hearing including attendance at any directions hearing but exclude -
- (a) the making or opposing of any application except at a directions hearing.
 - (b) expert's fees for preparing a report and attending any conference or hearing.

Assessed costs of procedural applications

- 37.6
- (1) On determining any application which is not covered by Appendix A, the court shall -
 - (a) decide which party, if any, should pay the costs of that application;
 - (b) assess the amount of such costs, and
 - (c) 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 shall pay the costs of the successful party.
 - (3) The court shall however take account of all the circumstances including the factors set out in rule 36.6(7) but where the application is -
 - (a) one that could reasonably have been made at a directions hearing; or
 - (b) an application to extend the time specified for the doing of any act under these Rules or an order or direction of the court; or
 - (c) an application to amend any petition, answer or cross-petition; or
 - (d) an application for relief under rule 15.6the court shall order the applicant to pay the costs of the respondent unless there are special circumstances.

Assessment of costs - general

- 37.7
- (1) This rule applies where costs fall to be assessed in relation to any proceedings or any stage of the proceedings, other than a procedural application, which is not covered by Appendix A.
 - (2) The assessment shall be carried out by the judge or master hearing the proceedings.
 - (3) If, however, the assessment does not fall to be carried out at the hearing of any proceedings then the person entitled to the costs

shall apply to a master for directions as to how the assessment is to be carried out.

- (4) The application under paragraph (3) shall be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.
- (5) On hearing any such application the master shall either -
 - (a) assess the costs if there is sufficient material available for him to do so; or
 - (b) fix a date time and place for the assessment to take place.

Budgeted costs

- 37.8
- (1) A party may however apply to the court to set a costs budget for the proceedings.
 - (2) An application for such a costs budget shall be made at or before the first directions hearing.
 - (3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent.
 - (4) An application for a costs budget shall be accompanied by -
 - (a) A written consent from the client in accordance with rule 37.9;
 - (b) a statement of the amount that the party seeking the order wishes to be set as the costs budget;
 - (c) a statement showing how such budget has been calculated and setting out in particular -
 - (i) the hourly rate charged by the attorney (or other basis of charging);
 - (ii) a breakdown of the costs incurred to date;
 - (iii) the fees for advocacy, advising or settling any document that are anticipated to be paid to any attorney other than the attorney on record;
 - (iv) the disbursements other than expert witness fees that are included in the budget;
 - (v) the anticipated amount of any expert fees and whether or not such fees are included in the budget;
 - (vi) a statement of the number of hours of preparation time (including attendances upon the party, any witnesses and on any other parties to the proceedings) that the attorney for the party making the application anticipates will be

- required to bring the proceedings to a hearing;
and
 - (vii) what procedural steps or applications are or are not included in the budget.
- (5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.

Client's consent to application for a costs budget

- 37.9
- (1) The court may not make an order for budgeted costs unless -
 - (a) the lay party seeking the order is present, unless for exceptional reasons this is impracticable, when the application is made; and
 - (b) the court has satisfied itself that each party fully understands the consequences of the order that is being sought as to -
 - (i) the lay party's liability for costs to his own attorney whether he obtains an order for costs against any other party or not;
 - (ii) his liability to pay costs in the budgeted sum to the other party if that party obtains an order for costs against him;
 - (iii) what his liability might be under paragraphs (i) and (ii) if rule 37.4 applied;
 - (c) there has been filed a document recording the express consent of the lay party to the application and to any order made as a consequence of the application.
 - (d) such consent shall be in a separate document which -
 - (i) is signed by the lay party;
 - (ii) deals only with the question of budgeted costs;
 - (iii) states the attorney's estimate of what the assessed costs appropriate to the proceedings would be;
 - (iv) gives an estimate of the total costs of the proceedings as between attorney and client, and
 - (v) sets out the basis of that estimate including the amount of any hourly charge.
 - (2) The written consent of the client shall not be disclosed to the other party.
 - (3) This rule also applies to any other lay party who consents to or does not oppose an order for a costs budget.

What is included in a costs budget.

37.10 Unless the costs budget approved by the court specifies otherwise rule 37.6 applies to budgeted costs as it does to fixed costs.

Value Added Tax

37.11 A party may add the appropriate amount of value added tax to the amount of any prescribed, assessed or budgeted costs awarded to him.

Appendix

Assessed Costs

1. Undefended divorce: taking instructions, drawing petition, having petition approved, sworn, issued and served considering acknowledgment of service and proving service.
\$1500
2. Statement of arrangements for children and/or application for children order including taking all necessary instructions and filing (to be allowed once only) \$1500
3. Application for financial order, including taking all necessary instructions and filing.
\$1500
4. Attending directions hearing. \$1500
5. Preparing for defended hearing of divorce, children application or financial application; assessed between \$4,000 & \$10,000
6. Attending defended hearing of divorce, children application or financial application; assessed between \$2,500 & \$8,000

Part 38

Enforcement

Contents of this Part

Scope of this Part	Rule 38.1
Affidavit verifying the amount due under an order	Rule 38.2
Enforcement	Rule 38.3

Scope of this Part

38.1 This part deals with the enforcement of orders for financial relief.

Affidavit verifying the amount due under an order

38.2 Before any step is taken to enforce a sum alleged to be due under an order for financial relief except where an application for an attachment of earnings order is made at the hearing when the financial order was made the applicant shall file an affidavit showing how the sum claimed to be due is calculated.

Enforcement

38.3 Any sum shown to be due under an affidavit filed under rule 38.2 may be enforced in the same way as any judgment or order for a sum of money under the Rules of the Supreme Court 1975 or under the Debtors Act, Chap. 8:07.

Appendix A

Matters to be included in a petition

Petitions for divorce, judicial separation and nullity.

- (a) the names of the parties to the marriage;
- (b) the date and place of the marriage;
- (c) the last address in Trinidad and Tobago at which the petitioner and respondent have lived together as husband and wife;
- (d) where it is alleged that the court has jurisdiction based on domicile -
 - (i) the country in which the petitioner is domiciled;
 - (ii) if that country is not Trinidad and Tobago the country in which the respondent is domiciled;
- (e) where it is alleged that the court has jurisdiction based on habitual residence -
 - (i) the country in which the petitioner has been habitually resident throughout the period of one year ending with the date of the presentation of the petition;
 - (ii) if the petitioner has not been habitually resident in Trinidad and Tobago, the country in which the respondent has been habitually resident during that period,
with details in either case, including the addresses of the places of residence and the length of residence at each place;
- (f) the occupation and residence of the petitioner and the respondent;
- (g) whether there are any living children of the family and, if so, how many and stating -
 - (i) the full names, including surname, of each such child;
 - (ii) the date of birth of each such child; or, if it be the case the fact that a child is over eighteen; and
 - (iii) whether any such child who is over sixteen is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation.
- (h) whether, to the knowledge of the petitioner if a husband, any other child now living has been born to the wife during the marriage and, if so, the full names, including surname, of the child and his date of birth, or, if it be the case, that he is over eighteen years;
- (i) if it be the case, that there is a dispute whether any living child is a child of the family;
- (j) whether there are or have been any other proceedings in any court in Trinidad and Tobago or elsewhere with reference to the marriage or to any child of the family 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; and
 - (ii) the date and effect of any decree or order; and
 - (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) whether there are any proceedings continuing in any country outside Trinidad and Tobago which relate to the marriage or are capable of affecting its validity or subsistence and, if so -
- (i) particulars of the proceedings, including the court in or the tribunal or authority before which they were begun; and
 - (ii) the date when they were begun; and
 - (iii) the names of the parties; and
 - (iv) the date or expected date of any trial of the proceedings; and
 - (v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under the Schedule to the principal act, and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under that law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of;
- (l) whether any, and if so, what agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent or, as the case may be, the petitioner or any child of the family;
- (m) a brief statement of the facts relied on, but not the evidence by which they are to be proved;
- (n) Where the petitioner intends to adduce evidence that a person was found to have committed adultery in matrimonial proceedings or was adjudged to be the father of a child in proceedings before a court in Trinidad and Tobago, he shall include in the petition a statement of his intention with particulars of -
- (i) the finding or adjudication and the date thereof;
 - (ii) the court which made the finding or adjudication and the proceedings in which it was made; and
 - (iii) the issue in the proceedings to which the finding or adjudication is relevant.

Petition for divorce (only)

That the marriage has broken down irretrievably .

Petition for divorce or judicial separation

The fact alleged by the petitioner for the purposes of section 4(1) of the principal Act and particulars thereof.

Petition for nullity

A petition for nullity under section 13(2)(e) or (f) of the principal Act shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

Petition for a decree of presumption of death and dissolution of marriage.

- (a) the last address in Trinidad and Tobago at which the parties to the marriage lived together as husband and wife;
- (b) the circumstances in which the parties ceased to cohabit;
- (c) the date when and the place where the respondent was last seen or heard of; and
- (d) the steps which have been taken to trace the respondent.

APPENDIX B

Court Fees

1.	On filing an application under Part 34	\$35.00
2.	On filing a petition (including sealing and copying)	\$50.00
3.	On filing an answer or reply (including sealing and copying)	\$35.00
4.	On filing a supplemental petition or amended Petition (including sealing and copying)	\$10.00
5.	On filing an application	\$10.00
6.	On filing an affidavit	\$10.00
7.	On filing a certificate, request in writing or any other document	\$5.00
8.	Copy of a medical report filed under Part 18.5(5) per page or part thereof	\$1.25
9.	Copy of a report filed under Part 11	\$1.25
10.	Sealed or office or photographic copy of a decree or order under (Part 30.8)	\$10.00
11.	On search in the index of decrees absolute kept Under Part 30.15(2)	\$5.00
12.	Copy of decree absolute (Part30.15(3))	\$10.00
13.	Any certificate under the hand of a Judge, Master or Registrar	\$10.00