



BERMUDA

MATRIMONIAL CAUSES RULES 1974

BX 1 / 1974

*[made under section 62 of the Supreme Court Act 1905 and brought into operation on 1 January 1974]*

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### PRELIMINARY

#### Citation and commencement

- 1 These Rules may be cited as the Matrimonial Causes Rules 1974 and shall come into operation on 1st January, 1974.

#### Interpretation

- 2 (2) In these Rules, unless the context otherwise requires—
  - “the Act” means the Matrimonial Causes Act 1974 [*title 27 item 3*];
  - “ancillary relief” means—

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- (a) an avoidance of disposition order,
- (b) a financial provision order,
- (c) an order for maintenance pending suit,
- (d) a property adjustment order, or
- (e) a variation order;

“attorney” means a person duly admitted under the Supreme Court Act 1905 [*title 8 item 1*] to practise as a barrister and attorney in the Supreme Court;

“avoidance of disposition order” means an order under section 41 (2) (b) or (c) of the Act;

“cause” means a matrimonial cause as defined by section 1 of the Supreme Court Act 1905 [*title 8 item 1*];

“court” means a judge or the registrar;

“defended cause” means a cause not being an undefended cause;

“directions for trial” means directions for trial given under rule 33;

“Director of Social Services” has the same meaning as in the Act;

“enactment” means any statutory provision;

“estate representative” has the same meaning as in the Succession Act 1974 [*title 26 item 1*];

“financial provision order” means any of the orders mentioned in section 25(1) of the Act except an order under section 31 (6) of the Act;

“financial relief”, has the same meaning as in section 41 of the Act;

“judge” means the Chief Justice, the Puisne Judge or an Assistant Justice;

“magistrates’ court” means a court of summary jurisdiction;

“matrimonial proceedings” means any proceedings with respect to which the court has jurisdiction under section 2 of the Act;

“notice of intention to defend”, has the meaning assigned to it by rule 15;

“person named” includes a person described as “passing under the name of A.B.”;

“registrar” means the registrar of the Supreme Court;

“registry” means the registry of the Supreme Court;

“special procedure list” has the meaning assigned to it by rule 33(3);

“undefended cause” means—

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- (a) in the case of an application under section 7 of the Act, a cause in which the respondent has not given notice of intention to defend within the time limited;
- (b) in any other case—
  - (i) a cause in which no answer has been filed or any answer filed has been struck out, or
  - (ii) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or
  - (iii) a cause to which rule 18(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn;

“variation order” means an order under section 35 of the Act;

“welfare” has the same meaning as in section 45 of the Act.

(3) Unless the context otherwise requires, a cause begun by petition shall be treated as pending for the purposes of these Rules notwithstanding that a final decree or order has been made on the petition.

(4) Unless the context otherwise requires, a rule referred to by number means the rule so numbered in these Rules.

(5) In these Rules a form referred to by number means the form so numbered in the Appendix to these Rules, or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(6) In these Rules any reference to an Order and rule is if prefixed by the letters “R.S.C.”, a reference to that Order and rule in the Rules of the Supreme Court 1985 [*title 8 item 1(a)*].

(7) Unless the context otherwise requires, any reference in these Rules to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

### Application of other rules

3 (1) Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court 1985 [*title 8 item 1(a)*] shall, notwithstanding the provisions of Order 1, rule 2(2) thereof, apply, with the necessary modifications, to the practice and procedure in matrimonial proceedings.

(2) For the purposes of paragraph (1) any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were a provision of the Rules of the Supreme Court 1985 [*title 8 item 1(a)*].

4 [*blank*]

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### COMMENCEMENT ETC. OF PROCEEDINGS

#### Application under section 7 of the Act

5 (1) An application under section 7 of the Act for leave to present a petition for divorce before the expiration of three years from the date of the marriage shall be made by originating summons.

(2) The application shall be filed in the registry, together with—

(a) an affidavit by the applicant exhibiting a copy of the proposed petition and stating—

(i) the grounds of the application,

(ii) particulars of the hardship or depravity alleged,

(iii) whether there has been any previous application for leave,

(iv) whether any, and if so what, attempts at reconciliation have been made,

(v) particulars of any circumstances which may assist the court in determining whether there is a reasonable probability of reconciliation between the parties,

(vi) the date of birth of each of the parties or, if it be the case, that he or she has attained 21;

(b) a copy of the application and of the supporting affidavit for service on the respondent; and

(c) unless otherwise directed on an application made *ex parte*, a certificate of the marriage.

(3) The registrar shall annex to the copy of the application for service a copy of the supporting affidavit and a notice in Form 1 with Form 6 attached.

#### Proceedings after service of application under section 7 of the Act

6 (3) The application shall be heard by a judge and shall, unless otherwise directed, be heard in chambers.

(4) Subject to the provisions of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the application as if the originating summons were a petition and the applicant a petitioner.

#### Discontinuance of cause before service of petition

7 Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

#### Cause to be begun by petition

8 (1) Every cause other than an application under section 7 of the Act shall be begun by petition.

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(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under 16 or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade or profession, the petition shall be accompanied by a separate written statement containing the information required by Form 4, to which shall be attached a copy of any medical report mentioned therein.

(3) Where a petition for divorce alleging five years' separation contains a proposal by the petitioner (not being a proposal agreed between the petitioner and the respondent) to make financial provision for the respondent, the petition shall be accompanied by an affidavit by the petitioner giving brief particulars of his means and commitments.

### Contents of petition

9 (1) Unless otherwise directed, every petition, other than a petition under rule 109 or 110, shall contain the information required by Form 2 as near as may be in the order there set out and any further or other information required by such of the following paragraphs of this rule as may be applicable.

(2) A petition for divorce, nullity or judicial separation—

- (a) shall state whether or not there are to the knowledge of the petitioner any proceedings continuing in any country outside Bermuda which are in respect of the marriage to which the petition relates or are capable of affecting its validity or subsistence, and
- (b) if there are any such proceedings, shall give particulars of them including—
  - (i) the court in or tribunal or authority before which they were begun,
  - (ii) the date when they were begun,
  - (iii) the names of the parties,
  - (iv) the date, or as the case may be, the expected date of any trial in the proceedings, and
  - (v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Act.

In this paragraph "proceedings continuing in any country outside Bermuda" includes any proceedings which are not instituted in a court of law in that country, if those proceedings are instituted before a tribunal or other authority in that country having power under the law having effect there to determine questions of status, and proceedings shall be treated as continuing in a country outside Bermuda if they have been begun and have not been finally disposed of.

(3) A petition for a decree of nullity under section 16(e) or (f) of the Act shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

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(4) A petition for a decree of presumption of death and dissolution of marriage shall state the last place at which the parties to the marriage cohabited, the circumstances in which the parties ceased to cohabit, the date when and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent. \_

10 [blank]

Signing and verification of petition and filing of affidavit

11 (1) Every petition shall be signed by the petitioner's attorney in his own name or the name of his firm, or by the petitioner if he sues in person.

(2) Every petition shall be verified by an affidavit in Form 7A sworn by the petitioner; and such affidavit shall be sufficient prima facie proof of the statements made in the petition.

(3) The affidavit shall be filed either with the petition or within seven days after the presentation of the petition.

*[Rule 11 revoked and replaced by BR 1 / 2016 rule 2 effective 8 January 2016]*

Presentation of petition

12 (1) [blank]

(2) Unless otherwise directed on an application made *ex parte*, a certificate of the marriage to which the cause relates shall be filed with the petition.

(3) Where an attorney is acting for a petitioner for divorce or judicial separation, a certificate in Form 3 shall be filed with the petition, unless otherwise directed on an application made *ex parte*.

(4) Where there is before the court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of three years from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in section 5(2) of the Act as were alleged in a petition for judicial separation presented before the expiration of that period.

(5) The petition shall be presented by filing it, together with any statement, report and affidavit required by rule 8 (2) and (3) , in the registry, with as many copies of the petition as there are persons to be served and a copy of the statement, report and affidavit required by rule 8 (2) and (3) for service on the respondent.

(6) On the filing of the petition the registrar shall—

(a) enter the cause in the cause book, and

(b) annex to every copy of the petition for service a notice in Form 5 with Form 6 attached and shall also annex to the copy petition for service on a

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respondent the copy of any statement, report and affidavit filed pursuant to paragraph (5) of this rule.

### Parties

13 (1) Subject to paragraph (2), where a petition alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the cause unless—

- (a) that person is not named in the petition and, if the adultery is relied on for the purpose of section 5 (2) (a) of the Act, the petition contains a statement that his or her identity is not known to the petitioner, or
- (b) the court otherwise directs.

(2) Where a petition alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1), that person shall not be made a co-respondent in the cause unless the court so directs.

(3) Where a petition alleges that the respondent has been guilty of an improper association (other than adultery) with a person named, the petitioner shall, as soon as practicable after the time limited for the respondent to give notice of intention to defend has expired, apply to the court for directions as to whether the person named shall be made a co-respondent in the cause.

(4) An application for directions under paragraph (1) or (3) may be made *ex parte* if no notice of intention to defend has been given.

(5) Paragraphs (1) and (3) of this rule do not apply where the person named has died before the filing of the petition.

### SERVICE OF PETITION, ETC.

#### Service of petition

14 (1) Subject to this rule and rules 113 and 117, a copy of every petition shall be served personally or by post on every respondent or co-respondent.

(2) Service may be effected—

- (a) where the party to be served is a person under disability within the meaning of rule 112, through the petitioner, and
- (b) in any other case, through the court or, if the petitioner so requests, through the petitioner.

(3) Personal service shall in no case be effected by the petitioner himself.

(4) A copy of any petition which is to be served through the court shall be served personally or by post by a public officer employed in the registry.

(5) For the purposes of the foregoing paragraphs, a copy of a petition shall be deemed to be duly served if—

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- (a) an acknowledgment of service in Form 6 is signed by the party to be served or by an attorney on his behalf and is returned to the registry, and
  - (b) where the form purports to be signed by the respondent, his signature is proved at the hearing.
- (6) Where a copy of a petition has been sent to a party and no acknowledgment of service has been returned to the registry, the registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.
- (7) Where a copy of a petition has been served on a party personally and no acknowledgment of service has been returned to the registry, service shall be proved by filing an affidavit of service showing, in the case of a respondent, the server's means of knowledge of the identity of the party served.
- (8) Where an acknowledgment of service is returned to the registry, the registrar shall send a photographic copy thereof to the petitioner.
- (9) An application for leave to substitute some other mode of service for the modes of service prescribed by paragraph (1), or to substitute notice of the proceedings by advertisement or otherwise, shall be made *ex parte* by lodging an affidavit setting out the grounds on which the application is made; and the form of any advertisement shall be settled by the registrar.
- (10) Where it appears necessary or expedient to do so the registrar may by order dispense with service of a copy of a petition on the respondent or on any other person, and an application to a registrar for an order under this paragraph may, if no notice of intention to defend has been given, be made *ex parte* by lodging an affidavit setting out the grounds of the application.

### Notice of intention to defend

- 15 (1) In these Rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form 6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgment relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the registry.
- (2) In relation to any person on whom there is served a document requiring or authorising an acknowledgment of service to be returned to the registry, references in these Rules to the time limited for giving notice of intention to defend are references to eight days after service of the document, inclusive of the day of service, or such other time as may be fixed.
- (3) Notice of intention to defend a cause begun by petition may be given at any time before directions for trial are given, notwithstanding that the time limited for giving the notice has expired.
- (4) Subject to paragraphs (2) and (3), a person may give notice of intention to defend notwithstanding that he has already returned to the registry an acknowledgment of service not constituting such a notice.

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Consent to the grant of a decree

16 (1) Where, before the hearing of a petition alleging two years' separation coupled with the respondent's consent to a decree being granted, the respondent wishes to indicate to the court that he consents to the grant of a decree, he must do so by giving the registrar a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgment of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgment is signed—

- (a) in the case of a respondent acting in person, by the respondent, or
- (b) in the case of a respondent represented by an attorney, by the respondent as well as by the attorney.

(2) A respondent to a petition which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

Where any such notice is given and none of the other facts mentioned in section 5(2) of the Act is alleged, the proceedings on the petition shall be stayed and the registrar shall thereupon give notice of the stay to all parties.

### PLEADINGS AND AMENDMENT

Supplemental petition and amendment of petition

17 (1) A supplemental petition may be filed only with leave.

(2) A petition may be amended without leave before it is served but only with leave after it has been served.

(3) Subject to paragraph (4), an application for leave under this rule—

- (a) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made *ex parte* by lodging in the registry the supplemental petition or a copy of the petition as proposed to be amended, and
- (b) shall, in any other case, be made by summons, to be served, unless otherwise directed, on every opposite party.

(4) The registrar may, if he thinks fit, require an application for leave to be supported by an affidavit.

(5) An order granting leave shall—

- (a) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;
- (b) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.

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(6) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(7) Rules 11 and 13 shall apply to a supplemental or amended petition as they apply to the original petition.

(8) Unless otherwise directed, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under this rule shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(9) The petitioner shall file the documents required by paragraph (8) to be served on any person and thereupon, unless otherwise directed, rules 12(6) (except sub-paragraph (a)) and 14 shall apply in relation to that person as they apply in relation to a person required to be served with an original petition.

### Filing of answer to petition

18 (1) Subject to paragraph (2) and to rules 16, 20 and 49, a respondent or co-respondent who—

- (a) wishes to defend the petition or to dispute any of the facts alleged in it,
- (b) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief, or
- (c) being the respondent to a petition to which section 9(1) of the Act applies, wishes to oppose the grant of a decree on the ground mentioned in section 9(1), shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed at any time before directions have been given for the trial of the cause, notwithstanding that the time for filing the answer has expired or that the person filing the answer has not given notice of intention to defend.

(3) Any reference in these Rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.

(4) Where in a cause in which relief is sought under section 16(d) of the Act the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the charges in the petition, give the registrar notice to that effect when filing his answer.

### Filing of reply and subsequent pleadings

19 (1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 23.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

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### Filing of pleading after directions for trial

20 No pleading shall be filed without leave after directions for trial have been given.

### Contents of answer and subsequent pleadings

21 (1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required in the case of a petition by paragraphs (11) and (12) of Form 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs (4), (5) and (6) of Form 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph (8) of Form 2 and so much of that form as requires the petition to conclude with a prayer giving details of the relief claimed shall, where appropriate, apply, with the necessary modifications, to a respondent's answer as they apply to a petition:

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) Where an answer to any petition to which rule 9(2) applies contains a prayer for relief, it shall contain the information required by that paragraph in the case of the petition in so far as it has not been given by the petitioner.

(7) Rule 11 shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

### Allegation against third person in pleading

22 (1) Rules 13 and 14 shall apply, with the necessary modifications, to a pleading other than a petition as they apply to a petition. so however that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

(2) Rule 18 shall apply, with the necessary modifications, to a party cited as it applies to a co-respondent.

### Service of pleadings

23 A party who files an answer, reply or subsequent pleading shall at the same time file a copy for service on every opposite party and thereupon the registrar shall annex to every copy for service on a party cited in the pleading a notice in Form 5 with Form 6 attached and shall send a copy to every other opposite party.

### Supplemental answer and amendment of pleadings

24 Rule 17 shall apply, with the necessary modifications, to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as they apply to the filing of a supplemental petition and the amendment of a petition.

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25 [blank]

Particulars

26 (1) A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

(3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

27 [blank]

PREPARATIONS FOR TRIAL

28 [blank]

29 [blank]

Medical examination in proceedings for nullity

30 (1) In proceedings for nullity on the ground of incapacity to consummate the marriage the petitioner shall, subject to paragraph (2), apply to the registrar to determine whether medical inspectors should be appointed to examine the parties.

(2) An application under paragraph (1) shall not be made in an undefended cause—

- (a) if the husband is the petitioner, or
- (b) if the wife is the petitioner and—
  - (i) it appears from the petition that she was either a widow or divorced at the time of marriage in question, or
  - (ii) it appears from the petition or otherwise that she has borne a child, or
  - (iii) a statement by the wife that she is not a virgin is filed,unless, in any such case, the petitioner is alleging his or her own incapacity.

(3) References in paragraphs (1) and (2) to the petitioner shall, where the cause is proceeding only on the respondent's answer or where the allegation of incapacity is made only in the respondent's answer, be construed as references to the respondent.

(4) An application under paragraph (1) by the petitioner shall be made—

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- (a) where the respondent has not given notice of intention to defend, after the time limited for giving the notice has expired;
- (b) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and an application under paragraph (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under paragraph (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the cause, make an application under that paragraph.

(6) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the registrar for the appointment of medical inspectors to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the petitioner under paragraph (1) or (6) may be made *ex parte*.

(8) If the registrar hearing an application under paragraph (1) or (6) considers it expedient to do so, he shall appoint a medical inspector or, if he thinks it necessary, two medical inspectors to examine the parties and report to the court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in paragraph (1) the court may, if it thinks fit, appoint a medical inspector or two medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under paragraph (8) is made or who has the conduct of proceedings in which an order under paragraph (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

### Conduct of medical examination

31 (1) Every medical examination under rule 30 shall be held at the consulting room of the medical inspector or, as the case may be, of one of the medical inspectors appointed to conduct the examination:

Provided that the registrar may, on the application of a party, direct that the examination of that party shall be held at such other place as the registrar thinks convenient.

(2) Every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined.

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(3) Every report made in pursuance of rule 30 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

(4) In an undefended cause it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial unless so directed.

(5) In a defended cause, if the report made in pursuance of rule 30 is accepted by both parties, notice to that effect shall be given by the parties to the registrar and to the inspector or inspectors not less than seven clear days before the date fixed for the trial; and where such notice is given, it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial.

(6) Where pursuant to paragraph (4) or (5) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the court by a court expert and be given such weight as the court thinks fit,

32     *[blank]*

Directions for trial

33     (1) On the written request of the petitioner or of any party who is defending a cause begun by petition, the registrar shall give directions for the trial of the cause if he is satisfied—

- (a) that any application for directions required by rule 13(3), or by that rule as applied by rule 17(7) or 22(1), has been made;
- (b) that a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, that any affidavit required by rule 113(2) has been filed;
- (c) if no notice of intention to defend has been given by any party entitled to give it, that the time limited for giving such notice has expired; \_
- (d) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired;
- (e) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired;
- (f) in proceedings for nullity—
  - (i) that any application required by rule 30(1) has been made, and
  - (ii) where an order for the examination of the parties has been made on an application under rule 30, that the notice required by paragraph (10) of that rule has been served and that the report of the inspector or inspectors has been filed.

(3) Where in the case of a petition for divorce or judicial separation pending in the court—

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- (a) the only fact mentioned in section 5(2) of the Act on which the petitioner relies in support of the petition is that specified in section 5(2)(d),
- (b) there are no children of the family to whom section 45 of the Act applies, and
- (c) the respondent has returned to the registry an acknowledgment of service containing a statement to the effect that he consents to a decree being granted or a statement to that effect signed by the respondent has been lodged in the registry,

then, unless otherwise directed,—

- (i) there shall be filed with the request for directions for trial an affidavit by the petitioner containing the information required by Form 7, as near as may be in the order there set out, together with any corroborative evidence on which the petitioner intends to rely; and
- (ii) the registrar shall give directions for trial by entering the cause in a list to be known as the special procedure list.

(4) In any other case the registrar shall give directions for trial by setting the cause down for trial and giving notice that he has done so to every party to the cause.

34 [blank]

Directions as to allegations under section 5 (2) (b) of the Act

35 (1) Where in a defended cause the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the registrar may, of his own motion on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter-allegations made in the pleadings or particulars.

(2) Where such an order is made or authority given, the allegations and counter-allegations shall, unless otherwise directed, be listed concisely in chronological order, each counter-allegation being set out against the allegation to which it relates, and the party filing the schedule shall serve a copy of it on any other party to the cause who has filed a pleading.

Stay of proceedings under Schedule 1 to the Act

36 (1) [blank]

(2) An application for an order under paragraph 8 of Schedule 1 to the Act shall be made to a judge.

(3) Where, on giving directions for trial, it appears to the registrar from any information given pursuant to rule 9(2) or 21(4) or paragraph (4) of this rule that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in any country outside Bermuda and he considers that the question whether the proceedings on the petition should be stayed under

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paragraph 8 of Schedule 1 to the Act ought to be determined by the court, he shall fix a date and time for the consideration of that question by a judge and give notice thereof to all parties.

In this paragraph “proceedings continuing in any country outside Bermuda” has the same meaning as in rule 9(2).

(4) Any party who makes a request for directions for trial in matrimonial proceedings within the meaning of paragraph 2 of Schedule 1 to the Act shall, if there has been a change in the information given pursuant to rules 9 (2) and 21 (4) , file a statement giving particulars of the change.

(5) An application by a party to the proceedings for an order under paragraph 9 of Schedule 1 to the Act may be made to the registrar, and he may determine the application or may refer the application, or any question arising thereon, to a judge as if the application were an application for ancillary relief.

### EVIDENCE

#### Evidence generally

37 (1) Subject to the provisions of rules 11, 39, 40 and 48 and of the Evidence Act 1905 and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally and in open court.

(2) Nothing in rules 39 and 40 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

*[Rule 37(1) amended by BR 1 / 2016 rule 3 effective 8 January 2016]*

38 *[blank]*

#### Evidence by affidavit, etc

39 (1) The court may order—

- (a) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable;
- (b) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—
  - (i) by statement on oath of information or belief, or
  - (ii) by the production of documents or entries in books, or
  - (iii) by copies of documents or entries in books, or
  - (iv) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper containing a statement of that fact; and
- (c) that not more than a specified number of expert witnesses may be called.

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- (2) An application to the registrar for an order under paragraph (1) shall—
- (a) if no notice of intention to defend has been given, or
  - (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought, or
  - (c) if the cause is undefended and directions for trial have been given,

be made *ex parte* by filing an affidavit stating the grounds on which the application is made.

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the proposed affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under paragraph (2).

(4) The court may, on the application of any party to a cause begun by petition, make an order under R.S.C. Order 39, rule 1, for the examination on oath of any person, and R.S.C. Order 38, rule 9 or Order 39, (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

(5) On any application made by originating summons, summons, notice or motion, evidence may be given by affidavit unless these Rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the court.

Evidence of marriage outside Bermuda

40 (1) The celebration of a marriage outside Bermuda and its validity under the law of the country where it was celebrated may, in any matrimonial proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in accordance with section 52 of the Evidence Act 1905 [*title 8 item 10*] or in any other manner authorised apart from this rule.

41 [blank]

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42 [blank]

TRIAL, ETC.

Mode of trial

43 (1) Unless otherwise directed and subject to rule 48, every cause and any issue arising therein shall be tried by a judge without a jury.

44 [blank]

Trial of issue

45 Where directions are given for the separate trial of any issue, the registrar shall, after those directions have been complied with, set down the issue for trial.

46 [blank]

Further provisions as to date of trial

47 Except with the consent of the parties or by leave of a judge, no cause, whether defended or undefended, shall be tried until after the expiration of 10 days from the date on which directions for trial were given:

Provided that nothing in this rule shall apply to a cause entered in the special procedure list.

Disposal of causes in special procedure list

48 (1) As soon as practicable after a cause has been entered in the special procedure list, the registrar shall consider the evidence filed by the petitioner and—

- (a) if he is satisfied that the petitioner has sufficiently proved the contents of the petition and is entitled to a decree and any costs for which he prays and that there are no children of the family to whom section 45 of the Act applies, the registrar shall make and file a certificate to that effect;
- (b) if he is not so satisfied he may either give the petitioner an opportunity of filing further evidence or remove the cause from the special procedure list whereupon rule 33(3) shall cease to apply.

(2) On the filing of a certificate under paragraph (1) a day shall be fixed for the pronouncement of a decree by a judge in open court and the registrar shall send to each party notice of the day so fixed and a copy of the certificate but it shall not be necessary for either party to appear on that day.

(3) Within 14 days after the pronouncement of a decree in accordance with a certificate under paragraph (1), any person may inspect the certificate and the evidence filed under rule 33 (3) and may bespeak copies on payment of the prescribed fee.

Right to be heard on ancillary questions

49 (1) A respondent may, without filing an answer, be heard on—

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- (a) any question of custody of, or access to, any child of the family,
- (c) any question whether a supervision order should be made as respects any such child under section 47 of the Act, and
- (d) any question of ancillary relief.

(2) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs but no allegation shall be made against a party claiming costs unless the party making the allegation has filed an answer.

(3) A party shall be entitled to be heard on any question pursuant to paragraph (1) or (2) whether or not he has returned to the registry an acknowledgment of service stating his wish to be heard on that question.

(4) In proceedings after a decree nisi of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the decree shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

### Respondent's statement as to arrangements for children

50 A respondent on whom there is served a statement in accordance with rule 8(2) may, at any time before the judge makes an order under section 45 of the Act, file in the registry a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the registrar shall send a copy to the petitioner.

### Order as to arrangements for children to be drawn up

51 Any order made pursuant to section 45(1) or (4) of the Act shall be drawn up.

### Restoration of matters adjourned etc. at the hearing

52 (1) Where at the trial of a cause any application is adjourned by the judge for hearing in chambers, it may be restored—

- (a) by notice without a summons, or
- (c) by notice given by the registrar when in his opinion the matter ought to be further considered,

and the notice shall state the place and time for the hearing of the restored application and be served on every party concerned.

(2) Where in proceedings for divorce, nullity of marriage or judicial separation the judge has not made an order pursuant to section 45 (1) of the Act, paragraph (1) shall, unless the judge otherwise directs, apply as if an application with respect to the arrangements for the care and upbringing of any such child had been adjourned for bearing in chambers.

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### Shorthand note etc. of proceedings at trial

53 (2) Unless the judge otherwise directs, a shorthand note shall be taken of the proceedings at the trial in open court of every cause pending in the court.

(3) A shorthand note may be taken of any other proceedings before a judge if directions for the taking of such a note are given by or on behalf of the Chief Justice.

(4) The shorthand writer shall sign the note and certify it to be a correct shorthand note of the proceedings and shall retain the note unless he is directed by the registrar to forward it to him.

(5) On being so directed the shorthand writer shall furnish the registrar with a transcript of the whole or such part as may be directed of the shorthand note,

(6) Any party, any person who has intervened in a cause or the Attorney-General shall be entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer shall, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the prescribed fee.

(7) Except as aforesaid, the shorthand writer shall not, without the permission of the court, furnish the shorthand note or a transcript of the whole or any part thereof to anyone.

(8) In these Rules references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer shall have effect as if they were references to the person responsible for transcribing the record.

### Application for re-hearing

54 (1) An application for re-hearing of a cause tried by a judge alone where no error of the court at the hearing is alleged, shall be made to a judge,

(2) Unless otherwise directed, the application shall be made to the judge by whom the cause was tried and shall be heard in open court.

(3) The application shall be made by a notice to attend before the judge on a day specified in the notice, and the notice shall state the grounds of the application.

(4) Unless otherwise directed, the notice must be issued within six weeks after the judgment and served on every other party to the cause not less than 14 days before the day fixed for the hearing of the application.

(5) The applicant shall file a certificate that the notice has been duly served on each person required to be served therewith.

(6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any pleading which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the cause.

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(7) Not less than seven days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of any official shorthand note of the proceedings at the trial.

(8) Any other application for re-hearing shall be made by way of appeal to the Court of Appeal.

(9) This rule shall apply, with the necessary modifications, to a cause disposed of under rule 48 as it applies to a cause tried by a judge alone.

### DECREES AND ORDERS

#### Decrees and orders

55 (1) Every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up by the registrar.

#### Application for rescission of decree

56 (1) An application by a respondent under section 14 (1) of the Act for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court.

(2) Paragraphs (3) and (5) of rule 54 shall apply to an application under this rule as they apply to an application under that rule.

(3) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed for the hearing of the application.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

#### Application under section 14 of the Act

57 (1) An application by the respondent to a petition for divorce for the court to consider the financial position of the respondent after the divorce shall be made by notice in Form 12.

(2) Where a petitioner is served with a notice in Form 12, then, unless he has already filed an affidavit under rule 8(3) or rule 73(2), he shall, within 14 days after the service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the respondent shall file an affidavit in reply containing full particulars of his property and income unless already given in an affidavit filed by him under rule 73(3).

(4) The powers of the court on the hearing of the application may be exercised by the registrar.

(5) If a decree nisi has been granted on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation and has made no such finding as to any other fact mentioned in section 5 (2) of the Act, the

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registrar shall fix an appointment for the hearing, and rules 77 (3) to (7) , 80 and 81 shall apply to the application as if it were an application for ancillary relief.

(6) At any time before the hearing of the application is concluded (and without prejudice to any right of appeal), the registrar may, and if so requested by either party shall, refer the application, or any question arising thereon, to a judge.

(7) A statement of any of the matters mentioned in section 14(3) of the Act with respect to which the court is satisfied, or, where the court has proceeded under section 14(4), a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the court minutes.

### Copies of decrees and orders

58 (1) A copy of every decree shall be sent by the registrar to every party to the cause.

(2) A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on the payment of the prescribed fee.

### Service of order

59 (1) Where an order made in matrimonial proceedings has been drawn up, the registrar shall, unless otherwise directed, send a copy of the order to every party affected by it.

(2) Where a party against whom the order is made is acting by an attorney, a copy may, if the registrar thinks fit, be sent to that party as if he were acting in person, as well as to his attorney,

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to R.S.C. Order 45, rule 7 (which deals with the service of an order to do an act), and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

60 *[blank]*

### Intervention to show cause by Attorney-General

61 (1) If the Attorney-General wishes to show cause against a decree nisi being made absolute, he shall give notice to that effect to the registrar and to the party in whose favour it was pronounced.

(2) Within 21 days after giving notice under paragraph (1) the Attorney-General shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The registrar shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

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(4) Subject to the following provisions of this rule, these Rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition by which a cause is begun.

(5) If no answer to the plea is filed within the time limited or, if an answer is filed and struck out or not proceeded with, the Attorney-General may apply forthwith by motion for an order rescinding the decree and dismissing the petition.

(6) Rule 33 shall apply to proceedings in respect of a plea by the Attorney-General as it applies to the trial of a cause, so however that if all the charges in the plea are denied in the answer the application for directions shall be made by the Attorney-General and in any other case it shall be made by the party in whose favour the decree nisi has been pronounced.

### Intervention to show cause by person other than Attorney-General

62 (1) If any person other than the Attorney-General wishes to show cause under section 13 of the Act against a decree nisi being made absolute, he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced. \_

(2) A party on whom a copy of an affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be filed without leave.

(5) Any person who files an affidavit under paragraph (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the registrar shall thereupon serve the copy on that person.

(6) A person showing cause shall apply to the judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within 14 days after expiry of the time allowed for filing such an affidavit.

(7) If the person showing cause does not apply under paragraph (6) within the time limited, the person in whose favour the decree was pronounced may do so.

63 *[blank]*

### Rescission of decree nisi by consent

64 (1) Where, after a decree nisi has been pronounced but before it has been made absolute, a reconciliation has been effected between the petitioner and the respondent, either party may apply for an order rescinding the decree by consent.

(2) The application shall be made on notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise affected by the decree,

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and a copy of the summons by which the application is made shall be served on every such person.

- (3) The application shall be made to a judge and may be heard in chambers.

Decree absolute on lodging notice.

65 (1) Subject to rule 66(1), an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the registrar a notice in Form 8.

(2) On the lodging of such a notice, the registrar shall search the court minutes and if he is satisfied—

- (a) that no appeal against the decree and no application for re-hearing of the cause or for rescission of the decree is pending;
- (b) that no order has been made by the Court of Appeal extending the time for appealing against the decree or by a judge extending the time for making an application for re-hearing of the cause or, if any such order has been made, that the time so extended has expired;
- (c) that no application for such an order as is mentioned in sub-paragraph (b) is pending;
- (d) that no intervention under rule 61 or 62 is pending;
- (e) that the judge has made an order under section 45(1) of the Act;
- (g) that the provisions of section 14(2) to (4) of the Act do not apply or have been complied with,

the registrar shall make the decree absolute:

Provided that if the notice is lodged more than 12 months after the decree nisi, the registrar may require the applicant to file an affidavit accounting for the delay and may make such order on the application as he thinks fit or refer the application to a judge.

Decree absolute on application

66 (1) In the following cases an application for a decree nisi to be made absolute shall be made to a judge, that is to say—

- (a) where, within six weeks after a decree nisi has been pronounced, the Attorney-General gives to the registrar and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or
- (b) where there are other circumstances which ought to be brought to the attention of the court before a decree nisi is made absolute.

Unless otherwise directed, the summons by which the application is made shall be served on every party to the cause (other than the applicant) and, in a case to which sub-paragraph (a) applies, on the Attorney-General.

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(2) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to a judge or the registrar, and the summons by which the application is made shall be served on the other spouse not less than four clear days before the day on which the application is heard.

(3) An order granting an application under this rule shall not take effect until the registrar has searched the court minutes and is satisfied as to the matters mentioned in rule 65(2).

### Indorsement and certificate of decree absolute

67 (1) Where a decree nisi is made absolute, the registrar shall make an indorsement to that effect on the decree, stating the precise time at which it was made absolute.

(2) On a decree nisi being made absolute, the registrar shall send to the petitioner and the respondent a certificate in Form 9 or 10, whichever is appropriate, authenticated by the seal of the court.

(3) An index of decrees absolute shall be kept at the registry and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

(4) A certificate in Form 9 or 10 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

## ANCILLARY RELIEF

### Application by petitioner or respondent for ancillary relief

68 (1) Any application by a petitioner or by a respondent who files an answer claiming relief, for—

- (a) an order for maintenance pending suit,
- (b) a financial provision order,
- (c) a property adjustment order,

shall be made in the petition or answer, as the case may be.

(2) Notwithstanding anything in paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently—

- (a) by leave of the court, either by notice in Form 11 or at the trial, or
- (b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 11.

(3) An application by a petitioner or respondent for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form 11.

### Application by guardian etc. for ancillary relief in respect of children

69 Any of the following persons, namely—

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- (a) the guardian of any child of the family,
- (b) any person who has the custody or the care and control of a child of the family under an order of the court,
- (d) any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a child of the family,
- (e) the Director of Social Services if appointed the guardian *ad litem* of a child of the family under rule 115, and
- (f) any other person in whose care a child of the family is and who has obtained leave to intervene in the cause for the purpose of applying for ancillary relief in respect of that child,

may apply for an order for ancillary relief as respects that child by notice in Form 11.

### Application in Form 11 or 12

70 Where an application for ancillary relief is made by notice in Form 11 or an application under rule 57 is made by notice in Form 12, the notice shall be filed in the registry and within four days after filing the notice the applicant shall serve a copy on the respondent to the application.

### Application for ancillary relief after order of magistrates' court

71 Where an application for ancillary relief is made while there is in force an order of a magistrates' court for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

### Children to be separately represented on certain applications

72 (1) Where an application is made to the court for an order for a variation of settlement, the court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any children concerned, direct that the children be separately represented on the application, by an attorney, and may appoint the Director of Social Services or other fit person to be guardian *ad litem* of the children for the purpose of the application.

(2) On any other application for ancillary relief the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).

(3) Before a person other than the Director of Social Services is appointed guardian *ad litem* under this rule there shall be filed a certificate by the attorney acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

### General provisions as to evidence etc, on application for ancillary relief

73 (1) A petitioner or respondent who has applied for ancillary relief in his petition or answer and who intends to proceed with the application before the registrar shall, subject to rule 83, file a notice in Form 13 and within four days after doing so serve a copy on the other spouse.

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(2) Where a respondent or a petitioner is served with a notice in Form 11 or 13 in respect of an application for ancillary relief, not being an application to which rule 74 or 75 applies, then, unless the parties are agreed upon the terms of the proposed order, he shall, within 14 days after service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the applicant shall file an affidavit in reply containing full particulars of his property and income.

Evidence on application for property adjustment or avoidance of disposition order

74 (1) Where an application is made for a property adjustment order, or an avoidance of disposition order, the application shall state briefly the nature of the adjustment proposed or the disposition to be set aside and the notice in Form 11 or 13, as the case may be, shall, unless otherwise directed, be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The affidavit in support shall contain, so far as known to the applicant, full particulars—

- (a) in the case of an application for a transfer or settlement of property—
  - (i) of the property in respect of which the application is made,
  - (ii) of the property to which the party against whom the application is made is entitled either in possession or reversion;
- (b) in the case of an application for an order for a variation of settlement—
  - (i) of all settlements, whether ante-nuptial or post-nuptial, made on the spouses, and
  - (ii) of the funds brought into settlement by each spouse;
- (c) in the case of an application for an avoidance of disposition order—
  - (i) of the property to which the disposition relates,
  - (ii) of the persons in whose favour the disposition is alleged to have been made, and in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.

(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the affidavit in support shall, in addition to containing any particulars required by paragraph (2) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

(4) A copy of Form 11 or 13, as the case may be, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application, that is to say—

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- (a) in the case of an application for an order for a variation of settlement order, the trustees of the settlement and the settlor if living,
  - (b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made,
  - (c) in the case of an application to which paragraph (3) refers, any mortgagee of whom particulars are given pursuant to that paragraph, and such other persons, if any, as the registrar may direct.
- (5) Any person served with notice of an application to which this rule applies may, within 14 days after service, file an affidavit in answer.

### Evidence on application for variation order

- 75 (1) An application for a variation order shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.
- (2) The respondent to the application may, within 14 days after service of the affidavit, file an affidavit in answer.

### Service of affidavit in answer or reply

- 76 (1) A person who files an affidavit for use on an application under rule 73, 74 or 75 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 14 and a copy of the affidavit or of such part thereof as the court may direct, indorsed as aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 77(6) within eight days of service of the affidavit on him, inclusive of the day of service.
- (2) Rule 49(4) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

### Investigation by registrar of application for ancillary relief

- 77 (1) On or after the filing of a notice in Form 11 or 13 an appointment shall be fixed for the hearing of the application by the registrar.
- (2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.
- (3) Notice of the appointment, unless given in Form 11 or 13 (as the case may be) shall be given by the registrar to every party to the application.
- (4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the registrar for directions.

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(5) At the hearing of an application for ancillary relief the registrar shall, subject to rule 78, investigate the allegations made in support of and in answer to the application, and may take evidence orally and may order the attendance of any person for the purpose of being examined or cross-examined, and may at any stage of the proceedings order the discovery and production of any document or require further affidavits.

(6) The registrar may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

(7) Where any party to such an application intends on the day appointed for the hearing to apply only for directions, he shall file and serve on every other party a notice to that effect.

### Applications heard by registrar

78 (1) Except in a case to which rule 79 applies and subject to paragraph (2), the registrar shall, after completing his investigation under rule 77, make such order as he thinks just.

(2) The registrar may at any time refer the application, or any question arising thereon, to a judge for his decision.

(3) Pending the final determination of the application, the registrar may make an interim order upon such terms as he thinks just.

### Applications heard by judge

79 (1) In the case of an application for an avoidance of disposition order and any related application for financial relief which is being heard at the same time, the registrar shall, after completing his investigation under rule 77, report the result thereof in writing to a judge to whom the application shall be adjourned.

(2) The registrar's report shall contain an estimate of the financial relief to which, in his opinion, the applicant is entitled (if he has not already obtained an order for financial relief), and of the relief to which, in the registrar's opinion, the applicant would be entitled if the application were granted.

(3) The registrar's report shall be filed and any party shall be entitled to inspect the report and to be supplied with a copy on payment of the prescribed fee.

(4) On the hearing of the application the judge may confirm or vary the registrar's report or make such other order as he thinks just.

(5) Where the parties come to an agreement as to the terms of the order to be made on the application, an order in those terms may be made by the registrar and the foregoing provisions of this rule shall not apply.

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Arrangements for hearing of application etc. by judge

82 (1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to a judge, the registrar shall fix a date and time for the hearing of the application or the consideration of the question and give notice thereof to all parties.

(2) The hearing or consideration shall, unless otherwise directed, take place in chambers.

Request for periodical payments order at same rate as order for maintenance pending suit

83 (1) Where at or after the date of a decree nisi of divorce or nullity of marriage an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his petition or answer, as the case may be, request the registrar in writing to make such an order (in this rule referred to as a "corresponding order") providing for payments at the same rate as those provided for by the order for maintenance pending suit.

(2) Where such a request is made, the registrar shall serve on the other spouse a notice in Form 15 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the registrar and to the applicant within 14 days after service of the notice in Form 15.

(3) If the other spouse does not give notice of objection within the time aforesaid, the registrar may make a corresponding order without further notice to that spouse and without requiring the attendance of the applicant or his attorney, and shall in that case serve a copy of the order on the applicant as well as on the other spouse.

Application for order under section 41(2)(a) of the Act

84 (1) An application under section 41 (2) (a) of the Act for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim shall be made to a judge.

(2) Rule 82(1) shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

85 to [blank]

91

APPLICATIONS RELATING TO CHILDREN

Custody, care and supervision of children

92 (1) Subject to paragraph (2), an application for an order relating to the custody or education of a child, or for an order providing for his supervision under section 47 of the Act, shall be made to a judge.

(2) An application by the petitioner or the respondent for access to a child of the family, where the other party consents to give access and the only question for determination is the extent to which access is to be given, may be made to the registrar.

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(3) Without prejudice to the right of any other person entitled to apply for an order as respects a child, the guardian of any child of the family and any other person who, by virtue of an order of a court, has the custody or control of such a child or his care or supervision in pursuance of section 47 of the Act may, without obtaining leave to intervene in the cause, apply by summons for such an order as is mentioned in paragraph (1).

(4) On any application to a judge relating to the custody, care and control of, or access to, a child—

- (a) neither the applicant nor the respondent shall be entitled to be heard in support of or, as the case may be, in opposition to the application unless he is available at the hearing to give oral evidence or the judge otherwise directs;
- (b) the judge may refuse to admit any affidavit by any person (other than the applicant or respondent) who is or is proposed to be responsible for the child's care and upbringing or with whom the child is living or is proposed to live unless that person is available at the hearing to give oral evidence;
- (c) [blank]
- (d) [blank]

(5) Where an affidavit filed for use in proceedings relating to a child contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 14 and a copy of the affidavit, or of such part thereof as the court may direct, indorsed as aforesaid shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under paragraph (7) within eight days of service of the affidavit on him, inclusive of the day of service.

(6) Rule 49 (4) shall apply to a person served with an affidavit under paragraph (5) of this rule as it applies to a co-respondent.

(7) The court may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Further provisions as to orders under section 47 of the Act

93 (4) An application by the Director of Social Services for the variation or discharge of an order made under section 47 of the Act or for directions as to the exercise of his powers under the order may, in case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the court and the authority or officer shall, if practicable, notify any interested party of the intention to make the application.

Removal of child out of Bermuda

94 (1) In any cause begun by petition the petitioner or the respondent may apply at any time for an order prohibiting the removal of any child of the family under 18 out of Bermuda without the leave of the court except on such terms as may be specified in the order.

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Unless otherwise directed, an application under this paragraph may be made *ex parte*.

(2) Unless otherwise directed, any order relating to the custody or care and control of a child shall provide for the child not to be removed out of Bermuda without the leave of the court except on such terms as may be specified in the order.

(3) Subject to rule 97(2), an application for leave to remove a child out of Bermuda shall be made to a judge except in the following cases when it may be made to the registrar, namely—

- (a) where the application is unopposed, or
- (b) where the application is for the temporary removal of the child and is opposed on a ground which in the opinion of the registrar relates only to the arrangements for the care of the child during the removal or any other incidental matter.

### Reference to Director of Social Services

95 (1) A judge or the registrar may at any time refer to the Director of Social Services for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.

(2) Without prejudice to paragraph (1), any party to an application to which rule 92 applies may, before the application is heard, request the registrar to call for a report from the Director on any matter arising on the application, and if the registrar is satisfied that the other parties to the application consent and that sufficient information is available to enable the Director to carry out the investigation, the registrar may refer the matter to the Director for investigation and report before the hearing.

(3) Where a reference is made under this rule—

- (a) the Director may inspect the court file;
- (b) after completing his investigation, the Director shall file his report and the registrar shall thereupon notify the parties that they may inspect it and may bespeak copies on payment of the prescribed fee;
- (c) the registrar shall give notice to the Director of the date of hearing of the application or other proceeding.

### Notice of other proceedings relating to children

96 If, while a cause is pending, proceedings relating to any child of the family are begun in the Supreme Court or a magistrates' court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the cause, by the petitioner.

97 [blank]

OTHER APPLICATIONS

Application in case of wilful neglect to maintain

98 (1) Every application under section 31 of the Act shall be made by originating summons, which must, unless otherwise directed, contain the information required by Form 19.

(2) There shall be filed with the application an affidavit by the applicant verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(4) If the registrar does not consider it practicable to fix a day for the hearing of the application at the time when it is issued, he may do so subsequently and in that case he shall forthwith give notice of the day to all parties.

(5) Within 14 days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an answer setting out the grounds on which he relies (including any allegation which he wishes to make against the applicant), and shall in any case, unless otherwise directed, file an affidavit containing full particulars of his property and income, and the registrar shall serve a copy of the answer, if any, and of the affidavit on the applicant.

(6) Where an answer is filed alleging adultery the alleged adulterer shall, unless otherwise directed, be made a party cited and be served with a copy of the answer, and rules 12(6) and 14 shall apply, with the necessary modifications, as if the answer were a petition and the party cited were a co-respondent.

(7) A party cited who wishes to defend all or any of the charges made against him shall, within 21 days after the time limited for giving notice of intention to defend, file an answer and the registrar shall serve a copy of the answer on the respondent.

(8) If the respondent does not file an affidavit in accordance with paragraph (5), the court may order him to file an affidavit containing full particulars of his property and income, and the registrar shall serve a copy of any such affidavit on the applicant.

(9) Within 14 days after being served with a copy of any answer filed by the respondent, the applicant may file a reply, and in that case the registrar shall serve a copy on the respondent and on any party cited.

(10) Within 14 days after being served with a copy of the respondent's affidavit, the applicant may file a further affidavit as to means and as to any fact stated in the respondent's affidavit which he wishes to dispute, and in that case the registrar shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

(11) An applicant, respondent or party cited who files an answer, affidavit or reply under any of the preceding paragraphs of this rule shall at the same time file a copy for service on every party required to be served therewith.

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### Hearing of applications under rule 98

99 (4) On the hearing of the application the judge may make such order as he thinks just or may refer the application (except any claim for custody), or any application for an order under section 31(5) of the Act, to the registrar for him to investigate the means of the parties to the marriage.

(5) Where an application is referred to the registrar under paragraph (4) he shall fix an appointment for the hearing of the application and the provisions of these Rules relating to ancillary relief shall apply subject to the modification that in rule 79(1) for the words from "In the case of" to "the same time" there shall be substituted the words "Except where the application is for an order made under section 31(5) of the Act or the judge has made a finding that there has been wilful neglect to maintain".

(6) Where a person has been made a party cited, the judge may, if after the close of the evidence on the part of the respondent he is of opinion that there is not sufficient evidence against the party cited, dismiss him from the proceedings.

(7) Subject to the provisions of this rule and Rule 98, these Rules shall, so far as applicable, apply, with the necessary modifications, to an application under section 31 of the Act as if—

- (a) the application were a cause, and
- (b) the originating application were a petition and the applicant the petitioner.

### Application for alteration of maintenance agreement during lifetime of parties

100 (1) An application under section 39 of the Act for the alteration of a maintenance agreement shall be made by originating summons containing, unless otherwise directed, the information required by Form 21.

(2) The application may be heard and determined by the registrar.

(3) There shall be filed with the application an affidavit by the applicant exhibiting a copy of the agreement and verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application containing full particulars of his property and income and, if he does not do so, the court may order him to file an affidavit containing such particulars.

(6) A respondent who files an affidavit under paragraph (5) shall at the same time file a copy which the registrar shall serve on the applicant.

(7) Rules 76, 77(4) to (7), 78 and 82 shall apply, with the necessary modifications, to an application under section 39 of the Act as if it were an application for ancillary relief.

(8) Subject to this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to an application under section 39 of the Act as if the application were a cause, the originating application a petition, and the applicant the petitioner.

## MATRIMONIAL CAUSES RULES 1974

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Application for alteration of maintenance agreement after death of one party

101 (1) An application under section 40 of the Act for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating summons in Form 22.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

- (a) whether the deceased died domiciled in Bermuda;
- (b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;
- (c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—
  - (i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18), and the place where and the person with whom any such minor child is residing,
  - (ii) the date of death of any such child who has died since the agreement was made;
- (d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or to any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;
- (e) whether there have been any proceedings by the applicant against the deceased's estate under Part III of the Succession Act 1974 [*title 26 item 1*] and the date and effect of any order made in such proceedings;
- (f) in the case of an application by the surviving party, the applicant's means;
- (g) in the case of an application by the estate representatives of the deceased, the surviving party's means, so far as they are known to the applicants, and the information mentioned in sub-paragraph (a), (b) and (c) of rule 102(3);
- (h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;
- (i) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(4) There shall be lodged in the registry a copy of the summons and of the affidavit for service on every respondent.

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(5) The registrar shall annex to every copy of the summons for service a copy of the affidavit in support and an acknowledgment of service in Form 6.

Further proceedings on application under rule 101

102 (1) Without prejudice to his powers under R.S.C. Order 15 (which deals with parties and other matters), the registrar may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 101.

(2) R.S.C. Order 15, rule 13 (which enables the court to make representation orders in certain cases), shall apply to the proceedings as if they were mentioned in the said rule 13.

(3) A respondent who is an estate representative of the deceased shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating—

- (a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout;
- (b) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained, and
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of rule 112.

(4) If a respondent who is an estate representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (3), the registrar may order him to do so.

(5) A respondent who is not an estate representative of the deceased may, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall at the same time lodge a copy, which the registrar shall serve on the applicant.

(7) The registrar shall, after investigating the allegations in support of and in answer to the application, report the result of his investigation in writing to a judge and the application shall be determined by a judge:

Provided that where the parties come to an agreement as to the terms of the order to be made on the application, an order in those terms may be made by the registrar.

(9) Rules 76, 77(4) to (7), 79(3) and (4) and 82(1) and (2) shall apply, with the necessary modifications, to an application under section 40 of the Act as if it were an application for ancillary relief.

(10) Subject to this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to an application under section 40 of the Act as if the application were a cause, the originating summons a petition, and the applicant the petitioner.

## MATRIMONIAL CAUSES RULES 1974

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### Application for maintenance from deceased's estate

103 (1) An application under Part III of the Succession Act 1974 [*title 26 item 1*] by a dependant of a deceased person for an order that reasonable provision for his or her maintenance be made out of the net estate of the deceased shall be made by originating summons in Form 23.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

- (a) the residence of the applicant;
- (b) the place and date of the marriage between the applicant and the deceased and the name and status of the wife before the marriage;
- (c) the name of any child of the family and—
  - (i) the date of birth of each such child who is still living (or, if such be the case, that he has attained 18), and the place where and the person with whom any such minor child is residing,
  - (ii) the date of death of any such child who has died since the marriage was dissolved or annulled;
- (d) particulars of all previous proceedings with reference to the marriage or the children of the family, and the date and effect of any order or decree made in those proceedings;
- (e) whether any such application as is mentioned in section 15 of the Succession Act 1974 [*title 26 item 1*] was made or deemed to be made by the applicant during the lifetime of the deceased and, if so, the date and effect of the order (if any) made on the application, or (if no such application was made by the applicant or such an application was made by the applicant and no order was made on the application) the reasons why no such application or order was made, in so far as they are within the applicant's knowledge or belief;
- (f) the date of the deceased's death;
- (g) the applicant's means;
- (h) the nature of the provision which the applicant desires to be made for his or her maintenance out of the deceased's estate;
- (i) that the applicant has not remarried;
- (j) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

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(4) The procedure on an application to which this rule applies shall be the same as on an application to which rule 101 applies and paragraphs (4) and (5) of that rule and rule 102 shall apply accordingly, with any necessary modifications.

(5) On the hearing of the application the estate representatives shall produce to the judge the grant of representation to the deceased's estate and, if an order is made, the grant shall remain in the custody of the court until a memorandum of the order has been indorsed thereon or permanently affixed thereto.

104 to [blank]

108

Application for declaration affecting matrimonial status

109 (1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to a person's matrimonial status, the proceedings shall be begun by petition.

(2) The petition shall state—

- (a) the names of the parties and the residential address of each of them at the date of presentation of the petition;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) whether there have been any previous proceedings in any court in Bermuda or elsewhere between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them, and, if so, the nature of the proceedings;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the court has jurisdiction to make it;

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

- (a) as conferring any jurisdiction to make a declaration in circumstances in which the court could not otherwise make it, or
- (b) as affecting the power of the court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) This rule does not apply to proceedings to which rule 110 applies.

Application under section 48 of the Act

110 (1) A petition by which proceedings are begun under section 48 of the Act shall, in addition to stating the grounds on which the petitioner relies, set out the date and place of birth of the petitioner and the maiden name of his mother, and, if the petitioner is known

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by a name other than that which appears in the certificate of his birth, that fact shall be stated in the petition and in any decree made thereon.

(2) The petition shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner:

Provided that if the petitioner is under 16, the affidavit shall, unless otherwise directed, be made by his next friend.

(3) An affidavit for the purposes of paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

(4) On filing the petition the petitioner shall issue and serve on the Attorney-General a summons for directions as to the persons, other than the Attorney-General, who are to be made respondents to the petition.

(5) It shall not be necessary to serve the petition on the Attorney-General otherwise than by delivering a copy of it to him in accordance with section 48(5) of the Act.

(6) The Attorney-General may file an answer to the petition within 21 days after directions have been given under paragraph (4) and no directions for trial shall be given until that period has expired.

(7) A respondent who files an answer shall at the same time lodge in the divorce registry as many copies of the answer as there are other parties to the proceedings and the registrar shall send one of the copies to each of those parties,

General provisions as to proceedings under rule 109 or 110

111 (2) Where the proceedings are proceedings for a declaration as to the validity or subsistence of a marriage of the petitioner, rule 9 (2) shall apply to the petition as if it were a petition for divorce.

(4) Subject to rules 109 and 110 and paragraph (2) of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the proceedings as if they were a cause.

### DISABILITY

Person under disability must sue by next friend, etc

112 (1) In this rule—

“Part IV” means Part IV of the Mental Health Act 1968 [*title 11 item 36*];

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1968 [*title 11 item 36*], is incapable of managing and administering his property and affairs;

“person under disability” means a person who is a minor or a patient.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian *ad*

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*litem* and, except as otherwise provided by this rule, it shall not be necessary for a guardian *ad litem* to be appointed by the court.

(3) No person's name shall be used in any proceedings as next friend of a person under disability unless the documents mentioned in paragraph (8) have been filed.

(4) Where a person is authorised under Part IV to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (3), be entitled to be next friend or guardian *ad litem* of the patient in any matrimonial proceedings to which his authority extends.

(5) Where a person entitled to defend any matrimonial proceedings is a patient and there is no person authorised under Part IV to defend the proceedings in his name or on his behalf, then an application may be made on behalf of the patient for the appointment of a guardian *ad litem*, and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (8) .

(6) Where a petition, answer, or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the registrar for directions as to whether a guardian *ad litem* should be appointed to act for that person in the cause, and on any such application the registrar may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian *ad litem*.

(7) No notice of intention to defend shall be given, or answer or affidavit in answer filed, by or on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit has filed the documents mentioned in paragraph (8).

(8) The documents referred to in paragraphs (3), (5) and (7) are—

- (a) a written consent to act by the proposed next friend or guardian *ad litem*;
- (b) where the person under disability is a patient and the proposed next friend or guardian *ad litem* is authorised under Part IV to conduct the proceedings in his name or on his behalf, an office copy of the order or other authorisation made or given under Part IV; and
- (c) except where the proposed next friend or guardian *ad litem* is authorised as mentioned in sub-paragraph (b), a certificate by the attorney acting for the person under disability—
  - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient stating (in the case of a patient) the grounds of his knowledge or belief and, where the person under disability is a patient, that there is no person authorised as aforesaid, and
  - (ii) that the person named in the certificate as next friend or guardian *ad litem* has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

## MATRIMONIAL CAUSES RULES 1974

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### Service on person under disability

113 (1) Where a document to which rule 14 applies is required to be served on a person under disability within the meaning of rule 112, it shall be served—

- (a) in the case of a minor who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient—
  - (i) on the person (if any) who is authorised under Part IV of the Mental Health Act 1968 [*title 11 item 36*] to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or
  - (iii) in any other case, on the person with whom the patient resides or in whose care he is:

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1) it shall be indorsed with a notice in Form 25; and after service has been effected the person at whose instance the document was served shall, unless the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

### Petition for nullity on ground of insanity, etc

114 (1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health Act 1968 [*title 11 item 36*] of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the registrar.

(2) The registrar by whom an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian *ad litem* of the respondent.

### Separate representation of children

115 (1) Without prejudice to rule 72, if in any matrimonial proceedings it appears to the court that any child ought to be separately represented, the court may on the application of any proper person, appoint that person to be guardian *ad litem* of the child with authority to take part in the proceedings on the child's behalf.

(2) The applicant for an order under paragraph (1) shall, on making the application, file a certificate by an attorney certifying that the person named in the

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certificate as the proposed guardian *ad litem* has no interest in the proceedings adverse to that of the child and that he is a proper person to be such guardian.

PROCEDURE: GENERAL

116 [blank]

Service out of Bermuda

117 (1) Any document in matrimonial proceedings may be served out of Bermuda without leave either in the manner prescribed by these Rules or in accordance with R.S.C. Order 11, (which relates to the service of a writ abroad).

(2) Where the document is served in accordance with R.S.C. Order 11, that Order shall have effect in relation to service of the document as it has effect in relation to service of notice of a writ:

Provided that in any case where a document is, under these Rules, required to be served personally, a certificate shall be furnished to show the server's means of knowledge of the identity of the person served.

(4) Where a petition is to be served on a person out of Bermuda, then—

- (a) the time within which that person must give notice of intention to defend shall be determined having regard to the practice adopted under R.S.C. Order 11, rule 4(4) (which requires an order for leave to serve a writ out of the jurisdiction to limit the time for appearance), and the notice in Form 5 shall be amended accordingly;
- (b) if there is reasonable ground for believing that the person to be served does not understand English, the petition shall be accompanied by a translation, approved by the registrar, of the notice in Form 5, in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected:

Provided that this sub-paragraph shall not apply in relation to a document which is to be served in a country in which the official language, or one of the official languages, is English.

(5) Where a document specifying the date of hearing of any proceedings is to be served out of Bermuda, the date shall be fixed having regard to the time which would be limited under paragraph (4) (a) for giving notice of intention to defend if the document were a petition.

Service by post

118 Where a document is required by these rules to be sent to any person, it shall, unless otherwise directed, be sent by post—

- (a) if an attorney is acting for him, to the attorney's address;

## MATRIMONIAL CAUSES RULES 1974

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- (b) if he is acting in person, to the address for service given by him or, if he has not given an address for service, his last known address, but if in the opinion of the registrar the document would be unlikely to reach him if sent to that address, the registrar may dispense with sending the document to him.

### Service of documents where no special mode of service prescribed

119 Unless otherwise directed, service of any document in matrimonial proceedings shall, if no other mode of service is prescribed or ordered, be effected—

- (a) if an attorney is acting for the person to be served, by leaving the document at, or sending it by post to, the attorney's address;
- (b) if the person to be served is acting in person, by delivering the document to him or by leaving it at, or sending it by post to, the address for service given by him or, if he has not given an address for service, his last known address:

Provided that where, in a case to which sub-paragraph (b) applies, it appears to the registrar that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in that subparagraph, it would be unlikely to reach him, the registrar may dispense with service of the document.

120 *[blank]*

### Proof of service by registrar

121 (1) Where a petition is sent to any person by the registrar, he shall indorse on a copy of Form 5 the date of posting and the address written on the letter and shall sign the indorsement.

(2) An indorsement made pursuant to paragraph (1) shall be evidence of the facts stated therein.

(3) Where the court has authorised notice by advertisement to be substituted for service and the advertisement has been inserted by some person other than the registrar, that person shall file copies of the newspapers containing the advertisement.

### Mode of making, applications

122 (1) Except where these Rules, or any rules applied by these Rules, otherwise provide, every application in matrimonial proceedings—

- (a) shall be made to the registrar;
- (b) shall be made by summons.

123 *[blank]*

124 *[blank]*

## MATRIMONIAL CAUSES RULES 1974

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No notice of intention to proceed after year's delay

125 R.S.C. Order 3, rule 6 (which requires a party to give notice of intention to proceed after a year's delay), shall not apply to any matrimonial proceedings.

126 *[blank]*

Mode of giving notice

127 Unless otherwise directed, any notice which is required by these Rules to be given to any person shall be in writing and, if it is to be given by the registrar, shall be given by post, or where an attorney is acting for the person to be served, by leaving the notice at, or sending it by post to the attorney's address.

128 *[blank]*

129 *[blank]*

### MISCELLANEOUS

Inspection etc. of documents retained in court

130 (1) A party to any matrimonial proceedings or his attorney or the Attorney-General may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the registry in those proceedings.

(2) Except as provided by rules 48(3) and 95(3) and paragraph

(1) of this rule, no document filed or lodged in the registry other than a decree or order made in open court, shall be open to inspection by any person without the leave of the registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Appeals from Registrar

131 A party may appeal from an order or decision of the Registrar to a judge in chambers by summons to be issued within five days of the order or decision complained of and returnable on the first day on which summonses are heard after that period has elapsed but such appeal shall not, unless otherwise ordered, act as a stay of the order or decision complained of.

Revocation

132 *[omitted.]*

APPENDIX  
FORMS

Form 1

NOTICE OF APPLICATION UNDER RULE 5

In the Supreme Court of Bermuda

[Divorce Jurisdiction]

No. of  
Matter

(Seal)

In the Matter of a proposed petition for dissolution of marriage

Between Applicant  
and Respondent

TAKE NOTICE THAT an application has been made by the above-named Applicant for leave to present a petition for dissolution of his [her] marriage with you before the expiration of the period of three years from the date of the said marriage. If the application is undefended, it will be heard at the Supreme Court on the day of 19 , at o'clock, and if you do not attend at that time and place, such order will be made as the Court thinks just.

A sealed copy of the application and of the affidavit to be used in support of the application is delivered with this notice.

You must complete and detach the acknowledgement of service and send it so as to reach the Court within eight days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs. If you intend to instruct an attorney to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgement to the Court on your behalf.

Dated this [blank] day of [blank] 19 [blank].

Registrar

To the Respondent

[Here set out Form 6]

Form 2

GENERAL FORM OF PETITION

In the Supreme Court of Bermuda

[Divorce Jurisdiction]



MATRIMONIAL CAUSES RULES 1974

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*the nature of the proceedings, the date and effect of any decree or order and, 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*]].

(10) There are no proceedings continuing in any country outside Bermuda which are in respect of the marriage or are capable of affecting its validity or subsistence [except *give particulars of the proceedings, including the court in or tribunal or authority before which they were begun, the date when they were begun, the names of the parties, the date or expected date of any trial in the proceedings and such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Matrimonial Causes Act 1974*]].

(11) The following [or No] agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent [or the petitioner] [and the said children] [namely *state details*]].

(12) [*In the case of a petition for divorce alleging five years' separation*] The petitioner proposes, if a decree nisi is granted, to make the following financial provision for the respondent [*give details of any proposal not mentioned in paragraph (11)*] [or The petitioner makes no proposals for financial provision for the respondent in the event of a decree nisi being granted].

(13) [*In the case of a petition for divorce*] The said marriage has broken down irretrievably.

(14) The respondent has committed adultery with [*blank*] and in consequence of that adultery the petitioner finds it intolerable to live with the respondent [or The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent] [or The respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of this petition] [or The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the respondent consents to a decree being granted] [or The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition] [or, *where the petition is not for divorce or judicial separation, set out the ground on which relief is sought, and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved*].

The petitioner therefore prays—

(1) That the said marriage may be dissolved [or declared void] [or annulled] [or *as the case may be*].

(2) That he [she] may be granted the custody of [*state name[s] of the child[ren]*] and add *any application for a declaration under section 46 (3) of the Matrimonial Causes Act 1974*].

(3) [*Where appropriate*] That \_\_\_\_\_ may be ordered to pay the costs of this suit.

(4) That he [she] may be granted the following ancillary relief, namely [*state particulars of any application for ancillary relief which it is intended to claim*].





MATRIMONIAL CAUSES RULES 1974

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and Respondent  
[and Co-Respondent]

TAKE NOTICE THAT a petition [for divorce] [*or as the case may be*] has been presented to this Court. A sealed copy of it [and a copy of the petitioner's proposals regarding the children] [is] [are] delivered with this notice.

1 You must complete and detach the acknowledgement of service and send it so as to reach the Court within eight days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

2 If you wish to do so, you may send to the Court a statement setting out your views on the proposals regarding the children. If you send a statement it will be placed before the judge dealing with the arrangements for the child[ren] and a copy of your statement will be sent to the petitioner. [*Delete if inapplicable.*]

3 If the reply to Question 4 [or 6 [*delete if inapplicable*]] in the acknowledgment is Yes, you must, within 29 days after you receive this notice, inclusive of the day of receipt, file in the Registry of the Supreme Court an answer to the petition [*or as the case may be*], together with a copy for every other party to the proceedings.

4 If the reply to Question 5 in the acknowledgment is Yes, the consequences to you are that—

(a) provided the petitioner establishes the fact that the parties to the marriage have lived apart for two years immediately preceding the presentation of the petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the Court is satisfied that the marriage has not broken down irretrievably;

(b) your right to inherit from the petitioner if he or she dies without having made a will ceases on the grant of a decree of judicial separation or on a decree nisi of divorce being made absolute;

(c) in the case of divorce the making absolute of the decree will end the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon your being left a widow;

(d) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances. About these you should obtain legal advice from an attorney.

[*Delete if inapplicable.*]

5 If after consenting you wish to withdraw your consent you must immediately inform the Court and give notice to the petitioner. [*Delete if inapplicable.*]



MATRIMONIAL CAUSES RULES 1974

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4 Do you intend to defend the case?

5 [In the case of a petition alleging two years' separation coupled with the respondent's consent to a decree being granted] Do you consent to a decree being granted? [Delete if inapplicable.]

6 [In the case of a petition asking for divorce and alleging five years' separation] Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage? [Delete if inapplicable.]

7 In the event of a decree nisi being granted on the basis of two years' separation coupled with the respondent's consent, or five years' separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce? [Delete if inapplicable.]

8 Even if you do not intend to defend the case do you wish to be heard on the claim[s] in the petition for [insert whichever of the following is applicable]—

- (a) costs
- (b) custody of the children
- (c) maintenance pending suit
- (d) periodical payments
- (e) secured periodical payments
- (f) lump sum provision
- (g) settlement or transfer of property
- (h) variation of a settlement

[Delete question 8 except in the case of a petition.]

9 Do you wish to make any application on your own account for—

- (a) access to the children
- (b) custody of the children
- (c) periodical payments or secured periodical payments for the children
- (d) maintenance pending suit
- (e) periodical payments or secured periodical payments for yourself
- (f) lump sum provision
- (g) settlement or transfer of property
- (h) variation of a settlement

MATRIMONIAL CAUSES RULES 1974

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*[Delete question 9 (except in the case of a respondent in proceedings begun by petition.)]*

(If possible answer YES or NO against each item in Question[s] 8 [and 9]. If you are uncertain leave a blank).

Dated this *[blank]* day of *[blank]* 19 *[blank]*

*[If an attorney is instructed, he will sign below on your behalf [but if the answer to Question 5 is Yes, you must also sign here]]*

*Signed*

*Address for service [Unless you intend to instruct an attorney, give your place of residence, or if you do not reside in Bermuda, the address of a place in Bermuda to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Registry of the Supreme Court].*

[I am [We are] acting for the Respondent [or the above-named \_\_\_\_\_] in this matter.

*Signed*

*Address for service: \_\_\_\_\_ ]*

Form 7

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 5 (2) (d) OF  
MATRIMONIAL CAUSES ACT 1974

*[Heading as in Form 5]*

- 1 Have you read your petition dated ?
- 2 Do you wish to alter or add to any statement in the petition?

If so, state the alterations or additions.

3 Subject to these alterations and additions (if any), is everything stated in your petition true?

Indicate which statements are true to your own knowledge and which to the best of your information and belief.

- 4 State the date on which you and the respondent separated.
- 5 State briefly the reason or main reason for the separation.
- 6 When and in what circumstances did you come to the conclusion that the marriage was in fact at an end?

MATRIMONIAL CAUSES RULES 1974

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7 State as far as you know the various addresses at which you and the respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:

Petitioner's Address	Respondent's Address
From	From
to	to

8 Since the date given in the answer to Question 6, have you ever lived with the respondent in the same household?

If so, state for which period or periods, giving dates.

I, *(full name)*  
of *(full residential address)*

*(occupation)*

make oath and say as follows:—

1 I am the petitioner in this cause.

2 The answers to Questions 1 to 8 above are true.

3 I identify the signature appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband [wife], the respondent in this cause.

4 *[Exhibit any other documents on which the petitioner wishes to rely.]*

5 I ask the Court to grant a decree dissolving my marriage with [or a decree that I be Judicially separated from] the respondent on the grounds stated in my petition [and to order the respondent to pay the costs of this suit *or as the case may be*].

Sworn at

in the of

this day of , 19 .

Before me,

A Commissioner for Oaths

MATRIMONIAL CAUSES RULES 1974

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[or as the case may be]

Form 7A

[Heading as in Form 5]

AFFIDAVIT VERIFYING PETITION

In the Supreme Court of Bermuda

I, \_\_\_\_\_ of \_\_\_\_\_ hereby MAKE OATH and SAY as follows:

1 I am the petitioner in the above-captioned matter.

2 I have read the petition herein in support of my application for a Decree Nisi to be granted at the hearing of this cause on the grounds set out therein. A copy of my said petition is exhibited hereto.

3 I confirm that the contents of my said petition are true to the best of my knowledge and belief.

SWORN by the above-named \_\_\_\_\_ )  
\_\_\_\_\_)  
\_\_\_\_\_)  
At: \_\_\_\_\_ )  
\_\_\_\_\_)  
this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ )

Form 8

NOTICE OF APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE

[Heading as in Form 5]

TAKE NOTICE THAT the petitioner [or respondent] applies for the decree nisi pronounced in his [her] favour on the \_\_\_\_\_ day of 19 \_\_\_\_\_, to be made absolute.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Signed

[Attorney for the] Petitioner  
[or Respondent] \_

Form 9

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (DIVORCE)







MATRIMONIAL CAUSES RULES 1974

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*[Heading as in Form 5]*

TO of

The petitioner [*or respondent*] having on the [*blank*] day of [*blank*] 19 [*blank*], obtained an order for payment by you of maintenance pending suit at the rate of [*blank*]

AND the petitioner [*or respondent*] having applied in his [*her*] petition [*or answer*] for a periodical payments order for himself [*or herself*],

TAKE NOTICE THAT the petitioner [*or respondent*] has requested the Court to make a periodical payments order for himself [*or herself*] providing for payments by you at the same rate as those mentioned above.

AND TAKE NOTICE THAT if you object to the making of such a periodical payments order, you must give notice to that effect to the registrar and the petitioner [*or respondent*] within 14 days after service of this notice on you, and if you do not do so, the registrar may make such a periodical payments order without further notice to you.

Dated this day of 19

Registrar

Form 19

ORIGINATING SUMMONS ON GROUND OF WILFUL NEGLECT TO MAINTAIN

*[Heading as in Form 5]*

*(Seal)*

*In the Matter of an Application under section 31 of the Matrimonial Causes Act 1974*

Between Applicant

and Respondent

1 I, [*blank*], of [*blank*], the wife [*husband*] of [*blank*] of [*blank*] (hereinafter called the "respondent") say that the respondent [*in the case of a wife's application* has wilfully neglected to provide [*reasonable maintenance for me*] *or in the case of a husband's application* has wilfully neglected to provide [*or make a proper contribution towards*] reasonable maintenance [*for me*] [*and*] [*the child[ren]*] of our family]].

2 On the [*blank*] day of [*blank*] 19 [*blank*], I [*in the case of an application by a wife* being then [*state full name and status before the marriage*]] was lawfully married to the respondent [*in the case of an application by a husband* who was then [*state respondent's full name and status before marriage*]] at [*blank*]

## MATRIMONIAL CAUSES RULES 1974

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3 There is [are] [no [or state number] children of the family now living] [namely [state the full name (including surname) of each child and his date of birth or, if it be the case, that he is over 18 and, in the case of each minor child over the age of 16 whether, he is, or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation] who is now residing at [state the place] with [state the person]].

4 There have been no previous proceedings in any court in Bermuda or elsewhere with reference to the marriage [or the children of the family] [or between the applicant and the respondent with reference to any property of either or both of them] [except state the nature of the proceedings, the date and effect of any decree or order and, 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].

6 The following are particulars of the wilful neglect [give particulars adding the name[s] of the child[ren] concerned and in the case of a husband's application in respect of himself the matters set out in section 31(1)(b)(i) of the Matrimonial Causes Act 1974 on which he relies].

7 The respondent has not made any payments to me by way of maintenance for myself [or the said child[ren]] [except [give particulars]].

8 My means are as follows:—

9 To the best of my knowledge and belief the respondent's means are as follows:—

10 I apply for an order that the respondent do make provision by way of [periodical payments, secured periodical payments, a lump sum delete as appropriate] for me [and [such of the said provisions as may be claimed] for [state name[s] of child[ren] in respect of whom such claim is made]].

11 I ask that I may be granted the custody of the said [state name[s] of the child[ren]].

12 This Court has jurisdiction to entertain these proceedings by reason of the fact that [in the case of an application based on domicile I am [or the respondent is] [or the respondent and I are] domiciled in Bermuda] [or in the case of an application based on residence I have been ordinarily resident in Bermuda throughout the period of one year ending with the date of this application [or the respondent is now resident in Bermuda]].

My address for service is [Where the applicant sues by an attorney, state the attorney's name or firm and address or, where the applicant sues in person, state her place of residence as given in paragraph 1 or, if no place of residence in Bermuda is given, the address of a place in Bermuda at or to which documents for her may be delivered or sent].







MATRIMONIAL CAUSES RULES 1974

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TAKE NOTICE THAT:—

[Continue as in Form 22]

Form 25

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE WITH RULE 113(1)

To of

TAKE NOTICE THAT the contents or purport of this document are to be communicated to the respondent [or as the case may be], the said [blank], if he is over 16 [add, if the person to be served is by reason of mental disorder within the meaning of the Mental Health Act 1968 incapable of managing and administering his property and affairs: unless you are satisfied [after consultation with the responsible medical officer within the meaning of the Mental Health Act 1968 or, if the said is not liable to be detained or subject to guardianship under that Act, his medical attendant *delete these words if the document is not to be served on the responsible medical officer or medical attendant*] that communication will be detrimental to his mental condition].

EXPLANATORY NOTE

*(This note is not part of the Rules.)*

Where possible the numbering of these Rules has been made to correspond with the numbering of the Matrimonial Causes Rules 1973 (U.K.)

[Note: The Matrimonial Causes Rules 1973 (UK) do not appear in the Supreme Court Practice 1979 upon which the Rules of the Supreme Court 1985 are based. See instead the Supreme Court Practice 1976]

[Appendix Form 7A inserted by BR 1 / 2016 rule 4 effective 8 January 2016]

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[Amended by:

S.R. & O. 65/1975

BR 34 / 1977

BR 1 / 2016]