

BERMUDA STATUTORY INSTRUMENT

SR&O 64/1974

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

*[made under section 21 of the Magistrates Act 1948 [title 8 item 15] and
brought into operation on 1 January 1975]*

ARRANGEMENT OF RULES

1	Commencement <i>[omitted]</i>	8	Defendant outside Bermuda
2	Interpretation	9	Certificate when payments forwarded abroad
3	Complaint	10	Defendants to complaint made under section 9
4	Summons to defendant	11	Application of other Rules
5	Reference to magistrate		SCHEDULE
6	Notice to parties of court's power to make provision regarding child of the family		Forms
7	Notice to parent not being a party of court's power to make provision regarding child of the family		

Commencement

1 *[omitted]*

Interpretation

2 In these Rules unless inconsistent with the context —

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

"the Act" means the Matrimonial Proceedings (Magistrates' Courts) Act 1974 [*title 27 item 5*];

"clerk of the Magistrates' Court" and "clerk" mean the person whom the Senior Magistrate may designate as the clerk for the purposes of these Rules acting in accordance with the instructions of the Senior Magistrate;

"collecting officer" means the office manager of the Magistrates' Court;

"prescribed form" means a form prescribed in the Schedule.

Complaint

3 A complaint under section 2(1) of the Act shall be in form MAT 1 and shall be signed by the complainant.

Summons to defendant

4 The clerk on receipt of an application by way of complaint under section 2(1) of the Act shall issue a summons in form MAT 2.

Reference to magistrate

5 Where the clerk is of the opinion that a complaint is in respect of a matter not within the jurisdiction of the court or is frivolous or vexatious, the clerk shall not issue the summons but shall refer the matter to a magistrate, who shall give the clerk such direction in the matter as he may think just and it shall be the duty of the clerk to comply with any such direction.

Notice to parties of court's power to make provision regarding child of the family

6 Where the special powers of the court under section 5 of the Act to make provision with regard to any child of the family of the parties are or may be exercisable, the clerk shall —

- (a) upon the making of a complaint under section 2 or section 9 of the Act, cause a notice in form MAT 3 to be given to the complainant;
- (b) upon the issue of a summons after the making of such a complaint as aforesaid, cause a similar notice to be served on the defendant with the summons.

Notice to parent not being a party of court's power to make provision regarding child of the family

7 (1) In the case of a complaint under section 2 of the Act where—

- (a) there is a child of the family of the parties who is not a child of both parties; and
- (b) the court is required, under section 5(6) of the Act, to take steps with a view to giving notice of the complaint, and of the time and place appointed for the hearing, to any person who, though not one of the parties, is a parent of that child,

the court may make a matrimonial order on the complaint in accordance with section 5(6)(b) if there has been read aloud before the court at the hearing of the complaint a statement signed by the clerk that the steps required by the following paragraphs of this rule have been taken with a view of giving notice to the parent as aforesaid.

(2) Subject to paragraph (3), the steps required by this rule are the following —

- (a) before the summons is issued on the complaint the complainant shall be required to say whether or not there is a child of the family who is not a child of both the parties and in respect of whom a notice is required to be given to his parent under section 5(6) of the Act, and, if there is, to give the name and address of that parent so far as this information is known to, or can in the opinion of the clerk conveniently be obtained by, the complainant;
- (b) at least ten days before the hearing at which the court proposes to make a matrimonial order on the complaint the clerk shall cause a notice in the form MAT 4 to be sent by post addressed to any such parent as is referred to in sub-paragraph (a) whose name and address are known to the clerk, whether from information given by the complainant in accordance with that sub-paragraph or otherwise.

(3) Where after notice has been sent to a parent in accordance with sub-paragraph (b), the hearing at which this rule is adjourned, the court may make the order at the adjourned hearing if it is satisfied that reasonable steps have been taken to give the parent adequate notice of the time and place thereof.

Defendant outside Bermuda

8 (1) Where a complaint is made by virtue of section 9 of the Act for the revocation, revival or variation of a matrimonial or interim order and the defendant does not appear at the time and place appointed for the hearing of the complaint but the court is satisfied that there is reason to believe that he has been outside Bermuda during the whole of the period beginning one month before the making of the complaint and

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

ending with the date of the hearing, then, subject to paragraph (2), the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint in accordance with section 10(2) of the Act if it is proved to the satisfaction of the court that the complainant has taken any of the following steps to give notice to the defendant of the making of the complaint and of the time and place aforesaid, that is to say:—

- (a) has caused a notice in the form MAT 5 to be delivered to the defendant; or
- (b) has caused a notice in the form MAT 5 to be sent by post addressed to the defendant at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach him; or
- (c) has caused a notice summarising the effect of that in the form MAT 5 to be inserted in one or more newspapers on one or more occasions.

(2) Where it is proposed to take any such steps as are mentioned in sub-paragraph (b) or (c) of paragraph (1), the complainant shall apply for directions to the court, and the taking of such steps shall be effective for the purposes of this rule only if they were taken in accordance with the directions given by the court.

Certificate when payments forwarded abroad

9 A complainant for the revocation or variation of a matrimonial order under which payments fall to be made by the complainant to the defendant through the collecting officer may apply to the collecting officer for such a certificate as is mentioned in section 10(4) of the Act, and, if the facts warrant it, the collecting officer shall supply such a certificate to the complainant in form MAT 6.

Defendants to complaint made under section 9

10 (1) Where a complaint is made by virtue of section 9 of the Act for the revocation, revival or variation of a matrimonial or interim order, the persons to be made defendants to the complaint in accordance with section 11(2) of the Act shall be the following persons (not being the complainant), that is to say, the parties to the marriage in question and the persons specified in paragraphs (2) to (5).

(2) Where the complaint relates to a provision of the order for the legal custody of a child, the following persons shall be made defendants to the complaint:—

- (a) any person who, though not a party to the marriage in question, is a parent of the child;

(b) any person to whose legal custody the child is for the time being committed by the order;

(c) the Director of Social Services, where under the order the child is for the time being under his supervision.

(3) Where the complaint is for the revocation or variation of a provision that a child be under the supervision of the Director of Social Services, the following persons shall be made defendants to the complaint:—

(a) the persons specified in sub-paragraphs (a) and (b) of paragraph (2);

(b) the Director of Social Services.

(4) Where the complaint relates to a provision for access to a child, the following persons shall be made defendants to the complaint:—

(a) the persons specified in sub-paragraphs (a) and (b) of paragraph (2);

(b) the Director of Social Services, where under the order the child is for the time being under his supervision.

(5) Where the complaint relates to a provision for payments for the maintenance of a child, any person to whom such payments fall to be made shall be made a defendant to the complaint.

[Rule 10 para (2) amended by 2002:36 Sch para 14 effective 19 January 2004]

Application of other Rules

11 Subject to the provisions of these Rules, the Magistrates' Court Rules 1973 (except Orders III, V, VII, IX, XIV, XX and XXI) shall apply with the necessary modifications to the practice and procedure in any matrimonial proceedings to which these Rules relate.

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

SCHEDULE

Form MAT 1

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

COMPLAINT

Matrimonial Proceedings (Magistrates' Courts) Act 1974 Section 2 (1)

The complaint of C.D. of [blank] who states that A.B. of [blank] being married to the complainant, during the subsistence of the marriage, —

* (a) did fail to provide such maintenance for the complainant [and/or the children (a child) of the family] as is reasonable in the circumstances; or

* (b) did behave in such a way that the complainant cannot reasonably be expected to live with the defendant; or

* (c) did desert the complainant.

.....
(Signature of complainant).

Taken before me this [blank] day of [blank] 19 [blank].

.....
Clerk of the Magistrates' Court.

** Delete inapplicable paragraph*

Form MAT. 2

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

SUMMONS TO DEFENDANT

To: A.B. of.....

Complaint has this day been [or was on the [blank] day of [blank] 19 [blank]] made to a clerk at the Magistrates' Court, by C.D., that you, being married to the complainant, during the subsistence of the marriage—

- *(a) did fail to provide such maintenance for the complainant [and/or the children (a child) of the family] as is reasonable in the circumstances; or
- *(b) did behave in such a way that the complainant cannot reasonably be expected to live with the defendant; or
- *(c) did desert the complainant:

YOU ARE THEREFORE SUMMONED TO APPEAR on the [blank] day of [blank] 19 [blank] at the hour of [blank] in the [blank] noon, before the Magistrates' Court sitting at the Magistrates' Court Building, corner of and Parliament Streets, Hamilton, to answer to the said complaint.

Issued by me this [blank] day of [blank] 19 [blank].

.....
Clerk of the Magistrates' Court.

* *Delete inapplicable paragraph*

(Defendant's Copy)

This summons was served by me on the [blank] day of [blank] 19[blank]

at

.....
(Signature of Bailiff).

Form MAT 3

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

**NOTICE TO PARTIES OF COURT'S POWER TO MAKE
PROVISION WITH REGARD TO CHILDREN**

Parties to complaints under the Matrimonial Proceedings (Magistrates' Courts) Act 1974, are informed that at the hearing of such

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

a complaint the Court has power to make provision for any of the following purposes as regards any child of both parties or any child of one party who has been accepted by the other as one of the family:—

- (a) custody (which may be awarded to either party or to a third person) ;
- (b) access to the child by either or both of the parties (or anybody else who is a parent of the child);
- (c) the payment of maintenance for the child by either or both of the parties.

In certain exceptional circumstances the Court may place the child under the supervision of the Director of Social Services.

The Court may exercise these powers whether the complaint asks for any provision about the children or not and whether any other order is made on the complaint or the complaint is dismissed.

At the hearing of the complaint the Court will hear anything the parties may wish to say on these matters.

The Court cannot make its final decision on the complaint until it has decided whether or not, and if so how, to exercise these powers.

(Court Copy)

The summons of which this is a true copy was served by me on the [blank] day of [blank] 19 [blank] by —

- (a) delivering the summons to the said defendant personally; or
- (b) delivering the summons to [blank] being an adult inmate of [blank] the abode/place of business of the defendant; or
- (c) [blank]

Date

.....
(Signature of Bailiff)

Form MAT 4

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

**NOTICE TO PARENT OF CHILD (OTHER THAN A PARTY) OF
COURT'S POWER TO MAKE PROVISION WITH REGARD TO
CHILDREN**

To: D.E.

You are hereby given notice that proceedings are pending under the Matrimonial Proceedings (Magistrates' Courts) Act 1974, between A.B. and B.B. and it has been stated that their family includes a child C.B. whose parents are [A.B.] and yourself but who has been accepted as one of the family by [B.B.].

If this information is correct, the Court has power to make provision at the hearing for any of the following purposes as regards C.B:

- (a) custody (which may be awarded to a person other than one of the parties);
- (b) access to the child by either or both of the parties or yourself ;
- (c) the payment of maintenance for the child by either or both of the parties.

In certain exceptional circumstances the Court may place the child under the supervision of the Director of Social Services.

At the hearing the Court will hear anything which you may, as a parent of the child, wish to say on those matters.

The hearing will take place on the [blank] day of [blank] 19 [blank], at the hour of [blank] in the [blank] noon before the Magistrates' Court sitting at Magistrates' Court Building, corner of Reid and Parliament Streets, Hamilton, and you may then appear in person or be represented by counsel. Whether you exercise this right or not, you cannot be ordered to pay any of the parties' costs.

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

.....
Clerk of the Magistrates Court

**MAGISTRATES' COURT (MATRIMONIAL PROCEEDINGS)
RULES 1974**

Form MAT 5

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

**NOTICE TO PERSON OUTSIDE BERMUDA OF COMPLAINT
FOR REVOCATION, ETC.**

To: A.B.

A complaint has been made by me the undersigned this day [or on the [blank] day of [blank] 19 [blank]] to the Magistrates' Court sitting at Magistrates' Court Building, corner of Reid and Parliament Streets, Hamilton, under section 9 of the Matrimonial Proceedings (Magistrates' Courts) Act 1974, that the matrimonial [or interim] order made by that Court on the [blank] day of [blank] 19 [blank], should be *[revoked] *[or revived] *[or varied] by

The complaint will be heard by that Court on [blank] day of [blank], 19 [blank], at the hour of [blank] in the [blank] noon.

You may appear in person or be represented by counsel at the hearing. If you do neither, the Court may, if it thinks it reasonable, deal with the case in your absence.

[To be completed in a case where the complaint is for the revocation or variation of a provision for the making of payments by the complainant to the defendant and is based on the defendant's prolonged absence abroad as mentioned in section 10 of the Matrimonial Proceedings (Magistrates' Courts) Act 1974.]

At the hearing I intend to satisfy the Court that there is reason to believe that during the period of six months immediately preceding the making of the complaint you were continuously outside Bermuda or were not in Bermuda on more than thirty days. If the Court is satisfied of this, it may after having regard to any communication to the Court in writing from you revoke the order for payments by me to you or reduce the amount of the payments. If you wish to make any written communication, you should do so by letter addressed to the clerk of the Magistrates' Court, corner of Reid and Parliament Streets, Hamilton, so that it will reach him before the hearing.

Dated this day of 19

.....
(Signature of B.B.)

* Delete whichever is inapplicable

Form MAT 6

Case No. of 19.....

BERMUDA

IN THE MAGISTRATES' COURT
(MATRIMONIAL PROCEEDINGS)

**CERTIFICATE BY OFFICE MANAGER WHEN MAINTENANCE
PAYMENTS ARE FORWARDED ABROAD**

I, J.C., the office manager of the Magistrates' Court through whom payments fall to be made by A.B. to B.B. under a matrimonial order made by the Magistrates' Court on the [blank] day of [blank] 19 [blank], hereby certify that —

- (a) during the period from the [blank] day of [blank] 19 [blank], to the [blank] day of [blank] 19 [blank], every payment made under the order has been forwarded by me to an address outside Bermuda, namely [blank]; and
- (b) during the period from the [blank] day of [blank] 19 [blank], to the [blank] day of [blank] 19 [blank], the said B.B. has not, to my knowledge, been in Bermuda at any time [or on more than thirty days, namely from the [blank] day of [blank] 19 [blank], to the [blank] day of [blank] 19 [blank]].

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

.....
J.C.

Office Manager of the Magistrates' Court

[Amended by:
2002 : 36]