

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

Matrimonial Causes.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Justice.

Accordingly, as at that date, except where a different intention is clearly indicated, by note or in the text, references in and in relation to this Chapter to—

“the Minister”—should be read as references to the Minister for Justice;

“the Departmental Head”—should be read as references to the Secretary for Justice¹;

“the Department”—should be read as references to the Department of Justice².

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¹ Previously the Secretary for Law.
² Previously the Department of Law.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

Matrimonial Causes Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

Matrimonial Causes Act.

Being an Act relating to divorce and causes, and, in relation to such matters, parental rights and the custody and guardianship of infants and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“adopted”, in relation to a child, means adopted under the law (whether of Papua New Guinea or elsewhere) relating to the adoption of children;

“appeal” includes an application for a rehearing;

“approved marriage guidance organization”, means a marriage guidance organization approved by the Minister under Section 5;

“the commencement date” means 8 July 1965 (being the date of commencement of the pre-Independence *Matrimonial Causes Act* 1963);

“the Court” means the National Court;

“crime” means an offence punishable by death or imprisonment;

“cross-petition” includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in Paragraph (a) or (b) of the definition “matrimonial cause” in this subsection;

“customary marriage” means a marriage of a kind referred to in Part II. of the *Marriage Act*;

“decree” means a decree, judgement or order, and includes a decree nisi and an order dismissing a petition or application or refusing to make a decree or order;

“marriage conciliator” means—

(a) a person authorized by an approved marriage guidance organization to endeavour to effect marital reconciliations; or

(b) a person nominated by a Judge, under Section 10, to endeavour to effect a reconciliation;

“marriage guidance counsellor” means a person authorized by an approved marriage guidance organization to offer marriage guidance on behalf of the organization;

“matrimonial cause” means—

(a) proceedings for a decree of—

(i) dissolution of marriage; or

(ii) nullity of marriage; or

(iii) judicial separation; or

(iv) restitution of conjugal rights; or

(v) jactitation of marriage; or

- (b) proceedings for—
- (i) a declaration of the validity of—
 - (A) the dissolution or annulment of a marriage, by decree or otherwise; or
 - (B) a decree of judicial separation; or
 - (ii) a declaration of the continued operation of a decree of judicial separation; or
 - (iii) an order discharging a decree of judicial separation; or
- (c) proceedings with respect to—
- (i) the maintenance of a party to any proceedings; or
 - (ii) settlements; or
 - (iii) damages in respect of adultery; or
 - (iv) the custody or guardianship of infant children of a marriage; or
 - (v) the maintenance, welfare, advancement or education of children of a marriage,
- being proceedings in relation to concurrent, pending or completed proceedings of a kind referred to in Paragraph (a) or (b) (including proceedings of such a kind pending at, or completed before, the commencement date); or
- (d) any other proceedings (including proceedings with respect to the enforcement of a decree, the service of process or costs) in relation to concurrent, pending or completed proceedings of a kind referred to in Paragraph (a), (b) or (c) (including proceedings of such a kind pending at, or completed before, the commencement date); or
- (e) proceedings seeking leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, or proceedings in relation to proceedings seeking such leave;

"petition" includes a cross-petition;

"petitioner" includes a cross-petitioner;

"proceedings" includes cross-proceedings;

"respondent" includes a petitioner against whom there is a cross-petition;

"the Rules" means the Matrimonial Causes Rules;

"welfare officer" means a welfare officer or honorary welfare officer within the meaning of the *Child Welfare Act*.

(2) For the purposes of this Act, the date of a petition shall be taken to be the date on which the petition was filed in the Court.

2. Application of Act in relation to certain children.

- (1) For the purpose of the application of this Act in relation to a marriage—
- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other; and
 - (b) a child of the husband and wife born before the marriage, whether legitimated by the marriage or not¹; and

¹ But, see, *Marriage Act*, Section 52.

(d) a child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife, shall be deemed to be a child of the marriage, and a child of the husband and wife (including a child born before the marriage, whether legitimated by the marriage of not¹) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

(2) For the purposes of Subsection (1), in relation to any proceedings the relevant time is—

- (a) the time immediately preceding the time when the husband and wife ceased to live together, or, if they have ceased on more than one occasion to live together the time immediately preceding the time when they last ceased to live together before the institution of the proceedings; or
- (b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

(3) Subsections (1) and (2) apply in relation to a purported marriage that is void as if it were a marriage.

3. Application of other laws.

(1) Subject to Subsection (2), where a matrimonial cause has been instituted, whether before or after the commencement date then, whether or not it has been completed, proceedings for any relief or order of a kind that could be sought under this Act in proceedings in relation to that matrimonial cause shall not be instituted except under this Act.

(2) Subject to the succeeding provisions of this section—

- (a) the jurisdiction of a court of summary jurisdiction, or of a court on appeal from such a court, to make—
 - (i) orders with respect to the maintenance of wives or children or the custody of or access to children; or
 - (ii) separation orders or other orders having the effect of relieving a party to a marriage from any obligation to cohabit with the other party, is not affected by this Act or any proceedings under this Act; and
- (b) proceedings for or in respect of such an order, or for the enforcement of such an order, may be continued or instituted as if this Act had not been passed.

(3) Where a marriage is dissolved or annulled by a decree under this Act—

- (a) any jurisdiction of a court of summary jurisdiction, or of a court on appeal from such a court, to make orders of the kind specified in Subsection (2)(a) ceases, by force of this subsection, to be applicable in relation to the parties to the marriage or the children of the marriage; and
- (b) an order of that kind made by such a court in relation to those parties or children ceases, subject to Subsection (5), to have effect.

(4) The Court may at any time order that an order of the kind specified in Subsection (2)(a) made by a court of summary jurisdiction, or by a court on appeal from such a court, cease to have effect.

¹ But, see, *Marriage Act*, Section 52.

(5) Where, by virtue of this section, an order with respect to the maintenance of a wife or of children ceases to have effect, this Act does not prevent the enforcement of that order, so far as it relates to a period before it ceased to have effect, as if this Act had not been passed.

4. Customary marriages.

This Act does not apply to or in relation to a customary marriage.

PART II.—MARRIAGE GUIDANCE ORGANIZATIONS.

5. Approval of marriage guidance organizations.

(1) A voluntary organization may apply to the Minister for approval under this Part as a marriage guidance organization.

(2) Where the Minister is satisfied—

- (a) that a voluntary organization is willing and able to engage in marriage guidance; and
- (b) that marriage guidance constitutes or will constitute the whole or the major part of its activities,

he may approve the organization as a marriage guidance organization.

(3) The approval of an organization under this section may be given subject to such conditions as the Minister determines.

(4) Where the approval of an organization has been given subject to conditions, the Minister may revoke or vary all or any of those conditions, or add further conditions.

(5) The Minister may revoke the approval of an organization if—

- (a) it has not complied with a condition of the approval of the organization; or
- (b) it has not furnished, in accordance with Section 7, a statement or report that it was required by that section to furnish; or
- (c) he is satisfied that it is not adequately carrying out marriage guidance.

(6) Notice of the approval of an organization under this section, and of the revocation of any such approval, shall be published in the National Gazette.

6. Grants to approved marriage guidance organizations.

The Minister may, out of moneys appropriated by the Parliament for the purposes of this Part, grant to an approved marriage guidance organization, on such conditions as he thinks fit, such sums by way of financial assistance as he determines.

7. Reports, etc., by approved marriage guidance organizations.

(1) As soon as practicable after 30 June in each year, an approved marriage guidance organization shall supply to the Minister, in respect of the year that ended on that day—

- (a) an audited financial statement of its receipts and expenditure, in which receipts and expenditure in respect of its marriage guidance activities are shown separately from other receipts and expenditure; and
- (b) a report on its marriage guidance activities, including information as to the number of cases dealt with by it during that year.

(2) Where the Minister is satisfied that it would be impracticable for an organization to comply with the requirements of Subsection (1) or that the application of those

requirements to an organization would be unduly onerous, he may, by writing under his hand, exempt the organization, wholly or in part, from those requirements.

8. Marriage guidance counsellor.

(1) Before entering on the performance of his functions as a counsellor, a marriage guidance counsellor shall make and subscribe, before a person authorized to take affidavits, an oath or affirmation of secrecy in the form in Schedule 1.

(2) A marriage guidance counsellor is not competent or compellable, in any proceedings before a court or before a person authorized by a law or by consent of parties to hear, receive and examine evidence, to disclose an admission or communication made to him in his capacity as a marriage guidance counsellor.

9. Branches of voluntary organizations.

A reference in this Part to a voluntary organization includes a reference to a branch or section of such an organization, being a branch or section identified by a distinct name and in respect of which separate financial accounts are maintained.

PART III.—RECONCILIATION.

10. Reconciliation.

(1) Where a matrimonial cause has been instituted in the Court, it is the duty of the Court to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage unless the proceedings are of such a nature that it would not be appropriate to do so.

(2) If at any time it appears to the Judge constituting the Court, from the nature of the case, the evidence in the proceedings or the attitude of the parties or of either of them, or of counsel, that there is a reasonable possibility of a reconciliation, the Judge may do all or any of the following things—

(a) adjourn the proceedings—

(i) to afford the parties an opportunity of becoming reconciled; or

(ii) to enable anything to be done in accordance with Paragraph (b) or (c);
and

(b) with the consent of the parties, interview them in chambers, with or without counsel, as the Judge thinks proper, with a view to affecting a reconciliation;
and

(c) nominate—

(i) an approved marriage guidance organization or a person with experience or training in marriage conciliation; or

(ii) in special circumstances, some other suitable person,

to endeavour, with the consent of the parties, to effect a reconciliation.

(2) If, not less than 14 days after an adjournment under Subsection (1) has taken place, either of the parties to the marriage requests that the hearing be proceeded with—

(a) the Judge shall resume the hearing; or

(b) arrangements shall be made for the proceedings to be dealt with by another Judge,

as the case requires, as soon as practicable.

11. Hearing where reconciliation fails.

Where a Judge has acted as conciliator under Section 10(1)(b) but the attempt to effect a reconciliation has failed, the Judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings or determine the proceedings, and in the absence of such a request arrangements shall be made for the proceedings to be dealt with by another Judge.

12. Evidence of statements, etc., at reconciliation attempts.

Evidence of anything said or of an admission made in the course of an endeavour to effect a reconciliation under this Part is not admissible in a court or in proceedings before a person authorized by a law or by consent of parties to hear, receive and examine evidence.

13. Oath of secrecy.

Before entering on the performance of his functions as a conciliator, a marriage conciliator shall make and subscribe, before a person authorized to take affidavits, an oath or affirmation of secrecy in the form in Schedule 1.

PART IV.—JURISDICTION.

14. Jurisdiction in matrimonial causes.

(1) Subject to this Act, a person may institute a matrimonial cause under this Act in the Court.

(2) Subject to the succeeding provisions of this section, the Court has jurisdiction to hear and determine matrimonial causes instituted under this Act.

(3) Proceedings for a decree of dissolution of marriage or for a decree of nullity of a voidable marriage shall not be instituted under this Act except by a person domiciled in Papua New Guinea.

(4) Proceedings for a decree of nullity of a void marriage or for a decree of judicial separation, restitution of conjugal rights or jactitation of marriage shall not be instituted under this Act except by a person domiciled or resident in Papua New Guinea.

(5) Where, in proceedings for a decree of dissolution or nullity of marriage, the Court finds that the parties to the marriage were, or one of the parties was, at the time when the proceedings were instituted, domiciled according to the principles of the common law in Papua New Guinea, it shall include in the decree a statement to that effect.

(6) For the purposes of this Act, a person domiciled in Australia who is resident in Papua New Guinea at the date of instituting proceedings under this Act and has been so resident for the period of six months immediately preceding that date shall be deemed to be domiciled in the country at that date.

15. Special provisions as to wife's domicile.

(1) For the purposes of this Act, a deserted wife who was domiciled in Papua New Guinea immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Papua New Guinea.

(2) For the purposes of this Act, a wife who is resident in Papua New Guinea at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Papua New Guinea at that date.

(3) The provisions of Subsections (1) and (2) are in addition to, and not in substitution for or derogation of, any other provision of this Act under which jurisdiction is conferred.

16. Law to be applied.

(1) The jurisdiction of the Court under this Act shall be exercised in accordance with this Act.

(2) Subject to this Act, the Court in exercising jurisdiction under this Act in proceedings for a decree of nullity of marriage, judicial separation, restitution of conjugal rights or jactitation of marriage shall proceed and act and give relief as nearly as possible in conformity with the principles and rules applied in the ecclesiastical courts in England immediately before the commencement of the Imperial Act known as The Matrimonial Causes Act 1857.

(3) Where it would be in accordance with the common law rules of private international law to apply the laws of a country or place (including a State or Territory of Australia), the Court shall apply the laws of that country or place.

PART V.—MATRIMONIAL RELIEF.

Division 1.—*Dissolution of Marriage*

17. Grounds for dissolution of marriage.

Subject to this Division, a petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be based on one or more of the following grounds—

- (a) that, since the marriage, the other party to the marriage has committed adultery; or
- (b) that, since the marriage, the other party to the marriage has, without just cause or excuse, wilfully deserted the petitioner for a period of not less than two years; or
- (c) that the other party to the marriage has wilfully and persistently refused to consummate the marriage; or
- (d) that, since the marriage, the other party to the marriage has, during a period of not less than one year, habitually been guilty of cruelty to the petitioner; or
- (e) that, since the marriage, the other party to the marriage has committed rape, sodomy or bestiality; or
- (f) that, since the marriage, the other party to the marriage has, for a period of not less than two years—
 - (i) been an habitual drunkard; or
 - (ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,
 or has, for a part or parts of such a period, been an habitual drunkard and, for the other part or parts of the period, has habitually been so intoxicated; or
- (g) that, since the marriage the petitioner's husband has, within a period not exceeding five years—
 - (i) suffered frequent convictions for crime, in respect of which he has been sentenced in the aggregate to imprisonment for not less than three years; and

- (ii) habitually left the petitioner without reasonable means of support; or
- (b) that, since the marriage, the other party to the marriage has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition; or
- (i) that, since the marriage and within a period of one year immediately preceding the date of the petition, the other party to the marriage has been convicted, on indictment, of—
 - (i) having attempted to murder or unlawfully to kill the petitioner; or
 - (ii) having committed an offence involving the intentional infliction of grievous bodily harm on the petitioner or the intent to inflict grievous bodily harm on the petitioner; or
- (j) that the other party to the marriage has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner that has been—
 - (i) ordered to be paid under an order of, or an order registered in, a court in Papua New Guinea or in Australia; or
 - (ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation; or
- (k) that the other party to the marriage has, for a period of not less than one year immediately preceding the date of the petition, failed to comply with a decree of restitution of conjugal rights made under this Act; or
- (l) that the other party to the marriage—
 - (i) is, at the date of the petition, of unsound mind and unlikely to recover; and
 - (ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution; or
- (m) that the parties to the marriage have been separated and afterwards have lived separately and apart for a continuous period of not less than five years immediately preceding the date of the petition, and there is no reasonable likelihood of cohabitation being resumed; or
- (n) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

18. Constructive desertion.**(1) A married person whose conduct—**

- (a) constitutes just cause or excuse for the other party to the marriage to live separately or apart; and
- (b) occasions the other party to live separately or apart,

shall be deemed to have wilfully deserted that other party without just cause or excuse.

(2) For the purposes of Subsection (1), it is irrelevant that the married person did not intend the conduct to occasion the other party to the marriage to live separately or apart.

19. Refusal to resume cohabitation.

(1) For the purposes of this section, "reasonable justification" means reasonable justification in all the circumstances, including the conduct of the other party to the marriage since the marriage, whether the conduct took place before or after the agreement for separation.

(2) Where husband and wife are parties to an agreement for separation, whether oral, in writing or constituted by conduct, the refusal of one of them, without reasonable justification, to comply with a bona fide request by the other to resume cohabitation constitutes, as from the date of the refusal, wilful desertion without just cause or excuse on the part of the party so refusing.

20. Desertion continuing after mental disorder.

Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to have been terminated by reason only of the fact that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the Court that the desertion would probably have continued if the deserting party had not become so incapable.

21. Wilful refusal to consummate.

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(*d*) unless the Court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.

22. Aggregation of concurrent sentences.

Where—

(*a*) a person has been sentenced to imprisonment in respect of each of two or more crimes that, in the opinion of the Court, arose substantially out of the same acts or omissions; and

(*b*) the sentences were ordered to be served in whole or in part concurrently,

then, in reckoning, for the purposes of Section 17(*g*), the period for which that person has been sentenced in the aggregate, any period during which two or more of those sentences were to be served concurrently shall be taken into account once only.

23. Failure to pay maintenance.

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(*f*) unless the Court is satisfied that reasonable attempts have been made by the petitioner to enforce the order or agreement under which the maintenance was ordered or agreed to be paid.

24. Unsoundness of mind.

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(*l*) unless the Court is satisfied that, at the commencement of the hearing of the petition, the respondent was still confined to an institution referred to in that paragraph and was unlikely to recover.

25. Separation.

(1) In this section, "the ground of separation" means the ground specified in Section 17(*m*).

(2) For the purposes of Section 17(*m*), the parties to a marriage may be taken to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties, whether constituting desertion or not.

(3) A decree of dissolution of marriage may be made on the ground of separation notwithstanding that there was in existence at any relevant time—

(*a*) a decree of a court suspending the obligation of the parties to the marriage to cohabit, or

(*b*) an agreement between the parties for separation.

(4) Where, on the hearing of a petition for a decree of dissolution of marriage on the ground of separation, the Court is satisfied that, by reason of the conduct of the petitioner, whether before or after the separation commenced, or for any other reason, it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to grant a decree on that ground on the petition of the petitioner, the Court shall refuse to make the decree sought.

(5) Where, in proceedings for a decree of dissolution of marriage on the ground of separation, the Court is of opinion that it is just and proper in the circumstances of the case that the petitioner should make provision for the maintenance of the respondent or should make any other provision for the benefit of the respondent, whether by way of settlement of property or otherwise, the Court shall not make a decree on that ground in favour of the petitioner until the petitioner has made arrangements, to the satisfaction of the Court, to provide the maintenance or other benefits on the decree becoming absolute.

(6) The Court may, in its discretion, refuse to make a decree of dissolution of marriage on the ground of separation if the petitioner has, before or after the separation commenced, committed adultery that has not been condoned by the respondent or that having been so condoned, has been revived.

(7) Where petitions by both parties to a marriage for the dissolution of the marriage are before the Court, the Court shall not make, on either of the petitions, a decree on the ground of separation if it is able properly to make a decree on the other petition on any other ground.

26. Presumption of death.

(1) Where proceedings are brought on the ground specified in Section 17(*n*), proof that, for a period of seven years immediately preceding the date of the petition, the other party to the marriage was continually absent from the petitioner and that the petitioner has no reason to believe that the other party was alive at any time within that period is sufficient to establish the ground of the petition, unless it is shown that the other party to the marriage was alive at a time within that period.

(2) A decree on the ground specified in Section 17(*n*) shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

27. Condonation or connivance.

A decree of dissolution of marriage shall not be made on a ground specified in Section 17(*a*) to (*h*) if the petitioner has condoned, or has connived at, the ground.

28. Collusion.

A decree of dissolution of marriage shall not be made if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion with intent to cause a perversion of justice.

29. Discretionary bars.

The Court may in its discretion, refuse to make a decree of dissolution of marriage on a ground specified in Section 17(*a*) to (*h*) if, since the marriage—

- (*a*) the petitioner has committed adultery that has not been condoned by the respondent or that, having been so condoned, has been revived; or
- (*b*) the petitioner has been guilty of cruelty to the respondent; or
- (*c*) the petitioner has wilfully deserted the respondent before the happening of matters constituting the ground relied on by the petitioner or, where that ground involves matters occurring during, or extending over, a period, before the expiration of that period; or
- (*d*) the habits of the petitioner have, or the conduct of the petitioner has, conduced or contributed to the existence of the ground relied on by the petitioner.

30. Decree for dissolution where petition for nullity.

Where both a petition for a decree of nullity of a marriage and a petition for a decree of dissolution of the marriage are before the Court, the Court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage.

31. Petition within three years of marriage.

(1) In this section, a reference to the leave of the Court includes a reference to leave granted on appeal.

(2) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within three years after the date of the marriage except by leave of the Court.

(3) This section does not require the leave of the Court to the institution of proceedings for a decree of dissolution of marriage on one or more of the grounds specified in Section 17(*a*), (*c*) or (*e*), and on no other ground, or to the institution of proceedings for a decree of dissolution of marriage by way of cross-proceedings.

(4) The Court shall not grant leave under this section to institute proceedings except on the ground that—

- (*a*) to refuse to grant leave would impose exceptional hardship on the applicant; or
- (*b*) the case involves exceptional depravity on the part of the other party to the marriage.

(5) In determining an application for leave to institute proceedings under this section, the Court shall have regard to the interests of any children of the marriage and to the question whether there is any reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.

(6) Where, at the hearing of proceedings that have been instituted by leave of the Court under this section, the Court is satisfied that the leave was obtained by misrepresentation or concealment of material facts, the Court may—

- (*a*) adjourn the hearing for such period as the Court thinks proper; or
- (*b*) dismiss the petition on the ground that the leave was so obtained.

(7) Where in a case to which Subsection (6) applies there is a cross-petition, if the Court adjourns or dismisses the petition under that subsection it shall also adjourn for the same period or dismiss, as the case may be, the cross-petition, but if the Court, having regard to the provisions of this section, thinks it proper to proceed to hear and determine the cross-petition it may do so, and in that case it shall also proceed to hear and determine the petition.

(8) The dismissal of a petition or a cross-petition under Subsection (6) or (7) does not prejudice any subsequent proceedings on the same, or substantially the same, facts as those constituting the ground on which the dismissed petition or cross-petition was brought.

(9) This section does not prevent the institution of proceedings, after the period of three years from the date of the marriage, based on matters that have occurred within that period.

32. Claim for damages.

(1) A party to a marriage may, in a petition for a decree of dissolution of the marriage on the ground that the other party to the marriage has committed adultery with a person, or on grounds including that ground, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage, and subject to this section the Court may award damages.

(2) The Court shall not award damages against a person—

(a) where the adultery of the respondent with that person has been condoned, whether subsequently revived or not; or

(b) if a decree of dissolution of the marriage on the ground of adultery of the respondent with that person, or on grounds including that ground, is not made.

(3) Damages shall not be awarded under this Act in respect of an act of adultery committed more than three years before the date of the petition.

(4) The Court may direct in what manner the damages awarded shall be paid or applied and, if it thinks fit, may direct that they be settled for the benefit of the respondent or the children of the marriage.

(5) No action for criminal conversation lies, whether under this Act or otherwise.

33. Joinder of adulterer, etc.

(1) Where, in a petition for a decree of dissolution of marriage or in answer to such a petition, a party to the marriage is alleged to have committed adultery with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the adultery, that person shall, except as provided by the Rules, be made a party to the proceedings.

(2) Where, in a petition for a decree of dissolution of marriage or in answer to such a petition, a party to the marriage is alleged to have committed rape or sodomy on or with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the rape or sodomy, that person shall, except as provided by the Rules, be served with notice that the allegation has been made, and is then entitled to intervene in the proceedings.

(3) Where a person has been made a party to proceedings for a decree of dissolution of marriage under Subsection (1), the Court may, on the application of the person, after the close of the case for the party to the marriage who alleged the adultery, dismiss that person

from the proceedings if it is satisfied that there is not sufficient evidence to establish that that person committed adultery with the other party to the marriage.

34. Re-marriage.

Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

Division 2.—Nullity of Marriage.

35. Ground for decree of nullity of marriage.

Subject to this Division, a petition under this Act for a decree of nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the petitioner.

36. Institution of proceedings.

A decree of nullity of marriage shall not be made—

- (a) on the ground that the marriage is voidable because of the incapacity of a party to the marriage to consummate the marriage—on the petition of the party suffering from the incapacity, unless he was not aware of the existence of the incapacity at the time of the marriage; or
- (b) on the ground that the marriage is voidable because a party to the marriage was, at the time at the marriage, of unsound mind or a mental defective, or was at that time suffering from a venereal disease in a communicable form—on the petition of the party suffering from the disability or disease; or
- (c) on the ground that the marriage is voidable because at the time of the marriage the wife was pregnant by a person other than the husband—on the petition of the wife.

37. Incapacity to consummate marriage.

(1) A decree of nullity of marriage shall not be made on the ground specified in Section 36(a) unless the Court is satisfied that the incapacity also existed at the time when the hearing of the petition commenced and that—

- (a) the incapacity is not curable; or
- (b) the respondent refuses to submit to such medical examination as the Court thinks necessary for the purpose of determining whether the incapacity is curable; or
- (c) the respondent refuses to submit to proper treatment for the purpose of curing the incapacity.

(2) A decree of nullity of marriage shall not be made on the ground specified in Section 36(a) where the Court is of opinion that—

- (a) by reason of—
 - (i) the petitioner's knowledge of the incapacity at the time of the marriage; or
 - (ii) the conduct of the petitioner since the marriage; or
 - (iii) the lapse of time; or

(b) for any other reason,
it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to make a decree.

38. Restrictions on certain grounds.

A decree of nullity of marriage shall not be made on a ground specified in Section 36(b) or (c) unless the Court is satisfied that—

- (a) the petitioner was, at the time of the marriage, ignorant of the facts constituting the ground; and
- (b) the petition was filed not later than 12 months after the date of the marriage; and
- (c) marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the ground.

39. Effect of decree of nullity of a voidable marriage.

(1) A decree of nullity of a voidable marriage annuls the marriage from and including the date on which the decree becomes absolute.

(2) Without prejudice to the operation of Subsection (1) in other respects, a decree of nullity under this Act of a voidable marriage does not make illegitimate a child of the parties born since, or legitimated by or during the marriage.

Division 3.—Judicial Separation.

40. Grounds for judicial separation.

Subject to this Division, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the grounds specified in Section 17(a) to (d).

41. Application of Division 1 to Division 3.

Sections 18 to 24 and 27 to 33 apply to and in relation to a decree of judicial separation and proceedings for such a decree, and for the purposes of those sections as so applying a reference in any of them to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.

42. Effect of decree.

A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation, but, except as provided by this Division, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

43. Effect on rights to sue, devolution of property, etc.

(1) While a decree of judicial separation is in operation, either party to the marriage may bring proceedings in contract or in tort against the other party.

(2) Where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, the property devolves as if he had survived the other party to the marriage.

(3) Where on, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use.

44. Exercise of joint powers.

This Division does not prevent a wife, during separation under a decree of judicial separation, from joining in the exercise of any power given to herself and her husband jointly.

45. Dissolution after judicial separation.

(1) A decree of judicial separation does not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

(2) In any proceedings for a decree of dissolution of marriage on the same, or substantially the same, facts as those on which a decree of judicial separation has been made, the Court may treat the decree of judicial separation as sufficient proof of the facts constituting the grounds on which that decree was made.

(3) Notwithstanding Subsection (2), the Court shall not grant a decree of dissolution of marriage without receiving evidence by the petitioner in support of the petition.

46. Discharge of decree on resumption of cohabitation.

(1) Where, after a decree of judicial separation has been made, the parties have voluntarily resumed cohabitation, either party may apply for an order discharging the decree.

(2) On an application under Subsection (1), the Court shall, if both parties consent to the order, or if the Court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the decree.

47. Application of Sections 43 to 46.

Sections 43 to 46 apply to and in relation to a decree of judicial separation made before the commencement date by a court in the country as well as to such a decree made after that date.

Division 4.—Restitution of Conjugal Rights.

48. Grounds for decree of restitution of conjugal rights.

A petition under this Act by a party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to, the petitioner.

49. Agreement for separation.

An agreement for separation, whether entered into before or after the commencement date, does not constitute a defence to proceedings under this Act for a decree of restitution of conjugal rights.

50. Sincerity of petitioner.

The Court shall not make a decree of restitution of conjugal rights unless it is satisfied—

- (a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent; and
- (b) that a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances that justify the making of a decree notwithstanding that such a request was not made.

51. Notice as to home.

Where the Court makes a decree of restitution of conjugal rights on the petition of a husband the petitioner shall, as soon as practicable after the making of the decree, and at such other times as the Rules require, give to the respondent notice, in accordance with the Rules, of the provision made by the petitioner, or that the petitioner is willing to make, with respect to a home for the purpose of enabling the respondent to comply with the decree.

52. Enforcement of decree.

A decree of restitution of conjugal rights is not enforceable by attachment.

Division 5.—Jactitation of Marriage

53. Grounds for decree of jactitation of marriage.

A petition under this Act for a decree of jactitation of marriage may be based on the ground that the respondent has falsely boasted and persistently asserted that a marriage has taken place between the respondent and the petitioner.

54. Decree.

Notwithstanding anything in this Act, the Court may, in its discretion, refuse to make a decree of jactitation of marriage.

Division 6.—General

55. Facts, etc., occurring outside the country, etc.

(1) A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement date, or outside Papua New Guinea.

(2) For the purposes of this section, Sections 18, 19 and 20 extend to matters that occurred before the commencement date.

56. Institution of proceedings.

(1) Subject to Subsection (2), a matrimonial cause of a kind referred to in Paragraph (a) or (b) of the definition "matrimonial cause" in Section 1(1) shall be instituted by petition.

(2) In the answer to the petition, a respondent may seek any decree or declaration that the respondent could have sought in a petition.

(3) Proceedings of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) that are in relation to proceedings under this Act for a decree or declaration of a kind referred to in Paragraph (a) or (b) of that definition—

(a) may be instituted by the same petition as that by which the proceedings for the decree or declaration are instituted; and

(b) except as permitted by the Rules, or by leave of the Court, shall not be instituted in any other manner.

(4) As far as practicable the Court shall hear and determine at the same time all proceedings instituted by the one petition.

57. Entitlement to decree.

Except as provided by this Act, the Court shall, on being satisfied of the existence of a ground in respect of which relief is sought, make the appropriate decree.

58. Decree nisi in first instance.

A decree of dissolution of marriage or of nullity of a voidable marriage under this Act shall, in the first instance, be a decree nisi.

59. Decree absolute where children under 16, etc.

(1) In this section, "children of the marriage in relation to whom this section applies" means—

(a) the children of the marriage who are under the age of 16 years at the date of the decree nisi; and

(b) any children of the marriage in relation to whom the Court has, under Subsection (3) ordered that this section applies.

(2) Unless the Court declares that it is satisfied that there are no children of the marriage in relation to whom this section applies, a decree nisi does not become absolute unless the Court has, by order, declared that—

(a) it is satisfied that proper arrangements in all the circumstances have been made for the welfare and, where appropriate, advancement and education for the children of the marriage in relation to whom this section applies; or

(b) there are such special circumstances that the decree nisi should become absolute notwithstanding that the Court is not satisfied that such arrangements have been made.

(3) If in a particular case the Court is of opinion that there are special circumstances that justify its so doing, it may order that this section applies in relation to a child of the marriage who has attained the age of 16 years at the date of the decree nisi.

60. Time of decree absolute.

(1) In this section, "appeal", in relation to a decree nisi, means—

(a) an appeal, an application for leave to appeal or an intervention, against or arising out of—

(i) the decree nisi; or

(ii) an order under Section 59 in relation to the proceedings in which a decree nisi was made; or

(b) an application under Section 62 or 63 for rescission of the decree, or an appeal or application for leave to appeal arising out of such an application.

(2) Subject to this section, where Section 59 applies in relation to a decree nisi the decree nisi becomes absolute by force of this section at the expiration of—

- (a) a period of three months after the making of the decree; or
- (b) a period of 28 days after the making of an order under Section 59(2),

whichever is the later.

(3) Subject to this section, where Section 59 does not apply in relation to a decree nisi the decree nisi becomes absolute by force of this section on the expiration of a period of three months after the making of the decree.

(4) Where a decree nisi has been made in any proceedings, the Court or a court in which an appeal has been instituted may, whether before or after it has disposed of the proceedings or appeal and whether or not a previous order has been made under this subsection—

- (a) having regard to the possibility of an appeal or further appeal—make an order extending the period at the expiration of which the decree nisi will become absolute; or
- (b) if it is satisfied that there are special circumstances that justify its so doing—make an order reducing the period at the expiration of which the decree nisi will become absolute.

(5) Where an appeal is instituted (whether or not it is the first appeal) before a decree nisi has become absolute, then, notwithstanding any order in force under Subsection (4) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree nisi, unless reversed or rescinded, becomes absolute by force of this section—

- (a) at the expiration of a period of 28 days after the day on which the appeal is determined or discontinued; or
- (b) on the day on which the decree would have become absolute under Subsection (2) or (3) if no appeal had been instituted,

whichever is the later.

(6) A decree nisi does not become absolute by force of this section where either of the parties to the marriage has died.

61. Certificate as to decree absolute.

(1) When a decree nisi becomes absolute, the Registrar of the Court shall prepare and file a memorandum of the fact and of the date on which the decree became absolute.

(2) When a decree nisi has become absolute, any person is entitled on application to the Registrar of the Court, and on payment of the appropriate fee, to receive a certificate signed by the Registrar that the decree nisi has become absolute.

(3) A certificate given under Subsection (2) is, in all courts and for all purposes, evidence of the matters specified in the certificate.

62. Rescission of decree nisi where parties reconciled, etc.

Notwithstanding anything in this Division, where a decree nisi has been made in proceedings for a decree of dissolution of marriage, the Court may, at any time before the decree becomes absolute, on the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled.

63. Rescission of decree nisi on ground of miscarriage of justice.

Where a decree nisi has been made but has not become absolute, if the Court, on the application of a party to the proceedings, is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, it may rescind the decree and, if it thinks fit, order that the proceedings be reheard.

64. Appeal after decree absolute.

An appeal does not lie from a decree of dissolution of marriage or nullity of a voidable marriage after the decree has become absolute.

PART VI.—INTERVENTION.

65. Intervention by Principal Legal Adviser on request of Court.

In proceedings under this Act, where the Court requests him to do so the Principal Legal Adviser may intervene in, and contest or argue any question arising in, the proceedings.

66. Intervention by Principal Legal Adviser in other cases.

In proceedings under this Act—

(a) for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights; or

(b) in relation to the custody or guardianship of children,

where the Principal Legal Adviser has reason to believe that there are matters relevant to the proceedings that have not been or may not be, but ought to be, made known to the Court, he may, at any time before the proceedings are finally disposed of, intervene in the proceedings.

67. Delegation by Principal Legal Adviser.

The Principal Legal Adviser may, by writing under his hand, delegate all or any of his powers and functions under this Part (except this power of delegation) to the person occupying a prescribed office.

68. Intervention by other persons.

(1) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the Court for leave to intervene in the proceedings and the Court is satisfied that he may be able to prove facts relevant to the proceedings that have not been or may not be, but ought to be, made known to the Court, the Court may, at any time before the proceedings are finally disposed of, make an order entitling him to intervene in the proceedings.

(2) An order under Subsection (1) may be made on such conditions as the Court thinks proper, including the giving of security for costs.

69. Rescission of decree nisi on intervention.

Where an intervention takes place under this Part after a decree nisi has been made and it is proved that—

(a) the petitioner has been guilty of collusion with intent to cause a perversion of justice; or

(b) material facts have not been brought before the Court, the Court may rescind the decree.

70. Operation of Part VI.

For the purposes of this Part, where a decree nisi has been made in any proceedings the proceedings shall not be taken to have been finally disposed of until the decree nisi has become absolute.

71. Status of interveners.

A person intervening under this Part or Part V. shall be deemed to be a party in the proceedings, with all the rights, duties and liabilities of a party.

PART VII.—MAINTENANCE, CUSTODY AND SETTLEMENTS.

72. Interpretation of Part VII.

In this Part, "marriage" includes a purported marriage that is void.

73. Powers of Court in maintenance proceedings.

(1) Subject to this section, in proceedings with respect to the maintenance of a party to a marriage or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings the Court may make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(2) Subject to this section and to the Rules, in proceedings for an order for the maintenance of a party to a marriage or of children of the marriage pending the disposal of proceedings, the Court may make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(3) The Court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

(4) The power of the Court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of opinion that there are special circumstances that justify the making of such an order for his benefit.

74. Powers of Court in custody, etc., proceedings.

(1) In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage—

(a) the Court shall regard the interests of the children as the paramount consideration; and

(b) subject to Paragraph (a), the Court may make such order in respect of those matters as it thinks proper.

(2) The Court may adjourn any proceedings referred to in Subsection (1) until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the Court thinks desirable, and the Court may receive the report in evidence.

(3) In proceedings with respect to the custody of children of a marriage, if the Court is satisfied that it is desirable it may make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4) Where the Court makes an order placing a child of a marriage in the custody of a person, it may include in the order such provision as it thinks proper for access to the child by parties or a party to the marriage.

75. Powers of Court with respect to settlement of property.

(1) In proceedings under this Act, the Court may by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such settlement of property to which the parties are, or either of them is, entitled (whether in possession or in reversion) as the Court thinks just and equitable in the circumstances.

(2) In proceedings under this Act, the Court may make such order as the Court thinks just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

(3) The power of the Court to make orders of a kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of opinion that there are special circumstances that justify the making of such an order for his benefit.

76. General powers of Court.

(1) In exercising its power under this Part the Court may do any or all of the following :—

- (a) order that a lump sum or weekly, monthly, yearly or other periodical sum be paid; or
- (b) order that a lump sum or a weekly, monthly, yearly or other periodical sum be secured; or
- (c) where a periodical sum is ordered to be paid, order that its payment be wholly or partly secured in such a manner as the Court directs; or
- (d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order; or
- (e) appoint or remove trustees; or
- (f) order that payments be made direct to a party to the marriage, or to a trustee to be appointed or to a public authority for the benefit of a party to the marriage; or
- (g) order that payment of maintenance in respect of a child be made to such person or public authority as the Court specifies; or
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives, or an order until further order; or
- (i) impose terms and conditions; or

- (j) in relation to an order made in respect of a matter referred to in Section 73, 74 or 75, whether made before or after the commencement date—
- (i) discharge the order if the party in whose favour it was made marries again or if there is any other just cause for so doing; or
 - (ii) modify the effect of the order or suspend its operation wholly or in part, and until further order or until a fixed time or the happening of some future event; or
 - (iii) revive wholly or in part an order suspended under Subparagraph (ii); or
 - (iv) subject to Subsection (2), vary the order so as to increase or decrease any amount ordered to be paid by the order; or
- (k) sanction an agreement for the acceptance of a lump sum or periodical sums or other benefits in place of rights under an order made in respect of a matter referred to in Section 73, 74 or 75, or any right to seek such an order; or
- (l) make any other order (whether or not of the same nature as the orders specified in the preceding paragraphs of this subsection, and whether or not it is in accordance with the practice under other laws before the commencement date) that it thinks necessary to make in order to do justice; or
- (m) include its order under this Part in a decree under another Part; or
- (n) subject to this Act, make an order under this part at any time before or after the making of a decree under another Part.

(2) The Court shall not make an order increasing or decreasing an amount ordered to be paid under Subsection (1) unless it is satisfied—

- (a) that, since the order was made or last varied, the circumstances of the parties or either of them, or of a child for whose benefit the order was made, have changed to such an extent as to justify its so doing; or
- (b) that material facts were withheld from the court that made the order or from a court that varied the order, or material evidence previously given before such a court was false.

(3) The Court shall not make an order increasing or decreasing—

- (a) the security for the payment of a periodical sum ordered to be paid; or
- (b) the amount of a lump sum or periodical sum ordered to be secured,

unless it is satisfied that material facts were withheld from the court that made the order or from a court that varied the order, or that material evidence given before such a court was false.

77. Execution of deeds, etc., by order of Court.

(1) Where a person who is directed by an order under this Part to execute a deed or instrument refuses or neglects to do so, or where service of any such order on any such person is dispensed with under Section 94, the Court may appoint an officer of the Court or other person to execute the deed or instrument in his own name in the place of that person, and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of a deed or instrument by a person appointed under Subsection (1) has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) The Court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

78. Orders where petition dismissed.

(1) In this section, "principal relief" means relief of a kind specified in Paragraph (a) or (b) of the definition "matrimonial cause" in Section 1(1).

(2) Except as provided by this section, the Court shall not make an order under this Part where the petition for the principal relief has been dismissed.

(3) Where—

(a) the petition for the principal relief has been dismissed after a hearing on the merits; and

(b) the Court is satisfied that—

(i) the proceedings for the principal relief were instituted in good faith to obtain that relief; and

(ii) there is no reasonable likelihood of the parties becoming reconciled,

the Court may, if it thinks it desirable, make an order under this Part, other than an order under Section 75.

(4) The Court shall not make an order under Subsection (3) unless it has heard the proceedings for the order at the same time as, or immediately after, the proceedings for the principal relief.

PART VIII.—RECOGNITION OF FOREIGN DECREES.

79. Recognition of foreign decrees.

(1) In this section, "foreign country" means a country, or part of a country other than Papua New Guinea and Australia and the Territories of Australia.

(2) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country shall be recognized as valid in Papua New Guinea where, at the date of the institution of the proceedings that result in the dissolution or annulment, the party at whose instance the dissolution or annulment was effected (or, if it were effected at the instance of both parties, either of those parties) was—

(a) in the case of the dissolution of a marriage or the annulment of a voidable marriage—domiciled in the foreign country; or

(b) in the case of the annulment of a void marriage—domiciled or resident in the foreign country.

(3) For the purposes of Subsection (2)—

(a) where a dissolution of marriage was effected in accordance with the law of a foreign country at the instance of a deserted wife who was domiciled in the foreign country immediately before her marriage or immediately before the desertion, she shall be deemed to have been domiciled in the foreign country at the date of the institution of the proceedings that resulted in the dissolution; and

(b) a wife who, at the date of the institution of the proceedings that resulted in a dissolution or annulment of her marriage in accordance with the law of a foreign country, was resident in the foreign country and had been so resident for a period of three years immediately preceding that date shall be deemed to have been domiciled in the foreign country at that date.

(4) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country, not being a dissolution or annulment to which Subsection (2) applies, shall be recognized as valid in Papua New Guinea if its validity would have been recognized under the law of the foreign country in which, in the case of a dissolution, the parties were domiciled at the date of the dissolution or in which, in the case of an annulment, either party was domiciled at the date of the annulment.

(5) A dissolution or annulment of a marriage that would be recognized as valid under the common law rules of private international law but to which the preceding provisions of this section do not apply shall be recognized as valid in Papua New Guinea, and the operation of this subsection shall not be limited by any implication from those provisions.

(6) For the purposes of this section, a court in Papua New Guinea, in considering the validity of a dissolution or annulment effected under the law of a foreign country, may treat as proved any facts found by a court of the foreign country or otherwise established for the purpose of the law of the foreign country.

(7) A dissolution or annulment of a marriage shall not be recognized as valid by virtue of Subsection (2) or (4) where, under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice.

(8) This section applies in relation to dissolutions and annulments made, whether by decree, legislation or otherwise, before or after the commencement date.

PART IX.—EVIDENCE.

80. Standard of proof.

(1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

81. Evidence of husbands and wives.

(1) Subject to this Part, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

(2) Subject to Subsection (3), in proceedings under this Act either spouse is competent, but not compellable, to disclose communications made between them during the marriage.

(3) Where a husband and wife are both parties to proceedings under this Act, each of them is competent and compellable to disclose communications made between them during the marriage.

(4) Subsections (2) and (3) apply to communications made before as well as after the commencement date.

82. Evidence of non-access.

In proceedings under this Act, either party to a marriage is competent to give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was illegitimate.

83. Evidence as to adultery.

- (1) A witness in proceedings under this Act, who—
- (a) being a party, voluntarily gives evidence on his own behalf; or
 - (b) whether he is a party or not, is called by a party,

may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness where proof of the adultery would be material to the decision of the case.

(2) Except as provided by Subsection (1), a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that he has committed adultery.

84. Proof of marriage, etc.

In proceedings under this Act, the Court may receive as evidence of the facts stated in it a document purporting to be the original or a certified copy of the certificate, entry or record of a birth, death or marriage alleged to have taken place in Papua New Guinea or elsewhere.

85 Evidence of rape, etc.

- (1) In proceedings under this Act—
- (a) evidence that a person, being a party to a marriage, was, after the marriage, convicted (whether in Papua New Guinea or elsewhere) of rape, or of any other offence of which sexual intercourse with a person of the opposite sex is an element, is evidence that he committed adultery with the person on whom the rape or other offence was committed; and
 - (b) evidence that a person, being a party to a marriage was, after the marriage, convicted (whether in Papua New Guinea or elsewhere) of sodomy or bestiality is evidence that he committed sodomy or bestiality, as the case may be.

(2) In proceedings under this Act, a certificate of the conviction of a person for an offence, on a date specified in the certificate, by a court of a State or Territory of Australia or of any part of the Queen's dominions, being a certificate purporting to be signed by the registrar or other appropriate officer of that court, is evidence of the fact and date of the conviction and, if the certificate shows that a sentence of imprisonment was imposed, of the fact that that sentence was imposed.

PART X.—ENFORCEMENT OF DECREES.

86. Attachment.

(1) Subject to the Rules, the Court may enforce by attachment or by sequestration an order made by it under this Act for payment of maintenance or costs, or in respect of custody of or access to children.

(2) The Court shall order the release from custody of a person who has been attached under this section on being satisfied that he has complied with the order in respect of which he was attached and may at any time, if the Court is satisfied that it is just and equitable to do so, order the release of such a person notwithstanding that he has not complied with the order.

(3) Where a person who has been attached under this section in consequence of his failure to comply with an order for the payment of maintenance or costs becomes a

bankrupt, he shall not be kept in custody under the attachment for more than six months after he becomes a bankrupt, unless the Court otherwise orders.

87. Recovery under decrees.

(1) Where a decree made under this Act orders the payment of money to a person, money payable under the decree may be recovered as a judgement debt in a court of competent jurisdiction.

(2) A decree made under this Act may be enforced, by leave of the Court and on such terms and conditions as the Court thinks proper, against the estate of a deceased party.

88. Summary enforcement of orders for maintenance.

Where the Court has made an order for payment of maintenance under this Act, the order may be registered, in accordance with the Rules, in a court of summary jurisdiction, and an order so registered may, subject to the Rules, be enforced in the same manner as if it were an order for maintenance of a deserted wife made by the court of summary jurisdiction.

89. Enforcement of maintenance orders by attachment of earnings.

An order under this Act for the payment of maintenance may be enforced in accordance with Schedule 2, and the provisions of that Schedule have effect in relation to the enforcement of such orders.

90. Enforcement of decrees by other means.

Subject to this Act, the Rules may make provision for the enforcement of decrees made under this Act by means other than those specified in the preceding provisions of this Part.

91. Enforcement of existing decrees.

A decree made in the country in a matrimonial cause before the commencement date may be enforced—

- (a) in any manner in which it could be enforced if this Act had not been made;
or
- (b) subject to the Rules, in any manner in which a similar decree made by the Court under this Act may be enforced.

PART XI.—MISCELLANEOUS.

92. Hearings to be in open court¹.

(1) Except to the extent to which the Rules make provision for proceedings, or part of proceedings, to be heard in chambers, the jurisdiction of the Court under this Act shall, subject to Subsection (2), be exercised in open court.

(2) Where, in proceedings under this Act, the Court is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice that the proceedings, or part of the proceedings, should not be heard in open court, the Court may order that any persons not being—

- (a) parties to the proceedings; or

¹ See, also, Constitution, Section 37(12),(13).

(b) their lawyers,
be excluded during the hearing of the proceedings or the part of the proceedings, as the case may be.

93. Transactions intended to defeat claims.

(1) In this section, "disposition" includes a sale and a gift.

(2) In proceedings under this Act, the Court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interests of, a party, if it is made or proposed to be made to defeat an existing or anticipated order in the proceedings for costs, damages, maintenance or the making or variation of a settlement.

(3) The Court may order that money or property dealt with by an instrument or disposition referred to in Subsection (2) may be taken in execution or charged with the payment of such sums for costs, damages or maintenance as the Court directs, or that the proceeds of a sale shall be paid into court to abide its order.

(4) In making an order or setting aside or restraining the making of an instrument or disposition under this section, the Court shall have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

(5) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party, or of a bona fide purchaser or other person interested, of and incidental to an instrument or disposition referred to in this section and the setting aside or restraining of it.

94. Service of process.

(1) Service of process of a court under this Act may be effected in or outside Papua New Guinea in accordance with the Rules.

(2) The Court may dispense with service where the Court thinks it necessary or expedient.

95. Restrictions on publication of evidence¹.

(1) In this section—

"court" includes an officer of a court investigating a matter in accordance with the Rules;

"judgement of the court" includes a report made to the court by such an officer.

(2) Except as provided in this section, a person who, in relation to any proceedings under this Act, prints or publishes, or causes to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings, other than—

(a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the lawyers; and

(b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and countercharges in support of which evidence has been given; and

(c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; and

¹ See, also, Constitution, Section 37 and 51.

(d) the judgement of the court and observations made by the court in giving judgement,

is guilty of an offence.

(3) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in Subsection (2)(a), (b), (c) or (d) shall be printed or published, or that any such matter or part of a matter shall not be printed or published.

(4) A person who contravenes Subsection (2), or prints or publishes, or causes to be printed or published, anything in contravention of an order of the court under Subsection (3), is guilty of an offence.

Penalty: For a first offence, or a second or subsequent offence prosecuted summarily—a fine not exceeding K1 000 or imprisonment for a term not exceeding six months.

For a second, or subsequent offence prosecuted on indictment—a fine not exceeding K2 000 or imprisonment for a term not exceeding 12 months.

(5) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Public Prosecutor.

(6) This section does not apply to or in relation to—

(a) the printing of any pleading, transcript of evidence or other document for use in connexion with proceedings in a court, or the communication of any such document to persons concerned in the proceedings; or

(b) the printing or publishing of a notice or report under the direction of a court; or

(c) the printing or publishing of a publication bona fide intended primarily for the use of members of the legal or medical profession, being—

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(d) the printing or publishing of a photograph of a person, not being a photograph forming part of the evidence in proceedings under this Act.

96. Injunctions.

The Court may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), where it appears to the Court to be just or convenient, and either unconditionally or on such terms and conditions as the Court thinks just.

97. Costs.

Subject to the Rules, in proceedings under this Act the Court may make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the Court thinks just.

98. Frivolous or vexatious proceedings.

(1) At any stage of proceedings under this Act, if the Court is satisfied that the proceedings are frivolous or vexatious it may dismiss the proceedings.

(2) At any stage of proceedings under this Act, if the Court is satisfied that the allegations made in respect of a party to the proceedings are frivolous or vexatious it may order that the party be dismissed from the proceedings.

SCHEDULES.

SCHEDULE 1.

Sec. 8(1), 13.

OATH AND AFFIRMATION OF SECRECY.

Oath.

I, _____, do swear that I will not disclose to any person any communication or admission made to me in my capacity as a marriage guidance counsellor (or marriage conciliator) except so far as it is necessary for me to do so for the proper discharge of my functions as a marriage guidance counsellor (or marriage conciliator).

So help me God!

Affirmation.

I, _____, do solemnly and sincerely affirm and declare that I will not disclose to any person any communication or admission made to me in my capacity as a marriage guidance counsellor (or marriage conciliator) except so far as it is necessary for me to do so for the proper discharge of my functions as a marriage guidance counsellor (or marriage conciliator).

SCHEDULE 2.

Sec. 89.

ENFORCEMENT OF ORDERS FOR MAINTENANCE.

PART I.—PRELIMINARY.

Sch. 2.1.—Interpretation of Schedule 2.

(1) In this Schedule, unless the contrary intention appears—

“attachment of earnings order” means an order under Section Sch. 2.4 or Sch. 2.5;

“the court”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings.

“defendant”, in relation to a maintenance order, means the person liable to make payments under the order;

“earnings”, in relation to a defendant, means any sums payable to the defendant—

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or

(b) by way of pension, including—

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and

- (ii) periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments of any office or employment,

but not including—

- (iii) pension payable to the defendant under the *Social Services Act 1947-1975*, the *Repatriation Act 1920-1975* or the *Seamen's War Pensions and Allowances Act 1940-1975*, all of Australia and all as in force from time to time; or
- (iv) pension payable to the defendant in respect of injury, disablement or disability;

"employer", in relation to a defendant, means a person (including the State, the Crown in right of Australia or of a State of Australia and any authority of the Government or of Australia) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

"maintenance order" means an order under this Act for the payment of maintenance and includes such an order that has been discharged if arrears are recoverable under it;

"net earnings", in relation to a pay-day, means the amount of earnings becoming payable on that pay-day, after the deduction of any sum deducted from them under Division VI.2 of the *Income Tax Act*;

"normal deduction", in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and the previous pay-day, or where there is no earlier pay-day the date on which the employer became, or last became, the defendant's employer;

"pay-day" means an occasion on which earnings to which an attachment of earnings order relates become payable;

"protected earnings", in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and the previous pay-day or where there is no last preceding pay-day the date on which the employer became, or last became, the defendant's employer.

"protected earnings rate", in relation to an attachment of earnings order, means the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the court considers it to be reasonable that the net earnings of the defendant should not be reduced by a payment under the order.

(2) In this Schedule—

- (a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order directly or through another person or for transmission to another person; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made; and
- (c) a reference to costs incurred in proceedings relating to a maintenance order shall be read, in the case of a maintenance order made by the National Court, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

Sch. 2.2. Effect of Schedule 2.

This Schedule has effect in relation to a defendant notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attached.

PART II.—ATTACHMENT OF EARNINGS ORDERS.

Sch. 2.3. Application for order.

Subject to this Schedule, a person entitled to receive payments under a maintenance order may apply to—

- (a) the National Court; or
- (b) a court in which the order is for the time being registered under Section 88,

for an attachment of earnings order.

Sch. 2.4. Making of orders on application.

If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and that—

- (a) at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than—
 - (i) in the case of an order for weekly payments—four payments; or
 - (ii) in any other case—two payments; or
- (b) the defendant has wilfully and persistently failed to comply with the requirements of the order,

the court may, in its discretion, by order require a person who appears to the court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of them or that part of them payments in accordance with Section Sch. 2.14(1).

Sch. 2.5. Making of orders on other occasions.

Where the proceedings for attachment are brought in the National Court under Section 86, or where proceedings are taken in a court of summary jurisdiction to enforce an order registered in that court under Section 88, the National Court or the court of summary jurisdiction, as the case may be, may, instead of making any other order, make an attachment of earnings order.

Sch. 2.6. Contents, etc., of orders.

(1) The court shall not make an attachment of earnings order if it appears to the court, in a case to which Section Sch. 2.4(a) applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(2) An attachment of earnings order shall specify the normal deduction rate, that is to say, the rate at which the court thinks it reasonable that the earnings to which the order relates should be applied in satisfying the requirements of the maintenance order, but not exceeding the rate that appears to the court to be necessary for the purpose of—

- (a) securing payment of the sums from time to time falling due under the maintenance order; and
- (b) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and of any costs incurred in proceedings relating to the maintenance order that are payable by the defendant.

(3) An attachment of earnings order shall also specify the protected earnings rate.

(4) An attachment of earnings order shall provide that payments under the order are to be made to an officer of the court specified in the order.

(5) An attachment of earnings order shall contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.

(6) An attachment of earnings order does not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

Sch. 2.7. Statement by defendant as to employment.

(1) Where proceedings relating to an attachment of earnings order are brought in a court, the court may, before or after the hearing—

- (a) order the defendant to furnish to the court, within a specified period, a statement signed by him specifying—
 - (i) the name and address of his employer, or if he has more than one employer each of his employers; and
 - (ii) particulars as to his earnings; and
 - (iii) such particulars as are necessary to enable him to be identified by any of his employers; and

(b) order any person who appears to the court to be an employer of the defendant to give to the court, within a specified period, a statement signed by him or on his behalf containing such particulars as are specified in the order of all earnings of the defendant that become payable by that person during a specified period.

(2) In any proceedings relating to an attachment of earnings order, a document purporting to be a statement referred to in Subsection (1) shall be received in evidence and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

Sch. 2.8. Notice denying employment.

A person to whom an attachment of earnings order is directed, who, at the time when a copy of the order is served on him or at any time after that time, has not on any occasion during the period of four weeks immediately preceding that time been the defendant's employer shall immediately give notice in writing accordingly to the proper officer of the court which made the order.

Sch. 2.9. Effect of order on enforcement of maintenance order.

Where an attachment of earnings order has been made, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

Sch. 2.10. Application for interpretation of order.

(1) On the application of—

- (a) the person to whom an attachment of earnings order is directed; or
- (b) the defendant; or
- (c) the person in whose favour the order was made,

the court by which an attachment of earnings order was made shall determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.

(2) A person to whom an attachment of earnings order is directed who makes an application under Subsection (1) does not incur any liability for failing to comply with the order with respect to payments of the class or description specified in the application that are made by him to the defendant while the application, or an appeal from a determination made on the application, is pending.

(3) Subsection (2) does not apply in respect of a payment made after—

- (a) the application has been withdrawn; or
- (b) an appeal from a determination made on the application has been abandoned.

Sch. 2.11. Discharge, variation, etc.

(1) On the application of the defendant or of a person entitled to receive payments under the maintenance order, the court by which an attachment of earnings order was made may, in its discretion, make an order discharging or varying the attachment of earnings order.

(2) An order varying an attachment of earnings order shall not come into force until the expiration of seven days after the date on which the order is served on the person to whom the attachment of earnings order is directed.

Sch. 2.12. Cessation of orders.

(1) An attachment of earnings order ceases to have effect—

- (a) on the issuing or making of a writ, order or warrant of commitment or attachment for the enforcement of the maintenance order in relation to which the attachment of earnings order applies; or
- (b) subject to Subsection (2), on its discharge or variation.

(2) Where it appears to the court on the discharge of a maintenance order that arrears under it will remain to be recovered under it, the court may, in its discretion, direct that it shall not cease to have effect until the arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect, the proper officer of the court by which the order was made shall immediately give notice to the person to whom the order was directed.

PART III.—PAYMENTS UNDER ORDERS.

Sch. 2.13. Compliance with orders.

(1) Notwithstanding any other law, but subject to this Schedule, a person to whom an attachment of earnings order is directed shall comply with the order or, if the order is varied, with the order as varied.

(2) Where on any occasion on which earnings become payable to a defendant there are in force two or more attachments of earnings orders in relation to the earnings, the person to whom the orders are directed—

- (a) shall comply with those orders according to the respective dates on which they came into force, and shall disregard an order until any earlier order has been complied with; and
- (b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after making any payment under any earlier order.

Sch. 2.14. Payments by employer.

(1) An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of—

- (a) the protected earnings of the defendant; and
- (b) so much of the amount by which the net earnings that become payable on any previous pay-day were less than the protected earnings for the purposes of that pay-day as has not been made good on any other previous pay-day,

pay, so far as the excess permits, to the officer specified for the purpose in the order—

- (c) the normal deduction; and
- (d) so much of the normal deduction for the purposes of any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

(2) A payment made by the employer under Subsection (1) is a valid discharge to him as against the defendant to the extent of the amount paid.

(3) Where an attachment of earnings order ceases to have effect or is discharged, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by Section Sch. 2.12(3) or a copy of the discharging order, as the case may be, is served on him.

(4) On each occasion on which an employer makes a payment under this Schedule in respect of a defendant, the employer may retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of 5t, or, if on that occasion the employer makes payments under two or more attachments of earnings orders relating to the defendant, the sum of 5t in respect of each sum payment.

(5) A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice specifying particulars of the payment.

Sch. 2.15. Payments out.

The officer to whom an employer pays a sum under an attachment of earnings order shall pay it to such person entitled to receive payments under the maintenance order as is specified by the attachment of earnings order.

Sch. 2.16. Effect of payments.

A sum received by virtue of an attachment of earnings order by the person entitled to receive it shall be deemed to be a payment made by the defendant to that person, so as to discharge first any sums due and unpaid under the maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order that were payable by the defendant when the attachment of earnings order was made or last varied.

PART IV.—OFFENCES.

Sch. 2.17. Failure to comply, false statements, etc.

(1) A person who—

- (a) fails to comply with a requirement of this Schedule, or of an order made under this Schedule, that is applicable to him; or
- (b) in a statement or notice furnished to a court under this Schedule, or in compliance with an order made under this Schedule, makes a statement that he knows to be false or misleading in a material particular; or
- (c) recklessly furnishes such a statement or notice that is false or misleading in a material particular,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) It is a defence to a charge of an offence against Subsection (1) if the defendant proves that he took all reasonable steps to comply with the requirements or order.

Sch. 2.18. Prejudicing on account of order.

(1) A person who—

- (a) dismisses an employee; or
- (b) injures him in his employment; or
- (c) alters his position to his prejudice,

by reason of the circumstance—

- (d) that an attachment of earnings order has been made in relation to the employee; or
- (e) that the person is required to make payments under such an order in relation to the employee,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) If in any proceedings for an offence against Subsection (1) all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden of proving that he was not actuated by the reason alleged in the charge is on the person charged.

(3) Where a person is convicted of an offence against Subsection (1), the court by which he is convicted may order that the employee be reimbursed any wages lost by him, and may also direct that the employee be re-instated in his old position or in a similar position.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

Matrimonial Causes Rules.

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—
 - "address for service"
 - "application"
 - "certificate of means"
 - "co-respondent"
 - "court town"
 - "filed"
 - "infant"
 - "intervener"
 - "party cited"
 - "party named"
 - "petitioner"
 - "person named"
 - "pleading"
 - "proceedings"
 - "the Registrar"
 - "respondent"
 - "sealed"
 - "stamped envelope".
2. Exercise of powers and functions of Registrar.
3. Designation of parties to proceedings.
4. Filing of documents.
5. Computation of time.
6. Sittings in chambers.
7. Further applications on hearing of ancillary proceedings.
8. Address for service.
9. Forms.

PART II.—RECONCILIATION.

10. Advice as to facilities for reconciliation.

PART III.—PROCEEDINGS.

Division 1.—Commencement of Proceedings.

11. Institution of proceedings.
12. Title of proceedings.
13. Numbering of proceedings.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

*Matrimonial Causes Rules*¹.

Being Rules of Court relating to the practice and procedure of the National Court in its matrimonial causes jurisdiction.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In these Rules, unless the contrary intention appears—

“address for service”, in relation to a party to proceedings, means an address for service given in accordance with Section 8;

“application” means an application to the Court for the purpose of instituting proceedings of a kind referred to in Section 11(2) or (3) or an application to the Registrar made under these Rules;

“certificate of means” means a certificate granted by the Registrar under Section 206;

“co-respondent” means a party to proceedings who is specified in the petition instituting the proceedings as a person with whom the respondent is alleged to have committed adultery;

“court town” means the Principal Seat of the Court and such other places as the Head of State, acting on advice, appoints by notice in the National Gazette for the purposes of these Rules;

“filed” means filed in the appropriate office of the Court;

“infant” means a person who has not attained the age of 21 years;

“intervener” in relation to any proceedings, means a person who becomes, or has become, a party to the proceedings by intervening under Part VI. of the Act or under Section 109, 110 or 213;

“party cited” means a person specified in an answer to a petition as a person with whom the petitioner is alleged to have committed adultery;

“party named”—

(a) in relation to a petition, means a person named in the petition who has intervened, under Section 33(2) of the Act, in proceedings instituted by the petition; and

(b) in relation to an answer to a petition, means a person named in the answer who has intervened, under Section 33(2) of the Act, in proceedings instituted by the answer or the petition;

“petitioner” means the party who institutes or has instituted proceedings by petition;

¹ See Constitution, Section 184; pre-Independence *Matrimonial Causes Act* 1963, Section 105; *National Court Act*, Section 10.

“person named”—

(a) in relation to a petition, means a person specified in the petition as a person on or with whom the respondent is alleged to have committed rape or sodomy; and

(b) in relation to an answer to a petition, means a person specified in the answer as a person on or with whom the petitioner is alleged to have committed rape or sodomy;

“pleading” means a petition, supplementary petition, answer, supplementary answer, reply or rejoinder;

“proceedings” means proceedings constituting a matrimonial cause;

“the Registrar” means the Registrar of the Court;

“respondent”, in relation to proceedings for a decree of dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights (whether instituted by petition or by an answer to a petition, or in relation to proceedings that relate to such proceedings), means the spouse of the petitioner;

“sealed” means sealed with the seal of the Court;

“stamped envelope” means an envelope having impressed on it or affixed to it postage stamps that are valid in the country for the correspondence of private individuals and the value of which is not less than the postage payable for the transmission of a letter, weighing not more than 28.35 g¹, posted in the country to an address in the country.

(2) In these Rules, a reference to a marriage shall be read as including a reference to a purported marriage, and a reference to the spouse of a person shall be read as including a reference to the purported spouse of a person.

2. Exercise of powers and functions of Registrar.

(1) In relation to a power or function that by these Rules is expressed to be conferred on the Registrar, the Judges may designate from time to time an office in or in connexion with the Court as the office the holder of which may exercise or perform the power or function in relation to proceedings in the Court, and that power or function may be so exercised or performed accordingly and not otherwise.

(2) Where the Registrar is required by these Rules to do an act of a merely administrative nature, not being the hearing and determination of an application under these Rules to the Registrar, it is sufficient if the act is done on behalf of the Registrar by another officer of the Court, or by a clerk in the office of the Registrar or of such an officer.

3. Designation of parties to proceedings.

(1) In the title of a document filed in, or issued out of, the office of a court in connexion with proceedings instituted by petition, a party to the proceedings who is the petitioner or respondent, a co-respondent, a party cited, a party named or an intervener shall be designated by whichever of those expressions is applicable.

(2) For the purpose of Subsection (1), a document filed or issued for the purpose of proceedings that are instituted by application to the Court and are in relation to proceedings instituted by a petition shall be deemed to have been filed or issued in connexion with the proceedings instituted by the petition.

¹ Metricated editorially. The original weight was 1 oz.

(3) In the title of a document filed in or issued out of the office of the Court in connexion with any proceedings of a kind specified in Paragraph (e) of the definition "matrimonial cause" in Section 1(1) of the Act, the party to the proceedings who institutes or instituted the proceedings shall be designated as the applicant, and any other party to the proceedings shall be designated as a respondent.

(4) In any part (not being the title) of a document filed in or issued out of the office of the Court in connexion with any proceedings--

(a) a party to the proceedings may be referred to by the designation by which the party is required by this section to be designated in the title to the document; and

(b) a person, not being a party to the proceedings, who is a person named within the meaning of these Rules may be referred to by that designation.

4. Filing of documents.

(1) During the trial of proceedings by the Court a document relating to the proceedings may, by leave of the Court, be filed in Court.

(2) During the trial of proceedings in Court, a document relating to the proceedings may, by leave of the Court, be filed in the Court.

(3) During the hearing of an application by the Registrar, a document relating to the application may, by leave of the Registrar, be filed with the Registrar.

5. Computation of time.

(1) Where a period of time dating from a given day, act or event is prescribed by or allowed under these Rules for doing an act or taking any proceedings, unless the contrary intention appears, the time shall be reckoned exclusive of the day, or of the day of the act or event, from which the time dates.

(2) Where the time for doing an act or taking any proceedings expires on a Saturday or Sunday or on a day that is a public holiday or court holiday in the place at which the act is to be or may be done, or the proceedings are to be or may be taken, the act may be done or the proceedings may be taken on the first day following that is not a Saturday, Sunday, public holiday or court holiday.

(3) Time runs, in connexion with any proceedings in the Court, during any vacation of the Court.

(4) Where a period of time dating from a given day, act or event, being a less period than five days, is prescribed by or allowed under these Rules for doing an act or taking any proceedings, a Saturday or Sunday or a day that is a public holiday or court holiday in the place at which the act is to be or may be done, or the proceedings are to be or may be taken, shall not be reckoned in computing the period.

(5) In reckoning a period of clear days in relation to the doing of an act in connexion with proceedings or the taking of any proceedings in the Court, any day on which the office of the Court is not open shall be excluded.

6. Sittings in chambers.

(1) Proceedings of a kind referred to in Paragraph (e), (d) or (e) of the definition "matrimonial cause" in Section 1(1) of the Act may be heard by the Court sitting in chambers.

(2) The Court sitting in open court may adjourn proceedings of a kind referred to in Subsection (1) for consideration by the Court sitting in chambers.

(3) The Court sitting in chambers may adjourn proceedings of a kind referred to in Subsection (1) for consideration by the Court sitting in open court.

(4) This section does not authorize the Court sitting in chambers to hear proceedings that relate to proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act, where it is practicable for the Court to hear those proceedings at the same time as the proceedings for such a decree.

7. Further applications on hearing of ancillary proceedings.

(1) Subject to this section, where proceedings that are in relation to proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act (in this rule referred to as "the principal proceedings") are heard by the Court before the trial of the principal proceedings, the Court may, in addition to determining the first-mentioned proceedings—

- (a) permit a party to the principal proceedings, whether or not he is a party to the first-mentioned proceedings, to make application for an order, required for the purpose of preparing the principal proceedings for trial, that could be made on the hearing of proceedings instituted for the purpose of seeking such an order; and
- (b) hear and determine the application in accordance with this section; and
- (c) on the determination of the application, make the order sought by the application or such other order as the Court thinks proper.

(2) An application for an order referred to in Subsection (1)—

- (a) may be made orally without the filing of any affidavit in support of the application; and
- (b) may be made notwithstanding the fact that proceedings seeking the order have been instituted but have not been heard and determined by the Court.

(3) Where an application for an order referred to in Subsection (1) is made in a case where proceedings seeking that order have been instituted but not heard by the Court—

- (a) any affidavit filed for the purpose of those proceedings may, by leave of the Court, be admitted in evidence on the hearing of the application; and
- (b) the order made by the Court on the determination of the application shall, unless the Court otherwise orders, be deemed to be the order of the Court on the determination of those proceedings.

(4) Without limiting the generality of Subsection (1), application may be made to the Court under this section for an order with respect to—

- (a) service of documents and dispensing with the service of documents; and
- (b) discovery and inspection of documents; and
- (c) admissions of fact or of documents; and
- (d) medical inspection of the petitioner and respondent in the principal proceedings; and
- (e) the day, time and place for the holding of a conference for the purpose of Division XI.6; and
- (f) the place, time and mode of trial; and
- (g) furnishing evidence of facts by affidavit at the trial of the principal proceedings; and

(b) the consolidation of the principal proceedings with other proceedings.

(5) An application under Subsection (1) may be heard by the Court notwithstanding that any facts relied on in support of, or in opposition to, the application are not verified by affidavit or by evidence given orally on the hearing of the application.

(6) This section does not prevent the Court—

(a) from requiring service of an application, or of notice of an application, under Subsection (1) to be effected on a party to the application; or

(b) from requiring the facts, or any of the facts, relied on in support of, or in opposition to, such an application to be verified by affidavit or by evidence given orally on the hearing of the application.

8. Address for service.

(1) Unless the Court otherwise orders—

(a) a person is not entitled to file a document for the purpose of any proceedings unless by that document, or by a document previously filed by him, he gives or has given an address for service that, under this section, is his address for service for the purpose of those proceedings; and

(b) a person is not entitled to be heard on the trial or hearing of any proceedings, or the hearing of an application to the Court or the Registrar in relation to any proceedings, unless he has previously given an address for service that, under this section, is his address for service for the purpose of those proceedings.

(2) A person who does not have an address for service for the purpose of any proceedings may give such an address by stating it as his address for service—

(a) if the first document filed by him in those proceedings is a petition, answer or application—in that document; or

(b) in any other case—in a notice of address for service, in Form 1, filed for the purpose,

and in the case of a notice referred to in Paragraph (b), by serving a copy of the notice on each other party to the proceedings who has an address for service for the purpose of the proceedings.

(3) A person who has an address for service for the purpose of any proceedings may change that address by filing a notice of change of address for service, in Form 2, and serving a copy of the notice on each other party to the proceedings who has an address for service for the purpose of the proceedings.

(4) The address given as a person's address for service shall be not more than 8 km¹ from the office of the Court in which the document stating the address is filed, and, subject to that requirement, in the case of a person who is represented by a lawyer shall be the address of his lawyer, or of a lawyer acting as the agent of his lawyer.

(5) The address for service given, or last given, by a person under this section in relation to any proceedings is his address for service for the purpose of those proceedings and also for the purpose of any other proceedings that constitute a matrimonial cause and are related to those proceedings.

¹ Metricated editorially. The original distance was 5 miles.

9. Forms.

(1) Where a person referred to in a form in Schedule 1 is not represented by a lawyer, any reference in the form to the lawyer for the person shall be read as a reference to the person.

(2) Where the word "Title" appears on a form in Schedule 1, it indicates that a document required to be in accordance with that form—

- (a) if it is a document to which Section 12 applies—shall be intitled in accordance with that section; or
- (b) in any other case—shall bear an appropriate title.

PART II.—RECONCILIATION.

10. Advice as to facilities for reconciliation.

(1) In this section, "document to which this section applies" means—

- (a) a petition or answer instituting proceedings for a decree of dissolution of marriage on a ground other than a ground specified in Section 17(*h*) or (*n*) of the Act; or
- (b) a petition or answer instituting proceedings for a decree of judicial separation on a ground other than the ground specified in Section 17(*h*) of the Act; or
- (c) an application for leave under Section 31 of the Act to institute proceedings for a decree of dissolution of marriage or judicial separation,

but does not include a petition instituting, by leave of the Court under Section 31 of the Act—

- (d) proceedings for a decree of dissolution of marriage or judicial separation; or
- (e) a supplementary petition; or
- (f) a supplementary answer.

(2) Where a document to which this section applies is filed on behalf of a party who is represented by a lawyer, the document is not effective for the purposes of proceedings under the Act unless a certificate, in Form 3 or 4 as the case requires and signed by the lawyer personally, is written on the document.

PART III.—PROCEEDINGS.

Division 1.—Commencement of Proceedings.

11. Institution of proceedings.

(1) Proceedings required by Section 56(1) of the Act to be instituted by petition shall be instituted by filing a petition, addressed to the Court, in the proper office of the Court.

(2) Where leave has been granted under Section 56(3) of the Act for the institution of proceedings of a kind to which that subsection applies otherwise than by the relevant petition or answer, the proceedings shall be instituted by filing an application to the Court.

(3) Subject to Subsections (1), (2) and (4), proceedings in a matrimonial cause shall, except as otherwise provided in these Rules, be instituted by filing an application to the Court in the proper office of the Court.

(4) Where, under these Rules, an application relating to proceedings is required or permitted to be made to the Registrar, the application shall be made by filing in the proper office of the Court an application to the Registrar.

(5) Subsection (3) does not authorize the institution of proceedings without the leave of the Court in a case where leave would be otherwise required.

12. Title of proceedings.

(1) A document filed in, or issued out of, the office of the Court in relation to proceedings instituted by petition shall be intituled in Form 5.

(2) Subject to these Rules, the title to a document referred to in Subsection (1) shall include the full name and the designation of every party to the proceedings instituted by the petition (including any person who, on the filing of the document, will become a party).

(3) Where proceedings are or have been instituted under the Act for a decree of nullity of marriage on the ground that a marriage is void, the title to a document filed in, or issued out of, the office of the Court in relation to the proceedings shall contain the surname, at the date of the institution of the proceedings, of the female party to the purported marriage followed by the word "otherwise", and followed then by the name that was that party's surname immediately before the solemnization of the purported marriage.

(4) Where a person intervenes in proceedings under Section 33(2) of the Act or under these Rules, the person becomes a party to the proceedings, and the title to the proceedings shall be deemed to have been amended accordingly.

(5) Subject to Part IX., where, after the institution of proceedings in a matrimonial cause, a pleading is filed, or an amendment to a pleading is made, by which the petitioner or respondent is alleged to have committed adultery with a specified person, whether or not a decree is sought on the ground of the adultery, that person becomes a party to the proceedings, and the title of the proceedings shall be deemed to have been amended accordingly.

(6) Where a party to any proceedings is dismissed from the proceedings, the title of the proceedings shall be deemed to have been amended by omitting the name and designation of the party.

13. Numbering of proceedings.

(1) Subject to Subsection (3), the Registrar shall cause a distinguishing number to be allotted to each proceedings.

(2) Where proceedings are instituted in the Court in relation to concurrent, pending or completed proceedings to which a number has been allotted under this section, that number shall be deemed to have been allotted to those first-mentioned proceedings.

(3) A document filed in, or issued out of, the office of the Court in connexion with any proceedings or in connexion with a decree in respect of which a distinguishing number has been allotted, or is deemed to have been allotted, under this section shall have that number endorsed on the document.

Division 2.—Applications to the Court or the Registrar.

14. Institution of applications.

(1) Subject to these Rules—

(a) an application to the Court referred to in Section 11(2) or (3), and an application to the Registrar referred to in Section 11(4) shall be in Form 6; and

(b) the affidavits intended to be used in support of the application shall be filed at the same time as the application is filed.

(2) Subject to these Rules, an application shall—

- (a) specify the date on which it is proposed that the application will be heard by the Court or Registrar or, if the Registrar is unable to fix that date at the time when the application is filed, shall state that the application will be heard on a date to be fixed by the Registrar; and
- (b) specify the place at which it is proposed that the application will be heard by the Court or Registrar; and
- (c) specify the order that the Court or Registrar will, on the hearing of the application, be asked to make; and
- (d) be signed by the lawyer, representing the applicant in connexion with the application, or, if the applicant is not represented by a lawyer, by the applicant.

(3) An application shall bear the date on which it is filed.

(4) Notwithstanding Subsection (1), the Court or Registrar may permit the use, in support of an application, of an affidavit that was filed after the filing of the application.

15. Parties to application.

Where an application to the Court or Registrar relates to pending or completed proceedings, the applicant and each other party to those proceedings who is affected by the application are parties to the application.

16. Service of copy of application.

(1) Subject to Subsections (2) and (3), when an application to the Court or Registrar has been filed the applicant shall cause service of the application to be effected on each other party to the application.

(2) It is not necessary for service of an application to be effected on a party to the application—

- (a) where the application is of a kind that is permitted by these Rules to be made *ex parte*; or
- (b) where service of the application on the party is dispensed with.

(3) Except where these Rules require service of an application to be effected on a party to the application, it is not necessary for service of the application to be effected on a party to the application unless that party has an address for service.

(4) Service of an application on a party shall be effected by serving a copy of the application on the party.

(5) Unless a Judge or the Registrar, as the case may be, otherwise directs, there shall be at least three clear days between the service of the application and the day named in the application for the hearing of the application or the day fixed by the Registrar for the hearing of the application, as the case may be.

17. Affidavits in support of application.

(1) The grounds on which the Court or Registrar, as the case may be, is asked to make the order specified in an application, and the facts on which the applicant proposes to rely in support of the application for the order, shall be stated in the affidavits filed in support of the application.

(2) Where service of an application is effected on a party to the application, a copy of each affidavit filed in support of the application shall be served on the party at the time of

the service of the application or within a reasonable time before the hearing of the application.

18. Affidavit in answer and in reply.

(1) A party to an application other than the applicant may, before the hearing of the application or, by leave of the Court or Registrar by whom the application is heard, during the hearing of the application, file an affidavit in answer to an affidavit in support of the application.

(2) A party filing an affidavit in answer shall cause a copy of the affidavit to be served on each other party to the application who has an address for service, as soon as practicable after the affidavit in answer has been filed.

(3) A party on whom a copy of an affidavit in answer is served may, before the hearing of the application or, by leave of the Court or Registrar by whom the application is heard, during the hearing of the application, file an affidavit in reply to that affidavit.

(4) A party filing an affidavit in reply to an affidavit filed by another party to the application shall cause a copy of the affidavit in reply to be served on each other party who has an address for service, as soon as practicable after the affidavit in reply has been filed.

PART IV.—APPLICATIONS FOR LEAVE UNDER SECTION 31 OF THE ACT.

19. Application may be made ex parte.

An application under Section 31 of the Act for leave to institute proceedings may be made ex parte.

20. Affidavit in support of application.

The affidavit in support of an application under Section 31 of the Act for leave to institute proceedings for a decree of dissolution of marriage or of judicial separation shall—

(a) include particulars of—

- (i) the exceptional hardship that would be imposed on the applicant by the refusal to grant the leave; or
- (ii) the exceptional depravity on the part of the other party to the marriage that is alleged,

as the case may be; and

(b) state the ground on which, if leave is granted, the applicant intends to petition for the decree; and

(c) state whether or not the applicant has made a previous application for leave, under Section 31 of the Act, to institute proceedings for such a decree, and if he has made a previous application also state the date and grounds on which the previous application was made and whether it was granted; and

(d) state whether or not a child of the marriage is living, and if a child of the marriage is living also state—

- (i) the name of the child; and
- (ii) the date of birth of the child; and
- (iii) the place at which, and person with whom, the child is residing; and

(e) state whether an attempt has been made to effect a reconciliation between the parties to the marriage, and if such an attempt has been made state particulars of the attempt; and

- (f) state particulars of any other circumstances that may assist the Court in determining whether there is reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.

21. Filing of marriage certificate with application.

(1) In this section, "marriage certificate", in relation to a marriage, whether solemnized in Papua New Guinea or elsewhere, means—

- (a) an original certificate or record of the marriage; or
- (b) a copy or photographic representation of an original certificate or record or of an entry of the marriage in an official register of marriages, being a true copy or representation certified as a true copy or photographic representation by a person having the custody of the certificate or record, or of the register containing the entry, of which it purports to be a copy or representation.

(2) At the time when an application under Section 31 of the Act for leave to institute proceedings is filed, the applicant shall, unless he is unable to do so, also file a marriage certificate in respect of the marriage to which the application relates.

(3) If the marriage certificate filed under Subsection (2) is not written in the English language, a translation in the English language of the certificate shall be filed at the same time.

(4) A translation of a marriage certificate filed under Subsection (3) shall be verified as a translation by the person who made the translation, by an affidavit in which he also states that he is competent to make a translation of the certificate.

(5) Where an applicant is unable, for any reason, to comply with Subsection (2), he shall state in the affidavit filed in support of the application the circumstances by reason of which he is unable so to comply.

22. Service of copy of order.

A petitioner who institutes proceedings for dissolution of marriage or of judicial separation by leave of the Court under Section 31 of the Act shall cause a copy of the order of the Court granting the leave to be served on his spouse at the same time as service of the petition is effected.

PART V.—PETITIONS.

Division 1.—General.

23. Particulars of parties, etc.

(1) A petition shall include—

- (a) the full name of each party to the proceedings; and
- (b) the address and occupation of the petitioner; and
- (c) the address and occupation, so far as they are known to the petitioner, of each other party to the proceedings; and
- (d) the name of the wife immediately before the marriage or alleged marriage; and
- (e) the address and occupation, so far as they are known to the petitioner, of any person, not being a party to the proceedings, specified in the petition as a

person with whom or on whom the respondent is alleged to have committed adultery, rape or sodomy.

(2) Where the address, at the date of the petition, of a party or person referred to in Subsection (1) is not known to the petitioner, the petition shall state that the address is not known to the petitioner and also state the last address (if any) of the party or person known to the petitioner.

24. Contents of petition.

A petition shall contain—

- (a) particulars of the marriage to which the petition relates; and
- (b) particulars relating to the birth of the parties to the marriage; and
- (c) particulars relating to the domicile or residence of the petitioner in the country; and
- (d) particulars of the cohabitation of the parties to the marriage; and
- (e) the particulars relating to the children of the parties to the marriage and the children of either party to the marriage as required by Section 29; and
- (f) particulars of any previous proceedings between the parties to the marriage, whether before or after the commencement date and whether in Papua New Guinea or elsewhere; and
- (g) the facts, but not the evidence by which the facts are to be proved, relied on as constituting the ground or each ground specified in the petition, stating, if more than one ground is specified, the facts relating to each ground, as far as practicable, separately; and
- (h) in the case of a petition for a decree of dissolution of marriage or judicial separation—the matters required by Section 31; and
- (i) in the case of a petition for a decree of dissolution of marriage or of nullity of a voidable marriage—particulars concerning the arrangements referred to in Section 38 or 39; and
- (j) in the case of a petition instituting proceedings of a kind specified in Paragraph (c) of the definition “matrimonial cause” in Section 1(1) of the Act—the matters required by Section 193.

25. Particulars of marriage.

(1) For the purpose of Section 24(a) the particulars of the marriage that are required to be stated in a petition are—

- (a) the place at which, and the date on which, the marriage was solemnized; and
- (b) the nature of the ceremony by virtue of which the marriage was solemnized; and
- (c) if that ceremony was a religious ceremony—the religious denomination according to the rites of which the marriage was solemnized; and
- (d) the conjugal status of the petitioner and respondent, respectively, immediately before the solemnization of the marriage.

(2) Where a petitioner has been previously married, the petition shall state—

- (a) the date of the previous marriage or of each previous marriage, as the case may be; and

- (b) the means by which the previous marriage or each previous marriage was dissolved; and
- (c) if a previous marriage was dissolved by a court—the name of the court by which, and the date on which, the marriage was dissolved.

(3) Where the respondent to a petition has been previously married, the petition shall state, so far as they are known to the petitioner—

- (a) the date of the previous marriage or of each previous marriage, as the case may be; and
- (b) the means by which the previous marriage or each previous marriage was dissolved; and
- (c) if a previous marriage was dissolved by a court—the name of the court by which, and the date on which, the marriage was dissolved.

26. Particulars of birth of parties, etc.

(1) For the purpose of Section 24(b), the particulars relating to the birth of the parties to the marriage that are required to be stated in a petition are the date and place of birth of each party to the marriage.

(2) Where a party to the marriage was not born in the country, particulars, to the best of the petitioner's knowledge, of—

- (a) the date on which the party entered the country; or
- (b) if the party has re-entered the country after having left the country—the date on which the party first entered the country,

shall be stated in a petition in addition to the particulars referred to in Subsection (1).

27. Particulars of domicile or residence.

(1) This section relates to the particulars of domicile or residence of a petitioner in the country that are required to be stated in a petition for the purpose of Section 24(c).

(2) The petition shall state that the petitioner is, within the meaning of the Act, domiciled or resident, as the case may be, in the country.

(3) The facts, but not the evidence by which the facts are to be proved, on which the Court will be asked to find that the petitioner is domiciled or resident, as the case may be, in the country shall be stated in the petition in as concise a form as the nature of the case allows.

(4) A petition shall state that—

- (a) a specified party to the proceedings, at the date of the institution of the proceedings, is ordinarily resident in the country; or
- (b) a specified party to the proceedings has been resident in the country for a period of not less than six months immediately preceding that date.

28. Particulars of cohabitation.

(1) For the purpose of Section 24(d) the particulars of the cohabitation of the parties that are required to be included in a petition are, subject to Subsection (2)—

- (a) particulars, to the best of the recollection of the petitioner, of the places at which and periods during which the parties to the marriage have cohabited; and

(b) the date on which, and circumstances in which, cohabitation between the parties ceased or last ceased, as the case may be.

(2) Where the parties to the marriage have never cohabited at a place of residence, the petition shall include a statement to that effect.

29. Particulars of children.

(1) This section applies to—

- (a) any child of the marriage living at the date of the petition who has not attained the age of 21 years; and
- (b) any child of the marriage who has attained the age of 21 years and in respect of whom an order is sought under Section 59, 73 or 75 of the Act; and
- (c) any child of the parties to the marriage who has been adopted by another person or has been placed by the parties in the care of a person with a view to the adoption of the child by that person or by another person; and
- (d) any child of a party to the marriage who—
 - (i) has, at any time since the marriage, ordinarily been a member of the household of the husband and wife; and
 - (ii) has been adopted by another person or has been placed by that party in the care of a person with a view to the adoption of the child by that person or by another person.

(2) The particulars relating to a child to whom this section applies that are to be stated in a petition are—

- (a) in the case of a child referred to in Subsection (1)(a) or (b)—the full name and date of birth of the child and the name of the person with whom the child is residing; or
- (b) in the case of a child referred to in Subsection (1)(c) or (d)—
 - (i) the full name (if any) under which the parties, or either of them, registered the birth of the child; and
 - (ii) the date of birth of the child; and
 - (iii) the date on or about which consent to the adoption of the child was given or the child was placed in the care of another person with a view to his adoption.

(3) If there are no children to whom this section applies, the petition shall include a statement to that effect.

(4) Where the petitioner disputes the parentage of a child born to the female party to the marriage since the solemnization of the marriage to which the petition relates, the petition shall also state that the parentage of the child is in dispute and the grounds on which the parentage of the child is disputed.

(5) Where a person who is deemed, by virtue of Section 2 of the Act, to be a child of the marriage to which the petition relates is living at the date of the petition, the petition shall also state the circumstances that result in his being deemed to be a child of the marriage.

30. Particulars of previous proceedings.

(1) This section relates to the particulars of previous proceedings that are required to be stated in a petition for the purpose of Section 24(f).

(2) Subject to Subsection (3), the petition shall state particulars of—

(a) any proceedings that, since the marriage to which the petition relates, have been instituted, in Papua New Guinea or elsewhere, in any court between the parties to the marriage; and

(b) any proceedings, concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of the marriage that have been instituted, in Papua New Guinea or elsewhere, otherwise than between the parties.

(3) Where no proceedings referred to in Subsection (2) have been instituted, the petition shall include a statement to that effect.

(4) Where the petition includes particulars of any proceedings referred to in Subsection (2) that have been heard and determined by a court—

(a) particulars of the order made in the proceedings, and the date on which, and the court by which, the order was made, shall be stated in the petition; and

(b) the petition shall also state whether the parties to the marriage have cohabited since the making of the order.

(5) Where an order of a court, or an agreement, making provision for the payment of maintenance in respect of a party to a marriage or a child of a marriage is in force, a petition relating to the marriage shall state the amount of maintenance payable under the order or agreement.

31. Condonation, connivance and collusion.

(1) A petition instituting proceedings for a decree of dissolution of marriage or of judicial separation on a ground specified in Section 17(a) to (k) of the Act shall contain—

(a) a statement that the petitioner has not connived at the ground; and

(b) a denial that he has condoned the ground, or a statement of all facts relevant to the question, whether he has condoned the ground, including any facts relevant to the question, whether the ground has been revived.

(2) A petition instituting proceedings for a decree of dissolution of marriage or of judicial separation shall contain a statement that, in bringing the proceedings, the petitioner has not been guilty of collusion with intent to cause a perversion of justice.

32. Particulars of other orders sought.

Where a petitioner—

(a) institutes, by his petition, proceedings with respect to—

(i) the maintenance of the petitioner; or

(ii) settlements; or

(iii) damages in respect of adultery; or

(iv) the custody or guardianship of infant children of the marriage; or

(v) the maintenance, welfare, advancement or education of children of the marriage; or

(b) is seeking an order as to the costs, of any proceedings instituted by his petition,

the petition shall set out particulars of the order sought in the proceedings, or of the order sought as to costs, as the case may be.

(2) Where, by his petition, a petitioner is seeking an award of damages under Section 32 of the Act, the petition shall specify the amount of damages sought.

33. Date and signature.

(1) A petition shall bear the date on which it is filed.

(2) Where a petition is settled by a lawyer, the name of the lawyer shall be written on the petition.

(3) A petition shall be signed—

(a) if the petitioner is represented by a lawyer—by the lawyer personally; or

(b) if the petitioner is not represented by a lawyer—by the petitioner.

34. Verification.

(1) A petitioner shall, by an affidavit written on his petition and sworn within 28 days before his petition is filed—

(a) verify the facts stated in his petition of which he has personal knowledge; and

(b) depose as to his belief in the truth of every other fact stated in his petition.

(2) Where for the purpose of complying with Subsection (1) it is necessary for a petitioner to verify the doing of, or the failure to do, an act within, throughout or for a period ending on the day immediately preceding the date of his petition, it is sufficient compliance with that subsection if the petitioner verifies the doing of, or the failure to do, the act within, throughout or for, as the case may be, a period ending on the day immediately before the swearing of his affidavit.

(3) Where for the purpose of complying with Subsection (1) it is necessary for a petitioner to verify that a certain circumstance existed at the date of his petition, it is sufficient compliance with that subsection if the petitioner verifies the existence of the circumstance at the date of swearing his affidavit.

Division 2.—Petitions for Dissolution of Marriage.

35. Petition for dissolution of marriage.

A petition for a decree of dissolution of marriage shall be in Form 7.

36. Statement of ground of relief.

(1) A petition for a decree of dissolution of marriage shall state the ground on which the decree is sought.

(2) For the purposes of these rules, a ground specified in a paragraph of Section 17 of the Act specified in the first column of the following table may be stated in a pleading or affidavit in the terms set out in the second column of that table opposite the paragraph :—

Table.

Paragraph of Section 17 of the Act.	Terms in which ground may be stated.
Paragraph (a)	adultery
Paragraph (b)	desertion
Paragraph (c)	refusal to consummate
Paragraph (d)	cruelty
Paragraph (e)	rape or sodomy or bestiality (as the case requires)

Table—continued.

Paragraph of Section 17 of the Act.	Terms in which ground may be stated.
Paragraph (f)	drunkenness <i>or</i> intoxication by drugs <i>or</i> drunkenness and intoxication by drugs (<i>as the case requires</i>)
Paragraph (g)	frequent convictions
Paragraph (h)	imprisonment
Paragraph (i)	attempt to murder <i>or</i> attempt unlawfully to kill <i>or</i> inflicting grievous bodily harm <i>or</i> offence involving intent to inflict grievous bodily harm (<i>as the case requires</i>)
Paragraph (j)	failure to pay maintenance
Paragraph (k)	non-compliance with restitution decree
Paragraph (l)	insanity
Paragraph (m)	separation
Paragraph (n)	presumption of death

37. Discretion statement where petitioner committed adultery.

Where a petitioner for a decree of dissolution of marriage on a ground specified in Section 17(*a*) to (*m*) of the Act, has committed adultery since the marriage but before the filing of his petition, his petition shall state that the Court will be asked to make the decree notwithstanding the facts and circumstances set out in his discretion statement.

38. Arrangements for welfare of children.

(1) In this section, "children of the marriage" means—

- (*a*) children of the marriage who are not likely to have attained the age of 16 years before the decree of dissolution of marriage is made; and
- (*b*) any children of the marriage in relation to whom the petitioner seeks an order under Section 59(3) of the Act.

(2) Where, at the date of a petition for a decree of dissolution of marriage, children of the marriage to which the petition relates are living, the petition shall state—

- (*a*) the arrangements proposed by the petitioner concerning the welfare, and, where appropriate, the advancement and education, of the children who are then living, or
- (*b*) the petitioner's reasons for not stating in the petition the arrangements so proposed.

39. Petition for dissolution on ground of separation.

A petition for a decree of dissolution of marriage on the ground specified in Section 17(*m*) of the Act may state the arrangements made or proposed by the petitioner for the provision of maintenance or other benefits referred to in Section 25(5) of the Act for the respondent on the decree becoming absolute.

40. Petition for dissolution on ground of presumption of death.

A petition for a decree of dissolution of marriage on the ground specified in Section 17(*n*) of the Act shall state, in addition to the facts stated in accordance with Section 24(*g*)—

- (*a*) the latest date on which the petitioner has reason to believe the respondent to have been alive, and the circumstances in which the petitioner has reason so to believe; and

(b) particulars of any inquiries made by the petitioner for the purpose of locating the respondent.

41. Death of person specified in petition.

Where a person specified in a petition for a decree of dissolution of marriage as a person with or on whom the respondent has committed adultery, rape or sodomy has died, to the knowledge of the petitioner, before the date of the petition, the petition shall state that the person so specified is dead and the date of his death.

Division 3.—Petitions for Nullity of Marriage.

42. Petition for nullity.

A petition for a decree of nullity of a marriage shall be in Form 7.

43. Statement of ground of relief.

A petition for a decree of nullity of marriage shall state—

(a) whether the decree is sought on the ground that the marriage is—

(i) void; or

(ii) voidable; and

(b) the nature of the defect in the marriage.

44. Statement of domicile at time of marriage.

In a petition for a decree of nullity of marriage, if the domicile of either of the parties immediately before the marriage is relevant to the determination of the proceedings the petition shall state that domicile.

45. Voidable marriages.

(1) On a petition for a decree of nullity of marriage on the ground that a marriage is voidable by virtue of Section 36(b) or (c) of the Act, the date on which the petitioner discovered the existence of the facts constituting the ground and the date on which marital intercourse last took place with the consent of the petitioner shall be stated in addition to any other facts stated in accordance with Section 24(d).

(2) A petition instituting proceedings for a decree of nullity of marriage on a ground referred to in Subsection (1) shall contain a statement that the petitioner was, at the time of the marriage, ignorant of the facts constituting the ground.

46. Arrangements for welfare of children.

Section 38 applies in relation to a petition for a decree of nullity of a voidable marriage.

Division 4.—Petitions for Judicial Separation.

47. Petition for judicial separation.

A petition for a decree of judicial separation shall be in Form 7.

48. Application of Sections 36, 37 and 41.

Sections 36, 37 and 41 apply in relation to a petition for a decree of judicial separation as if the references in those sections to a petition for a decree of dissolution of marriage were references to a petition for a decree of judicial separation.

*Division 5.—Petitions for Restitution of Conjugal Rights.***49. Petition for restitution of conjugal rights.**

A petition for the decree of restitution of conjugal rights shall be in Form 8.

50. Particulars to be stated.

(1) In a petition for a decree of restitution of conjugal rights—

- (a) the date on which the petitioner and respondent last cohabited, and the circumstances in which cohabitation between the petitioner and respondent ceased or last ceased, as the case may be; and
- (b) the date on which, and the manner in which, the written request for cohabitation was made to the respondent in accordance with Section 50(b) of the Act, or if no such written request was made particulars of the special circumstances that are alleged to justify the making of the decree notwithstanding that such a request was not made,

shall be stated in the petition in addition to an other facts that are stated in accordance with Section 24(g).

(2) A petition for a decree of restitution of conjugal rights shall state—

- (a) that the respondent refuses, at the date of filing the petition, to cohabit with, and render conjugal rights to, the petitioner; and
- (b) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent.

*Division 6.—Filing of Petitions and Notices of Petitions.***51. Filing of marriage certificate with petition.**

(1) In this section, "marriage certificate", in relation to a marriage, whether solemnized in Papua New Guinea or elsewhere, means—

- (a) an original certificate or record of the marriage; or
- (b) a copy or photographic representation of an original certificate or record or of an entry of the marriage in an official register of marriages, being a true copy or representation certified as a true copy or photographic representation by a person having the custody of the certificate or record, or of the register containing the entry, of which it purports to be a copy or representation.

(2) This section does not apply in relation to a petition instituting proceedings by leave granted under Section 31 of the Act.

(3) Subject to Subsection (2), at the time when a petition for a decree of—

- (a) dissolution of marriage; or
- (b) nullity of marriage; or
- (c) judicial separation; or
- (d) restitution of conjugal rights,

is filed, the petitioner shall, unless he is unable to do so, also file a marriage certificate in respect of the marriage to which the petition relates.

(4) If the marriage certificate filed under Subsection (3) is not written in the English language, a translation in the English language of the marriage certificate shall also be filed at the same time.

(5) A translation of a marriage certificate filed under Subsection (4) shall be verified as a translation by the person who made the translation by an affidavit in which he also states that he is competent to make a translation of the certificate.

(6) Where a petitioner is unable, for any reason, to comply with Subsection (3), the petitioner shall state in the affidavit verifying the petition the circumstances by reason of which he is unable to comply with that subsection.

52. Notice of petition or proceedings.

(1) A notice of petition or notice of proceedings that, under these Rules, a petitioner or respondent is required to serve on another person shall be a notice signed by the Registrar and sealed with the seal of the Court, and shall be in Form 9, 10 or 11 as the case requires.

(2) Where a form of notice is properly presented to the Registrar by or on behalf of the petitioner or respondent and a copy of the form of notice is filed, the Registrar shall sign and seal the form of notice for the purposes of this section.

53. Time for answer, etc., to be specified in notice.

The time to be specified in a notice of petition or notice of proceedings as the time limited for the filing of an answer or reply, as the case requires, by a person entitled to do so is—

- (a) where the place of service of the notice is in Papua New Guinea—35 days; and
- (b) in any other case—such reasonable time as is determined by the Registrar, having regard to the place at which the notice is to be served and to the availability of air-mail services.

54. Time for service of notice of petition, etc.

- (1) In this section—
 - “answer” includes supplementary answer;
 - “petition” includes supplementary petition.
- (2) Subject to this section, a notice of petition or notice of proceedings, in relation to a petition or answer, remains in force, for the purposes of service, until the expiration of 12 months from the day on which the petition or answer was filed.
- (3) On being satisfied that it is reasonable, the Registrar may grant an extension of the time within which the notice may be served until a date 12 months after the expiration of that period, or of that period as previously extended.
- (4) The Registrar may grant an extension of the time within which a notice may be served notwithstanding that the notice has ceased to be in force and notwithstanding that the time has previously been extended.
- (5) Where the Registrar grants an extension of the time within which a notice may be served, he shall write on the notice, and on the copy of the notice that was filed under Section 52(2), particulars of the extension, sign his name under the particulars and seal the particulars with the seal of the Court.

55. Lost notice.

- (1) Where a notice of petition or notice of proceedings addressed to a person and signed by the Registrar has been lost without having been served, the Registrar may, on being satisfied of the loss, sign and seal another notice in place of the lost notice.

(2) A notice of petition or notice of proceedings signed under Subsection (1) shall state the last day of the period for which it remains in force.

56. Concurrent notices.

(1) A petitioner or respondent may, at the time of, or at any time within 12 months after, the filing of a petition or answer, procure the issue of a concurrent notice of petition or a concurrent notice of proceedings, or of more than one such concurrent notice, addressed to a person to whom an original notice of petition or notice of proceedings was addressed.

(2) A concurrent notice of petition or notice of proceedings shall bear the same date as the original notice, and shall be stamped with a stamp bearing the word "concurrent" and the date of issuing the concurrent notice.

(3) Sections 53, 54 and 55 apply to and in relation to concurrent notices in like manner as they apply to and in relation to original notices.

PART VI.—SERVICE.

Division 1.—General Provisions relating to Service of Documents.

57. Manner of service.

Subject to the provisions of these Rules that limit the methods of service of particular classes of documents, where service of a document is required by these Rules to be effected on a person it may be effected in Papua New Guinea or elsewhere—

- (a) by delivering the document to the person personally; or
- (b) by serving the document on the person by post as prescribed by Section 59; or
- (c) if the person has an address for service for the purpose of the proceedings—by delivering the document at that address or by posting the document (by prepaid postage) as a letter to the person, or his lawyer, as the case may be, at that address; or
- (d) by delivering the document at, or by properly addressing and posting (by prepaid postage) the document as a letter to the person at, the last address of the person known to the person on whose behalf the document is being served.

58. Personal service.

(1) Subject to Subsection (2), service of a document on a person by delivering it to him personally shall not be effected by the party to proceedings on whose behalf the document is being served but may be effected by another person in the presence of that party.

(2) Where it is impracticable for service of a document on a person to be effected in accordance with Subsection (1), the party to the proceedings on whose behalf the document is being served may effect service of the document on the person by delivering it to him personally, but in such a case he shall state in any affidavit of the service of the document sworn by him the circumstances that made it impracticable for another person to effect the service.

(3) Where service of a document on a person by delivering it to him personally is effected by the party on whose behalf the document is being served, that party shall obtain from the person a receipt for the document signed by the person unless the person refuses

to sign and give a receipt for the document, and in any affidavit of the service of the document sworn by him that party shall state whether the person signed, or refused to sign, a receipt for the document.

59. Service by post.

(1) For the purpose of Section 57(*b*), service of a document on a person shall be effected by properly addressing and posting (by prepaid postage) the document, together with—

- (*a*) a form in Form 12 for acknowledging service of the document; and
- (*b*) an envelope (being, in the case of service effected in Papua New Guinea, a stamped envelope) having written on it the name of the person on whose behalf the document is being served, or the name of his lawyer, and his address for service,

as a letter, to the person at the last address of the person known to the person on whose behalf the document is being served.

(2) Subject to Subsection (3), where a document has been posted to a person in accordance with Subsection (1), service of the document on the person shall be deemed not to have been effected unless the person signs and returns to the person on whose behalf the document is being served, or to his lawyer, an acknowledgement of the service in Form 12.

(3) Where a document instituting proceedings has been posted to a person in accordance with Subsection (1), service of the document shall be deemed to have been duly effected on the person if, after the time when the document would in the ordinary course of post have been received by the person, the person files a document giving an address for service for the purpose of the proceedings.

(4) Where service of a document has been effected by posting the document to a person in accordance with Subsection (1), the date on which the person received the document shall be taken to be the date on which the service was effected.

60. Time of service of posted documents.

Where service of a document is effected on a person in accordance with Section 57(*d*) or (*d*) by posting the document to the person or to his lawyer, service of the document shall, unless the contrary is proved, be deemed to have been effected on the person at the time when the letter containing the document would in the ordinary course of post be delivered at the address to which it is posted.

61. Service in convention countries.

(1) This section applies, subject to the provisions of the relevant Convention, in relation to service of a document in a country that is a party to a Convention, extending to Papua New Guinea, regarding Legal Proceedings in Civil and Commercial matters.

(2) Where under a Convention referred to in Subsection (1) service of a document relating to proceedings is not to be effected in a country otherwise than in accordance with the Convention, service of such a document shall not be effected otherwise than—

- (*a*) as nearly as practicable in accordance with Rule 64 of the Matrimonial Causes Rules of Australia; or
- (*b*) in any other manner allowed by the Convention; or
- (*c*) as directed by the Court or a Judge.

62. Substituted service.

(1) Where the Registrar, on application made *ex parte* by a party to proceedings for an order under this section, is satisfied that it is not reasonably practicable for the party to effect service of a document in a manner specified in Section 57(a) to (d), as the case requires, the Registrar may, in his discretion, order—

- (a) that service of the document be effected in a manner specified in the order; or
- (b) that giving notice of the document and its effect by advertisement or otherwise, as specified in the order, be substituted for service of the document.

(2) Where an order has been made by the Court or by the Registrar authorizing the giving of notice of a document by advertisement, the form of the advertisement shall be approved by the Registrar.

(3) Where an order of a kind referred to in Subsection (1) has been made by the Court or by the Registrar in relation to service of a document on a person, compliance with that subsection shall, notwithstanding any other provision of these Rules, be deemed to be due service of the document on the person.

Division 2.—Service of Petitions and Answers.

63. Service of petition.

(1) Subject to these Rules, a petitioner shall cause service of the petition to be effected on—

- (a) each other party to any proceedings instituted by the petition; and
- (b) any person specified in the petition as a person on or with whom the respondent is alleged to have committed rape or sodomy.

(2) Service of a petition shall be effected on a person—

- (a) by serving on the person, in the manner referred to in Section 57(a)—
 - (i) a sealed copy of the petition; and
 - (ii) if the person served is the respondent—a notice of petition or, if the person served is not the respondent—a notice of proceedings; or
- (b) by serving on the person, in the manner referred to in Section 57(b)—
 - (i) a sealed copy of the petition; and
 - (ii) if the person served is the respondent—a notice of petition or, if the person served is not the respondent—a notice of proceedings; and
 - (iii) a form, in Form 12, for acknowledging service of the petition; and
 - (iv) an envelope (being, in the case of service effected in Papua New Guinea, a stamped envelope) having written on it the name of the petitioner or his lawyer and the address for service of the petitioner.

64. Service of answer.

(1) Subject to these Rules, a person on whose behalf an answer to a petition is filed shall cause service of the answer to be effected on—

- (a) each other party to any proceedings instituted by the petition who has an address for service for the purpose of the proceedings; and

(b) any person specified in the answer as a person with or on whom the petitioner is alleged to have committed adultery, rape or sodomy.

(2) Service of an answer to a petition shall be effected on a party to proceedings referred to in Subsection (1)(a) by serving, on the day on which the answer is filed or on the next following day, a copy of the answer on the person in a manner referred to in Section 57(d).

(3) Service of an answer to a petition shall be effected on a person referred to in Subsection (1)(b)—

(a) by serving on the person, in the manner referred to in Section 57(a)—

- (i) a sealed copy of the answer; and
- (ii) a notice of proceedings; or

(b) by serving on the person, in the manner referred to in Section 57(b)—

- (i) a sealed copy of the answer; and
- (ii) a notice of proceedings; and
- (iii) a form, in Form 12, for acknowledging service of the answer; and
- (iv) an envelope (being, in the case of service effected in Papua New Guinea, a stamped envelope) having written on it the name of the respondent or his lawyer and the address for service of the respondent.

(4) Where a party to proceedings instituted by a petition files an address for service for the purpose of the proceedings on or after the day on which an answer to the petition is filed by another party to the proceedings, the party who filed the answer shall, on request made by the first-mentioned party, cause service of a copy of the answer to be effected, in a manner referred to in Section 57(d), on the first-mentioned party on the day on which the request is made or on the next following day.

65. Stale petitions and answers.

(1) Service of a petition on a person is of no force and effect unless the notice of petition or notice of proceedings addressed to the person was in force, for the purposes of service, on the day on which service of the petition was effected.

(2) Where, under these Rules, service of an answer on a person is required to be effected by serving on the person a notice of proceedings addressed to the person in addition to a sealed copy of the answer, service of the answer on the person is of no force and effect unless the notice of proceedings addressed to the person was in force, for the purposes of service, on the day on which service of the answer was effected.

Division 3.—Service on Infants and Persons of Unsound Mind.

66. Service of petition, etc., on infant.

(1) In this section—

- “answer” includes supplementary answer;
- “petition” includes supplementary petition.

(2) Subject to this section, service of a petition on an infant shall be effected by—

- (a) serving a sealed copy of the petition and a notice of petition or notice of proceedings, as the case requires, on the infant in a manner referred to in Section 57(a) or (b); and

(b) serving a sealed copy of the petition and a notice of proceedings, in a manner referred to in Section 57(a) or (b) on a parent of the infant, a person with whom the infant is residing or such other person as the Registrar specifies in an order made under Subsection (4).

(3) Service of a sealed copy of a petition—

(a) if a parent of the infant is a party—on a parent of the infant; or

(b) if a parent of the infant is not a party and service can be duly effected in Papua New Guinea on a parent of the infant—on a person with whom the infant is residing (not being his parent); or

(c) if a person with whom the infant is residing is under the age of 21 years or is not a kinsman of the infant—on that person,

is not sufficient compliance with Subsection (2)(b).

(4) Where the Registrar is satisfied that, for any reason, a petitioner would otherwise be unable to comply with Subsection (2)(b), the Registrar may, by order, specify a person who, in the opinion of the Registrar, is a proper person to advise the infant in connexion with the proceedings instituted by the petition as the person on whom a sealed copy of the petition may be served for the purpose of complying with that paragraph.

(5) Where the Registrar is satisfied that having regard to the age and understanding of the infant, it is proper, the Registrar may, by order, dispense with compliance with Subsection (2)(b).

(6) An application for an order under Subsection (4) or (5) may be made ex parte.

(7) This section applies in relation to service of an answer on an infant who is specified in the answer as a person with or on whom the petitioner is alleged to have committed adultery, rape or sodomy as if—

(a) references to a petition were references to an answer; and

(b) references to a petitioner were references to a party on whose behalf an answer is filed; and

(c) references to a notice of petition or notice of proceedings, as the case requires, were references to a notice of proceedings; and

(d) the reference in Subsection (4) to proceedings instituted by the petition were a reference to the proceedings in answer to which the answer is filed and to any other proceedings instituted by the answer.

67. Service of petition, etc., on person of unsound mind.

(1) In this section—

“answer” includes supplementary answer;

“petition” includes supplementary petition.

(2) Unless the Court or Registrar otherwise orders, service of a petition shall be effected on a person of unsound mind by serving, in a manner referred to in Section 57(a) or (b), a sealed copy of the petition and a notice of petition or notice of proceedings, as the case requires—

(a) if there is a committee of the person of unsound mind—on the committee; or

(b) if there is no such committee but there is a committee of the estate of the person of unsound mind—on the committee of the estate; or

- (c) if there is no committee of the person, or committee of the estate, of the person of unsound mind but the Minister or an authorized person has signed a consent under Section 122 to act as the guardian *ad litem* of the person of unsound mind—on the Minister or the authorized person, as the case may be; or
 - (d) in any other case—on a person with whom the person of unsound mind is residing or the person under whose care he is.
- (3) Service of a petition shall be deemed not to have been effected on a person of unsound mind in accordance with Subsection (2)—
- (a) unless the sealed copy of the petition so served had written on it a notice directing the person on whom it is actually served to bring the contents of the petition to the notice of the person of unsound mind if, after consultation with the medical practitioner responsible for the treatment of the person of unsound mind, he is satisfied that it would not be detrimental to his health to do so; and
 - (b) unless the Court is satisfied, by affidavit of the person on whom the petition is served or otherwise, that the contents of the petition were brought to the notice of the person of unsound mind or that the medical practitioner referred to in Paragraph (a) has expressed the opinion that it would be detrimental to his health to do so.
- (4) For the purposes of Subsection (2), a person of unsound mind who is a patient in an institution shall be deemed to be in the care of the superintendent or other person in direct charge of the institution.
- (5) This section applies to the service of an answer on a person of unsound mind who is specified in the answer as a person with or on whom the petitioner is alleged to have committed adultery, rape or sodomy as if—
- (a) references to a petition were references to an answer; and
 - (b) references to a notice of petition or notice of proceedings, as the case requires, were references to a notice of proceedings.

Division 4.—Proof of Service.

68. Proof of personal service.

(1) Subject to Subsection (2), where service of a document is effected on a person in the manner referred to in Section 57(a), the due service of the document shall be deemed not to have been proved by affidavit unless the person who delivered the document to the person to be served states in an affidavit—

- (a) the date on which, and the place at which, the document was delivered; and
- (b) the means by which he established that the person to whom the document was delivered was the person required to be served with the document.

(2) Where service of a petition or answer is effected on the respondent or the petitioner, as the case may be, in the manner referred to in Section 57(a) and proof of the due service of the document is required at the trial of proceedings of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act, the due service of the document shall not be deemed to have been proved by affidavit unless—

- (a) Subsection (1) has been complied with; and

(b) a person other than the person who delivered the document has, in an affidavit or in evidence given orally at the trial—

- (i) verified the signature on a receipt given by the person to whom the document was delivered; or
- (ii) corroborated in some other manner the fact that the person to whom the document was delivered is the person required to be served by the document.

(3) An affidavit on service of a document on a person personally shall be in Form 13.

69. Proof of service of document by post.

(1) Subject to Subsection (2), where service of a document is effected on a person in the manner referred to in Section 57(b), the due service of the document shall be deemed not to have been proved by affidavit unless a person to whom an acknowledgement of service of the document was returned (being an acknowledgement that purports to be signed by the person to be served with the document), has deposed, in an affidavit to which the acknowledgement is annexed, to the manner in which the acknowledgement was returned to him.

(2) Where service of a petition or answer is effected on the respondent or the petitioner, as the case may be, in the manner referred to in Section 57(b) and proof of the due service of the document is required at the trial of proceedings of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act, the due service of the document shall not be deemed to have been proved by affidavit unless—

- (a) Subsection (1) has been complied with; and
- (b) the signature appearing on the acknowledgement of service of the document is verified as the signature of the person to be served with the document by the affidavit of, or by evidence given orally at the trial by, a person conversant with that signature.

(3) For the purposes of Subsection (2)(b), the signature appearing on an acknowledgement shall not be verified by the party to proceedings on whose behalf the document was served unless—

- (a) it is not reasonably practicable for the signature to be verified by some other person; and
- (b) the party states in his affidavit or in his evidence, as the case may be, the circumstances by reason of which it is not reasonably practicable.

70. Proof of service where document posted to address.

Where service of a document is effected on a person in accordance with Section 57(d) or (d) by posting the documents to the person or to his lawyer, the due service of the documents shall be deemed not to have been proved by affidavit unless—

- (a) the person who posted the document has stated in an affidavit the manner in which the envelope containing the document was addressed, the day on which, and the time of the day and place at which, the document was posted and that the document was posted as a letter and postage was prepaid; and
- (b) in a case where the document was posted to a person at an address other than the address of the person—the person on whose behalf the document was served has stated in an affidavit the last address of the person to be served that was known to him at the time of the posting.

71. Proof of service by advertisement.

(1) Where, in accordance with an order of the Court or of the Registrar under these Rules, an advertisement is published in the National Gazette, in the *Australian Government Gazette*, in the government gazette of a State or Territory of Australia or in a newspaper, the person who obtained the order may deposit, in the proper office of the Court, a copy of the page of the National Gazette, *Australian Government Gazette*, government gazette or newspaper containing the advertisement.

(2) Where a copy of a page is deposited in accordance with Subsection (1), the Registrar shall cause the advertisement to be cut out of the page and annexed to a memorandum in Form 14, referring to, and giving the date of publication of the advertisement.

(3) A memorandum referred to in Subsection (1) shall be filed by the Registrar, and is evidence that the advertisement, a copy of which is annexed to the memorandum, was published in the National Gazette, *Australian Government Gazette*, government gazette or newspaper specified in the memorandum on the date specified in the memorandum.

72. Affidavits of service.

Where a person states in an affidavit that he delivered or posted a copy of an application or a notice of hearing to a person, another copy of the application or notice shall be annexed to the affidavit.

73. Presumption of due service, etc., where address for service filed.

Where a respondent or a person specified in a pleading as a person with or on whom a petitioner or respondent has committed adultery, rape or sodomy has given an address for service for the purpose of the proceedings, the petition or pleading shall be deemed to have been duly served on the respondent or that person without further proof of the service and, unless an affidavit or a certificate in accordance with Rule 64(8) of the Matrimonial Causes Rules of Australia, of the due service of the petition or pleading was filed before the document giving the address for service was filed, the petition or pleading shall, for all purposes, be deemed to have been served on the day on which the document giving the address for service was filed.

PART VII.—PLEADINGS.

Division 1.—Answers.

74. Answer.

(1) The respondent or a co-respondent in proceedings instituted by petition, or a person named in a petition, may, by filing an answer—

- (a) deny a fact alleged in the petition; or
- (b) state that he does not know and cannot admit the truth of a fact alleged in the petition; or
- (c) allege a fact; or
- (d) admit the truth of a fact, being a fact material to proceedings, instituted by the petition, to which he is a party or in which he is entitled to intervene under Section 33(2) of the Act or under Part IX.

(2) Where the respondent or a co-respondent in proceedings instituted by petition, or a person named in a petition, desires to submit to the Court that it should dismiss the

proceedings, he shall, in an answer filed for the purpose, ask the Court to dismiss the proceedings.

(3) Where the respondent or a co-respondent in proceedings instituted by petition, or a person named in a petition, desires to submit to the Court that if it makes an order in favour of the petitioner the order should be different from the order sought by the petitioner, he shall, in an answer filed for the purpose, set out particulars of the order that, in his submission, the Court should make if it makes an order in favour of the petitioner.

(4) An answer shall be in Form 15, and shall be filed within the time limited by the notice of petition or notice of proceedings addressed to the person filing the answer.

(5) Where an answer to a petition contains an allegation that the petitioner has committed adultery, rape or sodomy with or on a specified person, the answer shall state the address and occupation, so far as they are known to the respondent, of the person.

(6) Where the address, at the date of the answer, of a person referred to in Subsection (5) is not known to the party filing the answer, the answer shall state that the address is not known to that party and the last address (if any) of the person known to that party.

75. Answer seeking dissolution, etc.

(1) This section applies to an answer by which a respondent to a petition institutes proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act.

(2) An answer to which this section applies shall state that the respondent is, within the meaning of the Act, domiciled or resident, as the case may be, in Papua New Guinea, and if the respondent relies, for the purpose of establishing his domicile or residence in Papua New Guinea, on any facts other than facts included in the petition, the answer shall state those other facts.

(3) The facts, but not the evidence by which the facts are to be proved, on which the Court will be asked to make the decree sought in proceedings instituted by an answer to which this section applies shall be stated in the answer in as concise a form as the nature of the case allows.

(4) An answer instituting proceedings for a decree of dissolution of marriage or of judicial separation on a ground specified in Section 17(a) to (k) of the Act shall contain—

- (a) a statement that the respondent has not connived at the ground; and
- (b) a denial that he has condoned the ground, or a statement of all facts relevant to the question whether he has condoned the ground, including any facts relevant to the question whether the ground has been revived.

(5) An answer instituting proceedings for a decree of dissolution of marriage or of judicial separation shall contain a statement that, in bringing the proceedings, the respondent has not been guilty of collusion with intent to cause a perversion of justice.

(6) Sections 32, 36, 37, 38, 39, 41 and 50, so far as they are applicable to the circumstances of the particular case, apply to and in relation to an answer to which this section applies, being an answer by which the respondent to a petition is seeking a decree of dissolution of marriage or of restitution of conjugal rights, as if—

- (a) references to a petition were references to an answer; and
- (b) references to a petitioner were references to the respondent to a petition; and
- (c) references to the respondent were references to the petitioner.

(7) Sections 32, 38, 43, 44 and 45, so far as they are applicable to the circumstances of the particular case, apply to and in relation to an answer to which this section applies, being an answer by which the respondent to a petition is seeking a decree of nullity of marriage, as if—

- (a) references to a petition were references to an answer; and
- (b) references to a petitioner were references to the respondent to a petition; and
- (c) references to the respondent were references to the petitioner; and
- (d) references to a petition for a decree of dissolution of marriage were references to a petition for a decree of nullity of a voidable marriage.

(8) Sections 32, 36, 37 and 41, so far as they are applicable to the circumstances of the particular case, apply to and in relation to an answer to which this section applies, being an answer by which the respondent to a petition is seeking a decree of judicial separation, as if—

- (a) references to a petition were references to an answer; and
- (b) references to a petitioner were references to the respondent to a petition; and
- (c) references to the respondent were references to the petitioner; and
- (d) references to a petition for a decree of dissolution of marriage were references to an answer by which the respondent to a petition is seeking a decree of judicial separation.

(9) An answer to which this section applies shall be in Form 16.

76. Answer under protest.

(1) A respondent or co-respondent to a petition who desires to have the jurisdiction of the Court determined shall file an answer under protest in Form 17 objecting to the jurisdiction of the Court.

(2) An answer under protest shall state the grounds on which the respondent or co-respondent objects to the jurisdiction of the Court.

(3) Where an answer under protest has been duly served, the party filing the answer may, within 14 days after the day on which the answer is filed, file an application to the Court for directions as to the time and place at which the objection is to be determined by the Court.

(4) It is not necessary for an application referred to in Subsection (3) to be supported by an affidavit.

(5) On the hearing of an application referred to in Subsection (3), the Court may also give directions as to whether disputed questions of fact are to be determined on evidence given orally or on evidence given by affidavit.

(6) Where the party filing an answer under protest does not file the application referred to in Subsection (3) within the time limited by that subsection, he shall be deemed to have waived the objection.

(7) After an answer under protest has been filed and service of the answer has been effected on him, a petitioner in the proceedings shall not continue the proceedings against the party who filed the answer unless—

- (a) the Court has overruled the objection to its jurisdiction; or
- (b) the party filing the answer under protest has waived the objection.

(8) Where the Court has overruled an objection to its jurisdiction, the party who filed the answer under protest may, within such time as the Court allows, file a further answer to the petition.

Division 2.—Replies and Rejoinders.

77. Reply.

(1) Where an answer to a petition contains any allegation of fact, the petitioner may, by filing a reply—

- (a) deny a fact alleged in the answer; or
- (b) state that he does not know and cannot admit the truth of a fact alleged in the answer; or
- (c) allege an additional fact that has become relevant to proceedings to which the reply relates by reason of some fact alleged in the answer; or
- (d) admit the truth of a fact alleged in the answer.

(2) A party cited or a person named in an answer may, by filing a reply—

- (a) deny a fact alleged in the answer; or
- (b) state that he does not know and cannot admit the truth of a fact alleged in the answer; or
- (c) allege a fact; or
- (d) admit the truth of a fact alleged in the answer,

being a fact material to proceedings, instituted by the answer, to which he is a party or in which he is entitled to intervene under Section 33(2) of the Act or under Part IX.

(3) Where proceedings have been instituted by an answer to a petition and the petitioner, a party cited or a person named in the answer desires to submit to the Court that it should dismiss the proceedings, he shall, in a reply filed for the purpose, ask the Court to dismiss the proceedings.

(4) Where proceedings have been instituted by an answer to a petition and the petitioner, a party cited or a person named in the answer desires to submit to the Court that if it makes an order in favour of the party who filed the answer the order should be different from the order sought by that party, he shall, in a reply filed for the purpose, set out particulars of the order that, in his submission, the Court should make if it makes an order in favour of that party.

(5) A reply shall be in Form 18.

(6) The time limited for filing a reply to an answer is—

- (a) in the case of a reply by the petitioner—14 days after service of the answer on the petitioner; and
- (b) in the case of a reply by a party cited or a person named in the answer—the time limited in the notice of proceedings served on the party cited or person named in relation to the answer.

78. Reply under protest.

(1) A petitioner who desires to have determined the jurisdiction of the Court to hear any proceedings instituted by an answer to the petition, or a party cited in an answer to a petition who desires to have determined the jurisdiction of the Court to which the petition

is addressed, shall file a reply under protest, in Form 19, objecting to the jurisdiction of the Court.

(2) A reply under protest shall specify the grounds on which the petitioner or party cited objects to the jurisdiction of the Court.

(3) Section 76(3) to (8) applies in relation to a reply under protest as if—

- (a) references to an answer under protest were references to a reply under protest; and
- (b) the reference in Section 76(7) to a petitioner in proceedings were a reference to a petitioner or respondent in proceedings; and
- (c) the reference in Section 76(8) to a further answer to the petition were a reference to a further reply to the answer.

79. Reply containing allegation of fact.

(1) Where a reply contains an allegation of fact, the party who filed the answer in relation to which the reply was pleaded may, by filing a rejoinder—

- (a) deny a fact alleged in the reply; or
- (b) state that he does not know and cannot admit the truth of a fact alleged in the reply; or
- (c) allege an additional fact that has become relevant to proceedings to which the rejoinder relates by reason of some fact alleged in the reply; or
- (d) admit the truth of a fact alleged in the reply.

(2) The time limited for filing a rejoinder by a party is 14 days after service of the reply on the party.

80. Further rejoinder.

(1) Where a rejoinder or further rejoinder (in this section called "the pleading") contains an allegation of fact, the party who filed the reply, rejoinder or further rejoinder in relation to which the pleading was pleaded may, by filing a further rejoinder—

- (a) deny a fact alleged in the pleading; or
- (b) state that he does not know and cannot admit the truth of a fact alleged in the pleading; or
- (c) allege an additional fact that has become relevant to proceedings to which the further rejoinder relates by reason of some fact alleged in the pleading; or
- (d) admit the truth of a fact alleged in the pleading.

(2) The time limited for filing a further rejoinder by a party is 14 days after service on the party of the pleading to which it is pleaded.

Division 3.—Pleadings Generally.

81. Interpretation of Division 3.

In this Division, unless the contrary intention appears, "pleading" means an answer, reply, rejoinder or further rejoinder.

82. Failure to admit, deny, etc., fact alleged.

Where a person who is entitled to deny a fact alleged in a pleading filed in proceedings does not, in a pleading filed by him—

- (a) deny the fact, expressly or by necessary implication; or
- (b) state that he does not know and cannot admit the truth of the fact; or
- (c) admit the truth of the fact,

he shall be deemed to have admitted the truth of the fact for the purpose of the proceedings.

83. Date and signature of pleading.

- (1) A pleading shall bear the date on which it is filed.
- (2) Where a pleading is settled by a lawyer, the name of the lawyer shall be written on the pleading.
- (3) A pleading shall be signed—
 - (a) if the party filing the pleading is represented by a lawyer—by the lawyer personally; or
 - (b) if the party filing the pleading is not represented by a lawyer—by the party.

84. Affidavit verifying pleading.

- (1) The party filing a pleading shall, by an affidavit written on his pleading and sworn within 21 days before his pleading is filed—
 - (a) verify the facts stated in his pleading of which he has personal knowledge; and
 - (b) depose as to his belief in the truth of every other fact stated in his pleading.
- (2) Section 34(2) and (3) apply in relation to an affidavit verifying a pleading as if references to a petition and a petitioner were references to a pleading and a party filing a pleading, respectively.
- (3) Where the party filing a pleading states in the pleading that he does not know and cannot admit the truth of a particular fact, he shall state, in his affidavit verifying the pleading, that he does not know and cannot admit the truth of the fact.

85. Service of pleading.

- (1) A party who files a pleading for the purpose of proceedings shall cause service of a copy of the pleading to be effected, in a manner referred to in Section 57(d), on each other party to the proceedings who has, at the day on which the pleading is filed, an address for service for the purpose of the proceedings.
- (2) For the purpose of Subsection (1), a copy of a pleading shall be served on the day on which the pleading is filed or on the next following day.
- (3) Where a party files an address for service for the purpose of any proceedings on or after the day on which a pleading is filed, the party who filed the pleading shall, on request made by the first-mentioned party, cause service of a copy of the pleading to be effected in a manner referred to in Section 57(d) on the first-mentioned party on the day on which the request is made or on the next following day.
- (4) This section does not apply in relation to service of an answer to a petition.

Division 4.—Discontinuance.

86. Withdrawal of pleading.

(1) Subject to Subsection (2), a party to any proceedings on whose behalf a pleading has been filed may withdraw the pleading by filing a notice in Form 20 and causing service of a copy of the notice to be effected, in a manner referred to in Section 57(d), on each other party to the proceedings who has an address for service for the purpose of the proceedings.

(2) Where an order pending the disposal of proceedings instituted by a petition is in force, the petition shall not be withdrawn under Subsection (1) except by leave of the Court.

(3) Where a petitioner withdraws his petition, the proceedings instituted by the petition, and any proceedings instituted in relation to those proceedings, are discontinued, but the discontinuance does not affect the continuance of—

- (a) any proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act instituted by the respondent to the petition by answer to the petition; or
- (b) any proceedings of a kind referred to in Paragraph (c) or (d) of that definition that are in relation to proceedings instituted by that answer.

(4) Where a party to any proceedings withdraws a pleading other than a petition, the proceedings, other than any proceedings instituted by that pleading, may be continued as if the party had never filed the pleading.

(5) Where a party to proceedings withdraws a pleading, any other party to the proceedings who has filed a pleading for the purpose of the proceedings may make application to the court in which the proceedings are or were pending for an order as to the costs occasioned by the pleading and the withdrawal.

PART VIII.—AMENDMENT OF PLEADINGS AND SUPPLEMENTARY PETITIONS AND ANSWERS.

Division 1.—Amendment of Pleadings.

87. Amendments that may be made.

(1) Subject to this section, amendments that are—

- (a) necessary for the purpose of determining the real questions in controversy between the parties; and
- (b) made in accordance with this Division,

may be made to a pleading.

(2) An amendment shall not be made to a petition or answer if the amendment would have the effect of instituting proceedings of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act.

(3) Subsection (2) does not apply to an amendment to a petition that has not been served on a party to the proceedings or on a person named in the petition.

(4) A party to a marriage shall not, by amending a pleading filed by him in proceedings, seek a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act on a ground arising after the date on which the pleading was filed.

88. Amendment before service.

A petition may be amended by the petitioner if it has not been served on a party to the proceedings or on a person named in the petition.

89. Amendment after service.

(1) Subject to Subsection (2), where a pleading filed on behalf of a party to any proceedings has been served on another party to the proceedings, or on a person on whom service of the pleading is required by these Rules to be effected although the person is not a party to the proceedings, the pleading may be amended by the party who filed it—

- (a) if it had not been amended after having been so served—without the leave of the Court or the Registrar; or
- (b) if it has been amended on a previous occasion after having been so served—by leave of the Court or the Registrar.

(2) Except by leave of the Court, a pleading in any proceedings shall not be amended after—

- (a) a compulsory conference relating to the proceedings has been held for the purpose of Division XI.6; or
- (b) the proceedings have been set down for trial.

(3) Where the Court or Registrar gives leave to amend a pleading, the Court or Registrar may also, by order—

- (a) dispense with service of the amended pleading on a person, whether or not the person is a party to the proceedings; and
- (b) specify the manner in which service of the amended pleading may be effected on a person; and
- (c) specify the time after service of the amended pleading on a person within which the person may—
 - (i) amend a pleading already filed by him in reply to the pleading; or
 - (ii) file a pleading in reply to the amended pleading,as the case requires.

(4) Where the Court or Registrar gives a party leave to amend a pleading, the party may cause the pleading to be amended accordingly within seven days after the leave is given.

(5) Where service of an amended pleading is to be effected on a party who has an address for service for the purpose of proceedings, the service shall be effected on the day on which the pleading is amended or on the next following day.

90. Verification of amendment.

(1) An amendment shall not be made to a pleading so as to alter a fact alleged in the pleading or to include an additional fact in the pleading, unless the party on whose behalf the pleading was filed has filed an affidavit—

- (a) verifying the altered fact or additional fact, as the case may be; or
- (b) deposing as to his belief in the truth of the altered fact or additional fact, as the case may be.

(2) An amendment shall not be made to a petition or answer so as to allege additional facts that constitute a ground for a decree of dissolution of marriage or of judicial

separation specified in Section 17(a) to (k) of the Act and to seek such a decree on that ground, unless the party who filed the petition or answer has filed an affidavit in which he—

- (a) denies that he has connived at the ground; and
- (b) denies that he has condoned the ground or states all facts relevant to the question whether he has condoned the ground, including any facts relevant to the question whether that ground has been revived; and
- (c) states that, in bringing the proceedings for the decree on the ground, he has not been guilty of collusion with intent to cause a perversion of justice.

(3) A party shall be deemed to have complied with the requirements of Subsections (1) and (2) if the matters required by those provisions to be included in an affidavit are included in an affidavit by the party in support of an application for leave to amend the pleading.

91. Notice of application for leave to amend.

(1) Subject to this section, where application is made for leave to amend a pleading filed for the purpose of any proceedings, the applicant shall cause service of the application to be effected on each other party to the proceedings who has an address for service for the purpose of the proceedings.

(2) Subsection (1) does not apply to an application that is made to the Court on the trial of the proceedings for the purpose of which the pleading was filed.

(3) An application to amend a pleading may be made *ex parte* if no party, other than the party who filed the pleading, has an address for service.

92. Method of amending pleading.

(1) A pleading shall be amended by writing the alterations or additions on the pleading in red ink, or in any other manner that distinguishes the alterations or additions from the original pleading and from any previous amendment.

(2) Where a pleading is amended by a party by leave of the Court or Registrar, his lawyer, or, if he is not represented by a lawyer, the party shall write at the top of the front page of the pleading, in red ink, particulars of the date on which the amendment is made to the pleading, in the following form:—

“Amended _____ 19 __, by leave granted by the _____ on _____ 19 __.”

(3) Where a pleading is amended by a party without the leave of the Court or Registrar, the lawyer for the party, or if the party is not represented by a lawyer, the party shall write at the top of the front page of the pleading, in red ink, particulars of the date on which the amendment is made to the pleading, in the following form:—

“Amended _____ 19 __, under Section 88 (or 89(1)(a)) of the Matrimonial Causes Rules.”

(4) A lawyer or party writing on a pleading the particulars required by Subsection (2) or (3) shall sign his name immediately under the particulars and inform the Registrar without delay of the nature of the amendments made by him to the pleading.

(5) Where the amendments made to the pleading are so numerous or of such a nature that the pleading is difficult or inconvenient to read, or where making amendments to a pleading in the manner provided by Subsection (1) would make the pleading difficult or inconvenient to read, the party making the amendments—

- (a) if the Registrar so requests—shall; or

(b) in any other case—may,
file a copy of the pleading as amended.

(6) Compliance with Subsection (1) is not necessary where, before a party writes the alterations or additions on the pleading in accordance with that subsection, he files a copy of the pleading as amended, but every copy of the pleading as amended shall bear the notation specified in Subsection (2) or (3), as the case requires.

93. Requirement of service of amendment.

(1) Where a pleading is amended before service of the pleading has been effected on a person on whom service of it is, by these Rules, required to be effected, service on the person of the pleading otherwise than as so amended is not due service for the purpose of these Rules.

(2) Subject to these Rules and to any order made under Section 89(3), where a pleading is amended after service of the pleading has been effected on a person, service of the amended pleading on the person shall be effected—

(a) if the person has an address for service—by serving, in the manner referred to in Section 57(d), a copy of the amended pleading on the person on the day on which the pleading is amended or on the next following day; or

(b) in any other case—by serving, in a manner referred to in Section 57(a) or (b), a copy of the amended pleading on the person, as soon as practicable after the amendment is made.

(3) Where—

(a) a petition is amended by adding an allegation that the respondent has committed adultery, rape or sodomy with or on a specified person, not being a person on whom service of the petition has been effected; or

(b) an answer is amended by adding an allegation that the petitioner has committed adultery, rape or sodomy with or on a specified person, not being a person on whom service of the answer has been effected,

service of a sealed copy of the amended petition or amended answer shall be effected on the person in a manner referred to in Section 57(a) or (b).

(4) These Rules apply in relation to service of a sealed copy of an amended copy of an amended petition or an amended answer on a person referred to in Subsection (3) in like manner as they apply in relation to service of a sealed copy of a petition or answer on the person.

94. Pleading in reply to amended pleading.

(1) Where a pleading has been amended, a person on whom service of a copy of the amended pleading has been effected shall not file a pleading in reply to the first-mentioned pleading but may file a pleading in reply to the amended pleading.

(2) For the purposes of these Rules, the time limited for filing a pleading in reply to the amended pleading commences from the day on which service of the amended pleading was effected on the person referred to in Subsection (1).

95. Amendment of subsequent pleading.

(1) Where a pleading is amended after a pleading (in this section called “the subsequent pleading”) has been filed in reply to it, the party who filed the subsequent pleading may, within 10 days after the day on which service of the amended pleading was

effected on him or within such other time as is specified in an order under Section 89(3), amend the subsequent pleading in such manner as he thinks desirable.

(2) An amendment of the subsequent pleading may be made in accordance with Subsection (1) without the leave of the Court or the Registrar and does not count as an amendment for the purposes of Section 89(1), but the other provisions of this Division apply to and in relation to the amendment.

Division 2.—Supplementary Petitions and Answers.

96. Supplementary petitions and answers.

(1) Where a ground on which a petitioner or respondent may seek a decree of dissolution of marriage or judicial separation arises after the petition was filed by the petitioner or an answer was filed by the respondent, as the case may be, the petitioner may, by filing a supplementary petition, or the respondent may, by filing a supplementary answer, seek appropriate relief of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act.

(2) A supplementary petition shall be in Form 21.

(3) A supplementary answer shall be in Form 22.

97. Contents of supplementary petition.

(1) In this section, "the petition" means the petition instituting the proceedings in relation to which the supplementary petition is filed.

(2) In a supplementary petition, the facts, but not the evidence by which the facts are to be proved, on which the Court will be asked to make the decree sought by the supplementary petition shall be stated in as concise a form as the nature of the case allows.

(3) A supplementary petition shall state the address and occupation, so far as they are known to the petitioner, of any person specified in the supplementary petition as a person with or on whom the respondent is alleged to have committed adultery, rape or sodomy.

(4) Where the address, at the date of the supplementary petition, of a person referred to in Subsection (3) is not known to the petitioner, the supplementary petitioner shall state that the address is not known to the petitioner, and also state the last address (if any) of the person known to the petitioner.

(5) Subject to Subsection (7), Sections 27(2) and (3), 33, 34, 36, 37, 38, 39 and 41, so far as they are applicable to the circumstances of the particular case, apply to and in relation to a supplementary petition for a decree of dissolution of marriage as if references to a petition were references to a supplementary petition.

(6) Subject to Subsection (7), Sections 27(2) and (3), 33, 34, 36, 37 and 41, so far as they are applicable to the circumstances of the particular case, apply to and in relation to a supplementary petition for a decree of judicial separation as if references to a petition were references to a supplementary petition and references to a petition for a decree of dissolution of marriage were references to a supplementary petition for a decree of judicial separation.

(7) It is not necessary to include in a supplementary petition any matter that is included in the petition.

98. Contents of supplementary answer.

(1) In this section—

“the answer” means the answer in the proceedings in relation to which the supplementary answer is filed;

“the petition” means the petition in relation to which the answer is filed.

(2) In a supplementary answer, the facts, but not the evidence by which the facts are to be proved, on which the Court will be asked to make the decree sought by the supplementary answer shall be stated in as concise a form as the nature of the case allows.

(3) A supplementary answer shall state the address and occupation, so far as they are known to the respondent, of any person specified in the supplementary answer as a person with or on whom the petitioner is alleged to have committed adultery, rape or sodomy.

(4) Where the address, at the date of the supplementary answer, of a person referred to in Subsection (3) is not known to the respondent, the supplementary answer shall state that the address is not known to the respondent, and also state the last address (if any) of the person known to the respondent.

(5) Subject to Subsection (7), Sections 27(2) and (3), 33, 34, 36, 37, 38, 39 and 41, so far as they are applicable to the circumstances of the particular case, apply to and in relation to a supplementary answer by which the respondent is seeking a decree of dissolution of marriage as if—

(a) references to a petition were references to a supplementary answer; and

(b) references to a petitioner were references to the respondent to the petition; and

(c) references to the respondent were references to the petitioner.

(6) Subject to Subsection (7), Sections 27(2) and (3), 33, 34, 36, 37 and 41, so far as they are applicable to the circumstances of the particular case, apply to and in relation to a supplementary answer by which the respondent to a petition is seeking a decree of judicial separation as if—

(a) references to a petition were references to a supplementary answer; and

(b) references to a petitioner were references to the respondent to the petition; and

(c) references to the respondent were references to the petitioner; and

(d) references to a petition for a decree of dissolution of marriage were references to a supplementary answer by which the respondent to a petition is seeking a decree of judicial separation.

(7) It is not necessary to include in a supplementary answer any matter that is included in the answer or the petition.

99. Condonation, connivance and collusion.

(1) A supplementary petition instituting proceedings for a decree of dissolution of marriage or of judicial separation on a ground specified in Section 17(a) to (k) of the Act, or alleging facts relied on as constituting such a ground, shall contain—

(a) a statement that the petitioner has not connived at the ground; and

(b) a denial that he has condoned the ground, or a statement of all facts relevant to the question whether he has condoned the ground, including any facts relevant to the question whether the ground has been revived.

(2) A supplementary petition instituting proceedings for a decree of dissolution of marriage or of judicial separation, or alleging facts relied on as constituting a ground for the making of such a decree, shall contain a statement that, in bringing the proceedings or alleging the facts, the petitioner has not been guilty of collusion with intent to cause a perversion of justice.

(3) Subsections (1) and (2) apply in relation to a supplementary answer in like manner as they apply in relation to a supplementary petition, and as if—

- (a) references to the petitioner were references to the respondent; and
- (b) references to a supplementary petition were references to a supplementary answer.

100. Particulars of other orders sought.

(1) Where a petitioner seeks—

- (a) an award of damages under Section 32 of the Act against a person specified in a supplementary petition as a person with whom the respondent is alleged to have committed adultery; or
- (b) an order as to costs related to proceedings for the decree sought by a supplementary petition,

the supplementary petition shall set out particulars of the award (including the amount of damages) or order sought.

(2) Where a respondent seeks—

- (a) an award of damages under Section 32 of the Act against a person with whom the petitioner is alleged to have committed adultery; or
- (b) an order as to costs related to proceedings for the decree sought by a supplementary answer,

the supplementary answer shall set out particulars of the award (including the amount of damages) or order sought.

101. Service of supplementary petitions, etc.

(1) Subject to Section 94(2) of the Act, service of a supplementary petition shall be effected on—

- (a) the respondent; and
- (b) each person (if any) specified in the supplementary petition as a person with or on whom the respondent is alleged to have committed adultery, rape or sodomy; and
- (c) any other person who, being a party to the proceedings instituted by the petition, has an address for service for the purpose of those proceedings.

(2) Service of a supplementary petition shall be effected on a person who has an address for service by serving a sealed copy of the supplementary petition on the person in the manner referred to in Section 57(d).

(3) Service of a supplementary petition shall be effected on a person who does not have an address for service—

- (a) by serving on the person, in the manner referred to in Section 57(a)—
 - (i) a sealed copy of the supplementary petition; and
 - (ii) a notice of petition or a notice of proceedings, as the case requires, in relation to the supplementary petition; or

- (b) by serving on the person in the manner referred to in Section 57(b)—
- (i) a sealed copy of the supplementary petition; and
 - (ii) a notice of petition or a notice of proceedings, as the case requires, in relation to the supplementary petition; and
 - (iii) a form, in Form 12, for acknowledging service of the supplementary petition; and
 - (iv) an envelope (being, in the case of service effected in Papua New Guinea, a stamped envelope) having written on it the name of the petitioner or his lawyer and the address for service of the petitioner.

(4) This section applies in relation to a supplementary answer as if—

- (a) references to a supplementary petition were references to a supplementary answer; and
- (b) references to the respondent were references to the petitioner; and
- (c) references to the petitioner were references to the respondent; and
- (d) references to a notice of petition or a notice of proceedings, as the case requires, were references to a notice of proceedings.

102. Time for filing an answer to supplementary petition, etc.

- (1) The time limited for the filing of an answer to a supplementary petition is—
- (a) in the case of a person on whom a notice of petition or a notice of proceedings is served with the sealed copy of the supplementary petition—the time specified in that notice for the filing of an answer; and
 - (b) in the case of any other person on whom service of a supplementary petition is effected—14 days after service of the supplementary petition on the person.
- (2) The time limited for the filing of a reply to a supplementary answer is—
- (a) in the case of a person on whom a notice of proceedings is served with the sealed copy of the supplementary answer—the time specified in the notice for the filing of a reply; and
 - (b) in the case of any other person on whom service of a supplementary answer is effected—14 days after service of the supplementary answer on the person.

103. Pleading to supplementary petition, etc.

For the purpose of Part VII., a supplementary petition shall be deemed to be a petition, and a supplementary answer shall be deemed to be an answer to a petition.

PART IX.—PARTIES.

Division 1.—General.

104. Persons who are not parties to proceedings.

Subject to the Act, to these Rules and to any order made by the Court on the trial of the proceedings or by the Registrar on the hearing of an application to the Registrar, a person named in the title to a document instituting proceedings, or making an application to the Registrar, is not a party to the proceedings or application unless he is affected by the proceedings or application, notwithstanding that he may be a party to a related proceedings by reason of which he is so named.

105. Intervention by persons named.

Where a person is entitled to intervene in proceedings under Section 33(2) of the Act, he may intervene in the proceedings by filing, within the time limited for doing so—

- (a) if the allegation by reason of which he is entitled to intervene is contained in a petition or supplementary petition—an answer to the petition or supplementary petition; or
- (b) if the allegation is contained in an answer or a supplementary answer—a reply to the answer or supplementary answer.

106. Allegation of adultery, etc., with person unknown.

(1) In this section, "suit" means the proceedings instituted by a petition, and includes any proceedings—

- (a) instituted by a supplementary petition filed in relation to the petition; or
- (b) instituted by an answer or supplementary answer to the petition or by a supplementary petition filed in relation to the petition; or
- (c) ordered by the Court under Section 169, or deemed by virtue of Section 192 or 213, to have been consolidated with any proceedings so instituted,

but does not include proceedings for an order pending the disposal of other proceedings.

(2) Where the petitioner alleges, in a petition for a decree of dissolution of marriage or of judicial separation, that the respondent has committed adultery or sodomy with or on a person whose name is unknown to the petitioner at the time of filing the petition, the suit shall not be set down for trial unless the Court has made an order dispensing with the naming of the person.

(3) The petitioner shall make application for an order under Subsection (2) after service of the petition has been effected on the respondent or after service has been dispensed with under Section 94(2) of the Act.

(4) The affidavit in support of an application for an order under Subsection (2) shall state particulars of any enquiries made by the petitioner for the purpose of ascertaining the name of the person.

(5) Service of an application for an order under Subsection (2) shall be effected on the respondent unless the Court has dispensed with service of the petition on the respondent.

(6) This section applies to and in relation to proceedings in which the respondent alleges, in an answer to a petition, that the petitioner has committed adultery or sodomy with or on a person whose name is unknown to the respondent at the time of filing the answer as if—

- (a) references to the petitioner were references to the respondent; and
- (b) references to the petition were references to the answer; and
- (c) references to the respondent were references to the petitioner.

107. Amendment if name of adulterer, etc., known.

(1) Where a petitioner alleges in a petition for a decree of dissolution of marriage or of judicial separation that the respondent has committed adultery or sodomy with or on a person whose name is unknown to the petitioner at the time of filing the petition, and subsequently becomes aware of the name of the person at any time before the making of the decree in the proceedings, he shall amend the petition accordingly.

(2) Where a petition is amended under Subsection (1)—

- (a) service of the amended petition shall be effected on the respondent and on the person to whom the amendment relates; and
- (b) if the petitioner alleges in the petition that the respondent committed adultery with that person, he becomes, subject to this Part, a party to the proceedings for a decree of dissolution of marriage or of judicial separation.

(3) Where a respondent alleges in an answer to a petition that the petitioner has committed adultery or sodomy with or on a person whose name is unknown to the respondent at the time of filing the answer, and subsequently becomes aware of the name of the person at any time before the making of the decree in the proceedings in relation to which the answer was filed, he shall amend the answer accordingly.

(4) Where an answer is amended under Subsection (3)—

- (a) service of the amended answer shall be effected on the petitioner and on the person to whom the amendment relates; and
- (b) if the respondent alleges in the answer that the petitioner committed adultery with that person, he becomes, subject to this Part, a party to any proceedings for a decree of dissolution of marriage or of judicial separation instituted by the petition or answer.

(5) These Rules apply in relation to the service of an amended petition or an amended answer on the person to whom the amendment relates in the same manner as they apply to the service of a petition or answer on a person.

(6) An amendment of a petition or answer under this section—

- (a) may be made without the leave of the Court or Registrar; and
- (b) does not count as an amendment for the purpose of Section 89(1).

(7) Where a petition or answer is amended under this section, service of the amended petition or amended answer shall be effected on the respondent or petitioner, as the case may be, but need not be effected on any other person on whom service of the petition or answer, as the case may be, has been effected before it was so amended.

(8) Subject to this Section, Division VIII.1 applies to and in relation to an amendment made under this section.

108. Death of adulterer.

(1) Nothing in Section 33(1) of the Act requires a deceased person to be made a party to proceedings.

(2) Where, in proceedings for a decree of dissolution of marriage or of judicial separation, a co-respondent, party cited or party named dies after the institution of the proceedings or the filing of the answer, as the case may be, but before the making of a decree in the proceedings, the petitioner shall amend the petition, or the respondent shall amend the answer, by alleging in the petition or answer the death of the person and the date on which he died.

(3) Where a petition or answer is amended under Subsection (2) to allege the death of a person who, at the date of the amendment, is a party to the proceedings, the person alleged to have died ceases to be a party to the proceedings and the title to the proceedings and record of the proceedings shall be deemed to have been amended accordingly.

(4) An amendment of a petition or answer under this section—

- (a) may be made without the leave of the Court or Registrar; and

(b) does not count as an amendment for the purposes of Section 89(1), and Division VIII.1 does not apply to or in relation to the amendment.

(5) A petitioner who amends a petition, or a respondent who amends an answer, under this section shall, as soon as possible after the amendment is made, inform the Registrar of the nature of the amendment made by him to the petition or answer and give notice of the amendment, including a copy of each amended paragraph or new paragraph in the petition or answer, to each party to the proceedings who has an address for service for the purpose of the proceedings.

(6) Proceedings do not abate on the death of a co-respondent, party cited or party named, but the Court shall not make a finding of adultery or sodomy, as the case may be, against such a party who has died.

109. Infant parties.

(1) In this section—

“answer” includes supplementary answer;

“petition” includes supplementary petition.

(2) Where—

(a) in a petition for a decree of dissolution of marriage or of judicial separation—the respondent; or

(b) in an answer to such a petition or in an answer by which proceedings for such a decree are instituted—the petitioner,

is alleged to have committed adultery with a specified person who, at the date of the petition or answer, is under the age of 14 years, whether or not such a decree is sought on the ground of the adultery, the person shall not be made a party to the proceedings except in accordance with Subsection (3), but service of the petition or answer, as the case may be, shall be duly effected on the infant.

(3) A person under the age of 14 years with whom a petitioner or respondent is alleged to have committed adultery may intervene in the proceedings by filing, within the time limited for doing so—

(a) if the allegation is contained in a petition—an answer to the petition; or

(b) if the allegation is contained in an answer—a reply to the answer,

in which case he shall be deemed to have become a party to the proceedings.

110. Incest with infant.

(1) In this section—

“answer” includes supplementary answer;

“petition” includes supplementary petition.

(2) This section applies to the proceedings where—

(a) in a petition instituting proceedings for a decree of dissolution of marriage or of judicial separation—the respondent; or

(b) in an answer to a petition instituting proceedings for such a decree—the petitioner; or

(d) in an answer instituting proceedings for such a decree—the petitioner, is alleged to have committed adultery, whether or not such a decree is sought on the ground of the adultery, with a person (in this section referred to as “the infant”) who—

(d) at the date of the petition, or answer, as the case may be, is under the age of 21 years; and

(e) is—

(i) if the respondent or petitioner is a male person—his female descendant or sister, or a female child adopted by him; or

(ii) if the respondent or petitioner is a female person—a descendant or brother of, or a male child adopted by her.

(3) Where this section applies to any proceedings, the infant shall not be made a party to the proceedings except in accordance with this section, but service of the petition or answer, as the case may be, shall be duly effected on the infant.

(4) Where this section applies to any proceedings by reason of the fact that an allegation referred to in Subsection (2) is included in a petition, the petitioner shall, before service of the petition on any person, make application to the Court for leave to serve the petition notwithstanding that the infant is not a party to the proceedings.

(5) Where this section applies to any proceedings by reason of the fact that an allegation referred to in Subsection (2) is included in an answer, the respondent shall, before service of the answer on any person, make application to the Court for leave to serve the answer notwithstanding that the infant is not a party to the proceedings.

(6) An application under Subsection (4) or (5) may be made *ex parte*.

(7) On an application under Subsection (4) or (5), the Court shall—

(a) if it is satisfied that it is in the interest of the infant that he should not be a party to the proceedings—by order, grant to the petitioner leave to serve the petition, or grant to the respondent leave to serve the answer, as the case may be, notwithstanding that the infant is not a party to the proceedings; or

(b) if it is not so satisfied—by order, direct that the infant be made a party to the proceedings.

(8) Where the Court makes an order under Subsection (7), the Court may also, by order, specify an adult person on whom service of the petition or answer may be effected, and for the purpose of Section 66(2) service of the petition or answer on the person so specified shall be deemed to be service on a person specified in Section 66(2)(b).

(9) Where, in proceedings to which this section applies, the Court has granted leave to serve a petition or answer notwithstanding that the infant is not a party to the proceedings, the infant may intervene in the proceedings by filing, within the time limited for doing so after service of the petition or answer on the infant, an answer to the petition or a reply to the answer, as the case requires.

(10) Where the Court has directed that the infant become a party to the proceedings, the petitioner shall amend the title of the petition or the respondent shall amend the title of the answer accordingly, and the infant shall then be deemed to have been made a party to the proceedings.

(11) For the purpose of Subsection (2), it is immaterial whether the relationship is of the whole blood or half-blood, or whether it is traced through or to any person of illegitimate birth.

Division 2. — Infants.

111. Proceedings by infants.

(1) Where an infant desires to institute proceedings in a matrimonial cause, a person may institute the proceedings on behalf of the infant.

(2) Proceedings referred to in Subsection (1) shall, unless the Court otherwise orders, be deemed void and of no effect unless the person instituting them has been elected or appointed to be the guardian *ad litem* of the infant for the purpose of the proceedings—

- (a) in the case of proceedings for a decree of a kind referred to in Paragraph (a) of the definition of "matrimonial cause" in Section 1(1) of the Act—before service of the petition has been effected on any person; or
- (b) in the case of proceedings, being an application for leave to institute proceedings for such a decree—before the hearing of the application; or
- (c) in any other case—before service of the application instituting the proceedings has been effected on any person.

112. Infant respondents, etc.

(1) Subject to Subsection (4), where the respondent or a co-respondent in any proceedings instituted by a petition, or a person named in a petition, is an infant, a guardian *ad litem* may file, on behalf of the infant—

- (a) an answer to the petition; or
- (b) if he does not desire to file an answer but desires to take any other action in the proceedings on behalf of the infant—a notice of address for service.

(2) Subject to Subsection (4), where a party cited in any proceedings, or a person named in an answer, is an infant, a guardian *ad litem* may file, on behalf of the infant—

- (a) a reply to the answer; or
- (b) if he does not desire to file a reply but desires to take any other action in the proceedings on behalf of the infant—a notice of address for service.

(3) A guardian *ad litem* of an infant who has an address for service for the purpose of any proceedings may take such further action in and in relation to the proceedings on behalf of the infant as the guardian thinks proper and the infant might have taken if he had been of full age.

(4) Where a co-respondent, party cited or person named is an infant, it is not necessary for a guardian *ad litem* to be elected or appointed in order that the infant may file an answer or reply or take any other action in relation to the proceedings, but the infant may file the answer or take the action either by his lawyer or in person.

113. Intervention by infant.

A guardian *ad litem* may apply for leave to intervene, and may intervene, under Part VI. of the Act, in proceedings on behalf of an infant.

114. Application of Rules to infants.

(1) Where an infant is a party to any proceedings, references in these Rules to an affidavit of the party shall, notwithstanding that a guardian *ad litem* of the infant has been elected or appointed, be read as references to an affidavit sworn by the infant.

(2) The Court may, in a particular case, order that an affidavit required by or under these Rules to be sworn by a party to proceedings who is an infant be sworn by the guardian *ad litem* of the infant.

Division 3.—Persons of Unsound Mind.

115. Interpretation of Division 3.

In this Division, "committee" means committee of the person.

116. Proceedings by persons of unsound mind.

(1) Proceedings in a matrimonial cause may be instituted on behalf of a person of unsound mind—

- (a) if there is a committee who is able and willing to act for him in connexion with the proceedings—by the committee; or
- (b) if the Minister or an authorized person files a consent under Section 122—by the Minister or the authorized person; or
- (c) in any other case—by a person intending to apply for appointment as guardian *ad litem*.

(2) Where proceedings referred to in Subsection (1) are instituted by a committee of a person of unsound mind, the committee shall be deemed, for the purpose of this Part, to be the guardian *ad litem* of the person of unsound mind for the purpose of the proceedings.

(3) Unless the Court otherwise orders, where proceedings referred to in Subsection (1) are instituted by a person referred to in Subsection (1)(c), the proceedings shall be deemed void unless the person has been appointed the guardian *ad litem* of the person of unsound mind for the purpose of the proceedings—

- (a) in the case of proceedings for a decree of a kind referred to in Paragraph (a) of the definition of "matrimonial cause" in Section 1(1) of the Act—before service of the petition has been effected on any person; or
- (b) in the case of proceedings, being an application for leave to institute proceedings for such a decree—before the hearing of the application; or
- (c) in any other case—before service of the application instituting the proceedings has been effected on any person.

117. Respondents, etc., being persons of unsound mind.

(1) Where the respondent or a co-respondent in proceedings instituted by a petition, or a person named in a petition, is a person of unsound mind, a committee of the person of unsound mind or a guardian *ad litem* may, on his behalf, file—

- (a) an answer to the petition; or
- (b) if he does not desire to file an answer but desires to take other action in the proceedings on behalf of the person of unsound mind—a notice of address for service.

(2) Where a party cited in proceedings, or a person named in an answer, is a person of unsound mind, a committee of the person of unsound mind or a guardian *ad litem* may file, on his behalf—

- (a) a reply to the answer; or

(b) if he does not desire to file a reply but desires to take other action in the proceedings on behalf of the person of unsound mind—a notice of address for service.

(3) A committee of a person of unsound mind or a guardian *ad litem* of a person of unsound mind who has an address for service for the purpose of any proceedings may take such further action in and in relation to the proceedings on behalf of the person as the committee or guardian thinks proper and the person might have taken if he had not been of unsound mind.

118. Intervention by person of unsound mind.

A committee or guardian *ad litem* of a person of unsound mind may apply for leave to intervene, and may intervene, under Part VI. of the Act, in proceedings on behalf of the person of unsound mind.

119. Application of Rules to persons of unsound mind.

(1) Where a person of unsound mind is a party to any proceedings, references in these Rules to an affidavit of the party shall be read as references to an affidavit sworn by the guardian *ad litem* of the party, or by the person who is deemed for the purpose of this Part to be the guardian *ad litem* of the party, as the case may be.

(2) The Court may, in a particular case, order that an affidavit required by or under these Rules to be sworn by the guardian *ad litem* of a party to proceedings who is a person of unsound mind be sworn by the party.

Division 4.—Guardians Ad Litem.

120. Election of guardian by infant.

(1) Subject to Subsection (2), an infant may, by signing an election in Form 23, elect his father, mother or legal guardian to be his guardian *ad litem* for the purpose of proceedings.

(2) An election under Subsection (1) is not effective until it is filed.

(3) An election under Subsection (1) shall have written on it the consent of the father, mother or legal guardian, as the case may be, to act as guardian *ad litem* of the infant for the purpose of the proceedings.

121. Friend of infant as guardian ad litem.

(1) Where an infant desires some person other than his father, mother or legal guardian to be his guardian *ad litem* for the purpose of any proceedings—

(a) the infant may consent in writing to the person being appointed his guardian *ad litem* for the purpose of any proceedings; and

(b) when the infant has done so, the person may make application to the Registrar to be appointed the guardian *ad litem* of the infant for that purpose.

(2) There shall be filed in support of an application for appointment as guardian *ad litem* of an infant—

(a) an affidavit by the applicant setting forth the reasons why the infant did not elect his father, mother or legal guardian to be his guardian *ad litem*; and

(b) an affidavit by a credible person deposing to the fitness of the applicant to act as guardian *ad litem* of the infant.

(3) The consent referred to in Subsection (1)(a) shall be annexed to the affidavit of the applicant in support of the application, and the signature appearing on the consent shall be verified as the signature of the infant by the affidavit of a person (who may be the applicant) conversant with the signature of the infant.

(4) An application under this section may be made ex parte.

(5) Where, on application made under this section, the Registrar is satisfied that the applicant is a fit and proper person to act as the guardian *ad litem* of the infant in the proceedings or proposed proceedings and that it is desirable that he be appointed, the Registrar shall appoint him accordingly.

122. Minister as guardian of person of unsound mind.

(1) Where the Minister or an authorized person signs a consent in Form 24 to act as the guardian *ad litem* of a party to proceedings or proposed proceedings who is—

- (a) detained in an institution where persons may be confined for unsoundness of mind in accordance with law; or
- (b) receiving treatment as a voluntary patient in such an institution,

the consent may be filed and the Minister or authorized person, as the case may be, becomes the guardian *ad litem* of the person for the purpose of the proceedings or proposed proceedings.

(2) For the purpose of Subsection (1), a person desiring to intervene in any proceedings shall be deemed to be a party to the proceedings notwithstanding that he has not yet intervened in the proceedings.

(3) The Minister may, by writing under his hand, appoint a person (including a corporation sole) to be an authorized person for the purposes of this section generally or in respect of a particular person of unsound mind.

(4) Notice of an appointment, not being an appointment in respect of a particular person of unsound mind, under Subsection (3) shall be published in the National Gazette.

123. Friend as guardian of person of unsound mind.

(1) In this section, "committee" means committee of the person.

(2) Where—

- (a) a party to proceedings is a person of unsound mind; and
- (b) the Minister or an authorized person has not filed a consent under Section 122 to act as the guardian *ad litem* of the party for the purpose of the proceedings; and
- (c) there is no committee of the party who is able and willing to act for the party,

a fit and proper person may apply to the Registrar to be appointed the guardian *ad litem* of the party for that purpose.

(3) For the purpose of Subsection (2), a person desiring to intervene in any proceedings shall be deemed to be a party to the proceedings notwithstanding that he has not yet intervened in the proceedings.

(4) There shall be filed in support of an application under this section an affidavit by a credible person deposing to the fitness of the applicant to act as guardian *ad litem* of the person of unsound mind.

(5) An application under this section, may be made ex parte.

(6) Where, on application made under this section, the Registrar is satisfied that the applicant is a fit and proper person to be appointed the guardian *ad litem* of the person of unsound mind for the purpose of the proceedings and that it is desirable that he be appointed, the Registrar shall appoint him accordingly.

124. Guardians in other circumstances.

(1) Where a person who is a party to any proceedings or who desires to intervene in any proceedings is an infant or a person of unsound mind, the Court may, at any stage of the proceedings, if it thinks it advisable, appoint a fit and proper person to be the guardian *ad litem* of the person for that purpose.

(2) An appointment under this section may be made by the Court—

(a) on application by—

(i) another party to the proceedings; or

(ii) a person willing and able to act as the guardian *ad litem* of the person;
or

(b) by the Court of its own motion.

125. Corporation as guardian of person of unsound mind.

A corporation sole authorized by or under a law to be appointed, or to act as, the guardian *ad litem* or next friend of a person of unsound mind may make application under Section 123 or 124 to be appointed, and may be appointed, the guardian *ad litem* of a person of unsound mind for the purpose of proceedings.

126. Removal of guardian ad litem.

The Court may, subject to such conditions as it thinks proper, remove a person from the office of guardian *ad litem* of an infant or person of unsound mind where—

(a) the person makes application to retire from the office; or

(b) the Court thinks that it is desirable that the person should be removed from the office.

127. Notice of appointment of guardian ad litem.

(1) Subject to Subsection (3), a person who becomes the guardian *ad litem*—

(a) of the respondent or a co-respondent in proceedings instituted by a petition, or of a person named in a petition—shall serve notice of the fact on the petitioner; and

(b) of any party cited in proceedings, or of a person named in an answer—shall serve notice of the fact on the petitioner and respondent.

(2) Notice that a person has become a guardian *ad litem* shall be served on the day on which the person becomes the guardian *ad litem* or on the next following day.

(3) Where an order appointing a person to be a guardian *ad litem* is made on the application of a party to any proceedings, it is not necessary for a notice required by Subsection (1) to be served on that party.

128. Lawyer as guardian.

Where a lawyer is the guardian *ad litem* of a party to proceedings, neither he nor his partner shall act in the proceedings as the lawyer for the party.

PART X.—DEFAULT IN PLEADING.

129. Failure to file pleading within time.

(1) Subject to these Rules, where a pleading is filed on behalf of a party to any proceedings after the time limited for the filing of the pleading has expired, any other party to the proceedings may continue the proceedings as if the pleading had not been filed unless—

- (a) the party filing the pleading in answer to which the first-mentioned pleading was filed consented to, or waived objection to, the late filing of the pleading; or
- (b) the Court otherwise orders.

(2) Consent to the filing of a pleading after the expiration of the time limited for the filing of the pleading shall be endorsed on the pleading and signed—

- (a) if the party on whose behalf the pleading is filed is represented by a lawyer—by the lawyer; or
- (b) if the party is not so represented—by the party.

130. Default of pleading by infant, etc.

(1) In this section—

“answer” includes supplementary answer;

“petition” includes supplementary petition.

(2) Where—

- (a) the respondent to a petition is an infant or person of unsound mind; and
- (b) service of the petition has been duly effected on the respondent; and
- (c) an answer has not been duly filed by or on behalf of the respondent,

the petitioner shall not continue the proceedings instituted by the petition, or institute in relation to those proceedings any proceedings of a kind referred to in Paragraph (c) or (d) of the definition “matrimonial cause” in Section 1(1) of the Act, unless—

- (d) a person has become the guardian *ad litem* of the respondent for the purpose of the proceedings; and
- (e) the time limited for the filing of an answer by the guardian *ad litem* has expired.

(3) Where—

- (a) an infant or person of unsound mind is specified in a petition as a person with or on whom the respondent has committed adultery, rape or sodomy; and
- (b) service of the petition has been duly effected on the person specified; and
- (c) an answer has not been duly filed by or on behalf of the person specified,

the petitioner shall not continue the proceedings for a decree of a kind referred to in Paragraph (a) of the definition “matrimonial cause” in Section 1(1) of the Act instituted by the petition unless—

- (d) a person has become the guardian *ad litem* of the person specified for the purpose of the proceedings; and
- (e) the time limited for the filing of an answer by the guardian *ad litem* has expired.

(4) Where—

- (a) an infant or person of unsound mind is specified in an answer to a petition as a person with or on whom the petitioner has committed adultery, rape or sodomy; and
- (b) service of the answer has been duly effected on the person specified; and
- (c) a reply has not been duly filed by or on behalf of the person specified,

neither the petitioner nor the respondent shall continue the proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act instituted by the petition, or proceedings (if any) for such decree instituted by the answer, unless—

- (d) a person has become the guardian *ad litem* of the person for the purpose of the proceedings; and
- (e) the time limited for the filing of a reply by the guardian *ad litem* has expired.

(5) A petitioner or respondent shall not be deemed to continue proceedings for the purposes of this section by reason of—

- (a) his making application for the appointment of a person to be the guardian *ad litem* of the infant or person of unsound mind for the purpose of the proceedings; or
- (b) his amending or making application for leave to amend the petition or answer by omitting the allegations in the petition or answer relating to the infant or person of unsound mind.

131. Time for filing answer, etc., by guardian.

Where a person becomes the guardian *ad litem* of an infant or person of unsound mind who is the respondent, a co-respondent or a party cited in any proceedings, or desires to intervene in any proceedings, the guardian *ad litem* has the same time, after he becomes the guardian *ad litem*, for filing an answer or reply, as the case requires, for the purpose of the proceedings as the infant or person of unsound mind had after service on him of the petition or answer in the proceedings.

PART XI.—PREPARATION FOR TRIAL.

Division 1.—Preliminary.

132. Interpretation of Part XI.

In this Part—

"defended suit" means—

- (a) a suit for the purposes of which an answer has been duly filed; or
- (b) a suit that includes proceedings instituted by application to the Court under Section 11(2) or (3), if a party has duly filed an affidavit in reply to the affidavit filed in support of that application;

"suit" means the proceedings instituted by a petition, and includes any proceedings—

- (a) instituted by a supplementary petition filed in relation to the petition; or
- (b) instituted by an answer or supplementary answer to the petition or to a supplementary petition filed in relation to the petition; or

(d) ordered by the Court under Section 169, or deemed by virtue of Section 192 or 213, to have been consolidated with any proceedings so instituted,

but does not include proceedings for an order pending the disposal of other proceedings;

“undefended suit” means a suit other than a defended suit.

133. Application of Part XI. to persons of unsound mind.

Where a person of unsound mind is a party to proceedings, this Part applies as if references to the party were references to the guardian *ad litem* of the party.

134. Completion of pleadings in defended suits.

(1) Subject to this section, in a defended suit the pleadings are complete for the purposes of this Part when the pleadings between the petitioner and respondent are complete.

(2) Where, in a defended suit, a person has been specified in a pleading as a person with or on whom the petitioner or the respondent is alleged to have committed adultery, rape or sodomy, the pleadings are not complete for the purposes of this Part unless the pleadings between the petitioner and respondent are complete and the pleadings between the petitioner or the respondent (as the case may be) and the persons so specified are complete.

(3) Where a petitioner in a defended suit has filed a supplementary petition, the pleadings are not complete for the purposes of this Part unless the pleadings in relation to the petition are complete and, in addition, the pleadings in relation to the supplementary petition are complete.

(4) For the purposes of this section, the pleadings between two parties to a suit are complete where—

- (a) a pleading filed on behalf of one of those parties in reply to a pleading filed on behalf of the other party does not contain any allegations of fact; or
- (b) the time limited for the filing, on behalf of one of those parties, of a pleading in reply to a pleading filed on behalf of the other party has expired and the pleading in reply has not been filed; or
- (c) the Court has, under Section 94(2) of the Act, dispensed with service of a pleading, being the petition or answer in the proceedings, on one of those parties.

(5) For the purposes of Subsection (4), a person on whom a petitioner or respondent is alleged to have committed rape or sodomy but who has not intervened in the suit shall be deemed to be a party to the suit.

Division 2.—Particulars, Discovery and Inspection of Documents.

135. Particulars.

(1) A person on whom service of a pleading has been effected, being a person who is a party to the proceedings for the purpose of which the pleading was filed or who is entitled to intervene in the proceedings under Section 33(2) of the Act or under Section 109 or 110, may serve on the party on whose behalf the pleading was filed a request to give further particulars of an allegation in the pleading.

(2) A party on whom a request under Subsection (1) is served shall, within 10 days after service of the request, give to the person who served the request—

- (a) the further particulars of the allegation requested, or the grounds on which he objects to giving, or is unable to give, the further particulars; or
- (b) such further particulars of the allegation as he is willing and able to give, and the grounds on which he objects to giving, or is unable to give, any other particulars of the allegation.

(3) On application made by a person who has served, or is entitled to serve, a request under Subsection (1) for further particulars of an allegation in a pleading, the Court may order the party on whose behalf the pleading was filed to give further particulars of an allegation in the pleading within a time specified in the order, and may further order—

- (a) that the party shall not continue the proceedings until the further particulars are given or the Court otherwise orders; or
- (b) that, if further particulars of the allegation are not given within the time specified, the allegation be struck out of the pleading.

(4) Further particulars of an allegation in a pleading shall be given by a party, whether in accordance with a request or with an order, by filing an affidavit to which a document containing the further particulars is annexed, being an affidavit by which the party—

- (a) verifies the facts contained in the further particulars of which he has personal knowledge; and
- (b) deposes as to his belief in the truth of every other fact in the further particulars,

and by serving a copy of the affidavit on the person who requested the particulars or to whom the particulars were ordered to be given, as the case may be.

(5) Where further particulars are given in accordance with a request, a copy of the request shall be annexed to the affidavit filed under Subsection (4).

(6) Where the Court makes an order under Subsection (3), it shall not make an order with respect to the costs of the application in favour of the applicant unless it is satisfied—

- (a) that the application was made in a case of urgency; or
- (b) that the applicant had served on the party on whose behalf the pleading was filed a request under Subsection (1), and that party—
 - (i) failed to comply with Subsection (2); or
 - (ii) complied with that subsection by stating that he objected to giving, or was unable to give, some or all of the further particulars requested.

136. Discovery.

(1) After the pleadings in the proceedings have been completed and before the proceedings have been set down for trial, a party to any proceedings who has filed a pleading for the purpose of the proceedings may serve on another party to the proceedings a request to make discovery on oath of the documents that are or have been in his possession, custody or power relating to any matter in question in the proceedings.

(2) For the purposes of Subsection (1), a person who has intervened in proceedings under Part VI. of the Act shall be deemed to be a party to the proceedings who has filed a pleading for the purpose of the proceedings.

(3) A request under this section shall be in Form 25.

(4) A party to any proceedings on whom a request under this section has been served shall make discovery of documents by filing an affidavit of discovery, and serving a copy of the affidavit on the party who made the request, within 10 days after service of the request on him.

(5) On application made to the Court by a party to any proceedings who has duly served, or is entitled to serve, a request under this section, the Court may make such order for the filing of an affidavit of discovery as it thinks necessary in order to dispose fairly of the matters in question or to save costs in the proceedings.

(6) Where the Court makes an order under Subsection (5), it shall not make an order with respect to the costs of the application in favour of the applicant unless it is satisfied—

- (a) that the application was made in a case of urgency; or
- (b) that the applicant had served on the party ordered to make discovery a request under this section and that party refused or failed to comply with Subsection (4).

(7) Where an order has been made requiring a person to file an affidavit of discovery, he shall file the affidavit, and serve a copy of the affidavit on the applicant for the order, within 10 days after the date of the order or within such other time as the Court orders.

137. Affidavit of discovery.

(1) Subject to any order made under Section 136 in a particular case, a party's affidavit of discovery shall—

- (a) specify the documents relating to matters in question in the proceedings that are in the possession, custody or power of the party; and
- (b) specify the documents relating to matters in question in the proceedings that are not but have been in the possession, custody or power of the party and state, to the best of the knowledge and belief of the party, whether they are still in existence and, if so, who has possession of them; and
- (c) specify the documents that he objects to produce on the ground that the documents are—
 - (i) professional communications of a confidential character made to him by his lawyer, or made by him to his lawyer, for the purpose of giving him legal advice; or
 - (ii) cases for the opinion of counsel, instructions to counsel or opinions of counsel prepared and given in anticipation of or during the progress of the proceedings; or
 - (iii) letters or copies of letters from him to his lawyer, from his lawyer to him, or from his lawyer to another person in anticipation of or during the progress of the proceedings; or
 - (iv) drafts or memoranda made by his lawyer for the purpose of the proceedings; and
- (d) specify the documents that he objects to produce on any other ground and the ground on which he objects; and

(e) state that he has not at the time of swearing the affidavit and has never had in his possession, custody or power, or in the possession, custody or power of a lawyer, agent or other person on his behalf—

(i) any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing that relates to matters in question in the proceedings, or in which an entry relating to such matter has been made; or

(ii) a copy of or extract from any such deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing,

that is not specified in the affidavit.

(2) In an affidavit of discovery it is not necessary to specify each letter from a person to another person, but it is sufficient to specify the number of letters from the person to the other person and the dates of the first letter and the last letter.

(3) Where the specifying, in an affidavit of discovery, of documents in respect of which privilege is claimed would derogate from the privilege attaching to documents, it is not necessary to specify each of the documents in the affidavit, but it is sufficient if—

(a) the documents are tied in a bundle that is marked as an exhibit to the affidavit and are referred to in the affidavit as the documents in that bundle; and

(b) the number of documents in the bundle is stated in the affidavit; and

(c) the documents in the bundle are numbered consecutively and each of them is initialled by the person before whom the affidavit is sworn.

(4) An affidavit of discovery shall be in Form 26.

138. Discovery of particular documents.

(1) On application made by a party to proceedings, the Court may order another party to make discovery, on oath, whether a document, or a document included in a class of documents, specified in the order is, or has been, in the possession, custody or power of the party and, if the document is not but has been in the possession, custody or power of the party, when the party parted with the document and to whom he gave the document.

(2) An order shall not be made under Subsection (1) unless the applicant for the order has, in an affidavit filed in support of the application deposed that he believes that the party has, or has had, the document, or a document included in the class of documents, in his possession, custody or power and that the document relates to a matter in question in the proceedings, and has set forth in the affidavit the grounds on which he so believes.

(3) An order may be made under Subsection (1) whether or not an affidavit of discovery has been filed by the party to whom the order is directed and whether or not that party has been requested or ordered under Section 136 to file such an affidavit.

139. Failure to discover document.

Where—

(a) a party to proceedings has filed an affidavit of discovery; and

(b) a document relating to matters in question in the proceedings at the time was, when the party swore the affidavit, in the possession, custody or power of the party or such a document was not at that time, but had been, in the possession, custody or power of the party; and

- (d) the document was not specified or referred to in the affidavit of discovery or in another affidavit of discovery filed by the party in accordance with an order of the Court,

the party is not entitled, except by leave of the Court, to put the document or a copy of the document in evidence, or to furnish or cause to be furnished evidence of the document, at the trial of the proceedings.

140. Inspection of documents.

(1) Subject to Subsection (2), a party to any proceedings may, by written notice to another party, request the other party to produce, for inspection by the party giving the notice, a document specified in the notice, being a document that is referred to in a pleading or affidavit filed on behalf of the other party or in further particulars given by that party in accordance with a request or order under Section 135.

(2) A document referred to in an affidavit of discovery filed on behalf of a party shall not be specified in a notice given to the party under Subsection (1) if, in the affidavit, the party—

- (a) objected to producing the document on a ground stated in the affidavit; or
- (b) stated that the document was not in his possession, custody or power.

(3) Within four days after receipt of the notice, a party to whom a notice under Subsection (1) has been given shall specify in writing to the party who gave the notice—

- (a) the ground on which he objects to the production of a document specified in the notice; or
- (b) the time and place at which he will produce the document for inspection.

(4) A document produced for inspection in accordance with a notice under Subsection (1) may be inspected and copied by the party to whom it is produced or by his lawyer.

(5) Where a party to any proceedings to whom a notice to produce a document has been given under Subsection (1) fails to produce the document for inspection and copying, he is not entitled, except by leave of the Court, to put the document or a copy of the document in evidence, or to furnish or cause to be furnished evidence of the document, at the trial of the proceedings.

141. Order for production of specified documents.

(1) On application made by a party to proceedings who has duly served, or is entitled to serve, a request under Section 140, the Court may order another party to proceedings to produce, at such time and place as the Court thinks proper and specifies in the order, a document that was specified or could be specified in such a request.

(2) Where the Court makes an order for the production of a document by a party under Subsection (1), it shall not make an order with respect to the costs of the application in favour of the applicant unless it is satisfied that—

- (a) the application was made in a case of urgency; or
- (b) the applicant had requested the party to produce the document under Subsection (1) and the party—
 - (i) did not comply with Section 140(3); or
 - (ii) objected to producing the document; or
 - (iii) specified a time for the production of the document that was more than 10 days after the making of the request; or

(iv) did not specify a place at which he would produce the document—

(A) that, in the case of a document, being a book in constant use for the purposes of trade or business, is the place at which the book is usually kept; or

(B) that, in the case of any other document, is the office of the lawyer (if any) representing the applicant, or is a place that is not more than 8km¹ from the office of the Court; or

(v) did not produce the document at the time and place specified.

142. Order for production of other documents.

(1) Where the Court is satisfied that a document relevant to a matter in question in proceedings is in the possession, custody or power of a party to the proceedings and that the party is not excused by law from producing the document for inspection by another party, the Court may order the first-mentioned party to produce the document, at a time and place specified in the order for inspection by that other party.

(2) An order under Subsection (1) shall not be made in respect of a document that could be specified in a notice under Section 140.

143. Furnishing of copies.

(1) Instead of ordering a party to any proceedings to produce a book used for the purposes of trade or business, the Court may order the party to furnish a copy of an entry in the book verified as a true copy of the entry by the affidavit of a person who has compared the copy with the entry of which it purports to be a copy.

(2) Where an entry in a book contains an erasure, alteration or interlineation and a copy of the entry is furnished in accordance with an order under Subsection (1), the copy shall be deemed not to have been verified as a true copy of the entry unless particulars of the erasure, alteration or interlineation are clearly shown in the copy or set out in the affidavit of the person who compared the copy with the entry of which it purports to be a copy.

(3) An order for the production of a book may be made by the Court notwithstanding that a copy of an entry in the book has been furnished in accordance with an order of the Court.

144. Privilege.

(1) A party to any proceedings who is requested or ordered under these Rules to make discovery of documents, or to produce documents, is not excused from making discovery of, or producing, a particular document by reason only of the fact—

(a) that the document relates solely to, and does not tend to impeach, his case and does not relate to, or tend to support, the case of the party to whom the discovery of documents is to be made or documents are to be produced, as the case may be; or

(b) that there is in the document any statement or other matter that he has committed adultery, proof of which would be material to the decision in the suit; or

¹ Metricated editorially. The original distance was 5 miles.

- (c) that there is in the document any statement or other matter tending to show that he has committed adultery, proof of which would be material to the decision in the suit.

(2) Where, on application for an order for the production of documents, a respondent to the application claims that he is excused, by reason of privilege, from producing a particular document, the Court may require the respondent to produce the document to it, and may inspect the document for the purpose of determining whether the respondent is so excused.

145. Non-compliance with order, etc.

Where a party to any proceedings fails to comply with an order to give particulars, to file an affidavit of discovery, to make discovery or to produce documents, the Court may order that—

- (a) if the party is the petitioner—the proceedings instituted by the petition be stayed or dismissed for want of prosecution; or
- (b) if the party is the respondent—any proceedings instituted by him by an answer to the petition, and any other proceedings instituted by him in relation to proceedings instituted by the petition, be stayed or dismissed for want of prosecution; or
- (c) if the party is any other party—his answer or reply, as the case may be, be struck out.

146. Interrogatories.

An order shall not be made by the Court or Registrar authorizing the delivery of written interrogatories for the examination of a person.

Division 3.—Admissions and Notices to Produce.

147. Admission of facts.

(1) A party to any proceedings may file an admission of the truth of a fact alleged in the proceedings by another party.

(2) Where a party files an admission under Subsection (1), a copy of the admission shall be served on each other party to the proceedings who has filed a pleading for the purpose of the proceedings.

148. Notice to admit documents.

(1) A party to any proceedings may, at any time not later than 10 days before the trial of the proceedings, by notice in Form 27 served on another party to the proceedings, call on that other party to make the admissions with respect to a document that are indicated in that form, and the other party, by notice served on the first-mentioned party, may make such of those admissions as he is willing to make.

(2) If the other party desires to challenge the authenticity of the document, he shall, within seven days after service on him of the notice to admit, serve on the party giving the notice a notice that he does not admit the document and requires it to be proved at the trial.

(3) If the other party fails to serve notice under Subsection (2) within the time prescribed by that subsection and fails to serve, before the trial of the proceedings, a notice under Subsection (1), he shall be deemed to have made the admissions indicated in the notice served on him, unless the Court otherwise orders.

(4) Where a party to any proceedings does not admit a document after service on him of a notice under Subsection (1), the costs of proving the document are payable by him, unless the Court certifies that the refusal to admit was reasonable.

(5) Where a notice to admit a document has not been given by a party to any proceedings, he is not entitled to the costs of proving the document unless the taxing officer is of the opinion that the omission to give the notice saved expense.

(6) An admission made or deemed to have been made under this section with respect to a document does not prevent the party who made or is deemed to have made the admission from objecting to the admission of the document in evidence on a ground that is not inconsistent with his admission.

149. Notice to admit facts.

(1) Subject to Subsection (5), a party to any proceedings may, at any time not later than 10 days before the trial of the proceedings, by written notice served on another party to the proceedings, call on the other party to admit, for the purpose of the proceedings, any specific fact or facts in the notice, and the other party may, by written notice, admit the fact or any of the facts.

(2) If the party on whom a notice to admit has been served refuses or fails to admit in writing a fact specified in the notice within seven days after service of the notice on the party, or within such further time as the Court allows, the Court may order him to pay the costs of proving the fact.

(3) An admission made by a party to any proceedings in answer to a notice to admit served under Subsection (1) shall be deemed to be made only for the purpose of the proceedings, and shall not be used—

(a) against the party in any other proceedings; or

(b) in favour of any person other than the party giving the notice.

(4) The Court may, at any time, allow the party to amend or withdraw an admission made under this section on such terms as it thinks proper.

(5) This section does not authorize a party to any proceedings to call on another party to admit a fact which the other party has denied in a pleading filed for the purpose of the proceedings.

(6) A notice referred to in Subsection (1) shall be in Form 28, and an admission of a fact in answer to such a notice shall be in Form 29.

(7) An admission under this section with respect to a fact does not prevent the party who made the admission from objecting to the admission in evidence of the fact on a ground that is not inconsistent with his admission.

150. Affidavit of signature to admissions.

An affidavit by the lawyer representing a party, or by a clerk of the lawyer, of the due signature of admissions made by the party in answer to a notice to admit documents or facts is sufficient evidence of those admissions.

151. Notice to produce documents.

A party to any proceedings may, by notice in Form 30, served on another party to the proceedings, require the other party to produce, at the trial of the proceedings, a document specified in the notice, being a document that is in the possession, custody or power of that other party.

*Division 4.—Medical Examination of Parties.***152. Medical examination in nullity proceedings.**

(1) This section applies to proceedings for a decree of nullity of marriage on the ground that a party to the marriage is incapable of consummating the marriage.

(2) In proceedings to which this section applies, the petitioner or respondent may make application to the Registrar for an order under Subsection (4).

(3) An application under Subsection (2) shall not be made to the Registrar—

(a) if the petitioner in the proceedings is seeking the decree of nullity of marriage, until—

(i) the filing of an answer by the respondent; or

(ii) the expiration of the time limited for the filing of an answer by the respondent,

whichever first occurs; or

(b) if the respondent in the proceedings is seeking the decree, until—

(i) the filing of a reply by the petitioner; or

(ii) the expiration of the time limited for the filing of a reply by the petitioner,

whichever first occurs.

(4) Where, in any proceedings to which this section applies, application is made to the Registrar for an order under this section the Registrar may by order—

(a) appoint a medical inspector or two medical inspectors to examine the petitioner and respondent; or

(b) appoint a medical inspector or two medical inspectors to examine the petitioner, and another medical inspector or two other medical inspectors to examine the respondent; or

(c) appoint a medical inspector or two medical inspectors to examine the petitioner or the respondent and dispense with the examination of the other of those parties; or

(d) dispense with the examination of the petitioner and respondent by a medical inspector appointed by the Registrar.

153. Appointment of medical inspector on the trial.

Norwithstanding that the Registrar has dispensed with the examination of the petitioner or respondent by a medical inspector appointed under Section 152, where the Court, on the trial of proceedings to which that section applies, thinks it desirable that the petitioner or respondent in the proceedings be examined or re-examined by a medical inspector or two medical inspectors appointed by the Court, the Court may appoint a medical inspector or two medical inspectors to examine or re-examine him.

154. Medical examination in divorce proceedings.

In proceedings for a decree of dissolution of marriage on the ground that a party to the marriage has wilfully and persistently refused to consummate the marriage, the Registrar may, on application made by either party to the marriage—

(a) appoint a medical inspector or two medical inspectors to examine the parties or a party; or

- (b) appoint a medical inspector or two medical inspectors to examine one of those parties and another medical inspector or two medical inspectors to examine the other party.

155. Service of notice of appointment of medical inspector.

(1) Where any order has been made under Section 152, 153 or 154—

- (a) on application by the petitioner in any proceedings, for the appointment of a medical inspector to examine the respondent in the proceedings—the petitioner shall cause a copy of the order to be served on the respondent; or
- (b) on application by the respondent in any proceedings, for the appointment of a medical inspector to examine the petitioner in the proceedings—the respondent shall cause a copy of the order to be served on the petitioner.

(2) Where, on the trial of any proceedings, the Court has of its own motion made an order under Section 153 for the appointment of a medical inspector to examine a party, being the petitioner or the respondent, and the party was not before the Court at the time when the order was made, another party, being the respondent or petitioner, to the proceedings who was before the Court in person or by his lawyer at that time shall cause a copy of the order to be served on the first-mentioned party.

(3) Service of a copy of an order referred to in Subsection (1) or (2) shall be deemed not to have been duly effected on a party on whom it is required to be served, unless—

- (a) a notice specifying the time, day and place appointed by the medical inspector for the examination of the party is served on the party at the same time as the copy of the order is served; and
- (b) there are at least seven clear days between service of the notice and the day specified in the notice for the examination of the party.

(4) Unless the Court or Registrar, as the case may be, otherwise orders, service of a copy of an order referred to in Subsection (1) or (2) and of a notice under Subsection (3) shall not be effected otherwise than in a manner specified in Section 57(a), (b) or (d).

156. Medical inspector's oath, etc.

(1) A medical inspector appointed under this Division to examine a person shall not carry out the examination unless he has made and subscribed, before the Registrar or before a person authorized by the Registrar for the purpose, an oath in a form approved by the Registrar that he will well and truly examine the person, or each person who submits himself for examination in accordance with an order made under this Division, and will make to the Court a correct report of the examination or of each such examination.

(2) Before a person is examined by a medical inspector appointed under this Division—

- (a) the person shall satisfy the medical inspector as to his identity by being identified by his lawyer or, if he is not represented by a lawyer by some other credible person; and
- (b) the person and the lawyer or person by whom he is identified shall each write his address and sign his name on a paper in the presence of the medical inspector, who shall also sign his name on the paper and annex it to the report of the result of the examination.

157. Report on medical examination.

(1) When a medical inspector appointed under this Division to examine a person has examined the person, he shall report the result of the examination to the Court.

(2) Where a party to any proceedings has failed to submit to examination by the medical inspector appointed under this Division to examine him or has failed to comply with Section 156, the medical inspector shall report to the Court accordingly.

(3) A report under Subsection (1) or (2) shall be forwarded by the medical inspector to the Registrar.

(4) A report under Subsection (1) or (2) shall be filed—

(a) if the order appointing the medical inspector was made on the application of a party to proceedings—by that party; or

(b) if the order appointing the medical inspector was made by the Court of its own motion—by the petitioner in the proceedings or, if the petitioner was not before the Court in person or by his lawyer when the order was made, by the respondent in the proceedings.

(5) Each party to the proceedings is entitled, on request to the Registrar, to be furnished with a copy of the report.

158. Failure to comply with Division 4.

(1) Proceedings to which Section 152 applies shall not be set down for trial unless—

(a) application has been made to the Registrar under that section; and

(b) except in a case where the examination of the petitioner and respondent by a medical practitioner appointed under that section has been dispensed with—Sections 155 and 157 have been complied with.

(2) Where in any proceedings to which Section 154 applies the Court has appointed under that section a medical inspector or two medical inspectors to examine the parties or a party, the proceedings shall not be set down for trial unless Sections 155 and 157 have been complied with.

(3) Where in any proceedings referred to in Subsection (1) or (2) a copy of an order appointing a medical inspector to examine a party to the proceedings is required, under Section 155, to be served on the party, the proceedings shall not be set down for trial unless—

(a) a report of the result of the medical examination of the party has been filed; or

(b) proof, by affidavit, of the due service of a copy of the order on the party has been filed.

*Division 5.—Discretion Statements.***159. Discretion statements.**

(1) A petitioner or respondent in any proceedings—

(a) who is seeking a decree of dissolution of marriage on a ground specified in Section 17(a) to (m) of the Act or a decree of judicial separation on a ground specified in Section 17(a) to (l), of the Act; and

(b) who has committed adultery since the marriage,

shall file a discretion statement.

(2) The discretion statement shall be filed—

- (a) if the adultery was committed before the filing of the petition or answer, as the case may be, by which the proceedings for the decree are instituted—at the time when the petition or answer is filed; or
- (b) if the adultery was committed after the filing of the petition or answer but before the trial of the proceedings—as soon as practicable after committing the adultery.

160. Form, etc., of discretion statements.

(1) A discretion statement shall be in Form 31, and shall state—

- (a) particulars of the acts of adultery committed by the petitioner or respondent, as the case may be, since the marriage (other than the acts stated in any other discretion statement filed by him for the purposes of the proceedings); and
- (b) the circumstances giving rise to the commission of the acts of adultery; and
- (c) the grounds on which the Court will be asked to make a decree of dissolution of marriage or judicial separation notwithstanding the adultery.

(2) Where a petitioner or respondent alleges that an act of adultery set out in his discretion statement has been condoned, he shall state in the discretion statement particulars of the facts that are alleged to constitute condonation of the adultery.

(3) Where, in a discretion statement filed by a petitioner or respondent, the petitioner or respondent states that he has committed adultery and that he and the person with whom he has committed adultery are living together as if they were husband and wife, it is not necessary for a further discretion statement to be filed setting out particulars of any further acts of adultery committed by him with that person.

(4) A discretion statement of a party to any proceedings shall not be filed unless—

- (a) it is signed by the party; and
- (b) the matters set out in it have been verified by the affidavit of the party written on it; and
- (c) it is enclosed in a sealed envelope having written on it the words "Discretion Statement", the number of the proceedings and a certificate—
 - (i) if the party is represented by a lawyer—signed by the lawyer; or
 - (ii) if the party is not so represented—signed by the party,

certifying that the statement is duly signed and verified, and that it bears the date on which it was signed.

161. Service of notice of allegation.

(1) Where a discretion statement of a party to any proceedings contains an allegation that the party's spouse has committed a matrimonial offence, not being an offence particulars of which have been included in a pleading filed on behalf of the party for the purposes of the proceedings, the party shall cause service of notice of the allegation to be effected on his spouse before the proceedings are set down for trial.

(2) On the hearing of any proceedings, the Court may excuse a party who has failed to serve notice of an allegation on his spouse under Subsection (1) if it is satisfied that the failure has not prejudiced the spouse in connexion with the proceedings.

162. Service of notice of discretion statement.

(1) Where a petitioner whose petition does not contain the statement referred to in Section 37 files a discretion statement after the filing of his petition—

- (a) service of notice of his intention to ask the Court to make the decree notwithstanding the facts and circumstances set out in the discretion statement shall be effected—
 - (i) if the respondent has an address for service for the purpose of the proceedings, or if the petitioner is claiming custody of a child of the marriage—on the respondent; and
 - (ii) if a party to the proceedings, other than the petitioner or respondent, has an address for service for the purposes of the proceedings—on that party; and
- (b) the lawyer for the petitioner or, if the petitioner is not represented by a lawyer, the petitioner shall write on the petition, in red ink, immediately after the signature to the petition, a notation in the following form and sign his name immediately under the notation :—

“Discretion Statement filed 19 ”.

(2) Where a petitioner is claiming custody of a child of the marriage and the respondent does not have an address for service, Subsection (1) does not require the service of the notice on a respondent—

- (a) if the Court dispensed with service of the petition on the respondent; or
- (b) if service of the petition was effected on the respondent by advertising notice of the petition, but in no other manner,

unless the petitioner is aware of the address of the respondent.

(3) Where service of a notice referred to in Subsection (1) is required to be effected on a respondent who does not have an address for service and the petition was served on the respondent under an order under Section 62, service of the notice may be effected in the same manner as that in which service of the petition was effected, and service in that manner shall be deemed to be due service of the notice on the respondent.

(4) Where—

- (a) service of a notice referred to in Subsection (1) would be required to be effected on a respondent but for the fact that the Court dispensed with service of the petition on the respondent; and
- (b) the Court, as a condition of dispensing with service of the petition on the respondent, required a copy of the petition to be sent to or served on some other person,

the notice shall be sent to or served on that other person.

(5) Subsection (1) applies to and in relation to a respondent who files a discretion statement after the filing of his answer as if—

- (a) references to a petitioner were references to a respondent; and
- (b) references to a petition were references to an answer; and
- (c) references to a respondent were references to a petitioner.

163. Disclosure of discretion statement.

(1) Where the Court thinks it proper in the circumstances of the particular case, it may require a discretion statement filed by a party to a suit to be tendered in evidence, read out in open court or produced for inspection by another party to the suit—

- (a) at any stage of the trial of the suit; or
- (b) at any stage of the hearing of proceedings with respect to the custody of a child of the marriage to which the suit relates.

(2) Except as provided in Subsection (1), a discretion statement is not open to inspection, without the leave of the Court, by a person other than the Principal Legal Adviser or a person authorized in writing by the Principal Legal Adviser to inspect the discretion statement.

(3) An authorization by the Principal Legal Adviser under Subsection (2) may be either general or in relation to a particular suit or class of suits.

(4) In Subsections (2) and (3), references to the Principal Legal Adviser shall be read as including references to a person to whom the Principal Legal Adviser, by a delegation that is in force, has delegated all or any of his powers and functions under Part VI. of the Act.

Division 6.—Compulsory Conferences.

164. Application of Division 6.

Where—

- (a) a defended suit includes proceedings with respect to—
 - (i) the maintenance of a party to the proceedings; or
 - (ii) settlements; or
 - (iii) the custody or guardianship of an infant child of the marriage to which the proceedings relate; or
 - (iv) the maintenance, welfare, advancement or education of a child of that marriage,

and the petitioner and respondent are not in agreement as to the order that should be made by the Court on the trial of the proceedings in the event that the Court does not make an order dismissing them; or

- (b) a defended suit includes proceedings for a decree of dissolution of marriage or of nullity of a voidable marriage in a case where there are children of the marriage—
 - (i) who are not likely to have attained the age of 16 years before the decree is made; or
 - (ii) in relation to whom the petitioner or respondent has obtained or is seeking an order under Section 59(3) of the Act,

and the petitioner and respondent are not in agreement concerning the arrangements that, in the event of a decree of dissolution or of nullity of marriage being made, should be made for the welfare, advancement and education of those children,

this Division applies to the suit.

165. Conference before certain suits set down for trial.

(1) Subject to Subsection (2), except by leave of the Court a suit to which this Division applies shall not be set down for trial on application made by a party to the suit, being the petitioner or respondent, unless either a conference for the purpose of this Division has been held, or—

- (a) that party attended such a conference on the day and at the time and place fixed under this Division for the holding of the conference, for the purpose of discussing, and making a bona fide endeavour to reach agreement on, any matters referred to in Section 166(1); and
- (b) the petitioner or respondent, as the case may be, failed to attend or to take part in the conference.

(2) Where the Registrar is satisfied that—

- (a) by reason of—
 - (i) the respective places of residence of the petitioner and respondent; and
 - (ii) the respective places of business of the lawyer for the petitioner and the lawyer for the respondent,

it would be unreasonable in the circumstances of the particular case to require a conference for the purpose of this Division to be held before the suit is set down for trial; or

- (b) the holding of such a conference before the suit is set down for trial would involve the petitioner or respondent in undue expense; or
- (c) for any reason it would be impracticable for such a conference to be held before the suit is set down for trial,

the Registrar may set the suit down for trial notwithstanding that Subsection (1) has not been complied with.

(3) Where the Registrar sets a suit to which this Division applies down for trial in accordance with Subsection (2), unless the Court otherwise orders a conference for the purpose of this Division shall be held before the commencement of the trial of the suit.

166. Nature, etc., of conferences.

(1) A conference for the purpose of this Division is a conference at which the petitioner and respondent discuss, and make a bona fide endeavour to reach agreement on, any matters in question—

- (a) in proceedings pending between them with respect to a matter referred to in Section 164(a)(i) to (iv); or
- (b) concerning arrangements of a kind referred to in Section 59(2)(a) of the Act.

(2) A petitioner or respondent may attend a conference for the purpose of this Division in person, with or without a lawyer, or may be represented by a lawyer.

(3) A conference for the purpose of this Division may be adjourned from time to time and from place to place.

(4) Subject to Subsection (5), evidence of anything said, or of any admission made, in the course of a conference for the purpose of this Division is not admissible in any court or in proceedings before any person authorized by law, or by consent of the parties, to hear, receive and examine evidence.

(5) Subsection (4) does not prevent evidence of anything said, or of any admission made, in the course of such a conference being admitted in evidence in a court on the trial of a person for an offence committed at the conference.

167. Conferences where parties represented by lawyers.

(1) Where the petitioner and respondent in a suit to which this Division applies are each represented by a lawyer, this section applies to the suit.

(2) Where in a suit to which this section applies the pleadings are complete, the lawyer for the petitioner may give to the lawyer for the respondent a written notice specifying a day, time and place for holding a conference for the purpose of this Division.

(3) Where the lawyer for the petitioner has not given a notice under Subsection (2) and a period of not less than 14 days has elapsed since the pleadings were completed, the lawyer for the respondent may give to the lawyer for the petitioner a written notice specifying a day, time and place for holding a conference for the purpose of this Division.

(4) Where the lawyer for a respondent has duly given a notice under Subsection (3), the lawyer for the petitioner ceases to be entitled to give a notice under Subsection (2).

(5) Unless the lawyer for the petitioner and the lawyer for the respondent otherwise agree—

(a) the day specified in a notice under Subsection (2) or (3) shall be a day that is not less than seven clear days, and not more than 21 clear days, after the day on which the notice is given; and

(b) the place so specified shall be—

(i) a place within 8 km¹ from the office of the Court in which documents may be filed for the purpose of the suit; or

(ii) a place in a town (not being the town in which that office is situated) in which the lawyer for the petitioner and the lawyer for the respondent each has a place of business.

168. Conference where a party not represented by lawyer.

(1) Where the petitioner or respondent in a suit to which this Division applies is not represented by a lawyer, this section applies to the suit.

(2) Where in a suit to which this section applies the pleadings are complete, the petitioner and respondent may agree as to the day, time and place for the holding of a conference for the purpose of this Division.

(3) Subject to Subsection (4), where the petitioner and respondent fail to agree within 14 days after either has approached the other for that purpose, the Registrar shall, at the request of either party, fix a reasonable day, time and place for holding the conference.

(4) The Registrar may refuse to comply with a request under Subsection (3) if he is satisfied that, under Section 165(2), he would be entitled to set the suit down for trial notwithstanding that the requirements of Section 165(1) have not been complied with.

(5) On the day on which the Registrar fixes a day, time and place for the holding of a conference for the purpose of this Division, or on the next following day, the party at whose request the day, time and place were fixed shall serve on the petitioner or respondent, as the case may be, notice of the day, time and place fixed.

¹ Metricated editorially. The original distance was 5 miles.

(6) The petitioner and respondent may agree to appoint a particular person, being a person willing to act, to act as chairman at the conference held for the purpose of this Division.

(7) Where the petitioner or respondent is represented by a lawyer, references in this section to the petitioner or respondent, as the case may be, shall be read as references to his lawyer.

Division 7.—Consolidation of Proceedings.

169. Consolidation of proceedings.

(1) On application made by the petitioner or respondent in proceedings, the Court or the Registrar may order that the proceedings be consolidated with other proceedings that are pending in the Court and to which the petitioner and respondent are parties, and that both proceedings be tried together.

(2) An order may be made under Subsection (1) notwithstanding that a party to one of the proceedings is not a party to the other proceeding.

(3) The Court or Registrar shall specify in an order made under Subsection (1) the party who shall be deemed to be the party having the carriage of the consolidated proceedings.

Division 8.—Setting Suits Down for Trial.

170. Setting undefended suit down for trial.

(1) Subject to Sections 106 and 158, and to this section, the Registrar may, on the petitioner filing a request and a certificate that the suit is ready for trial, set the suit down for trial.

(2) A request and certificate under Subsection (1) shall be in Form 32, shall state the court town at which the petitioner desires the suit to be tried and shall be signed by the lawyer for the petitioner or, if the petitioner is not represented by a lawyer, by the petitioner.

(3) Subject to Section 174, the Registrar shall not set an undefended suit down for trial unless—

- (a) proof, by affidavit, or by a certificate filed in accordance with Rule 64(8) of the Matrimonial Causes Rules of Australia, of the due service of the petition on the respondent, and on each named person (if any) with or on whom the respondent is alleged to have committed adultery, rape or sodomy, has been filed; and
- (b) the time limited for the filing of an answer by each person on whom service of the petition has been effected has expired and no answer has been filed by such a person; and
- (c) in the opinion of the Registrar, the particulars of the marriage stated in the petition are consistent with the particulars shown in the marriage certificate (if any) filed under Section 51; and
- (d) the facts alleged in the petition would, if true, establish, in the opinion of the Registrar, the domicile or residence, as the case may be, within the meaning of the Act, in Papua New Guinea of the petitioner at the time of the institution of the suit; and

(e) in a case where the petitioner is seeking an order with respect to the maintenance of himself or of a child of the marriage (not being an order for maintenance pending the disposal of the suit) or an order relating to the settlement of property—

- (i) the Registrar is satisfied that it would not be unreasonable for the petitioner to proceed to the trial of the suit without obtaining a certificate of means; or
- (ii) the petitioner has, in pursuance of a direction of the Registrar, made application for, and been granted, a certificate of means.

(4) Subsection (3)(a) does not require the Registrar to be satisfied as to the due service of a petition—

- (a) on a respondent, if service of the petition on him has been dispensed with under Section 94(2) of the Act or he has an address for service for the purpose of the proceedings; or
- (b) on any other person, if—
 - (i) he is dead; or
 - (ii) service of the petition on him has been dispensed with under Section 94(2) of the Act; or
 - (iii) he has an address for service for the purposes of the proceedings.

(5) Subject to Section 174, where service of a petition on a person, whether or not he is the respondent, has been dispensed with subject to compliance with a condition, the Registrar shall not set the suit down for trial unless proof, by affidavit, of the due compliance with the condition has been filed.

(6) A suit is not ready for trial for the purpose of Subsection (1) unless—

- (a) any request for discovery or inspection of documents that the petitioner desires to make for the purpose of preparing for the trial has been made; and
- (b) any interlocutory application that the petitioner desires to make for the purpose of preparing for the trial has been made, heard and determined; and
- (c) as far as practicable, a proof of the evidence of each person to be called by the petitioner as a witness on the trial of the proceedings has been obtained.

(7) Where an undefended suit includes proceedings in which there is a claim with respect to—

- (a) the maintenance of the petitioner or of a child of the marriage (not being a claim for maintenance pending the disposal of proceedings); or
- (b) the settlement of property,

the Registrar shall consider the facts alleged in the petition with respect to the claim and any reasons for obtaining a certificate of means stated in the request and, if he is satisfied that it would be unreasonable for the petitioner to proceed to the trial of the suit without obtaining a certificate of means, shall direct the petitioner, in writing, to make application for a certificate of means.

(8) This section applies to an undefended suit that consists only of proceedings instituted by the respondent to a petition as if—

- (a) references to the petitioner were read as references to the respondent; and
- (b) references to the petition were read as references to the respondent's answer to the petition; and

- (c) references to the respondent were read as references to the petitioner; and
- (d) references to an answer were read as references to a reply; and
- (e) references in Subsection (3)(c) or (d) to the petition were read as references to the petition and the answer.

171. Request to set defended suit down for trial.**(1) Where—**

- (a) in the case of a defended suit to which Division 6 applies, being a suit in relation to which—
 - (i) a compulsory conference for the purpose of that Division has been held; or
 - (ii) a date for the holding of such a conference has been fixed, a period of less than 14 days has elapsed since the date on which the conference was concluded or the date that was fixed for the holding of the conference, as the case may be; or
- (b) in the case of any other defended suit to which that Division applies—a period of less than 28 days has elapsed since the pleadings were completed; or
- (c) in the case of a defended suit to which that Division does not apply—a period of less than 14 days has elapsed since the pleadings were completed,

a request to set the suit down for trial shall not be made by a party other than the petitioner.

(2) Where—

- (a) in the case of a defended suit to which Division 6 applies—a period of less than 56 days; or
- (b) in the case of any other defended suit—a period of less than 28 days,

has elapsed since the pleadings were completed, a request to set the suit down for trial shall not be made by a party other than the petitioner or the respondent.

(3) Where a request to set a defended suit down for trial has been duly made by a party, another party shall not make a request to set the suit down for trial unless the first-mentioned request has been withdrawn by the party by whom it was made or has been refused.

172. Setting defended suit down for trial.

(1) Subject to Sections 106, 158 and 165, and to this section, on the filing, by a party who has filed a pleading of—

- (a) a request; and
- (b) a certificate that the suit is ready for trial,

the Registrar may set a suit down for trial.

(2) A request and certificate under Subsection (1)—

- (a) shall be in Form 33; and
- (b) shall state the court town at which the party desires the suit to be tried; and
- (c) shall state an estimate of the length of the trial; and
- (d) shall be signed by the lawyer for the party or, if the party is not represented by a lawyer, by the party.

(3) The Registrar shall not set a defended suit down for trial on the request of a party unless—

- (a) the pleadings are complete; and
- (b) in the opinion of the Registrar, the allegations in the petition relating to the marriage are consistent with the particulars shown in the marriage certificate (if any) filed under Section 51; and
- (c) the facts alleged in the petition would, if true, establish, in the opinion of the Registrar, the domicile or residence, as the case may be, within the meaning of the Act, in Papua New Guinea of the petitioner at the time of the institution of the suit; and
- (d) in a case where the respondent has, in an answer, sought a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act—the facts alleged in the petition and answer would, if true, establish, in the opinion of the Registrar, the domicile or residence, as the case may be, within the meaning of the Act, in Papua New Guinea of the respondent at the time of the institution of the proceedings for that decree.

(4) A suit is not ready for trial for the purpose of Subsection (1) unless—

- (a) any request or order for the furnishing of particulars by or to the party or for the inspection of documents has been complied with; and
- (b) the party has instituted all such interlocutory applications, and made all such requests for particulars, discovery or inspection of documents, as the party desires to make for the purpose of preparing for the trial of the suit; and
- (c) as far as practicable, a proof of the evidence of each person to be called by the party as a witness on the trial of the suit has been obtained; and
- (d) if, on the trial of the suit, the party proposes to call an expert witness to give evidence in relation to any proceedings included in the suit—the party has furnished a copy of a proof of the evidence of the witness to each other party to the proceedings who has filed a pleading.

(5) For the purpose of Subsection (4)(a), a party shall be deemed to have complied with a request or order referred to in that paragraph if the party who made the request or was the applicant for the order, as the case may be, has waived compliance with the request or order.

(6) A suit that includes defended proceedings in which there is a claim with respect to the maintenance of a party to the suit or of a child of the marriage (not being a claim for maintenance pending the disposal of the suit) or the settlement of property shall not be set down for trial on a request made by a party to the suit, being the petitioner or the respondent, unless—

- (a) application has been made for a certificate of means; or
- (b) the request to set the suit down for trial states that the parties to the marriage have agreed, whether or not subject to conditions—
 - (i) with respect to the payment of maintenance, the payment of an amount in place of maintenance or the settlement of property; or
 - (ii) on a statement of their means,
 and the terms of the agreement are set out in the request or in another document specified in the request and filed in the proceedings; or

- (c) the Registrar is satisfied, for a reason stated in the request (not being the reason that the parties have so agreed) that it is unnecessary for a certificate of means to be obtained.

(7) Where the parties to a marriage have agreed to the payment of maintenance in accordance with terms and conditions set out in an order of a court or in a written agreement entered into between the parties, it is a sufficient compliance with Subsection (6)(b) if the request states that the parties have so agreed and refers to the order or agreement, as the case may be.

(8) Where the petitioner or respondent makes application to set down for trial a defended suit in relation to which Division 6 applies, the request and certificate filed under Subsection (1)—

- (a) shall state the facts by virtue of which the party is entitled, having regard to Section 165(1), to make the application; or
- (b) shall request the Registrar to set the suit down for trial notwithstanding that the requirements of Section 165(1) have not been complied with, and state the facts relied on in support of the request.

(9) Where the request and certificate states that a conference for the purpose of Division 6 has been held, the request and certificate shall also state whether any agreement was reached at the conference, and if agreement was reached brief particulars of the agreement.

173. Service of request to set suit down for trial.

A party who makes a request to set a defended suit down for trial shall, on the day on which the request is filed or on the next following day, cause a copy of the request to be served on each other party who has an address for service.

174. Further request to set suit down for trial.

(1) Where a request to set a suit down for trial has been made to the Registrar but the Registrar is not satisfied that the suit is in order for trial, the Registrar shall inform the party who made the request of the matters that, in his opinion, are not in order and, if such a matter relates to a pleading filed, or an application made or required to be made, by a party other than the first-mentioned party, shall also inform that party of the matter.

(2) Where, under Subsection (1), the Registrar has informed the party who made the request that he is not satisfied that the suit is in order for setting down for trial, that party may request the Registrar, in writing, to set the suit down for trial notwithstanding, and the Registrar, on receipt of the request, shall set the suit down for trial.

(3) Where a period of not less than 28 days has elapsed after the Registrar informed the party who made the request that he is not satisfied that a suit is in order for setting down for trial and the suit has not been set down for trial, any other party entitled to make a request to set the suit down for trial may request the Registrar, in writing, to set the suit down for trial, and the Registrar shall, on receipt of the request, set the suit down for trial.

(4) Where the Registrar sets a suit down for trial in accordance with a request under Subsection (2) or (3), he shall state on the certificate filed under Section 177 the matters that in his opinion are not in order.

175. Place of trial.

(1) An undefended suit shall be set down for trial at the court town specified in the request to set the suit down for trial.

(2) Except where an order under Section 178 has been made before the suit is set down for trial, a defended suit shall be set down for trial at the court town specified in the request to set the suit down for trial.

176. Date of trial.

(1) Where the Registrar sets a suit down for trial at a court town, he shall, if it is in accordance with the practice of the Court, set the suit down for trial on a particular date or at a sittings of the Court at the court town commencing on or about a particular date.

(2) Unless the Court or Registrar otherwise orders under Section 179, a defended suit shall not be—

- (a) set down for trial on a date; or
- (b) set down for trial at a sittings of the Court commencing on or about a date; or
- (c) tried by the Court on a date,

that is less than 14 clear days after the date on which the suit is set down for trial by the Registrar.

177. Notice of trial.

(1) Subject to Subsection (2), a party who requests the Registrar to set a suit down for trial shall deposit with the Registrar a form of notice, in Form 34, for signature by the Registrar, and a copy of the form for each party to the suit.

(2) Subsection (1) does not require the deposit of a copy of a form of notice for a party—

- (a) if the Court dispensed with service of the petition or answer on the party; or
- (b) if service of the petition or answer was effected on the party by advertising notice of the petition or answer, but in no other manner,

unless—

- (c) the party has an address for service; or
- (d) the party making the request is aware of an address of the first-mentioned party; or
- (e) the Court, as a condition of dispensing with the service, required a copy of the petition or answer to be sent to or served on some other person.

(3) A copy of a form of notice for a party to proceedings—

- (a) shall be capable of being folded, and of being sealed with adhesive material provided on the form, for transmission through the post as a letter; and
- (b) shall have the name and address of the party endorsed on it so that when the form is folded and sealed the form can, without being enclosed in an envelope and without any further addition to it, be posted as a letter to the party at that address; and
- (c) shall have a notation, in the form set out in Subsection (7), endorsed on it so that when it is folded and sealed the notation remains legible.

(4) For the purpose of Subsection (3), the address of a party that is to be written on a copy of a form of notice is—

- (a) if the party has an address for service—that address; or

(b) in any other case—the address—

- (i) of the place at which the party is residing or working; or
- (ii) if the person on whose behalf the copy is deposited with the Registrar does not know where the party is residing or working—
 - (A) any other address of the party known to the person; or
 - (B) the address of the place at which service of the petition or answer, as the case may be, was effected on the party; or
 - (C) the address of the person to or on whom a copy of the petition or answer was sent or served as a condition of dispensing with service on the party.

(5) Where the Registrar sets a suit down for trial he shall—

- (a) insert in each copy of the form of notice deposited under Subsection (1) the name of the court town at which the suit has been set down for trial, and if he has, in accordance with the practice of the Court, set the proceedings down for trial on a particular day or for a sittings of the Court commencing on or about a particular day, also insert particulars of that day or sittings; and
- (b) post each copy of the notice to the party whose address appears on it at that address (postage being prepaid); and
- (c) certify, in Form 35, that—
 - (i) the suit is ready for trial or has been set down for trial in accordance with a request under Section 174(2) of (3), as the case may be; and
 - (ii) that he has complied with Paragraphs (a) and (b),and file the certificate.

(6) In any proceedings in the Court, a certificate under Subsection (5)(c), relating to a suit and under the hand of the Registrar, is evidence that the provisions of Subsection (5)(a) and (b) have been duly complied with in relation to the suit.

(7) The form of the notation required by Subsection (3)(c) to be endorsed on a form of notice deposited by a party is as follows :—

"If not delivered within seven days, return to (name of the lawyer for the party or name of the party, as the case may be, and address for service of the party)".

178. Change of venue.

(1) At any time after a request has been made to the Registrar to set a suit down for trial at a court town, a party who has filed a pleading may, whether or not the suit has been set down for trial, make application to the Court or to the Registrar for an order that the trial of the suit take place at another court town specified in the application.

(2) Where on the hearing of an application under Subsection (1), the Court or the Registrar is satisfied that it is proper, the Court or Registrar shall order that the trial of the suit take place at a court town specified in the order.

(3) Where an order has been made by the Court or by the Registrar under Subsection (2), the Registrar shall set the suit down for trial at the court town specified in the order.

179. Expediting trial of suit.

(1) Where the Court or the Registrar is satisfied that, by reason of special circumstances, it is proper to do so, the Court or Registrar may, by order—

- (a) set a suit down for hearing on, or for hearing at a sitting of the Court commencing on, a date that is less than 14 days after the day on which the suit was set down for trial; or
- (b) fix a specified day (which may be more or less than 14 days after the day on which the suit was set down for trial) as the day on which the trial of the suit shall take place.

(2) An application for an order under Subsection (1) may be made by any party who has filed a pleading.

180. Time of trial.

Subject to any order made by the Court or Registrar under Section 179, a suit shall be listed for trial at a court town in the order in which the suit is set down for trial at it.

PART XII.—DECREES.

181. Forms of decrees.

- (1) A decree of dissolution of marriage shall be in Form 36.
- (2) A decree of nullity of marriage shall be in Form 37 or Form 38, as the case requires.
- (3) A decree of judicial separation shall be in Form 39.
- (4) A decree of restitution of conjugal rights shall be in Form 40.

182. Adultery of party who has established ground for dissolution or judicial separation.

Where on the trial of proceedings for a decree of dissolution of marriage or of judicial separation the Court is satisfied of the existence of—

- (a) a ground (not being the ground specified in Section 17(n) of the Act) in respect of which the decree may be granted; and
- (b) a ground on which the Court may, under Section 25(6) or 29 of the Act, refuse to make the decree,

the Court shall state accordingly in its decree, and shall also state that a decree of dissolution of marriage or of judicial separation—

- (c) was refused by the Court in the exercise of its discretion under Section 25(6) or 29 of the Act, as the case may be; or
- (d) was granted by the Court notwithstanding the matter referred to in Paragraph (b),

as the case may be.

183. Death of party after decree nisi but before decree absolute.

(1) Where, after a decree of dissolution of marriage or a decree of nullity of a voidable marriage has been made but before the decree becomes absolute it comes to the notice of—

- (a) a party to the proceedings who has an address for service that a party to the marriage died before, or has died after, the making of the decree; or

(b) the lawyer representing a party to the marriage that the party died before, or has died after, the making of the decree,

the party or the lawyer, as the case may be, shall make and file an affidavit stating such particulars of the date and place of the death as are known to him.

(2) If the Registrar is satisfied that the party is dead, he shall file a memorandum to that effect.

184. Decrees absolute.

(1) A memorandum under Section 61(1) of the Act shall be in Form 41.

(2) A certificate under Section 61(2) of the Act—

(a) shall be in Form 42; or

(b) shall be endorsed on a copy of the decree nisi, in the following form :—

“I certify that the decree nisi of which this decree is a copy became absolute
on 19 .

Dated 19 .

Registrar.”

185. Rescission where parties reconciled.

(1) An application under Section 62 of the Act by a party to a marriage to rescind a decree nisi on the ground that the parties to the marriage have become reconciled may be made ex parte if the parties to the marriage have, by a joint affidavit or by their respective affidavits filed in support of the application, verified the grounds of the application.

(2) Subject to Subsection (1), service of an application referred to in that subsection shall be effected on the other party to the marriage in a manner referred to in Section 57(a) or (b).

186. Rescission on ground of miscarriage of justice.

(1) A party to proceedings who makes application for the rescission, under Section 63 of the Act, of a decree nisi shall cause service of the application to be effected on each other party to the proceedings, other than a party on whom service of the application is dispensed with under Section 94(2) of the Act.

(2) Service of an application referred to in Subsection (1) shall be effected in a manner referred to in Section 57(a) or (b).

PART XIII.—INTERVENTION BY PERSONS NOT PARTIES TO PROCEEDINGS.

187. Intervention by Principal Legal Adviser.

(1) Where the Principal Legal Adviser is entitled to intervene in any proceedings under Section 65 or 66 of the Act, he may do so by causing a notice of intervention in Form 43 to be filed stating whether he is intervening under Section 65 or Section 66 of the Act.

(2) Where the Principal Legal Adviser intervenes in proceedings under Section 66 of the Act, he shall, at the time of intervening or as soon after that time as practicable, file a statement containing particulars of the matters relevant to the proceedings that he has reason to believe have not been, or may not be, but ought to be, made known to the Court.

(3) A copy of a notice of intervention, and a copy of a statement filed under Subsection (2), shall be served, as soon as possible after it has been filed, on each other party to the proceedings who has an address for service.

(4) In this section, a reference to the Principal Legal Adviser shall be read as including a reference to a person to whom, by a delegation under Section 67 of the Act that is in force, he has delegated a power or function under Part VI. of the Act.

188. Intervention by Principal Legal Adviser after decree nisi.

(1) Where the Principal Legal Adviser intervenes in any proceedings after a decree nisi has been made—

- (a) he shall, as soon as practicable after intervening, make application to the Court for directions with respect to matters arising out of the intervention; and
- (b) a party to the proceedings may, in an affidavit filed for the purpose of the proceedings, deny an allegation in the statement filed under Section 187(2) or state a fact that has become relevant to the proceedings by reason of some matter alleged in that statement.

(2) In this section, a reference to the Principal Legal Adviser shall be read as including a reference to a person to whom, by a delegation under Section 67 of the Act that is in force, he has delegated a power or function under Part VI. of the Act.

189. Intervention by other persons.

(1) Service of an application under Section 68 of the Act for leave to intervene in proceedings shall be effected, on the day on which the application is filed or on the next following day, on each party to the proceedings who has an address for service.

(2) Where the Court makes an order under Section 68 of the Act entitling a person to intervene in proceedings—

- (a) it shall give such directions as it thinks proper with respect to service of copies of the order, the filing of affidavits and the hearing or the further hearing of the proceedings as it thinks necessary for the proper determination or review of the proceedings; and
- (b) on the day on which the order is made or on the next following day, the person shall intervene in the proceedings by filing a notice of intervention in Form 44.

PART XIV.—PROCEEDINGS FOR ANCILLARY RELIEF.

Division 1.—Preliminary.

190. Interpretation of Part XIV.

In this Part, unless the contrary intention appears—

“application for ancillary relief”, in relation to any proceedings for ancillary relief, means—

- (a) if the proceedings for ancillary relief are instituted by petition—the petition; or
- (b) if the proceedings for ancillary relief are instituted by an answer to a petition—the answer; or
- (c) if the proceedings for ancillary relief are instituted by application to the Court—the affidavit in support of the application;

“claimant” means a person who institutes or has instituted proceedings for ancillary relief;

“defence to the proceedings”, in relation to any proceedings for ancillary relief, means—

- (a) if the proceedings for ancillary relief were instituted by petition—the respondent’s answer to the petition; or
- (b) if the proceedings for ancillary relief were instituted by an answer to a petition—the petitioner’s reply to the answer; or
- (c) if the proceedings for ancillary relief were instituted by application to the Court—an affidavit filed in reply to the affidavit in support of the application;

“proceedings for ancillary relief” means proceedings of a kind referred to in Paragraph (c) of the definition “matrimonial cause” in Section 1(1) of the Act that are in relation to proceedings for principal relief;

“proceedings for principal relief” means proceedings of a kind referred to in Paragraph (a) of the definition “matrimonial cause” in Section 1(1) of the Act.

191. Proceedings that may be instituted without leave of the Court.

(1) Where proceedings for principal relief have been instituted by petition, the respondent may, by filing an answer to the petition, institute proceedings for ancillary relief that are in relation to the proceedings for principal relief, without the leave of the Court.

(2) Proceedings for ancillary relief may be instituted by application and without the leave of the Court if the proceedings relate to—

- (a) proceedings of a kind referred to in Paragraph (a) of the definition “matrimonial cause” in Section 1(1) of the Act that were pending at, or were completed before, the commencement date; or
- (b) an order made by the Court, whenever made, in proceedings of a kind referred to in Paragraph (c) of that definition.

192. Leave to institute proceedings for ancillary relief.

(1) Where a party to any proceedings for principal relief makes application to a court for leave, under Section 56 of the Act, to institute proceedings for ancillary relief, service of the application shall, unless the Court dispenses with the service, be effected on the spouse of the party in a manner referred to in Section 57(a),(b) or (c).

(2) A party to any proceedings for principal relief who makes application for leave to institute proceedings for ancillary relief shall state in the affidavit in support of the application his reasons for not instituting the proceedings for ancillary relief by his petition or answer.

(3) Where, before the making of the decree in any proceedings for principal relief, proceedings for ancillary relief are instituted by leave of the Court or under Section 191(2), the proceedings for ancillary relief shall be deemed to have been consolidated with the proceedings for principal relief to which they are related and shall, as far as practicable, be heard and determined by the Court at the same time as the proceedings for principal relief.

(4) Where proceedings for ancillary relief are instituted by leave of the Court, the Court shall not make an order with respect to the costs of the proceedings in favour of the claimant unless the Court is satisfied that there were good reasons for not instituting the proceedings by the petition by which the proceedings for principal relief were instituted or by an answer to the petition, as the case required.

193. Particulars in application for ancillary relief.

- (1) A claimant shall state in his application for ancillary relief—
 - (a) the order sought by him; and
 - (b) the facts on which the Court will be asked to make the order.
- (2) In any proceedings for ancillary relief, being proceedings with respect to the maintenance of a party to the proceedings or of a child of the marriage, the claimant shall state in his application for ancillary relief particulars of—
 - (a) the property, income and financial commitments of the claimant; and
 - (b) the capability of the claimant to earn income; and
 - (c) the property, income and financial commitments of the spouse of the claimant, so far as they are known to the claimant; and
 - (d) the capability of the spouse of the claimant to earn income, so far as it is known to the claimant; and
 - (e) any financial arrangement in operation between the claimant and the spouse of the claimant; and
 - (f) any order of a court, whether in Papua New Guinea or elsewhere, under which one of the parties to the marriage is liable to make payments to the other; and
 - (g) the ownership of the home in which the claimant is residing, and the terms and conditions on which the claimant is occupying or otherwise residing in it.
- (3) Where the pecuniary resources of the parties to the marriage are relevant to the determination of proceedings for ancillary relief, not being proceedings of a kind referred to in Subsection (2), the claimant shall state in his application for ancillary relief particulars of such of the matters referred to in Subsection (2)(a) to (g) as are relevant to the proceedings.
- (4) Where any particulars specified in Subsection (2)(c) or (d) are included in a petition or answer, particulars of the claimant's means of knowing them shall be stated in the petition or answer.
- (5) Where particulars referred to in Subsection (2)(c) or (d) are included in an affidavit, the person swearing the affidavit shall state in the affidavit particulars of his means of knowing them.

194. Defence to proceedings for ancillary relief.

- (1) Where proceedings for ancillary relief have been instituted, the spouse of the claimant may, in a defence to the proceedings—
 - (a) admit or deny an allegation in the application for ancillary relief that relates to the proceedings for ancillary relief; or
 - (b) state any facts relevant to the proceedings for ancillary relief that he wishes to be considered on the determination of the proceedings.
- (2) Without limiting the generality of Subsection (1), in proceedings for ancillary relief, being proceedings with respect to the maintenance of a party to the proceedings or of a child of the marriage, the spouse shall, if he wishes to oppose the making of the order sought, state in his defence to the proceedings particulars of—
 - (a) the property, income and financial commitments of his spouse; and
 - (b) the capability of his spouse to earn income; and

- (c) the property, income and financial commitments of the claimant, so far as they are known to him; and
- (d) the capability of the claimant to earn income, so far as it is known to him; and
- (e) any financial arrangements in operation between him and the claimant; and
- (f) any order of a court, in Papua New Guinea or elsewhere, under which one of the parties to the marriage is liable to make payments to the other; and
- (g) the ownership of the home in which the claimant is residing and the terms and conditions on which the claimant is occupying or otherwise residing in it.

(3) Without limiting the generality of Subsection (1), where the pecuniary resources of the parties to the marriage are relevant to the determination of proceedings for ancillary relief other than proceedings of a kind referred to in Subsection (2) the spouse, if he wishes to oppose the making of the order sought, shall state in his defence to the proceedings particulars of such of the matters referred to in Subsection (2)(c) to (g) as are relevant to those proceedings.

(4) Where any particulars referred to in Subsection (2)(c) or (d) are included in an answer or reply, particulars of the spouse's means of knowing them shall be stated in the answer or reply.

(5) Where any particulars referred to in Subsection (2)(c) or (d) are included in an affidavit, the person swearing the affidavit shall state in the affidavit particulars of his means of knowing them.

(6) Where the spouse of a claimant states in his defence to the proceedings that any particulars of a matter referred to in Subsection (2) that are stated in the claimant's application for ancillary relief are true and correct, this section does not require the spouse to state them in his defence to the proceedings.

195. Forms of application for ancillary relief.

(1) This section does not apply to proceedings for ancillary relief that are instituted by petition or by answer to a petition.

(2) Subject to Subsections (3) and (4), an application to the Court for the purpose of instituting proceedings for ancillary relief shall be in Form 45.

(3) Subject to Subsection (4), an application to the Court for the purpose of instituting proceedings for ancillary relief—

- (a) being proceedings for relief pending the disposal of proceedings; or
- (b) being proceedings for relief in relation to completed proceedings for principal relief including proceedings for principal relief completed before the commencement date,

shall be in Form 6.

(4) An application to the Court for the purpose of instituting proceedings for maintenance pending the disposal of proceedings shall be in Form 46.

(5) Subject to Subsection (6), service of an application instituting proceedings for ancillary relief shall be effected on the spouse of the claimant in a manner referred to in Section 57(a), (b) or (c).

(6) Where proceedings for ancillary relief are instituted in relation to completed proceedings of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act, service of the application shall not be effected in the manner referred to in Section 57(c) unless the address for service of the spouse of the claimant is

the address of a lawyer representing the spouse and the lawyer is, at the time of the service, representing the spouse in connexion with the proceedings for ancillary relief.

Division 2.—Maintenance Pending Suit

196. Order for maintenance pending suit where summary order in force.

(1) This section applies where—

- (a) an order referred to in Section 3(3)(a) of the Act is in force with respect to the maintenance of a party to a marriage or a child of a marriage (in this section referred to as "the existing order"); and
- (b) the party institutes proceedings for ancillary relief, being proceedings with respect to the maintenance of the party or the child, as the case may be, pending the disposal of proceedings.

(2) In a case to which this section applies, the Court shall not make an order for the maintenance of the party or the child, as the case may be, pending the disposal of proceedings unless the Court also orders, under Section 3(4) of the Act, that the existing order cease to have effect.

(3) In a case to which this section applies—

- (a) the application for ancillary relief shall state that the claimant is seeking an order under Section 3(4) of the Act that the existing order cease to have effect; and
- (b) the application for ancillary relief shall include particulars of any hardship likely to be suffered by the claimant or the child, as the case may be, if relief sought in the proceedings for ancillary relief is not granted; and
- (c) the Court shall not make an order with respect to the costs of the proceedings for ancillary relief in favour of the claimant unless it is satisfied that there were good reasons for not allowing the existing order to continue to have effect.

(4) In a case to which this section applies, the claimant may, at any time after filing the application for ancillary relief, set the proceedings for ancillary relief down for hearing by filing a request in Form 47.

(5) A claimant who files a request under Subsection (4) shall cause service of a notice in Form 48 to be effected on the spouse of the claimant in a manner referred to in Section 57(a), (b) or (c), unless service of the application for ancillary relief on the spouse is dispensed with.

(6) Unless a Judge otherwise directs, there shall be at least 14 clear days between the service of the notice and the day named in the notice for the hearing of the proceedings for ancillary relief.

(7) Where, in a case to which this section applies, the proceedings for ancillary relief were instituted by a petition or by an answer to a petition, and the respondent had not filed an answer to the petition, or the petitioner had not filed a reply to the answer, before a notice under Subsection (5) was served on him, the respondent or petitioner, as the case may be, may, in an affidavit filed for the purposes of the proceedings—

- (a) admit or deny an allegation in the petition or answer that relates to the proceedings; and
- (b) state any facts relevant to the proceedings that the respondent or petitioner wishes to be considered by the Court on the determination of the proceedings.

197. Assessment by the Registrar.

(1) This section applies in a case, not being a case to which Section 196 applies, where proceedings for ancillary relief have been instituted seeking a decree with respect to the maintenance of—

- (a) the claimant; or
- (b) a child of the marriage; or
- (c) the claimant and a child of the marriage,

pending the disposal of proceedings.

(2) Where in a case to which this section applies no defence to the proceedings has been filed although the time for filing a defence has expired, the claimant may, by filing a request in Form 49, request the Registrar to make an assessment for the purpose of this section.

(3) As soon as practicable after the filing of the request, the Registrar shall—

- (a) if the particulars included in the application for ancillary relief are sufficient to enable him to do so—make the assessment; or
- (b) in any other case—inform the claimant that he is unable to make an assessment until a certificate of means has been issued under Section 206.

(4) Where, in a case to which this section applies, a defence to the proceedings has been filed, the claimant may, by filing a request in Form 49, request the Registrar to make an assessment for the purpose of this section, and the Registrar shall, as soon as practicable after the filing of the request—

- (a) if the particulars included in the application for ancillary relief and the particulars in the defence to the proceedings are sufficiently consistent and give sufficient information to enable him to do so—make the assessment; or
- (b) in any other case—inform the claimant that he is unable to make an assessment until a certificate of means has been issued under Section 206.

(5) Where, in a case to which this section applies, a certificate of means is issued after the Registrar has informed the claimant that he is unable to make an assessment, the Registrar shall as soon as practicable after the certificate of means is issued, make an assessment for the purpose of this section having regard to the matters specified in that certificate.

(6) An assessment made by the Registrar for the purpose of this section shall specify—

- (a) the rate (if any) per week at which the Registrar thinks maintenance should be payable for the claimant or the child, as the case may be, pending the disposal of proceedings; and
- (b) the date, not being a date earlier than the day on which the petition, answer or application to the Court for ancillary relief was filed, as from and including which maintenance at that rate should be payable; and
- (c) whether the Registrar thinks that maintenance should be paid to the claimant, into court or to a person or public authority on behalf of the claimant; and
- (d) the rate per week at which the Registrar considers any maintenance for the claimant or the child in respect of the period commencing on the date specified under Paragraph (b) and ending on the date of the assessment, less any amount paid as maintenance for the claimant or the child, as the case may be, in respect of that period, should be payable.

(7) In making an assessment for the purpose of this section, the Registrar shall not have regard to any allegation concerning the conduct of the claimant or the spouse of the claimant, whether or not that conduct is in question in the proceedings for principal relief, unless it is relevant to the means or financial needs of the claimant or his spouse, or to the capability of the claimant or his spouse to earn income.

(8) In proceedings for ancillary relief, the Registrar shall not make an assessment for the purpose of this section specifying a rate per week for the maintenance of a claimant or a child if an order under Section 203 has been made concerning the maintenance to be paid for the claimant or child, as the case may be.

(9) An assessment for the purpose of this section shall be in Form 50.

198. Service of assessment.

(1) Subject to Subsection (2), a claimant who requests the Registrar to make an assessment for the purpose of Section 197 in relation to proceedings for ancillary relief shall deposit with the Registrar a form of assessment in Form 49 for signature by the Registrar, and two copies of the form for the claimant and the spouse of the claimant, respectively.

(2) Subsection (1) does not require the deposit of a copy of a form of assessment for the spouse of the claimant if service of the application for ancillary relief on the spouse—

- (a) was dispensed with; or
- (b) was effected by publishing notice of the application in a newspaper, but in no other manner,

unless the spouse filed a defence to the proceedings or the Court, as a condition of dispensing with the service, required a copy of the application to be sent to or served on some other person.

(3) A copy of a form of assessment for a person—

- (a) shall be capable of being folded, and of being sealed with adhesive material provided on the form, for transmission through the post as a letter; and
- (b) shall have the name and address of the person endorsed on it so that when the form is folded and sealed it can, without being enclosed in an envelope and without any further addition to it, be posted as a letter to the person at that address; and
- (c) shall have a notation, in the form set out in Subsection (8), endorsed on it so that when it is folded and sealed the notation remains legible.

(4) For the purpose of Subsection (3), the address of a person that is to be written on a copy of a form of assessment is—

- (a) if the person is the claimant—the address for service of the claimant; or
- (b) if the person is the spouse of the claimant—
 - (i) the address for service of the spouse; or
 - (ii) the last address of the spouse known to the claimant; or
 - (iii) the address of the place at which the spouse was served with the application for ancillary relief; or
 - (iv) the address of the person to or on whom a copy of the application was sent or served as a condition of dispensing with service on the spouse, as the case requires.

(5) As soon as practicable after the Registrar makes an assessment under Section 197, the Registrar shall—

- (a) complete, sign and file the form of assessment deposited under Subsection (1); and
- (b) complete and sign the copies of the form, and cause each copy to be served on the person to whom it is addressed by posting it to him as a letter (postage being prepaid).

(6) Service of a copy of an assessment shall, unless the contrary is proved, be deemed to have been effected on a person at the time when the letter containing the copy of the assessment would, in the ordinary course of post, be delivered at the address to which it is posted.

(7) In any proceedings, a certificate under the hand of the Registrar and written on an assessment, stating that a copy of the assessment was posted as a letter (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified person at a specified address, is evidence of the facts stated in the certificate.

(8) The form of the notation required by Subsection (3)(d) to be endorsed on a form of assessment deposited by a claimant is as follows :—

"If not delivered within seven days, return to (name of the lawyer for the claimant, or name of the claimant, as the case may be, and address for service of claimant)".

199. Reference of claim to the Court.

(1) Where in a case to which Section 197 applies the Registrar has made an assessment for the purpose of that section the petitioner or respondent may, not later than 10 days after service of a copy of the assessment on him, by filing a request in Form 51 request the Registrar to refer the proceedings to the Court, and the Registrar shall refer the proceedings accordingly.

(2) Where a person on whom a copy of an assessment has been served does not duly file a request under Subsection (1), the person shall be taken to have consented to the Court making, in the proceedings in relation to which the assessment was made, an order in accordance with the terms of the assessment, but that consent does not prejudice the person in any other proceedings.

200. Default in payment of amount assessed.

(1) Subject to Subsection (2), where, in proceedings with respect to maintenance, a claimant and his spouse are taken to have consented to the making of an order by the Court in accordance with the terms of an assessment, the claimant may, by filing a request in Form 51, request the Registrar to refer the proceedings to the Court under this section, and the Registrar shall refer the proceedings accordingly.

(2) Subsection (1) does not require the Registrar to refer proceedings to the Court unless he is satisfied, by affidavit, that the amount calculated in respect of the proceedings in accordance with Section 201(1) exceeds, by more than the weekly rate (or the sum of the weekly rates) specified in the assessment under Section 197(6)(a), the amount so calculated in accordance with Section 201(2).

(3) Where the Registrar is required to refer proceedings to the Court under Subsection (1), he shall bring the proceedings before the Court which, if it thinks fit, may, without any application being made to it and without a hearing, order the payment of maintenance in accordance with the terms of the assessment, less any amounts paid as maintenance in respect of the period covered by the assessment.

(4) Where the Court does not think fit to make an order under Subsection (3), the Registrar shall refer the proceedings to the Court for hearing and determination, and the spouse of the claimant may withdraw the consent that, under Section 199(2), he is taken to have given.

(5) Where, in proceedings for ancillary relief, an order under Section 203 has been made for the payment of maintenance for the claimant in the proceedings or for a child of a marriage, an order shall not be made under this section for the payment of maintenance for the claimant or child, as the case may be, in accordance with the terms of an assessment made under Section 197.

201. Calculations for the purposes of Section 200(2).

(1) The first amount referred to in Section 200(2) in respect of any proceedings is the total amount of the payments (including payments in respect of periods preceding the date of the relevant assessment under Section 197) that would have become due and payable on or before the date on which the request under Section 200(1) is filed if the assessment had been an order for the payment of maintenance in accordance with its tenor.

(2) The second amount referred to in Section 200(2) is the total amount paid, since the date of the assessment, by the spouse of the claimant for the maintenance of—

- (a) the claimant; or
- (b) the child; or
- (c) the claimant and the child,

as the case may be, less so much of any maintenance so paid as relates to a period preceding the date specified, in accordance with Section 197(6)(a), in the assessment.

202. Notice of hearing.

(1) The party at whose request proceedings for ancillary relief are referred to the Court under Section 199, or the claimant in proceedings for ancillary relief that are referred to the Court under Section 200(4), shall cause a notice in Form 52 to be served on the spouse of the party or claimant, as the case may be.

(2) Subsection (1) does not require service of a notice referred to in that subsection to be effected on the spouse if service on the spouse of the application for ancillary relief instituting the proceedings—

- (a) was dispensed with; or
- (b) was effected by publishing notice of the application in a newspaper,

and the spouse did not file a defence to the proceedings.

203. Consent orders pending disposal of proceedings.

(1) Where the parties to proceedings for ancillary relief, being proceedings for an order with respect to the maintenance, pending the disposal of proceedings, of one of the parties or of a child of a marriage, agree as to the maintenance that should be paid for the party or the child pending the disposal of proceedings, a form of order may be deposited with the Registrar—

- (a) providing for the payment of maintenance in accordance with the agreement; and
- (b) providing for the payment of the costs of the proceedings; and

(d) ordering, under Section 3(4) of the Act, that a relevant existing order, within the meaning of Section 196, shall cease to have effect,

or doing any of those things.

(2) A form of order shall not be deposited under Subsection (1) unless it has endorsed on it the consent, signed by each of the parties, either personally or by his lawyer, to the making of an order in the terms of the form.

(3) Where a form of order is duly deposited with the Registrar, he shall bring the proceedings to which the form of order relates before the Court which may, if it thinks fit, without any application being made to it and without a hearing, make an order in the terms of the form.

(4) Where, after the Registrar has made an assessment under Section 197 specifying the rate per week at which the Registrar thinks maintenance should be paid for the person pending the disposal of proceedings, an order is made under Subsection (3) with respect to the maintenance payable for the person pending the disposal of the proceedings, the assessment ceases to have effect for the purpose of Section 199 or 200.

204. Determination of maintenance by the Court.

(1) Subject to Subsection (2), in determining proceedings for ancillary relief, being proceedings seeking an order with respect to the maintenance, pending the disposal of proceedings, of a party to a marriage or of a child of a marriage, the Court may have regard to the conduct of the parties to the marriage, other than conduct that is in question in the proceedings for principal relief.

(2) Notwithstanding Subsection (1), the Court may take into account allegations concerning the conduct of a party to the marriage that is in question in the proceedings for principal relief if the truth of the allegations has been admitted by the party in a pleading or affidavit filed for the purpose of the proceedings for ancillary relief, or in a pleading filed for the purpose of the proceedings for principal relief.

(3) Where proceedings for ancillary relief are referred to the Court under a request under Section 199, the Court shall not make an order with respect to the costs of the proceedings in favour of the party who made the request unless it is satisfied that the reference of the proceedings to the Court was justified.

Division 3.—Certificates of Means.

205. Application for certificate of means.

(1) This section applies to proceedings for ancillary relief in which—

(a) a party to a marriage is seeking a decree with respect to the maintenance of a party to the marriage settlements, or the maintenance of a child of the marriage; or

(b) the Registrar has informed the claimant that the Registrar is unable to make an assessment under Section 197 until a certificate of means has been granted.

(2) In proceedings for ancillary relief to which this section applies, a party to the marriage may make application in Form 53 to the Registrar for a certificate of means with respect to the pecuniary resources of the parties to the marriage and the capability of each of them to earn income.

(3) Except by leave of the Court or the Registrar, an application under Subsection (2) shall not be made—

- (a) after the date on which the proceedings for principal relief have been set down for trial; or
- (b) if a certificate of means has already been issued in relation to the proceedings for ancillary relief; or
- (c) in the case of proceedings for ancillary relief (not being proceedings for maintenance pending the disposal of other proceedings) included in a suit to which Division XI.6 applies—before a conference for the purpose of that Division has been held.

(4) Unless the Court or the Registrar otherwise directs, it is not necessary for an applicant for a certificate of means to serve the application on the other party to the marriage unless that party has an address for service for the purpose of the proceedings.

(5) Service of an application under Subsection (2) by a party to a marriage shall be effected on the other party to the marriage in a manner referred to in Section 57(a),(b) or (c).

(6) On the hearing of an application for a certificate of means in relation to proceedings for ancillary relief, the application for ancillary relief, and the defence to the proceedings (if any) filed for the purpose of those proceedings, are each evidence of any facts relevant to the first-mentioned application that are stated in it.

(7) It is not necessary for a party making application for a certificate of means to file an affidavit in support of his application.

(8) Notwithstanding Subsection (7), either party to an application for a certificate of means may file affidavits for the purpose of the application, and Sections 17(2) and 18 apply to and in relation to affidavits so filed.

206. Issue of certificate of means.

(1) On application made under Section 205 or at the direction of the Court, the Registrar shall inquire into the pecuniary resources of the parties to the marriage to which the application relates and into the capability of each of them to earn income, and issue a certificate of means in Form 54 with respect to those resources and capabilities.

(2) Where a certificate of means is issued on an application made after a certificate under Subsection (1) has already been issued, the certificate already issued shall be deemed to have been revoked.

(3) Where a Judge directs an inquiry by the Registrar into the pecuniary resources of the parties to a marriage and the capability of each of them to earn income, the Judge may give such directions as he thinks proper with respect to service of notice of the date fixed for the hearing of the inquiry by the Registrar and the filing and serving of affidavits for the purpose of that inquiry, and the parties of the marriage shall comply with any such directions.

207. Effect of certificate of means.

A certificate of means is evidence of the matters specified in the certificate.

208. Notice of application for interim order.

(1) Where proceedings for ancillary relief, being proceedings seeking an order with respect to the custody, guardianship, welfare, advancement or education of a child of a marriage, pending the disposal of proceedings, are instituted by a petition or by an answer to a petition, the petitioner or respondent, as the case may be, may, at any time after the filing of the petition or answer, set the proceedings for ancillary relief down for hearing by filing a request in Form 47.

(2) A party who files a request under Subsection (1) shall cause service of notice in Form 48 of the place, date and time fixed for the hearing of the proceedings to be effected, in a manner referred to in Section 57(*a*),(*b*) or (*c*), on each other party to the proceedings for ancillary relief, other than a party service on whom the petition or answer instituting the proceedings was dispensed with.

(3) Unless a Judge otherwise directs, there shall be at least 14 clear days between the service of the notice and the day named in the notice for the hearing of the proceedings for ancillary relief.

(4) Where a notice under Subsection (2) is served on a respondent who has not filed an answer to the petition, or on a petitioner who has not filed a reply to the answer, the respondent or petitioner, as the case may be, may, in an affidavit filed for the purpose of the proceedings—

- (*a*) deny any allegation in the petition, or answer, that relates to the proceedings for ancillary relief; and
- (*b*) state any facts relevant to the proceedings for ancillary relief that the respondent or petitioner wishes to be considered by the Court on the determination of the proceedings.

209. Application by respondent for custody pending disposal of proceedings.

(1) The respondent to a petition instituting proceedings for principal relief may, at any time before the filing of an answer to the petition on behalf of the respondent but not later than the expiration of the time limited for the filing of such an answer, make application to the Court for an order with respect to the custody, guardianship, welfare, advancement or education, as the case may be, of a child of the marriage pending the disposal of the proceedings.

(2) Unless a Judge otherwise directs, there shall be at least 14 clear days between the service of an application under Subsection (1) and the day named in the application for the hearing of the application or the day fixed by the Registrar for the hearing of the application, as the case may be.

210. Application for custody pending disposal of proceedings.

(1) Where, after proceedings for principal relief have been instituted, a dispute arises with respect to the custody, guardianship, welfare, advancement or education, as the case may be, of a child pending the disposal of the proceedings, the petitioner or respondent may make application to the Court for an order with respect to the custody, guardianship, welfare, advancement or education, as the case may be, of the child, pending the disposal of the proceedings.

(2) Unless a Judge otherwise directs, there shall be at least 14 clear days between the service of an application under Subsection (1) and the day named in the application for the

hearing of the application or the day fixed by the Registrar for the hearing of the application, as the case may be.

211. Ex parte application for custody.

(1) Where proceedings for ancillary relief have been instituted seeking an order with respect to the custody, guardianship, welfare, advancement or education of a child of the marriage, pending the disposal of proceedings, the Court may, in a case of urgency, hear the proceedings, and make an order in the proceedings, *ex parte*.

(2) The petitioner or respondent in proceedings for principal relief may, in a case of urgency, institute proceedings for ancillary relief seeking an order of a kind referred to in Subsection (1), by filing an application or, with the leave of the Court, by making application orally to the Court, and the Court may hear the proceedings for ancillary relief, and make an order in those proceedings, *ex parte*.

(3) Where the Court gives leave under Subsection (2), to make an application orally, it may give the leave on condition that the claimant gives to it an undertaking to file, as soon as practicable, an application and such affidavits and other documents in support of the application as the Court thinks proper.

(4) Where the Court makes an order of a kind under Subsection (1) on an application that was made *ex parte*, it shall—

- (a) specify in the order the period during which the order will remain in force; and
- (b) give directions with respect to the service of copies of the order, the application and such other documents as it thinks proper on the spouse of the claimant and, if a person other than the claimant or the spouse of the claimant has the custody, or the care and control, of the child, on that person; and
- (c) give directions with respect to the further hearing of the proceedings for ancillary relief.

212. Disclosure of adultery by respondent claiming custody.

(1) This section applies in relation to a respondent to any proceedings for principal relief who—

- (a) before the determination of the proceedings, institutes or has instituted proceedings for ancillary relief with respect to the custody of a child of the marriage; and
- (b) has committed adultery since cohabitation between the parties to the marriage ceased or last ceased, as the case may be, but before the hearing of the proceedings for ancillary relief; and
- (c) has not filed, and is not required by these Rules to file, a discretion statement with respect to that adultery.

(2) A respondent to whom this section applies shall file a statement concerning the adultery—

- (a) if the adultery was committed before the application for ancillary relief is filed—at the time when the application is filed; or
- (b) in any other case—as soon as practicable after committing the adultery.

(3) A statement under Subsection (2) shall state particulars of the acts of adultery committed by the respondent since cohabitation between the parties to the marriage ceased or last ceased, as the case may be (other than acts stated in any other statement filed by him

for the purposes of the proceedings in accordance with Subsection (2)), and the circumstances giving rise to the commission of the acts of adultery.

(4) Where in a statement filed by a respondent under Subsection (2) the respondent states that he and the person with whom he has committed adultery are living together as if they were husband and wife, it is not necessary for a further statement under that subsection to be filed setting out particulars of any further acts of adultery committed by him with that person.

(5) A statement under Subsection (2) shall not be filed by or on behalf of a respondent to any proceedings unless—

- (a) it is signed by the respondent; and
- (b) the matters set out in it have been verified by the affidavit of the respondent written on it; and
- (c) it is enclosed in a sealed envelope having written on it the words “Statement under Section 212”, the number of the proceedings and a certificate—
 - (i) if the respondent is represented by a lawyer—signed by the lawyer; or
 - (ii) if the respondent is not represented by a lawyer—signed by the respondent,

certifying that the statement is duly signed and verified, and that it bears the date on which it was signed.

(6) Sections 161 and 163 apply in relation to statements filed under Subsection (2) as if reference in those sections to a discretion statement were references to a statement so filed.

(7) Where a respondent to whom this section applies files a statement under Subsection (2), the lawyer for the respondent or, if the respondent is not represented by a lawyer, the respondent—

- (a) shall write on the application for ancillary relief, in red ink, a notation in the following form, and sign his name immediately under the notation:—

“Statement under Section 212 of the *Matrimonial Causes Rules* filed
19 .”; and

- (b) shall give notice of the filing of the statement to the petitioner as soon as practicable after the filing of the statement.

(8) Where a notation under Subsection (7) has been written on an application for ancillary relief before service of the application is effected on the petitioner, notice of the filing of the statement under Subsection (2) shall be deemed to have been given to the petitioner if the copy of the application served on him has a copy of the notation written on it.

(9) Where a respondent has filed a discretion statement stating that he has committed adultery and that he and the person with whom he has committed adultery are living together as if they were husband and wife, this section does not require the respondent to file a statement concerning any further acts of adultery committed by the respondent with that person.

Division 5.—Proceedings for Ancillary Relief Instituted by a Person not a Party to the Marriage.

213. Application for custody by person other than parent.

(1) Where a person who is not the petitioner or respondent in proceedings for principal relief institutes, in relation to those proceedings and by leave of the Court, proceedings for ancillary relief, being proceedings with respect to the custody, guardianship, maintenance, welfare, advancement or education of a child of the marriage to which the proceedings for principal relief relate, this section applies to the proceedings for ancillary relief, but Divisions 2, 3 and 4 do not apply to or in relation to them.

(2) Where a person institutes proceedings for ancillary relief to which this section applies—

- (a) the title to the proceedings for principal relief shall be deemed to have been amended by adding his full name and designation; and
- (b) such of the parties to the marriage as are living on the date of the institution of the proceedings for ancillary relief are parties to the proceedings for ancillary relief; and
- (c) subject to Subsection (3), the person shall cause service of the application instituting the proceedings for ancillary relief to be effected, in a manner referred to in Section 57(a),(b) or (c), on such of the parties to the marriage as are living on that date; and
- (d) subject to Subsection (5), it is not necessary for service of a pleading, or a copy of a document, filed for the purpose of the proceedings for principal relief after the institution of the proceedings for ancillary relief to be effected on the person unless the pleading or document relates to other proceedings with respect to the custody of the child; and
- (e) a Judge may give such directions with respect to the filing of affidavits and the trial of the proceedings for ancillary relief as he thinks necessary for the proper determination of those proceedings.

(3) Where proceedings for ancillary relief to which this section applies are instituted in relation to completed proceedings for principal relief, service of the application instituting the proceedings for ancillary relief shall not be effected on a party in the manner referred to in Section 57(c) unless the address for service of the party is the address of a lawyer representing him and the lawyer is, at the time of the service, representing him in connexion with the proceedings for ancillary relief.

(4) Where proceedings for ancillary relief to which this section applies are instituted before the trial of the proceedings for principal relief, the proceedings for ancillary relief shall, subject to any directions given under Subsection (2)(e), be deemed to have been consolidated with, and shall, as far as practicable, be heard and determined by the Court at the same time as the proceedings for principal relief.

(5) Where proceedings for ancillary relief to which this section applies are instituted before the proceedings for principal relief are set down for trial—

- (a) a copy of any request to set the proceedings for principal relief down for trial; and
- (b) any application, or any document filed for the purpose of an application, with respect to the date on which or place at which the trial of the proceedings for principal relief take place,

shall be served on the person who instituted the proceedings for ancillary relief.

(6) Subject to this section and to any directions given under Subsection (2)(e), Sections 16, 17 and 18 apply to and in relation to proceedings for ancillary relief to which this section applies.

Division 6.—Variation of Orders.

214. Variation of orders.

(1) Where application is made to the Court for the variation of an order made in respect of a matter referred to in Section 73 of the Act so as to increase or decrease any amount ordered to be paid by the order, the affidavits in support of the application shall state, in addition to any other facts stated in accordance with Section 17—

- (a) the changed circumstances relied on by the applicant; or
- (b) the material facts that are alleged by the applicant to have been withheld from the Court; or
- (c) the material evidence previously given before the Court that is alleged by the applicant to have been false,

as the case may be.

(2) Where application is made to the Court for an order increasing or decreasing—

- (a) the security for the payment of a periodic sum ordered to be paid; or
- (b) the amount of a lump sum or periodic sum ordered to be secured,

the affidavits in support of the application shall state, in addition to any other facts stated under Section 17, the material facts that are alleged by the applicant to have been withheld from the Court or the material evidence previously given before the Court that is alleged by the applicant to have been false, as the case may be.

(3) Where a party has made application to the Court for the variation of an order, another party to the application may, in an affidavit filed for the purpose and without filing an application to the Court, request the Court to vary the order in a manner specified in the affidavit, and the Court shall then determine the request on the hearing of the application.

(4) Where a party makes a request under Subsection (3), the affidavit of the party shall state which of the matters referred to in Subsection (1)(a),(b) or (c), or in Subsection (2)(a) or (b), are relevant to the request.

PART XV.—EVIDENCE.

Division 1.—General.

215. Manner of giving testimony.

(1) Subject to this Division, testimony at the trial of proceedings shall be given orally.

(2) This Division does not prevent the admission in evidence, in accordance with the practice of the Court, at the trial of any proceedings, of—

- (a) evidence taken at a previous trial of the proceedings; or
- (b) evidence taken in other proceedings; or
- (c) the depositions of a witness taken by virtue of a commission to examine the witness.

216. Proof of service of documents.

Unless the Court otherwise orders at the trial or the Registrar otherwise orders at the hearing of an application to the Registrar, proof of the due service of a pleading or other document may be given by affidavit.

217. Where proof of service unnecessary.

These Rules do not require proof, at the trial of proceedings, of—

- (a) the service of a petition on a person who has filed an answer to the petition or a notice of address for service; or
- (b) the service of an answer on a person who has filed a reply to the answer or has since the answer was filed, filed a notice of address for service.

218. Delivery in ordinary course of post.

(1) In any proceedings, a certificate under the hand of the Director of Posts and Telegraphs, or a person authorized in writing by the Director to give certificates under this subsection stating that a letter posted (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified address would, in the ordinary course of post, have been delivered at that address on a specified day is evidence of the fact stated.

(2) For the purposes of Subsection (1), a document purporting to be a certificate referred to in that subsection shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

219. Affidavit evidence at trial.

(1) This section applies to proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act and to any related proceedings that are heard and determined by the Court at the same time.

(2) Subject to Subsection (3), the Court may, by order, grant leave to a party to proceedings to which this section applies to furnish at the trial evidence of a particular fact by the affidavit of a person, whether a party to the proceedings or not, who has, of his own knowledge, deposed to the fact.

(3) An order under Subsection (2) may be made by the Court—

- (a) before the trial of the proceedings—on application made by a party to the proceedings; or
- (b) at the trial of the proceedings—on oral application made during the trial.

(4) Where the Court makes an order under Subsection (2) before any defended proceedings to which this section applies are set down for trial—

- (a) an affidavit proposed to be used on the trial of the proceedings by leave granted to the party by the order shall, unless the Court otherwise ordered, be filed within eight days after the making of the order, and a copy of the affidavit shall be served on the day on which it is filed, or on the next following day, on each other party to the proceedings who has filed a pleading; and
- (b) a party on whom a copy of an affidavit is so served may, within eight days after the service, file an affidavit in reply; and
- (c) the party who obtained the order may, within four days after an affidavit in reply is served on him, file a further affidavit in reply; and

(d) a copy of an affidavit in reply shall, on the day on which it is filed or on the next following day, be served on the party who filed the affidavit in reply to which it is filed.

(5) Where the Court makes an order under Subsection (2) after any defended proceedings to which this section applies have been set down for trial, the order shall specify the time within which an affidavit may be filed and served, and the time within which affidavits in reply may be filed and served.

220. Affidavit evidence on hearing of other proceedings.

(1) Evidence shall be given by affidavit on the hearing of proceedings of a kind referred to in Paragraph (d), (d) or (e) of the definition "matrimonial cause" in Section 1(1) of the Act (not being proceedings to which Section 219 applies), or on the hearing of an application to the Registrar, unless the Court or Registrar, as the case may be, orders otherwise.

(2) Where an affidavit intended to be used on the hearing of any proceedings or of an application to which Subsection (1) applies is filed on behalf of a party to the proceedings or application, he shall, on the day on which the affidavit is filed or on the next following day, serve a copy of the affidavit on each other party who has an address for service.

(3) Where a party to any proceedings or to an application has served on another party to the proceedings or application a copy of an affidavit intended to be used on the hearing of the proceedings or application, the party on whom the affidavit was served may, within the time limited for replying to the affidavit, or if no such time is limited within four days after service of the affidavit on the party, serve on the party who served the affidavit notice that on the hearing of the proceedings or application he desires to cross-examine the person who made the affidavit.

(4) A party who serves a notice that he desires to cross-examine the person who made an affidavit shall, unless the person is or has been the husband of the party, pay or tender reasonable expenses for his attendance at the hearing.

(5) Where a notice has been served under Subsection (3) and Subsection (4) has been complied with, the affidavit in relation to which the notice was served shall not be admitted in evidence on the hearing of the proceedings or application unless—

- (a) the person who made the affidavit is available at the hearing for cross-examination; or
- (b) the Court or Registrar, as the case may be, is satisfied that there are special circumstances justifying the admission of the affidavit in evidence.

Division 2.—Affidavits.

221. Contents of affidavit.

(1) Where an affidavit states facts to which the deponent is unable to depose of his own knowledge—

- (a) the affidavit is not admissible, as evidence of those facts, on the trial of proceedings to which Section 219 applies; and
- (b) unless the affidavit states the deponent's belief in the truth of those facts and particulars of his means of knowing them, the affidavit is not admissible, as evidence of those facts, on the hearing of any other proceedings or of an application to the Registrar.

(2) The costs of a part of an affidavit that unnecessarily set out matters of hearsay, argumentative matter or copies of, or extracts from, documents are payable by the party filing the affidavit.

222. Document quoted in affidavit.

Where a document or a portion of a document is set out in an affidavit, the party filing the affidavit shall produce the document, or cause it to be produced, on the trial of the proceedings in connexion with which the affidavit is filed.

223. Exhibits.

A document, object or thing referred to in an affidavit as an exhibit shall have written on it, or on a paper attached to it, the title and number of the proceedings in connexion with which the affidavit is filed and a certificate signed by the person before whom the affidavit is sworn certifying that the exhibit is the particular exhibit specified in the affidavit.

224. Use of figures.

In an affidavit, dates and sums of money shall be written in figures and not in words.

225. Swearing of affidavits.

(1) Subject to Subsection (5), an affidavit may be sworn in accordance with the *Oaths, Affirmations and Statutory Declarations Act*.

(2) An affidavit may be sworn at a place outside Papua New Guinea before a diplomatic officer or consular officer of Papua New Guinea, before an Australian Diplomatic Officer or an Australian Consular Officer as defined by Section 2 of the *Consular Fee Act 1955* of Australia, or before a judge of a court of that place, a magistrate or justice of the peace of or for that place or a notary public.

(3) The title of the person before whom an affidavit is sworn, and the date on which and place at which the affidavit is sworn, shall be stated in the jurat to the affidavit.

(4) Where an affidavit purports to have been sworn at a place before a person before whom an affidavit is permitted to be sworn at that place, the affidavit shall, unless the contrary is proved, be deemed to have been sworn before such a person, without proof of his signature or title.

(5) An affidavit is not admissible in evidence if it is sworn by the deponent before—

- (a) the lawyer acting for the party on whose behalf the affidavit is to be used; or
- (b) an agent or correspondent of the lawyer so acting; or
- (c) the party on whose behalf the affidavit is to be used; or
- (d) a clerk or partner of that lawyer, agent, correspondent or party.

226. Form of affidavit.

(1) An affidavit shall be drawn up in the first person, and shall be divided into paragraphs.

(2) Where an affidavit contains more than one paragraph, the paragraphs shall be numbered consecutively.

(3) Each paragraph shall, as far as practicable, be confined to a distinct part of the subject.

(4) An affidavit may be in Form 55.

(5) Costs shall not be allowed for an affidavit departing substantially from this section.

227. Statement of deponent's occupation, etc.

An affidavit shall state the address and occupation of the deponent.

228. Signature to affidavit.

An affidavit shall be signed on each page by the deponent and by the person before whom the affidavit is sworn.

229. Affidavit by two or more deponents.

(1) Subject to Subsection (2), where an affidavit is sworn by two or more deponents the full name of each deponent shall be stated in the jurat.

(2) If all the deponents swear the affidavit at the same time and before the same person, it is sufficient for the jurat to show that the affidavit was sworn or affirmed by all of the "abovenamed" deponents.

230. Filing of affidavit.

(1) Unless the Court otherwise directs, an affidavit shall be filed before it is used in proceedings before the Court.

(2) Unless the Registrar otherwise directs, an affidavit to be used in connexion with an application to the Registrar shall be filed before it is used.

231. Endorsements on affidavit.

(1) There shall be endorsed on an affidavit the name of the deponent, the date on which the affidavit is sworn and the party on whose behalf the affidavit is filed.

(2) An affidavit that does not have endorsed on it the particulars referred to in Subsection (1) shall not be used in any proceedings or on the hearing of an application to the Registrar, unless the Court or the Registrar, as the case may be, otherwise directs.

232. Irrelevant matter.

On application by a party to proceedings, the Court may order that any scandalous or irrelevant matter included in an affidavit filed for the purpose of the proceedings be struck out, and may further order that the costs of the application be paid as between solicitor and client.

233. Alterations in affidavit.

When an affidavit filed for the purpose of any proceedings or of an application to the Registrar contains, in the jurat or in the body of the affidavit, an interlineation, alteration or erasure, the affidavit shall not be used in the proceedings or on the hearing of the application without the leave of the Court or the Registrar, as the case may be, unless—

- (a) in the case of an interlineation or alteration, not being an alteration by erasure—the interlineation or alteration is authenticated by the initials of the person before whom the affidavit is sworn; or
- (b) in the case of an erasure—the words or figures appearing, at the time when the affidavit is sworn, to be written on the erasure are written in the margin of the affidavit and initialled by the person before whom the affidavit is sworn.

234. Affidavit by illiterate or blind person.

(1) Where an affidavit is sworn by a deponent who appears to the person before whom it is sworn to be illiterate or blind, that person shall certify, in the jurat to the affidavit, that—

- (a) the affidavit was read in his presence to the deponent; and
- (b) the deponent appeared to understand the matter in the affidavit; and
- (c) the deponent signed the affidavit (whether by making his mark or otherwise) in his presence.

(2) Where an affidavit that is sworn by a person who is illiterate or blind does not bear the certificate referred to in Subsection (1), it is not admissible in evidence in any proceedings or on the hearing of an application by the Registrar, unless the Court before whom the proceedings are tried or the Registrar, as the case may be, is satisfied that it was read over to the deponent and that the deponent appeared to understand the matter contained in it.

235. Affirmation.

Where the deponent to an affidavit objects to swearing on oath to the truth of the statements in the affidavit, he may solemnly and sincerely declare and affirm that he objects to swearing on oath and that the statements in the affidavit are true, and the jurat to the affidavit shall be altered accordingly.

236. Defective affidavit.

Where, in an affidavit filed for the purpose of any proceedings or of an application to the Registrar, there is a defect, by misdescription of parties or deponents or otherwise, in the title to, or jurat in, the affidavit, or there is any irregularity in the form of the affidavit, the Court or the Registrar, as the case may be, may direct that a memorandum be written on the affidavit authorizing the use of the affidavit notwithstanding the defect or irregularity, and the affidavit may then be used in the proceedings or on the hearing of the application.

PART XVI.—ENFORCEMENT OF DECREES.

Division 1.—General.

237. Application of Part XVI.

Except as expressly provided in this Part, this Part does not limit the operation of decrees and process made or issued under the Act or these Rules.

238. Enforcement of decrees.

(1) Subject to Subsection (4), a decree made under the Act is not enforceable against a person unless—

- (a) service of a copy of the decree has been effected—
 - (i) on the person—in the manner referred to in Section 57(a), or in accordance with the terms of an order for the substituted service of the decree; or
 - (ii) on the lawyer representing the person in connexion with the enforcement of the decree—in the manner referred to in Section 57(a); and

- (b) subject to Subsection (2), at the time when service of a copy of the decree was so effected the decree was shown to the person to whom the copy was delivered; and
- (c) a notice, in accordance with the form of notice in Subsection (3), addressed to the person is written on the copy of the decree that is served on him; and
- (d) subject to Section 239, written demand for compliance with the decree has been made on the person.

(2) Subsection (1)(b) does not apply to the enforcement of a decree against a person in a case where an order has been made substituting the giving of notice of the decree to the person by advertisement or otherwise for service of the decree on the person.

(3) The form of notice for the purposes of Subsection (1)(c) is as follows—

“To

Take notice that if you fail to carry out the acts required of you by the within decree (*or* order) within the time specified in the decree (*or* order) for carrying out those acts, further legal proceedings may be taken against you for the purpose of compelling you to carry them out.”

(4) Subsection (1) does not apply to the enforcement of a decree against a person if the Court, under Section 94(2) of the Act, has dispensed with service of a copy of the decree on him.

239. Demand for compliance with decree.

(1) Where a person is ordered by a decree to pay—

- (a) into court; or
- (b) to a person, and at a place, specified in the decree,

a sum or sums of money for maintenance, costs or damages within a time specified in the decree, the making of a demand for compliance with the decree is not necessary for the purpose of Section 238.

(2) Where a person is ordered by a decree—

- (a) to do an act, not being payment of a sum or sums of money for maintenance, costs or damages, within a time specified in the decree; or
- (b) to refrain from doing an act,

the making of a demand for compliance with the decree is not necessary for the purpose of Section 238.

Division 2.—Attachment and Sequestration.

240. Leave to enforce decree by attachment, etc.

(1) A decree shall not be enforced by attachment or sequestration without the leave of the Court.

(2) Subject to Subsection (3), where application is made for leave to enforce, by attachment or sequestration, a decree for the payment of maintenance or costs, the affidavit in support of the application shall state, in addition to any other facts stated in accordance with Section 17—

- (a) particulars of the amounts that have become payable under the decree; and
- (b) particulars of any amounts paid in reduction of those amounts; and

(d) as far as practicable, the respective dates on which any amounts so paid were paid.

(3) An affidavit shall be deemed to have stated the particulars required by Subsection (2) if it states—

(a) that, at a specified date, all amounts that had become payable under the decree on or before that date had been paid; and

(b) particulars of the amounts that have become payable under the decree after that date and of any amounts paid in reduction of the amounts so payable and, as far as practicable, the respective dates on which any amounts so paid were paid.

(4) A party to any proceedings who makes application for leave to enforce a decree by attachment or sequestration against another party to the proceedings shall cause service of the application to be effected on the other party in a manner referred to in Section 57(a) or (b).

241. Ordering of sequestration.

(1) Where a person who has been arrested under a writ of attachment is brought before the Court, the Court may, with the consent of the person on whose application the person was arrested, order the sequestration of the person's estate instead of ordering the person to be kept in custody.

(2) The Court may, under Section 86 of the Act, enforce a decree by sequestration notwithstanding that an attempt has not been made to enforce the decree by attachment.

242. Discharge of writ of sequestration.

On application made by a person whose estate has been sequestrated under a writ of sequestration issued under an order of the Court, the Court may discharge the writ on such terms and conditions as the Court thinks proper.

Division 3.— Attachment of Earnings Orders.

243. Interpretation of Division 3.

(1) In this Division—

“the person entitled to receive payments under the maintenance order”, in relation to a maintenance order, means—

(a) if the maintenance order requires payments to be made into a court for payment out to a person—that person; or

(b) if the maintenance order requires payments to be made to a person for transmission to another person—the first-mentioned person; or

(c) in any other case—the person to whom the payments are required to be made under the maintenance order;

“the prescribed officer” means—

(a) in relation to the Court—the Registrar; and

(b) in relation to a court of summary jurisdiction—the clerk or other proper officer of that court of summary jurisdiction.

(2) Unless the contrary intention appears, expressions used in this Division have the same meaning as in Schedule 2 to the Act.

244. Application to Court for attachment of earnings order.

(1) An application to the Court for an attachment of earnings order may be made *ex parte*.

(2) The affidavit in support of an application referred to in Subsection (1) shall state, in addition to any other facts stated in accordance with Section 17—

- (a) particulars of the maintenance order; and
- (b) the amount of the arrears due to the applicant under the maintenance order; and
- (c) particulars of any proceedings taken by or on behalf of the applicant for the enforcement of the maintenance order; and
- (d) the name and address of the person believed by the applicant to be the employer of the defendant; and
- (e) such of the following particulars as are known to the applicant:—
 - (i) the place at which the defendant resides; and
 - (ii) the age of the defendant; and
 - (iii) the place at which the defendant works; and
 - (iv) the nature of the work performed by the defendant and the works number (if any) of the defendant.

245. Form of order.

An attachment of earnings order, whether made by the Court or by a court of summary jurisdiction, shall be in Form 56.

246. Notice that order has ceased to have effect.

A notice under Section Sch. 2.12(3) of the Act shall be in Form 57.

247. Service of orders.

(1) Subject to Subsection (2), where the Court or a court of summary jurisdiction makes an attachment of earnings order, or an order varying or discharging an attachment of earnings order, the prescribed officer shall cause service of a sealed copy of the order to be effected on—

- (a) the person entitled to receive payments under the maintenance order; and
- (b) the defendant; and
- (c) the person to whom the attachment of earnings order is directed,

by properly addressing and posting (postage being prepaid) the copy, as a letter, to the person at the last place of residence of the person known to the prescribed officer, or, in the case of the person to whom the attachment of earnings order is directed, at a place of business of the person.

(2) Subsection (1) does not require service of a copy of an order to be effected on the applicant for the order.

(3) Where the prescribed officer has caused a sealed copy of an order referred to in Subsection (1) to be posted, in accordance with that subsection, to the person to whom the attachment of earnings order is directed at a place of business of the person, the copy shall be deemed to have been served on the person on the day on which the copy would, in the ordinary course of the post, be delivered at that place.

(4) Where the Court makes an order referred to in Subsection (1), the applicant for the order shall deposit with the Registrar a copy of the order for each person on whom service of a copy of the order is required by this section to be effected, being a copy that has written on it the name of the person and either the place of residence or a place of business of the person.

(5) In all courts, a certificate under the hand of the prescribed officer of a court stating that a sealed copy of an order, a copy of which is attached to the certificate, being an order of a kind referred to in Subsection (1), was posted as a letter (postage being prepaid) at a specified time, on a specified day, at a specified place and addressed to a specified person at a specified address is evidence of the facts stated and that the specified address—

(a) was, at the time of the posting, the last place of residence of the person known to the prescribed officer; or

(b) if the person is the person to whom the attachment of earnings order is directed—was, at the time of the posting, a place of business of the person.

(6) For the purposes of Subsection (5), a document purporting to be a certificate referred to in that subsection shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

248. Notice that defendant not employed.

(1) Where a person to whom an attachment of earnings order is directed is required by Section Sch. 2.8 of the Act to give notice of a matter referred to in that section, he shall furnish to the prescribed officer of the court that made the order a notice in Form 58 containing particulars of the matter, together with a copy of the notice, and the attachment of earnings order shall than be deemed to have been discharged.

(2) The prescribed officer of a court who receives a notice under Section Sch. 2.8 of the Act shall cause a copy of the notice to be addressed and posted as a letter (postage being prepaid) to the person entitled to receive payment under the maintenance order to which the attachment of earnings order relates.

249. Service of application for interpretation of order.

Where application is made to the Court under Section Sch. 2.10(1) of the Act, the applicant shall cause service of the application to be effected on each other person referred to in that subsection.

250. Practice, etc., of courts of summary jurisdiction.

(1) Subject to this Division, the practice and procedure of a court of summary jurisdiction applies to and in relation to an application to that court under Schedule 2 to the Act, and to the service, hearing and determination of such an application.

(2) Service of a summons or other appropriate document relating to an application under Section Sch. 2.10(1) of the Act shall be effected by the applicant on each other person referred to in that subsection.

Division 4.—Other Means of Enforcing Decrees.

251. Other means of enforcing decrees.

- (1) In this section, "laws" include the practice and procedure of the Court.
- (2) Subject to these Rules, laws relating to the enforcement of judgements of the Court apply to and in relation to the enforcement by the Court of a decree made under the Act.

Division 5.—Registration of Maintenance Orders in Courts of Summary Jurisdiction.

252. Registration of maintenance orders in courts of summary jurisdiction.

- (1) For the purpose of Section 88 of the Act, registration in a court of summary jurisdiction of an order for the payment of maintenance shall be effected by the clerk or other proper officer of the court entering particulars of the order in a register kept for the purpose.
- (2) A person in whose favour an order for the payment of maintenance has been made under the Act may obtain from the Registrar a certificate in Form 59 of the decree or order, which shall be signed by the Registrar and sealed with the seal of the Court.
- (3) Particulars of an order for the payment of maintenance shall not be entered in the register by the clerk or other proper officer of a court of summary jurisdiction unless—
 - (a) a certificate under Subsection (2) in relation to the order has been filed in the proper office of the court; and
 - (b) the clerk or other proper officer is satisfied, by affidavit filed in the proper office of the court—
 - (i) that a copy of the order has been duly served on the person liable to make payments under the order, or that service of a copy of the order on him has been dispensed with under Section 94(2) of the Act; and
 - (ii) that the order is not registered in any other court of summary jurisdiction; and
 - (iii) that no proceedings are pending in any court for the enforcement of the order and no writ, warrant or other process issued by a court for the enforcement of the order is in force.

253. Dealing with moneys paid into court.

- (1) Where moneys are paid into a court of summary jurisdiction under an order for the payment of maintenance that has been registered in that court under Section 88 of the Act, the clerk or other proper officer of the court shall, in his discretion—
 - (a) transmit the moneys to the court, public authority or person to which or to whom they are directed to be paid by the order; or
 - (b) pay them direct to a person who would be entitled to receive the moneys from the court, authority or person referred to in Paragraph (a) if the moneys were transmitted to that court, authority or person.
- (2) Where, under Subsection (1), the clerk or other proper officer pays moneys direct to a person in accordance with Subsection (1)(b), the clerk or other proper officer shall give notice to the court, public authority or person referred to in Subsection (1)(a) of the amount or amounts so transmitted.

(3) Where the clerk or other proper officer of a court has given notice under Subsection (2) in relation to an order for the payment of maintenance, subsequent notices under that subsection in relation to the order may be given by the clerk or other proper officer of the court at such intervals as he thinks proper.

254. Variation, discharge, etc., of order.

(1) Where an order for the payment of maintenance that is registered in a court of summary jurisdiction is discharged, varied or revived by the Court, or where the effect of such an order is modified or the operation of such an order is suspended by the Court, the Registrar shall cause written notice of the fact to be given without delay to the clerk or other proper officer of the court of summary jurisdiction.

(2) On receipt of notice under Subsection (1), the clerk or other proper officer shall cause particulars of the discharge, variation, revival, modification or suspension to be entered in the register kept by him under Section 252.

255. Cancellation of registration.

Where no proceedings for the enforcement of an order for the payment of maintenance are pending in the court of summary jurisdiction in which the order is registered and no writ, warrant or other process issued by that court for the enforcement of the order is in force, the person who caused the order to be registered in the court may request, in writing, the clerk or other proper officer of the court to cancel the registration of the order, and the clerk or other proper officer shall cancel the registration.

256. Notification of registration of maintenance order.

(1) Where an order for the payment of maintenance is registered under Section 88 of the Act in a court of summary jurisdiction, or where the registration of such an order in a court of summary jurisdiction is cancelled under Section 255, the clerk or other proper officer of the court shall cause notice of the registration or cancellation to be given without delay to the Registrar.

(2) A notice under Subsection (1) shall be in writing, signed by the clerk or officer giving the notice.

PART XVII.—PROCEEDINGS CONSEQUENT ON DECREES OF RESTITUTION OF CONJUGAL RIGHTS.

257. Interpretation of Part XVII.

In this Part—

“decree” means a decree of restitution of conjugal rights;

“petition” includes an answer by which a respondent institutes proceedings for a decree of restitution of conjugal rights;

“the petitioner”, in relation to a decree, means the party, whether the petitioner or respondent in the proceedings for the decree, in whose favour the decree is made;

“the respondent”, in relation to a decree, means the party, whether the petitioner or respondent in the proceedings for the decree, against whom the decree is made.

258. Service of copy of decree.

Where the Court makes a decree, the petitioner shall, as soon as practicable after the making of the decree, cause service of a copy of the decree to be effected on the respondent in a manner referred to in Section 57(*a*) or (*b*).

259. Notice as to home, etc.

(1) Subject to Subsection (3), where the Court has made a decree on the petition of a husband, a notice given by the petitioner to the respondent under Section 51 of the Act—

(*a*) shall specify the address of the home to which the respondent is to return to the petitioner in order to comply with the decree; or

(*b*) shall—

(i) state that the petitioner will, within a reasonable time, specified in the notice, after the respondent informs him of her intention to return home to the petitioner and of the date on and after which she will be ready to return, provide a home for the respondent to return to, and give the respondent notice of its address; and

(ii) specify an address where the respondent may communicate with the petitioner by post; or

(*c*) shall—

(i) specify the address of a home to which the respondent is to return to the petitioner in order to comply with the decree; and

(ii) specify the date on which that home will cease to be the home to which the respondent is to return to the petitioner for that purpose; and

(iii) specify an address where the respondent may communicate with the petitioner by post; and

(iv) state that, if the respondent does not return home to the petitioner before the specified date, the petitioner, within a reasonable time, specified in the notice, after the respondent informs him that she intends to comply with the decree, and of the date on and after which she will be ready to return, will—

(A) provide a home for the respondent to return to; and

(B) give the respondent notice of its address.

(2) A notice referred to in Subsection (1) shall also state that—

(*a*) if the respondent informs the petitioner of her intention to return home to the petitioner and of the date on and after which she will be ready to return; and

(*b*) if the respondent's usual place of residence at that date is more than 32 km¹ from the home to which she is to return; and

(*c*) if the respondent so requests him,

the petitioner will pay to the respondent, in advance, a reasonable sum for her expenses of returning home to the petitioner.

(3) Where the Court has, on the petition of a husband, made a decree by which the respondent is ordered to take back the petitioner and render to the petitioner conjugal rights, a notice given by the petitioner to the respondent under Section 51 of the Act shall

¹ Metricated editorially. The original distance was 20 miles.

specify an address where the respondent can communicate with the petitioner by post, and shall state that, if the respondent intends to comply with the decree, she should inform him accordingly, and that the petitioner will then return to the matrimonial home.

260. Notice by wife.

Where the Court has made a decree on the petition of a wife, the petitioner shall, as soon as practicable after the making of the decree, give to the respondent a notice specifying an address where the respondent can communicate with the petitioner by post, and stating that, if the respondent intends to comply with the decree, he should inform her of the manner in which he intends to comply with the decree.

261. Cancellation and variation of notices.

(1) A notice under Section 51 of the Act or under Section 260 that has been served on the respondent remains in force until it is cancelled by a written notice served on the respondent.

(2) At any time while a notice under Section 51 of the Act or under Section 260 is in force, a petitioner may serve on the respondent a notice cancelling the notice, and shall do so if—

- (a) the home, the address of which is specified in the notice, ceases to be the home to which the respondent is to return to the petitioner; or
- (b) the address specified in the notice as the address where the respondent may communicate with the petitioner by post ceases to be an appropriate address for that purpose.

(3) Where a petitioner specifies, in a notice under Section 51 of the Act, the date on which a specified home will cease to be the home to which the respondent is to return to the petitioner for the purpose of complying with a decree, Subsection (2) shall not be taken to require the petitioner to cancel the notice on its ceasing, on that date, to be the home to which the respondent is to return for that purpose.

(4) Where, within a period of 12 months after service of a copy of a decree is effected on the respondent under Section 258, the petitioner cancels a notice under Section 51 of the Act or under Section 260, the petitioner shall serve on the respondent, at the same time, a further notice under that section.

(5) The further notice under Subsection (4) may be included in the notice cancelling the previous notice, or may be a separate notice.

262. Service of notice as to home.

A notice under Section 51 of the Act or under Section 260 or 261 shall be served on the respondent in a manner referred to in Section 57(a) or (b).

263. Conduct money.

(1) Where—

- (a) the respondent, being the wife, named in a decree informs the petitioner of her intention to return home to him and of the date on and after which she will be ready to return; and
- (b) the usual place of residence of the respondent at that date is more than 32 km¹ from the home to which the respondent is to return; and

¹ Metricated editorially. The original distance was 20 miles.

(d) the respondent so requests the petitioner, the petitioner shall pay to the respondent, in advance, a reasonable sum of money for her expenses of returning home to the petitioner.

(2) Where a petitioner has paid moneys to his wife under Subsection (1) and the wife fails to comply with the decree within a reasonable time after the payment of the moneys, the moneys are a debt due and payable by the wife to the petitioner.

PART XVIII.—REGISTRAR AND THE REGISTRY.

Division 1.—Powers of Registrar.

264. Power of Registrar to summon witnesses, etc.

(1) At the request of a party to an application to the Registrar, the Registrar may summon a person to attend before him at a time and place specified in the summons and then and there to give evidence and to produce any books or documents in his custody or control that he is required by the summons to produce.

(2) A summons under Subsection (1) shall be in Form 60.

(3) Service of a summons under Subsection (1) shall be effected on a person by serving a copy of the summons on him in the manner referred to in Section 57(a), and by showing the summons to him at the time when service of the copy is effected on him.

(4) A person who has been summoned to attend before the Registrar as a witness shall appear and report himself at the time and place specified in the summons and then from day to day, unless excused by the Registrar.

265. Arrest of witness failing to attend.

(1) If a person who has been summoned to attend before the Registrar fails to attend before the Registrar as required by Section 264(4), the Registrar, on being satisfied that the summons has been duly served and that reasonable expenses have been paid or tendered to the person, may bring the failure to the notice of a Judge who, if he thinks fit, may, without any application being made to him, issue a warrant under his hand for the arrest of the person.

(2) A warrant under Subsection (1) authorizes the arrest of the person concerned and his being brought before the Registrar, and his detention in custody for that purpose until he is released by order of the Court or the Registrar.

(3) A warrant under Subsection (1) may be executed by a member of the Police Force, by the Sheriff or an officer of the Sheriff or by any person to whom it is addressed, and the person executing it may break and enter any place, building or vessel for the purpose of executing the warrant.

(4) The arrest of a person under this section does not relieve him from any liability incurred by him by reason of his failure to attend before the Registrar.

266. Witness' fees.

(1) A person who, in obedience to a summons, attends as a witness before the Registrar is entitled to be paid witness' fees and travelling allowances according to the scale of fees and allowances payable to witnesses in the Court or, in special circumstances, such fees and allowances as the Registrar directs (less any amount previously paid to him for his expenses of attendance).

(2) The fees and allowances are payable by the person at whose request the witness was summoned.

267. Power to examine on oath, etc.

The Registrar may administer an oath to a person appearing as a witness before him, whether the witness has been summoned or appears without being summoned, and the witness may be examined on oath.

268. Failure to answer questions.

(1) If a person appearing before the Registrar as a witness refuses to answer, or fails to answer to the satisfaction of the Registrar, any question that the Registrar puts, or allows to be put, to him, the Registrar may report the refusal in a summary way to the Court, and on the report being made to the Court the person may be dealt with by the Court as if the question had been put to the person by it and the person had refused to answer the question or had made to it the answer to the question that he had made to the Registrar, as the case may be.

(2) A report of the Registrar under Subsection (1) shall be in writing, in Form 61, and shall state the question put to the witness and the answer (if any) to the question made by the witness, and may refer to any other evidence before the Registrar.

(3) Where the Registrar decides to report to the Court the refusal or failure of a witness to answer a question, the Registrar shall inform the witness, before the conclusion of his examination, of the day on which, and time and place at which, the report of the Registrar will be made to the Court.

269. Representation by lawyer.

(1) At the hearing of an application made under these Rules to the Registrar, the parties to the application are each entitled to be represented by a lawyer.

(2) A lawyer appearing before the Registrar on behalf of a party may examine or cross-examine witnesses, and may address the Registrar.

270. Protection of Registrar, etc.,

(1) In the performance of his duties in connexion with the hearing and determination of an application to him under these Rules, the Registrar has the same protection and immunity as a Judge.

(2) A lawyer appearing before the Registrar has the same protection and immunity as a lawyer has in appearing for a party in proceedings in the Court.

(3) Where a party who is not represented by a lawyer appears before the Registrar, the party has the same protection and immunity as a party to proceedings in the Court has in appearing before the Court when not so represented.

(4) A witness summoned to attend or appearing before the Registrar has the same protection as a witness in proceedings in the Court.

271. Submission of doubtful matters to Court.

(1) If, before or after the Registrar has given his decision on an application made to him under these Rules, a matter arises that the Registrar and a party to the application wish to have determined by the Court, the Registrar shall—

(a) state the matter in writing for the opinion of the Court; and

(b) refer the matter so stated for hearing and determination by the Court.

(2) Where a matter is referred to the Court under Subsection (1), the Registrar may give directions with respect to the giving of notice of the day on which, and time and place at which, the matter will be heard by the Court to the parties to the application who have an address for service for the purpose of the proceedings to which the application relates, and the parties shall comply with any such directions.

(3) Where a matter referred to the Court under Subsection (1) is heard and determined by the Court, the Court may dispose of the matter or refer it back to the Registrar with such directions as it thinks proper.

Division 2.—Appeals from Registrar.

272. Review of decision of Registrar.

(1) Where the Registrar hears and determines an application made to him under these Rules, a party to the application who is aggrieved by the decision of the Registrar may, within 10 days after the decision is given, file a request in Form 62 for a review of the decision by the Court.

(2) A party to an application who files a request under Subsection (1) shall, unless the application was made to the Registrar *ex parte*, cause service of a notice of hearing, in Form 63, to be effected, as soon as practicable after the request is filed, on each other party to the application who has an address for service.

(3) The review by the Court of a decision of the Registrar shall be by way of re-hearing, and the Court may, in its discretion, permit evidence other than evidence that was before the Registrar to be given on the re-hearing.

(4) On the review of a decision of the Registrar, the Court may affirm, reverse or vary the decision, and may make such order as, in the opinion of the Court, ought to be made in all the circumstances.

Division 3.—The Registry.

273. Seal of the Court.

(1) In these Rules, a reference to the seal of the Court shall be read as a reference to the seal used by the Court in the exercise of its matrimonial causes jurisdiction.

(2) Where the Registrar has in his custody a stamp the design of which is, as nearly as practicable, the same as the design of the seal of the Court, a document or copy of a document required, for the purpose of any proceedings, to be sealed with the seal of the Court, may be marked with the stamp.

(3) A document or copy of a document marked with a stamp referred to in Subsection (2) is as valid and effectual as if it had been sealed with the seal of the Court.

(4) All courts exercising jurisdiction under the Act shall take judicial notice of the mark of a stamp referred to in Subsection (2) affixed on a document or copy of a document relating to proceedings and shall presume, in the absence of proof to the contrary, that it was affixed by proper authority.

274. Sealing of documents.

(1) Where a person requires a sealed document or a sealed copy of a document for the purpose of any proceedings, he may prepare the document or a copy of the document and present it for sealing to the Registrar.

(2) If it appears that a document presented under Subsection (1) is in proper form, or that the copy is a true copy of the document, as the case may be, and that the person presenting it for sealing does require the document or copy to be sealed for the purpose of proceedings, the Registrar shall cause it to be sealed with the seal of the Court.

275. Date of filing.

The Registrar shall cause the date of filing to be written on each pleading or other document that is filed.

276. Indexes.

Proper indexes to the files or bundles of documents filed in an office of the Court shall be kept so that they may conveniently be referred to when required.

277. Divorce Proceedings Book.

(1) In this section, "suit" has the same meaning as in Part XI.

(2) At each office of the Court a record, to be called the Divorce Proceedings Book, shall be kept of all matrimonial causes instituted at that office.

(3) Subsection (2) does not apply to or in relation to—

- (a) a matrimonial cause instituted before the commencement date; or
- (b) a matrimonial cause instituted after the commencement date in relation to a matrimonial cause instituted before that date.

(4) The Divorce Proceedings Book shall show, in relation to each suit, the date on which—

- (a) each pleading is filed for the purpose of the suit; and
- (b) an application is made to the Court or to the Registrar in relation to the suit; and
- (c) a decree or order is made on the determination of the suit, of any proceedings included in the suit or of such an application.

278. Records of Court.

A document filed in the office of the Court is a record of the Court and shall not, without the permission of a Judge, be removed from the office of the Court except for use by the Court, a Judge or an officer of the Court.

279. Searches.

(1) Subject to these Rules, a party to any proceedings, the Principal Legal Adviser and, in special circumstances, a person who satisfies the Registrar that he has good reason for doing so or obtains the permission of a Judge to do so may, on furnishing to the Registrar sufficient particulars and (with the exception of the Principal Legal Adviser) after paying the appropriate fee, cause a search to be made for an entry in the Divorce Proceedings Book or for a document that has been or might have been filed for the purpose of any proceedings, and to receive a certificate of the result of the search.

(2) Subject to these Rules, a person who has, under this section, caused a search to be made for an entry in the Divorce Proceedings Book is entitled to inspect any document filed for the purpose of any proceedings to which the entry relates, and a person who has caused a search to be made for a document is entitled, if the document has been filed, to inspect the document.

(3) In this section, a reference to the Principal Legal Adviser shall be read as including a reference to a person to whom he has, by a delegation under Section 67 of the Act that is in force, delegated any of his powers and functions under Part VI. of the Act.

PART XIX.—FEES.

280. Fees.

The fees specified in Schedule 2 are payable in respect to the matters in relation to which they are specified.

281. Payment of fees.

Subject to this Part, a pleading, application or other document shall not be filed, issued or otherwise dealt with, and any other thing shall not be done, in the Court or by an officer of the Court unless the fee (if any) payable on or in respect of filing, sealing, issuing or otherwise dealing with the pleading, application or document, or on or in respect of the doing of the matter or thing, has been paid, or an undertaking to pay the fee has been given to the Court or to the officer, as the case may be.

282. Marking of fees.

The proper officer of the Court shall, immediately on the payment of a fee on or in respect of a document, or in respect of filing, issuing, sealing or otherwise dealing with a document, mark on the document the amount of the fee paid and the date of payment.

283. Disputed fees.

If a question arises as to which (if any) of the prescribed fees is applicable in a particular case, the question shall be determined by the Registrar, but a person affected by the determination of the Registrar may have the decision reviewed in accordance with Section 272.

284. Remission of fees.

In a particular case and for special reasons, the Court or the Registrar may direct—

- (a) that a fee shall not be taken, or that part only of a fee shall be taken, or, if taken, that the whole or a part of the fee be remitted; or
- (b) that the payment of the whole or a part of a fee be postponed until such time, and on such conditions (if any) as the Court or Registrar thinks proper.

PART XX.—EFFECT OF NON-COMPLIANCE WITH RULES OR ORDER.

285. Application of Part XX.

In this Part, a reference to proceedings shall be read as including a reference to a step in proceedings.

286. Effect of non-compliance.

Subject to these Rules, non-compliance with these Rules does not make any proceedings void unless the Court so directs, but the proceedings may be set aside, wholly or in part, as irregular, or may be amended or otherwise dealt with in such manner and on such terms as the Court thinks proper.

287. Relief from non-compliance.

Subject to the Act and these Rules—

- (a) the Court may, at any time, on such terms as it thinks proper, relieve a party from the consequences of non-compliance with these Rules, or with an order made by the Court or the Registrar; and
- (b) the Registrar may, at any time, on such terms as he thinks proper, relieve a party to an application to the Registrar from the consequences of non-compliance with these Rules in relation to the application, or with an order made by the Registrar in relation to the application.

288. Application to set aside for irregularity.

(1) An application to set aside any proceedings for irregularity shall not be allowed—

- (a) if the application is not made within a reasonable time; or
- (b) if the party making the application has taken a relevant step after knowledge of the irregularity.

(2) Nothing in Subsection (1) prevents the Court from exercising, of its own motion, any of the powers conferred on it by Section 286 or 287.

(3) Where application is made to set aside any proceedings for irregularity, the objections intended to be relied on shall be stated in the application.

PART XXI.—PROCEEDINGS FOR JACTITATION OF MARRIAGE, DECLARATIONS, ETC.

Division 1.—Application.

289. Application of Part XXI.

(1) This Part applies to and in relation to—

- (a) proceedings for a decree of jactitation of marriage; and
- (b) proceedings for a decree of nullity of a void marriage instituted by a person who is not a party to the marriage; and
- (c) proceedings for a declaration or order of a kind referred to in Paragraph (b) of the definition “matrimonial cause” in Section 1(1) of the Act; and
- (d) proceedings that constitute a matrimonial cause and relate to any proceedings referred to in Paragraph (a), (b) or (c),

and, to the extent and in the manner provided in this Part but not otherwise, these Rules, other than this Part, apply to and in relation to any such proceedings.

(2) Where—

- (a) a party to a marriage institutes, by petition, proceedings for a decree of dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights, and also institutes, by the same petition, proceedings for a declaration or order of a kind referred to in Paragraph (b) of the definition “matrimonial cause” in Section 1(1) of the Act; and
- (b) no persons other than the parties to the marriage are parties to the last-mentioned proceedings,

these Rules, other than this Part, apply in addition to this Part to and in relation to the last-mentioned proceedings and to any other proceedings that constitute a matrimonial cause and relate to them.

Division 2.—Petitions for Jactitation of Marriage.

290. Form of petition.

A petition for a decree of jactitation of marriage shall be in Form 64.

291. Contents of petition.

(1) A petition for a decree of jactitation of marriage shall state—

- (a) the dates on which, and the times and places at which, the respondent is alleged to have boasted and asserted that a marriage had taken place between the petitioner and the respondent; and
- (b) particulars of the boastings and assertions.

(2) A petition for a decree of jactitation of marriage shall state that the petitioner is not married to the respondent and that the petitioner has not acquiesced in the alleged boastings and assertions.

Division 3.—Petitions for Declarations, etc.

292. Application of Division 3.

This Division applies to—

- (a) proceedings for a decree of nullity of a void marriage instituted by a person who is not a party to the marriage; or
- (b) proceedings for a declaration or order of a kind referred to in Paragraph (b) of the definition "matrimonial cause" in Section 1(1) of the Act.

293. Form of petition and parties to petition.

(1) A petition instituting proceedings to which this Division applies shall be in Form 65.

(2) Subject to Subsection (3) and to any order made by the Court in a particular case, a petitioner instituting proceedings to which this Division applies shall make each other person affected by the proceedings a respondent to the proceedings.

(3) Where persons included in a class of persons are affected by proceedings to which this Division applies, and the Court is satisfied that it is expedient by reason of the difficulty in ascertaining the persons who are included in that class of persons or for the purpose of saving expense, the Court may, by order, appoint a person or persons included in that class of persons to represent all the persons included in the class.

(4) An order under Subsection (3) may be made on the trial of the proceedings to which the order relates.

294. Contents of petition.

(1) A petition instituting proceedings of a kind referred to in Section 292(a) shall comply with such of the provisions of Divisions V.1 and V.3 as are applicable to petitions for a decree of nullity of a void marriage and to the circumstances of the particular case.

(2) A petition for a declaration or order of a kind referred to in Paragraph (b) of the definition "matrimonial cause" in Section 1(1) of the Act shall—

- (a) specify the declaration or order that the petitioner is seeking; and

- (b) set out, in as concise a form as the nature of the case allows, the facts, but not the evidence by which the facts are to be proved, on which the Court will be asked to make the declaration or order.

295. Application of Rules.

(1) Subject to this Part, these Rules apply, as far as practicable and with the necessary modifications, to and in relation to proceedings to which this Division applies in like manner as they apply to proceedings for a decree of a kind referred to in Paragraph (a) of the definition "matrimonial cause" in Section 1(1) of the Act.

(2) The provisions of these Rules that apply to and in relation to proceedings of a kind referred to in Paragraph (c) or (d) of the definition "matrimonial cause" in Section 1(1) of the Act that relate to proceedings of a kind referred to in Paragraph (a) of that definition apply, as far as practicable and with the necessary modifications, to and in relation to proceedings of a kind referred to in Paragraph (c) or (d) of that definition that relate to proceedings to which this Division applies.

PART XXII.—MISCELLANEOUS.

296. Consent orders.

These Rules do not prevent the Court or the Registrar, as the case may be, from making with the consent of the parties to any proceedings and in accordance with the practice of the Court, an order (not including an order of a kind referred to in Paragraph (a) or (b) of the definition "matrimonial cause" in Section 1(1) of the Act) determining the proceedings or relating to the proceedings.

297. Ex parte application for order to restrain.

(1) Where the Court is satisfied that a party who has instituted proceedings for an order under Section 93 of the Act would be seriously prejudiced if the hearing and determination of the proceedings were delayed until after service of the petition or application instituting the proceedings had been effected on another party to the proceedings, the Court may hear and determine the proceedings or make such order in relation to the proceedings as it thinks proper, notwithstanding that any party has not been served with the petition or application.

(2) Where the Court has made an order under Subsection (1), whether or not it determines the proceedings, a person who is affected by the order and who had not been served with the petition or application instituting the proceedings may make application to the Court to set aside or vary the order.

298. Extension of time.

(1) On application made by a party to any proceedings, or by a person entitled to intervene in any proceedings under Section 33(2) of the Act or under these Rules, the Court or the Registrar may extend the time limited by these Rules, or fixed by an order made by the Court or the Registrar, for doing an act or taking a step in any proceedings.

(2) Application under Subsection (1) may be made whether or not the time limited for the doing of the act or the taking of the step has expired.

(3) Subject to Subsection (4), an extension of time may be granted under Subsection (1) on such conditions as the Court or Registrar thinks proper.

(4) Unless the Court otherwise orders, the costs of an application under Subsection (1) shall be borne by the applicant.

(5) An application under Subsection (1) may be made orally to the Court on the trial of proceedings by the Court, or to the Registrar on the hearing of an application by the Registrar.

(6) The time limited for doing an act or taking a step in proceedings may be extended by consent, in writing, without application to the Court or Registrar.

299. Form of documents.

(1) A pleading, application, affidavit, deposition, certificate, decree, notice or other document required or allowed by these Rules to be filed or delivered to or served on a person for use in or in connexion with proceedings shall, unless the nature of the document renders it in any respect impracticable or these Rules otherwise provide—

- (a) be legibly and clearly typewritten or printed, without blotting, erasure or such alterations as cause material disfigurement; and
- (b) have a space of not less than 6mm¹ between each line; and
- (c) be on white International A4 size paper of good and durable quality and capable of receiving ink writing; and
- (d) be on one side only of the paper with a quarter margin on the left hand side of each sheet; and
- (e) be folded lengthwise; and
- (f) have each page numbered; and
- (g) have a backsheet on which appears—
 - (i) the number and short title of the proceedings; and
 - (ii) a short description of the document; and
 - (iii) the name, address and telephone number of the lawyer (if any) filing, delivering or serving the document or, if the person on whose behalf the document is filed, delivered or served is not represented by a lawyer, the name, address for service and telephone number (if any) of that person.

(2) A typewritten copy of a document to which Subsection (1) applies shall not be filed unless it is a first black ink copy.

300. Copies of affidavits on ex parte applications.

(1) Where, on an ex parte application, an order is made by the Court or Registrar against, or affecting the rights of, a person, the person may request, in writing, the applicant or his lawyer to furnish him with a copy of each affidavit filed in support of the application.

(2) On receipt of a request under Subsection (1) and on payment of the proper charges, the party who made the application shall furnish a copy of each affidavit filed in support of the application to the person who made the request.

301. Change of lawyer.

(1) A party to any proceedings who is represented in the proceedings by a lawyer may change his lawyer without an order for the purpose on filing notice of the change and serving a copy of the notice on each other party to the proceedings who has an address for service for the purpose of the proceedings, and on his former lawyer.

¹ Metricated editorially. The original measurement was 1/4".

(2) Until a notice is filed and copies are served in accordance with Subsection (1), the former lawyer shall be considered lawyer of the party.

(3) A notice under Subsection (1) shall be signed by the new lawyer for the party, and shall state his place of business, and the address for service of the party for the purpose of the proceedings.

(4) The address stated as the party's address for service shall be not more than 8km¹ from the office of the Court in which the notice is filed, and, subject to that requirement, may be the address of the new lawyer for the party or of a lawyer acting as the agent of that lawyer.

302. Notice of appointment of lawyer.

(1) Where a party to any proceedings who is not represented by a lawyer appoints a lawyer to represent him in the proceedings, the party may, personally or by his lawyer, give notice of the appointment.

(2) The provisions of Section 301 relating to a notice of change of lawyer, to service of such a notice and to the stating of an address for service in such a notice apply, with the necessary modifications, in the case of notice of appointment of a lawyer.

303. Notice of intention to act in person.

(1) Where a party to any proceedings who is represented by a lawyer intends to act in person in the proceedings, the party may give notice as to his intention to act in person.

(2) The provisions of Section 301 relating to a notice of change of lawyer, to service of such a notice and to the stating of an address for service in such a notice apply, with the necessary modifications, in the case of a notice of intention to act in person.

304. Lawyer ceasing to act.

(1) Where—

(a) the address for service of a party to proceedings is the address of a lawyer who has represented, but is no longer representing, the party in the proceedings; and

(b) the lawyer has served on the party a notice in Form 66 signed by him personally, and a period of not less than seven days has elapsed after service of the notice; and

(c) the party has not, since the lawyer ceased, or last ceased, to represent him in the proceedings, filed a notice under Section 301 or 303,

the lawyer may file a notice in Form 67 of his having ceased to represent the party.

(2) Where a lawyer who has represented a party files a notice under Subsection (1), he shall, on the day on which the notice is filed or on the next following day, cause a copy of the notice to be served on each other party who has an address for service.

(3) Where a lawyer who has represented a party in any proceedings has duly complied with Subsection (1), the party may give notice, in accordance with these Rules, that he is represented by a lawyer or that he intends to act in person and, in default of his doing so, shall be deemed not to have an address for service for the purpose of the proceedings.

¹ Metricated editorially. The original distance was 5 miles.

305. Acting for adverse parties.

A lawyer shall not represent any two or more parties having adverse interests in the proceedings.

306. Disallowance of costs, etc.,

(1) The Court may, at the trial of a matrimonial cause or an application to the Court, whether or not objection is taken, direct—

(a) any costs which have been improperly, unnecessarily or negligently incurred to be disallowed; or

(b) the Registrar to examine the costs incurred, and to disallow such costs as he finds to have been improperly, unreasonably or negligently incurred.

(2) A party whose costs are disallowed under Subsection (1) shall pay to the other parties the costs incurred by them in relation to the matter in respect of which his costs have been disallowed.

SCHEDULES.

SCHEDULE 1.

Rules, Sec. 8(2)(b).

Form 1.

NOTICE OF ADDRESS FOR SERVICE.

(Title)

The address for service of the abovenamed _____ is

Dated _____ 19 .

Lawyer for the
(Address of lawyer for party.)

To the petitioner and to

Rules, Sec. 8(3).

Form 2.

NOTICE OF CHANGE OF ADDRESS FOR SERVICE.

(Title)

The address for service of the abovenamed _____ will on _____ 19 , be changed to

Dated _____ 19 .

Lawyer for the
(Address of lawyer for party.)

To

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Rules, Sec. 10(2).

Form 3.

CERTIFICATE RELATING TO RECONCILIATION.

I, (*full name of lawyer*), certify that I am the lawyer representing the petitioner (*or as the case may be*) and that I have (*or my partner has or the clerk in my office having charge of these proceedings has*) brought to the attention of the petitioner (*or respondent*) the provisions of the *Matrimonial Causes Act* relating to reconciliation of the parties to a marriage and the approved marriage guidance organizations reasonably available to assist in effecting a reconciliation between the petitioner and the respondent and have (*or has*) discussed with the petitioner (*or respondent*) the possibility of a reconciliation between the petitioner and the respondent being effected with or without the assistance of such an organization.

Dated 19 .

Lawyer for the

Rules, Sec. 10(2).

Form 4.

CERTIFICATE RELATING TO RECONCILIATION.

I, (*full name of lawyer*) certify—

- (a) that I am the lawyer representing the petitioner (*or as the case may be*); and
- (b) that I believe that the petitioner (*or respondent*) is outside Papua New Guinea; and
- (c) that I have been informed by (*full name*), a legal practitioner carrying on practice at (*full address*) that he (*or his partner or a clerk in his office*) has brought to the attention of the petitioner (*or respondent*) the provisions of the *Matrimonial Causes Act* relating to reconciliation of the parties to a marriage and the approved marriage guidance organizations reasonably available to assist in effecting a reconciliation between the petitioner and the respondent and has discussed with the petitioner (*or respondent*) the possibility of a reconciliation between the petitioner and the respondent being effected with or without the assistance of such an organization.

Dated 19 .

Lawyer for the

Rules, Sec. 12(1).

Form 5.

TITLE OF PROCEEDINGS.

Matrimonial Causes Act.

In the National Court of Papua New Guinea.

No. of 19 .

Between Petitioner (*or Applicant*)
Respondent and Co-respondent
(*or as the case may be*)

APPLICATION TO COURT OR REGISTRAR.

(Title)

Application is made to the Court (or the Registrar) on behalf of the _____ for (set out the order sought).

This application has been set down for hearing by the Court (or Registrar) at the National Court, _____, (or as the case may be) on _____ 19____, at the hour of _____ a.m./p.m., or as soon afterwards as the course of business permits (or on a date and time to be fixed by the Registrar).

Dated _____ 19____.

Laywer for the _____

This application is filed by _____ on behalf of the _____ whose address for service is _____

It is intended to effect service of this application on _____ and _____

PETITION FOR DECREE OF DISSOLUTION OF MARRIAGE, NULLITY OF MARRIAGE OR JUDICIAL SEPARATION.

(Title)

To the National Court.

The petitioner, whose address is _____ and whose occupation is _____ petitions the Court for a decree of _____ against the respondent, whose address is _____ and whose occupation is _____, on the ground of _____

MARRIAGE.

1. The petitioner, then a (conjugal condition), was lawfully married to (or went through a ceremony of marriage with) the respondent, then a (conjugal condition), at _____ on _____ 19____, according to the rites of the _____ Church.

2. The surname of the _____ immediately before the marriage (or purported marriage) was _____

3. (Insert any particulars required by Section 25(2) or (3) of the Rules.)

BIRTH OF PETITIONER AND RESPONDENT.

4. The petitioner was born at _____ on _____ 19____, and the respondent was born at _____ on _____ 19____.

5. (Insert any particulars required by Section 26(2) of the Rules.)

DOMICILE OR RESIDENCE.

6. The petitioner is domiciled (or resident), within the meaning of the Act, in Papua New Guinea. The facts on which the Court will be asked to find that the petitioner is so domiciled (or resident) are as follows :—

COHABITATION.

7. Particulars of the places at which and periods during which the petitioner and the respondent have cohabited are as follows:—

or

7. The petitioner and respondent have never cohabited.

8. The date on which and the circumstances in which cohabitation between the petitioner and respondent ceased (or last ceased) are as follows :—

(Leave out if the petitioner and respondent have never cohabited.)

CHILDREN.

9. There are no children to whom Section 29 of the Rules applies.

or

9. Particulars relating to the children to whom Section 29 of the Rules applies are as follows :—

PREVIOUS PROCEEDINGS.

10. Since the marriage (or ceremony of marriage) there have not been any previous proceedings in a court between the petitioner and the respondent.

or

10. The following are particulars of previous proceedings between the petitioner and the respondent since the marriage (or ceremony of marriage) :—

11. Since the marriage (or ceremony of marriage) there have not been any proceedings, instituted otherwise than between the parties to the marriage, concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of the marriage.

or

11. The following are particulars of proceedings that have been instituted since the marriage (or ceremony of marriage), otherwise than between the parties to the marriage, concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of the marriage :—

FACTS.

12. The facts relied on by the petitioner as constituting the ground (or each ground) specified above are as follows :—

CONDONATION, CONNIVANCE AND COLLUSION.

(Leave out in the case of a petition for nullity of marriage.)

13. The petitioner has not condoned or connived at the ground (or any of the grounds) specified above, and is not guilty of collusion in presenting this petition.

or

13. The petitioner has not connived at the ground (or any of the grounds) specified above, and is not guilty of collusion in presenting this petition; the following facts are furnished in relation to condonation :—

PROPOSED ARRANGEMENTS FOR CHILDREN.

(Leave out if Section 38 of the Rules does not apply.)

14. *(State the matters required by Section 38 of the Rules.)*

MAINTENANCE AND SETTLEMENT OF PROPERTY.

(Leave out if no order for maintenance or settlement of property is sought.)

15. *(Set out the particulars required by Section 193 of the Rules.)*

EXERCISE OF COURT'S DISCRETION.

(Leave out if Section 37 of the Rules does not apply.)

16. The Court will be asked to make a decree notwithstanding the facts and circumstances set out in the discretion statement filed with this petition.

OTHER MATTERS.

(In the succeeding paragraphs set out any additional matters, including any matters required or permitted to be stated by virtue of Section 39, 45 or 193 of the Rules.)

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ORDERS SOUGHT.

17. The petitioner seeks the following orders:—

- (a) A decree of _____ on the ground of _____
(In the following paragraphs set out each order sought.)
(b)

This petition was settled by (name of lawyer).

Lawyer for the petitioner.

Filed on _____ 19 ____ by _____ on behalf of the petitioner, whose address for service is _____

Rules, Sec. 49.

Form 8.

PETITION FOR DECREE OF RESTITUTION OF CONJUGAL RIGHTS.

(Title)

To the National Court.

The petitioner, whose address is _____ and whose occupation is _____, petitions the Court for a decree of restitution of conjugal rights against the respondent, whose address is _____ and whose occupation is _____

MARRIAGE.

1. The petitioner, then a (conjugal condition), was lawfully married to the respondent, then a (conjugal condition), at _____ on _____ 19 ____, according to the rites of the Church.
2. The surname of the _____ immediately before the marriage was _____
3. (Insert any particulars required by Section 25(2) or (3) of the Rules.)

BIRTH OF PETITIONER AND RESPONDENT.

4. The petitioner was born at _____ on _____ 19 ____, and the respondent was born at _____ on _____ 19 __.
5. (Insert any particulars required by Section 26(2) of the Rules.)

DOMICILE OR RESIDENCE.

6. The petitioner is domiciled (or resident), within the meaning of the Act, in Papua New Guinea. The facts on which the Court will be asked to find that the petitioner is so domiciled (or resident) are as follows:—

COHABITATION.

7. Particulars of the places at which and periods during which the petitioner and the respondent have cohabited are as follows:—

or

7. The petitioner and respondent have never cohabited.
8. The date on which and circumstances in which cohabitation between the petitioner and respondent ceased (or last ceased) are as follows:—
(Leave out if the petitioner and respondent have never cohabited.)

CHILDREN.

9. There are no children to whom Section 29 of the Rules applies.

or

9. Particulars relating to the children to whom Section 29 of the Rules applies are as follows:—

PREVIOUS PROCEEDINGS.

10. Since the marriage there have not been any previous proceedings in a court between the petitioner and the respondent.

or

10. The following are particulars of previous proceedings between the petitioner and the respondent since the marriage :—

11. Since the marriage there have not been any proceedings, instituted otherwise than between the parties to the marriage, concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of the marriage.

or

11. The following are particulars of proceedings that have been instituted since the marriage, otherwise than between the parties to the marriage, concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of the marriage :—

FACTS.

12. The respondent still refuses to cohabit with, and render conjugal rights to, the petitioner who sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent.

13. (Set out the particulars required by Section 50(1)(b) of the Rules.)

OTHER MATTERS.

(If proceedings for ancillary relief within the meaning of Part XIV. of the Rules are instituted by the petitioner, set out in the succeeding paragraphs any further matters stated in relation to those proceedings.)

ORDERS SOUGHT.

14. The petitioner seeks the following orders :—

(a) A decree of restitution of conjugal rights.

(In the following paragraphs set out each other order sought.)

(b)

This petition was settled by (name of lawyer).

Lawyer for the petitioner.

Filed on
for service is.

19 by

on behalf of the petitioner, whose address

Rules, Sec. 52.

Form 9.

NOTICE OF PETITION.

(Title)

To (full name and address of respondent).

1. A petition has been presented to the abovenamed Court by (full name and address of petitioner) instituting proceedings for a decree of _____ and also seeking orders with respect to _____

2. A sealed copy of the petition is delivered to you with this notice.

3. If you intend to consult a lawyer in connexion with the proceedings, you should take to him all the documents delivered to you.

4. The form of Acknowledgment of Service delivered to you with this notice should be completed and signed by you, and either you or your lawyer should immediately return it to the petitioner's lawyer. A stamped and addressed envelope is delivered to you for that purpose.

(Leave out this paragraph if service is not to be effected by post.)

5. If you desire—

(a) to deny any facts alleged in the petition; or

(b) to allege any additional facts for the consideration of the Court; or

(d) to submit to the Court that it should dismiss any of the proceedings instituted by the petitioner; or

(d) to make any other submissions to the Court,

you should file an answer to the petition.

6. If you wish to institute proceedings for dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal rights, you may do so in an answer to the petition filed by you. If you institute proceedings for dissolution of marriage on the ground that the petitioner has committed adultery, you may also, by the answer, institute proceedings for damages in respect of the adultery.

7. If you wish to institute proceedings for the purpose of seeking an order with respect to maintenance for yourself, a settlement, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, you should do so by filing an answer to the petition. If you fail to do so, you will have to obtain the leave of the Court to institute the proceedings.

8. If you do not wish to file an answer but wish to receive a copy of each document filed in connexion with the proceedings, you should file a notice of address for service. Unless you file an answer, you will not, without the leave of the Court, be entitled to give evidence to the Court, or address the Court, at the trial of the proceedings, and the Court may hear and determine the proceedings in your absence.

9. Any answer or notice of address for service filed by you must be filed within _____ days after you receive this notice or within such extended period as the petitioner or the Registrar allows, and service of a copy of the answer or notice must be effected in accordance with the *Matrimonial Causes Rules*.

Dated

19 .

For the Registrar,
Clerk of the National Court.

Rules, Sec. 52.

Form 10.

NOTICE OF PROCEEDINGS.

(Title)

To (full name and address of co-respondent, party cited or person named in the petition or answer, as the case may be).

1. (Full name and address of petitioner or respondent, as the case may be) has, by a petition (or answer), instituted proceedings for a decree of _____ alleging that (full name of respondent or petitioner, as the case may be) committed adultery (or rape or sodomy) with (or on) you. The petitioner (or respondent) is also seeking orders for (set out particulars of any orders for damages or costs sought against the person to whom the notice is addressed).

2. A sealed copy of the petition (or answer) is delivered to you with this notice.

3. If you intend to consult a lawyer in connexion with the proceedings, you should take to him all the documents delivered to you.

4. The form of Acknowledgment of Service delivered to you with this notice should be completed and signed by you, and either you or your lawyer should immediately return it to the petitioner's (or respondent's) lawyer. A stamped and addressed envelope is delivered to you for that purpose.

(Leave out this paragraph if service is not to be effected by post.)

5. If you desire—

(a) to deny any facts alleged in the petition (or answer) or to allege any additional facts for the consideration of the Court, being facts material to proceedings instituted by the petition (or answer) to which you are a party (or in which you are entitled to intervene); or

(b) to submit to the Court that it should dismiss any such proceedings; or

(c) to make any other submissions to the Court,

you should file an answer to the petition (or reply to the answer).

6. If you do not wish to file an answer (or reply) but wish to receive a copy of each document filed in connexion with the proceedings to which you are a party, you should file a notice of address for

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service. Unless you file an answer (or reply), you will not, without the leave of the Court, be entitled to give evidence to the Court, or address the Court, at the trial of the proceedings, and the Court may hear and determine the proceedings in your absence.

7. Although you are not joined in the proceedings as a party, you are entitled to intervene in the proceedings, and may do so by filing an answer to the petition (or reply to the answer).

(Leave out this paragraph if the person to whom the notice is addressed is a party to the proceedings.)

8. Any answer (or reply) or notice of address for service filed by you must be filed within days after you receive this notice or within such extended period as the petitioner (or respondent) or the Registrar allows, and service of a copy of the answer (or reply) or notice must be effected in accordance with the Matrimonial Causes Rules.

Dated 19

For the Registrar,
Clerk of the National Court.

Rules, Sec. 52.

Form 11.

NOTICE OF PROCEEDINGS.

(Title)

To (full name and address of person), a parent of (full name and address of infant) (or an adult person with whom is residing or an adult person specified by the Court (or Registrar) in an order dated 19 as the person to be served with a sealed copy of the petition (or answer) in order that due service of the petition (or answer) may be effected on

1. (Full name and address of petitioner or respondent, as the case may be) has, by a petition (or answer), instituted proceedings against (full name and address of respondent or petitioner, as the case may be) on the ground that (set out, briefly, the ground, including the full name and address of any person with or on whom the respondent or petitioner, as the case may be, is alleged to have committed adultery, rape or sodomy).

2. The said is believed to be a person who has not attained the age of 21 years. Under the Matrimonial Causes Rules, service of a petition (or answer) on a person who has not attained that age is required to be effected—

- (a) by serving a sealed copy of the petition (or answer) and a notice of petition or notice of proceedings on the person; and
(b) by serving a sealed copy of the petition (or answer) on a parent of the person, on an adult person with whom the person is residing or on some other adult person specified by the Court or Registrar.

3. A sealed copy of the petition (or answer) is delivered to you with this notice. Service of the petition (or answer) is effected on you, under the abovementioned provision of the Matrimonial Causes Rules, in order that you may advise (full name of infant) in connexion with the proceedings. The notice of petition (or notice of proceedings) that is being served on (full name of infant) sets out the various courses of action that he (or she) may take in the proceedings.

4. The form of Acknowledgment of Service delivered to you with this notice should be completed and signed by you and returned immediately to the petitioner's (or respondent's) lawyer. A stamped and addressed envelope is delivered to you for that purpose.

(Leave out this paragraph if service is not to be effected by post.)

Dated 19

For the Registrar,
Clerk of the National Court.

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Rules, Sec. 59, 63, 64, 101.

Form 12.

ACKNOWLEDGMENT OF SERVICE.

(Title)

I, (full name), acknowledge that on 19 , at , I received—

(a) a sealed copy of the petition in these proceedings (or as the case may be); and

(b)* a notice of petition (or notice of proceedings) addressed to me.

I also acknowledge that I am the person referred to in the sealed copy of the petition as the , and that I am the person to whom the notice of petition (or notice of proceedings) is addressed (or as the case may be).

Dated 19 .

(Signature)

* Strike out if inapplicable.

Rules, Sec. 68(3).

Form 13.

AFFIDAVIT OF PERSONAL SERVICE.

(Title)

I, (full name, address and occupation of deponent), make oath and say :—

1. On 19 I duly served with by delivering it to him personally at (address).

2. (Set out the means by which the deponent identified the person served.)

3. Annexed to this affidavit and marked with the letter " " is a document acknowledging receipt of the , which was signed in my presence by the person to whom I delivered the

4. (If service of the document was effected by the party on whose behalf the document was being served, set out the circumstances that made it impracticable for another person to effect the service, and the matters required by Section 58(3) of the Rules.)

5. A true copy of the is annexed and marked with the letter " ".

(Leave out this paragraph if Section 72 of the Rules does not apply.)

(Signature of Deponent)

Sworn by the deponent on 19 , at ,

Before me

(Signature and title of person before whom affidavit sworn.)

Rules, Sec. 71.

Form 14.

MEMORANDUM OF PUBLICATION OF ADVERTISEMENT.

(Title)

Nature of document to which advertisement relates:

Newspaper in which advertisement published:

Date on which published:

Dated 19 .

Registrar.

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Rules, Sec. 74(4).

Form 15.

ANSWER.

(Title)

The respondent (*or as the case may be*), in answer to the petition in these proceedings, says:—

The respondent (*or as the case may be*) therefore (*set out particulars of the orders that the Court will be asked to make*).

This answer was settled by (*name of lawyer*).

Dated 19

Lawyer for the

This answer is filed by on behalf of the, whose address for service is

Rules, Sec. 75(9).

Form 16.

ANSWER AND CROSS-PETITION.

(Title)

The respondent, in answer to the petition in these proceedings, says:—

1. (*Set out any denial, statement, allegation or admission permitted by Section 74(1) of the Rules*)
2. The respondent therefore asks the Court to dismiss the petition of the petitioner.
3. The respondent petitions the Court for a decree of against the petitioner on the ground of

DOMICILE OR RESIDENCE.

4. The respondent is domiciled (*or resident*), within the meaning of the Act, in Papua New Guinea. The facts, other than those stated in the petition, on which the Court will be asked to find that the respondent is so domiciled (*or resident*) are as follows:—

(*Leave out last sentence if respondent does not rely on any facts other than those stated in the petition.*)

FACTS.

5. The facts relied on by the respondent as constituting the ground (*or each ground*) specified above are as follows:—

CONDONATION, CONNIVANCE AND COLLUSION.

(*Leave out if decree of nullity is sought.*)

6. The respondent has not condoned or connived at the ground (*or any of the grounds*) specified above, and is not guilty of collusion in presenting this answer.

or

6. The respondent has not connived at the ground (*or any of the grounds*) specified above, and is not guilty of collusion in presenting this answer; the following facts are furnished relating to condonation:—

PROPOSED ARRANGEMENTS FOR CHILDREN.

(*Leave out if Section 38 of the Rules does not apply.*)

7. (*State the matters required by Section 38 of the Rules.*)

MAINTENANCE AND SETTLEMENT OF PROPERTY.

(*Leave out if no order for maintenance or settlement of property is sought.*)

8. (*Set out the particulars required by Section 193 of the Rules.*)

EXERCISE OF THE COURT'S DISCRETION.

(*Leave out if Section 37 of the Rules does not apply.*)

9. The Court will be asked to make a decree notwithstanding the facts and circumstances set out in the discretion statement filed with this answer.

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OTHER MATTERS.

10. (Set out any additional matters required to be stated by virtue of Section 75(6), (7) or (8).)

ORDERS SOUGHT.

11. The respondent seeks the following orders :—

(a) An order dismissing the petition.

(b) A decree of _____ on the ground of

(In the following paragraphs set out each other order sought:—)

(c)

This answer and cross-petition was settled by (name of lawyer).

Filed on
for service is

19 , by

Lawyer for the respondent.
on behalf of the respondent, whose address

Rules, Sec. 76.

Form 17.

ANSWER UNDER PROTEST.

(Title)

The respondent (or as the case may be), in answer to the petition in these proceedings, objects to the jurisdiction of the Court on the following grounds :—

The respondent (or as the case may be) therefore (set out particulars of the orders that the Court will be asked to make).

This answer was settled by (name of lawyer).

Dated 19 .

Lawyer for the

This answer is filed by
service is

_____ on behalf of the

_____, whose address for

Rules, Sec. 77(5).

Form 18.

REPLY.

(Title)

The petitioner (or as the case may be), in reply to the answer of the _____ in these proceedings, says :—

The petitioner (or as the case may be) therefore (set out particulars of any orders or additional orders that the Court will be asked to make).

This reply was settled by (name of lawyer).

Dated 19 .

Lawyer for the

This reply is filed by
service is

_____ on behalf of the

_____, whose address for

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Rules, Sec. 78(1).

Form 19.

REPLY UNDER PROTEST.

(Title)

The petitioner (or party cited), in reply to the answer of the respondent in these proceedings, objects to the jurisdiction of the Court on the following grounds :--

The petitioner (or party cited) therefore (set out particulars of the orders that the Court will be asked to make).

This reply was settled by (name of lawyer).

Dated 19 .

Lawyer for the

This reply is filed by _____ on behalf of the _____, whose address for service is _____

Rules, Sec. 86(1).

Form 20.

NOTICE OF WITHDRAWAL OF PLEADING.

(Title)

The _____ wholly withdraws his _____ in these proceedings.

Dated 19 .

Lawyer for the

It is intended to effect service of a copy of this on _____

Rules, Sec. 96(2).

Form 21.

SUPPLEMENTARY PETITION.

(Title)

To the National Court.

Date of petition:

The petitioner, by his supplementary petition, petitions the Court for a decree of against the respondent on the ground of

1. (In this and the succeeding paragraphs, set out the facts relied on as constituting that ground and any other facts stated in accordance with Division VIII.2 of the Rules.)

2. The petitioner seeks the following additional orders :--

This supplementary petition was settled by (name of lawyer).

Dated 19 .

Lawyer for the petitioner.

This supplementary petition is filed by _____ on behalf of the petitioner, whose address for service is _____

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Rules, Sec. 9(3).

Form 22.

SUPPLEMENTARY ANSWER.

(Title)

Date of answer:

The respondent, in further answer to the petition in these proceedings, says :—

The respondent therefore seeks the following additional orders :—

This supplementary answer was settled by (name of lawyer).

Dated 19 .

Lawyer for the respondent.

This supplementary answer is filed by
address for service is

on behalf of the respondent, whose

Rules, Sec. 120(1).

Form 23.

ELECTION OF GUARDIAN AD LITEM OF INFANT.

(Title)

I, (full name), the petitioner (or as the case may be), elect my father (or mother or legal guardian) (full name), of , to be my guardian *ad litem* for the purpose of these proceedings (or for the purpose of proceedings that I propose to institute against).

Dated 19 .

(Signature)

(Signature and address of witness.)

CONSENT.

I, (full name, address and occupation) consent to act as the guardian *ad litem* of for the purpose of these proceedings (or for the purpose of proceedings that he proposes to institute against). I declare that I am the father (or mother or legal guardian) of the petitioner (or as the case may be).

Dated 19 .

(Signature)

(Signature and address of witness.)

Rules, Sec. 122(1).

Form 24.

CONSENT TO ACT AS GUARDIAN AD LITEM.

(Title)

I, , Principal Legal Adviser (or , an authorized person), consent to act as the guardian *ad litem* of the above-named for the purpose of these proceedings (or for the purpose of proceedings proposed to be instituted by him against the above-named).

Dated 19 .

(Signature)

Matrimonial Causes

Ch. No. 282

Rules, Sec. 136(3).

Form 25.

REQUEST FOR DISCOVERY.

(Title)

The petitioner (*or as the case may be*) requests the respondent (*or as the case may be*) to make discovery on oath of the documents that are or have been in his possession, custody or power relating to matters that are in question in these proceedings (*or the following matters that are in question in these proceedings* :—

Dated 19

Lawyer for the

To

Rules, Sec. 137(4).

Form 26.

AFFIDAVIT OF DISCOVERY.

(Title)

I, (*full name, address and occupation of deponent*), make oath and say as follows :—

1. I have in my possession, custody or power the documents, relating to matters in question in these proceedings, specified or referred to in the first, second and third parts of Schedule 1 to this affidavit.

2. I object to produce the documents specified (*or referred to*) in the second part of Schedule 1 to this affidavit on the ground that the documents are professional communications of a confidential character made by me to my legal adviser or to me by my legal adviser for the purpose of giving me legal advice, cases for the opinion of counsel, instructions to counsel or opinions of counsel given in anticipation of or during the progress of these proceedings, letters or copies of letters from me to my lawyer, from my lawyer to me or from my lawyer to another person in anticipation of or during the progress of these proceedings, or drafts or memoranda made by my counsel or lawyer for the purpose of these proceedings.

3. I object to produce the documents specified (*or referred to*) in the third part of Schedule 1 to this affidavit on the ground that

4. I have had, but do not now have, in my possession, custody or power the documents relating to matters in question in these proceedings specified or referred to in Schedule 2 to this affidavit.

5. To the best of my knowledge and belief, the documents specified or referred to in Schedule 2 to this affidavit are in the possession of the persons respectively specified in that Schedule in relation to the documents.

6. I have not now, and have never had, in my possession, custody or power, or in the possession, custody or power of a lawyer, agent or other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing that relates to matters in question in these proceedings (*or to matters in question in these proceedings that are specified in Schedule 3 to this affidavit*) or in which an entry relating to such a matter has been made or any copy of or extract from any such deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, except for the documents specified or referred to in Schedule 1 or 2 to this affidavit.

SCHEDULES.

Sworn by the deponent on 19 , at

(Signature of Deponent.)

Before me :—

(Signature and title of person before whom affidavit sworn.)

NOTICE TO ADMIT DOCUMENTS

(Title)

The petitioner (or as the case may be) in these proceedings proposes to give in evidence the several documents referred to in Schedules 1 and 2 to this notice. Those documents may be inspected by the , and by his lawyer or agent, at on 19 , between the hours of and

The respondent (or as the case may be) is called on to admit, within seven days after service of this notice on him—

- (a) that the documents referred to in Schedule 1 are original documents that were duly written, signed or executed, as the case may be, on the respective dates specified in that Schedule by the persons by whom they purport to have been written, signed or executed; and
(b) that the documents referred to in Schedule 2 are true copies of the documents of which they purport to be copies; and
(c) that, where particulars of the service, sending or delivery of an original document are specified in the third column of Schedule 2 in relation to a reference to a copy of that document in the first column of that Schedule, that original document was served, sent or delivered as specified in the third column of that Schedule.

SCHEDULE 1.

Original Documents.

Table with 2 columns: Description of documents, Date on which written, signed or executed.

SCHEDULE 2.

Copies of Documents.

Table with 3 columns: First column. Description of documents, Second column. Date on which original written, signed or executed, Third column. Particulars of service, sending or delivery of original.

Dated 19 .

Lawyer for the

To

Matrimonial Causes

Ch. No. 282

Rules, Sec. 149(6).

Form 28.

NOTICE TO ADMIT FACTS.

(Title)

The petitioner (*or as the case may be*) calls on the respondent (*or as the case may be*) to admit, within seven days after receipt of this notice, for the purpose of these proceedings only, each of the following facts:—

Dated 19 .

Lawyer for the

To

Rules, Sec. 149(6).

Form 29.

ADMISSION OF FACTS.

(Title)

The respondent (*or as the case may be*) admits, for the purpose of these proceedings only, the facts specified below, subject to the qualifications (if any) specified in relation to any of those facts.

These admissions are not to be used against the respondent (*or as the case may be*) in any other proceedings, or by any person other than the petitioner (*or as the case may be*) in these proceedings.

Facts admitted.	Qualifications (if any) subject to which the facts are admitted.

Dated 19 .

Lawyer for the

To

Rules, Sec. 151.

Form 30.

NOTICE TO PRODUCE AT TRIAL.

(Title)

You are required to produce, at the trial of these proceedings, all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power that relate to, or contain an entry, memorandum or minute relating to, any matters in question in these proceedings, and, in particular, the following documents:—

Dated 19 .

Lawyer for the

To

DISCRETION STATEMENT.

(Title)

Discretion statement of the

On the trial of these proceedings, the Court will be asked to make a decree of dissolution of marriage (or judicial separation) notwithstanding that I have, since the date of my marriage to the respondent (or as the case may be), committed adultery with of

Particulars of the adultery and of the circumstances giving rise to the commission of the adultery are as follows :—

The grounds on which the Court will be asked to make the decree notwithstanding that adultery are as follows :—

Apart from the acts of adultery referred to above, I have not committed adultery since the date of my marriage to the respondent (or as the case may be).

Dated 19 .

(Signature)

I, (full name, address and occupation of deponent), the in these proceedings, make oath and say that the facts stated in the preceding discretion statement are true.

Sworn by the deponent on 19 , at

(Signature of Deponent)

Before me:—

(Signature and title of person before whom affidavit sworn)

REQUEST TO SET UNDEFENDED SUIT DOWN FOR TRIAL.

(Title)

1. I, , the lawyer for the petitioner (or as the case may be), certify that this suit is ready for trial, and request that it be set down for trial at

2. In addition to the proceedings comprising this suit, the following proceedings are pending in this Court between the petitioner and the respondent :—

or

2. No proceedings, other than proceedings comprising this suit, are pending in this Court between the petitioner and the respondent.

3.* A certificate of means has been issued in relation to proceedings for maintenance pending the disposal of this suit.

or

3.* In my opinion, a certificate of means is unnecessary.

or

3.* In my opinion, it is desirable that a certificate of means be issued for the following reasons :—

Dated 19 .

Lawyer for the

* Omit if no proceedings for permanent maintenance or the settlement of property.

Matrimonial Causes

Ch. No. 282

Rules, Sec. 172(2)(a).

Form 33.

REQUEST TO SET DEFENDED SUIT DOWN FOR TRIAL.

(Title)

1. I, _____, the lawyer for the petitioner (*or as the case may be*), certify that this suit is ready for trial, and request that it be set down for trial at

2. At the trial of the suit it is proposed to call as witnesses the petitioner (*or as the case may be*) and (*number of witnesses*) other witnesses who reside, respectively, at (*names of towns*).

3. In addition to the proceedings comprising this suit, the following proceedings are pending in this Court between the petitioner and the respondent :—

or

3. No proceedings, other than proceedings comprising this suit, are pending in this Court between the petitioner and the respondent.

4. The probable length of the trial is

5.* A certificate of means has been issued/applied for.

or

5.* The petitioner and respondent have agreed (*set out the matters required by Section 172(6)(b) of the Rules*)

or

5.* In my opinion, it is unnecessary for a certificate of means to be obtained, for the following reasons :—

6. (*Set out the matters (if any) required by Section 172(7) and (8) of the Rules.*)

Dated _____ 19__ .

Lawyer for the

It is intended to serve a copy of this request on

* Omit if no proceedings for permanent maintenance or the settlement of property.

Rules, Sec. 177(1).

Form 34.

NOTICE OF TRIAL.

(Title)

This suit has been set down for trial at _____ (*or at* _____), on 19__ , (*or for the sittings of the Court at* _____) commencing on 19__ .

Registrar.

To

NOTES.—1. This notice does not necessarily state the actual date on which the suit will be tried by the Court. Inquiry may be made at the office of the Court as to the approximate date on which the suit will be tried.

2. If this suit proceeds to trial and a decree of dissolution of marriage (*or a decree of nullity of a voidable marriage*) is made, the marriage is not dissolved (*or annulled*) until the decree has become absolute in accordance with Section 60 of the *Matrimonial Causes Act*.

REGISTRAR'S CERTIFICATE THAT SUIT IS READY FOR TRIAL.

(Title)

1. I certify that this suit is ready for trial (or this suit has been set down for trial by leave of the Court or this suit has been set down for trial in accordance with a request under Section 174(2) or (3) of the Matrimonial Causes Rules notwithstanding that, in my opinion, the following matters are not in order :-

(a)

(b)

2. The documents filed in this suit disclose that no proceedings, other than proceedings comprising this suit, are pending in this Court between the petitioner and the respondent.

or

2. The documents filed in this suit disclose that in addition to proceedings comprising this suit, the following proceedings are pending in this Court between the petitioner and the respondent :-

3. Division XI.6 of the Rules does not apply in relation to any proceedings comprised in this suit.

or

3. A compulsory conference was held in accordance with the provisions of Division XI.6 of the Rules, and agreement between the petitioner and respondent was (or was not) reached at the conference.

or

3. The petitioner (or respondent) complied with the provisions of Section 165(1) of the Rules but the respondent (or petitioner) failed to attend (or to take part in) a conference for the purpose of Division XI.6 of the Rules.

or

3. This suit has been set down for trial in accordance with Section 165(2) of the Rules.

4. A certificate of means has been issued.

or

4. I am satisfied that it is unnecessary for a certificate of means to be obtained.

or

4. This suit does not comprise any proceedings with respect to permanent maintenance or the settlement of property.

5. I certify that I have duly complied with Section 177(5)(a) and (b) of the Rules in relation to this suit.

Registrar.

DECREE NISI OF DISSOLUTION OF MARRIAGE.

(Title)

Before the Honourable Mr. Justice

On 19

This suit was heard this day (or as the case may be), Mr. being counsel for the petitioner, Mr. being counsel for the respondent and Mr. being counsel for the co-respondent (or as the case may be).

The Court was satisfied that at the time when the suit was instituted the petitioner was domiciled in Papua New Guinea within the meaning of the Matrimonial Causes Act (or was domiciled in Papua New Guinea according to the principles of the common law) and that (set out the ground or grounds proved at the trial).

(The Court was also satisfied that (set out any matter by reason of which the Court could, in its discretion, have refused to make a decree of dissolution of marriage), but decided, in the exercise of its discretion, to make a decree of dissolution of marriage notwithstanding that it was so satisfied.)

Matrimonial Causes

Ch. No. 282

The Court therefore decreed that, on and subject to the decree of the Court becoming absolute, the marriage solemnized on 19 at , between the petitioner, and , the respondent, be dissolved.

The Court further ordered :-

(Set out any further orders made by the Court at the trial, including any order made under Section 59 of the Act.)

1.

By the Court,
Registrar.

NOTES.—1. A party to the marriage who marries again before this decree has become absolute (unless the other party has died) commits the offence of bigamy.

2. If, after this decree has been made but before it has become absolute, it comes to the notice of a party to the suit who has an address for service that a party to the marriage has died, he or she is required by Section 183 of the *Matrimonial Causes Rules* to make and file an affidavit stating such particulars of the date and place of death as are known to him or her.

3. If the parties to the marriage become reconciled before this decree becomes absolute, application should be made to the Court for the rescission of this decree.

Rules, Sec. 181(2).

Form 37.

DECREE OF NULLITY OF VOID MARRIAGE.

(Title)

Before the Honourable Mr. Justice

On 19

This suit was heard this day (or as the case may be), Mr. being counsel for the petitioner and Mr. being counsel for the respondent.

The Court was satisfied that at the time when the suit was instituted the petitioner was domiciled in Papua New Guinea within the meaning of the *Matrimonial Causes Act* (or was domiciled in Papua New Guinea according to the principles of the common law or was resident in Papua New Guinea) and that (set out the ground or grounds proved at the trial).

The Court therefore decreed that the marriage in fact solemnized on 19 at , between , the petitioner, and , the respondent, be declared to have been absolutely null and void.

The Court further ordered :-

(Set out any other orders made by the Court at the trial.)

1.

By the Court,
Registrar.

Rules, Sec. 181(2).

Form 38.

DECREE NISI OF NULLITY OF VOIDABLE MARRIAGE.

(Title)

Before the Honourable Mr. Justice

On 19

This suit was heard this day (or as the case may be), Mr. being counsel for the petitioner, Mr. being counsel for the respondent and Mr. being counsel for the co-respondent (or as the case may be).

The Court was satisfied that at the time when the suit was instituted the petitioner was domiciled in Papua New Guinea within the meaning of the *Matrimonial Causes Act* (or was domiciled in Papua New Guinea according to the principles of the common law) and that (set out the ground or grounds proved at the trial).

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Matrimonial Causes

The Court therefore decreed that, on and subject to the decree of the Court becoming absolute, the marriage in fact solemnized on _____ 19 _____ at _____, between _____, the petitioner, and _____, the respondent, be annulled.

The Court further ordered :—

(Set out any other orders made by the Court at the trial, including any order made under Section 59 of the Act.)

1.

By the Court,

Registrar.

NOTES.—1. A party to the marriage who marries again before this decree has become absolute (unless the other party has died) commits the offence of bigamy.

2. If, after this decree has been made but before it has become absolute, it comes to the notice of a party to the suit who has an address for service that a party to the marriage has died, he or she is required by Section 183 of the *Matrimonial Causes Rules* to make and file an affidavit stating such particulars of the date and place of death as are known to him or her.

Rules, Sec. 181(3).

Form 39.

DECREE OF JUDICIAL SEPARATION.

(Title)

Before the Honourable Mr. Justice

On _____ 19 _____

This suit was heard this day (or as the case may be), Mr. _____ being counsel for the petitioner, Mr. _____ being counsel for the respondent and Mr. _____ being counsel for the co-respondent (or as the case may be).

The Court was satisfied that at the time when the suit was instituted the petitioner was domiciled in Papua New Guinea within the meaning of the *Matrimonial Causes Act* (or was domiciled in Papua New Guinea according to the principles of the common law or was resident in Papua New Guinea) and that the respondent (set out the ground or grounds proved at the trial).

(The Court was also satisfied that (set out any matters by reason of which the Court could, in its discretion, have refused to make a decree of judicial separation), but decided, in the exercise of its discretion, to make a decree of judicial separation notwithstanding that it was so satisfied.)

The Court therefore decreed that _____, the petitioner, who was married to _____, the respondent, on _____ 19 _____ at _____, be judicially separated from the respondent.

The Court further ordered :—

(Set out any other orders made by the Court at the trial.)

1.

By the Court,

Registrar.

Matrimonial Causes

Ch. No. 282

Rules, Sec. 181(4).

Form 40.

DECREE OF RESTITUTION OF CONJUGAL RIGHTS.

(Title)

Before the Honourable Mr. Justice

On 19

This suit was heard this day (or as the case may be), Mr. being counsel for the petitioner and Mr. being counsel for the respondent.

The Court was satisfied that at the time when the suit was instituted the petitioner was domiciled in Papua New Guinea within the meaning of the *Matrimonial Causes Act* (or was domiciled in Papua New Guinea according to the principles of the common law or was resident in Papua New Guinea), that the petitioner and respondent were not cohabiting and that the respondent had refused, without just cause or excuse, to cohabit with, and render conjugal rights to, the petitioner.

The Court therefore decreed that the respondent take back (or return home to) the petitioner and render to the petitioner conjugal rights.

The Court further ordered :-

(Set out any other orders made by the Court at the trial.)

1.

By the Court,
Registrar.

Rules, Sec. 184(1).

Form 41.

MEMORANDUM OF DECREE NISI HAVING BECOME ABSOLUTE.

(Title)

1. Date of decree nisi:
- 2.* Date of order under Section 59 of the Act:
- 3.* Date of determination or discontinuance of appeal:
- 4.* Date of order under Section 60(4) of the Act:
- 5.* Date on which intervention determined:

The decree nisi of dissolution of the marriage between the petitioner and the respondent solemnized (or of nullity of the marriage between the petitioner and the respondent in fact solemnized) on 19 became absolute on 19

Dated 19

Registrar.

* If not applicable, state "not applicable".

Rules, Sec. 184(2).

Form 42.

CERTIFICATE OF DECREE NISI HAVING BECOME ABSOLUTE.

(Title)

I certify that the decree nisi of dissolution (or nullity) of marriage made by the National Court on 19 dissolving (or annulling) the marriage solemnized (or in fact solemnized) on 19, between the petitioner, and the respondent, became absolute on 19

Dated 19

Registrar.

Ch. No. 282

Matrimonial Causes

Rules, Sec. 187(1).

Form 43.

NOTICE OF INTERVENTION BY PRINCIPAL LEGAL ADVISER.

(Title)

To the National Court.

, Principal Legal Adviser, (or , a person authorized by delegation of the Principal Legal Adviser dated 19) intervenes in these proceedings under Section 65 or 66 of the *Matrimonial Causes Act*.

Dated 19 .

Principal Legal Adviser.

It is intended to effect service of copies of this notice on the petitioner and on

Rules, Sec. 189(2).

Form 44.

NOTICE OF INTERVENTION.

(Title)

To the National Court.

of 19 intervenes in these proceedings by leave granted by the Court on 19 .

Dated 19 .

Lawyer for the intervener.

It is intended to effect service of copies of this notice on the petitioner and on

Rules, Sec. 195(2).

Form 45.

APPLICATION FOR ANCILLARY RELIEF.

(Title)

By leave granted by the Court on 19 , application is made to the Court on behalf of the for (*set out the order sought*).

It is proposed that the proceedings instituted by this application be heard and determined by the Court, as far as practicable, at the same time as the proceedings for instituted by the

Dated 19 .

Lawyer for the

This application is filed by on behalf of the abovenamed whose address for service is

It is intended to effect service of this application on

Rules, Sec. 195(4).

Form 46.

APPLICATION FOR MAINTENANCE PENDING SUIT.

(Title)

By leave granted by the Court on 19 , application is made to the Court on behalf of the for (*set out the order sought*).

Dated 19 .

Lawyer for the

This application is filed by on behalf of the abovenamed whose address for service is

It is intended to effect service of this application on

Matrimonial Causes

Ch. No. 282

Rules, Sec. 196(4), 208(1).

Form 47.

REQUEST TO SET PROCEEDINGS DOWN FOR HEARING.

(Title)

To the Registrar.

Set down for hearing the proceedings for an order for _____ pending suit instituted by the petition (or answer or application of the _____) in this suit.

Dated _____ 19 ____

Lawyer for the _____

Rules, Sec. 196(5), 208(2).

Form 48.

NOTICE OF HEARING.

(Title)

The proceedings for an order for _____ pending suit instituted by the petition (or answer) in this suit have been set down for hearing at _____ on _____ 19 ____, at _____ a.m./p.m., or so soon afterwards as the course of business permits.

Dated _____ 19 ____

Lawyer for the _____

To _____

Rules, Sec. 197(2), (4), 198.

Form 49.

REQUEST TO ASSESS MAINTENANCE PENDING SUIT.

(Title)

To the Registrar.

The petitioner (or respondent) requests the Registrar to make an assessment under Section 198 of the Rules of maintenance for (full name of person) in the proceedings for maintenance pending suit instituted by petition (or as the case may be) dated _____ 19 ____.

That petition was served personally on the respondent on _____ 19 ____, as appears by the affidavit of _____ sworn _____ 19 ____ (or as the case may be).

Dated _____ 19 ____

Lawyer for the _____

Rules, Sec. 197(9).

Form 50.

ASSESSMENT OF MAINTENANCE PENDING SUIT.

(Title)

Under Section 197 of the *Matrimonial Causes Rules*—

(a) I specify K _____ as the proper rate per week of maintenance pending suit for (and K _____ as the proper rate per week of maintenance pending suit for _____); and

(b) I specify _____ 19 ____, as the commencing date for that maintenance; and

(c) I specify K _____ (and K _____) as the proper rate (or rates) per week for the making of payments in respect of arrears of maintenance for _____ (and _____, respectively,) for the period commencing on that date and ending on the date of this assessment, less any amount paid as such maintenance before the date of this assessment for that period (or as the case may be).

2. Payments of maintenance in accordance with this assessment should be made to (*set out the office of the Court, the public authority or the person to whom the Registrar thinks that the maintenance should be paid*), and the first payment should be made not later than six days after the date of this assessment.

Dated 19 .

Registrar.

NOTES.—1. A party may, not later than 10 days after the service of a copy of this assessment on him, file a request in Form 51, requesting the Registrar to refer to the Court the proceedings of the petitioner (*or respondent*) for maintenance pending suit.

2. Unless the respondent (*or petitioner*) duly files such a request, he will be deemed to have consented to the making of an order by the Court in accordance with the terms of this assessment, and if he does not duly pay maintenance in accordance with those terms the Court may, without further notice to him, order him to make payments of maintenance pending suit in accordance with those terms.

Rules, Secs. 199, 200.

Form 51.

REQUEST TO REFER MAINTENANCE PROCEEDINGS TO THE COURT.

(*Title*)

In accordance with Section 199 (*or 200*) of the *Matrimonial Causes Rules*, the requests the Registrar to refer to the Court the proceedings for an order for the maintenance pending suit of

Dated 19 .

Lawyer for the

Rules, Sec. 202(1).

Form 52.

NOTICE OF HEARING OF MAINTENANCE PROCEEDINGS REFERRED TO THE COURT.

(*Title*)

In accordance with a request made by the under Section 199 (*or 200*) of the *Matrimonial Causes Rules*, the proceedings for an order for the maintenance of pending suit have been referred to the Court and have been set down for hearing at on 19 , at a.m./p.m., or so soon afterwards as the course of business permits.

Dated 19 .

Lawyer for the

To

Rules, Sec. 205(2).

Form 53.

APPLICATION FOR CERTIFICATE OF MEANS.

(*Title*)

Application is made to the Registrar on behalf of the for a certificate of means (by reason of the Registrar being unable to make an assessment until the certificate has been issued).

This application has been set down for hearing by the Registrar at the National Court, (*or as the case may be*) on 19 , at a.m./p.m., or so soon afterwards as the course of business permits (*or on a date and time to be fixed by the Registrar*).

Dated 19 .

Lawyer for the

It is intended to effect service of this application on

Matrimonial Causes

Ch. No. 282

Rules, Sec. 206(1).

Form 54.

CERTIFICATE OF MEANS.

(Title)

The application dated 19 , of the petitioner (or respondent) for a certificate of means was heard by me on 19 , Mr. appearing for the petitioner and Mr. appearing for the respondent (or as the case may be).

I certify that the pecuniary resources of the petitioner and respondent are as follows :—

I also certify that the capabilities of the petitioner and respondent to earn income are as follows :—

Dated 19 .

By the Court,
Registrar.

Rules, Sec. 226(4).

Form 55.

AFFIDAVIT.

(Title)

I, (full name, address and occupation of deponent), make oath and say as follows :—

1.

Sworn by the deponent on 19 , at

(Signature of Deponent.)

Before me .

(Signature and title of person before whom affidavit sworn.)

Rules, Sec. 245.

Form 56.

ATTACHMENT OF EARNINGS ORDER.

(Title)

Whereas of , aged years, who is employed by , is liable to make payments of at as a week (or as the case may be) to under a maintenance order made by the National Court on 19 :

And whereas this Court is satisfied that the said is a person to whom earnings are payable or are likely to become payable by the said and that, at the time when application was made for this order, there was due under the maintenance order and unpaid an amount equal to not less than four weekly payments (or as the case may be):

This Court therefore orders :—

1. That the said (name of employer) make payments out of those earnings in accordance with Schedule 2 to the Matrimonial Causes Act to (insert the name of the officer of the court or other person to whom payments are to be made) for transmission to

2. That, for the purpose of calculating those payments, the normal deduction rate shall be a week (or as the case may be), and the protected earnings rate shall be a week (or as the case may be).

Dated 19 .

By the Court,
Registrar (or Clerk or as the case may be).

To of
and to of

NOTE.—Sections Sch. 2.6(6) and Sch. 2.14(1) of the Matrimonial Causes Act are respectively as follows :—

"An attachment of earnings order does not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed."

"An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of—

- (a) the protected earnings of the defendant; and
- (b) so much of the amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings for the purposes of that pay-day as has not been made good on any other previous pay-day,

pay, so far as as the excess permits, to the officer specified for the purpose in the order—

- (c) the normal deduction; and
- (d) so much of the normal deduction for the purposes of any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day."

Rules, Sec. 246.

Form 57.

NOTICE OF ATTACHMENT OF EARNINGS ORDER HAVING CEASED TO HAVE EFFECT.

(Title)

The attachment of earnings order made by the abovenamed Court on _____ 19____, by which the _____ was ordered to make payments out of earnings payable to the _____, ceased to have effect on _____ 19____, by reason of the fact that

Dated _____ 19____.

For the Registrar (or
Clerk or as the case may be).

To

NOTE.—You are not required to make any further deductions under the attachment of earnings order but Section Sch. 2.14(3) of the *Matrimonial Causes Act* is as follows :—

"Where an attachment of earnings order ceases to have effect or is discharged, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by Section Sch. 2.12(3) or a copy of the discharging order, as the case may be, is served on him."

Rules, Sec. 248(1).

Form 58.

NOTICE BY EMPLOYER THAT PERSON NOT IN HIS EMPLOY.

(Title)

Whereas by an attachment of earnings order made by the abovenamed Court on _____ 19____ I was directed to make payments to _____ out of the earnings of _____

I give notice, under Section Sch. 2.8 of the *Matrimonial Causes Act*, that I have not on any occasion during the period of four weeks immediately preceding _____ 19____ been the employer of _____ within the meaning of that Schedule.

Dated _____ 19____.

Employer.

To the Registrar of the National Court.

Matrimonial Causes

Ch. No. 282

Rules, Sec. 252(2).

Form 59.

CERTIFICATE OF DECREE OR ORDER.

(Title)

Nature of proceedings:

Date of decree or order made in the proceedings:

Name and address of party to whom payment is to be made or in whose favour decree or order was made:

Name, address and occupation of party ordered to pay money or to do or not to do any act:

Abstract of decree or order: (set out particulars of the effect of the decree, including the amount (if any) ordered to be paid, the date on or from which it is payable and particulars of any act ordered to be done or not to be done)

I certify that this certificate correctly states particulars of a decree (or order) made in this Court on 19 , in proceedings in which was the petitioner and was the respondent (or as the case may be).

Dated 19 .

For the Registrar,
Clerk of the National Court.

Rules, Sec. 264(2).

Form 60.

REGISTRAR'S SUMMONS.

(Title)

To (full name and address of person).

By virtue of the power conferred by Section 264 of the *Matrimonial Causes Rules*, I, Registrar of the National Court, summon you to attend at 19 , at a.m./p.m., to give evidence in connexion with (give short particulars of the application) and then and there to produce any books, documents and writings in your custody or control that relate to that matter, and, in particular, the following books, documents and writings:—

Dated 19 .

For the Registrar,
Clerk of the National Court.

NOTE.—Section 265 of the *Matrimonial Causes Rules* authorizes a Judge to issue a warrant for the arrest of a person who, having been served with a summons and paid or tendered reasonable expenses, fails to attend as required by the summons.

Rules, Sec. 268(2).

Form 61.

REPORT OF REGISTRAR WHERE WITNESS FAILS TO ANSWER QUESTION SATISFACTORILY.

(Title)

On 19 , at the hearing of an application by the for an order the following question was put by me (or allowed by me to be put) to

2. The witness refused to answer the question.

or

2. The witness answered the question as follows:—

3. I named 19 , at a.m./p.m., at as the time and place at which the refusal to answer (or the answer) would be reported to the Court.

Dated 19 .

Registrar.

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Rules, Sec. 272(1).

Form 62.

REQUEST FOR REVIEW OF REGISTRAR'S DECISION.

(Title)

To the National Court.

The petitioner (or as the case may be) requests the Court, under Section 272 of the *Matrimonial Causes Rules*, to review the decision of the Registrar given on 19 , on (set out the matter in respect of which the decision was given).

Dated 19 .

Lawyer for the

Rules, Sec. 272(2).

Form 63.

NOTICE OF HEARING OF REVIEW OF REGISTRAR'S DECISION.

(Title)

The petitioner (or as the case may be) has, under Section 272 of the *Matrimonial Causes Rules*, requested the Court to review the decision of the Registrar given on 19 on (set out the matter in respect of which the decision was given), and that the review of the decision by the Court has been set down for hearing at on 19 , at a.m./p.m., or so soon afterwards as the course of business permits.

Dated 19 .

Lawyer for the

To

Rules, Sec. 290.

Form 64.

PETITION FOR JACTITATION OF MARRIAGE.

(Title)

To the National Court.

The petitioner, whose address is and whose occupation is petitions the Court for a decree of jactitation of marriage against the respondent, whose address is and whose occupation is

DOMICILE OR RESIDENCE.

1. The petitioner is domiciled (or resident), within the meaning of the Act, in Papua New Guinea. The facts on which the Court will be asked to find that the petitioner is so domiciled (or resident) are as follows :—

FACTS.

2. The petitioner is not married to the respondent.
3. (Set out the dates on which, and the times and places at which, the respondent boasted and asserted that a marriage had taken place between the petitioner and the respondent, together with particulars of the boastings and assertions.)
4. Those boastings and assertions are false, and the petitioner has not acquiesced in them.

OTHER MATTERS.

(If proceedings for ancillary relief within the meaning of Part XIV. of the Rules are instituted by the petition, set out in the succeeding paragraphs any further matters that are relevant to the proceedings.)

5.

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ADDITIONAL ORDERS.

The petitioner seeks the following additional orders :—

This petition was settled by (*name of lawyer*).

Dated 19 .

Lawyer for the petitioner.

This petition is filed by _____ on behalf of the petitioner, whose address for service is

Rules, Sec. 293.

Form 65.

PETITION FOR DECLARATION, ETC.

(*Title*)

To the National Court.

The petitioner, whose address is _____ and whose occupation is _____ petitions the Court for a declaration (*or order or decree*) that (*set out the declaration, order or decree sought*) against the respondent, whose address is _____ and whose occupation is _____

FACTS.

1. The facts on which the Court will be asked to make the declaration (*or order or decree*) are as follows :—

OTHER MATTERS.

(*If proceedings for ancillary relief within the meaning of Part XIV. of the Rules are instituted by the petition, set out in the succeeding paragraphs any further facts that are relevant to those proceedings.*)

2.

ADDITIONAL ORDERS.

The petitioner seeks the following additional orders :—

This petition was settled by (*name of lawyer*).

Dated 19 .

Lawyer for the petitioner.

This petition is filed by _____ on behalf of the petitioner, whose address for service is

Rules, Sec. 304(1)(b).

Form 66.

NOTICE OF INTENTION TO GIVE NOTICE TO COURT THAT LAWYER HAS CEASED TO REPRESENT PARTY.

(*Title*)

As I have ceased to act for you in these proceedings, I intend, after the expiration of seven days from service of this notice on you, to file a notice of my having ceased to represent you in these proceedings.

Under the *Matrimonial Causes Rules*, you may give notice, in accordance with those Rules, that you are represented by a lawyer or that you intend to act in person. If you do not give such a notice, you will be deemed not to have an address for service for the purpose of these proceedings and will not be entitled to have pleadings or other documents served on you.

Dated 19 .

Lawyer.

NOTICE THAT LAWYER HAS CEASED TO REPRESENT PARTY.

(Title)

To the Registrar.

Take notice that I no longer represent the _____ in these proceedings.

A notice, a copy of which is annexed to this notice and marked "A", was served on the _____ on _____ 19____, by (set out such particulars of the service as establish due service of the notice).

The last address of the _____ known to me is _____

Dated _____ 19____

Lawyer.

SCHEDULE 2.

Rules, Sec. 280.

COURT FEES.

Item.	Matters.	Court fee.
		K
1.	Filing an application under Section 31 of the Act for leave to institute proceedings	6.00
2.	Filing a petition or supplementary petition	12.00
3.	Sealing a notice of petition or notice of proceedings in place of a lost notice	2.00
4.	Sealing a concurrent notice of petition or notice of proceedings	2.00
5.	Extending the time for serving a notice of petition or notice of proceedings	2.00
6.	Filing an answer or supplementary answer by which the respondent to a petition institutes proceedings of a kind referred to in Paragraph (a) or (b) of the definition "matrimonial cause" in Section 1(1) of the Act	10.00
7.	Filing any other answer or supplementary answer	6.00
8.	Filing a reply by a party cited or by a person named in an answer	6.00
9.	Amending a pleading by virtue of Section 89(1)(a) of the Rules	4.00
10.	Filing a notice of address for service	2.00
11.	Filing a notice of change of address for service	2.00
12.	Filing a request, under Section 170 of the Rules, to set an undefended suit down for trial	10.00
13.	Filing a request, under Section 172 of the Rules, to set a defended suit down for trial	15.00
14.	Issuing a certificate that a decree has become absolute	2.00
15.	Filing an application under Schedule 2 to the Act	2.00
16.	Filing an application to the Court, other than an application referred to in Item 1 or 15	4.00
17.	Filing an application for a certificate of means, not being an application filed as a result of the Registrar being unable to make an assessment until the certificate has been issued	4.00
18.	Filing any other application to the Registrar	2.00
19.	Filing a request for assessment of maintenance pending suit	4.00
20.	Filing a request to refer proceedings for ancillary relief, other than proceedings instituted by the filing of an application to the Court under Section 196 or 208 of the Rules	4.00
21.	Filing a request to refer maintenance proceedings to the Court under Section 199 of the Rules	4.00
22.	Stating, at the request of a party, a matter for the opinion of the Court under Section 271 of the Rules	4.00
23.	Filing a request for review of the Registrar's decision	4.00

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Item.	Matters.	Court fee.
		K
24.	Filing a consent order, other than a consent order determining proceedings instituted by application to the Court or determining an application made to the Registrar	2.00
25.	Furnishing a copy of the report of a medical inspector— (a) for a photographic copy, per sheet (b) for any other copy— (i) if the report comprises less than eight folios (ii) if the report comprises eight or more folios, per folio	0.50 1.00 0.25
26.	Filing notice of intervention by a person other than the Principal Legal Adviser or a delegate of the Principal Legal Adviser	6.00.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 282.

Matrimonial Causes.

APPENDIXES.

APPENDIX 1.

SOURCE OF THE MATRIMONIAL CAUSES ACT.

Part A.—Previous Legislation.

Matrimonial Causes Act 1963 (No. 18 of 1964).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference ¹ .
1	5	30	35
2	6	31	36
3	7	32	37
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29	34	58	63

¹ Unless otherwise indicated, references are to the Act set out in Part A.

*Matrimonial Causes*Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
59	64	90	95
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61	66	92	98
62	67	93	99
63	68	94	100
64	69	95	101
65	70	96	102
66	71	97	103
67	72	98	104
68	73	Schedules—	Schedules—
69	74	Schedule 1	Second Schedule
70	75	Schedule 2	Third Schedule
71	76		Para—
72	77	Sch.2.1	1,2
73	78	Sch.2.2	38
74	79	Sch.2.3	3
75	80	Sch.2.4	4
76	81	Sch.2.5	13
77	82	Sch.2.6	5-10
78	83	Sch.2.7	25,26
79	84	Sch.2.8	24
80	85	Sch.2.9	14
81	86	Sch.2.10	27,28,29
82	87	Sch.2.11	15,16
83	88	Sch.2.12	17,18,19
84	89	Sch.2.13	21,22
85	90	Sch.2.14	11,12,20,23,32
86	91	Sch.2.15	30
87	92	Sch.2.16	31
88	93	Sch.2.17	33,34
89	94	Sch.2.18	35,36,37

APPENDIX 2.

SOURCE OF THE MATRIMONIAL CAUSES RULES.

Part A.—Previous Legislation.

Matrimonial Causes Rules 1965 (Rules dated 2 July 1965 and notified in *Territory of Papua and New Guinea Government Gazette No. 34* of 8 July 1965, p. 507.)¹
as amended by—

Matrimonial Causes Rules (No. 2) 1965 (Rules dated 2 July 1965 and notified in *Territory of Papua and New Guinea Government Gazette No. 34* of 8 July 1965, p. 507.)¹

Statutory Instrument No. 39 of 1971.

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ² .	Section, etc., in Revised Edition	Previous Reference ² .
1	4	35	39
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28	32	62	66
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34	38	68	72

¹ Made under the pre-Independence *Matrimonial Causes Act 1964*, Section 105. For the consolidated text of the two sets of rules dated 2 July 1965, see *Laws of the Territory of Papua and New Guinea, 1965* (Annotated), at p. 521.

² Unless otherwise indicated, references are to the rules set out in Part A.

Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
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71	75	127	130
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Part B.—Cross References—*continued.*

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193	201	248	254
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198	206	253	259
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201	208(2) (in part)	257	263
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225	231	281	288
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228	234	284	291
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293	300	Form 27	Form 25
294	301	Form 28	Form 26
295	302	Form 29	Form 27
296	303	Form 30	Form 28
297	304	Form 31	Form 29
298	305,306	Form 32	Form 30
299	307	Form 33	Form 31
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