

Seychelles

Matrimonial Causes Act

Matrimonial Causes Rules

Statutory Instrument 19 of 1993

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Matrimonial Causes Rules

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Seychelles

Matrimonial Causes Act

Matrimonial Causes Rules

Statutory Instrument 19 of 1993

Commenced on 22 March 1993

[This is the version of this document at 1 December 2014.]

[S.I. 19 of 1993]

1. Citation

These Rules may be cited as the Matrimonial Causes Rules.

2. Interpretation

In these rules—

“**a poor person**” means a person who has been admitted to take or defend or be party to any proceedings under the Act as a poor person under any enactment for the time being in force;

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

“**filed**” means filed in the Registry of the Supreme Court;

“**judge**” means a judge of the Supreme Court and includes the Chief Justice and a Puisne Judge;

“**minor**” means an unemancipated minor;

“**office copy**” means a copy examined against the original in the Registry and sealed with the seal of the Registry;

“**registrar**” means the Registrar or Assistant Registrar of the Supreme Court;

“**undefended cause**” means a matrimonial cause in which no answer has been filed or in which all the answers filed have been struck out.

3. Commencement of matrimonial proceedings. Form of petition

- (1) Every matrimonial cause shall be commenced by filing a petition addressed to the Supreme Court.
- (2) The petition in a matrimonial cause shall state—
 - (a) the name, description and domicile of the petitioner;
 - (b) the place of residence in Seychelles of the petitioner and the length of the residence immediately prior to the filing of the petition;
 - (c) the name, description, domicile and residence of the respondent;
 - (d) in proceedings in respect of a relevant child, the place of residence in Seychelles of the child immediately prior to the filing of the petition;
 - (e) the place and date of marriage of the parties;
 - (f) the name and date of birth of each relevant child;
 - (g) previous matrimonial causes between the parties, if any, and date and nature of any order made in those causes;

- (h) the grounds on which the petitioner asks for relief and in a case under section 16 of the Act, the grounds that exist for supposing that the other party to the marriage is dead;
 - (i) a concise statement of the material facts which are necessary to sustain the grounds for relief, including where the petition is based on any circumstances set out in section 4(1) of the Act, the attempts made to reconcile the parties;
 - (j) the relief claimed.
- (3) If a wife petitioner includes in her petition a claim for alimony pending suit the petition shall contain a statement in general terms of her husband's income and property in so far as they are within her knowledge or belief.
- (4) The relief claimed in a petition may also include the following ancillary beliefs—
 - (a) any claim for custody of a relevant child;
 - (b) any claim for maintenance of a relevant child;
 - (c) any claim for maintenance pending suit;
 - (d) any claim for maintenance of the petitioner or a secured provision;
 - (e) any claim for costs; and
 - (f) any claim for other ancillary relief.
- (5) Where the petitioner has been guilty of adultery during marriage, the petitioner may in the petition request the court to exercise its discretion to grant a conditional order of divorce or an order of separation notwithstanding the petitioner's adultery.
- (6) Every petition shall be signed by the attorney for the petitioner, or by the petitioner if the petitioner is suing in person.
- (7) The attorney for the petitioner shall endorse on the petition his name or the name of his firm and the address of his or of his firm's place of business which shall be the address for service of the petitioner.
- (8) A petitioner suing in person shall endorse on the petition an address for service, which shall be the place of residence of the petitioner, or if the petitioner has no place of residence within the jurisdiction, an address for service within the jurisdiction.
- (9)
 - (a) Every petition shall be supported by an affidavit by the petitioner verifying the facts of which the petitioner has personal cognizance and deposing as to belief in the truth of the other facts.
 - (b) The affidavit in support of the petition shall be contained in the same document as the petition and shall follow at the foot or end thereof and shall be in accordance with Form 1.

4. Claim for ancillary relief not included in the petition

- (1) Every application in a matrimonial cause for ancillary relief where a claim for such relief has not been made in the original petition, shall be by notice in accordance with Form 2 issued out of the Registry, that is to say every application for:—
 - (a) maintenance pending suit;
 - (b) payment by one party to the marriage to the other party or to any person for the benefit of the other party of periodical payments or for securing such periodical payments;
 - (c) payment by one party to the marriage to the other party or to any person for the benefit of the other party a lump sum of money or for securing such payment;

- (d) payment by one party to a marriage to any person for the benefit of a relevant child periodical payments or for securing such payments;
 - (e) payment by one party to the marriage to any person for the benefit of a relevant child a lump sum of money or for securing such payment;
 - (f) an order in respect of any property of a party to a marriage or any interest or right of a party in any property for the benefit of the other party or a relevant child;
 - (g) the protection of a party to the marriage or a relevant child;
 - (h) restraining a party to a marriage—
 - (i) from entering or remaining in any premises or any part of premises including the matrimonial home, where the other party resides or works;
 - (ii) from entering the premises of any educational or training institution at which a relevant child is attending.
 - (i) an order for the protection of the property of a party to the marriage or the matrimonial home;
 - (j) an order relating to the occupancy of the matrimonial home;
 - (k) the discharge, modification or temporary suspension of an order made under paragraphs (a) to (j).
- (2) Unless these rules otherwise provide, every other application in a matrimonial cause or matter shall be made, and any leave or directions shall be obtained, by summons to a judge in accordance with Form 3.

5. Provisional orders for protection of property of spouses

- (1) The petitioner at the time of filing a petition for divorce, judicial separation, nullity of marriage and the respondent at any time after an appearance in any such case may make an application *ex-parte* supported by affidavit for provisional orders for the protection of his or her property or his or her rights in any property.
- (2) Such orders may include the affixing of seals on, and the inventory and valuation of, all movable and the sequestration of any immovables in the possession of either party in which either party claims a right of ownership, and the sequestration and any other orders or injunction which the judge may think fit for the protection of the husband's or the wife's property generally.
- (3) Whenever seals have been affixed on any property, the party in possession or any person whom the registrar shall think fit, shall be constituted judicial custodian of such property.
- (4) The judge may at any time, on the application of either party or of the Attorney General or of any person interested in any property with respect of which the judge has made any order under this rule discharge, alter or extend such order.

6. Provisional orders relating to relevant children

- (1) Whenever it appears from the petition that there are relevant children resident within jurisdiction of the Court, the judge shall appoint any suitable person to make an inquiry on the material and moral situation of the family, the home surroundings of the children and the manner in which the children are cared for, and shall on the report of such person make such orders for the provisional custody and maintenance of the children as he shall think fit.
- (2) The judge may at any time, on the intervention of either party or of the Attorney General or of any person who shall have been given the custody of any child, discharge alter or extend any orders made under this rule.

7. Service of petition etc.

- (1) Unless otherwise directed—
 - (a) an office copy of every petition shall be served personally or by registered post upon every respondent;
 - (b) an office copy of every order for the protection of the petitioner's or the respondent's property or rights in any property shall be served personally or left at the address for service on the respondent or the petitioner as the case may be;
 - (c) every notice of an application for ancillary relief shall be personally served on the respondent thereto, unless the respondent thereto is the petitioner or, being respondent in the cause has appeared to the petition in which case the notice may be served by leaving it at the address for service.
- (2) An application for leave to substitute for personal service some other mode of service or to substitute for service notice of the proceedings by advertisement or otherwise shall be made *ex-parte* and shall be accompanied by an affidavit in support setting out the grounds on which the application is made.
- (3) Where leave is given to substitute for service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the Registrar and copies of the newspapers containing the advertisement shall be filed together with any notice to appear.
- (4) Service may be dispensed with altogether in any case in which it may appear necessary or expedient to do so. An application for leave to dispense with service on a respondent spouse or in any other case shall be made to a judge and shall be supported by an affidavit setting out the ground of the application.

8. Notice to appear

- (1) Every copy of a petition for service upon a respondent shall be accompanied by a notice to appear and answer to the petition in accordance with Form 4.
- (2) A notice of an application for any ancillary relief and every copy thereof for service shall, if the application is not made in the petition or if filed before the date fixed for the appearance of the respondent to the petition in the matrimonial cause in which the application is made, be accompanied by a notice to appear as set out in Form 4.
- (3) A notice of an application for ancillary relief under rule 4(1)(a), (b), (c), (d) and (e) shall also contain a notice to file evidence in accordance with Form 5.

9. Service out of jurisdiction

A petition, summons, notice or holder document in a matrimonial cause or matter may be served out of the jurisdiction with leave.

10. Proof of service necessary

Unless otherwise directed a petition shall not proceed to trial or hearing unless the respondent—

- (a) has appeared to answer the petition; or
- (b) except where service is effected under rule 7(3), is shown by a certificate or affidavit of service which shall be filed, to have been duly served with the petition.

11. Service or delivery where no other mode is prescribed

- (1) Unless otherwise directed service or delivery of any notice or other documents in a matrimonial cause may, if no other mode of service or delivery is prescribed, be effected—
 - (a) where the party to be served is the petitioner or has appeared, by leaving it at the address for service;
 - (b) in any other case by delivering it to the party to be served or by leaving it at his last known address.
- (2) A copy of every affidavit filed in support of or in answer to an application for ancillary relief, personal answers, or other order under the Seychelles Code of Civil Procedure, shall be delivered to the opposite party, if he has appeared or is the petitioner, at the address of his attorney or of his proxy appointed under section 70 of the Seychelles Code of Civil Procedure, within forty-eight hours or such other reasonable time as the Registrar may fix, after the affidavit has been filed and, if he has not appeared and the time for appearance has not expired, a copy of such affidavit shall be personally served upon the opposite party with the notice of application in support of which the affidavit is filed.

12. Entry of appearance

All appearance shall be in the manner provided in section 70 of the Seychelles Code of Civil Procedure.

13. Appearance under protest

- (1) An appearance may be under protest, may be either general or limited to any claim in the petition or subsequent application or to making an application under these rules.
- (2) A party appearing under protest shall before or after the date fixed for appearance but before the expiration of the time allowed for filing an answer file a concise statement of the grounds of protest and apply to the court for directions for the determination of any question arising by reason of such appearance under protest, and, in default of making such application, shall be deemed to have appeared unconditionally. Any such directions may provide for the trial of a preliminary issue with or without a stay of proceedings or for determination of the matters in question at the hearing of the cause, and for any interlocutory matters incidental thereto. A copy of the statement of grounds of protest of the application shall be served on the petitioner and any other party who has appeared unless such party is the applicant.

14. Supplemental or amended petitions

- (1) A petition may be amended without leave before service of the original petition.
- (2) No supplemental petition shall be filed before service of the original petition.
- (3) After service of the original petition no supplemental petition may be filed and no petition shall be amended without leave.
- (4) Unless otherwise directed, an application for leave shall be made *ex-parte* and shall be accompanied by the supplemental petition or the amendment to the petition accompanied by an affidavit in support by the petitioner verifying the new facts which the deponent has personal cognizance and deposing as to belief in the truth of the other new facts alleged.
- (5) An order under this rule shall, if made after appearance, fix the time within which the answer must be filed or amended and provide for a stay of the hearing or adjourn the hearing until a further date if necessary.
- (6) Unless otherwise directed the supplemental petition or the amendment petition together with a copy of the order (if any) under this rule shall be served upon the respondent, the supplemental

petition or the amended petition shall be endorsed with a notice to appear in accordance with Form 4 and the provisions of rules 8 to 11 shall apply to supplemental and amended petitions as they apply to original petitions.

15. Interveners

- (1) If the ground alleged for the irretrievable break-down of the marriage is the adultery of a party to the marriage, a copy of the petition or the answer, as the case may be, shall be served on the person with whom adultery is alleged to have been committed endorsed with a notice in accordance with Form 6.
- (2) Unless otherwise directed, a party intervening shall join in the proceedings at the stage which those proceedings have reached on the day on which the application for leave to intervene is granted and the name of that party shall appear thereafter in the title to the cause.

16. Answer

The court shall, on the day fixed for appearance, if the respondent has appeared, proceed to fix a date for the party who has appeared to file an answer to the petition.

17. Consent to the grant of an order of divorce

Where before the hearing of a petition alleging one year separation coupled with respondent's consent to an order of divorce being granted, the respondent wishes to indicate to the court that he consents to the grant of the order, he shall do so by giving the Registrar a notice to that effect signed by the respondent personally in accordance with Form 7.

18. Particulars of answer

Every answer which contains matter other than a simple denial of the facts stated in the petition shall set out with sufficient particularity the facts relied upon but not the evidence by which they are to be proved, and if the answer is filed by a person who is husband or wife of the petitioner, shall contain at the foot or end the affidavit supporting it in accordance with rule 3(9).

19. Amendment of notice, pleading etc,

Subject to the aforesaid rules, any notice, pleading or other document may be amended by leave subject to any directions as to re-service and as to consequential amendment of pleadings already filed.

20. Pleadings out of time

No pleading shall be filed out of time without leave. Applications for leave shall be made by motion supported by affidavit.

21. Further particulars

- (1) Any party may by letter require any other party to furnish particulars of any allegation or other matter pleaded and, if such other party fails to furnish such particulars within a reasonable time, the party requiring the particulars may apply for an order that particulars be given.
- (2) All particulars, whether in pursuance of an order or otherwise, shall be furnished, within twenty-four hours of being required to do so, to the party requiring them.

22. Delivery of answer

A copy of every answer (other than an answer which is required to be served in the same manner as a petition) shall, within twenty-four hours after it is filed, be delivered to the opposite parties or their attorneys.

23. Medical examination

- (1) On a petition for nullity on the ground that the marriage has not been consummated owing to the willful refusal of the respondent to consummate the marriage, either party may apply for the appointment of a medical officer to examine the parties. Upon such application the Registrar shall appoint a medical officer and either of the parties shall be at liberty to submit himself for examination by the officer so appointed.
- (2) The provisions of paragraphs (3) and (4) shall apply to any such examination and the medical officer shall report to the court in writing the result of any examination made by him.
- (3) Every report made in pursuance of this rule shall be filed and either party shall be entitled to be supplied with a copy upon payment of the prescribed fee.
- (4) The Registrar may if it appears to him to be necessary, appoint more than one medical officer.

24. Examination of petitioner and evidence

The court may order the attendance of the petitioner and may examine him or her, or permit him or her to be examined on oath or on his or her personal answer on the hearing of any petition.

25. Evidence

- (1) Subject to the provisions of the Act and this rule the witnesses at the trial or hearing of any matrimonial cause shall be examined *viva voce* and in open court;
Provided that the judge may, on application made to him—
 - (a) subject to the provisions of paragraph (2) order that any particular facts to be specified in the order may be proved by affidavit;
 - (b) order that the affidavit of any witness may be read at the trial or hearing on such conditions as the judge may think reasonable;
 - (c) order that the evidence of any particular facts to be specified in the order shall be given at the trial or hearing by statement on oath of information and belief or by production of documents or entries in books or by copies of documents, entries or otherwise as the judge may direct; and
 - (d) order that no more than a specified number of expert witnesses may be called.
- (2) Where it appears to the judge that any party reasonably desires the production of a witness for cross-examination and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit, but the expenses of such witness at the trial shall be specially reserved.
- (3) Any party may apply for the appointment of an examiner or for a commission or for letters of request to examine a party or witness in any cause and for leave to give the depositions taken on examination in evidence at the trial or hearing.
- (4) Nothing in any order made under this rule shall affect the power of the judge at the trial or hearing to refuse to admit evidence tendered in accordance with any such order if in the interests of justice he should think fit to do so.

26. Setting down for trial

- (1) The Registrar, on being satisfied that the pleadings and proceedings are in order, shall set down the cause for trial at the earliest convenient date and shall in a defended cause give notice by registered letter or other wise to all parties in the cause who have filed an answer or intervened or to their attorneys.

- (2) In an undefended cause or in a defended cause in which no answer has been filed, the Registrar shall at the request of the petitioner set down the cause for trial but need not give notice to the other party.

27. Right of respondent to be heard on question of costs, custody and access

After having appeared, a respondent may, without filing an answer, be heard in respect of any question as to costs and a respondent spouse may, without filing an answer, be heard as to any question of custody of or access to any relevant child.

28. Copy of record to be sent to Attorney-General; Form of order

- (1) Immediately after the judgment or decree the Registrar shall if the Attorney General so requests forward to the Attorney General the record (or a copy of the cause) including the notes of evidence.
- (2) A sealed or other copy of any order of the court may be issued to any person requiring it on payment of the prescribed fee.

29. Interventions by Attorney-General

When the Attorney General desires to show cause against making absolute a conditional order, he shall give notice to the Registrar and to the party in the cause in whose favour the conditional order has been granted that he intends to show cause and shall within fourteen days thereafter file his plea setting forth the grounds upon which he desires to show cause, and a copy thereof shall be served on the person in whose favour such order has been pronounced or on his attorney.

30. Interventions by persons other than Attorney-General

- (1) When any person other than the Attorney General desires to show cause against making absolute a conditional order he shall give notice to the Registrar and to the party in the cause in whose favour the order has been pronounced that he intends to show cause and shall within fourteen days after the date of the order file an affidavit setting forth the facts upon which he relies, and within twenty-four hours of filing such affidavit deliver copies thereof to the party in whose favour the order has been pronounced or to the attorney of that party.
- (2) The party in the cause in whose favour the conditional order has been pronounced may within fourteen days after the delivery of the affidavit as aforesaid in rules 29 and 30 file an affidavit in answer, and shall within twenty-four hours after filing deliver copies thereof to the person showing cause or his attorney.
- (3) The registrar on being satisfied that the proceedings are in order shall set down the intervention for hearing at the earliest convenient date not being less than ten days thereafter and shall within twenty-four hours of having done so give notice of hearing to the parties or their attorneys.

31. Order absolute

- (1) An application by a spouse to make absolute a conditional order pronounced in his favour shall be made to the court by lodging a notice of application in accordance with Form 8 on any day after the expiration of the period prescribed for making such order absolute. The registrar having searched the court minutes and being satisfied—
 - (a) that no appeal against the said order is pending, that no order has been made by the Appellate Court enlarging the time for appealing against the said order (or, if such order has been made, that the time so enlarged has expired),

- (b) that no notice has been given (or if notice has been given that no affidavits have been filed within the time allowed for filing), by or on behalf of any person wishing to show cause against the order being made absolute,

the notice shall be filed:

Provided that if the application is made after the expiration of one year from the date of the conditional order there shall be filed with the application an affidavit by the applicant or his attorney accounting for the delay, and the notice of application shall not be filed without the leave of a judge.

- (2) Upon the filing of the said notice the conditional order shall become absolute.
- (3) An application by a spouse to make absolute a conditional order pronounced against him shall be by summons to a judge accompanied by a notice of application in Form 8, on not less than four days' notice. On any such application the judge may make such order as he thinks fit.
- (4) A certificate in accordance with Form 9 or Form 10 whichever is appropriate, that the order has been made absolute, shall be prepared and filed by the Registrar. The certificate shall be authenticated by fixing thereto the seal of the Supreme Court.
- (5) Where in relation to a matrimonial cause in which a conditional order has been pronounced, the record of the cause has been lost or destroyed, it shall be a sufficient compliance with the provisions of this rule if an affidavit, sworn not more than six days before the time appointed, is filed—
 - (a) exhibiting a letter from the Attorney General stating that he has no cause to show against the order being made absolute; and
 - (b) stating that to the best of the deponent's knowledge and belief no person other than the Attorney General has given notice or filed an affidavit to show cause against the order being made absolute.

32. Maintenance pending suit

A petitioner wife or a respondent wife who has not included in her petition or answer, as the case may be, a prayer for maintenance pending suit at any time after filing the petition or before or after filing answer, as the case may be, and a respondent husband against whom a petition for divorce, judicial separation or nullity of marriage is presented and who is alleged to be suffering from a mental disorder or of unsound mind, may, in accordance with rule 48, make an application for maintenance pending suit at any time after appearing to a petition.

33. Maintenance of children

An application for maintenance of a relevant child in accordance with rule 4(1) (d) and (e) may be made—

- (a) by a petitioner who has not included in the petition a prayer for maintenance of the child at any time after service of a petition in which custody of any relevant child is claimed or after making a subsequent application for custody;
- (b) by a respondent spouse after appearing to a petition; and
- (c) by any person who has intervened in the suit for the purpose of applying for the custody, or who has the custody or control, of any relevant child under order of the court after intervention in the cause.

34. Payment for spouse and relief in respect of property

- (1) An application for a periodical payment or lump sum payment in accordance with rule 4(1) (b) or (c) or in relation to property in accordance with rule 4(1) (f), (h), (i) or (j) where a prayer for the same has not been included in the petition for divorce or nullity of marriage, may be made by the petitioner at any time after the expiration of the time for appearance to the petition, but no application shall be made later than two months after order absolute except by leave.

- (2) An application for periodic payment or lump sum payment in the case of a petition for an order of separation (if a prayer for the same has not been included in the petition) may be made at any time after the pronouncement of the order of separation.
- (3) An application in relation to property in the case of a petition for an order of separation (if a prayer for the same has not been included in the petition) may be made at any time after the pronouncement of the order of separation.
- (4) Upon an application in relation to property under paragraph (1) or (3) or where a claim for such relief is made in the petition, the court shall, unless it is satisfied that any order may not adversely affect the rights or interests of any relevant child or that adequate provision is made for any relevant child, direct that the relevant child be separately represented on the application by an attorney and may, where necessary, assign a guardian *ad litem* by whom any relevant child may appear upon the application.

35. Variation of orders for ancillary relief

A petitioner, or a respondent after appearance to the petition, may at any time apply for an order to discharge, modify or temporary suspend an order made in respect of any ancillary relief.

36. Evidence on applications for maintenance etc.

- (1) Where a husband is served with a petition in which maintenance pending suit, maintenance of a relevant child or payment for the wife is claimed, and appears to the petition he shall within fourteen days of the time limited for appearance, file an affidavit setting out full particulars of his property and income.
- (2) Where a husband is served with a claim for or with a notice of an application for maintenance pending suit, or for payment for the wife or for maintenance of a relevant child, he shall within fourteen days after service of the notice upon him, or if he has not at the time of such service appeared to the petition, after appearing, within fourteen days after the expiration of the time limited for appearance, file an affidavit setting out full particulars of his property and income, unless in the case of any such application other than application for maintenance pending suit the wife at the time of service of the application thereof gives notice to him or to his attorney of her intention to proceed with the application upon the evidence already filed upon her application for maintenance pending suit.
- (3) Where a wife is served with a notice of an application for maintenance pending suit, for a payment for the husband or for the maintenance of a relevant child, the provisions of paragraph (2) shall apply to the filing of an affidavit by the wife setting out full particulars of her property and income as they apply to the filing of an affidavit by the husband as to his property and income.

37. Evidence in support of application for variation of property orders

- (1) An application for variation of a marriage settlement or of an order in respect of the property of spouses shall state the nature of the variation proposed and shall, unless otherwise directed, be supported by an affidavit of the petitioner stating the facts relied on, and in the case of an application for variation of marriage settlements, such affidavit shall set forth full particulars of the marriage, of any relevant child, all settlements whether ante-nuptial or post nuptial and of the funds brought into the settlements by the husband and wife, and in the case of an application for settlement of the wife's property, full particulars of the property to which she is entitled either in possession or in reversion.
- (2) The application shall, in addition to being served on the respondent, be served on the trustees, if any, of any settlements and upon such other persons as the judge may direct and any party so served may within fourteen days after such service and after appearance file an affidavit in answer.

38. Further evidence in support of applications for maintenance, etc.

If an affidavit is filed by a husband in pursuance of rule 36, the wife may, within fourteen days after delivery of the husband's affidavit to her or her attorney, file an affidavit in reply thereto, but no further affidavit shall be filed by any party without leave.

39. Evidence on application for variation of orders for alimony, etc.

- (1) An application for a variation of orders for payment of maintenance pending suit or for any other payment of money shall be supported by an affidavit of the applicant giving full particulars of the applicant's property and income and the grounds on which the application is made.
- (2) The respondent to the application may, within fourteen days after delivery of the affidavit to him or to his attorney, and unless he is the petitioner in the cause, after appearance, file an affidavit in answer, but no further affidavit shall be filed by any party without leave.

40. Date of hearing and notice to other parties in application for ancillary relief

On an application for maintenance pending suit or for other ancillary relief whether contained in the petition or otherwise, the judge shall fix a date for the hearing of the application, and notice thereof shall be given by the applicant to every other party to the application who has appeared and at the hearing the judge shall in the presence of the parties, or their attorneys, investigate the allegations made in support of and in answer to the application and may order the attendance of the spouses and any other person for the purpose of being examined or cross-examined, or may take the oral evidence of witnesses, and at any stage of the proceedings may order the production of any document or call for further affidavits.

41. Custody of and access to children

- (1) The petitioner or the respondent spouse or guardian or any person who has intervened in the suit for the purpose of applying for custody of a relevant child or who has the custody or control of any relevant child under an order of the court may apply at any time either before or after order absolute or order of separation as the case may be, to a judge for an order relating to the custody or education of such child or that such child be placed under the protection of the court.
- (2) A petitioner may at any time after filing a petition in a matrimonial cause and a respondent may at any time after appearance, apply to a judge in chambers for access to any relevant child. On an application for access by a spouse against whom an order, conditional order or absolute order, as the case may be, has been pronounced, unless the other party consents to give access to the child, the only question for determination on the application is the extent to which access shall be given.

42. Information as to other proceedings relating to children

On any application under these rules relating to any relevant child, if there are any other proceedings relating to any such child in progress in the Supreme Court, there shall be filed a statement as to the nature of such proceedings.

43. Summons

The name of the cause or matter and of the person taking out a summons shall be endorsed thereon, and a copy of the summons shall be served on the party to whom the summons is addressed or on his attorney two clear days at least before the summons is returnable unless these rules otherwise provide.

44. Hearing of application

On the day and at the hour named, the party taking out the summons shall attend at the place appointed for hearing. If any party to the summons does not appear at the time appointed in the summons, the judge

may proceed in his absence upon being satisfied by affidavit of service or otherwise that the party not in attendance had due notice of the time appointed.

45. Attachment and committal

- (1) An application for attachment or committal orders shall be made to a judge in chambers and any person attached or committed may apply to the court for his discharge.
- (2) Writs of attachment or committal order shall be directed to a Process Server of the Supreme Court and the Process Server after arresting the person ordered to be attached or committed shall deliver him for safe custody to the Superintendent of Prisons.

46. Enforcement of orders

- (1) In default of payment to any person of any sum of money at the time appointed by any order of the court for the payment thereof, an order of sequestration, or warrant for execution shall be issued as of course upon an affidavit of service of the order and of non-payment, in the manner provided by the Seychelles Code of Civil Procedure for the execution of judgment.
- (2) An order requiring a person to do an act thereby ordered shall state the time within which the act is to be done, and the copy to be served upon the person required to obey the same shall be endorsed with a notice in accordance with form 11 and shall be served personally on that person.
- (3) Where a party who has been ordered to pay costs into court fails to do so in accordance with the order, the party in whose favour the order was made may apply to a judge to vary the said order by directing payment to an individual to be specified in the application, and the judge, if satisfied that in the circumstances it is just and equitable to do so, may vary the order accordingly, provided that, if the application is made before order absolute, the order shall only be made upon the individual undertaking to pay the costs into court as and when received.

47. Motions

- (1) Unless the judge shall otherwise direct, and save as otherwise provided for by these rules, five clear days notice of any motion, other than an *ex parte* motion, to be made to the court shall be served on all parties who may be affected by the proposed order.
- (2) A copy of the notice so served shall be filed in the Registry, and the affidavits to be used in support of the motion and original documents referred to therein or intended to be used at the hearing of the motion, shall at the same time be lodged in the Registry. Copies of all such affidavits or documents shall be delivered to the parties or the attorneys of the parties who are entitled to be heard upon the motion.

48. Minors and persons of unsound mind

- (1) A minor or a person of unsound mind may commence and prosecute any cause or make any application and may defend or intervene in any cause to which these rules relate by his guardian where necessary or by a guardian *ad litem*.
- (2) When in any such cause, any documents is required to be personally served and the person on whom service is to be effected is a minor, that document shall, unless otherwise directed, be served on the father or guardian of the minor or, if none, upon the person with whom the minor resides or under whose care he is, and service so effected shall be deemed service on the minor provided that the Registrar may order that any other mode of service made or to be made on the minor shall be deemed service.
- (3) Where in any such cause any document is required to be served and the persons on whom service is to be effected is of unsound mind, service shall be made on his guardian *ad litem* or on his legal guardian and service so effected shall be deemed service upon the person of unsound mind.

- (4) Any document served in accordance with paragraph (3) shall be endorsed with a notice that the contents or purport shall be communicated to the person of unsound mind to whom it relates unless the person on whom the document was served is satisfied, after consultation with the medical attendant of the person of unsound mind or the medical officer of the institution in which the person of unsound mind is, that the communication would be detrimental to the mental condition of the person of unsound mind, and in a case where any order has been made under the Mental Treatment Act in respect of the person of unsound mind the document shall also be served upon the chairman of the Central Board, and upon the Superintendent of the Institution wherein the person of unsound mind is detained.
- (5) After service of any document has been effected upon a person of unsound mind in accordance with paragraph (4), the party at whose instance the document was served shall, unless otherwise directed, file a statement made by the person with whom the person of unsound mind resides or under whose care he is, stating whether or not the contents or purport of the document were communicated to the person of unsound mind, and if not, giving the reason why the contents or purport of the document were not so communicated.
- (6) Where a petition or answer has been served personally on the minor or a person of unsound mind, and no appearance has been made in the cause or no intervention has been made by or on behalf of the minor or person of unsound mind, the party at whose instance the petition or answer was served shall before proceeding further with the cause, cause the petition or answer to be served on the guardian if any, of the minor or person of unsound mind, and if there is no such person, apply for an order that some proper person be assigned guardian of the minor or person of unsound mind by whom he may appear and defend or intervene in the proceedings.
- (7) Where any cause to which these rules relate is commenced against a person who is a mentally defective, or where a petition is filed for nullity on the ground that the respondent was at the time of the marriage of unsound mind or mentally defective or subject to recurrent fits of insanity or epilepsy the applicant or petitioner shall not proceed with the cause without leave, whether the respondent shall not proceed with the cause without leave, whether the respondent appears or not, and the judge may, if he considers that the respondent is not properly represented or ought to be represented, order that some proper person be assigned guardian and litem of the respondent by whom he may appear and defend the cause.
- (8) Nothing in this rule shall affect the capacity of emancipated minors to be served or to petition or defend or intervene or make any application in any matrimonial cause.

49. Taxation of costs

All bills or costs shall be referred to the Registrar for taxation in the manner provided by the Court Fees and Costs (Supreme Court) Act.

50. Certificate of taxation

Upon the Registrar's certificate as to costs being signed, an order for payment of the amount may issue *de plano*.

51. Costs in conditional orders

An order for payment of costs contained in a conditional order, if drawn up before the conditional order is made absolute, shall direct payment into court, and such costs shall not be paid out of court to the party entitled to receive them under the conditional order until that order has been made absolute, but a wife who is unsuccessful in a cause and who at the hearing of the cause has obtained an order of the judge for costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

52. Wife's costs

- (1) At the hearing of an application for a commission or for letters of request or for the appointment of a special examiner to examine a party or witness who is outside the jurisdiction of the Court, or at any time after such examination is granted, a wife who is a petitioner, or who has appeared to a petition may apply for a sufficient sum to cover her costs of and incidental to the examination.
- (2) At any time after the petition has been filed by a wife petitioner, or after appearance by a wife respondent, she;
 - (a) may, subject to the provisions of paragraph (3), file her bill of costs up to and including the stage which the cause has reached, for taxation as against her husband; and
 - (b) may, whether she has failed her bill of costs or not, apply for her costs of and incidental to the trial or hearing of the cause.
- (3) A wife who has been allowed to sue as a poor person may not file her bill of costs for taxation without leave unless an order for such costs has been made in the suit.
- (4) Where an application for costs has been made under this rule, the judge shall ascertain what is a sufficient sum of money to cover the costs of the wife of and incidental to the examination or to the trial or hearing of the cause, as the case may be, including a reasonable sum for counsel's honorarium and fees, and if after taking all the circumstances into account, including the means of the husband and the wife he considers that the husband should pay or provide security for all or some of the wife's costs, he may order the husband to pay the sum so ascertained, or some portion of it, into court or to give security with sureties therefore in such sum and within such time as the judge may fix, and may direct a stay of the proceedings until the order is complied with. The judge may at any time, after such sum has been paid or such security has been given, order payment of a further sum or increase the security.

53. Form of bond and proceedings under bond

- (1) The bond taken to secure the costs of a wife under rule 52 shall be given to the Registrar and shall be filed, it shall not be delivered out or sued upon without leave of the judge.
- (2) Where it appears to the satisfaction of the court that the conditions of a bond have been broken, the court may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order and the person to whom the bond is ordered to be assigned shall be entitled by virtue of the order to sue thereon in his own name as if it had originally been given to him, and to recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.

54. Payment of money out of Court

Persons entitled to payment of money out of court on applying for the same, shall lodge in the Registry an application in writing, setting forth the date on which the money applied for was paid into court, the amount applied for, and the name and address of the person to receive the same.

55. Record of proceedings

- (1) Notes of the proceedings at the trial or hearing of any matrimonial cause shall, subject to the Act, be taken in such manner as the judge may direct.
- (2) The petitioner, any party who at any time has appeared or intervened in the suit and the Attorney General shall be entitled to require from the Registrar a copy of the notes or a transcript of shorthand notes of the proceedings and the Registrar shall on the request of any person entitled thereto, furnish a copy or transcript on the payment of the proper fees.

- (3) Save as aforesaid no copy or transcript of the whole or any part of the notes of the proceedings shall be furnished to anyone without permission of the judge.

56. Security for costs of preparation of appeal

When in any cause to which these rules relate notice of appeal has been given by any party who may be entitled to appeal, a wife who is appellant or respondent to the appeal may apply to a judge in chambers for her costs and expenses of and incidental to the preparation of the appeal and retaining of attorney and counsel before the Appellate Court, and the judge, after ascertaining what is a sufficient sum of money to cover such costs and expenses, may, unless the husband proves that the wife has sufficient separate estate or shows other good causes order the husband to pay such sum either to the wife or into court or to give security with sureties within such time as he may fix, in addition to the security for the costs before the Appellate Court. The provisions of rule 53 shall apply in connection with these costs.

57. Application of Rules of the Supreme Court

Subject to the provisions of the Act and of these rules and of any other enactment, the Seychelles Code of Civil Procedure, shall apply *mutatis mutandis*, to the practice and procedure in any matrimonial cause or matter to which the Act relates, and when the Seychelles Code of Civil Procedure is silent the practice and procedure of the High Court in England shall be followed as near as may be.

58. Transitional provisions

All petitions and matrimonial causes pending before the Supreme Court before the coming into operation of these rules and all incidental proceedings thereto shall be continued, conducted, heard, tried and determined as if they had been entered under these rules.

59. Forms

The Forms set out in the schedule shall be used in all proceedings in matrimonial causes and where no Form is given, the Forms used in the High Court in England shall, with proper modifications, be followed in the Supreme Court.

Schedule

Form 1

In the Supreme Court

In the matter of the above petition

Affidavit in support

I, A, B, the petitioner, make oath and says as follows:—

- (1) That the statements set forth in paragraphs of the petition are true

- (2) That the statements set forth in paragraphs _____ of the petition are true to the best of my knowledge, information and belief.

Sworn by the above-named deponent at my Chambers, at the Court House at Victoria,

Made, this _____ day of _____

Registrar of the Supreme Court

Deponent

Form 2 (Rule 3(1))

In the Supreme Court

In the matter of a petition by _____ for _____

(here set out particulars of the matrimonial cause in which the application is made)

To _____

TAKE NOTICE that the petitioner (respondent) intends to apply to the Court for an order that _____

(here set out the ancillary relief claimed.)

And take notice that the petitioner will be heard on the _____ at _____ and should you the said _____ desire to be heard on the said application you are at liberty to appear to the said application on the said date and time.

This notice is issued by _____ *(name and address of applicant or attorney)* _____

Dated the _____ day of _____ 19 _____

Form 3 (Rule 4(2))

In the Supreme Court

(Summons)

In the matter of petition by _____ for _____*(here set out particulars of the matrimonial cause in which the application is made.)*

TO THE HONOURABLE MR. JUSTICE _____

Chief Justice/Judge.

PRAECIPE FOR A SUMMONS TO _____

(here set out the particulars of the application made.)

An affidavit in support is annexed herewith.

Applicant _____

or

applicant's attorney _____

THE ORDER OF THE JUDGE is that you _____ of _____

attend the Court (or the Judge in Chambers) on the _____ day of _____, 19 _____ o'clock in the _____ noon on the hearing of the above application, and that a copy of the affidavit to be used in support of the application to be delivered to you with this summons. If you wish to be heard on the said application you must attend at the time and place above-mentioned, and if you do not attend such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ Day of _____, 19 _____

This summons was taken out by _____ attorney for the (respondent)/(petitioner).

Registrar

Form 4 (Rule 8(1))
Notice to appear

Between _____ Petitioner

and _____ Respondent

Consent to grant of divorce

I _____ *(full name and description of respondent)* admit living apart from the petitioner for a continuous period of _____ year/s immediately preceding the petition and hereby consent to the grant of the divorce.

Respondent**Form 5 (Rule 8(3))*****In the Supreme Court******In the matter of a petition by _____***

To _____

Notice to file evidence

And further take notice that unless at the time of service thereof upon you the applicant or her (or his) attorney gives notice to you dispensing with this requirement you are required before the date for appearance to deliver or send to the Registrar an affidavit giving full particulars of your property and income and to send a copy thereof to the applicant or his (or her) attorney. If you allege that the applicant has property or income you should so state in your affidavit.

Form 6 (Rule 15 (1))

Notice to a person entitled to intervene in the Supreme Court

In the matter of a petition by _____

To _____

TAKE NOTICE that a petition (or answer) has been presented to the Court by _____

A copy of it is delivered herewith. Unless you intervene you are not entitled to be heard. If you wish to intervene and be heard you must apply to the Court by motion within _____ days of the receipt of this notice.

If you do not do so within the time named the Court may, without further notice to you, proceed to hear the petition (or answer) and pronounce judgment notwithstanding your absence.

The petition (or answer) is filed and this notice is issued by _____ of _____

(name and address of petitioner (or respondent) or his attorney)

Dated the _____ day of _____ 19 _____

Registrar.

Form 7 (Rule 17)

In the Supreme Court

Certificate of making conditional order absolute (Divorce)

Referring to the order made in this cause on the _____ day of _____ 19 _____, whereby it was ordered that the marriage had and solemnized on the _____ day of _____ 19 _____ at _____, between _____, the petitioner and _____ the respondent be dissolved by reason that _____ unless sufficient cause be shown to the Court within _____ weeks from the making thereof why the said order should not be made absolute, and no such cause having been shown, it is hereby certified that the said order was on the _____ day of _____, 19 _____ made absolute and that the said marriage was hereby dissolved.

Dated the _____ day of _____, 19 _____

Registrar.

Form 8 (Rule 31(1))***In the Supreme Court***

Between _____ Petitioner

and _____ Respondent

and _____ Co-respondent

Notice of application for conditional order to be made absolute

I _____ (*full name and description of petitioner or respondent or attorney for the petitioner or respondent*) give notice that application is hereby made on behalf of the petitioner (or respondent) that the conditional order pronounced in this cause on the _____ day of _____ 19 _____ be made absolute.

Signature.**Form 9 (Rule 31 (4))*****In the Supreme Court***

Between _____ Petitioner

and _____ Respondent

and _____ Co-respondent

Certificate of making conditional order absolute (Nullity)

Referring to the order made in this cause on the _____ day of _____ 19 _____ whereby it was ordered that the marriage in fact had and solemnized on the _____ and of _____ 19 _____, at _____ between _____ the Petitioner, and _____, the respondent be pronounced and declared to have been and to be absolutely null and void to all intents and purposes in the law whatsoever by reason _____ and the said petitioner _____ be pronounced to have been and to be free of all bond of marriage with the said respondent _____ unless sufficient cause the shown to the Court within _____ weeks from the making thereof why the said order should not be made absolute, and no such cause having been shown, it is hereby certified that the said order was on the _____ day of _____ 19 _____ made absolute, and that the said marriage was absolutely null and void and that the said petitioner was and is free from all bond of marriage with the said respondent.

Dated this _____ day of _____ 19 _____

Registrar.**Form 10 (Rule 31 (4))*****In the Supreme Court***

Between _____ Petitioner

and _____ Respondent

and _____ Co-respondent

In the Supreme Court***In the matter of a petition by _____***

To _____

TAKE NOTICE that a petition/application has been presented to the Supreme Court _____. A copy of it is delivered herewith. The petition/application will be called at the Supreme Court on the _____ day of _____ by _____ 19 _____ at _____ o'clock in the _____ noon.

If you wish to be heard you must appear on the said date at the said time. If you do not to do so the Court may, without further notice to you, proceed to hear the petition application and pronounce judgment, notwithstanding your absence.

The petition/application is filed and this notice is issued by _____ of _____

(name and address of petitioner/applicant or attorney).

Dated the _____ day of _____ 19 _____

Registrar**Form 11 (Rule 46 (2))****Notice to be endorsed on an order**

TAKE NOTICE that if you the within named _____ neglect to obey this order within the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same.

Registrar.