

## **MATRIMONIAL CAUSES RULES**

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**MEMORANDUM OF PUBLICATION OF ADVERTISEMENT**

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**DECREE OF NULLITY OF VOID MARRIAGE**

**FORM 37**

**DECREE NISI OF NULLITY OF VOIDABLE MARRIAGE**

**FORM 38**

**DECREE OF JUDICIAL SEPARATION**

**FORM 39**

**DECREE OF RESTITUTION OF CONJUGAL RIGHTS**

**FORM 40**

**MEMORANDUM OF DECREE NISI HAVING BECOME ABSOLUTE**

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**NOTICE THAT LEGAL PRACTITIONER HAS CEASED TO REPRESENT PARTY**

**Cesser of**

**English**

**Rules**

**SECOND SCHEDULE**

**COURT FEES**

**Orders**

**Matrimonial Causes Rules**

under sections 93 and 112

[Commencement: 1<sup>st</sup> October, 1983]

@@#ORDER I##@@

## PRELIMINARY

1. These Rules may be cited as the Matrimonial Causes Rules.
2. The rules of court for the time being in force in the High Court of Justice in England providing for the practice and procedure of that court in respect of divorce and matrimonial causes, shall cease to apply in Nigeria when these Rules come into force.

3. These Rules are divided into the following Orders that is to say-

Order I -Preliminary (rules 1-14).

Order II -Reconciliation (rules 1 and 2).

Order III -Proceedings.

Part 1. -Commencement of proceedings (rules 1-3).

Part 2. -Applications to the court (rules 4-8).

Order IV. -Applications for leave to institute proceedings for dissolution of marriage or judicial separation (rules 1-4).

Order V. -Petitions.

Part 1. – General (rules 1-10).

Part 2. -Petitions for dissolution of marriage (rules 11 -17).

Part 3. - Petitions for nullity of marriage (rules 18-22).

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Part 4 – Petitions for judicial separation (rules 23 and 24).

Part 5.- Petitions for restitution of conjugal rights (rules 25 and 26). Part 6. - Filing petitions and notices of petitions (rules 27-32).

Order VI. -Service.

Part 1. – General provisions relating to service of Documents (rules 1-7).

Part 2. – Service of petitions and answers (rules 8-10).

Part 3. – Service on infants and persons of unsound mind (rules 11 and 12).

Part 4. - Proof of service (rules 13-18).

Order VII. -Pleadings.

Part 1. - Answers(rules 1-3).

Part 2. – Replies and rejoinders (rules 4-7).

Part 3. -Pleadings generally (rules 8-12).

Part 4. -Discontinuance (rule 13).

Order VIII. -Amendment of pleadings, supplementary petitions and supplementary answers.

Part 1. - Amendment of pleadings (rules 1-9).

Part 2. - Supplementary petitions and supplementary answers (rules 10-17).

Order IX. -Parties.

Part 1. - General(rules 1-7).

Part 2. -Infants(rules 8-12).

Part 3. – Persons of unsound mind (rules 13-17).

Part 4. -Guardians ad litem (rules 18-27).

Order X. – Default in pleading (rules 1-3).

Order XI. -Preparation for trial.

Part 1. -Preliminary (rules 1-3).

Part 2. -Particulars, discovery and Inspection of Documents (rules 4-15).

Part 3. -Admissions and notices to produce (rules 16-20).

Part 4. – Medical examination of parties (rules 21-27).

Part 5. -Discretion statements (rules 28-32).

Part 6. -Compulsory conferences (rules 33-37).

Part 7. -Consolidation of proceedings (rule 38).

Part 8. – Setting suits down for trial (rules 39-49).

Order XII.-Decrees (rules 1-9).

Order XIII.-Intervention by persons not parties to proceedings (rules 1-3).

Order XIV. -Proceedings for ancillary relief.

Part 1. -Preliminary (rules 1-6).

Part 2. -Maintenance pending suit (rules 7-16).

Part 3. -Certificates of means (rules 17-19).

Part 4. - Custody(rules 20-24).

Part 5. -Proceedings for ancillary relief instituted by a person not a party to the marriage (rule 25).

Part 6. -Variation of orders (rule 26).

Order XV. -Evidence.

Part 1. - General(rules 1-6).

Part 2. -Affidavits (rules 7-20).

Order XVI. –Affirmations and defective affidavits (rules 1-2).

Order XVII. -Enforcement of decrees.

Part 1. - General(rules 1-3).

Part 2. -Attachment and sequestration (rules 4-6).

Part 3. -Attachment of earning orders (rules 7-16).

Part 4. – Other means of enforcing decrees (rule 17).

Part 5. -Execution of warrants and writs in other States or territories (rules 18-22).

Part 6. -Registration of decrees in other courts (rules 23-29). Part 7. – Registration of maintenance orders in courts of summary jurisdiction (rules 30-34).

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ORDER 1

Order XVIII. Proceedings consequent on decrees of restitution of conjugal right (rules 1-7)

Order XIX. Registries (rules 1-7)

Order XX. Fees (rules 1-5).

Order XXI. -Effect of non-compliance with these Rules or with an order (rules 1-4).

Order XXII. -Proceedings for jactitation of marriage, declarations, etc.

Part 1. -Application (rule 1).

Part 2. -Petitions for jactitation of marriage (rules 2 and 3).

Part 3. -Petitions for declarations, etc. (rules 4-7).

Order XXIII. -Miscellaneous (rules 1-14).

Interpretation4. (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 rule 12 of Order 1 of these Rules;

application means an application to a court for the purpose of instituting proceedings of a kind referred to in sub-rule (2) or (3) of Order III, rule 1 of these Rules or an application to a registrar made under these Rules;

Attorney-General means the Attorney-General of the Federation;

certificate of means a certificate granted by the court under Order XIV rule 18 of these Rules;

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 means the High Court of a State or of the Federal Capital Territory, Abuja;

court division means, in relation to a State or the Federal Capital Territory, a division in that State designated as a court division for the purpose of these Rules by the Chief Judge or any other authority authorised under the law of that State or the Federal Capital Territory, Abuja to make rules of court or other provision in relation to the practice and procedure of the High Court of that State or the Federal Capital Territory, Abuja;

filed means filed in the appropriate office of a court;

Gazette means the Official Gazette of the Federation;

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

intervener means, in relation to proceedings, a person who becomes or has become a party to the proceedings by intervening under Part III of the Act or under Order IX, rules 6 and 7 or Order XIV, rule 25 of these Rules;

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 means

(a) in relation to a petition, a person named in the petition who has intervened, under subsection(2) of section 32 of the Act, in proceedings instituted by the petition; and

(b) in relation to an answer to a petition, a person named in the answer who has intervened, under subsection (2) of section 32 of the Act, in proceedings instituted by either the answer or the petition;

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

**Order I** person named means-

(a) in relation to a petition, 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, 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;

respondent means, 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, the spouse of the petitioner;

registrar means the Chief Registrar, Deputy Chief Registrar, or registrar of the court;

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 Federation 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 twenty grammes, posted in the Federation to an address in the Federation;

State means a State in the Federation of Nigeria;

the Act means the Matrimonial Causes Act; [Cap. M7.]

the definition of matrimonial cause, means the definition of matrimonial cause in subsection(1) of section 114 of the Act.

(2) Subject to Order XIV, rule 1 of these Rules, references in these Rules to a marriage shall be read as including references to a purported marriage and references to the spouse of a person shall be read as including references to the purported spouse of a person.

Order I

5. Where a registrar is required by any of these Rules to do an act of a merely administrative nature, 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.

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

(2) For the purpose of sub-rule (1) of this rule, a document filed or issued for the purpose of proceedings that are instituted by application to a court and are in relation to proceedings instituted by a petition,

shall be deemed to have been filed or issued in connection with the proceedings instituted by that petition.

(3) In the title of a document filed in or issued out of the office of a court in connection with proceedings of a kind referred to in paragraph (e) of the definition of matrimonial cause, 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 a court in connection with proceedings

(a) a party to the proceedings may be referred to by the designation by which the party is required by the preceding provisions of this rule 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.

## **Order I**

### Filing of documents

7.(1) Subject to this rule, where a document relating to proceedings is required by these Rules to be filed, the document shall, unless the contrary intention appears, be filed in the office of the court in which the petition or application instituting the proceedings was filed.

(2) Where proceedings have been transferred from a court to another court under section 9 of the Act, a document relating to the proceedings shall be filed in the appropriate office of the court to which the proceedings have been transferred.

(3) Where a decree has been registered in a court under section 89 or section 91 of the Act, a document relating to the enforcement of the decree by that court shall be filed in the appropriate office of that court.

(4) During the trial of proceedings or of any application relating thereto by a court, a document relating to the proceedings or application may, by leave of the court, be filed in court.

8. (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 a proceeding, the time shall, unless the contrary intention appears, 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 a proceeding expires on a Saturday or Sunday or on a day that is a public holiday in the place at which the act is to be or may be done, or the proceeding is to be or may be taken, the act may be done or the proceeding may be taken on the first day following that is not a Saturday, Sunday or public holiday.

(3) Except as otherwise provided in relation to the High Court of a State or the Federal Capital Territory Abuja, by a rule made by virtue of subsection (2) of section 112 of the Act, time runs, in connection with any proceedings in such a court, during any vacation of that 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 a proceeding, a Saturday or Sunday or a day that is a public holiday in the place at which the act is to be or may be done, or the proceeding is 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 connection with proceedings or the taking of a proceeding in a court, any day on which the office of the court is not open shall be excluded.

9. (1) Proceedings of a kind referred to in paragraph (c),

(d) or (e) of the definition of matrimonial cause may be heard by a court sitting in chambers.

(2) A court sitting in open court may adjourn proceedings of a kind referred to in sub-rule (1) of this rule for consideration by the court sitting in chambers.

(3) A court sitting in chambers may adjourn proceedings of a kind referred to in sub-rule (1) of this rule for consideration by the court sitting in open court.

(4) This rule shall not authorise a court sitting in chambers to hear proceedings that relate to proceedings for an act of a kind referred to in paragraph (a) of the definition of matrimonial cause where it is practicable for the court to hear those proceedings at the same time as the proceedings for such an act.

10. (1) Where a court is satisfied that

(a) the provisions of the Act relating to practice and procedure and the rules made under the Act do not make provision with respect to the practice and procedure applicable in the circumstances of a particular case; or

(b) difficulty arises or doubt exists as to the practice or procedure applicable in the circumstances of a particular case, the court may give such directions with respect to the practice and procedure to be followed in the case as the court considers necessary.

(2) Subject to any order made by a court on appeal, an act done or proceeding taken in accordance with a direction in force under sub-rule (1) of this rule shall be deemed to have been duly done or taken.

(3) Where a direction given by a court under sub-rule (1) of this rule is varied by a court on appeal, any act done or proceeding taken in accordance with the direction as so varied shall be deemed to have been duly done or taken.

11. (1) Subject to this rule, where proceedings that are in relation to proceedings for a decree of a kind referred to in paragraph (a) of the definition of matrimonial cause (in this rule referred to as the principal

proceedings) are heard by a 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 any order, required for the purpose of preparing the principal proceedings for trial, that could be made upon the hearing of proceedings instituted for the purpose of seeking such an order;

(b) hear and determine the application in accordance with the provisions of this rule; and

(c) make, upon the determination of the application, the order sought by the application or such other order as to the court seems meet.

(2) An application for an order referred to in sub-rule (1) of this rule

(a) may be made orally to a court without the filing of any affidavit in support of the application; and

(b) may be so made to a court notwithstanding the fact that proceedings seeking the order have been instituted but have not been heard and determined by a court.

(3) Where an application for an order referred to in sub-rule

(1) of this rule is made to a court in a case where proceedings seeking that order have been instituted but not heard by a court

(a) any affidavit filed for the purpose of those proceedings may, by leave of the court, be admitted in evidence upon the hearing of the application; and

(b) the order made by the court upon the determination of the application shall, unless the court otherwise orders, be deemed to be the order of the court upon the determination of those proceedings.

(4) Without limiting the generality of sub-rule (1) of this rule, application may be made to a court under this rule for an order with respect to

(a) service of documents and dispensing with the service of documents;

(b) discovery and inspection of documents;

(c) admissions of fact of documents;

(d) medical inspection of the petitioner and respondent in the principal proceedings;

(e) the day, time and place for the holding of a conference for the purpose of Part 6 of Order XI of these Rules;

(f) the place, time and mode of trial;

(g) the furnishing of evidence of facts by affidavit at the trial of the principal proceedings; and (h) the consolidation of the principal proceedings with other proceedings.

(5) An application under sub-rule (1) of this rule may be heard by a 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 upon the hearing of the application.

(6) Nothing in sub-rules (1) to (5) of this rule shall be taken to prevent the court

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

Order I

Address for service

(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 upon the hearing of the application.

12. (1) Unless the court otherwise orders

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

(b) a person is not entitled to be heard upon the trial or hearing of any proceedings, or upon the hearing of an application to a court or a registrar in relation to any proceedings, unless he has previously given an address for service that is, under this rule, 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 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 accordance with Form 1, filed for the purpose, and, in the case of a notice referred to in paragraph (b) of this sub-rule, serving a copy of the notice on each other party to the proceedings who had an address for service for the purpose of the proceedings.

(3) A person who has an address for service for the purpose of proceedings may change that address by filing a notice of change of address for service, in accordance with 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, in the case of a person who is represented by a legal practitioner, be the address of the legal practitioner for that person, or of a legal practitioner acting as the agent of that legal practitioner.

(5) The address for service given, or last given, by a person in accordance with this rule 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, or to which those proceedings are related.

1. In these Rules, a reference to a Schedule by number shall be read as a reference to the Schedule so numbered to these Rules and a reference to a Form by number shall be read as a reference to the Form so numbered in the First Schedule to these Rules.

2. (1) Strict compliance with the Forms in the First Schedule is not necessary and substantial compliance or such compliance as the circumstances of a particular case allow, is sufficient.

[First Schedule.]

(2) Where a person referred to in a Form in the First Schedule is not represented by a legal practitioner, a reference in the Form to the legal practitioner for the person shall be read as a reference to the person.

(3) Where the word Title appears on a Form in the First Schedule, it shall be taken to indicate that a document required to be in accordance with that Form shall

(a) if it is a document to which Order III, rule 2 of these Rules applies, be instituted in accordance with that rule; or

(b) in any other case, bear an appropriate title.

(4) A Form in the First Schedule shall be completed in accordance with such directions as are specified in the Form.

## ORDER II

### **RECONCILIATION**

1. In this Order, a document to which this Order 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 paragraph (h) of section 15 (2) of the Act;

(b) a petition or answer instituting proceedings for a decree of judicial separation under section 39 of the Act on a ground other than the ground specified in paragraph (h) of section 15 (2) of the Act; or

(c) an application for leave under section 30 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 a court under section 30 of the Act, proceedings for a decree of dissolution of marriage or judicial separation, a supplementary petition or a supplementary answer.

2. Where a document to which this Order applies is filed on behalf of a party who is represented by a solicitor, the document shall not be effective for the purposes of proceedings under the Act unless a

certificate, in accordance with Form 3 or Form 3A (whichever is appropriate) and signed by the solicitor personally, is written on the document.

## ORDER III

### **PROCEEDINGS**

#### Part 1 -Commencement of proceedings

1. (1) Proceedings required by subsection (1) of section 54 of the Act to be instituted by petition shall be instituted by filing a petition, addressed to a court having jurisdiction under the Act, in a proper office of that court.

(2) Where leave has been granted under subsection (3) of section 54 of the Act for the institution of proceedings of a kind to which that subsection applies otherwise than in the relevant petition or answer, the proceedings shall be instituted by filing an application to the court.

(3) Subject to sub-rules (1) and (2) of this rule, proceedings in a matrimonial cause shall, except as otherwise provided in these Rules, be instituted by filing an application to a court having jurisdiction under the Act in the proper office of that court.

(4) Where proceedings to which sub-rule (3) of this rule applies are instituted in relation to pending proceedings, the proceedings shall be instituted in the court in which those proceedings are pending.

(5) Subject to the Act and to these Rules, where proceedings to which sub-rule (3) of this rule applies are instituted in relation to completed proceedings, the proceedings shall be instituted in the court in which the completed proceedings were heard and determined or in a court in which the decree of that court has been registered.

(6) Where an application relating to proceedings is, under these Rules, required or permitted to be made to a court, the application shall be made by filing

(a) in the proper office of the court in which the proceedings are pending; or

(b) if the application relates to the enforcement of a decree by a court in which the decree has been registered, in the proper office of that court, an application in that court.

(7) For the purposes of this rule, proceedings determined in an appellate Court on appeal from proceedings commenced in a High Court of a State or of the Federal Capital Territory shall be deemed to have been determined in the court from which the proceedings were taken on appeal or commenced.

(8) Nothing in sub-rule (3) of this rule shall be taken to authorise the institution of proceedings without the leave of the court in a case where such leave would be otherwise required.

2. (1) A document filed in or issued out of the office of a court in relation to proceedings instituted by petition, shall be instituted in accordance with Form 4.

(2) Subject to these Rules, the title to a document referred to in sub-rule (1) of this rule shall include the full name and the designation of every party to the proceedings instituted by the petition (including any person who, upon the filing of that 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 a 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 the party's surname immediately before the solemnisation of the purported marriage.

(4) Where a person intervenes in proceedings under section 65 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 Order IX of these Rules, 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 shall be deemed a party to those proceedings, and the title of those proceedings shall be deemed to have been amended accordingly.

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

3. (1) Subject to sub-rule (3) of this rule, the registrar of the court in which proceedings are instituted, or to which proceedings are transferred, shall cause a distinguishing number to be allotted to the proceedings.

(2) Where proceedings that constitute a matrimonial cause had been instituted in the High Court of a State or of the Federal Capital Territory before the commencement of the Act, the distinguishing number applicable to those proceedings immediately before the commencement of these Rules shall be deemed to have been allotted to those proceedings by the registrar of that High Court under this rule.

(3) Where, after the commencement of these Rules, proceedings under the Act are instituted in a court in relation to concurrent, pending or completed proceedings to which a number has been allotted or is deemed to have been allotted under this rule, that number shall be deemed to have been allotted to those first-mentioned proceedings.

(4) Where a decree made by a court is registered in another court under section 89 or section 91 of the Act, the registrar or other proper officer of that court shall cause a distinguishing number to be allotted to the decree.

(5) A document filed in, or issued out of, the office of a court in connection with proceedings or in connection with a decree in respect of which a distinguishing number has been allotted, or is deemed to have been allotted under this rule, shall have that number endorsed on the document.

## **Part 2 - Applications to Court**

4. (1) Subject to these Rules

(a) an application to a court referred to in sub-rule (2) or (3) of rule 1 of this Order, and in sub-rule (6) of that rule shall be in accordance with Form 5; 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

(a) shall specify the date on which it is proposed that the application will be heard by the court or shall state that the application will be so heard on a date to be fixed by the court;

(b) shall specify the place at which it is proposed that the application will be heard by the court;

(c) shall specify the order that the court will, on the hearing of the application, be asked to make; and

(d) shall be signed by the legal practitioner representing the applicant in connection with the application, or if the applicant is not so represented by a legal practitioner, by the applicant.

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

(4) Notwithstanding sub-rule (1) of this rule, the court may permit the use, in support of an application, of an affidavit that was filed subsequently to the filing of the application.

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

2.(1) Subject to sub-rules (2) and (3) of this rule, when an application to a court has been filed, the applicant shall cause service of the application to be effected on each other party to the application.

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

(a) in a case where the application is of a kind that is permitted by these Rules to be made ex parte; or

(b) in a case where service of the application on the party is dispensed with.

(3) Subject to any provisions of these Rules requiring service of an application to be effected on a party to the application, it shall not be necessary for service of an 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 or his legal practitioner.

(5) Unless a judge 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.

7. (1) The grounds on which a court shall be 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 that 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. 8.(1) A party to an application other than the applicant may, before the hearing of the application or, by leave of the court 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 in answer 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 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.

#### ORDER IV

#### **APPLICATIONS FOR LEAVE TO INSTITUTE PROCEEDINGS FOR DISSOLUTION OF MARRIAGE OR JUDICIAL SEPARATION**

1. An application under section 30 or 40 of the Act for leave to institute proceedings may be made ex parte.

2. The affidavit in support of an application under section 30 or 40 of the Act for leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, as the case may be, shall

(a) include particulars of the exceptional hardship that would be imposed on the applicant by the refusal to grant the leave or particulars of the exceptional depravity on the part of the other party to the marriage that is alleged, as the case maybe;

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

(c) state whether or not the applicant has made a previous application for leave, under section 30 or 40 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, and the court to which, the previous application was made and whether that application was granted;

(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;

(ii) the date of birth of the child; and

(iii) the place at which, and the persons with whom, the child is residing;

(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 a reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.

3. (1) At the time when an application under section 30 or 40 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.

(2) If the marriage certificate filed in accordance with sub-rule (1) of this rule is not written in the English language, a translation, in the English language, of the marriage certificate shall be filed at the same time.

(3) A translation of a marriage certificate filed in accordance with sub-rule (2) of this rule 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 marriage certificate.

(4) Where an applicant is unable, for any reason, to comply with sub-rule (1) of this rule, the applicant shall state in the affidavit filed in support of the application the circumstances by reason of which he is unable so to comply.

(5) In this rule, marriage certificate, in relation to a marriage, whether solemnised in Nigeria or elsewhere, has the same meaning as in Order V, rule 27 (7) of these Rules.

4. A petitioner who institutes proceedings for dissolution of marriage or of judicial separation by leave of the court under section 30 or section 40 of the Act, as the case may be, shall cause service of a copy of the order of the court granting the leave to be effected on his spouse at the same time as service of the petition is effected on his spouse.

## ORDER V

### PETITIONS

#### Part 1 - General 1.

(1) A petition shall state the full name of each party to the proceedings and, in addition

(a) the address and occupation of the petitioner;

(b) the address and occupation, so far as known to the petitioner, of each other party to the proceedings;

(c) the name of the wife immediately before the marriage, or alleged marriage, as the case maybe; and

(d) the address and occupation, so far as 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 sub-rule (1) of this rule 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.

(3) A petition shall state

(a) particulars of the marriage or purported marriage to which the petition relates;

(b) particulars relating to the birth of the parties to the marriage or purported marriage;

(c) particulars relating to the domicile or residence of the petitioner in Nigeria;

(d) particulars of the cohabitation of the parties to the marriage;

(e) the particulars relating to the children of the parties to the marriage and the children of either party to the marriage required by rule 8 of this Order;

(f) particulars of previous proceedings between the parties to the marriage;

(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 so specified, the facts relating to each ground, as far as practicable, separately;

(h) in the case of a petition for a decree of dissolution of marriage or judicial separation the matters required by rule 7 of this Order;

(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 rule 14 or 15 of this Order; and

(j) in the case of a petition instituting proceedings of a kind referred to in paragraph (c) of the definition of matrimonial cause the matters required by Order XIV, rule 4 of these Rules.

(4) For the purpose of paragraph (a) of sub-rule 3 of this rule, the particulars of the marriage or purported marriage that are required to be stated in a petition are

(a) the place at which and date on which the marriage or purported marriage was solemnised;

(b) the nature of the ceremony by virtue of which the marriage or purported marriage was solemnised;

(c) if that ceremony was a religious ceremony, the religious denomination according to the rites of which the marriage or purported marriage was solemnised; and

(d) the conjugal status of the petitioner and respondent, respectively, immediately before the solemnisation of the marriage or purported marriage.

(5) Where a petitioner has been previously married, his petition shall state

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

(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.

(6) Where the respondent to a petition has been previously married, the petition shall, so far as those facts are known to the petitioner, state

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

(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, that marriage was dissolved.

2. (1) For the purpose of paragraph (b) of sub-rule (3) of Particulars of date and rule 1 of this Order, the particulars relating to the birth of place of birth

the parties to the marriage that are required to be stated of parties

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 Nigeria, particulars of the date of which the party entered Nigeria or, if the party has re-entered Nigeria after having left Nigeria, the date on which the party first entered Nigeria shall be stated in a petition in addition to the particulars referred to in the last preceding sub-rule.

3. (1) This rule relates to the particulars relating to the domicile or residence of a petitioner in Nigeria that are required to be stated in a petition for the purpose of paragraph (c) of sub-rule (3) of rule 1 of this Order.

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

(3) The facts, but not the evidence by which the facts are to be proved, upon which the court shall be asked to find that the petitioner is, within the meaning of the Act, domiciled or resident, as the case may be, in Nigeria, shall be stated in the petition in as concise a form as the nature of the case allows.

4. (1) For the purpose of paragraph (d) of sub-rule (3) of rule 1 of this Order, the particulars of the cohabitation of the parties as are required to be included in a petition shall, subject to sub-rules (2) and (3) of this rule, be particulars, to the best of the recollection of the petitioner-

(a) of the places of residence at which the parties to the marriage have cohabited for periods that, having regard to all the circumstances, were substantial;

(b) of the periods during which the parties cohabited at those places; and

(c) of 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, the petition shall include a statement to that effect.

(3) Where the parties to the marriage have never cohabited at a place of residence, or have never cohabited at a place of residence for a period that, having regard to all the circumstances, was substantial, the petition shall include a statement to that effect and a statement of the circumstances in which they cohabited during the marriage.

5. (1) This rule shall apply to

(a) any child of the marriage living at the date of the petition who has not attained the age of 21 years;

(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 70, 71 or 72 of the Act;

(c) any child of the parties to the marriage who has been adopted by another person or other persons or has been placed by the parties in the care of a person or persons with a view to the adoption of the child by that person or those persons or by another person or other persons; and

(d) any child of a party to the marriage who

(i) has, at anytime since the marriage, ordinarily been a member of the household of the husband and wife; and

(ii) has been adopted by another person or other persons or has been placed by that party in the care of a person or persons with a view to the adoption of the child by that person or those persons or by another person or other persons.

(2) The particulars relating to any child to whom this rule applies that are to be stated in a petition are in the case of a child referred to in paragraph

(a) (a) or (b) of sub-rule (1), of this rule, the full name and date of birth of the child and the name of the persons with whom the child is residing; or

(b) (c) or (d) of that sub-rule

(i) the full name(if any) under which the parties, or either of them, registered the birth of the child;

(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 or persons with a view to his adoption.

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

(4) Where the petitioner disputes the parentage of a child born since the solemnisation of the marriage to which the petition relates, to the female party to the marriage, 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 69 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 the person being so deemed to be a child of the marriage.

6. (1) This rule shall relate to the particulars of previous proceedings as are required to be stated in a petition for the purpose of paragraph (f) of sub-rule (3) of rule 1 of this Order of these Rules.

(2) Subject to sub-rule (3) of this rule, the petition shall state particulars of any proceedings

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

(b) concerning the maintenance, custody, guardianship, welfare, advancement or education of a child of that marriage that have been instituted, whether in Nigeria or elsewhere, otherwise than between those parties.

(3) Where no proceedings referred to in sub-rule (2) of this rule have been instituted, the petition shall include a statement to that effect.

(4) Where the petition includes particulars of any proceedings referred to in sub-rule (2) of this rule, being proceedings 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 that 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.

7. (1) A petition instituting proceedings for a decree of dissolution of marriage or of judicial separation upon a ground specified in any of paragraphs (a) to (g), inclusive, of section 15 (2) of the Act or section 39 of the Act, as the case may be, shall contain

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

8. (1) Where a petitioner institutes, by his petition, proceedings with respect to the maintenance of the petitioner, settlements, damages in respect of adultery, the custody or guardianship of infant children of the marriage or the maintenance, welfare, advancement or education of children of the marriage, the petition shall contain particulars of the orders sought by him, and the facts relating to the proceedings, required by Order XIV, rule 4 of these Rules.

(2) Where a petitioner 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 as to costs.

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

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

(3) A petition shall be signed

(a) if the petitioner is represented by a legal practitioner, by the legal practitioner personally; or

(b) if the petitioner is not represented by a legal practitioner, by the petitioner.

10. (1) A petitioner shall, by an affidavit written on his petition and sworn to 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 sub-rule (1) of this rule 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 shall be a sufficient compliance with that sub-rule 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 sub-rule (1) of this rule, it is necessary for a petitioner to verify that a certain circumstance existed at the date of his petition, it shall be a sufficient compliance with that sub-rule if the petitioner verifies the existence of the circumstance at the date of swearing his affidavit.

## **Part 2 - Petitions for dissolution of marriage**

11. A petition for a decree of dissolution of marriage shall be in accordance with Form 6.

12. (1) A petition for a decree of dissolution of marriage shall state the ground and the facts in support thereof on which the decree is sought.

(2) For the purpose of these Rules, a fact specified in a paragraph of section 15 (2) of the Act and 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

1. Where a petitioner for a decree of dissolution of marriage on a ground specified in any of paragraphs (a) to (g), inclusive, of section 15 (2) of the Act, has committed adultery since the marriage but before the filing of his petition, his petition shall state that the court shall be asked to make the decree notwithstanding the facts and circumstances set out in his discretion statement.

2. (1) 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 petitioners reason for not stating in the petition the arrangements so proposed.

(2) In sub-rule (1) of this rule, children of the marriage means

(a) children of the marriage who are not likely to have attained the age of sixteen 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 subsection (3) of section 71 of the Act.

15. A petition for a decree of dissolution of marriage on the ground specified in paragraph (e) or(f) of section 15

(2) of the Act may state the arrangements made or proposed by the petitioner for the provision of maintenance or other benefits referred to in subsection (2) of section 70 of the Act for the respondent upon the decree becoming absolute.

16. A petition for a decree of dissolution of marriage on the ground specified in paragraph (h) of section 15 (2) of the Act shall, in addition to the facts stated in pursuance of paragraph (g) of sub-rule (3) of rule 1 of this Order, state

(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.

17. 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, to the knowledge of the petitioner, died before the date of the petition, the petition shall state that the person so specified is dead and the date of his death.

### **Part 3 - Petition for nullity of marriage**

18. A petition for a decree of nullity of a marriage shall be in accordance with Form 6.

19. A petition for a decree of nullity of marriage shall indicate whether the decree is sought on the ground that the marriage is void or on the ground that the marriage is voidable, and shall state the nature of the defect in the marriage.

20. 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.

21. (1) In a petition for a decree of nullity of marriage on the ground that a marriage is voidable by virtue of paragraph (b), (c) or (d) of subsection (1) of section 5 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 pursuance of paragraph (g) of sub-rule (3) of rule 1 of this Order.

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

22. Order V, rule 14 of these Rules shall apply in relation to a petition for a decree of nullity of a voidable marriage as if the references in that rule to a decree of dissolution of marriage were references to a decree of nullity of a voidable marriage.

### **Part 4 - Petitions for judicial separation**

23. A petition for a decree of judicial separation shall be in accordance with Form 6.

24. The provisions of rules 12, 13 and 17 of this Order, in so far as they are applicable to the circumstances of the particular case, apply in relation to a petition for a decree of judicial separation as if the references to a petition for a decree of dissolution of marriage were references to a petition for a decree of judicial separation.

### **Part 5 - Petitions for Restitution of Conjugal rights**

1. A petition for a decree of restitution of conjugal rights shall be in accordance with Form 7.

2. (1) In a petition for a decree of restitution of conjugal rights the date on which

(a) 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 manner in which the written request for cohabitation was made to the respondent in accordance with paragraph (b) of section 49 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 any other facts that are stated in the petition in pursuance of paragraph (g) of sub-rule (3) of rule 1 of this Order.

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

(a) that the respondent still 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.

## **Part 6 - Filing petitions and notices of petitions**

27. (1) Subject to the sub-rule (2) of this rule at the time when a petition for a decree of

(a) dissolution of marriage;

(b) nullity of marriage;

(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.

(2) This rule shall not apply in relation to a petition instituting proceedings in pursuance of leave granted under section 30 of the Act.

(3) Subject to sub-rule (5) of this rule, if the marriage certificate filed in accordance with sub-rule (1) of this rule 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.

(4) A translation of a marriage certificate filed under sub-rule (3) of this rule 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 marriage certificate.

(5) Where

(a) a petitioner and respondent were married in a country the public records of which are not kept in the English language; and

(b) the marriage certificate relating to the marriage that is filed in accordance with sub-rule (1) of this rule was issued in that country in two or more languages, including the English language,

Notwithstanding sub-rules (3) and (4) of this rule, it shall not be necessary to file a translation in the English language of the marriage certificate or an affidavit verifying the version in the English language of the marriage certificate so filed.

(6) Where a petitioner is unable, for any reason, to comply with sub-rule (1) of this rule, the petitioner shall state in the affidavit verifying the petition the circumstances by reason of which he is unable so to comply.

(7) In this rule, marriage certificate, in relation to a marriage, whether solemnised in Nigeria 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 true copy or photographic representation.

28. (1) A notice of petition or notice of proceedings which, under these Rules, a petitioner or respondent is required to serve on another person shall be a notice signed by the registrar of the court and sealed with the seal of the court and shall be

(a) in the case of a notice to be served on a person in a State or the Federal Capital Territory, Abuja, in accordance with Form 8, Form 9 or Form 10 (whichever is appropriate); or

(b) in any other case, in accordance with Form 8A.

(2) Where a form of notice is properly presented to the court 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 purpose of this rule.

29. 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 so to do shall

(a) where the place of service of the notice is in Nigeria

28 days; or

(b) in any other case, thirty days or such other reasonable time as is determined by the court, having regard to the place at which the notice is to be served and to the availability of air-mail services.

30. (1) Subject to this rule, a notice of petition or a notice of proceedings, in relation to a petition or answer, shall remain in force, for the purposes of service, until the expiration of twelve months from the day on which the petition or answer was filed.

(2) The court, upon being satisfied that it is reasonable so to do, may grant an extension of the time within which the notice may be served until a date twelve months after the day on which it grants the extension or such earlier date as it thinks fit.

(3) The court 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.

(4) Where the Court grants an extension of the time within which a notice may be served, the registrar shall write on the notice, and on the copy of the notice that was filed in pursuance of sub-rule (2) of rule 28 of this Order of these Rules, particulars of the extension, sign his name under those particulars and seal the particulars with the seal of the court.

(5) In this rule answer includes supplementary answer; petition includes supplementary petition.

31. (1) Where a notice of petition or notice of proceedings addressed to a person and signed by a registrar has been lost without having been served, the registrar of the court may, upon being satisfied of the loss, sign and seal another notice in lieu of the lost notice.

(2) A notice of petition or notice of proceedings signed in pursuance of sub-rule (1) of this rule shall state the last day of the period for which it remains in force.

32. (1) A petitioner or respondent may, at the time of, or at any time within twelve 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 notices, 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 date of the same day as the original notice of petition or notice of proceeding and shall be stamped with a stamp bearing the word concurrent and the date of issuing the concurrent notice.

(3) The provisions of rules 29, 30 and 31 of this Order shall apply to and in relation to concurrent notices in like manner as they apply to and in relation to original notices.

ORDER VI

## **SERVICE**

### **Part 1 - General provisions relating to service of Documents**

1. Where service of a document is required by these Rules to be effected on a person, service may, subject to the provisions of these Rules that limit the methods of service of particular classes of documents, be effected, either in or outside Nigeria

(a) by delivering the document to the person personally;

(b) by serving the document on the person by post in accordance with rule 3 of this Order;

(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 (under prepaid postage) as a letter to the person, or his legal practitioner, as the case may be, at that address; or

(d) by delivering the document at, or by properly addressing and posting (under 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.

2. (1) Subject to sub-rule (2) of this rule, 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 by delivering it to him personally to be effected by a person other than the party to the proceedings on whose behalf the document is being served, that party may effect service of the document on the person in that manner but in such a case, he shall state in any affidavit of the service of the document sworn to by him the circumstances that rendered 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 that party shall, in any affidavit of the service of the document sworn to by him, state whether the person signed or refused to sign a receipt for the document.

3. (1) For the purpose of paragraph (b) of rule 1 of this Order, service of a document on a person shall be effected by properly addressing and posting (under prepaid postage) the document, together with

(a) a form in accordance with Form 11 for acknowledging service of the document; and

(b) an envelope, being, in the case of service effected in Nigeria, 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 legal practitioner, and the address for service of that person, 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 sub-rule (3) of this rule, where a document has been posted to a person in accordance with the provisions of preceding sub-rule (1) of this rule, 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 legal practitioner an acknowledgement of the service in accordance with Form 11.

(3) Where a document instituting proceedings has been posted to a person in accordance with the provisions of sub-rule (1) of this rule, 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 is effected on a person in accordance with paragraph (c) or (d) of rule 1 of this Order by posting the document to the person or to his legal practitioner, 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.

5.(1) This rule shall apply, subject to the provisions of the relevant Convention, in relation to service of a document in a country that is party to a Convention, extending to the Federal Republic of Nigeria, regarding legal proceedings in civil and commercial matters.

(2) Where, under a Convention referred to in the last preceding sub-rule, service of a document relating to proceedings is not to be effected in the country otherwise than in accordance with the Convention, service of such a

document in the country shall not be effected otherwise than in accordance with this rule.

(3) Where a party to proceedings who desires to effect service of a document relating to the proceedings on a person in a country referred to in sub-rule (1) of this rule, files a request for service of the document in accordance with Form 12, and deposits with the registrar of the court in which the proceedings are pending the documents required by sub-rule (4) of this rule to be deposited, the registrar shall forward the documents so deposited direct to the Attorney-Generals Department for transmission to that country for service.

(4) Subject to sub-rule (5) of this rule, the documents to be deposited under sub rule (3) above shall be

(a) the document to be served;

(b) a translation of the document into the language of the country in which the service is to be effected, being a translation bearing a certificate in that language, of the person who made the translation certifying that it is a translation of the document of which it purports to be a translation;

(c) a copy of the document to be served and of the translation; and

(d) such further copies (if any) of the document and translation as are required by the Convention.

(5) A document, a translation of a document or a copy of a document shall, before being forwarded to the Attorney-Generals Department in accordance with sub-rule (3) of this rule, be sealed with the seal of the court.

(6) Where a registrar has received a certificate, transmitted through diplomatic channels, by a judicial authority in a country referred to in sub-rule (1) of this rule certifying that a document has been served on a person on a date specified in the certificate, the certificate may be filed and, subject to sub-rule (7) of this rule, shall be evidence of the matters stated in the certificate.

(7) Where service of a document is required to be effected on a person in the manner referred to in paragraph

(a) of rule 1 of this Order, the due service of the document shall be deemed not to have been proved by a certificate referred to in sub-rule (6) of this rule, unless

(a) it also certifies the means by which the person who served the document identified the person served; or

(b) other evidence, whether by affidavit or otherwise, is furnished showing that the document came to the notice of the person on whom it was to be served.

6. (1) The court may, upon application made ex parte, dispense with the service of any process under the Act on a person if the court thinks it necessary or expedient to do so.

(2) An order under sub-rule (1) of this rule may be made subject to such conditions (if any) as the court thinks fit.

7. (1) Where a court, upon application made ex parte by a party to proceedings for an order under this rule, is satisfied that it is not reasonably practicable for the party to effect service of a document in a manner specified in any of paragraphs (a) to (d), inclusive, of rule 1 of this Order that is applicable, the court may order that service of the document be effected in a manner specified in the order or that the giving of notice of the document and of 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 authorising the giving of notice of a document by advertisement, the form of the advertisement shall be approved by a registrar.

(3) Where an order of a kind referred to in sub-rule (1) of this rule has been made by the court in relation to service of a document on a person, compliance with the order shall, notwithstanding any other provision of these Rules, be deemed to be due service of the document on the person.

## **Part 2 - Service of Petitions and Answers**

8. (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) Where proceedings for a decree of dissolution of marriage on the ground specified in paragraph (h) of section 15 (2) of the Act and on no other ground are instituted by a petition, the last preceding sub-rule shall not require service of the petition to be effected on any person.

(3) Service of a petition shall be effected on a person

(a) by serving on the person in the manner referred to in paragraph (a) of rule 1 of this Order

(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 paragraph (b) of rule 2 of this Order

(i) a sealed copy of the petition;

(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;

(iii) a form, in accordance with Form 11, for acknowledging service of the petition; and

(iv) an envelope, being, in the case of service effected in Nigeria, a stamped envelope, having written on it the name of the petitioner or his legal practitioner and the address for service of the petitioner.

9. (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 paragraph (a) of sub-rule(1) of this rule 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 paragraph (c) of rule 1 of this Order.

(3) Service of an answer to a petition shall be effected on a person referred to in paragraph (b)of sub-rule (1) of this rule

(a) by serving on the person, in the manner referred to in paragraph (a) of rule 1 of this Order

(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 paragraph (b) of rule 1 of this Order

(i) a sealed copy of the answer;

(ii) a notice of proceedings; (iii)a form, in accordance with Form 11, for acknowledging service of the answer; and

(iv) an envelope, being, in the case of service effected in Nigeria, a stamped envelope, having written on it the name of the respondent or his solicitor 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, upon request made by the first-mentioned party, cause service of a copy of the answer to be effected, in a manner referred to in paragraph (c)of rule 1 of this Order, on the first-mentioned party on the day on which the request is made or on the next following day.

10. (1) Service of a petition on a person shall be 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 shall be 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.

### **Part 3 -Service on Infants and Persons of Unsound Mind**

11.(1) Subject to this rule, 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 paragraph (a) or(b) of rule 1 of this Order; and

(b) serving a sealed copy of the petition and a notice of proceedings, in a manner referred to in paragraph

(a) or (b) of rule1 of this Order, on a parent of the infant, a person with whom the infant is residing or such other person as a registrar specifies in an order made under sub-rule (3) of this rule.

(2) Service of a sealed copy of a petition

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

(b) if a parent of the infant is not a party and service can be duly effected in Nigeria 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, service on that person, is not sufficient compliance with paragraph (b) of sub-rule

(1) of this rule.

(3) Where a court is satisfied that, for any reason, a petitioner would otherwise be unable to comply with paragraph (b) of sub-rule (1) of this rule, the court may, by order, specify a person who, in the opinion of the court, is a proper person to advise the infant in connection 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.

(4) Where a court is satisfied that, having regard to the age and understanding of the infant, it is proper so to do, the court may, by order, dispense with compliance with paragraph (b) of sub-rule (1) of this rule.

(5) An application for an order under sub-rule (3) or (4) of this rule may be made ex parte.

(6) The provisions of sub-rule (4) of this rule shall apply 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;

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

(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 sub-rule (3) to proceedings instituted by the petition was a reference to the proceedings in answer to which the answer is filed and to any other proceedings instituted by the answer.

(7) In this rule answer includes supplementary answer; petition includes supplementary petition.

12. (1) Unless the court otherwise orders, service of a petition shall be effected on a person of unsound mind by serving, in a manner referred to in paragraph (a) or (b) or rule 1 of this Order, 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 that committee;

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

(c) if there is no committee of the person, or committee of the estate of the person of unsound mind but the Attorney-General or an authorised person has signed a consent under Order IX, rule 20 of these Rules to act as the guardian ad litem of the person of unsound mind, on the Attorney-General or the authorised 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.

(2) Service of a petition shall be deemed not to have been effected on a person of unsound mind in accordance with sub-rule (1) of this rule

(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 the health of the person of unsound mind to do so; and

(b) unless the court is satisfied, by affidavit of the person on whom the petition is actually 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) above has expressed the opinion that would be detrimental to the health of the person of unsound mind to do so.

(3) For the purposes of sub-rule (1) of this rule, 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.

(4) Sub-rules (1),(2) and (3) of this rule shall apply 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.

(5) In this rule answer includes supplementary answer; petition includes supplementary petition.

#### **Part 4 - Proof of Service**

13. (1) Subject to sub-rule (2) of this rule, where service of a document is effected on a person in the manner referred to in paragraph (a) of rule 1 of this Order, 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 place at which the document was so 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 document, being a petition or answer, is effected on a person, being the respondent or the petitioner, as the case may be, in the manner referred to in paragraph (a) of rule 1 of this Order of these Rules and proof of the due service of the document is required at the trial proceedings of a kind referred to in paragraph

(a) of the definition of matrimonial cause, the due service of the document shall be deemed not to have been proved by affidavit unless

(a) sub-rule (1) of this rule 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 to the trial, verified the signature on a receipt given by the person to whom the document was delivered or, in some other manner, corroborated the fact that the person to whom the document was delivered is the person required to be served with the document.

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

14. (1) Subject to sub-rule (2) of this rule, where service of a document is effected on a person in the manner referred to in paragraph (b) of rule 1 of this Order, the due service of the document shall be deemed not to have been proved by affidavit unless a person to whom an acknowledgment 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 acknowledgment was returned to him.

(2) Where service of a document, being a petition or answer, is effected on a person, being the respondent or the petitioner, as the case may be, in the manner referred to in paragraph (b) of rule 1 of this Order 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 of matrimonial cause, the due service of the document shall be deemed not to have been proved by affidavit unless

(a) the provisions of sub-rule (1) of this rule have been complied with; and

(b) the signature appearing on the acknowledgment 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) The signature appearing on an acknowledgment shall not, for the purposes of paragraph (b) of sub-rule (2) of this rule, 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 so reasonably practicable.

(4) Where service of a document instituting proceedings is to be deemed to have been duly effected on a person by virtue of sub-rule (3) of rule 3 of this Order, nothing in this rule shall be taken to require proof, by affidavit, of the date on which the person received the document to comply with the provisions of this rule.

15. Where service of a document is effected on a person in accordance with paragraph (c) or (d) of rule 1 of this Order by posting the document to the person or to his legal practitioner, the due service of the document 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 for service 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.

16. (1) Where, in pursuance of an order of the court under these Rules, an advertisement is published in the Federal Gazette, in the State Gazette or that of the Federal Capital Territory, Abuja, or in a newspaper, the person who obtained the order may

(a) deposit, in the proper office of the court, a copy of the page of the said Gazette or newspaper containing the advertisement; or

(b) file a memorandum, in accordance with Form 13A, having the advertisement annexed to it.

(2) Where the page of a copy of the said Gazette, or newspaper containing the advertisement is deposited under sub-rule(1) of this rule, the registrar of the court shall cause the advertisement to be cut out of the page and annexed to a memorandum, in accordance with Form 14, referring to, and giving the date of publication of, the advertisement and shall file the memorandum.

(3) A memorandum referred to in sub-rule (1) or (2) of this rule shall be evidence that the advertisement, a copy of which is annexed to the memorandum, was published in the Gazette, Government Gazette or newspaper specified in the memorandum on the date specified in the memorandum.

1. 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.

2. 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 certificate under sub-rule (8) of rule 5 of this Order, 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 so served on the day on which the document giving the address for service was filed.

## ORDER VII

### PLEADINGS

#### Part 1 - Answers

1. (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;

(b) state that he does not know and cannot admit the truth of a fact alleged in the petition;

(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 subsection (2) of section 65 of the Act or under Order IX of these Rules.

(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, that 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 accordance with 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 known to the respondent, of that person.

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

2. (1) This rule shall apply 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 of matrimonial cause, in section 114 (1) of the Act.

(2) An answer to which this rule applies shall state that the respondent is, within the meaning of the Act, domiciled or resident, as the case may be, in Nigeria, and, if the respondent relies, for the purpose of establishing his domicile or residence in Nigeria, 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, upon which the court shall be asked to make the decree sought in proceedings instituted by an answer to which this rule 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 upon a ground specified in paragraphs (a) to (g), inclusive, of section 15 (2) of the Act, shall contain

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

(b) a denial that he has condoned that ground, or a statement of all facts relevant to the question whether he has condoned that ground, including any facts relevant to the question whether that 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) The provisions of rules 8, 12, 13, 14, 15, 17 and 26 of this Order, in so far as they are applicable to the circumstances of the particular case, shall apply to and in relation to an answer to which this rule 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 it

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

- (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) The provisions of rules 8, 14, 19, 20 and 21 of this Order, in so far as they are applicable to the circumstances of the particular case, shall apply to and in relation to an answer to which this rule 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;
- (b) references to a petitioner were references to the respondent to a petition;
- (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 avoidable marriage.

(8) The provisions of rules 8, 12, 13 and 17 of this Order, in so far as they are applicable to the circumstances of the particular case, shall apply to and in relation to an answer to which this rule 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;
- (b) references to a petitioner were references to the respondent to a petition;
- (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 rule applies shall be in accordance with Form 15A.

3. (1) A respondent or co-respondent to a petition who desires to have the jurisdiction of the court to which the petition is addressed determined shall file an answer under protest, in accordance with Form 16, objecting to the jurisdiction of that court.

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

(3) Where an answer under protest has been duly served, the party filing the answer may, within fourteen 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 shall not be necessary for an application referred to in sub-rule (3) of this rule to be supported by an affidavit.

(5) Upon the hearing of an application referred to in sub-rule (3) of this rule, the court may also give directions as to whether disputed questions of fact are to be determined upon evidence given orally or upon evidence given by affidavit.

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

(7) A petitioner in proceedings shall not, after an answer under protest has been filed and service of the answer has been effected on him, continue the proceedings against the party who filed the answer unless the court has overruled the objection to its jurisdiction or the party filing the answer under protest has waived the objection.

(8) Where a 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.

## **Part 2 - Replies and rejoinders**

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

(a) deny a fact alleged in the answer;

(b) state that he does not know and cannot admit the truth of a fact alleged in the answer;

(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;

(b) state that he does not know and cannot admit the truth of a fact alleged in the answer;

(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 subsection (2) of section 32 of the Act or under Order IX of these Rules.

(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, that 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 accordance with Form 17.

(6) The time limited for filing a reply to an answer shall be

(a) in the case of a reply by the petitioner, fourteen 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 so limited in the notice of proceedings served on the party cited or person named in relation to the answer.

5. (1) A petitioner who desires to have the jurisdiction of the court to hear any proceedings instituted by an answer to the petition determined, or a party cited in an answer to a petition who desires to have the jurisdiction of the court to which the petition is addressed determined, shall file a reply under protest, in accordance with Form 18, objecting to the jurisdiction of that court.

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

(3) Sub-rules (3) to (8), inclusive, of rule 3 of this Order shall apply in relation to a reply under protest as if

(a) references to an answer under protest were references to a reply under protest;

(b) the reference in sub-rule (7) of that rule to a petitioner in proceedings was a reference to a petitioner or respondent in proceedings; and

(c) the reference in sub-rule (8) of that rule to a further answer to the petitioner was a reference to a further reply to the answer.

6. (1) Where a reply contains any 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;

(b) state that he does not know and cannot admit the truth of a fact alleged in the reply;

(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 fact alleged in the reply.

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

7. (1) Where a rejoinder or further rejoinder (in this rule called the pleading) contains any 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;

- (b) state that he does not know and cannot admit the truth of a fact alleged in the pleading;
  - (c) allege an additional fact that has become relevant to proceedings to which the 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 shall be fourteen days after service on the party of the pleading to which it is pleaded.

### **Part 3- Pleadings generally**

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

9. Where a person who is entitled to deny a fact alleged in a pleading filed in proceedings, files a pleading in answer to that pleading and does not, in the pleading so filed

- (i) deny the fact, either expressly or by necessary implication;
- (ii) state that he does not know and cannot admit the truth of the fact; or
- (iii) admit the truth of the fact, the person shall be deemed to have admitted the truth of the fact for the purpose of the proceedings.

10. (1) A pleading shall bear a date on which it is filed.

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

(3) A pleading shall be signed

(a) if the party filing the pleading is represented by a legal practitioner, by the legal practitioner personally; or

(b) if the party filing the pleading is not represented by a legal practitioner, by the party.

11. (1) The party filing a pleading shall, by an affidavit written on his pleading and sworn to 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) Sub-rules (2) and (3) of rule 10 of Order V of these Rules shall apply in relation to affidavits 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, the party shall, in his affidavit verifying the pleading, state that he does not know and cannot admit the truth of the fact.

12.(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 paragraph (c) of rule 1 of Order VI of these Rules, 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 the last preceding sub-rule, a copy of a pleading shall be so 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 proceedings on or after the day on which a pleading is filed, the party who filed the pleading shall, upon request made by that first-mentioned party, cause service of a copy of the pleadings to be effected in a manner referred to in paragraph (c) of rule 1 of Order VI of these Rules on that first-mentioned party on the day on which the request is made or on the next following day.

(4) This rule shall not apply in relation to service of an answer to a petition.

#### Part 4 - Discontinuance

13. (1) Subject to the next succeeding sub-rule, a party to proceedings on whose behalf a pleading has been filed may withdraw the pleading by filing a notice in accordance with Form 19 and causing service of a copy of the notice to be effected, in a manner referred to in paragraph (c) of rule 1 of Order VI of these Rules, 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 sub-rule (1) of this rule 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, shall be discontinued but the discontinuance of those proceedings shall not affect the continuance of

(a) any proceedings for a decree of a kind referred to in paragraph (a) of the definition of matrimonial cause 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 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.

#### ORDER VIII

#### **AMENDMENT OF PLEADINGS,**

## **SUPPLEMENTARY PETITIONS AND SUPPLEMENTARY ANSWERS**

### **Part 1 -Amendment of pleadings**

1. (1) Subject to this rule, all such amendments as are necessary for the purpose of determining the real questions in controversy between the parties may be made to a pleading as are made in accordance with the succeeding provisions of this Part.

(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 (c) of the definition of matrimonial cause.

(3) The provisions of sub-rule (2) of this rule shall 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 connection with proceedings, seek a decree of a kind referred to in paragraph (a) of the definition of matrimonial cause upon a ground arising after the date on which the pleading was filed.

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

3. (1) Subject to sub-rule (2) of this rule where a pleading filed on behalf of a party to 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 has not been amended after having been so served, without the leave of the court or a registrar;  
or

(b) if it has been amended on a previous occasion after having been so served, by leave of the court or a registrar.

### **Order VIII**

Amendments that may be made

Amendment before service

Amendment after service

(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 purpose of Part 6 of Order XI of these Rules; or

(b) the proceedings have been set down for trial.

(3) The court may give leave in circumstances referred to in sub-rule (2) of this rule subject to such terms and conditions (if any) as the court thinks fit.

(4) Where a pleading has been amended without the leave of the court, the court may, on application by the party by whom the pleading was so amended, by order

(a) dispense with service of the amended pleading on a person, whether or not the person is a party to the proceedings;

(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, if he so desires

(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.

(5) Where a court gives leave to amend a pleading, the court may also make any order that it could have made upon application under sub-rule (4) of this rule if the pleading had been amended without leave.

(6) Where the court gives a party leave to amend a pleading, the party may cause the pleading to be amended accordingly within fourteen days after the leave was given.

(7) An application to a court under sub-rule (4) of this rule may be made ex parte.

4. (1) Subject to sub-rule (4) of this rule, 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 maybe.

(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 any of paragraphs (a) to (g) inclusive of section 15(2) 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 the party

(a) denies that he has connived at that ground;

(b) denies that he has condoned that ground or states all facts relevant to the question whether he has condoned that 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 that 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 the preceding provisions of this rule 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.

(4) Where the court grants leave under rule 3 of this Order to amend a pleading, the court may also dispense with the need for compliance with sub-rule (1) of this rule.

5. (1) Subject to this rule, where application is made for leave to amend a pleading filed for the purpose of 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) Sub-rule (1) of this rule shall not apply to an application made to the court upon 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.

6. (1) A pleading shall be amended by writing the alterations or additions on the pleading in red ink or in such other manner as will distinguish the alterations or additions from the original pleading or from any previous amendment.

(2) Where a pleading is amended by a party by leave of a court the legal practitioner for the party or, if the party is not represented by a legal practitioner, the party, shall write at the top of the front page of the pleading, in red ink, particulars of the date on which leave to amend the pleading was given and the date on which the amendment is made to the pleading, in accordance with the following form Amended this.. day of.....20 in pursuance of leave granted by the.....on.....the..... day of..20.

(3) Where a pleading is amended by a party without the leave of a court, the legal practitioner for the party or, if the party is not represented by a legal practitioner, 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 accordance with the following form Amended this.....day of..... .20....., in pursuance of rule 2 or 3 (1) (a) of Order VIII.

(4) A solicitor or party writing on a pleading the particulars required by sub-rule (3) of this rule shall sign his name immediately under those particulars and shall forth with inform the registrar of the nature of the amendments made by him to the pleading.

(5) Where the amendments made to a pleading are so numerous or of such a nature that the pleading is difficult or inconvenient to read or where the making of amendments to a pleading in the manner provided by sub-rule (1) of this rule would make the pleading difficult or inconvenient to read, the party making the amendments

(a) if the court so requests, shall; or

(b) in any other case may, file a copy of the pleading as amended.

(6) Compliance with sub-rule (1) of this rule shall not be necessary if, before a party writes the alterations or additions on the pleading in accordance with that sub-rule, the party files a copy of the pleading as amended, but every copy of the pleading as amended shall bear the notation referred to in sub-rule (2) or (3), as the case may be, of this rule.

7. (1) Where a pleading is amended before service of the pleading has been effected on a person on whom service of the pleading is, by these Rules, required to be effected, service on the person of the pleading otherwise than as so amended shall not be due service for the purpose of these Rules.

(2) Subject to these Rules and to any order made under sub-rules (4) and (5) of rule 3 of this Order, 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 paragraph(c) of Order VI rule 1 of these Rules, 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 paragraph (a) or (b) of rule 1 of Order VI, a copy of the amended pleading on the person as soon as practicable after the amendment is made.

(3) Where 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 where 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 paragraph (a) or (b) of rule 1 of Order VI.

(4) These Rules shall apply in relation to service of a sealed copy of an amended petition or an amended answer on a person referred to in sub-rule (3) of this rule in like manner as they apply in relation to service of a sealed copy of a petition or answer on the person.

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 and, for the purposes of these Rules, the time limited for filing a pleading in reply to the amended pleading shall commence from the day on which service of the amended pleading was effected on the person.

2. (1) Where a pleading is amended after a pleading (in this Rule called the subsequent pleading) has been filed in reply to that pleading, the party who filed the subsequent pleading may, within ten 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 sub-rules

(4) and (5) of rule 3 of this Order, amend the subsequent pleading in such manner as he considers desirable.

(2) An amendment of the subsequent pleading in accordance with sub-rule (1) of this rule may be made without the leave of the court or a registrar and shall not count as an amendment for the purposes of sub-rule (1) of rule 3 of this Order, but the other provisions of this shall apply to and in relation to the amendment.

## **Part 2 - Supplementary Petitions and Supplementary Answers**

10. (1) Where a ground upon 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, as the case may be, seek appropriate relief of a kind referred to in paragraph (a) of the definition of matrimonial cause.

(2) A supplementary petition shall be in accordance with Form 20.

(3) A supplementary answer shall be in accordance with Form 21.

11. (1) In a supplementary petition, the facts, but not the evidence by which the facts are to be proved, upon which the court shall 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.

(2) A supplementary petition shall state the address and occupation, so far as 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.

(3) Where the address, at the date of the supplementary petition, of a person referred to in sub-rule (2) of this rule is not known to the petitioner, the supplementary petition 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.

(4) Subject to sub-rule (6) of this rule, the provisions of sub-rules (2) and (3) of rule 6 and of rules 9, 10, 12, 14, 15 and 17 of Order V of these Rules, in 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 in those provisions to a petition were references to a supplementary petition.

(5) Subject to sub-rule (6) of this rule, the provisions of sub-rules (2) and (3) of rule 6 and of rules 9, 10, 12 and 17 of Order V of these Rules, in 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, in those provisions, 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.

(6) It shall not be necessary to include in a supplementary petition any matter that is included in the petition.

(7) In this rule, the petition means the petition instituting the proceedings in relation to which the supplementary petition is filed.

12. (1) In a supplementary answer, the facts, but not the evidence by which the facts are to be proved, upon which the court shall 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.

(2) A supplementary answer shall state the address and occupation, so far as 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.

(3) Where the address, at the date of the supplementary answer, of a person referred to in sub-rule (2) of this rule 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.

(4) Subject to sub-rule (6) of this rule, the provisions of sub-rules (2) and (3) of rule 6 and of rules 9, 10, 12, 14, 15 and 17 of Order V of these Rules, in 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;

(b) references to a petitioner were references to the respondent to the petition; and

(c) references to the respondent were references to the petitioner.

(5) Subject to sub-rule (6) of this rule, the provisions of sub-rules (2) and (3) of rule 6 and of rules 9, 10, 12 and 17 of Order V of these Rules, in 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 references to

(a) a petition were references to a supplementary answer;

(b) a petitioner were references to the respondent to the petition;

(c) the respondent were references to the petitioner; and

(d) 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.

(6) It shall not be necessary to include in a supplementary answer any matter that is included in the answer or the petition.

(7) In this rule, the answer means the answer in the proceedings in relation to which the supplementary answer is filed and the petition means the petition in relation to which the answer is filed.

13. (1) A supplementary petition instituting proceedings for a decree of dissolution of marriage or of judicial separation upon a ground specified in any of paragraphs (a) to (g) inclusive of section 15 (2) 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 that ground; and

(b) a denial that he has condoned that ground, or a statement of all facts relevant to the question whether he has condoned that ground, including any facts relevant to the question whether that 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) The provisions of sub-rule (2) of this rule shall 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.

14. (1) Where a petitioner seeks

(a) an award of damages under section 31 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 31 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.

15. (1) Service of a supplementary petition shall, unless dispensed with, be effected on

(a) the respondent;

(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 paragraph (c) of rule 1 of Order VI of these Rules.

(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 paragraph (a) of rule 1 of Order VI of these Rules

(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 paragraph (b) of rule 1 of Order VI of these Rules

- (i) a sealed copy of the supplementary petition;
  - (ii) a notice of petition or a notice of proceedings, as the case requires, in relation to the supplementary petition; (iii) a form, in accordance with Form 11, for acknowledging service of the supplementary petition; and
  - (iv) an envelope, being, in the case of service effected in Nigeria, a stamped envelope, having written on it the name of the petitioner or his solicitor and the address for service of the petitioner.
- (4) The preceding provisions of this rule shall apply in relation to a supplementary answer as if
- (a) references to a supplementary petition were references to a supplementary answer;
  - (b) references to the respondent were references to the petitioner;
  - (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.

16. (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 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 fourteen 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 that 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 fourteen days after service of the supplementary answer on the person.

17. For the purpose of Order 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.

## ORDER IX

### **PARTIES**

#### Part 1 - General

1. Subject to the Act, to these Rules, and to any order made by a court, upon the trial of proceedings, a person named in the title to a document instituting proceedings, shall not be a party to the proceedings or application unless he is affected by the proceedings or application notwithstanding that he may be a party to related proceedings by reason of which he is so named.

2. Where a person is entitled to intervene in proceedings under subsection (2) of section 32 of the Act, the person 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 that allegation is contained in an answer or a supplementary answer a reply to the answer or supplementary answer.

3. (1) 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.

(2) The petitioner shall make application for an order under sub-rule (1) of this rule after service of the petition has been effected on the respondent or after such service has been dispensed with.

(3) The affidavit in support of an application for an order under sub-rule (1) of this rule shall state particulars of any enquiries made by the petitioner for the purpose of ascertaining the name of the person.

(4) Service of an application for an order under sub-rule

(1) of this rule shall be effected on the respondent unless the court has dispensed with service of the petition on the respondent.

(5) In this rule, suit has the same meaning as in Order XI of these Rules.

(6) The provisions of sub-rules (1) to (5) of this rule shall apply 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;

(b) references to the petition were references to the answer; and

(c) references to the respondent were references to the petitioner.

(7) Where the respondent has alleged in his answer to a petition that the petitioner has committed adultery or sodomy with or on a person whose name was unknown to the respondent at the time of filing the answer, the court may, on the application of the petitioner, and upon being satisfied that it is proper so to do, approve the suit being set down for trial notwithstanding that sub-rules (1) to (6) of this rule have not been complied with.

4. (1) Where a petitioner who has, in a petition for a decree of dissolution of marriage or of judicial separation, alleged 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, becomes aware of the name of the

person at any time before the making of the decree in the proceedings, the petitioner shall amend the petition accordingly.

(2) Where a petition is amended in pursuance of sub-rule

(1) of this rule

(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, that person shall become, subject to this Part, a party to the proceedings for a decree of dissolution of marriage or of judicial separation.

(3) Where a respondent who has, in an answer to a petition, alleged 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 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, the respondent shall amend the answer accordingly.

(4) Where an answer is amended in pursuance of sub-rule (3) of this rule-

(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, that person shall become, 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 shall apply in relation to the service of an amended petition or an amended answer on the person to whom the amendment relates in like manner as they apply to the service of a petition or answer on a person.

(6) An amendment of a petition or answer in pursuance of this rule

(a) may be made without the leave of a court; and

(b) shall not count as an amendment for the purpose of sub-rule (1) of rule 3 of Order VIII of these Rules.

(7) Where a petition or answer is amended in pursuance of this rule, 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 rule, the provisions of Part 1 of Order VIII shall apply to and in relation to an amendment made in pursuance of this rule.

5. (1) Nothing in subsection (1) of section 32 of the Act shall require 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 amended in pursuance of sub-rule (2) of this rule alleges the death of a person who is, at the date of the amendment, a party to the proceedings, the person alleged to have died shall cease 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 in pursuance of this rule

(a) may be made without the leave of the court; and

(b) shall not count as an amendment for the purposes of sub-rule (1) of rule 3 of Order VIII of these Rules, and the provisions of Part 1 of Order VIII shall not apply to or in relation to the amendment.

(5) A petitioner who amends a petition, or a respondent who amends an answer, in accordance with the provisions of this rule 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 also 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 shall not abate upon 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 maybe, against such a party who has died.

6. (1) 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 fourteen 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 sub-rule (2) of this rule, but service of the petition or answer, as the case may be, shall be duly effected on the infant.

(2) A person under the age of fourteen 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, and shall then be deemed to have become a party to the proceedings.

(3) In this rule answer includes supplementary answer; petition includes supplementary petition.

7.(1) Where

(a) in a petition instituting proceedings for a decree of dissolution of marriage or of judicial separation, the respondent;

(b) in an answer to a petition instituting proceedings for such a decree, the petitioner; or

(c) 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 rule referred to as the infant) who, at the date of the petition or answer, as the case may be, is under the age of 21 years and is, if the respondent or petitioner is a male person, a descendant or sister of, or a female child adopted by, the respondent or petitioner, as the case maybe, or, if the respondent or petitioner is a female person, a descendant or brother of, or a male child adopted by, the respondent or petitioner, as the case may be, this rule applies to those proceedings.

(2) Where this rule applies to proceedings, the infant shall not be made a party to the proceedings except in accordance with this rule, but service of the petition or answer, as the case may be, shall be duly effected on the infant.

(3) Where this rule applies to proceedings by reason of the fact that an allegation referred to in sub-rule (1) of this rule 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.

(4) Where this rule applies to proceedings by reason of the fact that an allegation referred to in sub-rule (1) of this rule 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.

(5) An application referred to in sub-rule (3) or (4) of this rule may be made ex parte.

(6) Upon application made to a court under sub-rule (3) or

(4) of this rule, 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 maybe, 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 shall be made a party to the proceedings.

(7) Where a court makes an order under sub-rule (6) of this rule, 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 sub-rule (1) of rule 11 of Order VI of these Rules, service of the petition or answer on the person so specified shall be deemed to be service on a person referred to in paragraph (b) of that sub-rule.

(8) Where, in proceedings to which this rule applies, a 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.

(9) Where a court has directed that the infant shall 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.

(10) For the purpose of sub-rule (1) of this rule, 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.

(11) In this rule answer includes supplementary answer; petition includes supplementary petition.

## **Part 2 -Infants**

8. (1) Where an infant desires to institute proceedings in a matrimonial cause, a person may, on behalf of the infant, institute the proceedings.

(2) Proceedings referred to in rule (1) of this rule shall, unless the court otherwise orders, be deemed to be 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, before service of the petition has been effected on any person;

(b) in the case of proceedings, being an application for leave to institute proceedings for such a decree, before the hearing of that application; or

(c) in any other case, before service of the application instituting the proceedings has been effected on any person.

9. (1) Subject to sub-rule (4) of this rule, where the respondent or a co-respondent in proceedings instituted by a petition, or a person named in a petition, is an infant, a guardian ad litem may, on behalf of the infant, file an answer to the petition or, if he does not desire to file an answer but desires to take any other action in the proceedings on behalf of the infant, file a notice of address for service.

(2) Subject to sub-rule (4) of this rule, where a party cited in proceedings, or a person named in an answer, is an infant, a guardian ad litem may, on behalf of the infant, file a reply to the answer or, if he does not desire to file a reply but desires to take any other action in the proceedings on behalf of the infant, file a notice of address for service.

(3) A guardian ad litem of an infant who has an address for service for the purpose of proceedings, may take such further action in and in relation to the proceedings on behalf of the infant as the guardian thinks fit 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 solicitor or in person.

1. A guardian ad litem may apply for leave to intervene, and may intervene, under Part III of the Act in proceedings on behalf of an infant.

2. (1) Where, upon the trial of a suit, it appears to the court that a child of the marriage in relation to whom section 57 of the Act applies or a child alleged by one of the parties to the suit to be such a child of the marriage, ought to be separately represented, the court may adjourn the trial of the suit in order that a guardian ad litem of the child may be appointed for the purpose of the child being so represented.

(2) Where the trial of a suit has been adjourned under sub-rule (1) of this rule, a guardian ad litem of the child may be appointed under rule 22 of this Order whether or not the child desires to intervene in the proceedings.

(3) Subject to sub-rule (4) of this rule, a person who becomes the guardian ad litem of a child for the purposes of this rule shall serve notice of the fact on each party to the suit who has an address for service for the purposes of the suit.

(4) Where an order appointing a person to be the guardian ad litem of a child for the purposes of this rule is made upon the application of a party to the suit, it is not necessary for the notice required by sub-rule (3) of this rule to be served on that party.

(5) A notice under sub-rule (3) of this rule shall

(a) set out the address for service of the child for the purposes of the suit; and

(b) shall be served on each party on whom it is required to be served on the day on which the person becomes the guardian ad litem or on the next following day.

(6) Where a child for whom a guardian ad litem has been appointed for the purposes of this rule does not desire to intervene in the suit or is refused leave to intervene in the suit, the child shall nevertheless be entitled to be represented at the further hearing of the suit by counsellor or solicitor who may cross-examine witnesses and address the court but is not entitled to adduce evidence.

(7) The court may, upon or at any time after adjourning the trial of a suit under sub-rule (1) of this rule, give directions concerning the continuation of the trial of the suit, including directions concerning the giving of notice to the guardian ad litem of the child of the date on which and place at which the trial of the suit will be continued, and the trial of the suit shall not be continued except in accordance with directions so given.

(8) Rule 27 of this Order shall apply in relation to a solicitor who is a guardian ad litem of a child for the purposes of this rule as if the child were a party to the suit.

(9) In this rule, suit has the same meaning as in Order XI of these Rules.

12. (1) Where an infant is a party to 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.

### Part 3 – Persons of unsound mind

1. In this Part committee means a committee of the person.

2. (1) Proceedings in a matrimonial cause may be instituted on behalf of a person of unsound mind

(a) if there is a committee of the person of unsound mind who is able and willing to act for the person of unsound mind in connection with the proceedings by that committee;

(b) if the Attorney-General or an authorised person files a consent under rule 20 of this Order of these Rules by the Attorney-General or the authorised 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 sub-rule (1) of this rule 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) Where proceedings referred to in sub-rule (1) of this rule are instituted by a person referred to in paragraph (c) of that sub-rule, the proceedings shall, unless the court otherwise orders, be deemed to be void and of no effect unless the person has been appointed to be 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, before service of the petition has been effected on any person;

(b) in the case of proceedings, being an application for leave to institute proceedings for such a decree, before the hearing of that application; or

(c) in any other case, before service of the application instituting the proceedings has been effected on any person.

15.(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 behalf of the person of unsound mind, file an answer to the petition or, 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, file 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, on behalf of the person of unsound mind, file a reply to the answer or, 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, file 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 proceedings may take such further action in and in relation to the proceedings on behalf of the person as the committee or guardian thinks fit and the person might have taken if he had not been of unsound mind.

16. A committee or guardian ad litem of a person of unsound mind may apply for leave to intervene, and may intervene, under Part III of the Act in proceedings on behalf of the person of unsound mind.

17. (1) Where a person of unsound mind is a party to 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 Order, 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 to by the party.

#### **Part 4 - Guardians ad litem**

18. (1) Subject to sub-rule (2) of this rule, an infant may, by signing an election in accordance with Form 22, elect his father, mother or legal guardian to be his guardian ad litem for the purpose of proceedings.

(2) An election referred to in sub-rule (1) of this rule shall not be effective until it is filed.

(3) An election referred to in sub-rule (1) of this rule 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.

19. (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 the proceedings

(a) the infant may consent, in writing, to the person being appointed to be his guardian ad litem for the purpose of the proceedings; and

(b) when the infant has done so, that person may make application to the court 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 paragraph (a) of sub-rule

(1) of this rule shall be annexed to the affidavit of the applicant in support of the application, and the signature appearing on that 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 rule may be made ex parte.

(5) Where, upon application made under this rule, the court 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 so to act, the court shall appoint the applicant accordingly.

20. (1) Where the Attorney-General or an authorised person signs a consent, in accordance with Form 23, to act as the guardian ad litem of a party to proceedings or proposed proceedings who

(a) is detained in an institution where persons may, in accordance with law, be confined for unsoundness of mind;

(b) is receiving treatment as a voluntary patient in such an institution; or

(c) has been a patient in such an institution and, not having been discharged from the institution, is absent from the institution,

the consent may be filed and the Attorney-General or authorised person, as the case may be, then becomes the guardian ad litem of the person for the purpose of the proceedings or proposed proceedings.

(2) A person desiring to intervene in proceedings shall be deemed, for the purpose of sub-rule (1) of this rule, to be a party to the proceedings notwithstanding that the person has not intervened in the proceedings.

(3) The Attorney-General may, by writing under his hand, appoint a person (including a corporation sole) to be an authorised person for the purposes of this rule either 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 sub-rule (3) of this rule shall be published in the Federal Gazette.

21. (1) Where

(a) a party to proceedings is a person of unsound mind;

(b) the Attorney-General or an authorised person has not filed a consent under rule 20 of this rule 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 a court to be appointed the guardian ad litem of the party for that purpose.

(2) In sub-rule(1) of this rule, a reference to a party to proceedings shall be read as including a reference to a person desiring to intervene in the proceedings.

(3) Except where the application is made in pursuance of rule 23 of this Order, there shall be filed in support of an application under this rule, 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.

(4) An application under this rule may be made ex parte.

(5) Where, upon application made under this rule, the court is satisfied that the applicant is a fit and proper person to be appointed to be 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 so to act, the court shall appoint the applicant accordingly.

(6) In this rule, committee means committee of the person.

22. (1) Where a person who is a party to proceedings or who desires to intervene in proceedings is an infant or a person of unsound mind, the court may, at any stage of the proceedings, if the court considers it advisable so to do, appoint a fit and proper person who consents to act as guardian ad litem of the person to be the guardian ad litem of the person for the purposes of the proceedings.

(2) An appointment under this rule may be made by the court upon application by another party to the proceedings or a person who consents to act as the guardian ad litem of the person or without any application being made.

(3) An application under this rule may be made ex parte.

(4) Where an application has been made to the court under this rule, the court may adjourn the hearing of the application and direct that the application be served on such persons (if any) as the court thinks fit.

1. A corporation sole authorised under the law of a State to be appointed, or to act as, the guardian ad litem or next friend of a person of unsound mind may make application under either of the last two preceding rules to be appointed, and may be appointed, to be the guardian ad litem of a person of unsound mind for the purpose of proceedings.

2. An order appointing a person to be the guardian ad litem of a party to proceedings or a person who desires to intervene in proceedings shall, unless the person appointed to be a guardian ad litem is the person on whose application the order was made, be served on the person appointed on the day on which it is made or on the next following day.

25. The court may, subject to such conditions as the court thinks fit, remove a person from the office of guardian ad litem of an infant or person of unsound mind if

(a) the person makes application to retire from the office; or

(b) the court considers that it is desirable that the person should be removed from the office.

26. (1) Subject to sub-rule (4) of this rule, a person who becomes the guardian ad litem 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.

(2) Subject to sub-rule (4) of this rule, a person who becomes the guardian ad litem of a party cited in proceedings, or of a person named in an answer, shall serve notice of the fact on the petitioner and the respondent.

(3) 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.

(4) Where an order appointing a person to be a guardian ad litem is made upon the application of a party to proceedings, it shall not be necessary for the notice required by sub-rule

(1) or (2) of this rule to be served on that party.

27. Where a legal practitioner is the guardian ad litem of a party to proceedings, neither that legal practitioner nor a partner of that legal practitioner shall act in the proceedings as the legal practitioner for the party.

@@#ORDER X

#### **DEFAULT IN PLEADING**

1. (1) Where a pleading is filed on behalf of a party to proceedings after the time limited for the filing of the pleading has expired, any other party to the proceedings may, subject to these Rules, 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) a 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 given in writing and signed

(a) if the party giving the consent is represented by a legal practitioner, by that legal practitioner; or

(b) if the party is not so represented, by the party.

(3) Where an answer to a petition is filed, with the consent of the petitioner or in pursuance of an order of the court, after the proceedings instituted by the petition have been set down for trial, unless the court orders otherwise

(a) the setting down of the proceedings shall be void and of no effect; and

(b) the proceedings may be continued as though they had not been set down for trial.

2. (1) Where

- (a) the respondent to a petition is an infant or person of unsound mind;
- (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 of matrimonial cause, unless
  - (i) a person has become the guardian ad litem of the respondent for the purpose of the proceedings; and
  - (ii) the time limited for the filing of an answer by the guardian ad litem has expired.

(2) 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;
- (b) service of the petition has been duly effected on the person so specified; and
- (c) an answer has not been duly filed by or on behalf of the person so specified, the petitioner shall not continue the proceedings for a decree of a kind referred to in paragraph(a) of the definition of matrimonial cause instituted by the petition unless
  - (i) a person has become the guardian ad litem of the person so specified for the purpose of the proceedings; and
  - (ii) 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 an answer to a petition as a person with or on whom the petitioner has committed adultery, rape or sodomy;
- (b) service of the answer has been duly effected on the person so specified; and
- (c) a reply has not been duly filed by or on behalf of the person so 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 of matrimonial cause instituted by the petition, or proceedings (if any) for such a decree instituted by the answer, unless
  - (i) a person has become the guardian ad litem of the person for the purpose of the proceedings; and
  - (ii) the time limited for the filing of a reply by the guardian ad litem has expired.

- (4) Where the person so specified in a petition or an answer is an infant (not being a person of unsound mind), the court may grant leave to the petitioner or respondent, as the case may be, to continue the proceedings and, where leave is so granted, the petitioner or respondent, as the case may be, may continue the proceedings notwithstanding the provisions of the preceding sub-rules

(2) and (3) of this rule.

(5) A petitioner or respondent shall not be deemed to continue proceedings for the purpose of any of the preceding sub-rules of this rule by reason of his

(a) 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 those proceedings; or

(b) amending or making application for leave to amend the petition or answer by omitting the allegations contained in the petition or answer relating to the infant or person of unsound mind; or

(c) making application for leave, under sub-rule (4) of this rule, to continue the proceedings notwithstanding the provisions of sub-rules (2) and

(3) of this rule.

(6) In this rule answer includes a supplementary answer; petition includes a supplementary petition.

3. 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 proceedings, or desires to intervene in proceedings, the guardian ad litem has the like 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.

## ORDER XI

### **PREPARATION FOR TRIAL**

#### Part 1 -Preliminary

1. In this Order 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 sub-rule (2) or (3) of rule 1 of Order III of these Rules, 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 that petition;

(b) instituted by an answer or supplementary answer to that petition or to a supplementary petition so filed; or

(c) ordered by the court under rule 38 of this Order of these Rules, or deemed by Order XIV, rule 3 or 25 of these Rules, 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.

1. Where a person of unsound mind is a party to proceedings, this Part shall apply as if references to the party were references to the guardian ad litem of the party.

2. (1) Subject to this rule, in a defended suit, the pleadings are complete for the purposes of this Order 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 Order unless the pleadings between the petitioner and the respondent (as the case maybe) and the person 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 Order 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 rule, the pleadings between two parties to a suit are complete

(a) if 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;

(b) if 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) if a court has dispensed with service of a pleading, being the petition or answer in the proceedings, on one of those parties.

(5) For the purposes of sub-rule (4) of this rule 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.

## **Part 2 - Particulars, Discovery and Inspection of Documents**

4. (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 subsection

(2) of section 32 of the Act or under rule 6 or 7 of Order IX of these Rules, 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 sub-rule (1) of this rule is served shall, within ten days after service of the request on him, 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) The court may, upon application made by a person who has served a request under sub-rule (1) of this rule for further particulars of an allegation in a pleading or who is entitled to serve such a request, 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 so 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 pursuance of a request or of 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 contained in the further particulars, and by serving a copy of that 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 pursuance of a request, a copy of the request shall be annexed to the affidavit filed in pursuance of sub-rule (4) of this rule.

(6) Where the court makes an order under sub-rule (3) of this rule, the court shall not make an order with respect to the costs of the application in favour of the applicant unless the court 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 sub-rule

(1) of this rule and that that party

(i) failed to comply with the provisions of sub-rule

(2) of this rule; or

(ii) complied with those provisions by stating that he objected to giving or was unable to give some or all of the further particulars requested.

5. (1) A party to proceedings who has filed a pleading for the purposes of the proceedings may

(a) after the pleadings in the proceedings have been completed and before the proceedings have been set down for trial; or

(b) by leave of the court, after the proceedings have been set down for trial, 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 sub-rule (1) of this rule, a person who has intervened in proceedings under Part III 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 rule shall be in accordance with Form 24.

(4) A party to proceedings on whom a request under this rule 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 ten days after service of the request on him.

(5) Where the court, upon application made by a party to proceedings, is satisfied that

(a) the party has duly served, or is entitled to serve, a request under this rule; or

(b) the application was made in a case of urgency and in such circumstances that the party would require leave to serve a request under this rule but had not applied for such leave, the court may make such order for the filing of an affidavit of discovery as the court considers 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 sub-rule (5) of this rule, the court shall not make an order with respect to the costs of the application in favour of the applicant unless the court is satisfied

(a) that the application was made in a case of urgency; or

(b) that the applicant had served a request under this rule on the party ordered to make discovery and that that party refused or failed to comply with the provisions of sub-rule (4) of this rule.

(7) Where an order has been made requiring a person to file an affidavit of discovery, the person shall, within ten days of the date of the order or within such other time as the court orders, file the affidavit and serve a copy of the affidavit on the applicant for the order.

6. (1) Subject to any order made under the last preceding rule of this Order 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;

(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;

(c) specify the documents that he objects to produce upon the ground that the documents are

(i) professional communications of a confidential character made to the party by his legal practitioner, or made by the party to his legal practitioner, for the purpose of giving him legal advice;

(ii) cases for the opinion of legal practitioner, instructions to legal practitioner or opinions of legal practitioner prepared and given in anticipation of or during the progress of the proceedings;

(iii) letters or copies of letters from the party to his legal practitioner, from the legal practitioner to the party or from his legal practitioner to another person in anticipation of or during the progress of the proceedings; or

(iv) drafts or memoranda made by the counselor solicitor to the party for the purpose of the proceedings;

(d) specify the documents that he objects to produce on any other ground and the ground on which he so objects; and

(e) state that he has not at the time of swearing to the affidavit and has never had in his possession, custody or power, or in the possession, custody or power of a legal practitioner 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 a 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 shall not be necessary to specify each letter from a person to another person, but it shall be sufficient to specify the number of letters from the person to the other person and the dates of the first such letter and last such letter, respectively.

(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 shall not be necessary to specify each of the documents in the affidavit but it shall be sufficient if

(a) the documents are tied in a bundle, marked as an exhibit to the affidavit and referred to in the affidavit as the documents in that bundle;

(b) the number of documents in that bundle is stated in the affidavit; and

(c) the documents in that bundle are numbered consecutively and each of those documents is initialled by the person before whom the affidavit is sworn.

(4) An affidavit of discovery shall be in accordance with Form 25.

7. (1) The court may, upon application made by a party to proceedings, 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 sub-rule (1) of this rule 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 sub-rule (1) of this rule 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 rule 5 of this Order to file such an affidavit.

8. Where

(a) a party to proceedings has filed an affidavit of discovery;

(b) a document relating to matters in question in the proceedings was, at the time the party's affidavit was sworn, 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

(c) the document was not specified or referred to in that affidavit of discovery or in another affidavit of discovery filed by the party in pursuance of an order of the court, the party shall not be 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.

9. (1) Subject to sub-rule (2) of this rule, a party to proceedings may, by notice in writing 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 that other party or in further particulars given by that party in pursuance of a request or order under rule 4 of this Order.

(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 sub-rule (1) of this rule if, in the affidavit, the party

(a) objects to producing the document on a ground stated in the affidavit; or

(b) states that the document is not in his possession, custody or power.

(3) A party to whom a notice under sub-rule (1) of this rule has been given shall, within four days after receipt of the notice, specify, in writing to the party who has given 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 pursuance of a notice under sub-rule (1) of this rule may be inspected and copied by the party to whom it is produced or by his legal practitioner.

(5) Where a party to proceedings to whom a notice to produce a document has been given under sub-rule (1) of this rule fails to produce the document for inspection and copying, the party shall not be 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.

10. (1) The court may, upon application made by a party to proceedings who has duly served a request under the last preceding rule or who is entitled to serve such a request, order another party to the

proceedings to produce, at such time and place as the court thinks fit 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 sub-rule(1) of this rule, the court shall not make an order with respect to the costs of the application in favour of the applicant unless the court 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 sub rule (1) of this rule and the party

(i) did not comply with sub-rule (3) of that rule;

(ii) objected to produce the document;

(iii) specified a time more than ten days after the making of the request for the production of the document;

(iv) did not specify a place at which he would produce the document

(aa) 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

(ab) that, in the case of any other document, is the office of the legal practitioner (if any)representing the applicant or is a place that is reasonably near the court premises; or

(v) did not produce the document at the time and place specified.

11. (1) Where a 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 sub-rule (1) of this rule shall not be made in respect of a document that could be specified in a notice under rule 9 of this Order.

12. (1) Instead of ordering a party to proceedings to produce a book used for the purposes of trade or business, a 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 interlineations and a copy of the entry is furnished in pursuance of an order referred to in sub-rule (1) of this rule, the copy shall be deemed not to have been verified as a true copy of the entry unless particulars of the erasure, alteration or interlineations are clearly shown in the copy or set forth 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 a court notwithstanding that a copy of an entry in the book has been furnished in pursuance of an order of the court.

13. (1) A party to proceedings who is requested or ordered under these Rules to make discovery of documents or to produce documents, shall not be 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, the case of the party and that the document 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;

(b) that there is, in the document, an admission by the party that he has committed adultery, proof of which would be material to the decision in the suit; or

(c) that there is, in the document, any statement or other matter tending to show that the party has committed adultery, proof of which would be material to the decision in the suit.

(2) Where, upon 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 that document to the court, and the court may inspect the document for the purpose of determining whether the respondent is so excused.

14. Where a party to 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;

(b) if the party is the respondent

(i) any proceedings instituted by him by an answer to the petition; and

(ii) any other proceedings instituted by him in relation to proceedings instituted by the petition, be stayed or dismissed for want of prosecution; and

(iii) any proceedings instituted by the petition may be continued by the petitioner as if the answer had not been filed; or

(c) if the party is any other party, his answer or reply, as the case may be, be struck out.

1. An order shall not be made by a court authorising the delivery of interrogatories in writing for the examination of a person.

2. (1) A party to 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 sub-rule (1) of this rule, 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.

### **Part 3 - Admissions and Notices to Produce**

17. (1) A party to proceedings may at any time not later than ten days before the trial of the proceedings, by notice, in accordance with Form 26 served on another party to the proceedings, call upon that other party to make the admissions with respect to a document that are indicated in that form, and that other party may, by notice served on the first-mentioned party, make such of those admissions as he is willing to make.

(2) If the other party desires to challenge the authenticity of the document, the party 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 refuses or fails to serve notice under sub-rule (2) of this rule within the time prescribed by that sub-rule and fails to serve, before the trial of the proceedings, a notice under sub-rule (1) of this rule, the party 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 proceedings does not admit a document after service on him of a notice under sub-rule

(1) of this rule, the costs of proving the document shall, unless the court certifies that the refusal to admit was reasonable, be payable by the party.

(5) Where a notice to admit a document has not been given by a party to proceedings, the party shall not be 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 rule with respect to a document shall 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.

18. (1) Subject to sub-rule (5) of this rule, a party to proceedings may at any time not later than ten days before the trial of the proceedings, by notice in writing served on another party to the proceedings, call upon the other party to admit, for the purpose of the proceedings, any specific fact or facts mentioned in the notice and that other party may, by notice in writing, admit the fact or any of those facts.

(2) If the party on whom a notice to admit has been served, refuses or fails to admit in writing a fact mentioned in the notice within seven days after service of the notice on the party, or within such further time as is allowed by the court, the court may order that party to pay the costs of proving the fact.

(3) An admission made by a party to proceedings in pursuance of a notice to admit served under sub-rule (1) of this rule 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) A court may at any time allow the party to amend or withdraw an admission made under this rule upon such terms as the court thinks fit.

(5) Nothing in this rule shall be deemed to authorise a party to proceedings to call upon another party to admit a fact which that other party has denied in a pleading filed for the purpose of the proceedings.

(6) A notice referred to in sub-rule (1) of this rule shall be in accordance with Form 27, and an admission of a fact in answer to such a notice shall be in writing and in accordance with Form 28.

(7) An admission made under this rule with respect to a fact shall not prevent the party who made the admission from objecting to the admission of the fact in evidence on a ground that is not inconsistent with his admission.

1. An affidavit by the solicitor representing a party or by a clerk of that solicitor, of the due signature of admission made by that party in pursuance of a notice to admit documents or facts shall be sufficient evidence of those admissions, if that evidence is required.

2. (1) A party to proceedings may, by notice in writing 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.

(2) A notice referred to in sub-rule (1) of this rule shall be in accordance with Form 29.

#### **Part 4 - Medical Examination of Parties**

21. (1) This rule shall apply 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 rule applies, the petitioner or respondent may make application to a court for an order under sub-rule (4) of this rule.

(3) An application referred to in sub-rule (2) of this rule shall not be made to a court

(a) if the petitioner in the proceedings is seeking the decree of nullity of marriage before the time limited for the filing of an answer by the respondent has expired or, if the respondent files an answer before the expiration of that time, before the filing of an answer by the respondent; or

(b) if the respondent in the proceedings is seeking the decree before the time limited for the filing of a reply by the petitioner has expired or, if the petitioner files a reply before the expiration of that time, before the filing of a reply by the petitioner.

(4) Where, in proceedings to which this rule applies, application is made to a court for an order under this sub-rule, the court may, by order

(a) appoint a medical inspector or two medical inspectors to examine the petitioner and respondent;

(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;

(c) appoint a medical inspector or two medical inspectors to examine either 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 a court.

1. Notwithstanding that a court has dispensed with the examination of the petitioner or respondent by a medical inspector appointed under rule 21 of this Order, where the court, upon the trial of proceedings to which rule 21 of this Order 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 the petitioner or respondent, as the case may be.

2. In proceedings for a decree of dissolution of marriage on the ground that a party to the marriage has willfully and persistently refused to consummate the marriage, a court may, upon application made by either party to the marriage

(a) appoint a medical inspector or two medical inspectors to examine the parties, or a party, to the marriage; or

(b) appoint a medical inspector or two medical inspectors to examine one of those parties and another medical inspector or two other medical inspectors to examine the other party.

24. (1) Where, under rule 21, 22 or 23 of this Order, an order has been made, upon application by the petitioner in 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.

(2) Where, under rule 21, 22 or 23 of this Order, an order has been made, upon application by the respondent in 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.

(3) Where, upon the trial of proceedings, a court has of its own motion made an order under rule 22 of this Order for the appointment of a medical inspector to examine a party, being the petitioner or the respondent, to the proceedings 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 either in person or by his legal practitioner at that time, shall cause a copy of the order to be served on the first-mentioned party.

(4) Service of a copy of an order referred to in any of the preceding sub-rules of this rule 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.

(5) Unless the court otherwise orders, service of a copy of an order referred to in this rule and of a notice referred to in sub-rule (4) of this rule shall not be effected otherwise than in a manner specified in paragraph (a), (b) or (c) of Order VI, rule 1 of these Rules.

25. (1) A medical inspector appointed under this Part to examine a person shall not carry out the examination unless the medical inspector has made and subscribed, before the registrar of the High

Court of a State or the Federal Capital Territory, Abuja, or before a person authorised by such a court for the purpose, an oath, in accordance with a form approved by the court, that he will well and truly examine any person who submits himself for examination in accordance with an order made under this Part, and will make to the appropriate court a correct report of the examination.

(2) Before a person is examined by a medical inspector appointed under these Rules

(a) the person shall satisfy the medical inspector as to his identity by being identified by a legal practitioner or, if he is not represented by a legal practitioner, by some other credible person; and

(b) the person, and the legal practitioner or credible 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.

26. (1) When a medical inspector appointed under these Rules to examine a person has examined the person, the medical inspector shall report the result of the examination to the court.

(2) When a party to proceedings has failed to submit to examination by the medical inspector appointed under these Rules to examine him or has failed to comply with rule 25 of this Order, the medical inspector shall report to the court accordingly.

(3) A report referred to in either sub-rule (1) or (2) of this rule shall be forwarded by the medical inspector to the registrar of the court.

(4) A report referred to in sub-rule (1) or (2) of this rule 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, either in person or by his legal practitioner when the order was made, by the respondent in the proceedings.

(5) Each party to the proceedings shall, upon request to the registrar, be entitled to be furnished with a copy of the report.

27. (1) Proceedings to which rule 21 of this order applies shall not be set down for trial unless

(a) application has been made to a court under that rule;

(b) except in a case where the examination of the petitioner and respondent by a medical practitioner appointed under that rule has been dispensed with the provisions of rules 24 and 26 of this Order have been complied with.

(2) Where, in proceedings to which rule 23 of this Order applies, the court has, under that rule, appointed a medical inspector or two medical inspectors to examine the parties or a party, the proceedings shall not be set down for trial unless the provisions of rules 24 and 26 of this Order have been complied with.

(3) Where, in proceedings referred to in sub-rule (1) or

(2) of this rule, a copy of an order appointing a medical inspector to examine a party to the proceedings is required under rule 24 of this Order 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.

#### **Part 5 - Discretion Statements**

28. (1) A petitioner or respondent in proceedings who

(a) is seeking a decree of dissolution of marriage on a ground specified in any of paragraphs(a) to (g), inclusive, of section 15 (2) of the Act or a decree of judicial separation under section 39 thereof on a ground specified in any of paragraphs

(a) to (g),inclusive, of the said section 15 (2); and

(b) has committed adultery since the marriage, shall file a discretion statement if the adultery was committed

(i) 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

(ii) after the filing of that petition or answer but before the trial of the proceedings as soon as practicable after committing the adultery.

29. (1) A discretion statement, which shall be in accordance with Form 30, shall state particulars of the acts of adultery committed by the petitioner or respondent, as the case may be, since the marriage (other than acts stated in any other discretion statement filed by him for the purposes of the proceedings), the circumstances giving rise to the commission of the act of adultery and the grounds upon which the court shall be asked to make a decree of dissolution of marriage or of judicial separation notwithstanding the adultery.

(2) Where a petitioner or respondent alleges that an act of adultery set forth 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 shall not be necessary for a further discretion statement to be filed setting forth particulars of any further acts of adultery committed by him with that person.

(4) A discretion statement of a party to proceedings shall not be filed unless

(a) it is signed by the party;

- (b) the matters set forth 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 legal practitioner, signed by the legal practitioner; 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.

30. (1) Where a discretion statement of a party to proceedings contains an allegation that the party's spouse has committed adultery or another matrimonial offence, not being adultery or 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) The court may, on the hearing of proceedings, excuse a party who has failed to serve notice of an allegation on his spouse in accordance with sub-rule (1) of this rule, if it is satisfied that the failure has not prejudiced the spouse in connection with the proceedings.

31. (1) Where a petitioner whose petition does not contain the statement referred to in rule 13 of Order V of these Rules 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 if

(i) 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) 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 legal practitioner for the petitioner, or, if the petitioner is not represented by a legal practitioner, the petitioner, shall write on the petition, in red ink, immediately after the signature to the petition, a notation in accordance with the following form, and sign his name immediately under that notation

Discretion statement filed the.....day of.....20

(2) Where a petitioner is claiming custody of a child of the marriage and the respondent does not have an address for service, sub-rule (1) of this rule shall 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 under sub-rule (1) of this rule is required to be effected on a respondent who does not have an address for service and the petition was served on the respondent in accordance with an order under rule 1 of Order VI of these Rules, service of the notice may be effected in the same

manner as 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 under sub-rule (1) of this rule 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 referred to in that sub-rule shall be sent to or served on that person.

(5) Sub-rule (1) of this rule shall apply 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;

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

(c) references to a respondent were references to a petitioner.

32. (1) The court may, if it considers it proper so to do in the circumstances of the particular case, 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 sub-rule (1) of this rule, a discretion statement shall not be open to inspection by a person other than the Attorney-General, or a person authorised in writing by the Attorney-General to inspect the discretion statement, without the leave of the court.

(3) An authorisation by the Attorney-General under sub-rule (2) of this rule may be either general or in relation to a particular suit or class of suits.

(4) In sub-rules (2) and (3) of this rule, references to the Attorney-General shall be read as including references to a person to whom the Attorney-General has, by a delegation that is in force, delegated all or any of his powers and functions under Part III of the Act.

## **Part 6 - Compulsory Conferences**

33. Where

(a) a defended suit includes proceedings with respect to

(i) the maintenance of a party to the proceedings;

- (ii) settlements;
- (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 upon the trial of those proceedings in the event that the court does not make an order dismissing those proceedings; 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 sixteen years before the decree is made; or
- (ii) in relation to whom the petitioner or respondent has obtained or is seeking an order under subsection (3) of section 57 of the Act, 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 Part shall apply to the suit.

34. (1) Subject to sub-rule (2) of this rule, a suit to which this Part applies shall not, except by leave of the court, be set down for trial upon application made by a party to the suits, being the petitioner or respondent, unless

- (a) a conference for the purpose of this Part has been held; or
- (b) that party attended, on the day and at the time and place fixed under this Part for the holding of such a conference, for the purpose of discussing, and making a bonafide endeavour to reach agreement on, any matters referred to in sub-rule

(1) of rule 35 of this Order, but the petitioner or respondent, as the case may be, failed to attend or to take part in the conference.

(2) Where a registrar is satisfied

(a) that, by reason of

- (i) the respective places of residence of the petitioner and respondent; and
- (ii) the respective places of business of the legal practitioner for the petitioner and the legal practitioner for the respondent, it would be unreasonable in the circumstances of the particular case to require a conference for the purpose of this Part to be held before the suit is set down for trial;

(b) that the holding of such a conference before the suit is set down for trial would involve the petitioner or respondent, or the petitioner and the respondent, in undue expense; or

(c) that 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 the requirements of sub-rule (1) of this rule have not been complied with.

(3) Where a registrar sets a suit to which this Part applies down for trial in accordance with sub-rule (2) of this rule, a conference for the purpose of this Part shall, unless the court otherwise orders, be held before the commencement of the trial of the suit.

35. (1) A conference for the purpose of this part shall be 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 proceeding pending between them with respect to a matter referred to in any of sub-paragraphs (i) to (iv), inclusive, of paragraph (a) of rule 33 of this Order; or

(b) concerning arrangements of a kind referred to in paragraph (a) of subsection (1) of section 57 of the Act.

(2) A petitioner or respondent may attend a conference for the purpose of this Part in person, either with or without his legal practitioner, or may be represented by his legal practitioner.

(3) A conference for the purpose of this Part may be adjourned from time to time and from place to place.

(4) Subject to sub-rule (5) of this rule, evidence of anything said, or of any admission made, in the course of a conference for the purpose of this Part shall not be admissible in any court (whether exercising federal jurisdiction or not) or in proceedings before a person authorised by a law of the Federal Republic of Nigeria or of a State or of the Federal Capital Territory, Abuja, or by consent of the parties, to hear, receive and examine evidence.

(5) The provisions of sub-rule (4) of this rule shall 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 upon the trial of a person for an offence committed at the conference.

36. (1) Where the petitioner and respondent in a suit to which this Part applies are each represented by a solicitor, this rule shall apply to the suit.

(2) Where, in a suit to which this rule applies, the pleadings are complete, the solicitor for the petitioner may give to the solicitor for the respondent a notice in writing specifying a day, time and place for the holding of a conference for the purpose of this Part.

(3) Where the legal practitioner for the petitioner has not given a notice under sub-rule (2) of this rule, and a period of not less than fourteen days has elapsed since the pleadings were completed, the solicitor for the respondent may give to the solicitor for the petitioner, a notice in writing specifying a day, time and place for the holding of a conference for the purpose of this Part.

(4) When the legal practitioner for a respondent has duly given a notice under sub-rule (3) of this rule, the legal practitioner for the petitioner shall cease to be entitled to give a notice under sub-rule (2) of this rule.

(5) In a notice given under sub-rule (2) or (3) of this rule, unless the legal practitioner for the petitioner and the legal practitioner for the respondent otherwise agree

(a) the day specified in the notice 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 a place in a city or town (not being the city or town in which that office is situated) in which the solicitor for the petitioner and the solicitor for the respondent each has a place of business.

37. (1) Where the petitioner or respondent in a suit to which this Part applies, is not represented by a legal practitioner, this rule applies to the suit.

(2) Where, in a suit to which this rule 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 Part.

(3) Subject to sub-rule (4) of this rule, where the petitioner and respondent fail so to agree within fourteen 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 the holding of a conference for the purpose of this Part.

(4) A registrar may refuse to comply with a request under the last preceding sub-rule if he is satisfied that, under sub-rule (2) of rule 34 of this Order, he would be entitled to set the suit down for trial notwithstanding that the requirements of sub-rule (1) of that rule 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 Part, 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 so fixed.

(6) The petitioner and respondent may agree to appoint a particular person, being a person willing so to act, to act as chairman at the conference held for the purpose of this Part.

(7) Where the petitioner or respondent is represented by a legal practitioner, references in this rule to the petitioner or respondent, as the case may be, shall be read as references to that legal practitioner.

#### **Part 7 - Consolidation of Proceedings**

38. (1) The court may, upon application made by the petitioner or respondent in proceedings, order that the proceedings be consolidated with other proceedings that are pending in the court and to which that petitioner and respondent are parties, and that both proceedings be tried together.

(2) An order may be made under sub-rule (1) of this rule notwithstanding that a party to one of the proceedings is not a party to the other proceedings.

(3) The court shall specify, in an order made under sub-rule (1) of this rule, the party who shall be deemed to be the party having the carriage of the consolidated proceedings.

#### **Part 8 - Setting Suits down for Trial**

39. (1) Subject to rules 3 and 27 of these Rules and to this rule, the registrar of the court in which an undefended suit is pending may, upon 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 referred to in the last preceding sub-rule, which shall be in accordance with Form 31, shall state the court division at which the petitioner desires the suit to be tried and shall be signed by the solicitor for the petitioner or, if the petitioner is not represented by a solicitor, by the petitioner.

(3) Subject to rule 43 of this Order, a registrar shall not set an undefended suit down for trial unless

(a) proof, by affidavit or by a certificate filed in accordance with sub-rule (6) of rule 5 of Order VI of these Rules, of the due service of the petition on the respondent, and on each named person (if any) with whom the respondent is alleged to have committed rape, sodomy or adultery, has been filed;

(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;

(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 in pursuance of Order V rule 27 of these Rules;

(d) in a case where the petitioner is seeking an order with respect to the maintenance of himself or 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 court 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 court, made application for, and been granted, a certificate of means.

(4) Paragraph (a) of the last preceding sub-rule shall not require a registrar to be satisfied as to the due service of a petition

(a) on a respondent, if

(i) the petition institutes proceedings for a decree of dissolution of marriage on the ground specified in paragraph (h) of section 15 (2) of the Act and on no other ground;

(ii) service of the petition on the respondent has been dispensed with; or

(iii) the respondent has an address for service for the purpose of the proceedings; or

(b) on any other person, if

(i) the person is dead;

(ii) service of the petition on the person has been dispensed with; or

(iii) the person has an address for service for the purpose of the proceedings.

(5) Subject to rule 43 of this Order, where service of a petition on a person, whether or not that person is the respondent, has been dispensed with subject to compliance with a condition, a 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 shall not be ready for trial for the purpose of sub-rule (1) of this rule 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;

(b) any interlocutory application that the petitioner desires to make for the purpose of preparing for the trial has been made, heard and determined.

(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 court 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 it 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 rule shall apply 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;

(b) references to the petition were read as references to the respondents answer to the petition;

(c) references to the respondent were read as references to the petitioner;

(d) references to an answer were read as references to a reply; and

(e) references to the petition in paragraph (c) or (d) of sub-rule (3) of this rule were read as references to the petition and the answer.

40.(1) Where

(a) in the case of a defended suit to which Part 6 of this Order applies, being a suit in relation to which

(i) a compulsory conference for the purpose of that Part has been held; or

(ii) a date for the holding of such a conference has been fixed, a period of less than fourteen days has elapsed since the date on which that conference was concluded or the date that was fixed for the holding of the conference, as the case may be;

(b) in the case of any other defended suit to which the Part 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 Part does not apply a period of less than fourteen 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 Part 6 of this Order 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.

41. (1) Subject to Order IX, rule 3 and Order XI, rules 27 defended and 37 of these Rules and to this rule, the court in which a suit down for defended suit is pending may, upon a party who has filed trial a pleading filing a request and a certificate that the suit is ready for trial, set the suit down for trial.

(2) A request and certificate referred to in sub-rule (1) of this rule

(a) shall be in accordance with Form 32;

(b) shall state the court division at which the party desires the suit to be tried;

(c) shall state an estimate of the length of the trial; and

(d) shall be signed by the legal practitioner for the party or, if the party is not represented by a legal practitioner, by the party.

(3) A court shall not set a defended suit down for trial upon the request of a party unless

(a) the pleadings are complete;

(b) in the opinion of the court, the allegations in the petition relating to the marriage are consistent with the particulars shown in the marriage certificate (if any) filed in pursuance of Order V, rule 27 of these Rules;

(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, of the petitioner in Nigeria, within the meaning of the Act, 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 of matrimonial cause, 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, of the respondent in Nigeria, within the meaning of the Act, at the time of the institution of the proceedings for that decree.

(4) A suit shall not be ready for trial for the purpose of sub-rule (1) of this rule unless

(a) any request or order for the furnishing of particulars by or to the party, for the making of discovery by or to the party or for the inspection of documents has been complied with;

(b) the party has instituted all such interlocutory applications and made all such requests for particulars, discovery or inspection of document, as the party desires to make for the purpose of preparing for the trial of the suit;

(c) so far as practicable, a proof of the evidence of each person to be called by the party as a witness upon the trial of the suit has been obtained; and

(d) if, upon 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 witness evidence to each other party to those proceedings who has filed a pleading.

(5) For the purpose of paragraph (a) of sub-rule (4) of this rule, 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 maybe, has waived compliance with the request or order.

(6) A suit which 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 upon 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;

(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 that agreement are set out in that request or in another document referred to in that request and filed in the proceedings; or

(c) the court 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 an agreement in writing entered into between the parties, it shall be sufficient compliance with paragraph (b) of sub-rule (6) of this rule, if the request states that the parties have so agreed and refers to the order or agreement, as the case maybe.

(8) Where the petitioner or respondent makes application to set down for trial a defended suit in relation to which Part 6 of this Order applies, the request and certificate filed in pursuance of sub-rule (1) of this rule

(a) shall state the facts by virtue of which the party is entitled, having regard to sub-rule(1) of rule 34 of Order XI of these Rules, to make the application; or

(b) shall request the registrar to set the suit down for trial notwithstanding that the requirements of that sub-rule have not been complied with and state the facts relied on in support of that request, as the case may be.

(9) Where the request and certificate states that a conference for the purpose of Part 6 of this Order has been held, the request and certificate shall also state whether any agreement was reached at the conference, and, if agreement was so reached, brief particulars of that agreement.

1. 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.

2. (1) Where a request to set a suit down for trial has been made to a 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 that first-mentioned party, shall also inform that party of the matter.

(2) Where, under sub-rule (1) of this rule, a 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 that the registrar is not so satisfied, and the registrar shall, on receipt of the request, set the suit down for trial.

(3) Where a period of not less than 28 days has elapsed after a registrar has 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 a registrar sets a suit down for trial in pursuance of a request under sub-rule 2 or 3 of this rule, the registrar shall state on the certificate filed in pursuance of rule 46 of this Order, the matters that in his opinion are not in order.

44. (1) A suit pending before the High Court of a State or the Federal Capital Territory, Abuja, may be set down for trial at a court division in that State or the Federal Capital Territory, Abuja.

(2) An undefended suit shall be set down for trial at the court division specified in the request to set the suit down for trial.

(3) A defended suit shall, except in a case where an order under rule 47 of this Order has been made before the suit is set down for trial, be set down for trial at the court division specified in the request to set the suit down for trial.

45. (1) When a registrar sets a suit down for trial at a court division, the registrar shall, if it is in accordance with the practice of the court so to do, set the suit down for trial on a particular date or at a sitting of the court at the court division commencing on a particular date.

(2) Unless the court otherwise orders under rule 48 of this Order, a defended suit shall not be

(a) set down for trial on a date;

(b) set down for trial at a sittings of the court commencing on a date; or

(c) tried by the court on a date, that is less than fourteen clear days after the date on which the suit is set down for trial by a registrar.

46. (1) Subject to sub-rule (2) of this rule, a party who requests a registrar to set a suit down for trial shall deposit with the registrar a form of notice, in accordance with Form 33, for signature by the registrar and a copy of that form of notice for each party to the suit.

(2) Sub-rule (1) of this rule shall not require the deposit of a copy of a form of notice for a party

(a) if the court dispenses 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 the party has an address for service and the party making the request is aware of an address of the party or 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;

(b) shall have the name and address of the party so endorsed on it 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 accordance with the form set out in sub-rule (7) of this rule, so endorsed on it that, when it is folded and sealed, the notation can remain legible.

(4) For the purpose of sub-rule (2) of this rule, 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 of the place at which the party is residing or working or, if the person on whose behalf the copy is deposited with a registrar does not know where the party is residing or working, any other address of the party known to the person, or the address of the place at which service of the petition or answer, as the case may be, was effected on the party or 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 a registrar sets a suit down for trial, he shall

(a) insert in each copy of the form of notice deposited under sub-rule (1) of this rule, the name of the court division 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 sitting of the court commencing on a particular day, insert particulars of that day or sittings;

(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 accordance with Form 34, that

(i) the suit is ready for trial or has been set down for trial in pursuance of a request under sub-rule (2) or (3), as the case may be, of rule 43 of this Order; and

(ii) that he has complied with the paragraphs (a) and (b) of this sub-rule, and file that certificate.

(6) In proceedings in a court, a certificate under sub-rule 5 of this rule, relating to a suit and under the hand of a registrar of the court, shall be evidence that the provisions of paragraphs (a) and (b) of that sub-rule have been duly complied with in relation to the suit.

(7) The form of the notation required by paragraph (c) of sub-rule (3) of this rule to be endorsed on a form of notice deposited by a party shall be as follows

If not delivered within seven days, return to (name of the solicitor for that party or name of that party, as the case may be, and address for service of that party).

(8) Where a party to proceedings is represented by a legal practitioner

(a) a copy of a form of notice deposited for that party that has endorsed on it the name and address of that solicitor together with the name and address of the city agent(if any) of that solicitor, shall be deemed to comply with paragraphs (b) and(c) of sub-rule (3) of this rule; and

(b) the delivery of the copy by the registrar to

(i) the legal practitioner whose name and address is so endorsed on the copy; or

(ii) the city agent, if the names and addresses of a legal practitioner and his city agent are so endorsed on the copy, shall be deemed to be compliance with paragraph

(b) of sub-rule(5) of this rule in respect of that party.

47. (1) At anytime after a request has been made to a registrar to set a suit down for trial at a court division in a State or the Federal Capital Territory, Abuja, a party who has filed a pleading may, whether or not the suit has been set down for trial, make application to the court for an order that the trial of the suit take place at a court division in that State or the Federal Capital Territory, Abuja, specified in the application.

(2) Where the court is, upon the hearing of an application under sub-rule (1) of this rule, satisfied that it is proper so to do, the court shall order that the trial of the suit take place at a court division specified in the order.

(3) Where an order has been made by the court or by a registrar under sub-rule 2 of this rule, the registrar shall set the suit down for trial at the court division specified in the order. 48. (1) Where the court in which a suit is pending is satisfied that it is, by reason of special circumstances, proper so to do, the court may, by order

(a) set the suit down for hearing on, or for hearing at a sitting of the court commencing on, a date that is less than fourteen 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 fourteen 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 sub-rule (1) of this rule may be made by any party who has filed a pleading.

49. Subject to any order made by the court under rule 48 of this Order, a suit shall be listed for trial at a court division in the order in which the suit is set down for trial at the court division.

## ORDER XII

### DECREES

1 A decree of dissolution of marriage shall be in accordance with Form 35.

2 A decree of nullity of marriage shall be in accordance with Form 36 or Form 37 (whichever is appropriate).

3 A decree of judicial separation shall be in accordance with Form 38.

4 A decree of restitution of conjugal rights shall be in accordance with Form 39.

5 Where, upon the trial of proceedings for a decree of dissolution of marriage or of judicial separation, the court is satisfied of the existence of a ground

(a) (not being the ground specified in paragraph (h) of section 15 (2) of the Act) in respect of which the decree may be granted; and

(b) on which the court may, under section 28 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

(i) was refused by the court in the exercise of its discretion under section 28 of the Act; or

(ii) was granted by the court notwithstanding that last-mentioned ground, as the case may be.

6. (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 has become absolute

(a) it comes to the notice of 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) it comes to the notice of the legal practitioner representing a party to the marriage that the party died before, or has died after, the making of the decree, the party or legal practitioner, 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) Where the registrar is satisfied that the party is dead, he shall file a memorandum to that effect.

7. (1) A memorandum referred to in subsection (1) of section 59 of the Act shall be in accordance with Form 40.

(2) A certificate referred to in subsection (2) of section 59 of the Act

(a) shall be in accordance with Form 41; or

(b) shall be a certificate, endorsed on a copy of the decree nisi, in accordance with the following form

I certify that the decree nisi of which this decree is a copy became absolute on the day  
of...20..... Dated this... day of.....20.. Registrar

8. (1) An application under section 60 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 sub-rule (1) of this rule, service of an application referred to in that sub-rule shall be effected on the other party to the marriage in a manner referred to in paragraph (a) or (b) of Order VI, rule 1 of these Rules.

9. (1) A party to proceedings who makes application for the rescission, under section 61 of the Act, of a decree nisi shall cause service of the application to be effected on each other party to the proceedings, except a party service on whom of the application is dispensed with.

(2) Service of an application referred to in sub-rule (1) of this rule shall be effected in a manner referred to in paragraph (a) or (b) or Order VI, rule 1 of these Rules.

#### ORDER XIII

#### **INTERVENTION BY PERSONS NOT PARTIES TO PROCEEDINGS**

1. (1) Where the Attorney-General is entitled to intervene in proceedings under section 62 or 63 of the Act, the Attorney-General may do so by causing to be filed a notice of intervention, in accordance with Form 42, stating whether he is intervening under section 62 or 63 of the Act.

(2) Where the Attorney-General intervenes in proceedings under section 63 of the Act, the Attorney-General 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 the Attorney-General 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 in pursuance of sub-rule (2) of this rule, shall, as soon as possible after it has been filed, be served on each other party to the proceedings who has an address for service.

(4) The Attorney-General shall state in a notice of intervention an address for service or the name and place of business of any solicitor acting on his behalf and in that case the place of business so stated shall be the address for service of the Attorney-General.

(5) In this rule, a reference to the Attorney-General shall be read as including a reference to a person to whom, by a delegation under section 64 of the Act that is in force, the Attorney-General has delegated a power or function under Part III of the Act.

2. (1) Where the Attorney-General intervenes in proceedings after a decree nisi has been made

(a) the Attorney-General shall, as soon as practicable after intervening, make application to the court or 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 contained in the statement filed in pursuance of sub-rule

(2) of rule 2 of this Order or state a fact that has become relevant to the proceedings by reason of some matter alleged in that statement.

(2) In this rule, a reference to the Attorney-General shall be read as including a reference to a person to whom, by a delegation under section 64 of the Act that is in force, the Attorney-General has delegated a power or function under Part III of the Act.

3. (1) Service of an application under section 65 of the Act for leave to intervene in proceedings shall, on the day on which the application is filed or on the next following day, be effected on each party to the proceedings who has an address for service.

(2) Where the court makes an order under section 65 of the Act entitling a person to intervene in proceedings

(a) the court shall give such directions as it thinks proper with respect to the 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) the person shall, on the day on which the order is made or on the next following day, intervene in the proceedings by filing a notice of intervention in accordance with Form 43.

## ORDER XIV

### **PROCEEDINGS FOR ANCILLARY RELIEF**

#### **Part I - Preliminary**

1. In this Order, unless the contrary intention appears application for ancillary relief, in relation to proceedings for ancillary relief means

(a) if the proceedings for ancillary relief are instituted by petition, that petition;

(b) if the proceedings for ancillary relief are instituted by an answer to a petition, that answer; or

(c) if the proceedings for ancillary relief are instituted by application to a court, the affidavit in support of that application; claimant means a person who institutes or has instituted proceedings for ancillary relief; defence to the proceedings, in relation to proceedings for ancillary relief, means

(a) if the proceedings for ancillary relief were instituted by petition, the respondents answer to the petition;

(b) if the proceedings for ancillary relief were instituted by an answer to a petition, the petitioners reply to the answer; or

(c) if the proceedings for ancillary relief were instituted by application to a 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 of matrimonial cause 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 of matrimonial cause; spouse, in relation to a claimant in proceedings for ancillary relief, means

(a) if the marriage of the claimant has been dissolved or annulled in the proceedings for principal relief to which those proceedings for ancillary relief relate, the person whose marriage to the claimant was so dissolved or annulled; or

(b) in any other cause, the husband or wife or purported husband or wife, as the case may be, of the claimant.

2. (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 those 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 of matrimonial cause that were pending at, or were completed before, the commencement of the Act; or

(b) an order made by a court, whether before or after the commencement of the Act, in proceedings of a kind referred to in paragraph (c) of that definition.

3. (1) Where a party to proceedings for principal relief makes application to a court for leave under section 54 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 paragraphs (a), (b) or (c) of rule 1 of Order VI of these Rules.

(2) A party to 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, as the case may be.

(3) Where, before the making of the decree in proceedings for principal relief, proceedings for ancillary relief are instituted by leave of the court or under sub-rule (2) of rule 2 of this Order, the proceedings for ancillary relief shall be deemed to have been consolidated with the proceedings for principal relief to

which they are related and, as far as is practicable, shall 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 to which those proceedings for ancillary relief relate were instituted or by an answer to that petition, as the case required.

4. (1) A claimant shall, in his application for ancillary relief state

(a) particulars of the order sought by him; and

(b) the facts upon which the court will be asked to make that order.

(2) Where a claimant is, by his application for ancillary Order relief, seeking an order with respect to the maintenance of the claimant or of children of the marriage, the application shall specify

(a) the persons in respect of whom maintenance is sought;

(b) whether the order sought in respect of each of those persons is 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 until further order; and

(c) the amount of the lump sum or the weekly, monthly, yearly or other periodic sum, as the case may be, sought in respect of each of those persons.

(3) Where a claimant is, by his application for ancillary relief, seeking an award of damages under section 31 of the Act, the application shall specify the amount of damages sought.

(4) 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 claimant shall state in his application for ancillary relief particulars of

(a) the property, income and financial commitments of the claimant;

(b) the capability of the claimant to earn income;

(c) the property, income and financial commitments of the spouse of the claimant, so far as they are known to the claimant;

(d) the capability of the spouse of the claimant to earn income, so far as that capability is known to the claimant;

(e) any financial arrangements in operation between the claimant and the spouse of the claimant;

(f) any order of a court 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 upon which the claimant is occupying or otherwise residing in that home.

(5) 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 sub-rule (4) of this rule, the claimant shall state in his application for ancillary relief particulars of such of the matters referred to in paragraphs (a) to (g), inclusive, of that sub-rule as are relevant to those proceedings.

(6) A claimant to whom either of the last two preceding sub-rules applies shall not be taken to have complied with those sub-rules unless he states in his application for ancillary relief

(a) that he has no property other than the property particulars of which are stated in the application, or that he has no property, as the case may be; and

(b) that he has no income other than the income particulars of which are stated in the application, or that he has no income, as the case may be.

(7) Where any particulars referred to in paragraph (c) or

(d) of sub-rule(4) of this rule are included in a petition or answer, particulars of the claimants means of knowing those first-mentioned particulars shall be stated in the petition or answer, as the case may be.

(8) Where any particulars referred to in paragraph (c) or

(d) of sub-rule(4) of this rule are included in an affidavit, the person swearing to the affidavit shall state in the affidavit particulars of his means of knowing those first-mentioned particulars.

5. (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 the spouse wishes to be considered upon the determination of the proceedings.

(2) Without limiting the generality of sub-rule (1) of this Order rule, 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 the spouse;

(b) the capability of the spouse to earn income;

(c) the property, income and financial commitments of the claimant, so far as they are known to the spouse;

(d) the capability of the claimant to earn income, so far as that capability is known to the spouse;

(e) any financial arrangements in operation between the spouse and the claimant;

(f) any order of a court 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 upon which the claimant is occupying or otherwise residing in that home.

(3) Without limiting the generality of sub-rule (1) of this rule, 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 the last preceding sub-rule, the spouse shall, if he wishes to oppose the making of the order sought, state in his defence to the proceedings particulars of such of the matters referred to in paragraphs (a) to (g), inclusive, of that sub-rule as are relevant to those proceedings.

(4) A spouse to whom either of the last two preceding sub-rules applies, shall not be taken to have complied with those sub-rules unless he states in his defence to the proceedings for ancillary relief

(a) that he has no property other than the property particulars of which are stated in the defence to the proceedings, or that he has no property, as the case may be; and

(b) that he has no income other than the income particulars of which are stated in the defence to the proceedings, or that he has no income, as the case may be.

(5) Where any particulars referred to in sub-paragraph (c) or (d) of sub-rule (2) of this rule are included in an answer or reply, particulars of the spouses means of knowing those first-mentioned particulars shall be stated in the answer or reply, as the case may be.

(6) Where any particulars referred to in sub-paragraph

(c) or (d) of sub-rule (2) of this rule are included in an affidavit, the person swearing to the affidavit shall state in the affidavit particulars of his means of knowing those first-mentioned particulars.

(7) Where the spouse of a claimant states in his defence to the proceedings that any particulars of a matter referred to in sub-rule (2) of this rule that are stated in the claimants application for ancillary relief are true and correct, this rule shall not require the spouse to state those particulars in his defence to the proceedings.

6. (1) This rule shall not apply to proceedings for ancillary relief that are instituted by petition or by answer to a petition.

(2) Subject to sub-rules (3) and (4) of this rule, an application to a court for purpose of instituting proceedings for ancillary relief shall be in accordance with Form 44.

(3) Subject to sub-rule (4) of this rule, an application to a 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 of the Act, shall be in accordance with Form 5.

(4) An application to a court for the purpose of instituting proceedings for maintenance pending the disposal of proceedings shall be in accordance with Form 45.

(5) Subject to sub-rule (6) of this rule, service of an application instituting proceedings for ancillary relief shall be effected on the spouse of the claimant in a manner referred to in paragraph (a), (b) or (c) of Order VI, rule 1 of these Rules.

(6) Where proceedings for ancillary relief are instituted in relation to completed proceedings of a kind referred to in paragraph (a) of the definition of matrimonial cause, service of the application shall not be effected in the manner referred to in paragraph (c) of rule 1 of Order VI of these Rules unless the address for service of the spouse of the claimant is the address of a legal practitioner representing that spouse and that legal practitioner is, at the time of the service, representing that spouse in connection with those proceedings for ancillary relief.

7. (1) This rule shall apply in a case where proceedings for ancillary relief have been instituted seeking a decree with respect to the maintenance, pending the disposal of proceedings, of the claimant, of a child of the marriage or of the claimant and a child of the marriage.

(2) Where, in a case to which this rule 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 accordance with Form 48, request the court to make an assessment for the purpose of this rule, and the court shall, as soon as practicable after the filing request

(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 it is unable to make the assessment until a certificate of means has been issued under rule 18 of this Order.

(3) Where, in a case to which this rule applies, a defence to the proceedings has been filed, the claimant may, by filing a request in accordance with Form 48, request the court to make an assessment for the purpose of this rule, and the court 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 it is unable to make an assessment until a certificate of means has been issued under rule 18 of this Order.

(4) Where, in a case to which this rule applies, a certificate of means is issued after a 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 rule, having regard to the matters specified in that certificate.

8. (1) An assessment made by the court for the purpose of this rule shall specify

(a) the rate (if any) per week at which the court considers maintenance should be payable for the claimant or the child, as the case may be, pending the disposal of proceedings;

(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;

(c) whether the court considers maintenance should be paid to the claimant, into court or to a person or public authority on behalf of the claimant; and

(d) the manner in which the court considers that the spouse of the claimant should pay maintenance for the claimant or the child in respect of the period commencing on the date specified in pursuance of paragraph (b) of this sub-rule 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.

(2) The court, in making an assessment for the purpose of this rule, 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 that conduct 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.

(3) The court shall not, in proceedings for ancillary relief, make an assessment for the purpose of this rule specifying a rate per month for the maintenance of a claimant or a child if an order under rule 14 of this Order has been made concerning the maintenance to be paid for the claimant or child, as the case may be.

(4) An assessment for the purpose of this rule shall be in accordance with Form 49.

9. (1) Subject to rule 10 of this Order, a claimant who requests a court to make an assessment for the purpose of the last preceding rule in relation to proceedings for ancillary relief shall deposit with the registrar a form of assessment, in accordance with Form 49, for signature by the court and two copies of that form for the claimant and the spouse of the claimant, respectively.

(2) The provisions of sub-rule (1) of this rule shall 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.

10. (1) A copy of a form of assessment for a person

(a) shall be capable of being folded, and of being sealed for transmission through the post as a letter;

(b) shall have the name and address of the person or his solicitor so endorsed on it 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 person or his solicitor, as the case may be, at that address; and

(c) shall have a notation, in accordance with the form set out in sub-rule (6) of this rule, so endorsed on it that, when it is folded and sealed, the notation will remain legible.

(2) For the purpose of sub-rule (1) of this rule, 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, the address for service of the spouse, the last address of the spouse known to the claimant, the address of the place at which the spouse was served with the application for ancillary relief or the address of the person to or on whom a copy of that application was sent or served as a condition of dispensing with service on the spouse.

(3) As soon as practicable after a court makes an assessment under rule 7 of this Order, the judge

(a) shall complete, sign and file the form of assessment deposited under sub-rule (1) of rule 9 of this Order; and

(b) shall then complete and sign the copies of that form and cause each copy to be served on the person to whom it is addressed by posting it to that person as a letter, postage being prepaid.

(4) 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 and 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.

(5) In any proceedings, a certificate under the hand of a registrar and written on an assessment, stating that a copy of the assessment was posted as a letter (postage being pre-paid) 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.

(6) The form of the notation required by paragraph (c) of sub-rule (1) of this rule to be endorsed on a form of assessment deposited by a claimant shall be as follows

If not delivered within 7 days, return to (name of the solicitor for that claimant or name of that claimant, as the case may be, and address for service of that claimant).

11. (1) When in a case to which rule 7 of this Order applies, the court has made an assessment for the purpose of that rule, the petitioner or respondent may, not later than ten days after service of a copy of the assessment on him, by filing a request in accordance with Form 50, request the registrar to refer the proceedings to the court, and the registrar shall refer the proceedings accordingly and notify the person filing the request of the date on which the proceedings have been set down for hearing by the court.

(2) Where a person on whom a copy of an assessment has been served

(a) does not duly file a request under sub-rule (1) of this rule;

(b) having duly filed a request under that sub-rule, gives notice in writing to the registrar that he desires to withdraw the request; or

(c) having duly filed a request under that sub-rule and being required by rule 13 of this Order to serve a notice of hearing on his spouse, being a person who has an address for service for the purpose of the proceedings, does not duly serve such a notice on his spouse, 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 shall not be taken to prejudice the person in any other proceedings.

12. (1) Subject to sub-rule (2) of this rule, 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 accordance with Form 50, request the registrar to refer the proceedings to the court under this rule, and the registrar shall refer the proceedings accordingly.

(2) The provisions of sub-rule (1) of this rule shall not require the registrar to refer proceedings to the court unless the registrar is satisfied, by affidavit, that the total amount of the payments (including payments in respect of a period preceding the date of the assessment) that would have become due and payable on or before the date on which the request is filed if the assessment had been an order for the payment of maintenance in accordance with its tenor exceeds, by more than the amount of the monthly rate, or the sum of the monthly rates, specified in the assessment in pursuance of paragraph (a) of sub-rule (1) of rule 8 of this Order, the total amount paid by the spouse of the claimant for the maintenance of the claimant, of the child or of the claimant and the child, as the case may be, since the date of the assessment (excluding so much of any maintenance so paid as relates to a period preceding the date specified in the assessment in pursuance of paragraph (b) of that sub-rule).

(3) Where a registrar is required to refer proceedings to a court under sub-rule (1) of this rule, the registrar 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 a court does not think fit to make an order under sub-rule (3) of this rule, the registrar of the court shall refer the proceedings to the court for hearing and determination and notify the claimant of the date on which the proceedings have been set down for hearing by the court and the spouse of the claimant may withdraw the consent that, under rule 11 of this Order, he is taken to have given.

(5) Where, in proceedings for ancillary relief, an order under rule 14 of this Order 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 rule 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 rule 7 of this order.

13. (1) The party at whose request proceedings for ancillary relief are referred to the court under rule 11 of this Order or the claimant in proceedings for ancillary relief that are referred to the court under sub-rule (4) of rule 12 of this Order, shall cause to be served on the spouse of the party or claimant, as the case may be, a notice in accordance with Form 51.

(2) Sub-rule (1) of this rule shall not require service of a notice referred to in that sub-rule 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.

(3) A notice referred to in sub-rule (1) of this rule shall be served

(a) if the spouse has an address for service for the purpose of the proceedings, on the day on which the claimant or the party at whose request the proceedings are referred to the court is notified by the

registrar of the date on which the proceedings have been set down for hearing by the court or the next following day; or

(b) in any other case, as soon as is reasonably practicable after the claimant or party is notified by the registrar of the date on which the proceedings have been set down for hearing by the court.

14. (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 those 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 providing for one or more of the following

(a) the payment of maintenance in accordance with the agreement; and

(b) the payment of the costs of the proceedings.

(2) A form of order shall not be deposited under sub-rule (1) of this rule unless it has endorsed on it the consent, signed by each of the parties either personally or by his solicitor, to the making of an order in the terms of the form.

(3) Where a form of order is duly deposited with a registrar, the registrar shall bring the proceedings to which the form of order relates before the court which, if it thinks fit, may, without any application being made to it and without a hearing, make an order, or orders, in the terms of the form.

(4) Where, after a court has made an assessment under rule 7 of this Order specifying the rate per month at which the court considers maintenance should be paid for the person pending the disposal of proceedings, an order shall be made under sub-rule (3) of this Order with respect to the maintenance payable for the person pending the disposal of those proceedings, and the assessment shall cease to have effect for the purpose of rule 11 or 12 of this Order.

15. (1) A court may, 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, 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 sub-rule (1) of this rule, a 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 or is to be deemed to have been admitted for the purpose of the proceedings for principal relief.

(3) Where proceedings for ancillary relief are referred to a court in pursuance of a request under rule 11 of this Order, 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 the court is satisfied that the reference of the proceedings to the court was justified.

16. (1) Where proceedings for ancillary relief have been instituted seeking an order with respect to the maintenance, pending the disposal of proceedings, of the claimant or a child of the marriage, the court may, in a case of urgency, hear the proceedings and make an order in the proceedings ex parte.

(2) The court, in proceedings heard in pursuance of sub-rule (1) of this rule, shall not make an order for the maintenance of the claimant or a child of the marriage other than an order having effect until further order.

(3) Where a court makes an order of a kind referred to in sub-rule (1) of this rule upon an application that was heard ex parte, the court may give directions with respect to

- (a) the service of the order and such other documents as it thinks fit on the spouse of the claimant; and
- (b) the further hearing of the proceedings.

### *Part 3 Certificate of Means*

17. (1) This rule shall apply 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) a court has informed the claimant that the court is unable to make an assessment under rule 7 of this Order until a certificate of means has been granted.

(2) In proceedings for ancillary relief to which this rule applies, a party to the marriage may make application to a court for a certificate of means with respect to the pecuniary resources of the parties to the marriage and the capability of each of those parties to earn income.

(3) Except by leave of the court, an application referred to in sub-rule 2 of this rule shall not be made

- (a) after the date on which the proceedings for principal relief have been set down for trial;
- (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 Part 6 of Order XI of these Rules applies, before a conference for the purpose of that Part has been held.

(4) An application for a certificate of means shall be in accordance with Form 52.

(5) Unless the court otherwise directs, it shall not be 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.

(6) Service of an application under sub-rule (2) of this rule by a party to a marriage shall be effected on the other party to the marriage in a manner referred to in paragraph (a), (b) or (c) of Order VI, rule 1 of these Rules.

(7) 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 that first-mentioned application that are stated in it.

(8) It shall not be necessary for a party making application for a certificate of means to file an affidavit in support of his application.

(9) Notwithstanding sub-rule (8) of this rule, either party to an application for a certificate of means may file affidavits for the purpose of the application, and sub-rule

(2) of rule 7 and rule 8, of Order III of these Rules shall apply to and in relation to affidavits so filed.

18. (1) A court shall, upon application made under the last preceding rule, inquire into the resources of the parties to the marriage to which the application relates and into the capability of each of those parties to earn income, and issue a certificate of means, in accordance with Form 53, with respect to those resources and capabilities.

(2) Where a certificate of means is issued upon an application made after such a certificate has already been issued, the certificate already issued shall be deemed to have been revoked.

(3) A judge may give such direction as he thinks fit with respect to service of notice of the date fixed for the hearing of the inquiry 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.

19. A certificate of means shall be evidence of the matters specified in the certificate.

#### **Part 4 - Custody**

20. (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 accordance with Form 46.

(2) The registrar shall cause service of notice, in accordance with Form 47, of the place, date and time fixed for the hearing of the proceedings to be effected in a manner referred to in paragraph (a), (b) or (c) of rule 1 of Order VI of these Rules, on each other party to the proceedings for ancillary relief, other than a party service on whom of the petition or answer instituting the proceedings was dispensed with.

(3) Unless a judge otherwise directs, there shall be at least fourteen 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 referred to in sub-rule (2) of this rule 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 upon the determination of those proceedings.

21. (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 fourteen clear days between the service of an application referred to in the last preceding sub-rule 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.

22. (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 fourteen clear days between the service of an application referred to in sub-rule (1) of this rule 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.

23. (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, by filing an application or, with the leave of the court, by making application orally to the court, proceedings for ancillary relief seeking an order of a kind referred to in sub-rule (1) of this rule 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 sub-rule (2) of this rule to make an application orally to the court, the court may give the leave upon condition that the claimant gives to the court 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 fit.

(4) Where a court makes an order of a kind referred to in sub-rule (1) of this rule upon an application that was made *ex parte*, the court shall

(a) specify in the order the period during which the order shall remain in force;

(b) give directions with respect to the service of copies of the order, the application and such other documents as it thinks fit 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.

24. (1) This rule shall apply in relation to a party to proceedings for principal relief

(a) who institutes proceedings for ancillary relief with respect to the custody of a child of the marriage before the determination of the proceedings for principal relief to which those first-mentioned proceedings relate;

(b) who 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 with respect to the custody of the child; and

(c) who is not required by these Rules to file a discretion statement in relation to the adultery in connection with the proceedings for principal relief or any other proceedings related to those proceedings and is not excused by sub-rule (3) of rule 29 of Order XI of these Rules from filing such a discretion statement.

(2) A party to whom this rule 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 the application is filed; or

(b) in any other case, as soon as practicable after the commission of the adultery.

(3) A statement referred to in sub-rule (2) shall state particulars of the acts of adultery committed by the party 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 the last preceding sub-rule), and the circumstances giving rise to the commission of the acts of adultery.

(4) Where, in a statement filed by a party in accordance with sub-rule (1) of this rule, the party states that he and the person with whom he has committed adultery a reliving together as if they were husband and wife, it shall not be necessary for a further statement under that sub-rule to be filed setting forth particulars of any further acts of adultery committed by him with that person.

(5) A statement under sub-rule (1) of this rule shall not be filed by or on behalf of a party to proceedings unless-

(a) It is signed by the party;

(b) the matter set forth 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 Statement under rule 24 of Order XIV of the Matrimonial Causes Rules, the number of the proceedings and a certificate

(i) if the party is represented by a solicitor, signed by the solicitor, or

(ii) if the party is not represented by a solicitor, signed by the party, certifying that the statement is duly signed and verified, and that it bears the date on which it was signed.

(6) Rules 30, 31, and 32 of Order XI of these Rules shall apply in relation to statements filed in accordance with sub-rule (1) of this rule as if reference to a discretion statement were reference to a statement so filed.

(7) Where a party to whom this rule applies files a statement under sub-rule (1) of this rule, the legal practitioner for the party or, if the party is not represented by a legal practitioner, the party, shall write on the application for ancillary relief a notation in accordance with the following form, and sign his name immediately under that notation-

(a) Statement under rule 24 of Order XIV of the Matrimonial Causes Rules filed the.....day of .....20..... and

(b) Shall give notice of the filing of the statement to the other party to the proceeding for principal relief as soon as practicable after the filing of the statement.

(8) Where a notation in accordance with the last preceding sub-rule has been written on an application for ancillary relief before service of the application is effected on the other party to the proceedings for principal relief, notice of the filing of the statement under sub-rule (1) of this rule shall be deemed to have been given to that party if the copy of the application served on him has a copy of that notation written on it.

#### **Part 5 - Proceedings for Ancillary Relief instituted by a Person not a Party to the Marriage**

25. (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 rule shall apply to those proceedings for ancillary relief, but the provisions of Part 2, Part 3 and Part 4 of this Order shall not apply to or in relation to those proceedings for ancillary relief.

(2) Where a person institutes proceedings for ancillary relief to which this rule applies

(a) the title to the proceedings for principal relief shall be deemed to have been amended by adding the full name and designation of the person;

(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;

(c) subject to the next succeeding sub-rule, the person shall cause service of the application instituting the proceedings for ancillary relief to be effected, in a manner referred to in paragraph (a), (b) or (c) of rule 1 of Order VI of these Rules, on such of the parties to the marriage as are living on that date;

(d) subject to sub-rule (5) of this rule, it shall not be necessary for service of a pleading, or of a copy of a document, filed for the purpose of the proceedings for principal relief after the institution of the Order 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 of the court 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 the proceedings for ancillary relief.

(3) Where proceedings for ancillary relief to which this rule 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 paragraph

(c) of rule 1 of Order VI of these Rules unless the address for service of the party is the address of a solicitor representing that party and that solicitor is, at the time of the service, representing the party in connection with those proceedings for ancillary relief.

(4) Where proceedings for ancillary relief to which this rule applies are instituted before the trial of the proceedings for principal relief, the proceedings for ancillary relief shall, subject to any directions given under paragraph (e) of sub-rule (2) of this rule, be deemed to have been consolidated with and shall, so far as is 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 rule 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 shall take place, shall be served on the person who instituted the proceedings for ancillary relief.

(6) Subject to this rule and to any directions given under paragraph (e) of sub-rule (2) of this rule, the provisions of rules 6, 7 and 8 of Order III of these Rules shall apply to and in relation to proceedings for ancillary relief to which this rule applies.

## **Part 6 - Variation of Orders**

26. (1) Where application is made to a court for the variation of an order made in respect of a matter referred to in section 70 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 pursuance of rule 7 of Order III of these Rules

(a) the changed circumstances relied on by the applicant;

(b) the material facts that are alleged by the applicant to have been withheld from a court; or

(c) the material evidence previously given before a court that is alleged by the applicant to have been false, as the case may be.

(2) Where application is made to a 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 in pursuance of rule 7 of Order III of these Rules, the material facts that are alleged by the applicant to have been withheld from a court or the

material evidence previously given before a 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 upon the hearing of the application.

(4) Where a party makes a request referred to in the last preceding sub-rule, the affidavit of the party shall state whichever of the matters referred to in paragraph (a),(b) or (c) of sub-rule (1), or in paragraph (a) or (b) of sub-rule (2), of this rule are relevant to the request.

## ORDER XV

### **EVIDENCE**

#### Part 1 - General

1. (1) Subject to this Part, testimony at the trial of proceedings shall be given orally.

(2) Nothing in this Part shall be taken to prevent the proof of facts, in accordance with the practice of the court and the relevant law of evidence, by the production of documents other than affidavits.

(3) In sub-rule(2) of this rule, the relevant law of evidence means the law of evidence applying to civil proceedings in the court (other than proceedings under the Act) so far as it is not inconsistent with the Act or these Rules.

1. Unless a court otherwise orders, proof of the due service of a pleading or other document may be given by affidavit at the trial of proceedings.

2. Nothing in these Rules shall require proof, at the trial of proceedings

(a) of 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) of the service of an answer on a person who has filed a reply to the answer or, since the answer was filed, has filed a notice of address for service.

4. (1) In any proceedings, a certificate under the hand of a person occupying, or performing the duties, under the Nigerian Postal Service Act, of Director of Posts, or a person authorised in writing by such a person to give certificates under this sub-rule, 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 to that address on a specified day, is evidence of the fact stated.

(2) For the purposes of sub-rule (1) of this rule, a document purporting to be a certificate referred to in that sub-rule shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

5. (1) This rule applies to proceedings for a decree of a kind referred to in paragraph (a) of the definition of matrimonial cause and to any related proceedings that are heard and determined by a court at the same time as the proceedings for such a decree.

(2) Subject to sub-rule (3) of this rule, the court may, by order, grant leave to a party to proceedings to which this Rule 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 referred to in sub-rule (2) of this rule may be made by a court

(a) before the trial of the proceedings, upon application made by a party to the proceedings; or

(b) at the trial of the proceedings, upon oral application made during that trial.

(4) Where the court makes an order, referred to in sub-rule (2) of this rule, before defended proceedings to which this rule applies are set down for trial

(a) an affidavit proposed to be used on the trial of the proceedings in pursuance of 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, on the day in which it is filed or on the next following day, be served on each other party to the proceedings who has filed a pleading;

(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;

(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 referred to in sub-rule (2) of this rule after defended proceedings to which this rule 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.

6. (1) Evidence shall be given by affidavit upon the hearing of proceedings of a kind referred to in paragraph (c), (d) or (e) of the definition of matrimonial cause (not being proceedings to which rule 5 of this Order applies), or on the hearing of an application to a court unless the court orders otherwise.

(2) Where an affidavit intended to be used upon the hearing of proceedings or an application to which sub-rule (1) of this rule applies is filed on behalf of a party to the proceedings or application, the party 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 proceedings or to an application has served on another party to the proceedings or application a copy of an affidavit intended to be used upon 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 he desires, upon the hearing of the proceedings, or application, 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 that person is or has been the husband of the party, pay or tender reasonable expenses for the attendance of the person at the hearing.

(5) Where a notice has been served under sub-rule (3) of this rule and sub-rule (4) of this rule has been complied with, the affidavit in relation to which the notice was served shall not be admitted in evidence upon 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 is satisfied that there are special circumstances justifying the admission of the affidavit in evidence.

## **Part 2 - Affidavits**

7. (1) Where an affidavit states facts to which the deponent is unable to depose of his own knowledge

(a) the affidavit shall not be admissible as evidence of those facts upon the trial of proceedings to which rule 5 of this Order applies; and

(b) unless the affidavit states the deponents belief in the truth of those facts and particulars of his means of knowing those facts, the affidavit shall not be admissible as evidence of those facts upon the hearing of any other proceedings or of an application to a registrar.

(2) The costs of a part of an affidavit that unnecessarily sets forth matters of hearsay, argumentative matter or copies of, or extracts from, documents, shall be payable by the party filing the affidavit.

8. Where a document or a portion of a document is set forth in an affidavit, the party filing the affidavit shall produce the document, or cause the document to be produced, upon the trial of the proceedings in connection with which the affidavit is filed.

9. 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 connection 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 referred to in the affidavit.

10. In an affidavit, dates and sums of money shall be written in figures and not in words.

11. (1) An affidavit may be sworn to at a place in Nigeria before a person having authority to administer an oath at that place.

(2) Without limiting the generality of sub-rule(1) of this Rule, an affidavit to be used in proceedings in the High Court of a State or the Federal Capital Territory, Abuja may be sworn to at a place that is outside that State or the Federal Capital Territory, Abuja whether that place is within or outside Nigeria, before a person before whom affidavits for use in the High Court of that State or the Federal Capital

Territory, Abuja, may, by virtue of a law of that State or the Federal Capital Territory, Abuja, be sworn at that place.

(3) An affidavit may be sworn to at a place outside Nigeria before a Nigerian Diplomatic Officer or a Nigerian Consular Officer within the meaning of the Consular Convention Act 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.

(4) The title of the person before whom an affidavit is sworn to, and the date on which and place at which the affidavit is sworn to, shall be stated in the jurat to the affidavit.

(5) Where an affidavit purports to have been sworn to at a place before a person before whom an affidavit is permitted to be sworn to at that place, the affidavit shall, without proof of the signature of that person or of his title, be deemed, unless the contrary is proved, to have been sworn to before such a person.

(6) Notwithstanding sub-rule (1) or (2) of this rule, an affidavit shall not be admissible in evidence if sworn to by the deponent before

(a) the solicitor acting for the party on whose behalf the affidavit is to be used;

(b) the agent or correspondent of the legal practitioner so acting;

(c) the party on whose behalf the affidavit is to be used; or

(d) a clerk or partner of that legal practitioner, agent, correspondent or party.

12. (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, so far as practicable, be confined to a distinct part of the subject.

(4) An affidavit shall be in accordance with Form 54.

(5) Costs shall not be allowed for an affidavit departing substantially from this rule.

13. An affidavit shall state the full names, address and occupation of the deponent.

14. An affidavit shall be signed on each page by the deponent and by the person before whom the affidavit is sworn.

15. (1) Subject to sub-rule (2) of this rule, where an affidavit is sworn to by two or more deponents, the full names of each deponent shall be stated in the jurat.

(2) If all the deponents swear to the affidavit at the same time and before the same person, it shall be sufficient for the jurat to show that the affidavit was sworn to or affirmed by all of the above-named deponents.

16. (1) An affidavit to be used in proceedings before a court shall, unless the court otherwise directs, be filed before it is so used.

(2) An affidavit to be used in connection with an application shall, unless the court otherwise directs, be filed before it is so used.

17. (1) There shall be endorsed on an affidavit the names of the deponent, the date on which the affidavit is sworn to and the party on whose behalf the affidavit is filed.

(2) An affidavit which does not have endorsed on it the particulars referred to in sub-rule (1) of this rule shall not be used in proceedings in, or on the hearing of an application to a court, unless the court before which the proceedings are retried, otherwise directs.

18. The court may, upon application by a party to proceedings 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.

19. When an affidavit filed for the purpose of proceedings in or of an application to a court, 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 before whom the proceedings are tried, 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 the affidavit is sworn to be written on the erasure are written in the margin of the affidavit and initialed by the person before whom the affidavit is sworn.

20. (1) Where an affidavit is sworn to 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;

(b) the deponent appeared to understand the matter contained in the affidavit; and

(c) the deponent signed the affidavit (whether by making his mark or otherwise) in the presence of that person.

(2) Where an affidavit that is sworn to by a person who is illiterate or blind does not bear the certificate referred to in the last preceding sub-rule, the affidavit shall not be admissible in evidence in proceedings in, or on the hearing of an application by a court, unless the court before whom the proceedings are tried, is satisfied that the affidavit was read over to the deponent and that the deponent appeared to understand the matter contained in the affidavit.

## ORDER XVI

### **AFFIRMATIONS AND DEFECTIVE AFFIDAVITS**

1. Where the deponent to an affidavit objects to swearing on oath to the truth of the statements contained in the affidavit, he may solemnly and sincerely declare and affirm that he objects to swearing

an oath and that the statements contained in the affidavit are true, and the jurat to the affidavit shall be altered accordingly.

2. Where, in an affidavit filed for the purpose of proceedings in or of an application to a court, 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 by whom the proceedings are tried, may direct that a memorandum be written on the affidavit authorising the use of the affidavit notwithstanding the defect or irregularity, and the affidavit may then be used in proceedings, or on the hearing of the application.

## ORDER XVII

### ENFORCEMENT OF DECREES

#### Part 1 - General

1. Except as expressly provided under this Order, nothing in this Order shall be taken to limit the operation, in all the States of the Federation, of decrees and process made or issued under the Act or these Rules.

2.(1) Subject to sub-rule (4) of this rule, a decree made under the Act shall not be 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 paragraph (a) of rule 1 of Order VI of these Rules or in accordance with the terms of an order for the substituted service of the decree; or

(ii) On the solicitor representing the person in connection with the enforcement of the decree, in the manner referred to in paragraph (a) of rule 1 the manner referred to in paragraph (a) of rule 1 of order VI of these Rules;

(b) Subject to sub-rule (2) of this rule, at the time service of a copy of the decree was so effected the decree was shown to the person to whom the copy was delivered;

(c) A notice, in accordance with the form of notice contained in sub-rule (3) or sub-rule (4), as the case requires, of this rule, addressed to the person is written on the copy of the decree that is served on the person; and

(d) Subject to the next succeeding rule, demand, in writing, for compliance with the decree has been made on the person.

(2) Paragraph (b), (c) and (d) of sub-rule (1) of this rule shall not apply to the enforcement of a decree against a person in a case where an order has been made substituting for service of the decree on the person the giving of notice of the decree to the person by advertisement or otherwise.

(3) Subject to sub-rule (4) of this rule, the form of notice referred to in paragraph (c) of sub-rule (1) of this rule shall be 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 out those acts.

(4) In the case of a decree for restitution of conjugal rights the form of notice referred to in paragraph (c) of sub-rule of this rule is as follows-

To take notice that if you fail to carry out the acts required of you by the orders set out in the paragraphs numbered in the within decree within the time specified in the decree for carrying out those acts, further legal proceedings may be taken against you for the purpose of compelling you to carry out those acts.

(5) Sub-rule (1) of this rule shall not apply to the enforcement of a decree against a person if a court has dispensed with service of a copy of the decree on the person.

(6) In relation to the enforcement of a decree that has been varied, the preceding provisions of this rule shall apply as if a reference to a decree were a reference to a decree and any order, or each order, by which that decree was varied.

(7) Nothing in this rule shall require the service on a person against whom a decree is sought to be enforced of an order made under section 73 of the Act whereby the decree is varied or its effect modified if the order was made on the application of that person.

3. (1) Where a person is ordered by a decree to pay within a time specified in the decree

(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, the making of a demand for compliance with the decree shall not be necessary for the purpose of the last preceding rule.

(2) Where a person is ordered by a decree to do an act, not being the payment of a sum or sums of money for maintenance, costs or damages, within a time specified in the decree, or to refrain from doing an act, the making of a demand for compliance with the decree shall not be necessary for the purpose of rule 2 of this Order.

## **Part 2 - Attachment and Sequestration**

4. (1) A decree shall not be enforced by attachment or sequestration without the leave of the court by which the decree was made or of a court in which the decree has been registered under section 89 of the Act.

(2) Subject to sub-rule (3) of this rule, 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, in addition to any other facts stated in pursuance of Order III, rule 7 of these Rules, state particulars of the amounts that have become payable under the decree and of any amounts paid in reduction of those amounts, and, 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 referred to in the last preceding sub-rule if the affidavit

(a) states that, at a specified date, all amounts that had become payable under the decree on or before that date had been paid; and

(b) states 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 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 paragraph (a) or (b) of rule 1 of Order VI of these Rules.

5. (1) Where a person who has been arrested in pursuance of a writ of attachment is brought before a court, the court may, with the consent of the person on whose application the person was arrested, order the sequestration of the persons estate instead of ordering the person to be kept in custody.

(2) A court may, under section 88 of the Act, enforce a decree by sequestration notwithstanding that an attempt has not been made to enforce the decree by attachment.

6. A court may, upon application made by a person whose estate has been sequestrated in pursuance of a writ of sequestration issued under an order of a court, discharge the writ of sequestration upon such terms and conditions as the court thinks fit.

### **Part 3 - Attachment of Earnings Orders**

7. (1) Unless the contrary intention appears, expressions used in this Part shall have the same meanings as in the Third Schedule to the Act.

(2) In this Part, the prescribed officer means

(a) in relation to a High Court, the registrar of that High Court; and

(b) in relation to a court of summary jurisdiction, the clerk or other proper officer of that court of summary jurisdiction.

8. (1) An application to the High Court of a State or of the Federal Capital Territory, Abuja for an attachment of earnings order may be made ex parte.

(2) The affidavit in support of an application referred to in sub-rule (1) shall, in addition to any other facts stated in pursuance of Order III, rule 7 of these Rules, state

(a) particulars of the maintenance order;

(b) the amount of the arrears due to the applicant under the maintenance order;

(c) particulars of any proceedings taken by or on behalf of the applicant for the enforcement of the maintenance order;

(d) the names and address of the person, organisation or government 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;

(ii) the age of the defendant;

(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.

9. An attachment of earnings order, whether made by a High Court or by a court of summary jurisdiction, shall be in accordance with Form 55.

10.(1) Subject to sub-rule (2) of this rule, where a High 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;

(b) the defendant; and

(c) the person to whom the attachment of earnings order is directed.

(2) The last preceding sub-rule shall not require service of a copy of an order to be effected on the applicant for the order.

(3) Where a High Court makes an order referred to in sub-rule (1) of this rule, the applicant for the order shall deposit with the registrar of the court, a copy of the order for each person on whom service of a sealed copy of the order is required by this rule to be effected, being a copy which complies with the provisions of the next succeeding sub-rule.

(4) Where service of a sealed copy of an order is to be effected in accordance with sub-rule (1) of this rule on any of the governments of the Federation, or a body corporate (not being an incorporated company, society or association) incorporated for a public purpose by or under a law of the Federation, of a State in the Federation or of the Federal Capital Territory, Abuja the copy of the order deposited for service accordingly shall have written on it the particulars required by sub-rule (2) of rule 11 of this Order to be written on an envelope containing a document that is to be served, in accordance with the provisions of sub-rule (1) of that rule, on the government of the Federation, the State or of the Federal Capital Territory, Abuja or the body corporate, as the case maybe.

(5) Where service of a sealed copy of an order is to be effected in accordance with sub-rule (1) of this rule on a State government, the copy of the order deposited for service on the State government shall have written on it the particulars required by sub-rule (4) of rule 11 of this Order to be written on an envelope containing a document that is to be served, in accordance with provisions of sub-rule (3) of that rule, on the State Government.

(6) Subject to sub-rules 4 and 5 of this rule, where service of a copy of an order is to be effected in accordance with sub-rule (1) of this rule on a person, the copy of the order deposited for service on the person shall have written on it the name of the person and either the place of residence or the place of business of the person.

(7) In this rule, the person entitled to receive payment 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;

(b) if the maintenance order requires payments to be made to a person for transmission to another person, that first-mentioned person; or

(c) in any other case, the person to whom the payments are required to be made under the maintenance order.

11.(1) Where a document, including a copy of an order, is required or permitted to be served under the Third Schedule to the Act on the Government of the Federation, or on a body corporate (not being an incorporated company, society or association) incorporated for a public purpose by or under a law of the Federation, of a State or of the Federal Capital Territory, Abuja, service of the document may be effected on the Government of the Federation or the body corporate by

(a) handing a sealed envelope containing the document, being an envelope that is addressed in the manner specified in the next succeeding sub-rule, to a person Order who is apparently over the age of sixteen years and is apparently employed in the Department of the Government of the Federation or by the body corporate, as the case may be, specified on the envelope at the address of that Department, branch or body corporate specified on the envelope; or

(b) posting such a sealed envelope, postage being prepaid, as a letter to the Department, branch or body corporate specified on the envelope at the address specified on the envelope.

(2) The manner in which an envelope containing a document is to be addressed for the purpose of the last preceding sub-rule, shall be as follows

**The Paying Officer, (Here insert the name of the Department of the Government of the Federation or of the body corporate in which the defendant is employed.),**

**(If the defendant is employed in a Department of the Government of the Federation and the person effecting service knows the name of the branch of that Department in which the defendant is employed, here insert the name of that branch.),**

**(Here insert the address of that Department or of the body corporate.).**

(3) Where a document, including the copy of an order, is required or permitted to be served under the Third Schedule to the Act on the government of a State, service of the document may be effected on the State

(a) by handing a sealed envelope containing the document, being an envelope that is addressed in the manner specified in the next succeeding sub-rule, to a person who is apparently over the age of sixteen

years and is apparently employed in the Department or office of the State specified on the envelope at the address of that Department or office, or of the branch of that Department or office specified on the envelope; or

(b) by posting such a sealed envelope, postage being prepaid, as a letter to the person referred to on the envelope at the address specified on the envelope.

(4) The manner in which an envelope containing a document that is to be served on the government of a State is to be addressed for the purpose of sub-rule (3) of this rule shall be as follows

The Director-General (or the Director, as the case may be),

**(Here insert the name of the Department or office of the State in which the defendant is employed.),**

**(If known to the person effecting service, here insert the name of the branch of the Department or office of the State in which the Defendant is employed.),**

**(Here insert the address of that Department, office or branch.).**

(5) A reference in sub-rule (2) or (4) of this rule to the person effecting service shall, in a case where service of a sealed copy of an order is being effected by the prescribed officer of a court in accordance with sub-rule (1) or (3) of this rule, be read as a reference to the applicant for the order.

(6) Service of a document in accordance with paragraph

(b) of sub-rule(1), or paragraph (b) of sub-rule (3) of this rule shall, unless the contrary is proved, be deemed to have been effected at the time when the envelope containing the document would be delivered in the ordinary course of post.

12. (1) 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 sub-rule (1) of rule 11 of this Order of these Rules, was posted as a registered letter or as a letter, as the case may be (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 or addressed in a specified manner, being a manner specified in sub-rule (2) or (4), whichever is applicable, of that rule, shall be evidence of the facts stated in it.

(2) Where a certificate under the last preceding sub-rule relates to service of a sealed copy of an order on a person other than an incorporated company, society or association or on any of the governments of the Federation, the certificate shall also be evidence that the address specified in the certificate is the usual place of residence or business of the person or is the last place of residence or business of the person known to the person on whose behalf the copy of the order was served.

(3) Where a certificate under sub-rule (1) of this rule relates to the service of a sealed copy of an order on an incorporated company, society or association, the certificate shall also be evidence that the address specified in the certificate is the address of a place of business of the company, society or association or of the registered office of the company, society or association under the law of a State or the Federal Capital Territory, Abuja to which the Act applies.

(4) For the purpose of sub-rule (1) of this rule, a document purporting to be a certificate referred to in that sub-rule shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

13. A notice referred to in paragraph 19 of the Third Schedule to the Act shall be in accordance with Form 56.

14. (1) Where a person to whom an attachment of earnings order is directed, is required by paragraph 24 of the Third Schedule to the Act to give notice of a matter referred to in that paragraph, the person shall furnish to the prescribed officer of the court that made the order, a notice, in accordance with Form 57, containing particulars of the matter, together with a copy of that notice, and the attachment of earnings order shall then be deemed to have been discharged.

(2) The prescribed officer of a court who receives a notice under paragraph 24 of the Third Schedule to the Act shall cause a copy of the notice to be addressed and posted by registered post, postage being prepaid, to the person entitled to receive payment under the maintenance order to which the attachment of earnings order relates.

(3) In this rule, the person entitled to receive payments under the maintenance order shall have the same meaning as in rule 10 of this Order.

15. Where application is made to a High Court under paragraph 27 of the Third Schedule to the Act, the applicant shall cause service of the application to be effected on each other person referred to in that paragraph.

16. (1) Subject to this Part, the practice and procedure of a court of summary jurisdiction shall apply to and in relation to an application to that court under the Third Schedule to the Act, and to the service, hearing and determination of such an application to that court.

(2) Service of a summons or other appropriate document relating to an application under paragraph 27 of the Third Schedule to the Act shall be effected by the applicant on each other person referred to in that paragraph.

#### **Part 4 - Other means of enforcing decrees**

17. Subject to these Rules, the laws of a State or of the Federal Capital Territory Abuja, relating to enforcement of judgments of the High Court of that State or the Federal Capital Territory, Abuja shall apply, to and in relation to the enforcement, by that High Court, of a decree made under the Act.

(2) In this rule, the laws of a State includes the practice and procedure of the High Court of the State or of the Federal Capital Territory, Abuja.

#### **Part 5 – Execution of Warrants and Writs in other States or the Federal Capital Territory, Abuja**

18. In this Part warrant means a warrant for the arrest of a person for contempt of court or for alleged contempt of court in relation to proceedings or for disobedience of a judgment, decree or order made by a court in proceedings, or a writ of attachment for the enforcement of an order of a kind referred to in section 88 of the Act;

writ means a writ of execution against the property of a person issued by the High Court of a State or of the Federal Capital Territory, Abuja for the purpose of enforcing a judgment, decree or order made by that High Court in proceedings, or registered in that High Court under section 89 of the Act, but does not include a garnishee order or a charging order.

19. A warrant or writ issued by the High Court of a State or of the Federal Capital Territory, Abuja or by a judge of such a court, may be executed in another State or the Federal Capital Territory, Abuja in accordance with this Part but not otherwise.

20. (1) Where a warrant or writ has been issued by the High Court of a State or of the Federal Capital Territory Abuja or by a judge of such a court, a copy of the warrant or writ may be deposited in the appropriate office of the High Court of another State or of the Federal Capital Territory, Abuja.

(2) Where

(a) a copy of a warrant or writ has been deposited in the appropriate office of a court under the last preceding sub-rule; and

(b) there is produced to the registrar of the court the original warrant or writ having written on it a notation in accordance with Form 58, the registrar shall sign his name under that notation and return the warrant or writ to the person by whom it was so produced.

(3) Subject to sub-rule (4) of this rule, where a warrant or writ bears a notation signed by the registrar of the High Court of a State or of the Federal Capital Territory, Abuja in pursuance of the last preceding sub-rule, the warrant or writ may be executed in that State or of the Federal Capital Territory, Abuja as if it had been duly issued by that High Court.

(4) Where a warrant or writ that bears a notation signed by the registrar of the High Court of a State or of the Federal Capital Territory, Abuja in pursuance of sub-rule(2) of this rule is directed, for the purpose of being executed, to the Sheriff or another officer of the State or of the Federal Capital Territory, Abuja in which it was issued, it may be executed in that first-mentioned State or the Federal Capital Territory, Abuja as if it had been directed, for the purpose of being executed, to the Sheriff or other appropriate officer of that first-mentioned State or of the Federal Capital Territory, Abuja.

21. (1) Where a person is arrested in a State or the Federal Capital Territory, Abuja by virtue of a warrant that bears a notation signed by the registrar of the High Court of that State or of the Federal Capital Territory, Abuja in pursuance of rule 20of this Order, the Sheriff or other person who effected the arrest shall, as soon as practicable after the arrest

(a) bring the person before that High Court; or

(b) return the person to the State or the Federal Capital Territory, Abuja in which the warrant was issued and deliver him into the custody of a person having authority to execute the warrant in that State or the Federal Capital Territory, Abuja to be dealt with in accordance with the warrant, whichever is, in his opinion, the more reasonable course in all the circumstances.

(2) Where a person is brought before a High Court in pursuance of the last preceding sub-rule, that High Court shall

(a) deal with the person, or order that the person be dealt with, as if the warrant had been issued by that High Court and any order in connection with which the warrant was issued had been made by that High Court; or

(b) order that the person be returned, as soon as is practicable, to the State or the Federal Capital Territory, Abuja in which the warrant was issued and be delivered into the custody of a person having authority to execute the warrant in that State or the Federal Capital Territory, Abuja to be dealt with in accordance with the warrant.

22. (1) The Sheriff or other officer who has power to execute a writ in a State or in the Federal Capital Territory, Abuja by virtue of Order XVII, rule 20 of these Rules, may execute the writ in that State or in the Federal Capital Territory, Abuja as if the writ had been issued by the High Court of that State or in the Federal Capital Territory, Abuja for the enforcement of a judgment decree or order of that High Court.

(2) Where a claim is made to property in respect of which execution has been levied or is proposed to be levied by the Sheriff or other person in a State or in the Federal Capital Territory, Abuja in pursuance of a writ that bears a notation signed by the registrar of the High Court of that State or the Federal Capital Territory, Abuja in pursuance of Order XVII, rule 20 of these Rules, the Sheriff or other person may take in that High Court the same proceedings by way of inter-pleader as if the writ had been issued out of that High Court and that High Court may deal with the proceedings accordingly.

(3) A seizure in execution, or attachment, of property situated in a State or the Federal Capital Territory, Abuja in pursuance of a writ that bears a notation signed by the registrar of the High Court of that State or the Federal Capital Territory, Abuja in pursuance of rule 20 of these Rules, shall become inoperative when any event occurs that, according to the laws of that State or the Federal Capital Territory, Abuja would have rendered the seizure or attachment inoperative if the seizure or attachment had been made in pursuance of a like writ issued by that High Court.

#### **Part 6 - Registration of Decrees in other High Courts**

23. References in this Part to a decree shall, in a case where the decree, as drawn up, signed or settled, include more than one order made by the court, be read as references to all or any of the orders so included.

24.(1) A person in whose favour a decree has been made in proceedings under the Act may obtain from the registrar of the court by which the decree was made a certificate of the decree, in accordance with Form 59 and containing the particulars set out in that Form.

(2) A certificate referred to in sub-rule (1) of this rule shall be signed by the registrar and sealed with the seal of the court by which the decree was made.

25. (1) Where the registrar or clerk of a court or a public authority is specified in an order of the court as the person to whom maintenance payable under the order is to be paid, he shall, at the request of the person who obtained the order, give to that person a certificate, in accordance with Form 59A, stating

(a) the amount that, according to his or its records, has been paid under the order on or before a date specified in the certificate by the person liable to make payments under the order, including any amount paid on or before that date to the clerk or other proper officer of a court of summary jurisdiction in which the order has, at any time, been registered under section 91 of the Act; and

(b) the amount that, according to his or its records, was due under the order but unpaid on that date.

(2) A certificate duly given in accordance with sub-rule (1) of this rule is evidence

(a) of the amount paid under the order on or before the date specified in the certificate by the person liable to make payments under the order; and (b) of the amount due under the order but unpaid on that date.

(3) For the purposes of sub-rule (2) of this rule, a document purporting to be a certificate referred to in that sub-rule shall, unless the contrary is proved, be deemed to be such a certificate and have been duly given.

(4) A reference in sub-rule (1) of this rule to an order of a court includes a reference to an order included in a decree made in a matrimonial cause before the commencement of the Act by a court in Nigeria.

26. (1) For the purpose of section 89 of the Act, there shall be kept at each office of the High Court of a State or of the Federal Capital Territory, Abuja a register, to be called the Register of Matrimonial Decrees, in such form as the Chief Judge may direct.

(2) For the purpose of section 89 of the Act, a decree made under the Act by a court may be registered in another court having jurisdiction under the Act by filing, in the proper office of that other court, a certificate of the decree obtained under the last preceding rule.

(3) When such a certificate of a decree is filed, the registrar of the court in which the certificate is filed shall cause particulars of the decree to be entered in the Register of Matrimonial Decrees.

27. (1) A judge of the court in which a decree has been registered may, upon being satisfied that the registration of the decree was reasonably justified, order that the costs of the party effecting the registration (including the costs of obtaining that order) be paid by the party against whom proceedings for the enforcement of the decree are taken in that court.

(2) An amount of costs payable under an order made under the last preceding sub-rule shall be deemed to be payable under the decree.

(3) A party requesting a judge to make an order referred to in sub-rule (1) of this rule shall file an affidavit stating, in reasonable detail, particulars of the costs claimed by the party.

(4) The judge may, upon making an order under sub-rule(1) of this rule, assess the amount of costs to be paid under the order or direct that the costs to be so paid be taxed by the proper officer of the court.

28. Where a decree has been registered in a court under section 89 of the Act, proceedings to enforce the decree shall not be commenced in a court, and a writ, warrant or other process for the enforcement of the decree shall not be issued by a court, unless an affidavit has been filed stating that no proceedings are pending in another court for the enforcement of the decree, and no writ, warrant or other process issued by another court for the enforcement of the decree is in force, and also stating

(a) the amount that is due and unpaid under the decree;

(b) the act ordered to be done by the decree that remains undone; or

(c) the act that has been done in disobedience of the decree, as the case may be.

(2) Proceedings to enforce a decree shall not be commenced in a court in which the decree has been registered under section 89 of the Act and a writ, warrant or other process for the enforcement of a decree shall not be issued by such a court

(a) unless the affidavit filed in accordance with sub-rule (1) of this rule states that, since that registration, the decree has not been discharged or varied by a court, the effect of the decree has not been modified by a court and the operation of the decree has not been suspended by a court; and

(b) except within a period of thirty days after the date on which that affidavit was sworn and in relation to an amount or act stated in that affidavit.

29. (1) A court in which a decree is registered under section 89 of the Act may, upon application by a person against whom the decree may be enforced, order that the decree be not enforced in that court during a period specified in the order.

(2) An order referred to in sub-rule (1) of this rule, may be made upon terms as to the giving of security or as to the making of an application to the court by which the decree was made to set aside the decree, or upon such other terms as the court sees fit.

#### **Part 7-Registration of Maintenance Orders in Courts of Summary Jurisdiction**

30. (1) For the purpose of section 91 of the Act, registration in a court of summary jurisdiction of a State or of the Federal Capital Territory, Abuja 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) Subject to sub-rule (3) of this rule, 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) either

(i) a certificate, obtained under Order XVII, rule 24 of these Rules, of the order; or

(ii) if the order is included in a decree nisi a copy of the decree nisi, has been filed in the proper office of the court;

(b) the clerk or other proper officer is satisfied, by affidavit filed in the proper office of the court

(i) that, in relation to the order, Order XVII, rule 2 of these Rules has been complied with;

(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; and

(c) if a public authority or the registrar or clerk of a court is specified in the order as the person to whom maintenance payable under the order is to be paid, there has been filed in the proper office of the court a certificate given by that public authority, registrar or clerk in accordance with rule 25 of this Order specifying a date not more than ten days before the date on which the certificate is received by the first-mentioned clerk or that proper officer.

(3) Where, under a law of a State or of the Federal Capital Territory, Abuja that relates to the enforcement in that State or the Federal Capital Territory, Abuja of summary orders for the maintenance of a wife or child made in another State or the Federal Capital Territory, Abuja, proceedings are taken for or in relation to the enforcement in that first-mentioned State or the Federal Capital Territory, Abuja of an order for the payment of maintenance made under the Act that has been registered in a court of summary jurisdiction in another State or the Federal Capital Territory, Abuja, sub-rule (2) of this rule shall not apply to or in relation to the registration in connection with those proceedings, of that maintenance order in a court of summary jurisdiction in that first-mentioned State or the Federal Capital Territory, Abuja.

31. (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 91 of the Act, the clerk or other proper officer of the court shall in his discretion

(a) transmit those moneys to the court, public authority or person to which or to whom the moneys are directed to be paid by the order; or

(b) pay those moneys direct to a person who would be entitled to receive the moneys from the court, authority or person referred to in the last preceding paragraph if the moneys were transmitted to that court, authority or person.

(2) Where, under sub-rule (1) of this rule, the clerk or other proper officer of a court pays moneys direct to a person in accordance with paragraph (b) of that sub-rule, the clerk or other proper officer shall give notice to the court, public authority or person referred to in paragraph

(a) of that sub-rule of the amount or amounts so paid.

(3) Where the clerk or other proper officer of a court has given one notice under sub-rule(2) of this rule in relation to an order for the payment of maintenance, subsequent notices under that sub-rule in relation to that order may be given by the clerk or other proper officer of that court at such intervals as he thinks fit.

32. (1) Where an order for payment of maintenance that is registered in a court of summary jurisdiction is discharged, varied or revived by a court or where the effect of such an order is modified or the operation of such an order is suspended by a court, the registrar of that court shall forthwith cause notice, in writing, of the fact to be given to the clerk or other proper officer of the court of summary jurisdiction.

(2) On receipt of notice given under sub-rule (1) of this rule, 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 in pursuance of Order XVII, rule 30 of these Rules.

33. Where no proceedings for the enforcement of an order for 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 accordingly.

34. (1) Where an order for the payment of maintenance is registered, under section 91 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 rule 33 of this Order, the clerk or other proper officer of the court shall forthwith cause notice of the registration or cancellation to be given to the registrar of the court by which the order was made.

(2) A notice referred to in sub-rule (1) of this rule shall be in writing and shall be signed by the clerk or officer giving the notice.

@@#ORDER XVIII#@@

### **PROCEEDINGS CONSEQUENT ON DECREES OF RESTITUTION OF CONJUGAL RIGHTS**

1. In this Order

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.

2. 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 paragraph (a) or (b) of rule 1 of Order VI of these Rules.

3. (1) Subject to sub-rule (3) of this rule, where the court has made a decree upon the petition of a husband, a notice given by the petitioner to the respondent under section 50 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;

(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 so to return, provide a home for the respondent to return to, and give the respondent notice of the address of that home; and

(ii) specify an address where the respondent may communicate with the petitioner by post; or

(c) shall specify

(i) the address of a home to which the respondent is to return to the petitioner in order to comply with the decree;

(ii) 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) an address where the respondent may communicate with the petitioner by post, and also state that, if the respondent does not return home to the petitioner before that date, the petitioner shall, 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 shall be ready so to return, provide a home for the respondent to return to, and give the respondent notice of the address of that home.

(2) A notice referred to in sub-rule (1) of this rule shall also state that the petitioner shall

(a) if the respondent informs him of her intention to return home to the petitioner and of the date on and after which she shall be ready so to return; and

(b) if the respondent so requests him, pay to the respondent, in advance, a reasonable sum for her expenses of returning home to the petitioner.

(3) Where the court has, upon 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 50 of the Act shall 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 shall then return to the matrimonial home.

4. Where the court has made a decree upon 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.

5. (1) A notice under section 50 of the Act or under rule 4 of this Order that has been served on the respondent, shall remain in force until it is cancelled by a notice in writing served on the respondent.

(2) A petitioner may, at any time while a notice under section 50 of the Act or under rule 4 of this Order is in force, serve on the respondent a notice cancelling that notice and shall do so if

(a) the home, the address of which is specified in that notice, ceases to be the home to which the respondent is to return to the petitioner; or

(b) the address specified in that notice as the address where the respondent may communicate with the petitioner by post ceases to be an appropriate address for that purpose, as the case may be.

(3) Where a petitioner specifies, in a notice under section 50 of the Act, the date on which a specified home shall cease to be the home to which the respondent is to return to the petitioner for the purpose of complying with a decree, sub-rule (2) of this rule shall not be taken to require the petitioner to cancel that notice upon that home ceasing, on that date, to be the home to which the respondent is to return for that purpose.

(4) Whenever, within a period of twelve months after service of a copy of a decree is effected on the respondent in pursuance of rule 2 of this Order, the petitioner cancels a notice under section 50 of the Act or under the last preceding rule, the petitioner shall serve on the respondent, at the same time, a further notice under section 50 of the Act or under rule 4 of this Order, as the case may be.

(5) The further notice referred to in the last preceding sub-rule may be included in the notice cancelling the previous notice or may be a separate notice.

6. A notice under section 50 of the Act or under rule 4 or 5 of this Order shall be served on the respondent in a manner referred to in paragraph (a) or (b) of Order VI, rule 1 of these Rules.

7. (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 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 in pursuance of sub-rule (1) of this rule and his wife fails to comply with the decree within a reasonable time after the payment of the moneys, the moneys shall be a debt due and payable by the wife to the petitioner and recoverable by action in a court of competent jurisdiction.

## ORDER XIX

### REGISTRIES

1. (1) In these Rules, a reference to the seal of a court, shall be read as a reference to the seal used by the court in the exercise of its matrimonial causes jurisdiction.

(2) Where a petitioner has paid moneys to his wife in pursuance of sub-rule (1) of this rule and his wife fails to comply with the decree within a reasonable time after the payment of the moneys, the moneys

shall be a debt due and payable by the wife to the petitioner and recoverable by action in a court of competent jurisdiction.

(3) A document or copy of a document marked with a stamp referred to in sub-rule (2) of this rule shall be 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 sub-rule (2) of this rule affixed on a document or copy of a document relating to proceedings and, in the absence of proof to the contrary, shall presume that it was affixed by proper authority.

2. (1) Where a person requires a sealed document or a sealed or office copy of a document for the purpose of proceedings (whether or not those proceedings constitute a matrimonial cause) the person may prepare the document or a copy of the document and present it to the registrar of the court in which the proceedings are pending or, if the proceedings are completed, by which the proceedings were determined.

(2) If it appears that the document 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 does require the document or copy to be sealed, or the copy to be issued as an office copy, for the purpose of proceedings, the registrar shall cause it to be sealed with the seal of the court or issued as an office copy, as the case may be.

3. The registrar shall cause the date of filing to be written on every pleading or other document that is filed.

4. Proper indexes to the files or bundles of documents filed in an office of a court shall be kept so that they may conveniently be referred to when required.

5. (1) At each office of a court, a record, to be called the Matrimonial Causes Book shall be kept of all matrimonial causes instituted at that office.

(2) The provisions of sub-rule (1) of this rule shall not apply to or in relation to

(a) a matrimonial cause instituted before the commencement of the Act; or

(b) a matrimonial cause instituted after the commencement of the Act in relation to a matrimonial cause instituted before the commencement of the Act.

(3) When, after a matrimonial cause has been transferred from one court to another court in pursuance of section 9 of the Act, the documents filed of record have been transmitted to the registrar or other proper officer of the court to which the cause has been transferred to be kept as of record at an office of that court, the cause shall, for the purpose of sub-rule (2) of this rule, be deemed to be a cause instituted at that office and shall be deemed not to be a cause instituted at the office of the court from which the cause was so transferred.

(4) The Matrimonial Causes Book shall show, in relation to each suit, the date on which

(a) each pleading is filed for the purpose of the suit;

(b) an application is made to a court or to a registrar in relation to the suit; or

(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.

(5) In this Rule, suit has the same meaning assigned to it under Order XI of these Rules.

6. Every document filed in the office of a court, or transmitted to the registrar or other proper officer of a court in accordance with section 9 of the Act to be kept at the office of a court, shall be a record of the court and shall not, without the permission of a Judge of the court, be removed from that office of the court except for use by the court, a judge or an officer of the court.

7. (1) Subject to these Rules, a party to proceedings, the Attorney-General and, in special circumstances, a person who satisfies a registrar that he has good reason for doing so or obtains the permission of a judge of the court to do so, may, upon furnishing to the registrar sufficient particulars and paying the appropriate fee, cause a search to be made for an entry in the Matrimonial Causes Book or for a document that has been or might have been filed for the purposes of proceedings and to receive a certificate of the result of the search.

(2) Subject to these Rules, a person who has, under this rule, caused a search to be made for an entry in the Matrimonial Causes Book, shall be entitled to inspect any document filed for the purpose of proceedings to which the entry relates, and a person who has caused a search to be made for a document shall, if the document has been filed, be entitled to inspect the document.

(3) In this rule, a reference to the Attorney-General shall be read as including a reference to a person to whom the Attorney-General has, by a delegation under section 64 of the Act that is in force, delegated any of his powers and functions under Part III of the Act.

## ORDER XX

### **FEES**

1. (1) The court fees specified in the Second Schedule shall be charged in respect of the matters in relation to which they are specified.

(2) Except as provided in the Second Schedule, no court fee shall be charged in respect of the following matters

(a) filing an affidavit in support of an application to the court or a registrar;

(b) filing any other affidavit, not being an affidavit that is filed in connection with the enforcing of a decree or order;

(c) filing a pleading;

(d) searching for a pleading or other document if the time for filing the pleading or document has expired and the search is made for the purpose of establishing that the pleading or document has not been filed;

(e) sealing a copy of a document;

- (f) drawing up, settling or signing a decree or order;
  - (g) amending a pleading;
  - (h) filing or making an application or request under these Rules; or
  - (i) filing, depositing, giving, issuing or serving any other document required by these Rules to be filed, deposited, given, issued or served in connection with proceedings.
- (3) The court fee in connection with proceedings in the High Court of a State or of the Federal Capital Territory, Abuja shall be payable in accordance with the practice and procedure of that court.
- (4) Nothing in this rule shall be deemed to prevent the making, under subsection (4) of section 112 of the Act, of rules of court or other provisions in relation to the practice and procedure of the High Court of a State or of the Federal Capital Territory, Abuja prescribing the court fees to be charged in respect of matters not specified in sub-rule (2) of this rule or in the Second Schedule.

2. (1) Subject to this Order, a pleading, application or other document shall not be filed, issued or otherwise dealt with, and any other matter or thing shall not be done in a court or by an officer of a court, unless the fee (if any) payable upon or in respect of filing, sealing, issuing or otherwise dealing with that pleading, application or other document, or upon or in respect of the doing of that matter or thing, has been paid or unless an undertaking to pay the fee has been given to the court or to the officer, as the case may be.

(2) Nothing in these Rules shall be taken to prejudice the operation of any law (including a rule of court) in force in a State or in the Federal Capital Territory, Abuja under which a party to any proceedings in the High Court of that State or of the Federal Capital Territory, Abuja is exempted, by reason of poverty, from the payment of court fees in relation to those proceedings.

(3) Nothing in these Rules shall be taken to require the payment of a court fee by the government of the Federation or by a State government.

3. The proper officer of a court shall, immediately upon payment of a fee upon or in respect of a document, or in respect of filing, issuing, sealing or otherwise dealing with a document, mark upon the document the amount of the fee paid and the date of payment.

4. If a question arises as to which, if any, of the fees is applicable in a particular case, the question shall be determined by a registrar, but a person affected by the determination of a registrar may have the decision reviewed by the court.

5. A court may, in a particular case for special reasons, 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 upon such conditions, if any, as the court thinks fit.

#### ORDER XXI

#### **EFFECT OF NON-COMPLIANCE WITH THESE**

#### **RULES OR WITH AN ORDER**

1. In this Order, a reference to proceedings shall be read as including a reference to a step in proceedings.
2. Subject to these Rules, non-compliance with these Rules, or with a rule of practice and procedure of a court applicable under the Act to proceedings, shall not render proceedings void unless the court so directs, but the proceedings may be set aside, either wholly or in part as irregular, or may be amended or otherwise dealt with in such manner and upon such terms as the court thinks fit.
3. Subject to the Act and to these Rules
  - (a) a court may at any time, upon such terms as the court thinks fit, relieve a party from the consequences of non-compliance with these Rules, with a rule of practice and procedure of the court applicable to the proceedings or with an order made by the court;
  - (b) a court may, upon such terms as the court thinks fit, dispense with the need for compliance by a party with any provision of these Rules.
4. (1) An application to set aside 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 the last preceding sub-rule shall be taken to prevent a court from exercising, of its own motion, any of the powers conferred on it by the last two preceding rules.
  - (3) Where application is made to set aside proceedings for irregularity, the several objections intended to be relied upon shall be stated in the application.

#### ORDER XXII

#### PROCEEDINGS FOR JACTITATION OF MARRIAGE, DECLARATIONS, ETC.

#### **Part 1 - Application**

1. (1) This Part shall apply to and in relation to
  - (a) proceedings for a decree of jactitation of marriage;

(b) proceedings for a decree of nullity of a void marriage instituted by a person who is not a party to the marriage;

(c) proceedings for a declaration or order of a kind referred to in paragraph (b) of the definition of matrimonial cause in subsection (1) of section 114 of the Act; and

(d) proceedings that constitute a matrimonial cause and relate to any proceedings referred to in paragraphs (a), (b) and (c) of this sub-rule, and, to the extent and in the manner provided in this Order but not otherwise, these Rules, other than this Order, shall apply to and in relation to any such proceedings.

(2) Where

(a) a party to a marriage institutes, by petition, proceedings for an Act of dissolution of marriage, nullity of marriage, judicial separation or restitution of conjugal right and also institutes, by the same petition, proceedings for a declaration or order of a kind referred to in paragraph (b) of the definition of matrimonial cause; and

(b) No person other than the parties to the marriage are parties to those last- mentioned proceedings, these Rules, other than this order, shall apply in addition to this order to and in relation to those last-mentioned proceedings and to any other proceeding that constitute a matrimonial cause and relate to those last-mentioned proceedings.

#### Part 2- Petitions for Jactitation of Marriage

2. A petition for an Act of jactitation of marriage shall be in accordance with form 60.

3. (1) A petition for an Act of jactitation of marriage shall state-

(a) The dates on which and the time 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 those boasting and assertions.

(2) A petition for an Act 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.

#### Part 3 Petitions for Declarations, Etc.

4 This Part shall apply to

(a) Proceedings for a decree of nullity of a void marriage institute 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 of matrimonial cause in the Act.

5. (1) A petition instituting proceedings to which this Part applies shall be in accordance with Form 61.

(2) Subject to the next succeeding sub-rule and to any order made by the court in a particular case, a petitioner instituting proceedings to which this Part 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 Part applies, a court may, if it is satisfied that it is expedient so to do either by reason of the difficulty in ascertaining the persons who are included in that class of persons or for the purpose of saving expense, by order, appoint a person or persons included in that class of persons to represent all the persons included in that class of persons.

(4) An order under the last preceding sub-rule may be made upon the trial of the proceedings to which the order relates.

6.(1) A petition instituting proceedings of a kind referred to in paragraph (a) of rule 4 of this Order shall comply with such of the provisions of Parts 1 and 3 of Order Vas are applicable to petitions for a decree of nullity of a void marriage and are applicable 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 of matrimonial cause in 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, upon which the court shall be asked to make the declaration or order.

7. (1) Subject to this Order, these Rules shall apply, as far as practicable and with the necessary modifications, to and in relation to proceedings to which this Part applies in like manner as they apply to proceedings for a decree of a kind referred to in paragraph (a) of that definition.

(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 of matrimonial cause that relate to proceedings of a kind referred to in paragraph (a) of that definition shall 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 Part applies.

ORDER XXIII

#### **MISCELLANEOUS**

1. Nothing in these Rules shall be taken to prevent the court from making, with the consent of the parties to 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 said definition of matrimonial cause) determining the proceedings or relating to the proceedings.

2. (1) Where a court is satisfied that a party who has instituted proceedings for an order under section 105 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 or the other parties to the proceedings, the court may hear and determine the

proceedings or make such order in relation to the proceedings a sit deems proper notwithstanding that that party has not, or those parties have not, been served with the petition or application.

(2) Where the court has made an order under sub-rule (1) of this rule, whether or not that order determines 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.

3. (1) Upon application made by a party to proceedings or by a person entitled to intervene in proceedings under sub-section (2) of section 32 of the Act or under these Rules, the court may extend the time limited by these Rules, or fixed by an order made by the court for the doing of an act or the taking of a step in proceedings.

(2) Application under sub-rule (1) of this rule may be made whether or not the time limited for the doing of the act or the taking of the step in proceedings has expired.

(3) Subject to sub-rule (4) of this rule, an extension of time may be granted under sub-rule(1) of this rule upon such conditions as the court thinks fit.

(4) Unless a court otherwise orders, the costs of an application under sub-rule (1) of this rule shall be borne by the applicant.

(5)An application under sub-rule (1) of this rule may be made orally to a court upon the trial of proceedings by the court.

1. The time limited for the doing of an act or the taking of a step in proceedings may be extended by consent, in writing, without application to a court.

2. Upon application made by a party to proceedings or by a person entitled to intervene in proceedings under subsection (2) of section 32 of the Act or under these Rules, the court may abridge the time fixed by these Rules as the time at the expiration of which that party or person may do an act or take a step in the proceedings.

3. 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 connection with proceedings shall, unless the nature of the document renders it in any respect impracticable or these Rules otherwise provide, be legibly and clearly typewritten or printed, without blotting, erasure or such alterations as may cause material disfigurement.

7. (1) Where, upon an ex parte application, an order is made by a court against, or affecting the rights of, a person, that person may request in writing the applicant or his solicitor to furnish him with a copy of each affidavit filed in support of the application.

(2) Upon receipt of a request under sub-rule (1) of this rule and upon 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.

8. (1) A party to proceedings who is represented in the proceedings by a legal practitioner shall, subject to sub-rule (3) of this rule, be at liberty to change his legal practitioner without an order for that purpose upon 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 legal practitioner.

(2) Until such a notice is filed and copies are served in accordance with the last preceding sub-rule, the former legal practitioner shall be considered the legal practitioner of the party.

(3) A party to proceedings who is proceeding as a poor person shall not discharge the legal practitioner representing him in the proceedings without the leave of the court.

(4) A notice under sub-rule (1) of this rule shall be signed by the new legal practitioner for the party, and shall state the place of business of that legal practitioner and the address for service of the party for the purpose of the proceedings.

(5) The address stated as the party's address for service shall, where appropriate, include the address of the new legal practitioner for the party or of a legal practitioner acting as the agent of that legal practitioner.

9. (1) Where a party to proceedings who is not represented by a legal practitioner appoints a legal practitioner to represent him in the proceedings, the party may, either personally or by his legal practitioner, give notice of the appointment.

(2) The provisions of the last preceding rule relating to notice of change of legal practitioner, to service of such a notice and to the stating of an address for service in such a notice shall apply, with the necessary modifications, in the case of notice of appointment of a legal practitioner.

10. (1) Where a party to proceedings who is represented by a legal practitioner 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 rule 8 of this Order relating to a notice of change of legal practitioner, to service of such a notice and to the stating of an address for service in such a notice shall apply, with the necessary modifications, in the case of a notice of intention to act in person.

#### 11. Where

(a) the address for service of a party to proceedings is the address of a legal practitioner who has represented, but is no longer representing, the party in the proceedings;

(b) the legal practitioner has served on the party a notice in accordance with Form 62, signed by the legal practitioner personally, and a period of not less than seven days has elapsed after service of that notice; and

(c) the party has not, since the legal practitioner ceased, or last ceased, to represent him in the proceedings, filed a notice under rule 8 or 10 of this Order, the legal practitioner may file a notice, in accordance with Form 63, of his having ceased to represent the party.

(2) Where a legal practitioner who has represented a party files a notice in accordance with Form 63, the legal practitioner 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 legal practitioner who has represented a party in proceedings has duly complied with sub-rule (1) of this rule, the party may give notice, in accordance with these Rules, that he is represented by a legal practitioner 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.

12. A legal practitioner shall not represent any two or more parties having adverse interests in proceedings.

13. (1) A court may, at the trial of a matrimonial cause or upon application to the court, whether or not objection is taken

(a) direct that any costs which have been improperly, unnecessarily or negligently incurred be disallowed; or

(b) direct 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 so disallowed shall pay to the other parties the costs incurred by those parties in relation to the matter in respect of which his costs have been disallowed.

14. Where a court makes an order under section 9 of the Act, transferring a matrimonial cause to another court having jurisdiction under the Act, a copy of the order shall be retained as part of the record in the first-mentioned court.