

[LEGAL NOTICE NO.]

FAMILY LAW ACT 2003
(Act No. 18 of 2003)

FAMILY LAW RULES 2005

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FAMILY LAW ACT 2003

FAMILY LAW RULES 2005

IN exercise of the powers conferred upon me by section 212 of the Family Law Act 2003 and after due consultation with the Chief Magistrate, I hereby make the following Rules:

ORDER 1—INTRODUCTORY

Division 1.1—Preliminary

Citation and commencement

1.01. These Rules may be cited as the Family Law Rules 2005 and shall come into operation on 1 June 2005.

Application of Rules

1.02.—(1) These Rules apply to all proceedings in the Family Division of the High Court or the Family Division of the Magistrates' Court under the Act, the Regulations or these Rules, including proceedings to which sections 4 (2), (3), (4) and (5) of the Act apply

(2) Unless the contrary intention appears, a provision of these Rules applies in the same manner in relation to both the Family Division of the High Court and the Family Division of the Magistrates' Court.

(3) Where a practice or procedure is not provided for in these Rules, the standard rules of the court in which the proceedings are being conducted apply.

Interpretation

1.03. In these Rules, unless the contrary intention appears—
“abuse”, in relation to a child, has the meaning given by section 42 of the Act;
“Act” means the Family Law Act 2003;
“applicant” means a person who makes an application;
“birth certificate” means the original, or a photocopy, of a certificate of birth, or a certified copy of the relevant entry in a Register of Births;
“cause of action” means a claim in any proceedings other than proceedings for principal relief and does not include an application for interim or procedural relief;

“certified copy”, in relation to a document, means a copy of the document certified to be a true copy by the person having custody, possession or control of the document, or by another person at the direction of the first-mentioned person, and includes a copy of the document bearing the seal of a court (including a court other than a court exercising jurisdiction under this Act) and the original document;

“company” means—

- (a) a company incorporated under the Companies Act;
- (b) a body corporate incorporated under the Co-operative Societies Act, the Credit Unions Act or any other written law providing for incorporation upon registration; and
- (c) a similar body incorporated under a law of another country;

“conciliation conference” means a conference held under Division 9.3;

“court”, according to context, has the meanings given by rule 1.04;

“court officer” has the meaning given by section 42 of the Act;

“divorce” means dissolution of marriage;

“ex-nuptial child” means a child whose parents never married each other;

“Family Division” means the Family Division of either the High Court or the Magistrates’ Court;

“filed” means filed in accordance with rule 3.04 and “file” and “filing” have corresponding meanings;

“filing registry” means, in relation to particular proceedings instituted in a court, the registry of that court in which the proceedings were instituted or, if the proceedings have been transferred to another registry of that court or to a registry of another court, then that registry;

“folio” means 100 words, in writing;

“intervener” means, in relation to proceedings, the Attorney-General or any other person when intervening under Part VIII of the Act;

“lawyer” means a legal practitioner within the meaning of the Legal Practitioners Act;

“marital status proceedings” means proceedings for—

- (a) an order of—
 - (i) dissolution of marriage; or
 - (ii) nullity of marriage; or
- (b) a declaration as to the validity of—
 - (i) a marriage; or
 - (ii) the dissolution or annulment of a marriage by order or otherwise;

“marriage certificate” means the original, or a photocopy, of a certificate of marriage, or a certified copy of the relevant entry in a Register of Marriages;

“party”, in relation to proceedings, means an applicant, respondent or third party, or an intervener other than an intervener not deemed to be a party;

“pre-hearing conference” means a conference held under Division 9.4;

“prescribed child welfare authority” has the same meaning as in Part VI of the Act;

“Register of Births” means an official public register of births kept under law in the Fiji Islands or in another country;

“Register of Marriages” means an official public register of marriages kept under law in the Fiji Islands or in another country;

“registrar”, according to context, has the meanings given by rule 1.04;

“registry”, in relation to a Family Division, includes an office of that Division;

“Regulations” means the Regulations under the Act;

“respondent”, in relation to proceedings, means a party to the proceedings other than an applicant or a third party;

“sealed”, in relation to a document and a court (including a court other than a court exercising jurisdiction under the Act), means sealed with the seal of that court or otherwise endorsed by a registrar or corresponding official of that court;

“standard rules” means—

- (a) in relation to proceedings in the Family Division of the High Court—the High Court Rules; and
- (b) in relation to proceedings in the Family Division of the Magistrates’ Court—the Magistrates’ Courts Rules;

References to courts and registrars

1.04. Unless the contrary intention appears, in these Rules—

- (a) a reference to “court” is a reference to a court exercising jurisdiction under this Act, that is to say—
 - (i) the Family Division of the High Court; or
 - (ii) the Family Division of the Magistrates’ Court;
- (b) a reference to “registrar” is a reference to the registrar, or a deputy registrar, of a Family Law Division;
- (c) a reference to “the court”, in relation to any proceedings commenced or to be commenced in, or transferred to, a Family Division, or any document or other matter relating to any such proceedings, is a reference to that Division.

Division 1.2—Proceedings under the Act

Proceedings to be commenced in Magistrates’ Court

1.05. Proceedings under the Act (other than proceedings to which section 17 (3) of the Act applies) must be commenced in the Family Division of the Magistrates’ Court and unless there are special circumstances must be filed in the registry closest to the place in which either the applicant or respondent resides.

Application of provisions of these Rules to various kinds of proceedings

1.06.—(1) Order 6 applies to marital status proceedings.

(2) Order 7 applies to proceedings in relation to—

- (a) an application for—
 - (i) spousal, child or parental maintenance; or
 - (ii) a contribution mentioned in section 100 of the Act,

unless proceedings between the parties with respect to any other matter under the Act (except marital status proceedings or proceedings in relation to another matter mentioned in subparagraph (i) or (ii)) are current or are instituted at the same time; and

(b) proceedings for contempt.

(3) Unless a contrary intention appears in these Rules, Order 8 applies to all other proceedings under the Act.

Information documents (sections 12 and 55)

1.07.—(1) The registrar of the Family Division of the High Court must prepare documents, simply expressed in the English, Fijian and Hindustani languages, that set out the matters specified in paragraphs (a) and (b) of section 12, and paragraphs (a) and (b) of section 55, of the Act.

(2) It is sufficient, for the purposes of subrule (1), if a document is prepared either in a single version, in each of the three languages, or in three separate versions, one in each of those languages.

(3) The registrar of each Family Division must ensure that copies of those documents are readily available at each registry of that Division for distribution, free of charge, in the circumstances respectively mentioned in sections 12 and 55 of the Act.

(4) Before any application for the institution of proceedings under the Act is accepted for filing, the registrar must be satisfied that—

- (b) the person seeking to file the application has been provided with, and had an opportunity to consider, such of the documents prepared for the purposes of section 12 of the Act as is or are relevant to that person's case; and
- (b) reasonable efforts have been made to ensure that the other party to the marriage has had an opportunity to obtain and consider copies of the same document or documents.

(5) Before any application for the institution of proceedings under Part VI of the Act in relation to children is accepted for filing, the registrar must be satisfied that—

- (a) the person seeking to file the application has been provided with, and had an opportunity to consider, such of the documents prepared for the purpose of section 55 of the Act as is or are relevant to that person's case; and
- (b) reasonable efforts have been made to ensure that each other person who may be interested in the care, welfare and development of those children has had an opportunity to obtain and consider copies of the same document or documents.

ORDER 2—ADMINISTRATION

*Division 2.1—Registrars**Oath or affirmation of office*

2.01. The prescribed form of oath or affirmation for the purposes of section 23(6) of the Act is as follows:

“I, [*name of registrar*] do swear by Almighty God [*or solemnly and sincerely affirm and declare*] that I will well and truly serve the Republic of the Fiji Islands in the office of registrar [*or deputy registrar*] of the Family Division of the High [*or Magistrates’*] Court and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, and I do further swear that I will not, on any account, at any time whatsoever, disclose to any person any communication or admission made to me in my capacity as the holder of that office, unless I reasonably believe that it is necessary for me to do so—

- (a) to protect a child; or
- (b) to prevent or lessen a serious and imminent threat to—
 - (i) the life or health of a person; or
 - (ii) the property of a person; or
- (c) to report the commission, or prevent the likely commission, of an offence involving—
 - (i) violence or a threat of violence to a person; or
 - (ii) intentional damage to property of a person or a threat of damage to property; or
- (d) to enable me to discharge properly my functions in that office; or
- (e) if a child is separately represented by a person under an order under section 125 of the Act, to assist the person to represent the child properly.

[*Oath only:*] So help me God!”

Exercise of powers and functions of registrars

2.02.—(1) Where a power or function is expressed by these Rules to be conferred upon a registrar, that power or function may also be exercised—

- (a) in the Family Division of the High Court—by a judge;
- (b) in the Family Division of the Magistrates’ Court—by a magistrate.

(2) Where a registrar is required or able to do an act under these Rules, it is sufficient if the act is done on behalf of the registrar by another officer of the court or by a clerk in the office of the registrar or of such an officer.

(3) Any act done by a registrar under these Rules is reviewable by a Judge or Magistrate of a Family Division upon the written request of a party to proceedings and such a review may be dealt with in chambers without appearance by that party or their lawyer.

Protection and immunity

2.03.—(1) In the conduct of a conference or enquiry under these Rules, a registrar or officer of the court, has the same protection and immunity as a judge or magistrate.

(2) A party, lawyer or witness appearing before a registrar or officer of the court on the conducting of any conference or enquiry has the same protection and immunity as the party, lawyer or witness would have if appearing in proceedings in a court.

Division 2.2—Seals, records and searches

Seals

2.04.—(1) There shall be kept at each registry of each Family Court Division, in such custody as the Chief Justice directs, an office seal having inscribed on it—

- (a) the words “The Seal of the Family Division of the High Court of the Fiji Islands” or “The Seal of the Family Division of the Magistrates’ Court of the Fiji Islands”, as the case requires; and
- (b) the word “Registry” preceded by the name of the registry.

(2) There shall be kept and used at each registry of each of the Family Divisions such other seals or stamps as are required for the business of the Division and those seals and stamps shall be in such form, and kept in such custody, as the Chief Justice directs.

Records, registers and indexes

2.05. The registrar of each Family Division shall keep such records, registers and indexes as the Chief Justice directs.

Exhibits

2.06.—(1) The registrar of the filing registry shall take charge of every document or object tendered as an exhibit during the hearing of any proceeding in the court.

(2) A list of exhibits tendered during proceedings, when completed, shall form part of the record of the proceedings.

(3) The court may direct that an exhibit tendered during the hearing of proceedings in the court be kept in the court, returned to the person who produced it or otherwise disposed of in such manner as is just.

Searches

2.07.—(1) A person shall not search the records of a court relating to proceedings or matters under the Act, the Regulations or these Rules, or inspect any document forming part of any such records otherwise than in accordance with subrule (2).

(2) The following persons may search records, or inspect a document, of a kind referred to in subrule (1):

- (a) the Attorney-General;
- (b) where the records relate to particular proceedings or matters concerning or

arising out of a marriage—a party to that marriage;

(c) where the records relate to particular proceedings—a party to those proceedings;

(d) a person who has been granted leave of the court, or the permission of a registrar, to search the records or inspect the document.

(3) Leave or permission for the purposes of subrule (2)(d) may be granted to a person who demonstrates a proper interest in searching records or inspecting a document and may be granted subject to such conditions as the court or registrar determines.

Division 2.3—Publication of lists

Mode of publication

2.08. Subject to this Order, lists of proceedings to be heard in a Family Division may be published—

(a) to members of the legal profession and their employees;

(b) to litigants in person; and

(c) on notice boards exhibiting lists of cases for the use of the court or the legal profession.

Lists to be provided by registrar

2.09. A list of proceedings shall not be published in a manner, or to persons, referred to in rule 2.08 unless the list has been provided by a registrar for publication to those persons or in that manner.

Content of lists

2.10. Lists of proceedings provided by a registrar for publication under this Order may contain such of the following particulars as the registrar thinks fit:

(a) the identifying numbers of applications;

(b) the name of the judge or magistrate, the time at which and the place or courtroom in which the proceedings will be conducted and the general nature of the applications to be heard.

Division 2.4—Fees and interest

Fees payable

2.11.—(1) Subject to this rule, the only court fees payable in respect of proceedings under the Act are—

(a) filing fees for Forms 1, 2, 3, 4, 9, 10 and 11, being, in the case of a form filed in the Family Division of the High Court, a fee equal to the fee payable under the High Court Rules on filing a writ, petition, summons or motion for the commencement of any action; and

- (b) hearing fees in respect of the final hearing of defended matters to which paragraph (a) applies, being, in the case of a hearing in the Family Division of the High Court, a fee, equal to the fee payable under the High Court Rules on filing a summons to set down for trial by a judge for court hearing;
 - (c) fees for the recovery of incidental administrative costs, including photocopying, as directed from time to time by the Chief Registrar.
- (2) Subrule (1) has effect notwithstanding anything in any other Rules.
- (3) In the Family Division of the Magistrates' Court, the filing and hearing fees are 50% of those payable in the Family Division of the High Court.
- (4) The fees payable in respect of appeals are as provided by the standard rules.

Remission and refund of fees

- 2.12.** A registrar may, in a particular case for special reasons—
- (a) waive the payment of the whole or a part of a fee;
 - (b) refund the whole or a part of a fee; or
 - (c) authorise the postponement of the payment of the whole or part of a fee until such time, and on such conditions, as the registrar thinks fit.

Rate of interest

2.13. The rate of interest for the purposes of sections 172 (12) (b) and 206 (1) of the Act is the rate of interest from time to time applicable to judgment debts in the civil jurisdiction of the High Court.

ORDER 3—DOCUMENTS AND FORMS

Definition of “document”

3.01. In this Order, “document” means an application, affidavit, certificate, order, notice or other writing to be filed, delivered or served, pursuant to the Act, the Regulations or these Rules in or in connection with proceedings.

Application of Order

3.02. This Order applies to a decree, order or agreement that is to be registered, or a document that is to be filed, under the regulations or these Rules even if no proceedings have been instituted in relation to that decree, order, agreement or document.

Requirements with respect to documents

- 3.03.—**(1) For the purposes of this rule, “printed” includes—
- (a) typewritten;
 - (b) machine printed; and
 - (c) reproduced by mechanical, electronic, photographic or other means.

(2) A document that is to be registered or filed must comply with subrule (3) unless—

- (a) the nature of the document renders compliance impracticable;
- (b) the document is in accordance with a form that—
 - (i) is prescribed in these Rules; and
 - (ii) provides for the document to be set out in a manner that does not comply with subrule (3);
- (c) under these Rules, the document must comply with a different requirement; or
- (d) the document is in accordance with the standard rules, as applicable in accordance with rule 1.02(3), and, under those rules, the document must comply with a different requirement.

(3) A document must—

- (a) be on durable white opaque paper of good quality, of the size known as ISO A4;
- (b) be legible and without erasures, blotting out or material disfigurement;
- (c) be—
 - (i) mechanically or electronically printed; or
 - (ii) if the document is a printed form made available by the court, completed by being hand-printed in ink;
- (d) have a margin at the left hand side of each page of not less than 30 millimetres;
- (e) have a space of not less than 6 millimetres between each line and the next;
- (f) be set out on only 1 side of the paper; and
- (g) have each page numbered.

Filing of documents

3.04.—(1) A document is filed in, or in connection with, proceedings if—

- (a) it is delivered to the filing registry; or
- (b) with the leave of the court, it is delivered to a registry that is appropriate in the circumstances,

and the document is accepted for filing by the court.

(2) During the hearing of proceedings by a court, a document relating to the proceedings may, by leave of the court, be filed by delivering it to an officer of the court.

(3) The registrar shall cause the date of filing to be marked on every document that is filed.

(4) Where a document has been filed, each copy of the document for service shall bear the seal of the court in which the document was filed.

(5) A reference in these Rules to the filing of a document or the taking of a step in proceedings by a person includes a reference to the filing of the document or the taking of

the step on behalf of the person.

Refusal to accept document for filing

3.05.—(1) A registrar may refuse to accept a document for filing, if—

- (a) it is not in proper form in accordance with these Rules;
- (b) it is not executed in the way required by these Rules;
- (c) the document, on its face, appears to the registrar to be an abuse of process or frivolous, scandalous or vexatious; or
- (d) the document is filed in connection with pending proceedings in another court or another registry, and the registry is not the appropriate registry.

(2) If a registrar refuses to accept a document for filing, the person who sought to file the document may apply to the court for review of the registrar's decision.

(3) The registrar must accept an application for review of a decision not to accept a document for filing.

(4) An application under subrule (2) must be made *ex parte*, in the first instance.

Documents to be served on other parties

3.06. Unless these Rules otherwise provide, a document that is filed must be served on each other party to the proceedings as soon as practicable after filing.

Forms

3.07.—(1) In these Rules, a reference to a form by number is a reference to the form so numbered in the Schedule.

(2) Strict compliance with the forms in Schedule 1 is not required and substantial compliance is sufficient.

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

(4) A document that is prepared in accordance with a form in Schedule 1 must be completed in accordance with any directions specified in the form, but the directions may be omitted from the document.

(5) The Chief Justice may authorise the use of appropriate computer software for the purpose of reproducing a form in the Schedule.

(6) A document that is prepared—

- (a) in accordance with a form in the Schedule; and
- (b) with the use of authorised computer software,

is taken to be completed in accordance with the form in the Schedule.

(7) Unless the contrary intention appears, a form or notice pursuant to these Rules

may be signed or given by a party or by the solicitor for the party.

(8) Where the lawyer for a party to proceedings is required or permitted to sign a document or give a notice for the purpose of those proceedings, it shall be sufficient for that purpose if it is signed or given—

- (a) by a partner or agent of, or lawyer employed by, that lawyer;
- (b) by a partner of, or lawyer employed by, such an agent; or
- (c) where the lawyer for the party is employed in the Legal Aid Commission, any other lawyer employed in or by that Commission.

Documents to be filed with applications, etc.—copies, translations, etc.

3.08.—(1) A requirement under these Rules to file an order or record with a Form prescribed by these Rules is satisfied by filing—

- (a) in the case of an order—a photocopy of the order; and
- (b) in the case of a record—a certified copy of the record

(2) If an applicant is not able to file a document (other than a form or other document prescribed by these Rules or the standard rules) that is required to be filed, the applicant must—

- (a) file an affidavit setting out the facts and circumstances by reason of which the applicant is not able to file the document; or
- (b) give to a registrar an undertaking, satisfactory to the registrar, to file the document within a specified time.

(3) An applicant need not file a document mentioned in subrule (2) if the document is already filed in relation to other proceedings in the same registry.

(4) If a document mentioned in subrule (2) is not in English, Fijian or Hindustani, the applicant must file with the document—

- (a) a translation of the document in English; and
- (b) an affidavit by the person who made the translation verifying the translation and setting out the person's qualifications to make the translation.

Form of affidavit

3.09. Unless otherwise provided by these rules, an affidavit to be filed must either be in accordance with Form 23 or have a cover sheet in accordance with Form 24.

Removal of documents from court file

3.10.—(1) A marriage or birth certificate filed by a party may be removed from the court file by that party if the party files in its place a certified or photographic copy of the certificate.

(2) A document, other than a marriage or birth certificate, filed by a party may, with the leave of the court, be removed from the court file by—

- (a) the party; or

(b) a person who demonstrates to the court a proper interest in obtaining the document,
subject to such conditions as the court determines.

Filing a document by facsimile transmission

3.11.—(1) Any document to be filed may be lodged by facsimile transmission if—

- (a) the matter is urgent; and
- (b) it is not practicable to lodge the document in the registry in any other way.

(2) A document to be filed must not be lodged by facsimile transmission in any other circumstances without the leave of the court.

(3) Unless the court otherwise directs, if a document is lodged by facsimile transmission it must be accompanied by a letter to the registrar signed by the unrepresented party or the party's legal representative, explaining—

- (a) the nature and immediacy of the damage or harm that may result if the document is not lodged by facsimile transmission; and
- (b) any other circumstances that justify lodging the document by facsimile transmission instead of lodging it in the registry.

(4) If a document is lodged by facsimile transmission, the party filing the document must lodge the original document in the registry within 7 days after it was sent by facsimile transmission.

Proceedings to be numbered

3.12.—(1) Subject to subrule (3), if—

- (a) an application instituting proceedings; or
- (b) an agreement or similar document,

is filed or registered, the registrar must allot the proceedings, or agreement or similar document, a distinctive number.

(2) A document filed in, or issued out of, a registry in connection with particular proceedings must have the distinctive number of the proceedings endorsed on it.

(3) If the registrar considers that new proceedings are closely connected with existing proceedings, the registrar may allot to the new proceedings the distinctive number already allotted to existing proceedings.

Notice seeking counselling—Form 14

3.13. A notice under section 50 (1) shall be in accordance with Form 14.

ORDER 4—SERVICE

*Division 4.1—Address for service**Address for service—right to be heard in proceedings*

4.01. A person who has not given an address for service is not entitled to be heard by the court in proceedings unless the court orders otherwise.

Giving address for service

4.02.—(1) A person may give an address for service in proceedings—

- (a) by filing a notice of address for service in accordance with Form 20; or
- (b) by filing another relevant document, in a form prescribed by these Rules, that includes an address for service.

(2) If a party to proceedings (in this subrule called “the later proceedings”)—

- (a) has not given an address for service in the later proceedings in accordance with subrule (1);
- (b) has an address for service in other proceedings between the parties (except proceedings for dissolution of marriage or other principal relief); and
- (c) has taken a step in the other proceedings within 6 months before the day on which a document that is required to be served on the party is filed in the later proceedings,

the party’s address for service in the other proceedings is taken to be the party’s address for service in the later proceedings unless the party changes his or her address for service in the later proceedings.

(3) Unless the court orders otherwise, if a person who does not have an address for service files a document in proceedings, the document must include the person’s address for service.

(4) An address for service must be an address in the Fiji Islands.

Change of address for service

4.03. A party to proceedings may change the party’s address for service in the proceedings by filing a notice of address for service in accordance with Form 20.

*Division 4.2—When and how are documents served?**When, and on whom, must documents be served?*

4.04.—(1) If a document is filed in proceedings, the person who filed the document must serve a copy of it as soon as practicable—

- (a) on each other party to the proceedings who has an address for service in the proceedings;
- (b) on any child’s representative appointed under section 125 of the Act; and
- (c) in the case of an application initiating a claim, or a cause of action, and any document filed with the application, on each other party to the application.

(2) Unless the court orders otherwise, a person must not serve a document on another person more than 12 months after the date on which the document was filed.

Service by hand

4.05.—(1) If a document is served on a person by handing it to him or her, it must not be handed to him or her by the party on whose behalf it is being served, but it may be handed to him or her in the party's presence.

(2) If an individual refuses to accept a document from the person serving it, the document is taken to have been handed to the individual if—

- (a) the document is put down, and left, in his or her presence; and
- (b) the person serving the document tells the individual what the document is.

Service of applications in marital status proceedings

4.06. A sealed copy of an application for dissolution of marriage or other principal relief must be served on the respondent by—

- (a) handing it to the respondent; or
- (b) sending it by pre-paid post in a sealed envelope addressed to the respondent at the respondent's last known address.

Service of summary applications for maintenance or contribution

4.07. An application for an order for maintenance, or for contribution under section 100 of the Act, must be served on the respondent—

- (a) by handing it to the respondent; or
- (b) by sending it by pre-paid registered post in a sealed envelope addressed to the respondent at the respondent's last known address.

Service of other documents on individuals

4.08.—(1) Except as otherwise provided in these Rules, if an individual has an address for service, a document (other than an application referred to in rule 4.06 or 4.07) may be served on the individual—

- (a) by handing it to the individual;
- (b) by delivering it to that address in a sealed envelope addressed to the individual; or
- (c) by sending it by pre-paid post in a sealed envelope addressed to the individual at that address.

(2) Except as otherwise provided in these Rules, if an individual does not have an address for service, a document (other than an application referred to in rule 4.06 or 4.07) may be served on the individual—

- (a) by handing it to the individual;
- (b) by delivering it to the individual's last known address in a sealed envelope addressed to the individual; or
- (c) by sending it by pre-paid post in a sealed envelope addressed to the individual at the individual's last known address.

- (3) In this rule, “individual” means a natural person.

Service on bodies corporate

4.09.—(1) Except as otherwise provided in these Rules, if a body corporate has an address for service, a document may be served on the body corporate—

- (a) by delivering it to that address in a sealed envelope addressed to the body corporate; or
- (b) by sending it by pre-paid post in a sealed envelope addressed to the body corporate at that address.

(2) Except as otherwise provided in these Rules, if a body corporate does not have an address for service, a document may be served on the body corporate—

- (a) if the body corporate has a registered office in the Fiji Islands— by delivering or sending it by pre-paid post in a sealed envelope addressed to the body corporate at the registered office;
- (b) if the body corporate does not have a registered office in the Fiji Islands— by delivering or sending it by pre-paid post in a sealed envelope addressed to the body corporate at the principal place of business, or principal office, of the body corporate in the Fiji Islands;
- (c) if the body corporate does not have a registered office or place of business in the Fiji Islands— by delivering it or sending it by pre-paid post in a sealed envelope addressed to the body corporate at its registered office in a place outside the Fiji Islands;
- (d) by handing the document to each of 2 directors of the body corporate who reside in the Fiji Islands; or
- (e) if a liquidator, or an official manager, of the body corporate has been appointed— by delivering it or sending it by pre-paid post in a sealed envelope to the office of the liquidator or official manager.

Additional requirements for service by post

4.10.—(1) A person serving a document by post must include with the document—

- (a) a form of acknowledgment of service in accordance with Form 21; and
- (b) an envelope that—
 - (i) is addressed to the person on whose behalf the document is being served at the address for service of that person; and
 - (ii) if the document is to be sent to an address in the Fiji Islands, bears the correct postage for the return by post of the acknowledgment of service in the envelope.

(2) If the document is to be served by post outside the Fiji Islands, the document must be posted by air mail.

When is service by post effected?

4.11. Subject to rule 4.15, a document served on a person by post is taken to have

been served on the person—

- (a) if it was posted to an address in the Fiji Islands— on the day on which the document would be delivered in the ordinary course of post; or
- (b) if it was posted to an address outside the Fiji Islands— on the twenty-eighth day after the day of posting.

Court's discretion relating to service

4.12. Nothing in this Order affects the power of a court exercising jurisdiction under the Act or another Act—

- (a) to authorise service of a document by means of newspaper advertisement or in another manner that is not provided for in Division 4.1 or 4.2;
- (b) to find that a document has been served; or
- (c) to find that a document has been served on a particular date.

Division 4.3—Proof of service

Acknowledgment of service

4.13.—(1) A person on whom a document is served may acknowledge service of the document by an acknowledgment of service.

(2) An acknowledgment of service—

- (a) must be in accordance with Form 21; and
- (b) may be signed by the person on whom the document was served or by that person's solicitor.

(3) If a solicitor signs an acknowledgment of service on behalf of a party to proceedings, the filing of the acknowledgment is taken to constitute proof of service of a document to which it refers on the date on which service of the document is acknowledged.

Affidavit of service

4.14.—(1) Unless the court otherwise orders, any evidence of service to be given (except an acknowledgment of service) must be given by affidavit.

(2) An affidavit of service must be in accordance with Form 22.

Evidence of service of documents

4.15.—(1) An acknowledgment of service of a document that is signed by the person on whom the document was served is evidence that the document was served in accordance with the acknowledgment.

(2) If the server of a document can identify the person served, service of the document may be proved by evidence to that effect given by the server.

(3) If the server of a document can identify a photograph of the person served, and another person who knows the person served identifies the photograph as a photograph of

the person served, service of the document may be proved by evidence to that effect by the server and the other person.

(4) If a person other than the server of a document—

(a) was present when the document was served and—

(ii) saw the document handed to the person served, or put down and left in the presence of the person served; and

(iii) can identify the person served,

service of the document may be proved by evidence to that effect given by the other person.

(5) Nothing in this rule precludes the giving of any other evidence to prove the service of a document.

Division 4.4—Discretion as to service

Court may dispense with service of documents

4.16.—(1) On application made *ex parte* in accordance with Form 12, the court may dispense with service of a document.

(2) In considering an application, the court may have regard to—

(a) whether the applicant has taken reasonable steps to serve the document on the respondent;

(b) whether the applicant has taken reasonable steps to provide the respondent with a copy of the document;

(c) whether the respondent could become aware of the existence and nature of the document by means of advertising or another form of communication that is reasonably available to the applicant;

(d) the likely cost to the applicant of serving the document, the means of the applicant and the nature of the proceedings; and

(e) any other relevant matter.

(3) If an order relating to service of a document under subrule (1)—

(a) is unconditional; or

(b) is made subject to a condition that is complied with,

the document is taken to have been served.

Failure to comply with conditions

4.17. Even if an applicant has not complied with a condition of an order made under rule 4.16, the court may order that the document is taken to have been served on a date specified in the order.

ORDER 5—COURT POWERS AND PROCEDURES

*Division 5.1—General**Dispensing with compliance*

5.01. The court may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance has arisen.

Failure to comply with Rules or court orders

5.02. Subject to any dispensation under rule 5.01, if a party does not do all things required by the Rules, or by an order of the court, the court may—

- (a) dismiss the application or response;
- (b) stay the proceedings, or part of the proceedings; or
- (c) make any other order the court thinks fit.

Court to give directions in cases of doubt or difficulty

5.03. Where the court is satisfied in the circumstances of a particular case that—

- (a) the provisions of the Act, the Regulations or these Rules do not make adequate provision for a matter of practice or procedure; or
 - (b) a difficulty arises or doubt exists as to a matter of practice or procedure,
- it may give such directions with respect to the practice and procedure to be followed in the case as it considers necessary.

Stay of proceedings

5.04. The court may order a stay of proceedings before it upon such terms as it thinks fit.

Need for prompt and inexpensive resolution of matters

5.05. The court shall have regard to the need to provide a prompt and inexpensive resolution of the matters in issue between the parties.

Right of appearance

5.06.—(1) Subject to subrule (2), a party to proceedings, or a person (including a court officer) entitled to take proceedings for, or for the enforcement or confirmation of, an order, may appear personally or by representation by a legal practitioner.

(2) A company that is entitled to appear in proceedings may appear only by representation by a legal practitioner.

(3) An authority entitled to take proceedings for, or for the enforcement or confirmation of, an order may be represented by an officer of the authority or by a legal practitioner.

Proceedings in chambers

5.07.—(1) This rule applies to all proceedings under the Act other than the final hearing in contested proceedings.

(2) A court may exercise in chambers any jurisdiction conferred on it and any sitting held in chambers shall be as valid and effectual as if it were held in court.

(3) A court may adjourn the hearing of proceedings from chambers to court and from court to chambers.

Proceedings in chambers—procedures and effect

5.08. The provisions of these Rules shall, so far as is appropriate, apply to proceedings heard in chambers in the same manner as to proceedings heard in open court and an order made in chambers shall have the same effect as an order made in court.

Record of proceedings in court or chambers

5.09.—(1) The judge or magistrate hearing proceedings in court or chambers shall make a record containing the following particulars in relation to those proceedings:

- (a) the name of the case;
- (b) a description of the proceedings;
- (c) the date of the hearing;
- (d) a minute of decisions made.

(2) The record made for the purposes of subrule (1) shall be placed on the court file and shall be evidence of the questions or matters in issue and the decisions made at the hearing.

Discontinuance—Form 25

5.10. An application under the Act may be discontinued by the applicant by filing a notice in accordance with Form 25.

Cover sheet

5.11. Any form filed in proceedings under the Act that is not a form prescribed by these Rules shall have attached to it a cover sheet in accordance with Form 24.

Affidavits

5.12.—(1) In proceedings under these Rules, a party must not file an affidavit unless—

- (a) the affidavit is required or authorised to be filed by these Rules; or
- (b) the court grants leave to do so or a registrar directs to do so.

(2) An affidavit must set out only facts relevant to the matters in issue.

(3) The court may order material to be struck out of an affidavit, at any stage of proceedings, if—

- (a) the material is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative; or
- (b) the material sets out opinions of persons who are not properly qualified to give them.

(4) If the court orders material to be struck out of an affidavit, the party who filed

the affidavit must pay the costs (if any) caused by the material struck out, unless the court otherwise orders.

(5) Unless otherwise provided in these Rules, ordered by the court or directed by a registrar, evidence in chief in proceedings is to be given on affidavit.

Applications for which no particular form is prescribed—Form 12

5.13. An application for which no particular form is prescribed by these Rules or by the standard rules shall be in accordance with Form 12.

Division 5.2—Transfer of proceedings between courts

Application of Division

5.14. This Division applies to and in relation to the transfer of proceedings under section 28 of the Act—

- (a) between registries of the same Family Division—
 - (i) on the motion of a judge or magistrate of that Division; or
 - (ii) on application, in accordance with this Order;
- (b) from the Family Division of the Magistrates' Court to the Family Division of the High Court—
 - (i) on the motion of a judge of the Family Division of the High Court; or
 - (ii) on application, in accordance with this Order; or
- (c) from the Family Division of the High Court to the Family Division of the Magistrates' Court—
 - (i) on the motion of a judge of the Family Division of the High Court; or
 - (ii) on application, in accordance with this Order;

Applications by parties

5.15. A party who has filed an application or response in proceedings in a court exercising jurisdiction under the Act may, by application in accordance with Form 12, filed in the filing registry, apply to have the proceedings heard—

- (a) in another registry of that court; or
- (b) in another court exercising jurisdiction under the Act.

Matters to be considered

5.16.—(1) In considering a transfer under this Order, the court shall have regard to—

- (a) the wishes of the parties;
- (b) whether proceedings in respect of an associated matter are pending in the other court; and
- (c) whether, if the proceeding is transferred, it is likely to be heard and determined at less cost and more convenience to the parties than if the proceeding is not transferred;

- (d) whether the proceeding is likely to be heard and determined earlier in the other court;
- (e) the availability of particular procedures appropriate for the class of proceeding; and
- (f) the interests of the administration of justice.

(2) In addition to the factors set out in subrule (1), the Family Division of the High Court must, when considering whether to transfer a proceeding to the Family Division of the Magistrates' Court, take into account—

- (a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Family Division of the Court on one or more of the points in issue; and
- (b) whether the resources of the Magistrates' Court are sufficient to hear and determine the proceeding.

(3) In making an order under rule 5.15, the court may impose such terms and conditions as it thinks fit.

Transmission of papers

5.17.—(1) Where a court makes an order to transfer proceedings to another registry or to another court, the court papers shall be transmitted by the registrar responsible for the filing registry to the registry to which the proceedings have been transferred.

(2) Thereafter the court to which the proceedings have been transferred shall proceed as if the proceedings had been originally instituted in that court, and may have regard to the evidence given before the transfer of the proceedings.

Filing and service

5.18. Upon receipt of court papers under rule 5.17, the registrar responsible for the registry to which the proceedings have been transferred must—

- (a) fix a date for a procedural hearing as soon as practicable; and
- (b) give notice of the date to each of the parties.

Record of proceedings transferred

5.19. Where an order is made by a court transferring proceedings to another court or registry, a copy of that order shall be retained in the first-mentioned court or registry.

Division 5.3—Registration of agreements and orders

Registration of agreements and orders under the Act

5.20.—(1) A party to a registrable agreement or order may register the agreement or order in a Family Division by filing—

- (a) the original of the agreement or order; and
- (b) 2 copies of the agreement or order.

- (2) Each copy of the agreement or order must be certified as a true copy by—
- (a) a lawyer; or
 - (b) the parties to the agreement or order.

(3) If the court registers an agreement or order a registrar of the filing registry must, as soon as practicable after the date of registration, give each party to the agreement or order a sealed copy of the agreement or order endorsed with a certificate, signed by a registrar, that specifies—

- (a) the court in which the agreement or order was registered; and
- (b) the date on which the agreement or order was registered.

ORDER 6—MARITAL STATUS PROCEEDINGS

Application for order of dissolution of marriage (divorce)—Form 1

6.01.—(1) An application for an order of dissolution of marriage must be in accordance with Form 1.

Application for order of nullity of marriage—Form 2

6.02. An application for an order of nullity of marriage must be in accordance with Form 2.

Application for declaration under section 201 of Act—Form 3

6.03. An application for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage must be in accordance with Form 3.

Filing of marriage certificate, etc., with application

- 6.04.** An applicant must file with an application to which this Order applies—
- (a) if the application is for an order of dissolution or nullity of marriage—the marriage certificate relating to the marriage or purported marriage; or
 - (b) if the application is for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage—the relevant marriage certificate or order of dissolution or annulment, as the case may be.

Fixing of hearing date

6.05.—(1) After the filing of an application under this Order, the registrar must fix a date for the hearing of the application.

- (2) The date fixed for the hearing of the application must be—
- (a) in the case of a joint application—at least 21 days after the day on which the application is filed; or
 - (b) in the case of an application other than a joint application--
 - (i) if the respondent is in the Fiji Islands — at least 42 days; or
 - (ii) if the respondent is outside the Fiji Islands – at least 56 days, after the day on which the application is filed.

Service of application on respondent

6.06.—(1) Unless an application is a joint application, a copy of the application, together with the documents specified in subrule (2), must be served, in accordance with Order 4, on the respondent.

(2) The documents mentioned in subrule (1) are—

- (a) a copy, suitable for use by the respondent, of Form 21; and
- (b) in the case of an application for dissolution of marriage—a copy, in English, Fijian or Hindustani, as appropriate, of the document, or documents, made available by the court to the applicant under section 12 of the Act in relation to the proceedings.

Response—Form 4

6.07.—(1) A respondent to, or an intervener in, proceedings to which this Order applies who wishes to oppose an application must file a response to the application in accordance with Form 4.

(2) A respondent to an application must file a response—

- (a) if the respondent is served in the Fiji Islands—within 28 days; or
- (b) if the respondent is served outside the Fiji Islands—within 42 days,

after the day on which the application is served on the respondent.

Application for rescission of conditional order—Form 12

6.08.—(1) An application under section 38 of the Act must be in accordance with Form 12.

(2) An applicant under section 38 of the Act must file and serve with the application an affidavit setting out—

- (a) the reasons why the conditional order should be rescinded; and
- (b) the evidence supporting those reasons.

Death of party before conditional order of dissolution of marriage becomes final

6.09.—(1) Where, after a conditional order of dissolution of marriage has been made but before that order has become final, it comes to the notice of the surviving party (if any) that the other party to the marriage has died, the surviving party must notify the court accordingly, giving particulars of the date and place of the death.

(2) Where a registrar is satisfied that a party to the marriage has died in the circumstances specified in subrule (1), the registrar shall endorse the court papers to that effect.

ORDER 7—SUMMARY PROCEEDINGS

*Division 7.1—Proceedings for maintenance or contribution**Application for maintenance or contribution only—Form 5*

7.01. An application to which this Division applies must be in accordance with Form 5.

Filing of marriage certificate or other document with application

7.02. Subject to rule 3.08, an applicant must file with an application—

- (a) if the relevant marriage has not been annulled or dissolved—a marriage certificate;
- (b) if the relevant marriage has been annulled—a marriage certificate, order of nullity, or other certificate or record of the annulment;
- (c) if the relevant marriage has been dissolved—a marriage certificate, certificate of final order of dissolution of marriage, or other certificate or record of the dissolution; or
- (d) if the application relates to an ex-nuptial child—the child’s birth certificate.

Hearing date

7.03.—(1) On the filing of an application under this Division, a registrar must—

- (a) fix a date for the hearing of the application; and
- (b) endorse the date on the application.

(2) The date fixed for the hearing of the application must be as near as practicable to, but not earlier than, 42 days after the date on which the application is filed.

Certain documents not required

7.04. Unless the court otherwise orders, an applicant who makes an application, or a respondent to that application, is not required to file—

- (a) a financial statement in accordance with Division 8.7; or
- (b) an affidavit.

Response—Form 6

7.05. If a respondent to an application intends to ask the court to make an order other than the order sought by the applicant, the respondent must—

- (a) file a response in accordance with Form 6; and
- (b) serve that response on the applicant as soon as practicable after it is filed, but in any event no later than 14 days before the date fixed for hearing.

Documents to be provided by parties

7.06. Each party to proceedings under this Division must, no later than 7 days before the date fixed for hearing, make available to the other party for inspection and copying, and bring to the court on the date fixed for hearing, such of the following documents as exist:

- (a) a copy of the party's taxation return for the most recent financial year;
- (b) the party's taxation assessment for the most recent financial year;
- (c) the party's bank records for the 12 months immediately preceding the date on which the application was filed;
- (d) the party's 3 most recent pay advice slips;
- (e) any document in the party's possession, custody or control that may assist the court in determining the income, needs and financial resources of the parties and any children to whom the proceedings relate.

Hearing

7.07. So far as practicable, the court must hear and determine an application on the date fixed for the hearing of the application.

Division 7.2—Contempts and offences

Contempt otherwise than in the face of the court

7.08.—(1) Where a person alleges that another person has committed a contempt of the court, other than a contempt in the face of the court, the Registrar may file an application in a registry of that court for the other person to be dealt with for that contempt.

(2) An application under subrule (1) shall be in accordance with Form 7.

(3) Where an application is filed under subrule (1), a copy of the application shall, unless the court otherwise orders, be served on the respondent.

(4) On the filing of an application under this Division, a registrar must—

- (a) fix a date for the hearing of the application; and
- (b) endorse the date on the application.

(5) The date fixed for the hearing of the application must be as near as practicable to, but not earlier than, 21 days after the date on which the application is filed.

(6) So far as practicable, the court must hear and determine an application on the date fixed for the hearing of the application.

Where respondent does not appear warrant may issue

7.09. Where an application has been made under rule 7.08 (1) and the person against whom the application is made does not appear before the court on the return day of the application, the court may issue a warrant for that person to be arrested and brought before the court.

Procedures on hearing

7.10. On the hearing of an application under rule 7.08 (1), and in proceedings for contempt in the face of the court, the court shall—

- (a) cause the person against whom the contempt is alleged to be orally informed of the contempt with which that person is charged and call upon that person to plead thereto;
- (b) hear such evidence as the court requires;
- (c) require that person to make any defence that the person may wish to make to the charge;
- (d) after hearing that person and any evidence that that person adduces, determine the matter of the charge and whether that person has purged his contempt; and
- (e) make such order as is considered just in all the circumstances.

*Division 7.3—Enforcement**Enforcement of obligations*

7.11.—(1) The Chief Justice may appoint persons (either personally or by reference to offices held by them) as family law enforcement officers, with authority to take proceedings and to enforce orders made under the Act or under a repealed Act.

(2) Subject to subrule (1), the standard rules apply to the enforcement of orders under the Act and the repealed Acts.

ORDER 8—GENERAL PROCEEDINGS

*Division 8.1—Applications and hearing dates**Form of application—Form 9 or 12*

8.01.—(1) Unless these Rules provide otherwise, an application for a final order must be in accordance with Form 9.

(2) An application for an interim or procedural order must be in accordance with Form 12, accompanied by such affidavit evidence as is necessary to support the application.

Application for interim or procedural order to be accompanied by application for final order

8.02. A person may not apply for an interim or procedural order in a cause of action unless that person has sought, or simultaneously seeks, by application, response or reply, a final order in that cause of action.

Contents of application

8.03. An application must—

- (a) comply, as nearly as practicable, with the prescribed Form; and

- (b) specify, briefly, but precisely, the orders that the court is asked to make.

Hearing date—final orders

8.04. On the filing of a Form 9 application, the registrar must—

- (a) fix a date for a case assessment conference or procedural hearing that is as near as practicable to 28 days after the filing of the application; or
 (b) if an earlier date is fixed for the hearing of a Form 12 application in the same matter, fix a date for a procedural hearing on the same day,

and endorse the application accordingly.

Hearing date—interim or procedural orders

8.05.—(1) If an application in accordance with Form 12 is filed in a court, the registrar must—

- (a) fix a date for the hearing of the application; or
 (b) if the Form 12 is filed at the same time as a Form 9, fix a date for a case assessment conference or a hearing; and
 (c) endorse the date on the application.

(2) Subject to subrule (3), the date fixed for the hearing of an application must be—

- (a) a date that is as near as practicable to, but not earlier than, 28 days after the application is filed; or
 (b) if—
 (i) there are other proceedings (except marital status proceedings) on foot between the same parties;
 (ii) a date has been fixed for the hearing of those other proceedings; and
 (iii) that date is considered by the registrar to be reasonable in the circumstances—

the date of that hearing or conference.

(3) If an application to which this rule applies is an application for an order for urgent relief, the applicant may apply in writing to a registrar requesting the registrar to fix an early date for the hearing of the application.

(4) An application under subrule (3) shall be in the form of a letter to the registrar setting out concisely—

- (a) the circumstances giving rise to the need for an earlier hearing date, with reference to the affidavit evidence;
 (b) whether the applicant proposes serving the application on the other party or parties; and
 (c) the applicant's estimate of the hearing time required.

(5) If an application is made under subrule (3), the registrar may fix as the date for the hearing of an application the date that the registrar considers appropriate in the particular circumstances.

Division 8.2—Documents to be filed with application

Filing of marriage certificate or other document with application

- 8.06.** Subject to rule 3.08, an applicant must file with an application—
- (a) if the relevant marriage has not been annulled or dissolved—a marriage certificate;
 - (b) if the relevant marriage has been annulled—a marriage certificate, order of nullity, or other certificate or record of the annulment;
 - (c) if the relevant marriage has been dissolved—a marriage certificate, certificate of final order of dissolution of marriage, or other certificate or record of the dissolution; or
 - (d) if the application relates to an ex-nuptial child—the child’s birth certificate.

Application seeking financial relief

8.07. If an application to which this Order applies seeks relief (other than interim or procedural relief) in relation to financial matters, the applicant must file and serve with the application a financial statement in accordance with Division 8.7.

Division 8.3—Response and reply

Response to application—Form 10

8.08.—(1) A respondent to an application in accordance with Form 9 may file and serve a response to the application in accordance with Form 10.

- (2) In a response under subrule (1)—
- (a) the respondent must—
 - (i) indicate the facts set out in the application with which the respondent disagrees; and
 - (ii) set out briefly and precisely the orders that the respondent will ask the court to make; and
 - (b) the respondent may—
 - (i) if the respondent consents to an order sought by the applicant, indicate the consent;
 - (ii) ask the court to make another order;
 - (iii) ask the court to dismiss the application; or
 - (iv) seek orders in a cause of action other than the cause of action set out in the application.

Applicant's reply in certain circumstances—Form 11

8.09. If a respondent files and serves a response that seeks orders in a cause of action (except the cause set out in the relevant application), the applicant may file and serve a reply, in accordance with Form 11, to the response.

Time for service of response and reply

8.10. If practicable, a response or reply to which rule 8.08 or 8.09 applies must be filed and served at least 7 days before the date fixed for the next hearing or conference in the relevant proceedings.

Response to Form 12 application—Form 13

8.11.—(1) If a party (except an applicant) seeks an order (including an order for dismissal of the proceedings) in proceedings commenced by an application in accordance with Form 12 the party must file and serve a response in accordance with Form 13.

(2) A party who files and serves a response in accordance with Form 13 must file and serve with the response an affidavit in accordance with rule 5.12 (2).

Time to file and serve response to Form 12 application

8.12. If practicable, a response and any supporting affidavit to which rule 8.15 applies must be filed and served at least 7 days before the date fixed for the next hearing or conference in relation to the application.

*Division 8.4—Procedural hearings and conferences**Scope of procedural hearing or conference*

8.13.—(1) At a procedural hearing or conference, the court, or a Registrar, must make appropriate orders or directions in relation to the conduct of the proceedings.

- (2) At a procedural hearing or conference, the court, or a Registrar, may—
- (a) investigate the possibility of settlement of any issue in the proceedings; and
 - (b) make orders or directions in relation to any aspect of the following matters:
 - (i) consent orders;
 - (ii) counselling;
 - (iii) defining the issues and orders sought;
 - (iv) appointment of child representatives;
 - (v) giving notice to persons who are not parties to the proceedings;
 - (vi) amendment of documents;
 - (v) conciliation or pre-hearing conferences;
 - (vii) production of documents at a conciliation conference;
 - (viii) production, filing and exchange of market appraisals or valuations of property;
 - (ix) withdrawal of proceedings.

Division 8.5—Amendment

Interpretation

8.14. In this Division, “document” means an application, response, or reply.

Amendment by a party

8.15. A party who has filed and served a document may amend the document without the leave of the court, or the consent of any other party to the proceedings, at any time before a date is fixed for the final hearing of the proceedings.

Amendment by the court

8.16. A court may grant leave to amend a document upon such terms and conditions as it considers fit.

Filing amendment by party

8.17. If a party amends a document, the party must file a copy of the amended document that clearly indicates each of the amendments.

Division 8.6—Children

Subdivision 8.6.1—General

Definition

8.18. In this Order, “child” has the same meaning as in section 42 (1) of the Act.

Application for separate representation

8.19. If the court makes an order for separate representation, the court may request that the representation be arranged by the Legal Aid Commission.

Division 8.6.2—Notification of child abuse or family violence order

Notice under section 113—Form 15

8.20.—(1) Where a party to proceedings is required to file a notice under subsection 113 (2) of the Act—

- (a) the notice shall be in accordance with Form 15; and
- (b) in addition to the original notice, sufficient copies shall be filed in the filing registry for the provision of copies to—
 - (i) the party filing the notice;
 - (ii) each other party to the proceedings;
 - (iii) the Department of Social Welfare; and
 - (iv) each person who is alleged in the notice to have abused a child or to be a person from whom a child is at risk of abuse.

(2) As soon as practicable after the filing of a notice under subrule (1)—

- (a) the registrar shall forward a sealed copy of the notice to the Department of Social Welfare; and

- (b) the party who filed the notice must serve a copy of the notice on each other party to the proceedings, including each person who is alleged in the notice to have abused a child or to be a person from whom a child is at risk of abuse.

Informing court of family violence order

8.21.—(1) The obligation under section 123 (1) of party to proceedings is discharged if the party informs the court in the manner specified in subrule (3).

- (2) For the purposes of section 123 (2) of the Act, a person who—
 - (a) is not a party to proceedings; and
 - (b) is aware that a family violence order applies to a child or to a member of the child’s family; and

may inform the court of that order in the manner specified in subrule (3).

(3) The information shall be given, in writing, to the registrar at the filing registry, and—

- (a) if the person giving the information knows—
 - (i) the date on which the family violence order was made;
 - (ii) the place at which the order was made; or
 - (iii) the court that made the order,
 the person must include those details, in writing, in the information given to the registrar; and
- (b) if possible, the person must give the registrar a copy of the family violence order.

- (4) On receiving information about a family violence order, the registrar—
 - (a) must provide a copy of the information to each party to the proceedings who has an address for service;
 - (b) must place the information on the court file; and
 - (c) may direct a party to the proceedings (including a child’s representative) to—
 - (i) obtain and file a copy of the relevant family violence order; and
 - (ii) serve the copy on each other party to the proceedings who has an address for service.

(5) The registrar must present the information and any copy of the family violence order to the court at the next hearing in the proceedings that concerns the care, welfare and development of the child affected by the order.

Subdivision 8.6.3—Recovery orders

Interpretation

8.22. In this Division, “recovery order” has the meaning given by section 105 of the Act.

Application for recovery order—Form 12

8.23. An application for a recovery order must be in accordance with Form 12.

Form of recovery order—Form 18

8.24. A recovery order must be in accordance with Form 18.

Service of recovery order on person for whom child is recovered

8.25.—(1) This rule applies to a recovery order that authorises or directs a person to take action of the kind described in section 105 (b), (c) or (d) of the Act.

(2) If the person to whom the recovery order is addressed finds and recovers the child who is the subject of the recovery order, the person must serve a sealed copy of the recovery order on the person from whom the child is recovered at the time the child is recovered.

Duration of recovery order

8.26. For the purposes of section 110 (1) of the Act, a recovery order remains in force for—

- (a) 12 months after it is made; or
- (b) a shorter period specified in the order.

*Division 8.7—Financial circumstances**Proceedings to which this Division applies*

8.27.—(1) Subject to subrule (2), this Division applies to proceedings with respect to financial matters, including proceedings under section 161, 163, 170 or 172 of the Act.

(2) Unless the court otherwise orders, this Division does not apply to—

- (a) applications for interim or procedural orders; or
- (b) applications under Division 7.1; or
- (c) applications for consent orders.

Financial statement—Form 19

8.28.—(1) A person who—

- (a) files an application instituting proceedings to which this Division applies; or
- (b) is a respondent to proceedings to which this Division applies and files a response in those proceedings,

must file with the application or response a financial statement in accordance with Form 19.

(2) If a party is aware that the completion of a Form 19 will not fully discharge the duty to make full and frank disclosure, the party must also file an affidavit giving further particulars.

Full and frank disclosure

8.29. A person who is required by these Rules to file a financial statement in

accordance with rule 8.28 must make in the financial statement a full and frank disclosure of the person's financial circumstance.

Production and provision of documents

8.30.—(1) Unless the court otherwise orders, a person who is required to file a financial statement must also provide to each other party who has an address for service in the proceedings such of the following documents as exist):

- (a) a copy of each of the person's 3 most recent income tax returns;
- (b) a copy of each of the person's 3 most recent income tax assessments;
- (c) if the person is a member of the Fiji National Provident Fund, a copy of the person's most recent member's account statement;
- (d) if the person is a member of a superannuation fund, a copy of the person's most recent member's account statement and of the most recent financial statement of the superannuation fund;
- (e) a copy of each of the 3 most recent financial statements and income tax returns of any relevant partnership, trust or company (except a public company).

(2) The documents must be provided not later than 21 days after the filing of the application.

Amendment of statement if circumstances change

8.31.—(1) If a person files a financial statement in accordance with rule 17.02 and there is a significant change in relation to the person's financial circumstances, the person must amend the statement, as soon as practicable—

- (a) if the amendment can be clearly set out in 300 words or less—by filing and serving an affidavit setting out the amendments; or
- (b) in any other case—by filing and serving an amended financial statement.

(2) If a person files an amended financial statement under subrule (1) (b), the person must—

- (a) re-swear or reaffirm the statement; and
- (b) clearly identify the amendments.

Division 8.8—Urgent applications

Evidence in support

8.32. Unless the court otherwise orders, on an application made *ex parte*, the applicant shall establish, by affidavit or with the leave of the court by oral evidence—

- (a) whether there have been any previous proceedings between the parties and, if so, the nature of those proceedings;
- (b) the particulars of any orders currently in force between the parties, specifying the courts in which those orders were made;
- (c) the steps that have been taken to inform the respondent or the respondent's legal representative of the applicant's intention to make the application or,

where no such steps have been taken, the reasons why no such steps have been taken;

- (d) the nature and immediacy of the damage or harm which may result if the order sought in the application is not made;
- (e) the grounds upon which the applicant claims that the making of the order sought in the application is a matter of urgency and the reasons why, in lieu of the making of an order *ex parte*, an abridgement of the time for service of the application and the fixing of an early date for hearing would not be appropriate; and
- (f) the other facts, matters and circumstances relied upon by the applicant in support of the application.

Directions for further hearing where no order made

8.33. Where an application is made *ex parte* and the court does not make an order of the kind sought in the application, the court may give such directions with respect to the filing of a written application, the service of the application and the hearing of the application as it thinks fit.

Orders

8.34.—(1) In an urgent case on an application made *ex parte*, the court may make an order until a specified time or until further order.

(2) Where the court makes an order of a kind referred to in subrule (1), the court may make such orders as it thinks fit with respect to—

- (a) the service of the order and of other documents relating to the order; and
- (b) the date for further hearing of the application.

ORDER 9—CONFERENCES

Division 9.1—General

Attendance of parties and lawyers

9.01. Unless the court otherwise orders—

- (a) a party must attend a conference in person; and
- (b) if the party is represented by a lawyer, the lawyer must also attend the conference.

Bona fide endeavour

9.02. Parties who attend a conference under this Order must make a *bona fide* endeavour to reach agreement on relevant matters in issue between them.

Adjournment

9.03. A conference under this Order may be adjourned from time to time and from place to place.

Documents to be produced

9.04.—(1) Each party who attends a conference in relation to proceedings with respect to financial matters must produce all relevant and significant documents in the party's possession, custody or control, or which, with reasonable diligence, the party can obtain, about—

- (a) the financial matters referred to in a financial statement filed by the party in accordance with Division 8.7 in so far as they are relevant and in dispute;
- (b) the value of any item of property in which any party attending the conference has an interest in so far as the value of that property is relevant and in dispute; or
- (c) any other financial matter in dispute between the parties.

(2) Each party who attends a conference in relation to proceedings with respect to children must produce all relevant and significant documents in the party's possession, custody or control, or which, with reasonable diligence, the party can obtain, that are relevant to any matter in dispute between the parties concerning children.

(3) The documents must be produced—

- (a) at the conference; or
- (b) if ordered or directed by the court, at an earlier time.

Conduct of conferences

9.05. At a conference a registrar shall—

- (a) attempt to resolve the proceedings or any part of them by agreement; and
- (b) if all the issues are not resolved, make any appropriate directions to facilitate the progress of the matter.

Listing for procedural orders

9.06. A registrar may list a matter before the court for procedural orders at any time when the registrar considers it appropriate to do so.

*Division 9.2—Case assessment conferences**Case assessment conference*

9.07.—(1) A case assessment conference must be held in the presence of a Registrar, court counsellor or both.

(2) The purpose of a case assessment conference is—

- (a) to enable the person conducting the conference to assess and make any recommendations about the appropriate future conduct of the case; and
- (b) to enable the parties to attempt to resolve the case, or any part of the case, by agreement.

(3) If the case is not settled by the end of the conference, the parties must immediately attend a procedural hearing or conference.

*Division 9.3—Conciliation conferences**Matters to be considered*

9.08. At a conciliation conference, all issues relating to the following matters must be considered, if appropriate:

- (a) the possibility of settlement of any issue or issues in the proceedings;
- (b) the defining of issues and orders sought;
- (c) amendment of documents;
- (d) issues (if any) as to valuation;
- (e) the filing and service of affidavits;
- (f) discovery and inspection;
- (g) interrogatories;
- (h) notices to admit facts or documents;
- (i) issue of subpoenas or witness summonses;
- (j) if there is more than one application in the proceedings that has not yet been determined—the possibility of applications being heard at the same time;
- (k) which party is to have carriage of the proceedings;
- (l) any directions necessary to ensure that the proceedings are ready for a pre-hearing conference;
- (m) the date for a pre-hearing conference.

*Division 9.4—Pre-hearing conferences**Matters to be considered*

9.09. At a pre-hearing conference, all issues relating to the following matters must be considered, if appropriate:

- (a) the date of the hearing;
- (b) the likely length of the hearing;
- (c) the number, and names, of witnesses (both expert and non-expert);
- (d) the filing of documents before the hearing, or at the beginning of the hearing;
- (e) any other necessary directions to ensure that the proceedings are ready for hearing.

Date for hearing

9.10. A registrar may fix a date for hearing if the registrar is satisfied that—

- (a) the proceedings are ready for hearing; or
- (b) any party is failing to comply with directions or orders made to ensure readiness for hearing.

ORDER 10—CONSENT ORDERS, AGREEMENTS AND PARENTING PLANS

Division 10.1—Consent orders

Subdivision 10.1.1—Consent orders where no proceedings are pending

Applications for consent orders

10.01. In proceedings in which orders may be made by consent, an application for an order of that kind may be made in accordance with this Division.

Form of application—Form 8

10.02. — (1) An application for consent orders shall be in accordance with Form 8.

(2) Subject to rule 3.08, an applicant must file with an application—

- (a) if the relevant marriage has not been annulled or dissolved—a marriage certificate;
- (b) if the relevant marriage has been annulled—a marriage certificate, order of nullity, or other certificate or record of the annulment;
- (c) if the relevant marriage has been dissolved—a marriage certificate, certificate of final order of dissolution of marriage, or other certificate or record of the dissolution; or
- (d) if the application relates to an ex-nuptial child—the child’s birth certificate.

Original and copies of orders sought to be filed with application

10.03.—(1) An applicant must file with an application the original, and 2 copies, of the orders sought endorsed with the consent of each party.

(2) The copies must be certified as true copies by—

- (a) the applicant’s legal representative; or
- (b) each party to the application.

Filing period—consent lapses after 60 days

10.04.—(1) A respondent’s consent to the proposed consent orders lapses if the applicant does not file the application within 60 days after the day on which the respondent swore the affidavit in Part K of the application.

(2) If there is more than one respondent, the consent of the respondents lapses if the application is not filed within 60 days after the last day on which a respondent swore the affidavit in Part K of the application.

Making of consent orders

10.05.—(1) Despite any other provision of these Rules, if an application for consent orders is filed within the period specified in rule 10.04, a registrar shall bring the matter before a judge or magistrate, as the case requires, in Chambers.

(2) The judge or magistrate may require a party to file additional information.

Subdivision 10.1.2—Consent orders in pending proceedings

Application in pending proceedings

10.06. An application for consent orders in pending proceedings may be made—

- (a) orally during a hearing or trial; or
- (b) in accordance with rule 10.07.

Written consent by party to proceedings

10.07.—(1) Any party to proceedings may file or tender in court a written minute of orders the terms of which are agreed by all parties.

(2) The minute must be signed by each party or his or her legal representative.

(3) If a consent is filed by a party to the proceedings, the registrar shall bring the matter before the court, which—

- (a) if it thinks fit; and
- (b) without any other application being made,

may pronounce the orders.

(4) The court may direct a party to provide typed and certified copies of the minute.

Subdivision 10.1.3—Effect of consent orders

Effect of consent orders

10.08. A consent order made under this Division is taken to be of the same force and validity as if it had been made after a hearing by the court.

Division 10.2—Applications under section 172

How to apply

10.09. An application for approval of a maintenance agreement under section 172 of the Act must be made—

- (a) orally during a hearing or trial in the proceedings; or
- (b) by filing an application in accordance with Form 9.

Documents to be filed by applicant

10.10.—(1) An applicant for approval of a maintenance agreement must—

- (a) in the case of an oral application—provide to the court; or
- (b) in the case of an application in writing—file with the application,

the documents specified in subrule (2), unless the applicant has already done so.

(2) The documents are—

- (a) a financial statement in accordance with Division 8.7; and

- (b) if an affidavit or other document is necessary to support the application and is relevant to the question whether the provisions of the agreement with respect to financial matters are proper, the affidavit or document.

Documents to be filed by respondent

10.11.—(1) Before the date fixed for the hearing of an application, a respondent must file—

- (a) a financial statement in accordance with Division 8.7; and
- (b) if an affidavit or other document is necessary to support the respondent's position in relation to the application and is relevant to the question of whether the provisions of the agreement with respect to financial matters are proper, the affidavit or document.
- (2) Subject to rule 3.08, an applicant must file with an application—
- (a) if the relevant marriage has not been annulled or dissolved—a marriage certificate;
- (b) if the relevant marriage has been annulled—a marriage certificate, order of nullity, or other certificate or record of the annulment;
- (c) if the relevant marriage has been dissolved—a marriage certificate, certificate of final order of dissolution of marriage, or other certificate or record of the dissolution.

Division 10.3—Registration of maintenance agreements

Registration of agreements under section 171

10.12. An agreement to which section 171 of the Act applies may be registered in the manner provided in Division 5.3.

Division 10.4—Parenting plans

Subdivision 10.4.1—General

Application of Division

10.13. This Division applies to—

- (a) an application for registration, under section 59 of the Act, of—
- (i) a parenting plan; or
- (ii) an agreement revoking a registered parenting plan; and
- (b) an application to—
- (i) set aside a registered parenting plan; or
- (ii) discharge, vary, suspend or revive provisions of a registered parenting plan.

Formal requirements with respect to parenting plan

10.14. A parenting plan in respect of which an application is made—

- (a) must be—

- (i) mechanically or electronically printed; or
- (ii) legibly hand-printed on ruled paper;
- (b) must be contained in a single document; and
- (c) must not refer to material contained in any other parenting plan.

Subdivision 10.4.2—Applications for registration of parenting plans and agreements
revoking registered parenting plans

Applicants

10.15. The parties to a parenting plan, or any of those parties, may apply to register—

- (a) the plan; or
- (b) an agreement revoking a registered parenting plan.

Form of application—Form 16

10.16.—(1) An application for registration of—

- (a) a parenting plan; or
- (b) an agreement revoking a registered parenting plan;

must be in accordance with Form 16.

- (2) An application for registration must be accompanied by—
 - (a) the original parenting plan, or agreement revoking a registered parenting plan, as the case may be; and
 - (b) as many copies of the plan or agreement as there are parties to the plan or agreement.
- (3) Subject to rule 3.08, an applicant must file with an application—
 - (a) if the relevant marriage has not been annulled or dissolved—a marriage certificate;
 - (b) if the relevant marriage has been annulled—a marriage certificate, order of nullity, or other certificate or record of the annulment;
 - (c) if the relevant marriage has been dissolved—a marriage certificate, certificate of final order of dissolution of marriage, or other certificate or record of the dissolution; or
 - (d) if the application relates to an ex-nuptial child—the child’s birth certificate.

(4) Each copy of the parenting plan, or agreement revoking a registered parenting plan, as the case may be, must be certified as a true copy of the plan or agreement by—

- (a) a lawyer; or
- (b) the parties to the plan or agreement.

Respondent to application

10.17. If a person who is a party to a parenting plan in respect of which an application for registration is made is not an applicant, that person must be made a respondent to the application.

Statements as to advice, etc., in relation to plan

- 10.18.**—(1) A statement referred to in section 59 (2) (b) (i) of the Act must—
- (a) if it is in relation to an applicant — be in accordance with Part G of Form 16; and
 - (b) if it is in relation to a respondent — be in accordance with Part C of Form 17.

(2) A statement referred to in section 59 (2) (b) (ii) of the Act must be in accordance with Part H of Form 16.

Information to accompany application

10.19.—(1) For the purposes of section 59 (6) of the Act, the following information is prescribed:

- (a) details of any order made under the Act relating to the welfare of the child who is the subject of the application;
- (b) details of any family violence order relating to the care, welfare and development of the child;
- (c) details of any maintenance agreement relating to the child that has been registered under section 171 of the Act;
- (d) details of any order relating to the care, welfare and development of the child;
- (e) if the person with whom the child is to reside, or have contact, has been convicted of an offence under the Act, an offence under a law relating to child welfare, or a criminal offence relevant to the care, welfare and development of the child, details of that offence;
- (f) if there are proceedings pending in relation to any of the above matters, details of those proceedings;
- (g) the names, ages and places of residence of each child;
- (h) any other information required by Form 16.

(2) The information must be verified by affidavit in accordance with Part F of Form 16.

Consent to application—Form 17

10.20.—(1) A respondent to an application for registration may consent to the registration of the parenting plan, or the agreement revoking a registered parenting plan, as the case may be, in respect of which the application is made.

- (2) The consent—
- (a) must be in accordance with Form 17; and
 - (b) may be attached to the application for registration.

(3) A consent in accordance with Form 17 ceases to have effect at the end of 30 days after the day on which it is signed.

Service of application

- 10.21.** A sealed copy of an application for registration must be served—
- (a) on each respondent to the application who has not consented to the registration of the parenting plan, or the agreement revoking a parenting plan, in respect of which the application is made; and
 - (b) if a respondent to the application has consented to the registration of the parenting plan, or the agreement revoking a parenting plan, in respect of which the application is made, and the consent has ceased to have effect, on that respondent.

Application may be dealt with in chambers

10.22. An application for registration may be dealt with by a judge or magistrate in chambers, in the absence of the parties or their lawyers.

Court may require service or additional information

- 10.23.** At any time before making a decision in relation to an application for registration, the judge or magistrate dealing with the application—
- (a) may direct that a sealed copy of the application be served on a specified person; or
 - (b) may require a party to file additional information in relation to the application.

Withdrawal of application or consent

10.24.—(1) At any time before a decision is made in relation to an application for registration—

- (a) an applicant may withdraw his or her application for registration; or
- (b) a respondent may withdraw his or her consent (if any) to the application.

(2) An applicant, or respondent, who wishes to withdraw his or her application for registration, or consent, as the case may be, must do so by filing a notice, in writing, to that effect.

(3) In the case of a joint application for registration, unless a notice of withdrawal is filed by all of the applicants, the application remains in effect as an application by the remaining applicants.

Notice of decision in relation to registration

10.25.—(1) As soon as practicable after a decision is made in chambers to register—

- (a) a parenting plan; or
- (b) an agreement revoking a parenting plan,

the registrar must give to each party to the plan or agreement a sealed copy of the plan or agreement endorsed with a certificate, signed by the registrar, that specifies—

- (c) the court in which the plan or agreement was registered; and
- (d) the date on which the plan or agreement was registered.

- (2) As soon as practicable after a decision is made in chambers not to register—
 - (a) a parenting plan; or
 - (b) an agreement revoking a parenting plan,

the registrar must give each party to the plan or agreement notice, in writing, of the decision.

Subdivision 10.4.3—Applications in relation to registered parenting plans

Form of application—Form 12

10.26. An application must be—

- (a) in accordance with Form 12; and
- (b) accompanied by an affidavit that sets out, briefly and concisely—
 - (i) the facts sought to be relied on in support of the application;
 - (ii) the facts on the basis of which the court will be asked to find that it is in the best interests of the child in respect of whom the plan was made that the order sought be made; and
 - (iii) particulars of any relevant consultations with a family and child counsellor attended by any party to the plan.

Applicants

10.27. An application may be made by—

- (a) a party to the relevant parenting plan;
- (b) any other person who has parental responsibility in relation to the child in respect of whom the plan was made; or
- (c) a prescribed child welfare authority.

Respondent to application

10.28. If person who is a party to a parenting plan in respect of which an application is made is not an applicant, that person must be made a respondent to the application.

Service of application

10.29. A sealed copy of an application must be served—

- (a) on each respondent to the application; and
- (b) on any other person directed by the court.

ORDER 11—APPEALS

Institution of appeal

11.01. An appeal under the Act shall be instituted by filing a notice of appeal in accordance with Form 26 in the court appealed from within—

- (a) one month after the day on which the order appealed from was made; or
- (b) such further time as that court orders.

MADE at Suva this day of 2005.

Chief Justice