

LEGAL NOTICE No. 121

REPUBLIC OF TRINIDAD AND TOBAGO

THE SUPREME COURT OF JUDICATURE ACT, 1962

RULES OF COURT

MADE BY THE RULES COMMITTEE UNDER SECTIONS 77 AND 81 OF THE SUPREME COURT OF JUDICATURE ACT, 1962, SECTION 62 OF THE MENTAL HEALTH ACT, 1975, AND SECTION 15(3) OF THE MARRIED PERSONS ACT, 1976.

THE SUPREME COURT (AMENDMENT) RULES, 1980

1. These Rules may be cited as the Supreme Court (Amendment) Rules, 1980 and shall be read as one with the Rules of the Supreme Court, 1975. Citation

2. Order I is amended by inserting in their appropriate alphabetical order the following definitions in rule 4(1)— Order I
amended

“the appropriate Registry” means—

(a) in relation to an action initiated or proceeding in the Registry, the Registry;

(b) in relation to an action initiated or proceeding in a Sub-Registry, that Sub-Registry;

“mental disorder” has the meaning assigned to it in section 2(1) of the Mental Health Act, 1975;

“patient” has the meaning assigned to it in section 2(1) of the Mental Health Act, 1975;

“person under disability” means a person who is an infant or a patient.”.

3. Order 32 is amended by substituting the words “a person under disability” for the words “an infant or person of unsound mind not so found by inquisition” in rule 18(2)(b). Order 32
amended

4. Order 55 is amended by substituting the figures “14(1)” for the figures “6(1)” appearing in the heading and in rule 1(1). Order 55
amended

5. Immediately after Order 58 the following new Order is inserted:— New Order
58A added

“ORDER 58A

REFERENCES BY THE BARRISTERS' DISCIPLINARY COMMITTEE
TO THE HIGH COURT

Interpretation

1. In this Order:—

“the Committee” means the Disciplinary Committee established under rule 2 of the Rules;

“the Court” means the High Court sitting as a Full Court consisting of three puisne judges;

“the Rules” means the Barristers’ (Disciplinary Proceedings) Rules, 1965.

Reference of Case to High Court

2. (1) On consideration of the record forwarded to him under rule 17 of the Rules, the Attorney General may apply to the Court by notice of motion for an order under section 81(3) of the Act.

(2) Every notice of motion must state the grounds upon which the reference is based and shall be lodged in the Registry.

(3) The Attorney General shall supply six copies of the proceedings for the use of the Court.

(4) The Court may at any time call for the record of any proceedings before the Committee and thereupon it shall be the duty of the Secretary of the Committee to furnish the same together with the findings of the Committee thereon.

(5) The Registrar shall, if the Court so directs, summon the barrister in respect of whose conduct the inquiry was made to appear before the Court to show cause why an order against him should not be made under section 81(3) of the Act.

Service of Notice of Motion and Hearing of Reference

3. (1) The Barrister must be served personally with the notice of the motion or of the summons.

(2) Unless the Court otherwise directs the reference shall not be heard sooner than fourteen days after service of the notice of motion or of the summons.

Record of Proceedings before Committee

4. The evidence taken and all documents admitted at the enquiry before the Committee may be used at the hearing before the Court, and the parties shall be at liberty to produce such further evidence only as the Court may think fit.

Entry of Alteration in Roll of Barristers

5. The Registrar shall make such entry of alteration in the Roll of Barristers as shall be required by any order made by the Court.

Departure from Rules

6. The Court may direct a departure from the rules of this Order in any way where this is required in the interest of justice.”.

6. Order 59 is amended:—

Order 59
amended

- (i) in rule 13, by adding immediately after paragraph (2) the following paragraph:—

“ (3) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an examiner; but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.”;

- (ii) in rule 20(2), by substituting the words “the Court” for the words “any judge of that Court having power to hear and determine the appeal”.

7. Order 62 is amended:—

- (i) by substituting the words “mental disorder” for the words “being a person of unsound mind or a sub-normal person within the meaning of Order 77” wherever they occur in rule 29(4) and in rule 30(1)(a), (3)(b) and (6)(a);

Order 62
amended

- (ii) by inserting after rule 30 the following rule:—

“Proceedings for Protection of Property of Patients

30A (1) In proceedings commenced under Order 77A the Court may order costs to be paid by the patient or charged on or paid out of his estate or paid by any other party or any person attending the proceedings.

(2) An order that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within four years after his death.

(3) No receiver of a patient other than the Chief State Solicitor shall, unless authorised by the Court, be entitled at the expense of the patient’s estate to employ a solicitor or other professional person to do any work not usually requiring professional assistance.

(4) Any costs incurred by the Chief State Solicitor in relation to proceedings under Order 77A or in carrying out any directions given by the Court shall be paid by such party or person attending the proceedings or out of such fund as the Court may direct.

(5) Where in proceedings relating to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf otherwise than in relation to the

proceedings, the Court may refer the claim to a taxing officer so that the amount due to the claimant may be ascertained by him or under his direction.”;

(iii) by substituting for Appendix 2 the following:—

Ch. 3 No. 3

“(a) Where under section 52 of the Petty Civil Courts Ordinance the judge certifies that the action was a fit and proper one to be brought in the High Court, then, unless the judge orders otherwise, the fees and charges in Appendix I shall be allowed.

(b) Unless the Court orders otherwise, one half of the fees and charges in Appendix I shall be allowed in all cases of appeal from a Petty Civil Court.”.

Order 75
amended

8. Order 75 is amended by substituting the word “State” for the word “Crown” wherever it occurs except in the expression “Crown side” in rule 1(2); and in rule 19(2).

Order 76
revoked
and replaced

9. Order 76 is revoked and replaced by the following:—

“ORDER 76

PROCEEDINGS BY AND AGAINST AIDED PERSONS

Memorandum of Filing of Legal Aid Certificate

1. On the filing of a Legal Aid Certificate in accordance with section 29(2) of the Legal Aid and Advice Act, 1976, there shall be issued to the Director of Legal Aid or the solicitors assigned under section 28, as the case may be, a memorandum of such filing bearing the seal of the appropriate Registry, and in all subsequent proceedings the production of such memorandum shall be sufficient evidence that such certificate has been filed”.

Order 77
amended

10. Order 77 is amended:—

(i) by substituting for rules 1 to 5 the following:—

“Interpretation

1. In this Order:—

“the Act” means the Mental Health Act, 1975.

Person who must sue, etc., by next friend or guardian ad litem

2. (1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend, and may not defend, make a counter-claim or intervene in any proceedings or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian *ad litem*.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of the proceedings is required or authorised to be done by a party to the proceedings shall, or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.

A next friend or guardian *ad litem* of a person under disability must act by a solicitor.

Appointment of next friend or guardian ad litem

3. (1) Except as provided by paragraph (3) or (4), or by rule 4, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

(2) Where a person is authorised under Part VII of the Act to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian *ad litem*, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3) or (4) or rule 4 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian *ad litem*, as the case may be, of that party.

(5) Except where the next friend or guardian *ad litem* as the case may be, of a person under disability has been appointed by the Court:—

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability;
- (b) an appearance shall not be entered in a cause or matter for a person under disability; and

(c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion, which, or notice of which, has been served on him; unless and until the documents listed in paragraph (6) have been filed in the appropriate Registry.

(6) The documents referred to in paragraph (5) are the following:—

(a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;

(b) where the person proposing to be such friend or guardian *ad litem* of the person under disability, being a patient, is authorised under Part II of Act to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, an office copy, sealed with the official seal of the High Court, of the order or other authorisation made or given under the said Part VII by virtue of which he is so authorised; and

(c) except where the person proposing to be such friend or guardian of that person under disability, being a patient, is authorised as mentioned in sub-paragraph (b), a certificate made by the solicitor for the person under disability certifying:—

(i) that he knows or believes, as the case may be that the person to whom the certificate relates is an infant or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and

(ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and

(iii) except where the person named in the certificate as next friend or guardian *ad litem*, as the case may be, is the Chief State Solicitor, that the person so named has no

interest in the cause or matter in question adverse to that of the person under disability.”;

(ii) by renumbering rules 6 to 14 as rules 4 to 12 respectively;

(iii) in the renumbered rule 4:—

(a) by substituting for the heading the following:—
“Appointment of Guardian where Person under disability does not appear;

(b) by substituting for the words “an infant or person of unsound mind” wherever they occur the words “a person under disability”;

(iv) by substituting for the renumbered rule 5 the following:—

“Application to discharge or vary certain Orders

5. An application to the Court on behalf of a person under disability served with an order made *ex parte* under Order 15, rule 7, for the discharge or variation of the order must be made:—

(a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within fourteen days after his service of the order on that person;

(b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within fourteen days after the appointment of such a friend, or guardian to act for him.”.

(v) in the renumbered rule 9(1), by substituting the words “a person under disability” for the words “an infant or person of unsound mind”;

(vi) in the renumbered rules 9(1) and 11(1), by substituting the words “rule 10” for the words “rule 12”;

(vii) in the renumbered rule 12(2) by substituting for paragraphs (a), (b) and (c) the following:—

(a) in the case of an infant who is not also a patient, on his father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a patient, on the person (if any) who is authorised under Part VII of the Act to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is.

and must be served in the manner required by these Rules with respect to the document in question.”.

New Order
77A added

11. Immediately after Order 77 the following Order is inserted:—

“ORDER 77A

PROTECTION OF PROPERTY OF PATIENTS

Interpretation

1. (1) In this Order:—

“the Act” means the Mental Health Act, 1975;

“Form” means a Form in Appendix D;

“medical certificate” means a certificate by a suitably qualified Government registered medical practitioner that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs;

“order” includes a certificate, direction or authority under the seal of the Court;

“receiver” means a receiver appointed under section 39(1) of the Act;

“stock” has the meaning assigned to it in section 40(2) of the Act;

“summons” except in rule 2 includes originating summons.

(2) Where in this Order any jurisdiction of the Court is expressed to be exercisable in a summary manner, it may be exercised:—

(a) without the issue of a summons;

(b) by the Court of its own motion or at the instance or request of any person interested; and

(c) whether or not any proceedings have been commenced with respect to the patient.

Title of Proceedings and Form of Application

2. (1) All proceedings shall be entitled in accordance with such of the headings set out in Form 1 as may be appropriate.

(2) Except where this Order otherwise provides, proceedings relating to a patient shall be commenced by originating summons returnable in not less than seven clear days; and every subsequent application relating to the patient shall be made in those proceedings by summons returnable in not less than two clear days unless the Court is of opinion that the application can properly be dealt with in a summary manner.

Summary Order in Small Cases

3. Where it appears to the Court that the property of a patient does not exceed \$ 10,000.00 in value, the Court may, if no originating summons has been issued, make an order in a summary manner directing:—

- (a) the Public Trustee to deal with the said property under section 42 of the Act; or
- (b) a fit and proper person to deal with the said property or any part thereof in any manner authorised by the Act and specified in the Order, where the Public Trustee has been discharged of the responsibility under section 44 of the Act.

Respondents and persons entitled to attend

4. (1) The Court may direct that all or any of the relatives of the patient or any person who appears to the Court to be interested in the relief sought by a summons shall be made a respondent to or be given notice of the summons.

(2) The Court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

Power to direct Application by Chief State Solicitor

5. Where in the opinion of the Court an application ought to be made for the appointment or discharge of a receiver or for the exercise of any other power conferred on the Court with respect to the property and affairs of a patient, and there appears to the Court to be no other suitable person able and willing to make the application or the Court for any other reason thinks fit, the Court may direct that the application be made by the Chief State Solicitor.

Representation of Patient by Receiver

6. (1) Except as provided in rule 10, an application on behalf of a patient for whom a receiver has been appointed shall, unless the Court otherwise directs, be made by the receiver in his own name.

(2) Subject to any directions given by the Court, a patient for whom a receiver has been appointed may be represented by the receiver on any summons to which the patient is a party.

Representation of Patient by Chief State Solicitor

7. Where in any proceedings the Court considers that the interests of a patient for whom a receiver has been appointed are not adequately represented by the receiver, the Court may direct the Chief State Solicitor to act as solicitor for the patient either generally in the proceedings or for any particular purpose connected with the proceedings; so however that it shall not be necessary to appoint the Chief State Solicitor to be receiver or guardian *ad litem* for the patient.

Representation of Parties

8. (1) Where two or more parties to a summons are represented by the same solicitor, the Court may, if it thinks fit, require any of them to be separately represented.

(2) Where two or more parties having the same interest in relation to the matter to be determined attend any hearing of a summons by separate solicitors or counsel, they shall not be allowed more than one set of costs of the hearing unless the Court certifies that the circumstances justify separate representation.

Application under section 42 of Trustee Ordinance, Ch. 8, No. 3.

9. (1) Where an application is made under section 42 of the Trustee Ordinance for leave to appoint a new trustee in place of a patient, the person intending to make the appointment shall be the applicant or one of the applicants.

(2) Where a receiver has been appointed for the patient, the receiver shall, unless he is the applicant or one of the applicants, be made a respondent to the application; but except as aforesaid no person shall be made a respondent unless and until the Court so directs.

Application under 37(k) of the Act

10. (1) An application under section 37(k) of the Act for an order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust may be made by:—

- (a) the receiver for the patient; or
- (b) the patient expressed to be acting by his receiver; or
- (c) any person who has made an application for the appointment of a receiver which has not yet been determined; or
- (d) any other person who is entitled to make an application.

(2) Where a receiver has been appointed for the patient, he shall be made a respondent to the application unless he or the patient expressed to be acting by him is the applicant or one of the applicants.

(3) Every person who is required to be served with the summons shall also be made a respondent to the application, so however that no person who is a patient shall be made a respondent unless and until the Court so directs.

Application for Settlement of Patient's Property or for Execution of Will of Patient

11. (1) Subject to paragraph (2), an application under section 37(d) of the Act for an order for the settlement of any

property of a patient, or an application under section 37(e) of the Act for an order for the execution for a patient of a Will, may be made by:—

- (a) the receiver for the patient;
- (b) any person who, under any known will of the patient or any codicil thereto or under his intestacy, may become entitled to any property of the patient or any interest therein; or
- (c) any person for whom the patient might be expected to provide if he were not mentally disordered.

(2) An application shall be made by a person for whom the benefit of the proposed settlement would enure, unless in the opinion of the Court there is sufficient reason for its being made by another of the persons mentioned in paragraph (1).

(3) Where a receiver has been appointed for the patient, the receiver shall, unless he is the applicant or one of the applicants, be made a respondent to the application; but except as aforesaid no person shall be made a respondent unless and until the Court so directs.

Service of Documents

12. (1) Except where this Order otherwise provides or the Court otherwise directs, every respondent to a summons shall be served with a copy of it at least two clear days before the return day.

(2) Unless the Court otherwise directs, it shall not be necessary to serve a respondent to a summons who consents to the making of the order sought, if a consent signed by him and verified by some other person is filed.

(3) Subject to Order 77 rule 12 or where this Order otherwise provides, any document required to be served on any person shall be served by delivering it to him personally, or, if in any particular case or class of case the Court so directs, by sending it to him at his last known address.

(4) Where a solicitor for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was made.

Service of Application for appointment of Receivers, etc.

13. (1) Where:—

- (a) an application is made for the appointment of a receiver for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver; or,

(b) the Court proposes to make an order with respect to a patient's property in a summary manner under rule 3, the patient shall be served with a notice in Form 2 instead of a copy of the originating summons, if any.

(2) The Court may dispense with service of the said notice if it is satisfied:—

- (a) that the patient is incapable of understanding the notice;
- (b) that service of the notice would be injurious to the patient's health; or
- (c) that for any other reason service ought to be dispensed with.

(3) Where service of the said notice has been dispensed with under paragraph (2) and the patient is within Trinidad and Tobago, the Court may appoint some fit and proper person to visit him and report to the Court as to his condition and welfare.

Affidavit of Service

14. (1) Unless the Court otherwise directs, an affidavit of service, showing particularly where, when, how and by whom service was effected, shall be filed as soon as practicable after service of a document has been effected in accordance with this Order.

(2) It shall not be necessary to file an affidavit of service:—

- (a) of any document served by an officer of the Court; or
- (b) of Form 2 if it has been served by a registered medical practitioner and a certificate of service, signed by him stating particularly where, when and how he effected service; is filed.

Evidence Generally

15. (1) The Court may accept and act upon any evidence notwithstanding that it would not be admissible in a Court of Law.

(2) Except where this Order otherwise provides, evidence shall be given by affidavit.

(3) Any person who has made an affidavit for use in proceedings under this Order may be ordered by the Court to attend for cross-examination.

(4) Before an affidavit is used in any proceedings under this Order it shall be filed, but in the case of urgency the Court may make an order on an affidavit before it is filed if the party tendering the affidavit undertakes to file it before the order is drawn up.

(5) There shall be endorsed on every affidavit the name and address of the solicitor, if any, for the party on whose behalf it is filed.

(6) Notwithstanding paragraph (2), the Court may accept and act under a statement of facts or such other evidence, whether oral or written, as the Court considers sufficient, although not given on oath, and may give directions as to the manner in which the evidence in any proceedings is to be given.

(7) Every statement of facts for use under paragraph (6) shall:—

- (a) be drawn up in numbered paragraphs and set out the relevant facts clearly and concisely;
- (b) so far as is practicable comply with the provisions of paragraphs (4) and (5) as if it were an affidavit; and
- (c) be dated and signed by the person by whom it is made.

(8) Where at any stage of proceedings relating to a patient the Court has reason to believe that the patient has died or recovered, the Court may require evidence of the death or recovery to be furnished by such party to the proceedings as the Court thinks appropriate.

(9) Except where the Court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient's family.

Evidence to be filed on application for Receiver, etc.

16. (1) On the issue of an originating summons applying for the appointment of a receiver for a patient or for an order authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, the applicant shall, unless the court otherwise directs, file a medical certificate and, subject to paragraphs (2) and (3), an affidavit of kindred and fortune.

(2) Where either the income of the patient does not exceed \$2,400 per annum or the capital value of the patient's estate does not exceed \$10,000 a certificate of kindred and fortune shall be filed instead of an affidavit of kindred and fortune.

(3) Where the applicant is the Chief State Solicitor, no affidavit or certificate of kindred and fortune shall be necessary if:—

- (a) there is filed a certificate by the Chief State Solicitor that the patient is possessed of property and that the relief asked for is desirable in order to manage or protect that property, or

(b) a report to the like effect is made under rule 35(1)(a).

(4) In this rule:—

“an affidavit of kindred and fortune” means an affidavit giving particulars of the patient’s relatives, property and affairs and of the circumstances giving rise to the application; and

“a certificate of kindred and fortune” shall be construed accordingly.

Consent to act as Trustee

17. Where in any proceedings it is proposed to appoint a person to act as trustee, a written consent in Form 3 signed by him and verified by some other person shall be evidence of his consent so to act, but no such consent shall be required where the person to be appointed is an applicant in the proceedings or the proceedings are brought under section 36(8) of the Trustee Ordinance.

Proof of Amount due to Public Authority

18. The amount due to any public authority for the past maintenance of a patient may, unless the Court otherwise directs, be proved by the filing of an account certified under the hand of the proper officer of the authority.

Interim Provision

19. (1) Where in the opinion of the Court it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in section 36(1) of the Act, the Court may in a summary manner:—

(a) by certificate direct or authorise any person named therein to do any act or carry out any transaction specified in the certificate; or

(b) by order appoint a receiver *ad interim* for the patient and, subject to any direction given by the Court, such appointment shall continue until further order.

(2) An order appointing a receiver *ad interim* shall, unless the Court otherwise directs, be served upon the patient within such time as the order may specify, and the patient may, within such further time as the order may specify, apply to have the order set aside.

Order without appointing a Receiver

20. The Court may, if it thinks fit, instead of appointing a receiver for a patient, by order direct or authorise any person named in the order to deal with the patient’s property, or any part thereof, in any manner authorised by the Act and specified in the order.

Accountability of Person Authorised

21. Any person directed or authorised to do any act or carry out any transaction under rule 19 or 20 shall render accounts to the Court at such time and in such manner as the Court may direct.

Appointment of Receivers with Survivorship

22. Where in the opinion of the Court two or more persons ought to be appointed receivers for the same patient and one or more of them ought to continue to act after the death or discharge of any of the others, the Court may when appointing them receivers direct that the receivership shall continue in favour of the surviving or continuing receiver or receivers.

Entry of Order on Originating Summons

23. (1) Where:—

- (a) an order is made on an originating summons appointing a receiver for a patient or directing or authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver; or
 - (b) an order with respect to the patient's property is made in a summary manner under rule 3,
- the order shall not be entered until the expiration of seven clear days after service of Form 2 on the patient, unless such service is dispensed with.

(2) Nothing in paragraph (1) shall prevent the entry of an interim order for the protection of a patient's property or for the application of a patient's property for his benefit.

Summoning of Witnesses

24. (1) In any proceedings under this Order the Court may allow or direct any party or the Chief State Solicitor to take out a writ of subpoena requiring the person named therein to attend before the Court and give oral evidence or produce any document.

(2) An application by a party to be allowed to take out a writ of subpoena shall be made by filing a statement giving:—

- (a) the name and address of the party making the application and of his solicitor, if any;
- (b) the name, address and occupation of the proposed witness;
- (c) particulars of any document which he is to be required to produce; and
- (d) the grounds on which the application is made.

(3) Where the Chief State Solicitor is required to take out a writ of subpoena under paragraph (1), the Court may also direct him to conduct any proceedings and carry out any other directions which the Court may specify.

Powers of Court where undue delay, etc.

25. (1) Where the Court is dissatisfied with the conduct of any proceedings or the carrying out of any order or direction of the Court, whether by reason of undue delay or otherwise, the Court may require the party having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or other cause of dissatisfaction, and may thereupon make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purpose of paragraph (1) the Court may direct any party or the Chief State Solicitor to take out any summons and to conduct any proceedings and carry out any directions which the Court may specify; and the Court may, if it thinks fit, appoint the Chief State Solicitor to act as solicitor for the patient in the proceedings in the place of any solicitor previously acting for him.

Order for Examination of Patient

26. In any proceedings relating to a patient the Court may make an order for the patient's attendance for examination by the Court by any suitably qualified Government medical practitioner, or any fit and proper person as the Court may appoint and at such time and place as the Court may direct.

Remuneration of Receiver and Trustee

27. (1) Where a receiver or trustee is appointed for a patient the Court may during the receivership or trusteeship, as the case may be, allow the receiver or trustee remuneration for his services at such amount or at such rate as the Court considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the receiver or trustee from the patient and his estate.

(2) No request by a receiver or trustee to have the sum payable for his remuneration fixed after the death or recovery of the patient shall be entertained unless the Court has during the receivership or trusteeship directed that remuneration be allowed and the request is made within four years from the date on which the receiver or trustee was discharged.

Security from Receiver

28. (1) Where an order is made appointing a person other than the Chief State Solicitor as receiver of a patient:—

- (a) the person appointed shall, unless the Court otherwise directs, give such security for the due performance of his duties as the Court may approve and shall give it before acting as receiver unless the Court allows it to be given subsequently; and
- (b) the order shall not be entered until the person appointed has given to the satisfaction of the Court any security required to be given by him before acting.

(2) The Court may from time to time vary any security required.

(3) Subject to any directions of the Court, security may be given in any of the following ways or partly in one of those ways and partly in another, that is to say:—

- (a) by a bond approved by the Court and given by the person giving security and also by:—
 - (i) an insurance company, group of underwriters or bank approved by the Court; or
 - (ii) with the approval of the Court, two personal sureties; or
- (b) by lodging in Court a sufficient sum of money or stock; or
- (c) in such other manner as the Court may approve.

(4) A person desiring to give security in whole or in part by lodging money or stock in Court shall file a form of request in Form 4 and the Court may thereupon give leave to make the lodgment and direct how any such money is to be invested and how any dividends are to be applied.

(5) Any security given by lodgment of money or stock shall be dealt with in accordance with the terms of the request filed when the lodgment was made.

(6) Where a receiver is authorised or directed to give new security and:—

- (a) the new security has been completed, and
 - (b) he has paid or secured to the satisfaction of the Court any balance due from him,
- the former security shall, unless the Court otherwise directs, be discharged.

(7) Every person who has given security by a bond shall, whenever his accounts are passed or the Court so directs, satisfy the Court:—

(a) that any premiums payable in respect of the bond have been duly paid; or

(b) if the bond was given by personal sureties, that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors,

and if the Court is not so satisfied, it may require new security to be given or may give such other directions as it thinks fit.

Passing of Accounts

29. (1) Every receiver shall annually, or at such other intervals as the Court may direct, deliver his accounts to the Court and attend at or within such time as the Registrar may appoint to have the accounts taken and passed.

(2) On the passing of any accounts the Registrar shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the receiver of passing the accounts and of any other person allowed to attend.

(3) The Court may, if it thinks fit, direct that a receiver need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.

Application of Balance due from Receiver

30. The balance found due from a receiver on the passing of his accounts, or so much thereof as the Court may direct, shall:—

(a) be paid by the receiver into Court to the credit of the proceedings and invested in such manner as the Court may direct; or

(b) be invested or otherwise dealt with by the receiver in such manner as the Court may direct.

Default by Receiver

31. Where a receiver fails to comply with any of the requirements of rule 29 or fails to pay into Court or invest or otherwise deal with any money in accordance with any direction of the Court, the Court may disallow any remuneration which would otherwise be due to the receiver and, if he has made default in paying into Court or investing or otherwise dealing with any money, may charge him with interest thereon at the rate of \$6.00 per centum per annum, or such other rate as the Court may fix, for the period of his default.

Payment of Maintenance and Costs

32. Unless otherwise directed, any money ordered to be paid by a receiver for maintenance shall be paid out of income, and any costs ordered to be paid by a receiver may, when taxed or fixed, be paid out of any moneys coming into his hands, after providing for such maintenance.

Final Accounts

33. (1) On the discharge or death of a receiver, or on the death or recovery of a patient for whom a receiver has been appointed, the Registrar shall take and pass the accounts of the receiver from the foot of his last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the Registrar the taking and passing of such accounts may properly be dispensed with.

(2) Where a balance is found due from the receiver or his estate, he or his personal representatives, as the case may be, shall pay into Court or otherwise deal with it as the Court may direct.

(3) Where a balance is found due to the receiver or his estate, it shall be paid to him or his personal representatives, as the case may be, by the patient or out of the patient's estate.

(4) On payment of any balance found due from the receiver or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1), the security of the receiver shall, unless the Court otherwise directs, be discharged.

Accounting by other persons

34. The provisions of rules 29 to 33 shall apply, with such modifications as may be necessary or the Court may direct, to any person required to render accounts under rule 20 as they apply to a receiver.

Inquiries as to desirability of Appointment of Receiver, etc.

35. (1) Where the Court has reason to believe that a receiver should be appointed for a patient or that any other power conferred on the Court should be exercised with respect to the property and affairs of a patient, the Court may:—

- (a) direct the Chief State Solicitor to make inquiries and report to the Court whether it is desirable in the interests of the patient that an application should be made for that purpose; or
- (b) appoint a suitably qualified Government medical practitioner to visit the patient and report to the Court on the capacity of the patient to manage and administer his property and affairs.

- (2) On receiving any report pursuant to paragraph (1) the Court may, if it thinks fit:—
- (a) direct an application to be made pursuant to rule 5; or
 - (b) if the report is by a person appointed by the Court and the Court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order in a summary manner appointing a receiver or exercising any other power conferred on the Court with respect to the patient's property and affairs.

Inspection of Patient's Property

36. For the purpose of any proceedings relating to the property of a patient, the Court may, if it thinks fit, inspect the property or direct the Registrar or the Chief State Solicitor to inspect the property, make any necessary inquiries and report to the Court.

Inquiries as to Prior dealing with Patient's Property

37. In any proceedings relating to a patient the Court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealing.

Inquiries as to Testamentary Documents Executed by Patient

38. The Court may make or cause to be made inquiries whether any person has in his possession or under his control or has any knowledge of any testamentary document executed by a patient and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control and deal with it in such manner as the Court may direct.

Power to direct other Inquiries

39. The Court may make or cause to be made any other inquiries which it may consider necessary or expedient for the proper discharge of any of its functions under the Act or this Order.

Statement of Property retained or deposited

40. Where under a direction of the Court any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the Court otherwise directs, sign and file a statement of the furniture or effects and an undertaking not to part with them except on a direction under seal of the Court.

Stock in Name of Patient or Receiver

41. (1) Where any stock:—

- (a) is standing in the name of a patient beneficially entitled thereto; or
- (b) is standing in the name of a receiver in trust for a patient or as part of his property, and the receiver dies intestate, or himself becomes incapable by reason of mental disorder of acting as receiver, or is out of the jurisdiction of the Court, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends thereof as the Court directs,

the Court may order some proper person to transfer the stock into the name of the receiver or, as the case may be, a new receiver for the patient or into Court or otherwise deal with it as the Court may direct, and also to receive and pay over the dividends thereof in such a manner as the Court may direct.

(2) Where an order is made under paragraph (1) or under section 40 of the Act directing stock to be transferred into Court, the person required to effect the transfer shall be:—

- (a) in the case of stock standing in the stock register kept by the Central Bank or any other bank, some proper officer of the bank;
- (b) in any other case, some proper officer of the company or other body, whose stock is to be transferred;

and the said person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus, or periodical payment in respect of the stock and pay it into Court to the general account of the patient or to a separate account or otherwise deal with it, according as the Court may direct.

Disposal of Property on Patient's death or recovery

42. (1) On the death or recovery of a patient the Court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the directions of, the Court, to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) Where no grant of representation has been taken out to the estate of a deceased patient and it appears to the Court that the assets of the estate do not exceed \$10,000.00 in value, the Court may, if it thinks fit, provide for payment of the funeral expenses out of any funds in Court standing to the credit of the deceased, and order that any such funds,

or the balance thereof, or any other property of the patient remaining under the control, or held under the directions, of the Court, be paid, transferred, delivered, released either to the person representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of representation to his estate.

(3) The Court may, at any time pending notification to the Court of the grant of representation to the estate of a patient, direct that any money or securities which belonged to the patient when he died and were not already in Court shall be transferred into Court.

Settlement and Approval of Deeds

43. (1) All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as may be directed shall be settled and approved by the Court.

(2) The seal of the Court on any deed or other document shall be evidence that it has been settled and approved by the Court.

(3) Unless otherwise directed, no deed or other document shall be sealed for the purpose aforesaid unless:—

- (a) it bears a certificate by the person tendering it that it is an exact copy of a draft settled and approved by the Court; and
- (b) in the case of a deed or document containing a recital that any money has been lodged in Court, a certificate of the Comptroller of Accounts is produced stating that the lodgment has been made.

Copies of documents in Court

44. (1) Subject to the payment of any fee prescribed by these Rules:—

- (a) any party who has filed an affidavit or other document shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Court with a copy of it;
- (b) the party having the conduct of any proceedings shall, unless the Court otherwise directs, be entitled, on request, to be supplied by the Court with a copy of any order, certificate, authority, direction or other document made, given or prepared by the Court in the proceedings; and
- (c) any other person may, on request, be supplied by the Court with a copy of any such document as is mentioned in either sub-paragraph (a) or (b).

court on the issue of a summons under rule 4 shall cease to be a ward of court:—

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the infant be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 18A(3) of the Ordinance to order that any infant who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 4 is made within the period 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the appropriate Registry immediately after the expiration of that period.”;

- (iv) in the renumbered rule 7, by substituting the words “rule 6” for the words “rule 4”;
- (v) by inserting the following after the renumbered rule 7:—

“III SPOUSES

Provisions as to Actions in Tort

8. (1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the first application by summons or motion in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 15(2) of the Married Persons Act, 1976, should or should not be exercised.

(3) Notwithstanding anything in Order 13 or Order 19 judgment in default of appearance or of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.”.

Order 92
amended

14. Order 92 is amended by substituting the word “confirm” for the word “cancel” in rule 5(a).

Appendices
amended

15. (1) Appendices A and C are amended by substituting:—

(a) the words “The Republic of Trinidad and Tobago” for the words “Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories, Queen, Head of the Commonwealth, Defender of the Faith”; and

(b) the words “You are hereby commanded” for the words “We command you”,
whenever they appear in Forms Nos. 1, 2, 4, 5, 27, 28, 34, 35, 37, 38, 39, 40, 41, 42, 43, 47, 48 and 49 in Appendix A and Forms 1, 3, and 12 in Appendix C.

(c) the words “the High Court of Justice” for the words “Our High Court of Justice” wherever they appear in Form 5 in Appendix A and in Forms 3, and 12 in Appendix C.

(2) Appendix A is amended by substituting:—

(a) the words “the High Court of Justice for the words “Our High Court of Justice” in Form 5;

(b) for Form 43A the following:—

“No. 43A

WRIT OF SEQUESTRATION

(O. 45, r. 12)

[Heading as in cause or matter]

THE REPUBLIC OF TRINIDAD AND TOBAGO [as in
No. 34]

To [names of not less than four commissioners]
greetings:

Whereas in the above-named action [or
matter] in the High Court of Justice it was on

the day of 19 ,
adjudged [or ordered] that C.D. should [pay
into Court the sum of \$ or as may be]:

You or any two or three of you are hereby authorised and commanded by this writ to enter upon and take possession of all the real and personal estate of the said C.D. and to collect, receive and get into your hands the rents and profits of his real estate and all his personal estate and keep the same under sequestration in your hands until the said C.D. shall [pay into Court to the credit of the said action or matter the sum of \$ or as may be] and clear his contempt and the said Court makes other order to the contrary.

Witness [as in No. 34]

This writ was issued [as in No. 34]

-
- (c) the words "the said Court" for the words "Our Court" in Form 47;
 - (d) the words "the State Prison" for the words "Our prison" and "Our said prison" wherever they appear in Forms 48 and 49;
 - (e) the words "on behalf of the State" for the words "on Our behalf" in Form 48;
 - (f) the word "State" for the word "Crown" in the heading of Forms 52 and 53.

(3) Appendix C is amended by substituting for Form 6 the following:—

No. 6

RELEASE

[O. 73, r. 12(1)]

[Heading as in action]

THE REPUBLIC OF TRINIDAD AND TOBAGO [as in Form No. 1]
To the Marshal [or Deputy Marshal] of the High Court of Justice, Greeting.

Whereas in this action you were commanded to arrest the and to keep the same under safe arrest until you should receive further orders you are hereby commanded to release the said from the arrest

effected by virtue of the warrant in this action.

[

Witness [as in Form No. 1]

Taken out by _____ [solicitors
for] the

Marshal's indorsement

On _____ the _____ day
of _____ 19 _____, the

was released from arrest pursuant to this Instrument.

(signed)

Marshal [Deputy Marshal].

(4) After Appendix C the following Appendix is added:—

“APPENDIX D

Forms

No. 1

TITLE OF PROCEEDINGS

[O. 77A, r. 2(1)]

(1) General Title

IN THE HIGH COURT OF JUSTICE

19 No.....

In the matter of: [name of patient]

(2) Titles under the Trustee Ordinance

IN THE HIGH COURT OF JUSTICE

19 No.....

In the matter of the Trusts of the Will, etc. [or the Statutory
Trustee arising. etc.] [as the case may be]

and

In the Matter of [Name of patient]

a certified copy of the entry in the Register of Births, or, as the case may be, in the Adopted Children Register relating to the infant; or

- (b) at the first hearing of the summons apply for directions as to proof of birth of the infant in some other manner.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the infant or, as the case may be, that the plaintiff is unaware of the whereabouts.

(5) Every defendant other than the infant shall, forthwith after being served with the summons:—

- (a) lodge in the appropriate Registry a notice stating the address of the defendant and the whereabouts of the infant, or as the case may be, that the defendant is unaware of his whereabouts; and
- (b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the infant changes his address or becomes aware of any change in the whereabouts of the infant after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the appropriate Registry and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of an infant is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

When Infant ceases to be a Ward of Court

5. (1) An infant who, by virtue of section 18A(2) of the Ordinance, becomes a ward of

if the Court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the party entitled to bespeak a copy from the Court.

(2) Any copy of a document supplied under paragraph (1) shall, if so required, be marked as an office copy without extra charge.

Order 78
amended

Ch. 31 No. 2

12. Order 78 is amended by substituting for rule 10, the following:—

“ 10. Every application to the Court by a judgment creditor of a partner for an order under section 25 of the Partnership Ordinance (which authorises the Court or a Judge thereof to make certain orders on the application of a judgment creditor or a partner including an order changing the partner's interest in the relationship property) and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application shall be made and dealt with in accordance with Order 50, rules 3 and 4.”

Order 86
amended

13. Order 86 is amended:—

(i) by substituting for the main heading thereto the following:—

“Proceedings relating to Infants, Matrimonial Status and Spouses”;

(ii) by renumbering rules 4 and 5 as rules 6 and 7 respectively;

(iii) by inserting the following as rules 4 and 5 of Part I—
Infants:—

“Application to make an Infant a Ward of Court

4. (1) An application to make an infant a ward of Court must be made by originating summons.

(2) Where there is no person other than the infant who is a suitable defendant, an application may be made *ex parte* for leave to issue either an *ex parte* originating summons or an originating summons with the infant as defendant thereto: and, except where such leave is granted, the infant shall not be made a defendant to an originating summons under this rule in the first instance.

(3) The date of the infant's birth shall, unless otherwise directed, be stated in the summons and the plaintiff shall:—

(a) on issuing the summons or before or at the first hearing thereof lodge in the appropriate Registry

and

In the matter of the Trustee Ordinance
s. 36(8) [or s. 54, as the case may be]

No. 2

NOTICE OF ORIGINATING PROCEEDINGS

[Appropriate title as in Form I]
[O. 77A, r. 13(1)]

To: [Name of patient]

1. You are informed that on _____, the
_____ day of _____, 19____, at
_____ o'clock, the Court will [or if the Court
proposes to make an order in a summary manner, that the
Court proposes to] consider whether steps should be taken
in your interests to protect and manage your property and
affairs if it appears that you are unable to do so yourself
[and whether (state full name of proposed Receiver followed
by his address and description) of.....

.....
.....
or some fit and proper person should be appointed to act as
Receiver under the directions of the Court].

2. If you wish to make any objection or observation
by letter, the letter should be addressed as follows:—
The Registrar,
Supreme Court,
Port-of-Spain/San Fernando/Scarborough.

3. No order (other than an interim order) will be
entered until the date mentioned above or until seven clear
days have elapsed from the day when you received this
communication, whichever is the later.

Dated the _____ day of _____, 19____.

[Seal of Court where notice sent by
officer of court, otherwise signature
and address of applicant's solicitor
or of applicant if acting in person.]

No. 3

CONSENT OF PROPOSED NEW TRUSTEE TO ACT
[Appropriate title as in Form 1]
(O. 77A r. 17)

I, _____ of _____, hereby consent to act as trustee of the will of, etc. [or the statutory trusts arising, etc.] [or as the case may be].

Dated the _____ day of _____, 19 ____.

I, _____ of _____, solicitor, hereby certify that the signature written above is the signature of the person mentioned in the above consent.

Dated the _____ day of _____, 19 ____.

[signed]

No. 4

REQUEST FOR LEAVE TO GIVE SECURITY BY LODGMENT IN COURT
[Appropriate title as in Form 1]
[O. 77A r. 28(4)]

I, _____ of [state address and description], Receiver for the above-named Patient, request the leave of the Court to give my security of \$ _____ [state penal sum] by lodging that sum [or state the amount and description of stock] in Court and I agree that if I make any default in paying or accounting to the estate of the patient for any money or securities coming into my hands as Receiver or otherwise in the due performance of my duties as Receiver, of which default the Court shall be sole judge, the said security may forthwith be transferred to the Patient's account or otherwise dealt with for his benefit as the Court may direct, provided that if I prove that the loss (including any costs) occasioned to the Patient's estate by reason of my default amounts to a lesser sum, the balance of the security remaining after deducting that sum, or so much of the balance as shall not have been applied for the benefit of the Patient, may be returned to me.

Dated the _____ day of _____, 19 ____.

[Signature]

To the Registrar,
Supreme Court,
Port-of-Spain/San Fernando/Scarborough.

16. The Barristers' (Disciplinary Proceedings) Rules, 1965 are amended:— Barristers'
(Disciplinary
Proceedings)
Rules 1965
amended

(a) by substituting for rules 17 and 18 the following rule:—

“Reference
of case to
Chief Justice
and Attorney
General

17. Where the Committee is of opinion that a case has been made out which may justify disciplinary action against the barrister the Committee shall forward to the Chief Justice and the Attorney General a copy of the record of the proceedings before them and their findings thereon”;

(b) by renumbering rules 19 and 20 as rules 18 and 19 respectively.

17. Order II of, and Appendices A and B in the Schedule to the Court of Appeal Rules, 1962, are hereby revoked. Revocation

Made by the Rules Committee this 21st day of May, 1980.

MAURICE A. CORBIN
Acting Chief Justice

C. KELSICK
Judge of the Court of Appeal

A. WARNER
Judge of the High Court

SELWYN RICHARDSON
Attorney General

CONRAD DOUGLIN
Registrar of the Supreme Court

J. A. WHARTON
Barrister

SHAHEED HOSEIN
Solicitor

Laid in the House of Representatives this 30th day of May, 1980.

J. E. CARTER
Clerk of the House

Laid in the Senate this 10th day of June, 1980.

R. L. GRIFFITH
Clerk of the Senate