

LEGAL NOTICE NO. 127

REPUBLIC OF TRINIDAD AND TOBAGO

THE SUPREME COURT OF JUDICATURE ACT, CHAP. 4:01

RULES

RULES MADE BY THE RULES COMMITTEE UNDER SECTION 78
OF THE JUDICATURE ACT

THE FAMILY PROCEEDINGS (AMENDMENT)
(NO. 2) RULES, 1999

1. These Rules may be cited as the Family Proceedings Citation
(Amendment) Rules, 1999.

2. (1) The Family Proceedings Rules, 1998 are hereby amended as
set out in the Schedule. Amendment
of the Family
Proceedings
Rules, 1998

(2) Column I of the Schedule sets out the Rules amended and
Column II sets out the extent of the amendments to those Rules.

SCHEDULE

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	PART 1
1.3	Delete the word “expected” and substitute the word “required”.
	PART 2
2.1	Delete subrule (2) and substitute the following: “ (2) These Rules shall come into force on a date in 2000 to be fixed by the Rules Committee.”.
2.2	A. Delete subrule (1) and substitute the following: “ (1) These Rules as amended apply to any family matter commenced in the Supreme Court on or after the date of the coming into force of these Rules.”. B. Renumber subrules (2), (3), (4) and (5) as subrules (4), (5), (6) and (7) respectively and insert the following after subrule (1) which shall have effect as subrules (2) and (3): “ (2) Subject to subrule (3), these Rules shall also apply to family matters commenced before the date of the coming into force of these Rules if— (a) any party to such matters at any time after the close of the pleadings and before the case has been

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>listed for trial, files a request at the court office for a Directions Hearing under Part 13; or</p> <p>(b) (i) some step required to be taken by a party has not been taken within six months of the time prescribed for taking it; or</p> <p>(ii) a case has not been listed for trial for more than three years after being set down for trial, and the court office issues a notice to all parties requiring them to attend a Directions Hearing.</p> <p>(3) Save as provided in subrule (2) above, the Matrimonial Causes Rules shall continue to apply to family matters commenced in the Supreme Court before the coming into force of these Rules.”.</p> <p>C. In subrule (4) (b) as renumbered insert a comma after the word “guardianship” and then add the word “paternity.”; and in subrule (4) as renumbered add the following after subparagraph (V)—</p> <p>“(VI) Cohabital Relationships Act, 1998”.</p> <p>D. Delete in subrule (7) as renumbered, the word “1988” and insert the word “1998”.</p>
2.3	<p>A. Delete in the definition of the word “application” and “applicant” the words “application” and “applicant” and insert the words “applicant” and “respondent”.</p> <p>B. Delete in the definition of the words “certificate of marriage” the words “proper officer” and insert the word “Registrar”.</p> <p>C. Insert before the definition of the word “court” the following:</p> <p>“Cohabitant” has the meaning given to it by the Cohabital Relationships Act, 1998”.</p> <p>D. Delete in the definition of “undefended cause” the words “rule 11.1” and insert the words “rule 17.1”.</p>
2.4	<p>Insert in subrule (1) a comma after the word “other wise”.</p>
2.10	<p>A. Insert in paragraph (b)(iii) the words “if any” after the words “fax numbers” and “E Mail address”.</p> <p>B. Delete in paragraph (b)(iii) the bracket before the word “where”.</p>
	<p style="text-align: center;">PART 4</p>
4.3	<p>Delete in paragraph (b) and word “for sale”</p>
	<p style="text-align: center;">PART 6</p>
6.2	<p>A. Delete in subrule (1) the words “by the marshall or his assistant”.</p> <p>B. Delete in subrule (2) the words “some other person” and insert the following:</p> <p>“the marshall or his assistant or some other person deputed by the marshall”.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
6.7	<p>A. Delete in subrule (1) the words “approved by the Court” and substitute the words “deputed by a marshall in writing.”.</p> <p>B. Delete subrules (2) and (3) and renumber subrules (4) and (5) as subrules (2) and (3) respectively.</p>
PART 7	
7.2	<p>Insert in subrule (2) after the word “petition” the words “that requires service”.</p>
7.4	<p>A. Delete in subrule (1) the words “that address” and insert the words “his address”.</p> <p>B. Delete subrule (4).</p>
7.5	<p>Delete in the heading the words “non party” and insert the words “person not a party”.</p>
7.6	<p>A. Delete in the heading the words “Address for posting” and insert the words “Method of serving”.</p> <p>B. In subrule (1) delete the words “The document must be served by posting it or delivering it at” and substitute the following:</p> <p style="padding-left: 40px;">“If a party to be served has not given an address to which documents for him may be sent the documents must be served by posting them to or delivering them at.”.</p>
PART 8	
8.1	<p>Delete the word “does” before the words “It deals”.</p>
8.10	<p>Renumber subrule (3) as subrule (4) and insert the following after subrule (2):</p> <p style="padding-left: 40px;">“ (3) Any party may then cross examine the witness.”.</p>
8.12	<p>A. Insert the figure “(1)” before the words “The court may.”.</p> <p>B. Insert the following as subrules (2) and (3):</p> <p style="padding-left: 40px;">“ (2) Where an order is made without a hearing under paragraph (1)(d) either party may apply to set aside the order.</p> <p style="padding-left: 40px;">(3) An application under paragraph (2) must be made within 14 days of the service of the order in question.”.</p>
PART 9	
9.1	<p>Delete in subrule (4)(c) the words “rule 9.5” and insert the words “rule 9.5; and”.</p>
PART 12	
12.1	<p>A. Insert in subrule (1) after the word “wife” the words “or cohabitant”.</p> <p>B. Delete in subrule (2)(h) the word “and”.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>Specific disclosure Rule 20.5</p> <p>Criteria for ordering specific disclosure Rule 20.6</p> <p>Procedure for disclosure Rule 20.7</p> <p>Duty of legal practitioner Rule 20.8</p> <p>Requirement for party to certify that he understands Duty of Disclosure Rule 20.9</p> <p>Disclosure in stages Rule 20.10</p> <p>Inspection and copying of listed documents Rule 20.11</p> <p>Duty of disclosure continuous during proceedings Rule 20.12</p> <p>Consequence of failure to disclose documents under an order for disclosure Rule 20.13</p> <p>Claim of right to withhold disclosure or inspection of a document Rule 20.14</p> <p>Restriction on use of a privileged document inspection of which has been inadvertently allowed Rule 20.15</p> <p>Documents referred to in petition, etc. Rule 20.16</p> <p>Subsequent use of disclosed documents Rule 20.17</p> <p>Notice to prove a document Rule 20.18</p> <p>Scope of this part</p> <p>20.1 (1) This Part sets out rules about the disclosure and inspection of documents.</p> <p>(2) In this Part “document” means anything on or in which information of any description is recorded; and</p> <p>“copy” in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.</p> <p>(3) A party “discloses” a document by revealing that the document exists or has existed.</p> <p>(4) For the purposes of this part a document is “directly relevant” if—</p> <p>(a) the party with control of the document intends to rely on it;</p> <p>(b) tends to adversely affect that party’s case; or</p> <p>(c) it tends to support another party’s case,</p> <p>but the rule of law known as “the rule in Peruvian Guano” does not apply.</p> <p>Duty of disclosure limited to documents which are or have been in party’s control</p> <p>20.2 (1) A Party’s duty to disclose documents is limited to documents which are or have been in the control of that party.</p> <p>(2) For this purpose a party has or has had control of a document if—</p> <p>(a) it is or was in the physical possession of the party;</p> <p>(b) the party has or has had a right to possession of it; or</p> <p>(c) the party has or has had a right to inspect or take copies of it.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>Disclosure of copies</p> <p>20.3 (1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.</p> <p>(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.</p> <p>Standard disclosure</p> <p>20.4 Where a party is required by any direction of the court, to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.</p> <p>Specific disclosure</p> <p>20.5 (1) An order for specific disclosure is an order that a party must do one or more of the following things:</p> <p>(a) disclose documents or classes of documents specified in the order; or</p> <p>(b) carry out a search for documents to the extent stated in the order; and</p> <p>(c) disclose any documents located as a result of that search.</p> <p>(2) An order for specific disclosure may be made on or without an application.</p> <p>(3) An application for specific disclosure may be made without notice at a case management conference.</p> <p>(4) An application for specific disclosure may identify documents—</p> <p>(a) by describing the class to which they belong; or</p> <p>(b) in any other manner.</p> <p>(5) An order for specific disclosure may only require disclosure of documents which are directly relevant to one or more matters in issue in the proceedings.</p> <p>Criteria for ordering specific disclosure</p> <p>20.6 (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.</p> <p>(2) it must have regard to—</p> <p>(a) the likely benefits of specific disclosure;</p> <p>(b) the likely cost of specific disclosure; and</p> <p>(c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.</p> <p>(3) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure it may however make such an order on terms that the party seeking that order shall pay the other party's costs of such disclosure.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>(4) Where the court makes an order under paragraph (3) it must assess the costs to be paid in accordance with Part 37.</p> <p>(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.</p> <p>Procedure for disclosure</p> <p>20.7 (1) Paragraphs (2) to (5) set out the procedure for disclosure.</p> <p>(2) Each party must make, and serve on every other party, a list of documents in Form 10.</p> <p>(3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.</p> <p>(4) The list must indicate—</p> <p style="padding-left: 2em;">(a) those documents which are no longer in the party's control;</p> <p style="padding-left: 2em;">(b) what has happened to those documents; and</p> <p style="padding-left: 2em;">(c) state where each such document then it is to the best of the party's knowledge, information or belief.</p> <p>(5) It must include documents already disclosed.</p> <p>Duty of legal practitioner</p> <p>20.8 The legal representative for a party must—</p> <p>(1) Explain to the maker of the list of documents—</p> <p style="padding-left: 2em;">(a) the necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and</p> <p style="padding-left: 2em;">(b) the possible consequences of failing to do so.</p> <p>(2) Certify on the list of documents under rule 20.7(2) or rule 20.12(3) that the explanation required by paragraph (1) has been given.</p> <p>Requirement for party to certify that he understands duty of disclosure</p> <p>20.9 (1) The lay party must certify in the list of documents—</p> <p style="padding-left: 2em;">(a) that he or she understands the duty of disclosure; and</p> <p style="padding-left: 2em;">(b) that to the best of that party's knowledge the duty has been carried out.</p> <p>(2) If it is impracticable for the party to sign the certificate required by paragraph (1) it may be given by that party's legal practitioner.</p> <p>(3) A certificate given by the legal practitioner must also certify—</p> <p style="padding-left: 2em;">(a) the reasons why it is impractical for the party to give the certificate; and</p> <p style="padding-left: 2em;">(b) that the certificate is given on the party's instructions.</p> <p>(Rule 15.6 deals with applications for relief.)</p> <p>Disclosure in stages</p> <p>20.10 The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p data-bbox="532 535 990 562">Inspection and copying of listed documents</p> <p data-bbox="532 571 1250 646">20.11 (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except—</p> <p data-bbox="698 655 1250 709">(a) documents which are no longer in the physical possession of the party who served the list; or</p> <p data-bbox="698 718 1250 772">(b) documents for which the party claims a right to withhold from disclosure.</p> <p data-bbox="597 781 1250 856">(2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.</p> <p data-bbox="597 865 1250 919">(3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the request is received.</p> <p data-bbox="597 928 1250 1003">(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested.</p> <p data-bbox="597 1012 1250 1066">(5) The party who served the list must supply the copy not more than 7 days after the date on which the request was received.</p> <p data-bbox="532 1096 1055 1123">Duty of disclosure continuous during proceedings</p> <p data-bbox="532 1131 1250 1207">20.12 (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.</p> <p data-bbox="597 1215 1250 1291">(2) If documents to which that duty extends come to a party's notice at any time during the proceedings that party must immediately notify every other party and serve a list of those documents.</p> <p data-bbox="597 1299 1250 1354">(3) The supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve it.</p> <p data-bbox="532 1383 1250 1438">Consequence of failure to disclose documents under an order for disclosure</p> <p data-bbox="532 1446 1250 1543">20.13 (1) A party who fails to give disclosure by the date ordered or to permit inspection may not rely on or produce any document not so disclosed or made available for inspection at the trial or other hearing.</p> <p data-bbox="597 1551 1250 1627">(2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's petition, cross-petition, answer or application or some part of it be struck out.</p> <p data-bbox="597 1635 1250 1732">(3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.</p> <p data-bbox="597 1740 1250 1795">(4) On such an application under paragraph (2) the court may order that unless the party in default complies with the order for</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>disclosure by a specific date that party's petition, cross-petition, answer or application or some part of it be struck out. (Rule 8.14 deals with applications to set aside order made on application without notice; Rule 15.3 deals with judgement after striking out; Rule 15.6 deals with applications for relief).</p> <p>Claim of right to withhold disclosure or inspection of a document</p> <p>20.14 (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must—</p> <ul style="list-style-type: none"> (a) make such claim for the document; and (b) state the grounds on which such a right is claimed, in the list or otherwise in writing to the person wishing to inspect the document. <p>(2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.</p> <p>(3) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be served on any other person nor be open for inspection by any person.</p> <p>(4) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that such document be disclosed or made available for inspection.</p> <p>(5) On hearing such an application the court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.</p> <p>(6) If a person—</p> <ul style="list-style-type: none"> (a) claims a right to withhold inspection; or (b) applies for an order permitting that person not to disclose the existence of a document or part of a document, <p>the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.</p> <p>(7) On any hearing under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.</p> <p>(8) This rule does not affect any rule of law which permits or requires a document to be withheld on the ground that its disclosure or inspection would damage the public interest.</p> <p>Restrictions on use of a privileged document inspection of which has been inadvertently allowed</p> <p>20.15 Where a party inadvertently allows a privileged document to be inspected the party who has inspected it may use it only with the</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	<p>permission of the court or the agreement of the party disclosing the document.</p> <p>Documents referred to in petition, etc.</p> <p>20.16 (1) A party may inspect and copy a document mentioned in—</p> <ul style="list-style-type: none"> (a) the petition; (b) a cross-petition or answer or other pleading; (c) a witness statement; (d) an affidavit; or (e) an expert's report. <p>(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.</p> <p>(3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.</p> <p>Subsequent use of disclosed documents</p> <p>20.17 (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed except where—</p> <ul style="list-style-type: none"> (a) the document has been read to or by the court, or referred to, in open court; or (b) (i) the party disclosing the document; (ii) the person to whom the document belongs; or (iii) the court, <p>gives permission.</p> <p>(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.</p> <p>(3) An application for such an order may be made—</p> <ul style="list-style-type: none"> (a) by a party; or (b) by any person to whom the document belongs. <p>Notice to prove a document</p> <p>20.18 (1) A party shall be deemed to admit the authenticity of any document disclosed to him under this Part unless that party serves notice that the document must be proved at trial or other hearing.</p> <p>(2) A notice to prove a document must be served not less than 42 days before the trial.”</p> <p style="text-align: center;">PART 21</p> <p>21.4 Delete in subrule (3) the words “paragraph (1)(a)” and substitute the words “paragraph (1)(b)”.</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
	PART 22
22.1	Delete the definition of “Hearsay Evidence” and substitute the following: “Hearsay Evidence” means a statement made otherwise than by a person while giving oral evidence in proceedings which is tendered as evidence of the matter stated.”.
22.5	Re-number subrule (2) appearing after subrule (3) as subrule (4).
22.7	Delete in subrule (5) the word “Counter-notice” and substitute the word “notice”.
	PART 23
23.1	Delete in subrule (2) the words “make or” and substitute the words “maker of”.
	PART 25
25.8	Delete in subrule (2) the words “expert must” and substitute the words “expert must provide him with a copy of the Part and”.
25.10	A. Delete in subrule (1)(e) the word “in”. B. Delete in subrule (3) (a) the word “by” and substitute the word “to”.
	PART 26
	Delete in the title entitled “Contents to this Part” the words “Rule 26.90” and substitute the words “Rule 26.9”.
26.5	Delete in subrule (2) the words “the witness summons”.
26.9	Delete in subrule (2)(c) the word “as”.
26.13	Delete subrules (1), (2) and (3) and substitute the following: “ (1) On appointing an examiner the Court must fix the fee to be paid to the examiner for carrying out the examination. (2) The party who obtained the order must also pay all reasonable travelling and other expenses including charges for a room (other than the examiner’s own chambers or office) where the examination takes place. (3) This does not affect any decision as to the party who is ultimately to bear the costs of the examination.”.
26.15	Delete the words “rule 26.8” and substitute the word “rule 26.7”.
26.18	Insert in subrule (1) the word “may” after the word “court”.
	PART 29
29.4	Insert in subrule (2) the words “to a date and time” before the words “to be fixed”.

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
29.6	<p>A. Delete in subrule (1)(b) the word "hearing" and substitute the words "hearing; or"</p> <p>B. Delete in subrule (1)(c) the word "the".</p>
31.3	<p style="text-align: center;">PART 31</p> <p>Insert in subrule (2) the words "copy of the" before the word "notice".</p>
34.4	<p style="text-align: center;">PART 34</p> <p>Insert in subrule (1)(e) the words "the manager of" after the word "Act".</p>
34.6	<p>Insert in subrule (1) the word "with" after the word "together".</p>
34.7	<p>Delete in subrule (1) the words "Forthwith upon" and insert the word "Upon".</p>
36.6	<p style="text-align: center;">PART 36</p> <p>Insert in subrule (5)(b) the words "or up to" after the words "costs from".</p>
36.9	<p>Insert after subrule (5) the following rule:</p> <p style="padding-left: 40px;">"(6) The notice to the Attorney shall be in writing unless made at the trial or hearing of the proceedings."</p>
37.2	<p style="text-align: center;">PART 37</p> <p>A. In subrule (1):</p> <p style="padding-left: 40px;">Delete the words "a discretion" and substitute the words "any discretion" and</p> <p style="padding-left: 40px;">Delete the word "average" and substitute the word "reasonable".</p> <p>B. Renumber subrule (2) as subrule (3) and insert the following rule as subrule (2):</p> <p style="padding-left: 40px;">"(2) Where the court has any discretion as to the amount of costs to be paid to an attorney by his client the sum allowed is the amount that the court deems to be reasonable and which appears to be fair both to the attorney and the client concerned."</p> <p>C. Insert in subrule (3) as renumbered after paragraph (g) the following paragraph:</p> <p style="padding-left: 40px;">"(h) in the case of costs charged by an attorney—</p> <p style="padding-left: 80px;">(i) any agreement that may have been made as to the basis of charging;</p> <p style="padding-left: 80px;">(ii) any agreement about what grade of attorney should carry out the work;</p> <p style="padding-left: 80px;">(iii) whether the attorney advised the client and took the client's instructions before taking any usual step or one which was usually expensive having regard to the nature of the case."</p>

SCHEDULE—CONTINUED

COLUMN I <i>Number of the Rule</i>	COLUMN II <i>Extent of the Amendment</i>
37.8	Insert after subrule (4) the following subrule: “ (5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.”.
37.9	Delete in subrule (1) the word “budget” and substitute the word “budgeted”.
	APPENDIX
Appendix	In the Appendix (Matters to be included in a petition), renumber paragraph “(o)” as paragraph “(n)”.

(3) In the Family Proceedings Rules, 1998 and in these Rules the word “must” wherever this word occurs shall be deemed to have been substituted by the word “shall”.

The word “shall” deemed to have been substituted for the word “must”

Made by the Rules Committee this 19th day of November, 1999.

M. DE LA BASTIDE
Chief Justice

C. BEST
Judge of the High Court

R. HAMEL-SMITH
Judge of the Court of Appeal

R. LAWRENCE MAHARAJ, s.c.
Attorney General

R. M. DOYLE
Master of the High Court

A. K. FITZPATRICK
Attorney-at-law

P. PIERRE
Acting Registrar, Supreme Court

I. HARRACKSINGH
Attorney-at-law

Laid in the House of Representatives this 28th day of April, 2000.

J. SAMPSON-JACENT
Clerk of the House

Laid in the Senate this 2nd day of May, 2000.

N. COX
Clerk of the Senate