

MENTAL HEALTH RULES

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Mental Health

Cap. 45.

MENTAL HEALTH RULES, 1984

1989/28.

Authority: These rules were made on 10th May, 1984 by the Judicial Advisory Council under section 27 of the *Mental Health Act*.

Cap. 45.

Commencement: 13th March, 1989.

PART I

Preliminary

1. These rules may be cited as the *Mental Health Rules, 1984*.

Citation.

2. (1) In these rules

Interpre-
tation.

"attorney-at-law" has the meaning assigned to it in section 2 of the *Legal Profession Act*;

Cap. 370A.

"entered" means entered in the books of the High Court;

"filed" means filed in the Registration Office;

"order" includes a certificate, direction or authority under the seal of the court;

"receiver" means a receiver appointed under section 22 of the Act;

"Registrar" means the Registrar of the Supreme Court;

"sealed" means sealed with the official seal of the court;

"summons", except in rule 4, includes originating application.

(2) Where in these rules provision is made for a matter relating to a patient to be determined in a summary manner, it may be determined

(a) without the issue of a summons;

(b) by the court of its own motion; or

(c) by the court at the instance or request of any interested person,

whether or not proceedings have been commenced in the court with respect to the patient.

Power to
limit or
extend
time.

3. The court may, upon such terms as it thinks fit, limit or extend the time, whether fixed by these rules or otherwise, for doing any act or taking any proceedings and where it is sought to extend time, the extension may be granted notwithstanding that the time limit has expired.

PART II

Mode of Application

Form of
applica-
tion
First
Schedule.

4. (1) Except where these rules otherwise provide, proceedings relating to a patient shall be commenced by originating application as set out in Form B of the *First Schedule* returnable not less than 7 clear days from the date of the service thereof on the other party.

(2) An application made in the course of proceedings commenced pursuant to paragraph (1), shall be made in Form C of the *First Schedule* returnable not less than 2 clear days from the date of service thereof on the other party.

(3) The procedure set out in paragraphs (1) and (2) does not apply if the court is of the view that the application can be properly dealt with in a summary manner.

Summary
order in
small
cases.

5. Where it appears to the court that the property of a patient does not exceed \$5 000 in value, the court may, if there has been no originating application, make an order in a summary manner directing one of its officers or some other fit and proper person to deal with that property, or any part thereof, in a manner authorised by the Act.

Title of
proceedings
First
Schedule.
Require-
ments to
preparation
of documents.

6. The title of proceedings shall be such title set out in Form A of the *First Schedule* as is appropriate.

7. In any document for use in proceedings under the Act, numbers shall be written in figures and not in words.

Issue of
summons.

8. (1) Every summons shall be prepared by or on behalf of the applicant and shall be deemed to be issued on its being sealed by one of the officers of the court.

(2) The applicant shall, at the time of tendering the summons for sealing, leave a copy at the Registration Office.

9. The court may allow one application to be made in respect of 2 or more patients or may consolidate applications relating to the 2 or more patients, if in the opinion of the court the proceedings relating to them can be more conveniently carried on together.

Consolidation of proceedings.

10. Every summons is returnable before a Judge.

Summons returnable before Judge.

PART III

Parties

11. The court may

- (a) direct that all or any of the relatives of the patient or any other person who appears to the court to be interested in the relief sought by a summons be made a respondent to, or be given notice of, the summons; and
- (b) determine who is entitled to attend at any stage of proceedings relating to a patient.

Respondents and persons entitled to attend.

12. The court may, where it is of the view that an application ought to be made for the appointment or discharge of a receiver or for the exercise of any power conferred on the court and

- (a) it appears that there is no suitable person able and willing to make the application; or
- (b) it is of the view that the matter in respect of which the application ought to have been made would be better performed by an officer of the court or by the Solicitor General,

Powers of Court to direct application by officer of court or Solicitor General.

direct one of its officers or the Solicitor General to make the application.

13. (1) Except as provided in rules 17 and 18 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.

Representation of patient by receiver.

(2) Subject to any directions the court gives, a patient for whom a receiver has been appointed may be represented by the receiver in respect of any summons to which the patient is a party.

Representation
of patient
by
Solicitor
General.

14. Where, in any proceedings, the court considers that the interest of a patient for whom a receiver has been appointed are not adequately represented by the receiver, the court may direct the Solicitor General to act as attorney-at-law for the patient either in the proceedings generally or for any particular purpose connected with the proceedings, so however, that it shall not be necessary to appoint the Solicitor General to be receiver or guardian *ad litem* for the patient.

Patient
not to
make
application
etc.

15. (1) A patient shall not make an application in proceedings relating to another person except by his next friend, and shall not resist or attend the hearing of an application in any such proceedings except by his guardian *ad litem*.

(2) Where a person is to be appointed next friend or guardian *ad litem* of a patient in substitution for the person previously so appointed, the appointment shall be made by the court, but, except for the purposes of paragraph (1), it is not necessary for the court to make an order appointing a next friend or guardian *ad litem* of a patient who is under disability.

(3) Before the name of any person may be mentioned in any proceedings as next friend or guardian *ad litem* of a patient, the person seeking to have the name of that person so used shall file

- (a) a written consent of the person to act as next friend or, as the case may be, guardian *ad litem* of the patient in the proceedings; and
- (b) a certificate of the attorney-at-law of the patient stating
 - (i) that he knows or has reason to believe that the person to whom the certificate relates is a patient;
 - (ii) that the person named as guardian *ad litem* has no interest in the proceedings adverse to that of the patient, and
 - (iii) that he is a fit and proper person to act as next friend or guardian.

(4) A certificate of an attorney-at-law given pursuant to paragraph (3) shall contain the grounds on which the attorney-at-law bases his knowledge or belief, but where the next friend or guardian *ad litem* is the Solicitor General paragraph (3) (b) (ii) does not apply.

16. (1) Where 2 or more parties to a summons are represented by the same attorney-at-law, the court may, if it thinks fit, require any of them to be separately represented.

Repre-
sentation
of parties.

(2) Where 2 or more parties having the same interest in relation to the matter to be determined are represented at a hearing of a summons by separate attorneys-at-law, they shall not be allowed more than one set of costs in respect of that hearing unless the court certifies that the separate representation was justified.

17. (1) For the purposes of these rules, an order under section 46 of the *Trustee Act*, may be obtained on application on

Applica-
tion of
section 46
of Cap. 230.

(a) the receiver for the patient;

(b) the patient expressed to be acting by his receiver;

(c) any person who has made an application for the appointment of a receiver that has not yet been heard; or

(d) any other person the court thinks fit.

(2) Where a receiver has been appointed for a patient, the receiver shall be made a respondent to the application referred to in paragraph (1) unless either he or the patient expressed to be acting by him is the applicant.

18. (1) For the purposes of these rules, no person shall be appointed as a new trustee under section 43 of the *Trustee Act* in substitution for a trustee who is suffering from mental disorder unless that person makes an application to the court to be so appointed.

Applica-
tion of
section 43
of
Cap. 230.

(2) Where a receiver has been appointed for a patient, the receiver shall, unless he is the person making the application under paragraph (1), be made a respondent to the application

except that no person may be made a respondent unless the court so directs.

Applica-
tions
under sec-
tion 19 of
the Act.

19. In any application under section 19 of the Act for an order for the exercise of any power vested in a patient of appointing trustees or retiring from a trust, rule 17 applies with such modifications as may be necessary.

Applica-
tion for
settle-
ment of a
patient's
property.

20. (1) Except as set out in paragraph (2), an application under section 19 of the Act for an order for the settlement of any property of a patient may be made

- (a) by the receiver for the patient;
- (b) by any person who is entitled to the property of the patient either under his will or on his intestacy; or
- (c) by any person for whom the patient might be expected to provide if he were not mentally disordered.

(2) Except with the permission of the court, an application may not be made pursuant to paragraph (1) by a person entitled to any benefit arising from the proposed settlement unless the court is satisfied that there is sufficient reason for its being made by such person.

(3) Where a receiver has been appointed for the patient, the receiver shall, unless he is the person who made the application referred to in paragraph (1), be made a respondent to that application, but so that no person may be made a respondent unless the court so directs.

PART IV

Service

Service
of
summons.

21. Except where these rules otherwise provide or the court otherwise directs, every respondent to a summons shall be served with a copy of that summons at least 2 clear days before the return day of the summons.

No ser-
vice where
respondent
consents.

22. Unless the court otherwise directs, it is not necessary to serve a summons on a respondent who consents to the making of

an order sought if a consent in writing signed by him or verified by an attorney-at-law is filed.

23. Where an attorney-at-law for a person to be served with any document endorses on the document or on 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 on
Attorney-
at-law.

24. Where it appears to the court that it is not practicable for any reason to serve a document on a person, the court may make an order for substituted service of that document by taking such steps as the court directs to bring that document to the notice of the person on whom service is to be effected.

Substitu-
ted ser-
vice.

25. (1) Subject to this rule, any document required by these rules to be served on a patient shall be served on the person authorised under Part III 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.

Service
on
patient.

(2) If no person is authorised under Part III of the Act to conduct proceedings by or on behalf of the patient, the document referred to in paragraph (1) shall be served on the person with whom he resides or in whose care he is, and service shall be in the manner required by these rules.

(3) Notwithstanding anything contained in paragraph (1), the court may, where it thinks proper, order that any document which has been, or is to be, served on the patient or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the patient.

(4) Nothing in this rule applies to a notice required by rule 26 to be served on a patient.

26. (1) Subject to paragraph (2), where

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

Service
of appli-
cation
for appoint-
ment
of re-
ceiver.

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(c) the court proposes pursuant to rule 5 to make an order in a summary manner with respect to a patient's property, the patient shall be served with a notice in Form D as set out in the *First Schedule* instead of a copy of the originating application.

First
Schedule.

(2) The court may dispense with service of the notice referred to in paragraph (1) if it is satisfied that

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

(3) Where service of a notice has been dispensed with under paragraph (2), a visitor shall, if requested by the court, visit the patient and report to the court as to the condition and welfare of the patient.

Affidavit
of
service.

27. Unless the court otherwise directs, an affidavit of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of any document has been effected, but it is not necessary to file an affidavit of service of

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

PART V

Evidence

Evidence
generally.

28. The court may accept evidence and act upon it notwithstanding that it would not be admissible in other legal proceedings.

Evidence
to be by
affidavit.

29. Except where these rules otherwise provide, evidence in proceedings under these rules shall be by affidavit.

30. Notwithstanding rule 29, the court may accept and act upon a statement of facts or other evidence whether oral or written, although not given on oath, and may give directions as to the manner in which the evidence in any proceedings is to be given.

Power to accept unsworn evidence.

31. Any person who makes an affidavit for use in proceedings under these rules may be ordered by the court to attend for cross-examination.

Cross-examination of deponent.

32. Every statement of fact for use under rule 30 shall

Statement of facts.

(a) be drawn up in numbered paragraphs setting out the relevant facts clearly and concisely;

(b) so far as is practicable, comply with rule 33 as if it were an affidavit; and

(c) be dated and signed by the person by whom it is made.

33. An affidavit for use in proceedings under these rules may be sworn before any Justice of the Peace or Notary Public.

Persons before whom affidavits may be sworn.

34. (1) Before an affidavit is used in any proceedings under these rules, it shall be filed, but in 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 formally drawn up.

Filing of affidavit.

(2) There shall be endorsed on every affidavit the name and address of the attorney-at-law, if any for the party on whose behalf it is filed.

35. Except where the court otherwise directs, evidence that 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 that patient or to any other member of that patient's family.

Use of evidence in subsequent proceedings.

36. (1) Where a person makes an application

(a) for the appointment of a receiver for a patient; or

Evidence to be filed on originating application for receiver, etc.

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- (b) for an order authorising the doing of any act or the carrying out of any transaction on behalf of a patient without appointing a receiver for the patient,

that person shall file an affidavit of kindred and fortune and a medical affidavit unless the court otherwise directs, or the income of the patient does not exceed \$1 500 per annum, or the capital value of the patient's estate does not exceed \$15 000.

(2) Where the person making an application referred to in paragraph (1) is the Solicitor General, no affidavit of kindred and fortune or medical affidavit is necessary if

- (a) he files a certificate that the patient is possessed of property;
- (b) the relief asked for is desirable in order to enable him to manage and protect that property; or
- (c) a report to the like effect is made under rule 71(1)(a).

(3) In this rule

- (a) "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
- (b) "a medical affidavit" means an affidavit containing medical evidence that the patient is incapable, by reason of mental disorder, of managing his property and affairs.

Evidence
of
patient's
death or
recovery.

37. The court may, if it has reason to believe that a patient to whom proceedings relate has died or has recovered from his illness, at any stage of those proceedings require evidence of the death of the patient or of his recovery to be furnished by such party to the proceedings as the court thinks appropriate.

Consent
to act as
trustee
First
Schedule.

38. Where in any proceedings it is proposed to appoint a person to act as trustee for a patient a written consent as set out in Form E contained in the *First Schedule* signed by that person and verified by an attorney-at-law is evidence of his consent so to act, but no such consent is required where the person to be appointed is an applicant in the proceedings or the proceedings are brought under section 46 of the *Trustee Act*.

Cap. 250.

39. 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.

Proof of amount due to public authority.

PART VI

Hearing of Proceedings

40. All proceedings to which these rules relate shall be heard in Chambers unless a Judge otherwise directs.

Proceedings to be heard in Chambers.

41. The court may refer any proceedings before it to the Registrar for inquiry and report.

Reference of proceedings to Registrar.

PART VII

Receivers

42. (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 18 of the Act, the court may in a summary manner

Interim provisions.

(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 an interim receiver for the patient, and, subject to any direction given by the court, the appointment continues until a further order is made.

(2) An order appointing an interim receiver shall, unless the court otherwise directs, be served on the patient within such time as is specified in the order and the patient may, within such further time as is also specified in the order apply under rule 57 to have the order set aside.

43. The court may, if it thinks fit, *in lieu* of appointing a receiver for a patient, order, direct or authorise any person named

Order without appointing a receiver.

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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.

Account-
ability of
person au-
thorised.

44. A person directed or authorised to do any act or carry out any transaction under rule 42 or 43 shall render account to the court at such time and in such manner as the court directs.

Remun-
eration of
receiver.

45. (1) Where a receiver is appointed for a patient, the court may, during the period of receivership, allow the receiver such amount as remuneration for his services as it considers reasonable and any amount so allowed shall be charged on and paid out of the estate of the patient.

(2) No request by a receiver to have an amount payable as his remuneration, that has been fixed after the death or recovery of the patient shall be entertained unless

- (a) the court has, during the period of receivership, directed that remuneration be allowed; and
- (b) the request is made within 6 years from the date of the receiver's discharge.

Appoint-
ment of
receivers
with sur-
vivorship.

46. Where, in the opinion of the court, 2 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 continues in favour of the surviving or continuing receiver.

PART VIII

Entry and Enforcement of Orders

Sealing
and filing
of orders.

47. Every order, certificate, direction or authority of the court shall, when entered, be sealed and filed.

Entry of
order on
originat-
ing appli-
cation.

48. (1) Where

- (a) an order is made as a result of the hearing of an originating application

- (i) appointing a receiver for a patient; or
 - (ii) 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 a patient's property is made in a summary manner under rule 5,

the order shall not be entered until the expiration of 7 clear days after service of Form D as set out in the *First Schedule* on the patient, unless the service is dispensed with.

First
Schedule.

(2) Nothing in paragraph (1) prevents an interim order being entered

- (a) for the protection of a patient's property; or
- (b) for the application of a patient's property for his benefit.

49. Every writ of execution or other process for the enforcement of an order of the court shall be issued out of the Registration Office.

Enforce-
ment of
orders.

PART IX

Summonses and Orders for Attendance of Witnesses and Other Persons

50. (1) In any proceedings under these rules, the court may allow or direct any party or the Solicitor General to take out a witness summons in Form F as set out in the *First Schedule* requiring the person named therein to attend before the court and give oral evidence or produce any document.

Summon-
ing of
witnesses
First
Schedule.

(2) An application by a party to be allowed to take out a witness summons shall be made by filing a statement in which the following are stated:

- (a) the name and address of the person making the application and of his attorney-at-law, 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) A witness summons shall be served on a witness personally and not less than 7 days before the date fixed for his attendance.

(4) Where the Solicitor General is directed by the court to take out a witness summons under paragraph (1), the court may also direct him to conduct any proceedings and carry out any other directions the court thinks necessary.

Power of court where undue delay etc.

51. If the court is dissatisfied with the conduct of any proceedings or with the carrying out of any of its orders or directions, whether by reason of undue delay or otherwise, it may require

(a) the party conducting the proceedings; or

(b) the person directed to carry out the order of the court or the court's directions,

to explain the reason for the delay or other cause of dissatisfaction and may thereupon make such order for expediting the proceedings or otherwise as it thinks proper.

Order for examination of patient.

52. In any proceedings relating to a patient, the court may make an order for the patient's attendance at such time and place as it directs for examination by the Registrar, a visitor or by a medical practitioner.

PART X

Amendment

Amendment of summons.

53. (1) The court may, at any stage of the proceedings allow or direct an applicant to amend his summons in such manner and on such terms as to costs or otherwise as it considers just.

(2) The amendments may be effected by the making in writing of the necessary alterations on the summons, but if the amendments are so numerous or are of such a nature or length that to make written alterations on the summons so as to give effect to them would make it difficult or inconvenient to read, a fresh summons, amended as authorised or directed, may be issued.

54. The court may, at any time, correct in an order any clerical mistake or any error arising from any accidental slip or omission.

Clerical errors.

55. Where a summons or order has been amended under this Part

Endorsement of amendment.

- (a) a note shall be placed thereon showing the date on which it was amended; and
- (b) the alterations shall be sealed.

PART XI

Appeals

56. (1) Subject to rule 58, any person aggrieved by an order or decision of a Judge may within 14 days or such further time as the court allows, from the date of the order or decision, appeal against the order or decision to the Court of Appeal.

Appeal from judge.

(2) The appellant shall, within the time referred to in paragraph (1)

- (a) serve notice of appeal in Form G as set out in the *First Schedule*
 - (i) on every person who is directly affected by the appeal; and
 - (ii) on any other person the court directs; and
- (b) leave a copy of the notice at the Registration Office.

(3) The time and place at which the appeal is to be heard shall be fixed by the Registrar in consultation with the Chief Justice and the Registrar shall cause notice of the time and place so fixed to be sent to the appellant who shall thereupon send notice thereof to every person who has been served with notice of the appeal.

(4) No further evidence shall be filed in support of or in opposition to an appeal without the leave of the Court of Appeal.

57. (1) Subject to this rule, no appeal lies

Appeal from order not made on summons etc.

- (a) from any order or decision of a Judge which is not made or given on a summons; or
- (b) at the instance of a patient from any order of the Judge appointing an interim receiver for the patient.
- (2) Any person who is aggrieved by any order or decision referred to in paragraph (1) (a) and any patient who is aggrieved by an order referred to in paragraph (1) (b) may apply by summons to the Judge to reconsider the order or decision.
- (3) No further evidence shall be filed in support of or in opposition to an application made pursuant to paragraph (2) without leave of the Judge.
- (4) A Judge may, on the hearing of an application made under paragraph (2), confirm or revoke his previous order or decision or make or give any other order or decision he thinks fit.
- (5) A person aggrieved by any order or decision made or given pursuant to paragraph (4) may appeal to the Court of Appeal and the procedure set out in Rule 56 applies.

PART XII

Attendance on Judge and Court of Appeal

Officer
to attend
as
registrar.

58. The Registrar may appoint an officer of the Registration Office to attend as Registrar at the hearing or consideration of any appeal or other application to a Judge or upon the hearing of an appeal from a Judge to the Court of Appeal.

PART XIII

Security

Receiver
to give
security.

59. (1) Where an order is made appointing a person other than the Solicitor General as receiver for a patient

- (a) the court shall order that person, before he assumes duties as receiver, to give such security for the due performance

of his duties as it thinks necessary unless the court allows that security 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 he does anything in relation to his appointment.

(2) The court may vary

(a) the amount of any security it requires to be given; or

(b) authorise or direct fresh security to be given.

60. (1) Subject to any directions of the court, security may be given wholly or partly in any of the following ways:

Manner of giving security.

(a) by a bond, approved by the Registrar and signed

(i) by the person giving the security,

(ii) by a person acting on behalf of an insurance company, a group of underwriters or a bank approved by the Registrar, or

(iii) by a person having 2 personal sureties, approved by the Registrar; or

(b) by lodging in court a sufficient sum of money or stock; or

(c) in such other manner as the Registrar approves.

(2) 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 H as set out in the *First Schedule* and the Judge may thereupon grant leave to make the lodgement and give directions as to how the money or stock shall be invested and how any dividends shall be applied.

First Schedule.

61. Any security given by lodgement of money or stock shall be dealt with in accordance with the terms of the request filed when the lodgement was made.

Forfeiture of security lodged.

62. Where a receiver is authorised or directed to give fresh security, and he has

(a) given that fresh security; and

Discharge of security where new security given.

(b) paid or secured to the satisfaction of the court any balance due from him,

he shall, unless the court otherwise directs, be discharged from all obligations binding on him under the former security.

Maintenance
of
security
by bond.

63. Every person who has given security by a bond shall, whenever his accounts are passed in pursuance of rule 64 or the court so directs, satisfy the court that any premiums payable in respect of the bond have been duly paid, or if the bond was given by personal sureties, that

(a) each surety is living and within the jurisdiction; and

(b) has neither been adjudicated bankrupt nor compounded with his creditors,

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

PART XIV

Accounts

Passing of
accounts.

64. (1) Every receiver shall, annually or at such other periods as the court directs, deliver his accounts to the Registrar and attend at or within such time as the Registrar appoints to have his 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 incurred by the receiver during the passing of 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 it may dispense with the passing of any accounts at any time at which they would otherwise be required to be passed.

Application
of balance
due from
receiver.

65. Where a balance is found to be due and owing from a receiver on the passing of his accounts, that balance shall

- (a) be paid by the receiver into court to the credit of the proceedings for investment in such manner as the court directs; or
- (b) be invested or otherwise dealt with by a receiver in such manner as the court directs.

66. The court may disallow any remuneration which would otherwise be payable to a receiver if the receiver

Default
by
receiver.

- (a) fails to comply with rule 64;
- (b) fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the court; or
- (c) defaults in paying into court or in investing or in otherwise dealing with any money in accordance with his duties,

and may charge him interest thereon at a rate not exceeding 10 per cent per annum for the duration of the period of his default.

67. Any money ordered by the court to be paid by a receiver for maintenance of a patient shall be paid out of the patient's income, unless the court otherwise directs and any costs ordered to be paid by a receiver may, when taxed or fixed, be paid out of any moneys coming into the hands of the receiver on behalf of the patient, after providing for maintenance of the patient and the remuneration of the receiver.

Payment
of main-
tenance
and costs.

68. (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 a Judge, the taking and passing of such accounts may properly be dispensed with.

Final
accounts.

(2) If a balance is found to be due and owing to the patient from the receiver or his estate, he or his personal representatives, as the case may be, shall pay the balance into court or otherwise deal with it as the Registrar directs.

(3) If a balance is found to be due to a receiver or to 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.

Discharge
of
receiver.

69. A receiver shall, unless the court otherwise orders, be discharged from all obligations binding on him under any security, if

- (a) no balance is found to be due and owing from him;
- (b) the passing of his account has been dispensed with under rule 64; or
- (c) he has paid any outstanding balance owed by him.

Account-
ing by
other
persons.

70. Rules 64 to 69 apply to any person required to render accounts under the rule 44 as they apply to a receiver.

PART XV

Inquiries

Inquiries
as to
desirability
of
appoint-
ment of
receiver.

71. (1) The court may, where it is of the opinion that a receiver ought to be appointed for a patient or that any other power conferred on it ought to be exercised with respect to the property and affairs of a patient,

- (a) direct an officer of the court or the Solicitor General to make inquiries and report to the court as to whether it is desirable in the interests of the patient that an application ought to be made for that purpose; or
 - (b) direct that a medical practitioner visit the patient and report to the court on the capacity of the patient to manage and administer his property and affairs.
- (2) The court may, on receiving a report pursuant to paragraph (1),
- (a) direct an application to be made pursuant to rule 12; or
 - (b) if the report is by a medical practitioner 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.

72. 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 one of its officers or the Solicitor General to inspect the property, make any necessary inquiries and report to the court.

Inspection of patient's property.

73. In any proceedings relating to the property of a patient, the court may make or cause to be made such inquiries as it thinks fit.

Inquiries as to prior dealing with patient's property.

(a) with respect to any dealing with the patient's property before the commencement of the proceedings; and

(b) with respect to the mental capacity of the patient at the time of the dealing with the property.

74. (1) The court may make or order to be made inquiries as to whether any person has possession, control or any knowledge of any testamentary document executed by a patient and may direct that person to give answers to the inquiries on oath.

Inquiries as to testamentary documents executed by patient.

(2) Where the court discovers that a person referred to in paragraph (1) has possession, control or knowledge of a document referred to in that paragraph, it may order him to follow such procedures with respect to that document as it thinks proper.

75. The court may make or order to be made inquiries in addition to those referred to in rule 74 as it considers expedient for the proper discharge of any of its functions under the Act or these rules.

Miscellaneous powers of court.

PART XVI

Custody and Disposal of Funds and other Property

76. Where the court directs that any personal property of a patient remain in the possession of or be deposited with any person, that person shall, unless the court otherwise directs, sign and file an inventory of that personal property together with an undertaking not to part with any of it except on the direction of the court.

Statement of property retained or deposited.

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rs. 77-78

Stock in
name of
patient or
receiver.

77. (1) Where stock stands in the name of a patient as beneficiary, or in the name of a receiver in trust for a patient as part of that patient's property, and the receiver

- (a) dies intestate;
- (b) becomes incapable, by reason of mental disorder, of acting as receiver;
- (c) is out of the jurisdiction, there being uncertainty as to whether he is still alive; or
- (d) fails to transfer stock or receive and pay over dividends on the direction of the court,

the court may order any person it deems proper to transfer the stock on behalf of the receiver, or appoint a new receiver for the patient or order the stock to be transferred into court or otherwise deal with the stock as the court thinks fit.

(2) Where an order is made under paragraph (1) or under section 18(1) of the Act directing stock to be transferred into court, the person required to effect the transfer shall be the secretary, manager or a director of the company or other body whose stock is to be transferred and that person shall, if so ordered receive any sum accrued and due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it

- (a) into court;
- (b) to the general account of the patient; or
- (c) to a separate account to be kept exclusively for the purpose, or

otherwise deal with it as the court directs.

Disposal
of pro-
perty on
patient's
death or
recovery.

78. (1) On the death or recovery of a patient the court may order any money, securities or other property

- (a) forming part of his estate; or
- (b) remaining under the control of or held under the direction of the court,

to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) If no grant or representation has been made in respect of the estate of a deceased patient and it appears to the court that the assets of the estate, after deduction of debt and funeral expenses, do not exceed \$1 500 in value, the court may provide for payment of the funeral expenses out of any funds in the 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 direction of the court, be paid, transferred, delivered or released to the personal 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) If no application for an order under paragraph (1) or (2) is made within 6 months after the death of a patient, the court may direct that any money or securities to which the patient was entitled at his death be transferred into court.

PART XVII

Settlement and Approval of Deeds

79. All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as are drawn up on behalf of a patient, shall be settled and approved by the court.

Docu-
ments to
be settled
by court.

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

Authenti-
cation by
seal.

(2) Except where otherwise directed, the seal of the court shall not be affixed to any deed or other document 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) the person tendering it produces a certificate from the Accountant General stating that money has been lodged in the court, if the deed or other document contains a recital as to money being so lodged.

PART XVIII

Copies of Documents

Copies of documents in court.

81. (1) Subject to the payment of any fees prescribed by these rules

- (a) any party who has filed an affidavit or other document is, unless the court otherwise directs, entitled, on request, to be supplied by the court with a copy of that affidavit or document;
- (b) the party conducting any proceedings is, unless the court otherwise directs, 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 document mentioned in sub-paragraph (a) or (b), if the court is satisfied that he has good reason for requiring such document and that it is not reasonably practicable for him to obtain that document from the party entitled to a copy by virtue of sub-paragraph (a) or (b).

(2) A copy of any document supplied under paragraph (1) shall, if so required by the party to whom it is supplied, be marked as an office copy without extra charge.

PART XIX

Fees

Charge of percentage.

82. (1) In this rule "income" means the clear income at the patient's disposal.

(2) Subject to this Part, a fee calculated at the rate of 5 per cent payable to the Crown shall be charged on the income of any patient whose estate is being administered in accordance with these rules.

(3) A fee charged under this rule is payable from the date of the first order in the proceedings (other than an order relating to the patient exclusively in his capacity as a trustee) and ceases to be so payable on the termination of such proceedings; but,

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- (a) where the annual income appears not to exceed \$2 500, the fee shall be \$25 in respect of each completed year; and
- (b) where the annual income appears to exceed \$2 500 but does not exceed \$5 000, the fee payable shall be at the rate of 3 per cent per annum of the estimated income.

83. (1) The court shall annually, or at such other periods as are convenient, issue a certificate in respect of each patient, whose property is being administered by the court in accordance with these rules, showing Payment of fees.

- (a) the fee payable at the date specified therein disregarding amounts of less than \$1; and
- (b) the name of the person by whom payment is to be made.

(2) Upon the issue of the certificate the amount stated therein shall be charged upon the patient's estate.

(3) Where the court directs a fee to be paid by the Accountant General wholly or partly out of funds that are in court, the Accountant General shall, unless the court directs payment to be made out of capital,

- (a) appropriate out of the income arising from those funds an amount equal to the amount of the fee payable therefrom;
- (b) place the amount to the credit of an account set apart for the purposes of this rule; and
- (c) deal with that amount thereafter in such manner as the court directs.

(4) In every other case the person by whom a fee is payable pursuant to these rules shall, unless the court otherwise directs, make the payment out of the income of the patient or, if he is deceased, out of his estate.

84. The fees specified in Part I of the *Second Schedule* are payable in respect of documents prepared by the court in the course of proceedings relating to a patient. Fees on documents
Second
Schedule

85. There is payable in respect of the taxation of a bill of costs Fees on
taxation.

- (a) a fee of 25 cents for every \$10 or part thereof; and
- (b) a fee of \$4 on the certificate of the result of taxation.

Method of payment of fees.

86. Unless the court otherwise directs, all fees other than fees payable out of funds in court or by the Solicitor General shall be paid by means of postage stamps affixed to the appropriate document.

Postponement and remission of fees.

87. The court may remit or postpone the payment of the whole or part of any fee if, in its opinion, hardship might be caused to the patient or his dependents or the circumstances merit the remission or postponement of such fees.

Exemptions from fees in cases of certain pensions.

88. No fee is payable pursuant to rule 82 or 84 in the case of a patient to whom a pension has been awarded in respect of mental disorder attributable to, or aggravated by, service in the armed forces of the Crown.

PART XX

Costs

Costs generally.

89. (1) All costs incurred in respect of proceedings under these rules may be awarded or remitted at the discretion of the court and the court may, in awarding costs, order them to be

- (a) paid by the patient;
- (b) charged on or paid out of the patient's estate;
- (c) paid by any other party; or
- (d) paid by 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 up to within 6 years from his death.

Application under section 46. Cap. 250.

90. The court may make any order with respect to the costs of an application under section 46 of the *Trustee Act* as the court could under section 63 of that Act in relation to any matter mentioned in that section.

Rules of Supreme court relating to costs to apply.

91. Subject to these rules, the Rules of the Supreme Court relating to costs apply to costs incurred in relation to proceedings

under these rules with such modifications as the court considers necessary, and where costs are to be taxed they shall be taxed by or under the direction of the Registrar.

92. No receiver for a patient, other than the Solicitor General shall, unless authorised by the court, employ an attorney-at-law or other professional person at the expense of the patient's estate to do any work that does not usually require professional assistance.

Cost of unnecessary employment of attorney-at-law etc. not to be allowed.

93. Any costs incurred by the Solicitor General in relation to proceedings under these rules or in carrying out any directions given by the court shall be paid by such party, such person attending the proceedings, or out of such funds, as the court directs.

Costs of Solicitor General.

94. Where in proceedings relating to a patient a claim is made against his estate in respect of 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 the Registrar for the amount due to the claimant to be ascertained.

Ascertainment of prior costs, etc.

FIRST SCHEDULE

Rule 6

FORM A

*Title of Proceedings***1. General Title**

High Court 19 No.

In the Matter of *[name of patient]***2. Title under the Trustee Act**

High Court 19 No.

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

and

In the Matter of *[name of patient]*

and

In the Matter of the *Trustee Act* section 46 [or section 63 as the case may be]

FORM B

Rule 4(1)

ORIGINATING APPLICATION

Title of Proceedings

1. General Title

High Court 19 No.

In the Matter of [name of patient]

LET all parties concerned attend the in Chambers at the High Court, Law Courts, Coleridge Street, Bridgetown, on the day of 19 at o'clock on the hearing of an application on the part of [*state full name of applicant, followed by his address and description*] in the parish of who is the [*state relationship*] of [or is not related to] the above named [*state name of patient*] for the appointment of the Applicant [*or, if not the Applicant, insert the full name, address and description of the proposed Receiver and state his relationship to the Patient or, if such be the case that he is not related to the Patient*] or some other fit and proper person as Receiver in this matter [*or, if the appointment of a receiver is not asked for, state the other relief asked for*] and for such consequential directions as are necessary.

Dated the day of 19 .

Taken out by of

To [*name of Patient*]
[and]

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FORM C

Rule 4(2)

GENERAL FORM OF SUMMONS

[Appropriate title as in Form A]

Let all parties concerned attend the
in Chambers at the High Court, Law Courts, Coleridge Street, Bridgetown on
the day of 19 at o'clock in the hearing of an
application on the part of *[state full name of Applicant followed by his address
and description]* of in the parish of for an order that
[state relief asked for] and for such consequential directions as may be
necessary.

Dated the day of , 19 .

Taken out by

Attorney for the Applicant

To *[name of Respondent]*

FORM D

Rules 26(2), 48(1)

NOTICE OF ORIGINATING PROCEEDINGS

*[Appropriate title as in Form A]*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 what steps should be taken in your interests to protect and manage your property and affairs during your inability to do so and whether *[state full name of proposed Receiver followed by his address and description]* of _____ or some other 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
High Court
Coleridge Street
Bridgetown.

3. An order will not be entered until 7 clear days have elapsed from the day when you receive this communication.

Dated the _____ day of _____ 19____ .

*[Seal of court where notice sent by
officer of court, otherwise signature
and address of applicants
attorney-at-law or of applicant if
acting in person]*

FORM E

Rule 38

CONSENT OF PROPOSED NEW TRUSTEE TO ACT

[Appropriate Title as in Form A]

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

Dated the day of , 19 .

[Signed]

I of Attorney-at-law, certify that the
signature written above is the signature of the person
mentioned in the above consent.

Dated the day of , 19 .

[Signed]

FORM F

Rule 50(1)

WITNESS SUMMONS

[Appropriate Title as in Form A]

You [state name and address of witness]

are hereby summoned to attend before the Honourable _____ in chambers at the Law Courts, Coleridge Street, Bridgetown on the _____ day of _____, 19____, at _____ o'clock, to give evidence in the matter *[add, if documents to be produced]* and also to bring with you and produce at the time and place herein referred to *[specify documents]*.

Dated this _____ day of _____, 19____.

[Seal of Court]

[Name of Registrar]

This summons was taken out by

of

Attorney-at-law for

FORM G

Rule 56

NOTICE OF APPEAL FROM ORDER OR
DECISION OF JUDGE*[Appropriate Title as in Form A]*

Take Notice that _____ of _____ desires to appeal to the Court of Appeal from the order [or decision] of the Honourable _____ made in this matter on the _____ day of _____ 19____, *[add, if part only is appealed from]* so far as it directs that

And that he intends to ask that the said order [or decision] may be discharged [or varied] and that it may be ordered that

You will be sent notice of the time and place fixed for the hearing of the appeal.

Dated the _____ day of _____ 19____.

Signed
Attorney-at-Law for

to
and
his Attorney-at-Law

FORM H

Rule 60

REQUEST FOR LEAVE TO GIVE SECURITY
BY LODGEMENT IN COURT

[Appropriate Title as in Form A]

I of [state address and description], Receiver for the 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 directs, but so 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 over []c. stamp

To the Registrar
Supreme Court.

SECOND SCHEDULE

Rule 84

PART I

FEES ON DOCUMENTS

			\$	c.	
1.	(a)	On an order	..	..	20.00
	(b)	on a certificate under the seal of the court other than a percentage certificate or a certificate of the result of a taxation	..	..	10.00
	(c)	on an authority or direction under the seal of the court (not being a direction to the Accountant-General)	..	..	5.00
	(d)	for a copy of such an authority or direction	..	..	.50
	(e)	for a copy of any document other than an authority or direction			
	(i)	for the first 4 folios	..	..	.50
	(ii)	for each additional folio beyond 4	..	..	.20

2. Fees (a), (b), and (c) shall be payable notwithstanding the termination of the proceedings if the document has previously been settled by the court.