

1964/181



THE MATRIMONIAL PROCEEDINGS RULES 1964

BERNARD FERGUSSON, Governor-General
ORDER IN COUNCIL

At the Government House at Wellington this 17th day of November 1964

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Matrimonial Proceedings Act 1963, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least four of the other members of the Rules Committee constituted under the Judicature Amendment Act 1930 (of whom at least one was a Judge of the Supreme Court), hereby makes the following rules.

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1. **Title and commencement**—(1) These rules may be cited as the Matrimonial Proceedings Rules 1964.

(2) These rules shall come into force on the 1st day of January 1965.

2. **Interpretation**—In these rules, unless the context otherwise requires,—

“The Act” means the Matrimonial Proceedings Act 1963:

“Matrimonial cause” or “cause” means any proceedings under the Act for a decree of nullity, or of separation, or of restitution of conjugal rights, or of dissolution of a voidable marriage, or of presumption of death and dissolution of marriage, or of divorce:

“Registrar” does not include a Deputy Registrar:

“Respondent” includes all co-respondents, so far as a provision in which the term occurs is applicable to them:

A reference to a numbered form is a reference to a form so numbered in the First Schedule to these rules:

Expressions defined in the Act have the meanings so defined.

3. **Divorce Register**—In each registry of the Court there shall be kept a book, to be called the Divorce Register, in which, under the title of each cause, every proceeding therein, every document filed,

every motion and the hearing thereof, every decree or order, and every other matter and thing done in Court or in Chambers, or in the Registrar's Office, shall be entered in chronological order, with the dates thereof, as they occur.

PART I—COMMENCEMENT OF MATRIMONIAL CAUSES

4. Petition—(1) Every matrimonial cause shall be commenced by filing a petition in the Court.

(2) A petition for a decree of divorce or of separation or of restitution of conjugal rights or of presumption of death and dissolution of marriage shall be in form 1.

(3) A petition for a decree of nullity in respect of a void marriage shall be in form 2.

(4) A petition for a decree of dissolution of a voidable marriage shall be in form 3.

(5) Each petition shall state such further or other facts (if any) as the special circumstances of the case may require.

5. Where names of adulterers unknown—Where adultery is a ground on which a decree of divorce or of separation is sought, if the name of any alleged adulterer or adulteress is unknown to the petitioner at the time of filing his or her petition, that name shall be supplied as soon as known, and application shall be made forthwith to the Court or a Judge thereof to amend the petition by inserting that name therein. On that application an order shall be made as to the amendment, and directions given as to the service of the amended petition.

6. Notice to respondent—(1) There shall be annexed to every petition and to every copy thereof a notice to the respondent, which, in the case of a respondent residing in New Zealand, shall be in form 4. The original of that notice shall be filed in the registry.

(2) The address for service shall be not more than 3 miles from the registry of the Court in which the petition was filed.

(3) Where an application is made for any order or direction relative to the service of the petition upon a respondent, the Court or Judge hearing the same may require such further information or matter to be stated in the said notice to the respondent, and may impose such conditions as to the Court or Judge seems proper in the circumstances of the particular case. Every such application may be dealt with by a Registrar, in which case every reference in this subclause to the Court or Judge shall be deemed to include a reference to the Registrar.

(4) Where a respondent resides outside New Zealand, the notice to the respondent shall be in form 5. The amount to be paid or tendered to the respondent pursuant to paragraph 12 of that form shall be fixed by a Registrar.

7. Marriage certificate—(1) The original or a certified copy of the certificate of the marriage to which the cause relates shall be lodged in the registry at the time of the filing of the petition, or at such other time as the Registrar directs.

(2) The Registrar or a Deputy Registrar may dispense with the lodging of a certificate under this rule, if he is satisfied that it is not available.

8. Respondents and others to give address for service—(1) Every address for service given by a respondent shall be not more than 3 miles from the registry in which the petition is filed.

(2) That address for service shall be given either by subscribing at the foot of the first document filed by the respondent a memorandum specifying the address for service and stating the name and address of the respondent's solicitor, if he is acting by a solicitor, or by filing such a memorandum separately and serving a copy thereof on each other party to the cause or his solicitor.

(3) Every address for service by a respondent shall be signed by the respondent or his solicitor.

(4) Until a respondent has given an address for service as herein provided, he shall not, except where personal service on him is required, be entitled to be served with notice of any further proceeding in the cause or with copies of any further affidavits or other documents filed therein, or to address the Court at any stage of the cause.

(5) The provisions of subclauses (1) to (4) of this rule, as far as they are applicable and with any necessary modifications, shall apply to every person who for any purpose intervenes or applies for leave to intervene in a cause, and to every person who is served with any notice or other document in any proceeding in a cause, in the same manner as they apply to a respondent.

PART II—SERVICE

9. Service of petition—Every petition shall be served on each party affected thereby, either within or outside New Zealand, in accordance with the provisions of this Part of these rules, or in such manner as the Court, by a general or special order, from time to time directs.

10. Petition and notice to be served personally—(1) Service of a petition shall be effected by personally delivering to each respondent a copy of the petition under seal of the Court with a copy, signed by a Registrar or Deputy Registrar and under the seal of the Court, of the notice to the respondent required by these rules to be annexed to the petition.

(2) Personal service shall in no case be effected by the petitioner, but the petitioner may be present when such service is effected.

11. Where personal service cannot be effected—(1) In cases where personal service cannot be effected, application may be made to the Court or a Judge thereof to substitute some other mode of service or to dispense with service altogether.

(2) Every order for substituted service shall be in form 6.

(3) Where leave is given to substitute for personal service notice of the proceedings by advertisement, the form of the advertisement shall be in form 7. In such a case the pages of the newspapers, containing the advertisement and the respective dates of publication, shall be exhibited to the affidavit filed in proof of the due publication of the advertisement.

12. Proof of service—(1) A petition shall not be tried unless, with respect to every respondent thereto service on whom is not altogether dispensed with, either—

(a) The Court is satisfied that the respondent has taken some step in the cause; or

(b) An affidavit in form 8 has been filed showing that the respondent has been personally served with the petition and the notice required to be annexed thereto, or an affidavit has been filed showing that the respondent has been otherwise duly served in accordance with the directions of the Court or Judge.

(2) Where the person served is personally known to the person who makes the affidavit of service, the circumstances which enable the deponent to state his personal knowledge of the person served shall be set out.

(3) Where the person served is not personally known to the person who makes the affidavit, a mere acknowledgment by the person served is not sufficient evidence of his or her identity. Identity may be proved by written acknowledgment proved to be in the handwriting of the person served, by satisfactory photographs, or by any other means to the satisfaction of the Court.

(4) Where an order is made for substituted service by advertisement, the affidavit as to advertising shall be in form 9.

13. Service of petition or answer on co-respondent—(1) Every co-respondent against whom adultery is alleged in a petition shall be served personally with a copy of the petition.

(2) Every co-respondent against whom adultery is alleged in an answer shall be served with a copy of the answer.

(3) Every copy of the petition or of an answer served under this rule shall be sealed with the seal of the Court, and shall have annexed thereto a copy, signed by a Registrar or Deputy Registrar under the seal of the Court, of a notice in form 4 or form 5, as the case may require, with any necessary modifications.

(4) The original notice shall be filed in the registry in which the petition was filed, annexed to the petition or the answer, as the case may require.

14. Service of other documents—Rules 10, 11, and 12 hereof, as far as they are applicable and with any necessary modifications, shall apply to all other documents required to be served personally.

15. Service where personal service not required—The provisions of rules 585 to 587 of the Code of Civil Procedure in the Supreme Court (as to service where personal service is not required), as far as they are applicable and with any necessary modifications, shall, unless otherwise provided, apply to the service of all pleadings and other documents under the Act or these rules.

16. Service on Maoris—The provisions of rules 588 to 588D of the Code of Civil Procedure in the Supreme Court, as far as they are applicable and with any necessary modifications, shall apply to the service on Maoris of all pleadings and other documents under the Act or these rules.

17. Original service on infants—Service on any infant, or on a parent or guardian with whom any infant is living, or on a person entitled by statutory authority or the order of any competent Court to the custody of any infant or, if there be no such person, then on the person under whose care the infant is, shall, unless the Court or a Judge thereof otherwise orders, be deemed good service on the infant of any petition commencing a cause, or of any answer or plea, and of any document required to be served therewith.

18. Original service on persons of unsound mind—Service on the committee of a person of unsound mind or on the person under whose care he or she is shall, unless the Court or a Judge thereof otherwise orders, be deemed good service on the person of unsound mind of any petition commencing a cause, or of any answer or plea, and of any document required to be served therewith.

PART III—GUARDIANS AD LITEM

19. No further step until guardian *ad litem* admitted—After the original service aforesaid on an infant or person of unsound mind, no further step shall be taken in the cause until a guardian *ad litem* to the person so served has been admitted.

20. Guardian *ad litem* necessary—No infant or person of unsound mind shall commence, prosecute, or defend, or intervene, or take any proceedings in a cause except by a guardian *ad litem*.

21. Guardian *ad litem* of infant—(1) Subject to subclause (3) of this rule, any person of or over the age of 21 years may act as the guardian *ad litem* of an infant of or above the age of 16 years upon the filing of a notice stating that he or she is willing to act as guardian *ad litem* and bearing at the foot a consent signed by the infant.

(2) Subject to subclause (3) of this rule, in every other case the guardian *ad litem* shall be appointed by the Court or by a Judge thereof or by a Registrar, on the application *ex parte* of the person proposing to be so appointed:

Provided that the Court or a Judge thereof may of its or his own motion appoint a guardian *ad litem* to any infant who is a party to or an intervener in a cause or desires to intervene therein.

(3) Where a petition or answer has been served in accordance with rule 17 hereof, and no appearance has been entered on behalf of the infant, the party at whose instance the petition or answer was served shall, before proceeding further with the cause, apply to the Court or to a Judge thereof or to a Registrar for an order that some proper person be appointed as guardian *ad litem*.

22. Guardian *ad litem* of person of unsound mind—(1) Where the Attorney-General or the Solicitor-General signs a consent to act as guardian *ad litem* of a person of unsound mind, the consent may be filed in the Court, and thereupon the Attorney-General or the Solicitor-General, as the case may be, or any authorised person appointed by him under subclause (2) of this rule, shall become the guardian *ad litem* of the person of unsound mind for the purposes of the cause.

(2) The Attorney-General or the Solicitor-General may, by writing under his hand, appoint a person to be an authorised person for the purposes of this rule, either generally or in respect of a particular person of unsound mind.

(3) In all other cases the guardian *ad litem* must be appointed by the Court or by a Judge thereof or by a Registrar, on the *ex parte* application of the person proposing to be so appointed:

Provided that where a person of unsound mind has been served with a petition, answer, or plea and, at the expiration of seven days after such service, no guardian *ad litem* to him has been appointed, application for the appointment by the Court or by a Judge thereof or by a Registrar of a guardian *ad litem* of that person may be made by the person by whom the petition, answer, or plea was filed, in which case the application shall be by notice of motion:

Provided further that the Court or a Judge thereof may of its or his own motion appoint a guardian *ad litem* to any person of unsound mind who is a party to or intervener in a cause or desires to intervene therein.

(4) Every application for the appointment of a guardian *ad litem* by the Court or by a Judge thereof or by a Registrar shall be supported by an affidavit or affidavits filed therewith deposing as to the mental condition of the person with respect to whom the guardian *ad litem* is sought to be appointed, and showing that the person whose appointment is applied for is a suitable person to be so appointed.

(5) Every person appointed by the Court or by a Judge thereof or by a Registrar or otherwise as a guardian *ad litem* to a person of unsound mind on whom a petition, answer, or plea has been served shall, within seven days after that appointment, serve notice thereof on the party who filed the petition, answer, or plea, unless he was so appointed on the application of that party.

(6) A person shall, for the purposes of this rule and of rule 23 hereof, be deemed to be a person of unsound mind who, in the opinion of the Court or Judge or Registrar, is, by reason of mental defect, incapable or likely to be incapable of properly understanding any matters which, as a party to or intervener in a matrimonial cause, he may require to understand.

23. Further provisions as to guardians *ad litem*—(1) Where it is required by these rules that a document shall be signed or an affidavit made by a party personally, it shall, in the case of a party proceeding by a guardian *ad litem*, be signed or made respectively by the guardian *ad litem*, unless the Court or Judge or Registrar otherwise directs.

(2) A guardian *ad litem* may be removed by the Court upon sufficient cause being shown.

(3) A guardian *ad litem* shall not be permitted to retire without leave of the Court.

(4) In case of the death or removal or retirement of a guardian *ad litem*, the provisions of rule 21 or, as the case may be, rule 22 hereof shall apply as in the case of an original guardian *ad litem*.

(5) The guardian *ad litem* shall be liable for costs and shall not be allowed to retire without giving security for the costs already incurred, if such security is required by the opposite party:

Provided that a solicitor appointed guardian *ad litem* under the proviso to subclause (2) of rule 21 hereof or under subclause (3) of that rule or under the first or second proviso to subclause (3) of rule 22 hereof shall not be so liable.

(6) A solicitor appointed under the proviso to subclause (2) of rule 21 hereof or under subclause (3) of that rule or under the first or second proviso to subclause (3) of rule 22 hereof may, by leave of the Court, decline to continue the proceedings unless he is prepaid the amount of all necessary disbursements.

(7) Where an infant coming of age, or a person ceasing to be of unsound mind, elects to continue a cause to which he has been a party by his guardian *ad litem*, all subsequent proceedings shall be carried on in his own name and, in such a case, he shall be liable for all the costs of the cause in the same manner as if he had become a party after coming of age or after ceasing to be of unsound mind, as the case may be.

PART IV—ANSWERS

24. Filing and service of answer—(1) Each respondent may, within 21 days after service of the petition on him or her if he or she resides within New Zealand, file an answer thereto.

(2) Where a respondent resides beyond New Zealand, the time after service within which he or she may file an answer to the petition shall, on application by the petitioner, be fixed by the Court or by a Judge thereof or by a Registrar.

(3) An answer shall be in form 10, with such modifications as may be necessary.

(4) Each respondent filing an answer shall, within the time limited for such filing, deliver a copy thereof to the petitioner, or to his or her solicitor.

(5) Where damages are claimed in a petition, it shall be sufficient for a co-respondent to state in his or her answer that he or she is defending the claim for damages only.

25. Respondent may not be heard without answer—A respondent who fails to file an answer within the time hereinbefore prescribed or within any extended time allowed for that purpose shall not be entitled to be heard on the petition except on questions of costs, custody of children, other ancillary relief, or damages, and then only after an address for service has been filed.

26. Prayer for relief in answer—Where a respondent intends to apply for relief under the provisions of section 66 of the Act, the answer of that respondent shall conclude with a prayer for the relief to which he or she claims to be entitled. An answer may be amended by leave of the Court or a Judge thereof, by adding such a prayer at or before the trial.

27. Naming of adulterer charged in answer—Where adultery is a ground on which divorce or separation is sought in the prayer of an answer, the provisions of rule 5 hereof, as far as they are applicable and with any necessary modifications, shall apply.

28. Reply to charge in answer—(1) Where the answer filed by any respondent contains any charge against the petitioner, the petitioner may, within 14 days after the delivery of the answer, file a reply thereto in form 11 and within that time deliver a copy of the reply to all parties or their solicitors.

(2) The provisions of subclauses (1) and (2) of rule 24 hereof, as far as they are applicable and with any necessary modifications, shall apply to the filing of a reply by a person who has been made a co-respondent by reason of a charge of adultery contained in an answer served on him or her; and the provisions of subclause (4) of rule 24 hereof, as far as they are applicable and with any necessary modifications, shall apply to the delivery of that reply.

PART V—GENERAL RULES AS TO PLEADINGS

29. Pleadings to give particulars—Every pleading shall give such particulars of time, place, names of persons, and other circumstances as will suffice to inform all other parties of the matters relied on as grounds of relief or defence.

30. Prayer for relief—The prayer to every petition, and to every answer in which relief is claimed shall state specifically the relief claimed, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or Judge may think just, to the same extent as if it had been asked for, but a separation shall not be granted on a petition for divorce unless it is specifically asked for in the prayer.

31. Amendment of pleading—(1) Any party desiring to alter or amend any pleading must apply to the Court or a Judge thereof for leave to do so.

(2) Where the alteration or amendment is merely verbal or for the purpose of correcting a clerical error, leave to make it may be obtained *ex parte*.

(3) In any other case, it shall not be necessary to give notice of the application for leave to any party who has not then given an address for service, but on the hearing of the application such direction for the purposes of rule 32 hereof may be given as the case requires.

32. Service of amended pleading—(1) A copy of every pleading, showing the alterations and amendments made therein, shall, unless the Court or a Judge thereof otherwise orders, be served on all other parties forthwith after those alterations and amendments are made in the pleadings filed in the registry.

(2) Each other party, if he or she has already pleaded in answer thereto, shall be at liberty to amend that answer within 10 days after such service or within such further time as may be allowed for the purpose.

33. Time extended where pleading amended—When a petition, answer, or other pleading is required to be served after being altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of such service.

34. Pleadings out of time—Except with the leave of the Court or a Judge thereof, no pleading shall be filed or served out of time after the case has been set down for trial.

35. Further particulars—The Court or a Judge thereof may order that further particulars be given of any matters pleaded. In the absence of a Judge, the Registrar shall have power to make such an order.

PART VI—TRIAL

36. Where cause to be tried—Each cause shall be tried at the Court nearest to the registry in which the petition was filed; but the Court or a Judge thereof, on the application of any party or of the Attorney-General or Solicitor-General, or without any application, may order a cause to be tried, either wholly or as to any particular issue or issues, at a Court in any other place.

37. Setting down for trial—(1) Except by leave of the Court or a Judge thereof, no cause shall be set down for trial before the time for filing an answer has expired.

(2) Every cause to be tried shall be entered by a Registrar or Deputy Registrar in accordance with the provisions of this rule in a list kept by him for that purpose.

(3) Where an answer has been filed, the entry shall be made only on the filing of a praecipe in form 12 signed by the parties:

Provided that a Registrar or Deputy Registrar may enter any such cause in the list where the praecipe is signed by one party only if the Registrar or Deputy Registrar is satisfied that the other party or parties to the cause have refused to sign the praecipe and that the refusal in the circumstances is unreasonable. Where a Registrar or Deputy Registrar enters a cause in the list under this proviso, he shall endorse the praecipe accordingly.

(4) Where an answer has not been filed, the entry shall be made only on the filing of a praecipe in form 13.

(5) If a cause is to be tried at any place other than Auckland, Wellington, Christchurch, or Dunedin, the praecipe shall be filed at least six clear days before the day appointed for the sitting of the Court, and, except with the leave of the Court or a Judge thereof, no cause shall be tried at any such sitting where the praecipe has not been so filed:

Provided that where the time for filing an answer has expired and an answer has not been filed, the praecipe may be filed at any later time (whether before or after the day appointed for the sitting of the Court).

(6) Where a cause has been set down for trial on the filing of a praecipe pursuant to the proviso to subclause (5) of this rule, and in the opinion of the Court or a Judge thereof it cannot be conveniently disposed of at the sitting for which it has been so set down, the Court or Judge shall adjourn the cause either to the next succeeding sitting of the Court at the same place, or *sine die*, or otherwise.

(7) Fixture for the trials of causes shall be made in the manner prescribed by the Rules of the Supreme Court for the trials of actions.

38. Notice of hearing—(1) The party who files a praecipe setting down a cause for trial shall, within 24 hours after doing so, serve a copy thereof upon each other party who has taken a step in the cause.

(2) It shall be the duty of all parties to a cause entered in any list or given any fixture to furnish without delay to a Registrar or Deputy Registrar all available information affecting any estimated length of the trial of the cause.

(3) Where any fixture for the hearing of a cause has been made, the party who applied for the fixture shall without delay inform the other parties or party who have taken a step in the cause of the time and date of the fixture allotted.

39. Issues of fact—Where a cause is to be tried before a Judge and a jury, the issues of fact to be submitted to the jury shall be settled by the Judge before or at the trial.

40. Application for new trial—The provisions of rules 276 to 285 of the Code of Civil Procedure in the Supreme Court shall apply to an application for a new trial of a cause, subject to the following modifications:

- (a) The Court or a Judge thereof shall have power to extend the time fixed by rule 284 for moving for a new trial in any cause in which a decree *nisi* for divorce or for presumption of death and dissolution of marriage or for dissolution of a voidable marriage has not been made absolute:
- (b) Notwithstanding anything in the said rules, the Court or a Judge thereof shall have power to grant a new trial in any cause where it appears that irreparable wrong would otherwise be done.

41. Mode of taking evidence—The witnesses in every cause, where their attendance can be had, shall be sworn and examined orally in open Court; but the parties, with the leave of the Court, or where so authorised by these rules, may verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit, on the application of any other party or by the direction of the Court, shall be subject to be cross-examined by or on behalf of that other party orally in open Court, and after that cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom the affidavit was filed.

42. Adjournment—The Court may from time to time adjourn the hearing of any cause, and may require further evidence thereon if it sees fit so to do.

43. Judge may sit in Chambers—(1) Any Judge of the Court may sit in Chambers for the purpose of dealing with such ancillary matters as in his opinion can with advantage be heard in Chambers; and the time at which that sitting shall be held shall from time to time be fixed by the Judge.

(2) The Judge when so sitting in Chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open Court.

44. Decree nisi—Every decree *nisi* shall operate as such from the granting of the decree by the Court, but it shall not be necessary for such a decree to be sealed:

Provided that if the petitioner or respondent so requests, a Registrar or Deputy Registrar shall seal the decree, which shall be in form 14.

45. Decree absolute—(1) The request under section 34 (1) (c) of the Act to issue a decree absolute shall be in form 15 and shall be signed by the petitioner, or his or her solicitor.

(2) Every motion by a petitioner or respondent to make absolute a decree *nisi* for divorce or for presumption of death and dissolution of marriage or for dissolution of a voidable marriage shall be in form 16. If neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause and no matter in opposition to the final decree is then pending, the motion shall have at the foot thereof the statement and certificate set out in the said form.

(3) No decree *nisi* shall be made absolute until a Registrar or Deputy Registrar has signed the certificate prescribed by subclause (2) of this rule, or until every intervention and opposition (if any) is disposed of and the Court thereupon or thereafter directs that a decree absolute may issue.

(4) Every decree absolute which is made on notice of motion shall be in form 17.

PART VII—ANCILLARY RELIEF

46. Application for ancillary relief—(1) Every application for ancillary relief—that is to say, every application for interim maintenance and for any relief authorised by Parts VI, VII, and VIII of the Act—shall be to the Court by notice in form 21 filed in the registry in which the petition was filed. Any such application may be made by a respondent, whether or not he or she has filed or intends to file an answer to the original petition.

(2) Subject to the requirements of the Court, an order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained or of any motion for a decree absolute upon such a petition without the necessity of complying with the requirements of subclause (1) of this rule and rules 47 to 56 hereof.

(3) Subject to the requirements of the Court, where the parties are agreed upon the terms of any order granting ancillary relief, the order may, by consent of the parties, be included in the decree *nisi* and decree absolute, or either of them, without the necessity of complying with the requirements of subclause (1) of this rule and rules 47 to 56 hereof.

(4) Where application is made for an order under section 60 of the Act, notice of the application in form 22, together with a copy of the application, shall be served on the landlord of the dwellinghouse to which the application relates. The provisions of subclause (1) of rule 49 hereof, as far as they are applicable and with any necessary modifications, shall apply with respect to the service of the notice, and at least four clear days' notice in writing of the time fixed for the hearing of the application shall be given to the landlord.

47. Time for applying for interim maintenance—An application for interim maintenance by a wife petitioner may be made at any time after the filing of her petition; and an application for interim maintenance by a wife respondent may be made at any time after service on her of the husband's petition.

48. Affidavits in support—Every person making application for ancillary relief shall, at the time of filing the application, file an affidavit or affidavits giving full particulars of all matters relevant to the application.

49. Service of application and affidavits—(1) Notice of an application for ancillary relief shall be served on the other party to the marriage, or on both parties to the marriage, as the case may be, and on any person or persons who may have any legal or beneficial interest in any property in respect of which the application is made, and on any person otherwise interested in the application, by leaving a copy thereof, under the seal of the Court, at the address for service of the party to be served, if he or she has given an address for service, or, if that party has not given an address for service, by personally serving the same, unless in either case the Court or a Judge thereof directs any other mode of service or dispenses with service on them or any of them.

(2) A copy of every affidavit filed in support of any such application shall be served therewith.

50. Affidavits in answer—A person who is served with notice of an application for ancillary relief may, within 14 days after service, file an affidavit or affidavits in answer thereto and within that time deliver a copy thereof to the applicant or to his or her solicitor.

51. Affidavits in reply—The applicant may, within 14 days after delivery of any affidavit under rule 50 hereof, file an affidavit or affidavits in reply, and within that time deliver a copy thereof to each other party who has given an address for service or to his or her solicitor; but no further affidavits shall be filed by any party without leave.

52. Fixing time for hearing, and notice of time—When the filing of affidavits relating to an application for ancillary relief is concluded or the time for filing affidavits has expired, a Registrar or Deputy Registrar, upon the request of any party thereto who has given an address for service, shall fix a time for the hearing thereof; and at least four clear days' notice in writing of the time so fixed shall be given by that party to each other party to the application who has given an address for service, or to his or her solicitor, unless the Court or Judge dispenses with such notice.

53. Subsequent procedure—Subject to the provisions of rule 54 hereof, all subsequent proceedings arising out of an application for ancillary relief shall be carried on, and every such application shall be heard and disposed of by the Court or a Judge thereof, as if in all respects the matter had been commenced and had come before the Court or Judge on motion.

54. Reference to Registrar—(1) Every application for ancillary relief may in the first instance be referred by the Court or a Judge thereof to the Registrar, who shall investigate the application in the presence of the parties or their solicitors, and who for that purpose shall be at liberty to require the production of any documents referred to in the pleadings, or to call for any affidavits. The Registrar shall report in writing to the Court the result of the investigation, and any special circumstances to be taken into consideration.

(2) After the Registrar has so reported, the application may again be brought before the Court or a Judge thereof at such time as may, upon the request of any party thereto who has given an address for service, be fixed by the Registrar; and notice of the time of that further hearing shall be given by that party as in the case of the time originally fixed for the hearing.

55. Further particulars—The Court or a Judge thereof may order that further particulars be given of any matters pleaded in any application or in any affidavit filed with respect to any application, and, if the Court or Judge thinks fit, that those particulars be verified by affidavit. In the absence of the Judge, a Registrar shall have power to make such an order.

56. Abridging times—(1) Notwithstanding the foregoing provisions as to the time for the filing of affidavits and the hearing of the application, the Court or a Judge thereof may, where the exigency of the case requires, fix such date for the hearing of the application and abridge the time or times for the filing of affidavits as may appear necessary in the interests of justice.

(2) Any application under this rule may be made on *ex parte* motion at any time after the filing of the application for ancillary relief.

(3) A copy of any order made on any such application shall be served upon the party or parties affected by the application for ancillary relief at the same time as the service of that application as provided in rule 49 hereof or, if the order is made after such service, then within 24 hours after the making of the order.

(4) Any party who is entitled to be heard on the application for ancillary relief may move at any time upon notice for an order varying the times or dates so fixed by the Court or Judge.

57. Application by person not a party to proceedings—Rules 46 to 56 hereof shall, with any necessary modifications, apply to an application for ancillary relief by a person not a party to the principal proceedings, claiming to be entitled to apply for an order giving any such relief. It shall not be necessary for any such person to obtain leave to intervene in the principal proceedings for the purpose of so applying.

PART VIII—INTERVENTION

58. Intervention by Law Officer or other person—(1) Where under subsection (1) or subsection (5) of section 71 of the Act the Attorney-General or the Solicitor-General is entitled to intervene in any cause, he may do so by filing an address for service stating therein under which subsection he intervenes.

(2) Where the Attorney-General or the Solicitor-General intervenes under the said subsection (5), he shall, at the time of so doing or so soon thereafter as may be practicable, file his plea setting forth the grounds of his intervention.

(3) A copy of the plea, shall, as soon as practicable after it has been filed, be served on every other party to the cause, and the Court may, on the application of any party or of the Attorney-General or the Solicitor-General, give such directions as it thinks proper with respect to the serving of a copy of the plea on any other person.

(4) Except as the Court or a Judge thereof directs otherwise, these rules shall apply to all subsequent proceedings in respect of the plea as if the plea were an original petition.

(5) An application made for leave to intervene under subsection (6) of section 71 of the Act shall, forthwith upon the filing thereof, be served on every party who has filed an address for service.

(6) Upon the making of an order upon such an application, the Court shall give such directions as it thinks proper with respect to the serving of copies of the order, the filing of affidavits, and the hearing or further hearing of the proceedings as it thinks necessary for the proper determination or review of the proceedings, and shall direct the time within which the applicant shall file his plea.

(7) Upon the due filing of the plea the provisions of subclause (4) of this rule shall apply.

PART IX—MISCELLANEOUS PROVISIONS

59. Costs to be according to Schedule—Subject to the provisions of section 74 of the Act, the costs of all causes shall be allowed in accordance with the Second Schedule to these rules.

60. Security for wife's costs—(1) When the pleadings are concluded, or the time for further pleading has expired, the Court or a Judge thereof may, on the application of a wife who is a petitioner or who has filed an answer to a petition, order the husband to pay into Court or secure such sum as the Court or Judge thinks sufficient to cover her costs up to the time of that order being made and also her future costs, including the costs of and incidental to the trial of the cause.

(2) Where an order has been made under subclause (1) of this rule, the Court or a Judge thereof may, on the further application of the wife, from time to time order the husband to pay into Court or secure such additional sum as the Court or Judge thinks sufficient to cover the costs of any part of the trial, or of any proceedings the costs of which have not previously been provided for.

(3) Where a bond has been given to secure the payment of a wife's costs of and incidental to the trial of a cause, it shall be filed in the registry, and shall not be delivered out or sued upon without the order of the Court or a Judge thereof.

(4) Any of the powers conferred by this rule upon the Court or a Judge thereof may be exercised by a Registrar.

(5) An order for security for a wife's costs shall be in form 23.

61. Applications by motion—Any application to the Court or to a Judge thereof, whether in Court or Chambers, not required to be made by petition or by notice of application for ancillary relief, may be made by motion.

62. Raising question as to jurisdiction—(1) A party may, before the expiration of the time allowed for filing an answer, by motion to the Court raise any question as to the jurisdiction, or apply to the Court or a Judge thereof for directions as to the determination of any such question.

(2) Notwithstanding the expiration of the time allowed for filing an answer, or the taking of any step in the cause by the party applying, the Court or Judge shall have power to permit a party to raise a question of jurisdiction at any stage of the proceedings. Such permission, if given, shall be on such terms as to costs incurred by any other party subsequent to the earliest date on which the question could have been raised, as the Court or Judge thinks fit.

63. Stay of proceedings (restitution of conjugal rights)—At any time after the commencement of proceedings for restitution of conjugal rights, the respondent may apply to the Court or a Judge thereof, or, in the absence of a Judge, to a Registrar, for an order to stay the proceedings in the cause by reason that he or she is willing to resume or to return to cohabitation with the petitioner.

64. Reversal of decree of separation—(1) A petition to the Court for the reversal of a decree of separation shall be in form 24.

(2) A copy of the petition, under the seal of the Court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may, within 21 days, file an answer thereto in the registry and, within that time, deliver a copy thereof to the other party in the cause, or to his or her solicitor.

(3) All subsequent pleadings and proceedings arising from the petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for separation and answer thereto, so far as those directions are applicable.

65. Issue of writs of attachment—Writs of attachment shall be issued by the Registrar only on the order of the Court or a Judge thereof.

66. Discharge from custody—A person in custody under a writ of attachment may for good cause shown be discharged from custody by the Court or a Judge thereof, or, in the absence of the Judge, by a Registrar.

67. Change of solicitor—Any party to a cause shall be at liberty to change his or her solicitor without any order for that purpose, upon notice of the change containing an address for service within 3 miles of the registry and signed by that party being filed in that office; but until that notice, and proof by affidavit that a copy thereof has been served on the other parties in the cause and on the former solicitor of the party, have been filed, the former solicitor shall be considered the solicitor of the party.

68. Provisions of Code of Civil Procedure incorporated—The under-mentioned rules of the Code of Civil Procedure in the Supreme Court, including any amendments or additions thereto or rules made in substitution therefor from time to time, as far as they are applicable and with any necessary modifications, shall apply to all proceedings under the Act, that is to say,—

- (a) Interrogatories and discovery and inspection of documents (rules 155 to 167B, except rules 157 and 161A to 161D):
- (b) Witnesses (rules 173 to 178):
- (c) Affidavits (rules 185 to 209, except rule 186):
- (d) Dismissal for want of prosecution (rule 273):
- (e) Discharge of jury (rules 274 and 275):
- (f) Charging orders (rules 314 to 335):
- (g) Applications to Court or in Chambers (rules 397, 399 to 426E, 426G, 426I to 426M):
- (h) Taxation of costs (rules 569 to 574, and 576A to 576C):
- (i) Solicitor not to be surety (rule 578):
- (j) Time (rules 589 to 594):
- (k) Taking security (rule 595):
- (l) Shape, writing, etc., of documents to be filed (rules 597A, 597B, and 597C):
- (m) Non-compliance (rule 599):
- (n) Vacations and holidays (rules 600 to 602):
- (o) Cases not provided for (rule 604).

69. Procedure on appeal to Court of Appeal—Subject to the provisions of section 73 of the Act, the Court of Appeal Rules 1955,* as far as they are applicable and with any necessary modifications, shall apply to all appeals to the Court of Appeal under that section.

70. Forms to be followed—The forms in the First Schedule to these rules shall be followed as nearly as the circumstances of each case will allow.

71. Fees of Court—(1) The fees to be taken in respect of proceedings under the Act or these rules shall be as follows, and no other fees (except jury or sheriff's fees) shall be payable (whether or not more than one form of relief is sought in the same application), namely:

Filing any petition .....	.....	.....	.....	.....	£12
Filing any application for ancillary relief .....	.....	.....	.....	.....	£5

(2) All such fees shall be prepaid.

72. Revocations—The rules specified in the Third Schedule to these rules are hereby revoked.

SCHEDULES

FIRST SCHEDULE

FORMS

1. Petition for Divorce, Separation, Restitution of Conjugal Rights, or Presumption of Death and Dissolution of Marriage
2. Petition for Nullity
3. Petition for Dissolution of Voidable Marriage
4. Notice to Respondent Resident in New Zealand
5. Notice to Respondent Resident Outside New Zealand
6. Order for Substituted Service
7. Notice by Advertisement
8. Affidavit of Service
9. Affidavit of Advertising
10. Answer
11. Reply to Answer
12. Praecipe to Set Down Defended Cause for Trial
13. Praecipe to Set Down Un defended Cause for Trial
14. Decree *Nisi* for Divorce or Dissolution of Voidable Marriage or Presumption of Death and Dissolution of Marriage
15. Request to issue Decree Absolute
16. Notice of Motion to Make Decree *Nisi* Absolute
17. Decree Absolute for Divorce or of Dissolution of Voidable Marriage or of Presumption of Death and Dissolution of Marriage
18. Decree of Nullity
19. Decree of Separation
20. Decree of Restitution of Conjugal Rights
21. Notice of Application for Ancillary Relief
22. Notice to Landlord of Application for Order Vesting Tenancy of Dwellinghouse
23. Order for Security of Wife's Costs
24. Petition for Reversal of Decree of Separation

Rule 4 (2)

Form 1

PETITION FOR DIVORCE, SEPARATION, RESTITUTION OF CONJUGAL RIGHTS,
OR PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

In the Supreme Court of New Zealand

..... Registry

No.

In Divorce

Between A.B., of Wellington, Merchant, Petitioner.

And C.B., of Wellington, Married Woman, Respondent.

The petitioner says:

1. The petitioner was on the day of 19....
married to C.B., at Church in

FIRST SCHEDULE—*continued*

2. There are no children of the marriage

[*or, as the case may require*]

The following are the children of the marriage:

[*Here state the names of the children who were members of the family (as defined in section 2 of the Act) at the time when husband and wife ceased to live together or who were members of the family immediately preceding the institution of the proceedings. The dates of birth of the children must be added and the basis of their status as children of the marriage, e.g.—*]

- (a) E.B., born on the day of 19..... (issue of the marriage).
- (b) F.B., born on the day of 19..... (legitimated by the marriage of the petitioner and respondent).
- (c) G.B., born on the day of 19..... (adopted by petitioner and respondent).
- (d) H.B., born on the day of 19..... (ward of the petitioner).

3. [*Here state briefly and explicitly the allegations relied on as the grounds for relief.*]

Examples:

- (a) The petitioner and his said wife are parties to an agreement for separation dated the day of 19....., and that agreement for separation is in full force and has been in full force and effect for a period of not less than three years, namely, from the said day of 19..... down to the present time.
- (b) On the day of 19....., and thereafter on other days between that date and the day of 19....., the petitioner's said wife committed adultery with one G.H., of Wellington, merchant, at the Z Hotel in Wellington.
- (c) On or about the day of 19....., the petitioner's said wife wilfully deserted the petitioner without just cause, and for years and upwards—namely, from that date down to the present time—has continued to desert the petitioner without just cause.

4. The petitioner (*or* the respondent) is domiciled (*or* resident) in New Zealand (and has for the last two years been domiciled (*or* resident) in New Zealand). [*Delete what is not applicable.*]

5. In the event of the granting of a decree, the petitioner proposes that the following arrangements be made for the custody, maintenance, and welfare of the children of the marriage:

[*Here state arrangements.*]

Examples:

- (a) That the said E.B., who has since the making of the agreement for separation been in the custody of the respondent, shall continue to reside with the respondent, the petitioner paying to the respondent maintenance in respect of the said child at the rate of £2 per week. It is proposed that the said E.B. shall continue at primary school and subsequently attend a State secondary college. The respondent shall have the custody of the said E.B.

FIRST SCHEDULE—continued

(b) That F.B., who is at present attending the Boarding School, shall continue to stay at that school until the age of 16 years and shall spend the May and Christmas holidays with the petitioner and the August holidays with the respondent. The petitioner shall be responsible for all school fees, and during the period when the said F.B. is spending holidays with the respondent the petitioner shall pay to the respondent the sum of £2 per week for the maintenance of the said F.B. The petitioner shall have the custody of the said F.B.]

(NOTE—If it is impracticable for the petitioner to make arrangements as to the proposed custody, maintenance, and welfare of any child or children of the marriage, he shall set out a statement to that effect and the reasons why it is impracticable to put an arrangement before the Court.)

The petitioner prays:

- (a) That the marriage of the petitioner with his wife be dissolved.
- Or, That the petitioner be separated from his wife.
- Or, That a decree be made for restitution to the petitioner of conjugal rights.
- Or, That a decree of presumption of death of the respondent be made and that the marriage of the petitioner with his wife be dissolved.

Add, where applicable—

- (b) That custody orders in respect of the children be granted in terms of paragraph 5 of this petition.
- (c) That the said G.H. be ordered to pay the sum of £..... as damages in respect of the aforesaid adultery.
- (d) That the said G.H. be ordered to pay the costs of these proceedings.

.....
[Petitioner's signature.]

Rule 4 (3)

Form 2

PETITION FOR NULLITY

[Intituling as in form 1]

The petitioner says:

1. On the day of 19..... the petitioner went through a form or ceremony of marriage with C.B. (otherwise C.H.) (hereinafter called the respondent) at Church in.....

2. [State particulars as to children of the marriage, etc., as in paragraph 2, form 1.]

3. The petitioner (or respondent) is domiciled in New Zealand (or resides in New Zealand) (or the marriage was solemnised in New Zealand). [Delete what is not applicable.]

FIRST SCHEDULE—continued

4. [Here state briefly and explicitly the allegations relied on as the grounds for relief.

Example—

At the time of the said form or ceremony of marriage the respondent was already married.]

The petitioner prays that the said marriage may be declared null and void.

[If an order for custody or costs is sought, a prayer should be added as in (b) and (d) of the prayer of the petition in form 1.]

.....
[Petitioner's signature.]

Form 3

Rule 4 (4)

PETITION FOR DISSOLUTION OF VOIDABLE MARRIAGE

[Intituling as in form 1]

The petitioner says:

- 1. The petitioner was on the day of 19..... married to C.B. at Church in
- 2. [State particulars as to children of the marriage, etc., as in paragraph 2, form 1.]
- 3. The petitioner (or respondent) is domiciled in New Zealand.
- 4. [Here state briefly and explicitly the allegations relied on as the grounds for relief.

Examples:

- (a) That the marriage has not been consummated owing to the incapacity of the respondent or the wilful refusal of the respondent to consummate the marriage.
- (b) At the time of the marriage the respondent was a mentally defective person within the meaning of the Mental Health Act 1911.]

[Where the ground is one of those specified in paragraphs (b), (c), and (d) of section 18 (2) of the Act, include the following paragraphs 5 and 6 pursuant to subsection (4).]

5. The petitioner was at the time of the said marriage ignorant of the facts alleged in paragraph 4 hereof.

6. No marital intercourse between the petitioner and the respondent with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of the ground for a decree of dissolution of marriage set out in paragraph 4 hereof.

[State, as applicable, prayer as in form 1.]

.....
[Petitioner's signature.]

FIRST SCHEDULE—*continued*

Rule 6 (1)

Form 4

NOTICE TO RESPONDENT RESIDENT IN NEW ZEALAND

[Intituling as in form 1]

To C.B., of Wellington (*respondent*).[Or, G.H., of Wellington, Merchant (*co-respondent*).]

TAKE NOTICE that unless within 21 days after service hereof on you, exclusive of the day of service, you file in the registry of this Court at an answer to the petition, a copy of which, sealed with the seal of this Court, is annexed hereto, you will not be entitled to be heard on the petition except on questions of costs, custody of children, maintenance, other ancillary relief, or claims for damages; and the Court may proceed to hear the petition and pronounce judgment without your being heard:

AND FURTHER TAKE NOTICE that, until you have given an address for service in manner provided by the Matrimonial Proceedings Rules 1964, you will not, except where personal service on you is expressly required by the said rules, be entitled to be served with notice of any proceeding or matter in connection with the said petition or arising in this cause, or with copies of any further affidavits or other documents filed herein, or to address the Court either in person or by counsel at any stage of the proceedings.

[Where divorce or dissolution of voidable marriage is sought] AND FURTHER TAKE NOTICE that if the cause proceeds to trial and a decree of divorce (or dissolution of voidable marriage) is made, that decree is a decree *nisi* in the first place, and unless and until upon further application the decree is made absolute the marriage is not dissolved. A decree *nisi* is not a defence to a charge of bigamy.

Dated the day of 19.....

....., (Deputy) Registrar.

This petition and notice were filed by the petitioner in person [or by K.L., solicitor for the petitioner]. The petitioner's address for service is at [Here state address for service within 3 miles of the registry].

(NOTE—A separate notice should be issued for each party to be cited.)

Rule 6 (4)

Form 5

NOTICE TO RESPONDENT RESIDENT OUTSIDE NEW ZEALAND

[Intituling as in form 1]

To C.B., of (*respondent*).[Or, G.H., of, Merchant (*co-respondent*).]

TAKE NOTICE that unless within days after service hereof on you, exclusive of the day of service, you file in the registry of this Court at an answer to the petition, a copy of which, sealed with the seal of this Court, is annexed hereto, you will not be entitled to be heard on the petition except on questions of costs, custody of children, maintenance, other ancillary relief, or claims for damages; and the Court may proceed to hear the petition and pronounce judgment without your being heard:

FIRST SCHEDULE—*continued*

AND FURTHER TAKE NOTICE that, until you have given an address for service in manner provided by the Matrimonial Proceedings Rules 1964, you will not, except where personal service on you is expressly required by the said rules, be entitled to be served with notice of any proceeding or matter in connection with the said petition or arising in this cause, or with copies of any further affidavits or other documents filed herein, or to address the Court either in person or by counsel at any stage of the proceedings.

[*Where divorce or dissolution of voidable marriage is sought*] AND FURTHER TAKE NOTICE that if the cause proceeds to trial and a decree of divorce (*or* dissolution of voidable marriage) is made, that decree is a decree *nisi* in the first place, and unless and until upon further application the decree is made absolute the marriage is not dissolved. A decree *nisi* is not a defence to a charge of bigamy.

The foregoing notice is the usual notice given to every respondent, but, as you are resident out of New Zealand, the order fixing the time for filing your answer has been made on condition that you be notified further as follows:

1. The petitioner alleges that he is (you are) domiciled in New Zealand, that is to say, that he is (you are) a permanent resident of New Zealand.

Or

1. The petitioner alleges that he resides (you reside) in New Zealand.

Or

1. The petitioner alleges that the marriage was solemnised in New Zealand.

2. The Supreme Court of New Zealand has jurisdiction to grant a decree of divorce if the petitioner or the respondent is domiciled in New Zealand. In addition, where the petition is based on certain grounds the petitioner or the respondent must have been domiciled or resident in New Zealand for two years at least immediately preceding the filing of the petition. The ground alleged in the petition in this case is (is not) one of these grounds.

Or

2. The Supreme Court of New Zealand has jurisdiction to grant a decree of dissolution of a voidable marriage if the petitioner or the respondent is domiciled in New Zealand.

Or

2. The Supreme Court of New Zealand has jurisdiction to grant a decree of nullity in respect of a void marriage if the petitioner or the respondent is domiciled or resident in New Zealand at the time of the filing of the petition or if the marriage was solemnised in New Zealand.

Or

2. The Supreme Court of New Zealand has jurisdiction to grant a decree of separation (*or* of restitution of conjugal rights) if the petitioner or the respondent is domiciled or resident in New Zealand at the time of the filing of the petition.

3. Under the law of New Zealand, for the purposes of jurisdiction, the domicile of a married woman, wherever she was married, is determined as if she were unmarried and (if she is a minor) as if she were adult. [*Delete if not applicable.*]

FIRST SCHEDULE—*continued*

4. A married person may be granted a divorce in New Zealand only if he or she can establish one of the grounds specified in section 21 (1) of the Matrimonial Proceedings Act 1963. One of these grounds is as follows:

[Here set out paragraph under which a decree is sought.]

Or

4. A married person may be granted a decree of dissolution of a voidable marriage in New Zealand only if he or she can establish one of the grounds specified in section 18 (2) of the Matrimonial Proceedings Act 1963. One of these grounds is as follows:

[Here set out paragraph under which a decree is sought.]

Or

4. A married person may be granted a decree of nullity in respect of a void marriage in New Zealand only if he or she can establish one of the grounds specified in section 7 (1) of the Matrimonial Proceedings Act 1963. One of these grounds is as follows:

[Here set out paragraph under which a decree is sought.]

Or

4. A married person may be granted a decree of separation in New Zealand only if he or she can establish one of the grounds specified in section 10 of the Matrimonial Proceedings Act 1963. That section provides as follows:

[Here set out section.]

Or

4. A married person may be granted a decree of restitution of conjugal rights in New Zealand only if he or she can establish the grounds specified in section 16 (1) of the Matrimonial Proceedings Act 1963. That subsection provides as follows:

[Here set out subsection.]

5. *[If, in the case of a petition for divorce, adultery is alleged, add]* The law of New Zealand provides that, if the petitioner proves this allegation, and it is not found that the petitioner has been in any manner accessory to or has connived at or condoned the adultery, the petitioner is entitled to a decree of divorce; but the Court has nevertheless a discretion to refuse the decree where the petitioner's own habits or conduct induced or contributed to the adultery.

6. If the petition is presented or prosecuted in collusion with the respondent or the co-respondent with intention to cause a perversion of justice, the Court has a discretion to refuse the decree.

7. *[Where applicable, add]* In addition to any other defence that may be available to you, the law of New Zealand provides that in every case where the ground on which the relief is sought is—

Agreement for separation in full force for not less than three years

or

Decree of separation or separation order in full force for not less than three years

or

Parties living apart for seven years and unlikely to be reconciled,—and the petitioner has proved his or her case, the Court shall have a discretion as to whether or not a decree shall be made.

FIRST SCHEDULE—*continued*

(If grounds are those specified in section 21 (1) (m) or (n), add but if upon the hearing of a petition the respondent opposes the making of a decree and it is proved to the satisfaction of the Court that the separation was due to the wrongful act or conduct of the petitioner, the Court shall dismiss the petition.)

8. You have a right to appear and defend the proceedings if you have a defence or to appear without defending if you desire to bring before the Court any matter relevant to the case or touching the questions of maintenance of yourself or children or custody of children.

9. Application may be made to the Court for maintenance for the benefit of yourself or your children and for the custody of children, even though the petitioner may be entitled to the divorce.

10. Application may be made to the Court under Part VIII of the Matrimonial Proceedings Act 1963 for an order relating to the occupation or sale or ownership of the matrimonial home or to the possession or ownership of the furniture therein.

11. If you desire to defend the proceedings or to apply for maintenance or custody or for an order relating to the matrimonial home or the furniture therein, you should, either directly or through a solicitor in the place where you are, send authority to a solicitor in New Zealand, by air mail, instructing him to act for you.

12. [Where the husband is the petitioner, add] Lest your absence from New Zealand may impose a hardship on you, the petitioner is required to pay or tender to you when the petition is served on you the sum of £..... (..... in the currency of the country in which you now reside) in order that you may take advice in case you should desire to defend the suit or to bring before the Court any question of maintenance of yourself or your children or custody of children or relating to the matrimonial home or the furniture therein.

13. The petitioner, by accepting the said order, has undertaken to repay your solicitor the cost of filing an answer to the petition or filing an application for ancillary relief, and of appearing before a Judge in Chambers upon an application as to your future costs, and as to the expenses to which you may be put in proceeding to New Zealand to conduct your defence should you decide to go there for that purpose.

14. [Where the wife is the petitioner, add] If you are not domiciled in New Zealand you are warned that, although a divorce granted on your wife's petition in New Zealand is perfectly valid for all purposes in New Zealand, it may not be recognised as valid outside New Zealand, and therefore, before you contract another marriage relying on the divorce, you should obtain legal advice in the country where you propose to marry as to whether you are legally entitled to do so.

Dated this day of 19.....

.....
(Deputy) Registrar.

This petition and notice were filed by the petitioner in person [or by K.L., solicitor for the petitioner]. The petitioner's address for service is at [Here state address for service within 3 miles of the registry].

(NOTE—A separate notice should be issued for each party to be cited.)

FIRST SCHEDULE—continued

Rule 11 (2)

Form 6

ORDER FOR SUBSTITUTED SERVICE

[Intituling as in form 1]

IN CHAMBERS

The day of 19.....

UPON READING the petition filed herein AND UPON READING the notice of motion for an order for substituted service filed herein and the respective affidavits of the petitioner and J.F. and B.H. sworn and filed in support thereof AND UPON HEARING Mr, Counsel for the petitioner IT IS ORDERED by the Honourable Mr Justice that personal service on the respondent of the petition issued in this cause and of the notice annexed thereto be dispensed with, and that a sealed copy of the said petition, together with a sealed copy, signed by the Registrar, of the said notice and a duplicate of this order be personally served on Mrs F. of, a sister of the respondent and that notice of these proceedings be advertised once in the ".....", a newspaper published at AND IT IS FURTHER ORDERED that the time within which the respondent may file an answer to the said petition be fixed at days from the date of publication of the said advertisement [or as otherwise ordered].

.....
(Deputy) Registrar.

Rule 11 (2)

Form 7

NOTICE BY ADVERTISEMENT

No. D/19.....

In Divorce

To, late of, but now of parts unknown, the husband (wife) of of

TAKE NOTICE that your wife (husband) has filed a petition for divorce [or, as the case may be] on the grounds of A copy of the petition, with an annexed notice containing information for you, will be forwarded on application to my office. If you do not file an answer to the petition on or before the Court may hear the petition and grant a decree without your being heard. (Add, in case of a petition for divorce or of dissolution of a voidable marriage, A marriage is not dissolved until the decree nisi made in the first instance is later made absolute, and a decree nisi is not a defence to a charge of bigamy.)

Dated at this day of 19.....

.....
(Deputy) Registrar.

Supreme Court

Friends of the above-named are asked to forward this advertisement to him (her).

Mr, of, is the solicitor for the petitioner.

FIRST SCHEDULE—*continued*

Form 8

Rule 12 (b)

AFFIDAVIT OF SERVICE

[Intituling as in form 1]

I,, of, etc., make oath and say as follows:

1. The petition filed in this cause, bearing date the day of, 19....., a true copy of which is hereunto annexed marked with the letter "A," was duly served by me on the respondent (co-respondent) the above-named, at [Place], in [Country], by delivering to him personally a copy thereof under seal of this Court on the day of 19.....

2. At the same time and place I served the said with the notice a true copy of which is hereunto annexed marked with the letter "B," by delivering to him personally a copy thereof, signed by the (Deputy) Registrar of this Court at and annexed to the sealed copy of petition referred to in paragraph 1 hereof.

3. The said is personally known to me by reason of the following facts—namely, [*State the facts establishing personal knowledge, such as: That I have been personally acquainted with him for a period of years (see rule 12).*].

Or, The said is not personally known to me, but I believe the person served by me as aforesaid to be the above-named respondent (co-respondent) by reason of the following facts—namely [*State the facts on which the deponent relies (see rule 12).*].

Sworn at, etc.

[NOTE—*Insert proof of compliance with any special directions relative to service.*]

Form 9

Rule 12 (4)

AFFIDAVIT OF ADVERTISING

[Intituling as in form 1]

I, C.J., of, make oath and say as follows:

1. I am a clerk employed by Mr A.H., the solicitor for the petitioner in this cause.

2. The notice of these proceedings to the respondent in this cause (a copy whereof is hereunto annexed and marked with the letter "A"), was duly advertised in the following newspapers: [*Here state names of newspapers and where published and dates of publication.*]

3. The pages of the said newspapers, containing the advertisements and the respective dates of publication, are hereunto annexed and marked respectively with the letters "B" and "C".

Sworn at, etc.

FIRST SCHEDULE—*continued*

Rule 24 (3)

Form 10

ANSWER

[Intituling as in form 1]

The day of 19.....

THE respondent in answer to the petition herein says,—

1. She denies that (e.g., she ever committed adultery with the said G.H.).

Add, where appropriate—

2. If it be proved that the respondent committed adultery with the said G.H., which the respondent denies, then the respondent says that the petitioner condoned the acts of adultery alleged in the said petition.

[or If it be proved that the respondent committed adultery with the said G.H., which the respondent denies, then the respondent says that the petitioner connived at the acts of adultery alleged in the said petition.]

[or If it be proved that the respondent committed adultery with the said G.H., which the respondent denies, then the respondent says that the petitioner by his own habits and conduct has induced the adultery complained of [*Here set out particulars of the habits and conduct relied on*].

[*If the petition does not allege adultery, paras. 1 and 2 to be drawn accordingly.*]

3. [*Allegation as in paragraph 3, form 1.*]

The respondent prays—

(a) That the prayer of the petition be rejected.

(b) [*As in prayer of form 1.*]

.....
[Respondent's Signature.]

This answer was filed by the respondent in person (or by L.M., solicitor for the respondent). The respondent's address for service is at [*Here state address for service within 3 miles of the registry.*]

(NOTE—*See rule 26 as to concluding answer with a prayer for relief when respondent desires to obtain relief under section 66 of the Act. See also rule 13 as to notice to accompany answer in certain cases.*)

Rule 28 (1)

Form 11

REPLY TO ANSWER

[Intituling as in form 1]

The day of 19.....

THE petitioner in reply to the respondent's answer filed herein says:

1. He denies that (e.g., he ever committed adultery with K.L., named in the said answer).

Add, where appropriate—

2. If it be proved that the petitioner committed adultery with the said K.L., which the petitioner denies, then the petitioner says that the respondent condoned the acts of adultery alleged in the said answer.

[or If it be proved that the petitioner committed adultery with the said K.L., which the petitioner denies, then the petitioner says that the respondent connived at the acts of adultery alleged in the said answer.]

FIRST SCHEDULE—continued

[or If it be proved that the petitioner committed adultery with the said K.L., which the petitioner denies, then the petitioner says that the respondent by her own habits and conduct has induced the adultery complained of [Here set out particulars of the habits and conduct relied on].

[If the answer does not allege adultery, paras. 1 and 2 to be drawn accordingly.]

[Petitioner's Signature.]

Form 12

Rule 37 (3)

PRAECIPE TO SET DOWN DEFENDED CAUSE FOR TRIAL

[Intituling as in form 1]

1. Please set this cause down for trial before a (Judge alone) (Judge and jury of 12. The requires the cause to be tried by a Judge and jury).

2. The respondent has (not) filed an answer.

3. The co-respondent has (not) filed an answer.

4. The pleadings and all interlocutory and other matters have been completed and we believe that this cause is in all respects ready for trial.

5. The estimated duration of the trial is

6. A fixture is not desired in the period to

Dated at this day of 19.....

..... Solicitor for Petitioner.

..... Solicitor for Respondent.

..... Solicitor for Co-respondent.

Form 13

Rule 37 (4)

PRAECIPE TO SET DOWN UNDEFENDED CAUSE FOR TRIAL

[Intituling as in form 1]

1. Please set this cause down for trial before a Judge alone.

2. The time allowed for filing an answer by the respondent expired on

3. The respondent has not filed an answer.

4. The respondent has (not) filed an address for service.

5. } [Repeat details in paragraphs 2, 3, and 4 for co-respondent, if
6. } applicable.]
7. }

Dated at this day of 19.....

..... Solicitor for Petitioner.

I certify that, as at the time of the filing of this praecipe, according to the records of the Court the foregoing statement is correct.

Dated this day of 19.....

..... (Deputy) Registrar.

FIRST SCHEDULE—continued

Rule 44

Form 14

DECREE NISI FOR DIVORCE OR DISSOLUTION OF VOIDABLE MARRIAGE OR PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

[Intituling as in form 1]

Before the Honourable Mr Justice

The day of 19.....

UPON READING the petition filed herein and UPON HEARING Mr, Counsel for the petitioner (and Mr, Counsel for the respondent) THIS COURT DECREES that, unless cause be shown why this decree should not be made absolute, (the respondent be presumed to be dead and) the marriage of the petitioner and the respondent solemnised on the day of 19..... at Church in be dissolved and that application to have this decree made absolute may be made (by motion in Court) at any time after the expiration of weeks (months) from this date.

[Where applicable, add]

AND THIS COURT ORDERS that until the further order of the Court the have custody of, children of the marriage, but it is directed that those children be not removed out of New Zealand without its sanction.

AND THIS COURT FURTHER ORDERS [As appropriate].

AND THIS COURT FURTHER ORDERS that the respondent pay the petitioner her costs on the scale and the disbursements and witnesses expenses to be fixed by the Registrar.

By the Court.

..... (Deputy) Registrar.

Rule 45 (1)

Form 15

REQUEST TO ISSUE DECREE ABSOLUTE

[Intituling as in form 1]

I,, the petitioner in the above cause, hereby request you to issue a decree absolute herein on the following grounds:

- 1. The time limited before making the decree absolute has expired.
- 2. Neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause, and no matter in opposition to the final decree is now pending.

Dated this day of 19.....

.....
Petitioner
or Solicitor for Petitioner.

To the Registrar.

FIRST SCHEDULE—continued

Form 16

Rule 45 (2)

NOTICE OF MOTION TO MAKE DECREE NISI ABSOLUTE

[Intituling as in form 1]

TAKE NOTICE that on, the day of 19....., at in thenoon or so soon thereafter as Counsel can be heard, Counsel for the petitioner (respondent) will move this Honourable Court at for an order that the decree nisi made herein on the day of 19....., for the dissolution of the marriage between the petitioner and the respondent be made absolute and for an order that the custody of, children of the marriage, be given to the petitioner and for a further order that [As appropriate] UPON THE GROUNDS set out in the statement hereunder, AND UPON THE FURTHER GROUND that [Here set out ground.]

[Where necessary, add the following statement and certificate, as required by rule 45 (2)].

1. The time limited before making the decree absolute has expired.

2. Neither the Attorney-General nor the Solicitor-General nor any other person has intervened or obtained leave to intervene in the cause and no matter in opposition to the final decree is now pending.

Dated this day of 19.....

.....
Petitioner.

or Solicitor for Petitioner (Respondent).

or Counsel for Petitioner (Respondent).

To the Registrar. And to the respondent (petitioner) [if address for service has been given by respondent (petitioner)].

I certify that, as at the time of the filing of this notice of motion, according to the records of the Court, the foregoing statement is correct.

Dated this day of 19.....

....., (Deputy) Registrar.

Form 17

Rule 45 (4)

DECREE ABSOLUTE OF DIVORCE OR OF DISSOLUTION OF VOIDABLE MARRIAGE OR OF PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

[Intituling as in form 1]

Before the Honourable Mr Justice

The day of 19.....

UPON READING the notice of motion filed herein to make absolute the decree nisi granted by this Court on the day of 19..... AND UPON HEARING Mr, Counsel for the Petitioner (and Mr, Counsel for the Respondent) AND IT APPEARING that the petitioner is now entitled to have the decree nisi made absolute THIS COURT DECREES (that the respondent be and he is hereby presumed to

FIRST SCHEDULE—*continued*

be dead and) that the marriage solemnised on the day of 19.... at Church in between the above-named petitioner and respondent be and the same is hereby absolutely dissolved AND THIS COURT ORDERS that the custody of, children of the marriage, be and the same is hereby given to the petitioner AND THIS COURT FURTHER ORDERS [*as appropriate*].

By the Court

.....
(Deputy) Registrar.

Rule 70

Form 18

DECREE OF NULLITY

[*Intituling as in form 1*]

Before the Honourable Mr Justice

The day of 19....

UPON READING the petition filed herein and UPON HEARING Mr, Counsel for the petitioner (and Mr, Counsel for the respondent) THIS COURT DECREES that the purported marriage which took place between the petitioner and the respondent on the day of 19.... at Church in be declared to have been and to be null and void by reason that

AND THIS COURT DECLARES that the petitioner is free from all bonds of marriage with the respondent AND THIS COURT FURTHER ORDERS [*as appropriate*].

By the Court

.....
(Deputy) Registrar.

Rule 70

Form 19

DECREE OF SEPARATION

[*Intituling as in form 1*]

Before the Honourable Mr Justice

The day of 19....

UPON READING the petition filed herein AND UPON HEARING Mr, Counsel for the petitioner (and Mr, Counsel for the respondent) THIS COURT DECREES a separation between the petitioner and the respondent by reason that AND THIS COURT ORDERS [*as appropriate*] AND THIS COURT FURTHER ORDERS that the respondent pay to the petitioner her costs of this cause on the scale with disbursements and witnesses' expenses to be fixed by the Registrar.

By the Court

.....
(Deputy) Registrar.

FIRST SCHEDULE—continued

Form 20

Rule 70

DECREE OF RESTITUTION OF CONJUGAL RIGHTS

[Intituling as in form 1]

Before the Honourable Mr Justice

The day of 19.....

UPON READING the petition filed herein AND UPON HEARING Mr, Counsel for the petitioner (and Mr, Counsel for the respondent) THIS COURT DECREES that the respondent within days from the service of this decree on her (him) return home to the petitioner (or take back the petitioner) and render to him (her) conjugal rights and within a like time file in the Registry of this Court at a certificate that she (he) has done so AND THIS COURT FURTHER ORDERS [as appropriate].

By the Court

.....
(Deputy) Registrar.

Form 21

Rule 46 (1)

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

[Intituling as in form 1]

To, of

TAKE NOTICE that the petitioner (respondent) intends to apply to the Court for an order that [Here set out the ancillary relief claimed]:

AND FURTHER TAKE NOTICE that, unless you have already given an address for service in this cause, or within 14 days after service hereof on you, exclusive of the day of service, you give an address for service in manner provided by the Matrimonial Proceedings Rules 1964, you will not be entitled to be served with notice of the hearing of this application, or of any proceeding or matter in connection therewith, or with copies of any further affidavits filed herein, or to address the Court either in person or by counsel at any stage of the proceeding:

AND FURTHER TAKE NOTICE that, if you desire to file any affidavit in answer to this application, it must be filed in the above-mentioned registry of this Court within the said period of 14 days: (Where notice is addressed to wife or husband of applicant, add AND THAT you will not be entitled to be heard on the hearing of the application, and the Court may pronounce judgment without your being heard, unless, within the said period of 14 days, you file an affidavit made by yourself personally, giving full particulars of all matters relevant to the application.)

Dated at the day of 19.....

.....
Petitioner (Respondent).
or Solicitor for the Petitioner (Respondent).

FIRST SCHEDULE—*continued*

This notice was filed by the petitioner (respondent) in person (or by, solicitor for the petitioner (respondent)). The petitioner's (respondent's) address for service is at [*Here state address for service within 3 miles of the registry*].

(NOTE—*A separate notice should be issued for each party to be cited.*)

Rule 46 (4)

Form 22

NOTICE TO LANDLORD OF APPLICATION FOR ORDER VESTING TENANCY OF DWELLINGHOUSE

[*Intituling as in form 1*]

To, of

TAKE NOTICE that the petitioner (respondent) has applied to the Court for an order under section 60 of the Matrimonial Proceedings Act 1963 vesting in him (her) the tenancy of the dwellinghouse situated at [*Here state address*] of which the respondent (petitioner) is a tenant and of which you are the landlord.

AND FURTHER TAKE NOTICE that you are entitled to appear and be heard as a party to the application, a copy of which is hereunto annexed

Dated at the day of 19.....

.....
 Petitioner (Respondent).
 or Solicitor for Petitioner (Respondent).

The petitioner's (respondent's) address for service is at [*Here state address for service within 3 miles of registry*].

If you are in doubt as to your rights, you are advised to consult a solicitor or the Registrar of this Court.

Rule 60 (5)

Form 23

ORDER FOR SECURITY FOR WIFE'S COSTS

[*Intituling as in form 1*]

Before the Registrar at in Chambers.

The day of 19.....

UPON READING the petition filed herein and the answer of the respondent thereto AND UPON READING the motion for an order for security for wife's costs filed herein AND UPON HEARING Mr, Counsel for the (and Mr Counsel for the) Mr Registrar C. acting under rule 60 of the Matrimonial Proceedings Rules 1964 HEREBY ORDERS that the pay into Court the sum of £..... as security for the costs of the to this date and also her future costs, including the costs of and incidental to the trial of this cause, such sum there to abide the further order of the Court, or that the give security to the satisfaction of the Registrar of this Honourable Court for the due payment of such sum.

.....
 (Deputy) Registrar.

FIRST SCHEDULE—*continued*

Form 24

Rule 60 (1)

PETITION FOR REVERSAL OF DECREE OF SEPARATION

[Intituling as in form 1]

The day of 19.....

The petitioner says:

1. The petitioner was on the day of 19..... married to C.B. at Church in

2. On the day of 19....., a decree of separation was made in this Court between, petitioner, and, respondent.

3. The aforesaid decree was obtained in the absence of the petitioner, who was then residing at [State facts tending to show that the petitioner did not know of the proceedings].

4. The decree should not have been granted by reason that [State reasons].

The petitioner therefore prays that the said decree may be reversed.

.....
[Signature of petitioner.]

SECOND SCHEDULE

SCALE OF COSTS

Rule 59

	Lower Scale	Higher Scale
Undefended suits	£ 25	£ 35
Defended suits in which the respondent or the co-respondent has appeared at the trial or hearing—		
Petitioner	40	55
Respondent	35	50
Co-respondent	25	40

1. The Court may determine under which of the above-mentioned scales the costs of any suit are to be allowed.

2. The costs of any exceptional proceedings—as, for example, of a Commission to take evidence—shall be fixed by the Court by analogy to the scale of costs for the time being in force under the Code of Civil Procedure in the Supreme Court.

3. When a trial or hearing has extended beyond one day, the Court may certify for an extra allowance not exceeding £21 for every day after the first day.

4. In addition to the foregoing, all disbursements for fees of Court, fees of officers, expenses of service, witnesses' expenses actually paid, and all other necessary payments shall be allowed.

THIRD SCHEDULE

Rule 72

RULES REVOKED

Title	Serial No.
The Matrimonial Causes Rules 1943	1943/135
The Matrimonial Causes Rules 1943, Amendment No. 1	1949/191
The Matrimonial Causes Rules 1943, Amendment No. 2	1951/144
The Matrimonial Causes Rules 1943, Amendment No. 3	1954/36
The Matrimonial Causes Rules 1943, Amendment No. 4	1955/31

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules replace the Matrimonial Causes Rules 1943 and the amendments of those rules.

The principal changes are—

- (a) Such amendments have been made in the rules and in the forms in the First Schedule as are necessary in view of the changes made by the Matrimonial Proceedings Act 1963.
- (b) References to verifying affidavits have been omitted because of the repeal of section 45 of the Divorce and Matrimonial Causes Act 1928. No similar provision appears in the 1963 Act.
- (c) A copy of the marriage certificate must be lodged at the time of the filing of the petition, or at such other time as the Registrar directs (rule 7).
- (d) The provisions of section 46 of the 1928 Act relating to the service of petitions now appear in the rules (rule 9).
- (e) The provisions as to the admission of a guardian *ad litem* for an infant or a person of unsound mind have been amended and simplified (rules 21 and 22).
- (f) The provisions as to setting the proceedings down for trial have been modified, and now follow closely the recent amendments to the Code of Civil Procedure relating to the setting down of civil actions for trial (rules 37 and 38).
- (g) The provisions of section 48 of the 1928 Act (relating to the mode of taking evidence) and of section 50 (relating to adjournments) now appear in the rules (rules 41 and 42).
- (h) The provisions of section 56 of the 1928 Act (relating to the power of the Judge to sit in Chambers) now appear in the rules (rule 43), and are limited to ancillary matters.
- (i) Rule 44 is new. It provides that a decree *nisi* need not be sealed unless either of the parties requires it.
- (j) Two fees only are prescribed, a fee for filing a petition and a fee for filing an application for ancillary relief (rule 71).
- (k) Some additional forms are prescribed.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 19 November 1964.

These regulations are administered in the Department of Justice.