

1962/72



**THE RULES OF THE HIGH COURT 1916,
AMENDMENT NO. 3**

COBHAM, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of May 1962

Present:
THE HON. J. R. HANAN PRESIDING IN COUNCIL

PURSUANT to the Cook Islands Act 1915, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

R U L E S

1. (1) These rules may be cited as the Rules of the High Court 1916, Amendment No. 3, and shall be read together with and deemed part of the Rules of the High Court 1916* (hereinafter referred to as the principal rules).

(2) The Order in Council made on the 30th day of July 1917† amending the principal rules may hereafter be cited as the Rules of the High Court 1916, Amendment No. 1.

(3) The Order in Council made on the 12th day of February 1923‡ and declared to be part of the principal rules is hereinafter referred to and may hereafter be cited as the Rules of the High Court 1916, Amendment No. 2.

2. These rules shall come into force—

- (a) In the Cook Islands other than Niue, on the day after the date at which they are publicly notified by the Resident Commissioner of the Cook Islands:
- (b) In the Island of Niue, on the day after the date at which they are publicly notified by the Resident Commissioner of Niue.

PART I—PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

3. In this Part of these rules the term “respondent” includes all co-respondents so far as the provision in which the term occurs is applicable to them.

**Gazette*, 9 March 1916, p. 709

Amended: *Gazette*, 2 August 1917, p. 3034

Gazette, 15 February 1923, p. 521

†*Gazette*, 2 August 1917, p. 3034

‡*Gazette*, 15 February 1923, p. 521

4. Every proceeding for a decree of divorce or nullity of marriage shall be commenced by filing a petition in the Court. The petition shall be in accordance with form 1 in the First Schedule to these rules, and shall set out the grounds for divorce or nullity of marriage.

5. Every person seeking a decree of divorce or of nullity of marriage shall append to the petition an affidavit in form 2 in the First Schedule to these rules verifying the same so far as the deponent is able to do so.

6. (1) There shall be annexed to every petition and every copy thereof a summons to the respondent in accordance with form 3 in the First Schedule to these rules, and the original thereof shall be filed in the Court.

(2) The summons shall specify, *inter alia*, the sitting of the Court fixed by the Registrar for the hearing of the petition. In making that fixture the Registrar shall take into account the distance of the place of residence of the respondent from the place where the petition is to be heard and all other relevant circumstances; and the sitting so fixed shall not without leave of the Court be on a date less than 21 days from the date of filing of the petition.

7. (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 the Registrar, of the summons 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.

(3) A petition for a decree of divorce or nullity of marriage may be served out of the Cook Islands by leave of the Court.

8. (1) Each respondent who resides within the Cook Islands may, within 14 days after service of the petition on him or her, file an answer thereto. Where a respondent resides beyond the Cook Islands, 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.

(2) An answer shall be in accordance with form 4 in the First Schedule to these rules.

9. 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 without leave of the Court, granted on such terms as the Court thinks fit, except on questions of costs, custody of children, or maintenance.

10. Where a respondent intends to apply for relief, 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, by adding such a prayer at or before the trial.

11. The Court may at any time order further particulars to be given of any matters pleaded.

12. (1) Every application for custody of children or for maintenance shall be to the Court by notice in accordance with form 5 in the First Schedule to these rules filed in the Court. 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) An order for custody of children may be made upon the hearing of any petition in which a prayer for such custody is contained, without the necessity of complying with the requirements of subclause (1) of this rule.

(3) Where the parties are agreed upon the terms of any order granting custody of children or maintenance, the order may, by consent of the parties, be included in the decree, without the necessity of complying with the requirements of subclause (1) of this rule.

13. 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 custody of children or for maintenance, may be made by motion.

14. In matters for which no specific provision is made in this Part of these rules in respect of matrimonial causes, the general provisions of the principal rules providing for the conduct of actions before the High Court, as far as they are applicable and with the necessary modifications, shall apply.

15. The principal rules are hereby amended as follows:

- (a) By revoking paragraph (d) of rule 3:
- (b) By inserting in rule 5, after the word "proceedings", the words "not being proceedings for a decree of divorce or nullity of marriage":
- (c) By revoking paragraph (d) of rule 21:
- (d) By omitting from the First Schedule the words "[or] the plaintiff claims a divorce from the defendant on the ground of her adultery with one E. F."

PART II—COURT FEES

16. The principal rules are hereby amended by inserting, after rule 101, the following rule:

"101A. In any appeal from the judgment of a Commissioner of the High Court to a Judge of the High Court—

- "(a) If it appears to any Commissioner or Registrar of the Court, or to any Justices of the Peace for the Cook Islands other than Niue or for Niue, acting together, that the appellant is unable to pay the fees payable in respect of the appeal, the Commissioner or Registrar or Justices of the Peace may dispense with the payment of the fees or may reduce the amount thereof:
- "(b) If the appellant succeeds in his appeal, the fees paid by him shall be returned to him."

17. (1) The principal rules are hereby further amended by revoking the Fifth Schedule, and substituting the Fifth Schedule set out in the Second Schedule to these rules.

(2) The Rules of the High Court 1916, Amendment No. 2, are hereby amended by revoking rule 11 and the Schedule.

18. Rule 98 of the principal rules is hereby amended by omitting the expression "10s.", and substituting the expression "30s."

19. Rule 99 of the principal rules is hereby amended by omitting the expression "10s.", and substituting the expression "30s."

SCHEDULES

FIRST SCHEDULE

FORMS IN PROCEEDINGS FOR DIVORCE OR NULLITY OF MARRIAGE

Rule 4

Form 1

IN THE HIGH COURT OF THE COOK ISLANDS

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of [*Occupation*], Respondent.

PETITION

The petitioner prays for a divorce from the respondent on the following grounds:

[*Here state the grounds for divorce.*]

Dated this day of 19 ..

.....
Signature of Petitioner.

Rule 5

Form 2

IN THE HIGH COURT OF THE COOK ISLANDS

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of [*Occupation*], Respondent.

I, A.B., of [*Occupation*] make oath and say—

1. I am applying for a divorce from my wife (husband) named [*Full name*].

2. We were married at by of the Church, on the day of 19 ..

3. There are children of the marriage, namely: [*Full names*].

4. The grounds upon which I am applying for the divorce are: [*Set out grounds*],

and the following are the facts concerning the same: [*Set out proof fully*].

5. I am a native of and the said is a native of

Sworn at by the above-named A.B. this day of 19 ..

.....
A Solicitor of the Supreme Court of New Zealand.

(or A Registrar of the High Court.)

(or A Registrar of the Native Land Court.)

(or A Postmaster.)

(or A Collector of Customs.)

(or A Resident Commissioner.)

(or A Resident Agent.)

(or A Medical Officer.)

FIRST SCHEDULE—*continued*

Rule 6 (1)

Form 3

IN THE HIGH COURT OF THE COOK ISLANDS

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of [*Occupation*], Respondent.

SUMMONS

You are hereby summoned, if you wish to defend these proceedings, to appear at the trial thereof before the High Court at at the first sitting of this Court for the trial of civil proceedings after the expiration of days from but exclusive of the date of service upon you of the petition in these proceedings.

A copy of the petition and of the supporting affidavit in these proceedings is annexed hereto.

Dated this day of 19 .

(Seal)

.....
Registrar.

To the above-named Respondent.

Rule 8 (2)

Form 4

IN THE HIGH COURT OF THE COOK ISLANDS

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of [*Occupation*], Respondent.

ANSWER

I, C.D., of [*Occupation*], the above-named respondent, make oath and say—

1. I was this day served with a petition for divorce and affidavit in support thereof.

2. I admit (or deny) the charges made against me in the petition and affidavit. [*Or set out which are admitted or denied*].

3. I (do not) object to a divorce being granted.

4. I wish the children to remain in the custody of

Sworn at by the above-named A.B. this day of 19 .

.....
A Solicitor of the Supreme Court of New Zealand.
(or A Registrar of the High Court.)
(or A Registrar of the Native Land Court.)
(or A Postmaster.)
(or A Collector of Customs.)
(or A Resident Commissioner.)
(or A Resident Agent.)
(or A Medical Officer.)

FIRST SCHEDULE—continued

Rule 12 (1)

Form 5

IN THE HIGH COURT OF THE COOK ISLANDS

(In Divorce)

Between A.B., of [*Occupation*], Petitioner,
and C.D., of [*Occupation*], Respondent.

APPLICATION FOR CUSTODY OF CHILDREN (OR MAINTENANCE)

Take notice that the Petitioner (Respondent) intends to apply to the Court for an order for the custody of the children of the marriage (or for a maintenance order against the Respondent (Petitioner)).

Dated this day of 19 ..

.....
Petitioner (Respondent).

To the above-named Respondent (Petitioner).

SECOND SCHEDULE

NEW SCALE OF COURT FEES

“FIFTH SCHEDULE

COURT FEES

Civil Proceedings

1. In Actions where a Sum of Money or any Property is Claimed:

—	Sum of Money or Value of the Land or Chattel Claimed					
	Not Exceeding £10	Not Exceeding £20	Not Exceeding £50	Not Exceeding £100	Not Exceeding £250	Exceeding £250
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
(1) Filing statement of claim and issue of summons	0 3 0	0 5 0	0 10 0	0 15 0	1 0 0	1 5 0
(2) Filing counterclaim (on amount of counterclaim)	0 2 0	0 3 0	0 5 0	0 7 6	0 10 0	0 12 6
(3) Hearing or rehearing and judgment (on claim or counterclaim) ..	0 3 0	0 5 0	0 10 0	0 15 0	1 0 0	1 5 0

2. In all other Actions and Proceedings: £ s. d.

- (1) Filing and hearing statement of claim and issue of summons 0 10 0
- (2) Service of any summons, notice, or other process .. 0 2 0
- (3) For each additional summons in any proceedings .. 0 2 0
- (4) Sealing of any judgment, order, writ of execution, or other document (other than a summons) .. 0 3 0
- (5) Copy of any document or notes of evidence – per folio of 72 words (minimum 3 folios) 0 0 8
- (6) Filing of any notice of motion, affidavit, petition (other than a petition for divorce), or other document .. 0 3 0

SECOND SCHEDULE—*continued*

	£	s.	d.
(7) Hearing of any motion or petition (other than a petition for divorce)	0	5	0
(8) Filing petition for divorce or nullity of marriage and supporting affidavit	0	10	0
(9) Hearing of petition for divorce or nullity of marriage	1	0	0
(10) Stating case for Supreme Court	1	0	0
(11) Hearing application for leave to appeal to Supreme Court	0	10	0
(12) Sealing order granting leave to appeal to Supreme Court	1	0	0
(13) Filing motion for probate or letters of administration	0	10	0
(14) Sealing any probate or letters of administration:			
Where the net value of the estate does not exceed £500	1	0	0
Where the net value of the estate exceeds £500 but does not exceed £1,000	1	10	0
Where the net value of the estate exceeds £1,000	2	0	0
(15) Execution of any writ of execution or warrant	0	3	0

No fees shall be payable in proceedings under Part XX of the Cook Islands Act 1915.

Criminal Proceedings

No fees shall be payable in any criminal proceedings commenced by the information of an officer of police or any other employee of the Cook Islands Public Service.

In all other cases a fee of 10s. shall be payable on the information. If the accused is convicted, the fee so paid shall be refunded to the informant.

Appeals from Commissioners of the High Court (Whether in Civil or Criminal Proceedings)

	£	s.	d.
(1) Filing notice of appeal	0	5	0
(2) Hearing of appeal	0	10	0

No fees shall be payable in respect of appeals in proceedings commenced by an officer of police or any other employee of the Cook Islands Public Service."

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.

Part I prescribes a new procedure in proceedings in the High Court of the Cook Islands for divorce or nullity of marriage. The proceedings are to be commenced by petition instead of by action.

Rule 16 authorises a Commissioner or Registrar of the High Court to dispense with payment of fees or reduce fees payable in respect of appeals from a Commissioner to a Judge of the High Court where the appellant is unable to pay the fees, and provides that a successful appellant is entitled to a refund of fees.

Rules 17 to 19 substitute a new scale of Court fees in proceedings in the High Court of the Cook Islands, and new rates of allowances and expenses payable to assessors and witnesses in criminal proceedings in that Court.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 May 1962.

These regulations are administered in the Department of Island Territories.