# EDO STATE CIVIL PROCEDURE RULES 2012

Order 1-Application and Interpretation

1. Application

(1) These Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such causes and matters.

(2) Application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice.

2. Interpretation of terms

(1) These Rules shall be interpreted in accordance with the Interpretation Law, Cap. 76 Laws of Bendel State, 1976 applicable in Edo State or any re-enactment thereof.

(2) Where in these Rules depositions and affidavits are required to be made, if the deponent does not understand English Language such deposition or affidavit may be made in a language he understands and shall be accompanied by interpretation thereof in English Language.

(3) In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the following meanings:

"Claimant" is a person who institutes an actions in Court [and] shall include a claimant in a counter-claim;

"Court" means the High Court of Edo State;

"Court Process or Process" includes writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents filed in court or written communication of which service is required;

"Decision" means any decision of a Court and includes judgment, ruling, decree, order, conviction, sentence or recommendation;

"Defendant" is a person against whom an action is instituted and shall include a defendant to a counter-claim;

"Guardian" means any person who has for the time being, in charge of or control over a person under legal disability and includes a person appointed to institute or defend an action on behalf of any person under legal disability;

"Law' means the High Court Law, Cap. 65, Laws of Bendel State, 1976 applicable in Edo State or any re-enactment thereof;

"Minor" means a person who has not attained the age of 18 years;

"Originating Process" means any court process by which a suit is initiated;

"Persons Under Legal Disability" means persons who lack capacity to institute or defend any proceedings by reason of age, insanity, unsoundness of mind or otherwise;

"Probate Action" means an action for the grant of probate or a Will, or Letters of Administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non -contentious or common form probate business;

"Registrar" means the Chief Registrar, Deputy-Chief Registrar, Assistant Chief Registrar, Principal Registrar, Senior Registrar, Higher Registrar, or any other officer acting or pe1forming the functions of a Registrar;

"Registry" means the Registry of the High Court of Edo State in the appropriate judicial division;

"Taxing Officer" means the Chief Registrar or such other officer of the Court as the Chief Judge or Judge may appoint to tax costs;

"Chief Judge" means the Chief Judge of Edo State;

"Attorney-General" means the Attorney-General of Edo State;

"Judge" means Judge of the High Court of Edo State;

"Legal practitioner" means a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the Court;

"Return Date" means the day endorsed of court process for the appearance of the parties before the Court or any other day the Court may appoint or direct;

"State" means Edo State

## Order 2 - Place Of Instituting And Trial Of Suits

Subject to the provision of the Law on transfer of suits, the place for trial of any suit shall be regulated as follows:

1. Suits relating to land and personal property distrained or seized

All suits relating to land or any mortgage or charge on or any interest in land, or any inquiry or damage to land and actions relating to personal properly distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situate or where the seizure took place.

2. Suits for recovery of penalties, forfeitures and against public officers

All actions for recovery of penalties, forfeitures and all actions against public officers shall be commenced and tried in the Judicial Division in which the cause of action arose.

3. Suits upon contract

All suits for specific performance, or upon the breach of any contract, may be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the defendant resides or carries on business.

4. Other suits

(1) All other suits may be commenced and determined in the Judicial Division in which the defendant resides or carries on business or where the cause of action arose.

(2) Where there are several defendants who reside or carry on business in different Judicial Divisions, the suit may be commenced in any one of these Judicial Divisions subject to any order or direction a Judge may make or give as to the most convenient arrangement for trial of the suit.

5. Suits commenced in wrong divisions

In case any suit shall be commenced in any other Judicial Division than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall have been so commenced, unless the Court shall otherwise direct, or the defendant shall plead specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in such cause.

6. Transfer of proceedings

No proceedings which may have been taken previously to such plea in objection shall in any way be affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or failing such proof, that it be retained and proceeded with in the court in which it has been commenced, and such order shall not be subject to appeal.

7. Transfer of suits to Magistrate

The Chief Judge or Judge may in any cause or matter, transfer or cause to be transferred to the Magistrate Court for hearing and determination, any cause or matter within the civil jurisdiction of the Magistrates' Court.

Order 3 - Form And Commencement Of Action

Court rules:

1. Form and Commencement of Action

Subject to the provisions of any enactment, civil proceedings may be commenced by writ, originating summons, originating motion or petition or by any other method required by these Rules of Court governing a particular subject matter.

2. Proceedings which must be commenced by writ

Subject to the provisions of these Rules or any applicable law requiring any proceedings to be commenced otherwise than by writ, a writ of summons shall be the form of commencing all proceedings.

(a) Where a claimant claims:

(i) Any relief or remedy for any civil wrong; or

(ii) Damages for breach of duty, whether contractual, statutory or otherwise; or

(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

(b) Where the claim is based on or includes an allegation of fraud, or

(c) Where an interested person claims a declaration.

3. Mode of beginning civil proceedings

All civil proceedings commenced by writ of summons shall be accompanied by:

(a) statement of claim;

(b) list of witnesses to be called at the trial;

(c) written statements on oath of the witnesses provided the identity of the witnesses may be concealed by the use of alphabet;

(d) list of non - documentary exhibits; and

(e) copies and list of e very document to be relied on at the trial provided that a litigation survey plan need not be filed at the commencement of the suit.

4. If pleadings are amended

It shall not be necessary to file fresh sets of the processes mentioned in rule 3 of this Order if pleadings arc amended.

5. Form of writ: Civil Form 1

Except in cases in which different Forms are provided in these Rules, the writ of summons shall be as in Form 1 with such modifications or variations as circumstances may require.

6. Form of writ for service outside Nigeria

A writ of summons to be served out of Nigeria shall be as in Form 2 with such modifications or variations as circumstances may require.

7. Civil Form 2: Proceedings which may commence by originating summons

Any person claiming to be interested under a Deed, Will, Enactment or other written law may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

8. Any person claiming legal or equitable rights which depend upon questions of construction of an enactment

Any person claiming any legal or equitable rights in a cause or matter where the determination of the question whether he is entitled to the rights depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

9. Discretion of the Judge

A Judge shall not be bound to determine any such question of construction, if in his opinion, it ought not to be determined in an originating summons but may make any such orders as he deems fit.

10. Forms of Originating Summons: Civil Forms 3, 4, 5

(1) An originating summons shall be as in Forms 3, 4 or 5 to these Rules with such variations as circumstances may require. It shall be prepared by the claimant or his Legal Practitioner and shall be sealed and filed in the Registry and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:

(a) an affidavit setting out the facts relied upon;

(b) all the exhibits to be relied upon; and

(c) a written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry, sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the respondent or respondents.

11. Service outside Edo; Edo State 1990 L.F.N.

Subject to the provisions of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the Court for service in Nigeria outside Edo State shall be endorsed by the Registrar of the Court with the following notice

"This summons (or as the case may be) is to be served out of Edo State of Nigeria and in the ..... State".

12. Originating process to be tested by its date

(1) The Registrar shall indicate the date and time of presentation for filing of every originating process presented to him and shall arrange for service thereof to be effected.

(2) An originating process shall not be altered after it is scaled except upon application to a Judge.

13. Consolidation of causes

Causes or matters pending in the same Court may by order of the Court be consolidated and the Court shall give directions as may be necessary with respect to the hearing of the causes or matters so consolidated.

**Order 4 - Endorsement Of Claim And Address**

1. Endorsement

Every originating process shall contain the claim, the relief or remedy sought and the full name and address of the claimant.

2. Endorsement to show representative capacity

Where a claimant sues, or the defendant or any of several defendants is sued in a representative capacity, the originating process shall state that capacity.

3. Probate actions

In probate actions, the originating process shall state whether a claimant claims as creditor, executor, administrator, beneficiary, next of kin or in any other capacity.

4. Endorsement where the claim is liquidated

Where the claim is for debt or liquidated money demand only, the originating process shall state the amount claimed for debt or in respect of such demand with costs, and shall further state that the defendant may pay the amount with costs to the claimant or legal practitioner within the time allowed for appearance and that upon such payment the proceedings shall terminate.

5. Ordinary account

In all cases where a claimant in the first instance desires to have an account taken, the originating process shall so state.

6. Endorsement of address by claimant or his legal practitioner

(1) A claimant suing in person shall state on the originating process, his residential or business address as his address for service.

If he lives and carries on business outside the jurisdiction, he shall state an address within the jurisdiction as his address for service.

(2) Endorsement of address

Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process, his chamber's address as the address for service. If the legal practitioner is based outside the jurisdiction, he shall state a chamber's address within the jurisdiction as his address for service.

7. Originating process without an address or with fictitious address

If the originating process does not state an address for service, it shall not be accepted and if any such address is illusory, fictitious or misleading, the process may be set aside by a Judge on the application of' the defendant.

Order 5 - Effect Of Non-compliance:,

Court rules:

1. Non-compliance with Rules

(1) Where in beginning or purporting to begin any proceeding there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall not nullify the proceedings.

2. Judge to give direction to regularise such steps

Where at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a

failure to comply with the requirements as to time, place, manner or form , the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularize such steps.

3. Application to set aside for irregularity

The Judge shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

(1) An application to set aside for irregularity any step taken in the course of any proceedings may be allowed where it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection shall be stated in the summons or notice of motion

Order 6 - Issuance Of Originating Process

1. Preparing originating process

Originating process shall be prepared by a claimant or his legal practitioner, and shall be clearly printed on Opaque A4 paper of good quality.

2. Signing and sealing of originating process

(1) The Registrar shall sign and seal every originating process whereupon it shall be deemed to be issued.

(2) A claimant or his legal practitioner shall, on presenting any originating process for signing and sealing, leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.

(3) Each copy shall be signed by the legal practitioner or by a claimant where he sues in person.

3. What is to be done after signing and sealing

The Registrar shall after signing and sealing an originating process, file it and note on it the date of filing and the number of copies supplied by a claimant or his legal practitioner for service on the defendants. The Registrar shall then make a n entry of the filing in the cause book and identify the action with a suit number that ma y comprise abbreviation of the Judicial Division, a chronological number and the year of filing.

4. Copies to be served

The Registrar shall promptly arrange for personal service on each defendant, of a copy of the originating process and accompanying documents.

5. Probate actions affidavit with originating process

The originating process in probate action shall be accompanied by an affidavit sworn to by a claimant or one of several claimants verifying the contents of the process.

6. Renewal of originating process: (Civil Form 6)

(1) The life span of every originating process shall be 6 months subject to a renewal for 3 months, provided that the claimant(s) applies within 21 days of its expiration.

(2) If a Judge is satisfied that it has not been possible to serve an originating process on any defendant within its life span, and a claimant applies either before or within 21 days before its expiration of renewal of the process, the Judge may renew the original or con current process for 3 months from the date of such renewal. A renewed originating process shall be in Form 6 with such modifications or variations as circumstances may require.

7. Endorsement renewal

A Judge may order two renewals in each case strictly for good cause shown and upon prompt application, provided that no originating process shall be in force for longer than a total of 12 months. The Registrar shall state the fact, date, and duration of renewal on every renewed originating process.

8. Loss of originating process

Where an originating process is lost after issue, a Judge, upon being satisfied of its loss and of the correctness of a copy process, may order the copy to be filed and sealed in place of the lost originating process.

9. Concurrent originating process

A claimant may at the issuance of an originating process or at any time during its life span, cause to be issued one or more concu1Tent originating processes each to bear the same date as the initial process marked 'CONCURRENT' and have stated on it the date of issue.

10. Concurrent originating process for service within and out of jurisdiction

An originating process for service within jurisdiction may be issued and marked as a concurrent originating process with one for service out of jurisdiction, and an originating process for service out of jurisdiction may

be issued and marked as a concurrent originating process with one for service within jurisdiction.

**Order 7 - Service Of Processes**

1. By whom service is to be effected

(1) Service of originating process shall be made by a Sheriff, Deputy Sheriff, Bailiff, Special Marshal or other officer of the Court. The Chief Judge may also appoint and register any Law Chamber, Courier Company or any other person to serve court processes and such person or company shall be called process server.

(2) Where a party is represented by a legal practitioner

Where a party is represented by a legal practitioner, service of Court process of which personal service is not required, may be made on such legal practitioner or on a person under his control.

(3) Counsel to counsel service

A solicitor filing the process where he intends to effect service himself shall give a written undertaking.

2. Service of originating process, etc., how effected

The process server shall serve an originating process by delivering to the party to be served, a copy of the process.

3. When originating process need not be served personally

No personal service of an originating process shall be required where the defendant has authorised his legal practitioner in writing to accept service and such legal practitioner enters appearance:

Provided that such written authority shall be attached to the memorandum of appearance filed by such legal practitioner.

4. Mode of service when not personal

All processes in respect of which personal service is not expressly required by these Rules or any applicable law shall be deemed as properly served, if left with an adult person resident or employed at the address for service given under Order 4 Rule 6.

5. Substituted service

(1) Where personal service of an originating process is required by these Rules or otherwise and a Judge is satisfied that prompt personal service cannot be effected, the Judge may upon application by the claimant, make such order for substituted service as may seem just.

(2) Every application to the Judge for substituted or other service, or for the substitution of notice for service shall be supported by an affidavit setting forth the grounds upon which the application is made.

6. Persons under legal disability

(1) Where a person under legal disability is a defendant, service on his guardian shall be deemed good and sufficient personal service, unless a Judge otherwise orders.

Provided that personal service on a minor who is over 16 years of age living independently or doing business is good and sufficient.

(2) The Judge may order that persona l service on a person under legal disability shall be deemed good and sufficient.

7. Prisoner or detainee

Where a detainee or prisoner i s a defendant , service on the head or other officer in charge of the station , facility or prison where the defendant is, or on an officer of the agency in charge of the station, facility or prison shall be deemed good and sufficient personal service on the defendant.

8. Partners

Where persons are sued as partners in the name of their firm, the originating process shall be served upon any one or more of the partners at the principal place of business within the jurisdiction or upon any person having control or management of the partnership business there; and such service shall be deemed good service upon the firm whether any of the members are out of the jurisdiction or not, and no leave to issue an originating process against them shall be necessary:

Provided that in the case of a partnership that has been dissolved to the knowledge of the claimant before the commencement of the action, the originating process shall be served upon every person within the jurisdiction sought to be made liable.

9. Corporation or company

Subject to any statutory provision regulating service on a registered company or corporation or body corporate, every originating process or other process requiring personal service, may be served on the organisation by delivery to a director, secretary, trustee or other senior, principal or responsible officer of the organisation, or by leaving it at the registered, principal or advertised office or place of business of the Organisation within the jurisdiction.

10. Foreign corporation or company Cap.90, L.F.N.1990

When the suit is against a foreign corporation or company within the meaning of Section 54 of the Companies and Allied Matters Act having an office and carrying on business within the jurisdiction, and such suit is limited to a cause of action which arose within the jurisdiction, the originating process or other documents requiring personal service may be served on the principal officer or representative of such foreign corporation or company within the jurisdiction:

Provided that where a foreign company has complied with the provision of Chapter 3 of the Companies and Allied Matters Act , personal service shall be effected on one of the persons authorised to accept service on behalf of the said company.

11. Local agent of principal who is out of jurisdiction

Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal residing or carrying on business out of the jurisdiction, an originating process in an action relating to or arising out of such contract may, before the determination of such agent's authority or of his business relations with the principal, be served on such agent. A copy of the originating process shall be sent promptly by the claimant by courier to the defendant at his address out of the jurisdiction.

12. Where violence is threatened

Where a person to be served, whether alone or in concert with others, resists service or applies or threatens violence to the process server, the process server may leave the process within the reach of the person to be served, and this shall be deemed good and sufficient service for all purposes.

13. Service of processes generally

(1) After serving any process, the process server shall promptly depose to and file an affidavit setting out the fact, date, time, place and mode of service, describing the process served and state the circumstances of service.

(2) After service, the affidavit shall be prima facie proof of service.

14. Expenses of service

(1) The party requiring service of any process shall pay in advance all charges for service except where the service to be effected is by a person appointed under Order 7 rule 1(I) and service under Order 7 rule 1(3).

(2) The fee for service shall be as directed by the Chief Judge in Practice Directions from time to time.

15. Time of service

(1) Service of Court processes shall be effected between the hours of 6:00a.m and 6:00p.m.

(2) Save in exceptional circumstances and as may be authorised by a Judge, service shall not be effected on a Sunday or on a public holiday.

16. Recording of service

(1) A register shall be kept at the Registry in such form as the Chief Judge may direct, for recording service of processes by any process server. The Registrar shall record therein the names of the claimant and defendant, the method of service, whether personal or otherwise, and the manner used to ascertain that the right person was served.

(2) Where any process was not served, the cause of failure shall be recorded in the register. Every entry in such register or certified copy thereof shall be prima facie evidence of the matters stated therein.

Order 8 – Service out of Nigeria and Service of Foreign Process

1. Cases where service of originating process, etc., are allowed out of Nigeria.

A Judge may allow any originating or other process to be served outside Nigeria where:

(a) the whole subject-matter of the claim is land situate within jurisdiction, or Edo State High Court (Civil Procedure) Rules, 2012.

Order 9 – Appearance:,

1. Mode of entry of appearance: Civil Form II

(1) A defendant served with an originating process shall, within the period prescribed in the process for appearance, file in the registry the original and copy of a duly completed and signed memorandum of appearance as in Form 11 with such modifications or variations as circumstances may require.

(2) On receipt of the memorandum of appearance, the Registrar shall make entry thereof and stamp the copy showing the date he received it and return the copy to the person making the appearance.

(3) A defendant entering appearance shall not later than 5 days thereafter serve a copy of the memorandum of appearance on a claimant's legal practitioner or on the claimant if he sues in person.

2. Defendants appearing in person or represented

(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within Edo State.

(2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum or appearance, his place of business and an address for service which shall be within Edo State, and where any such legal practitioner, is only the agent of another legal practitioner, he shall al so insert the name and place of business of the principal legal practitioner.

3. Fictitious address

The Registrar shall not accept any memorandum of appearance which does not contain an address for service. If a n y such address is illusory, fictitious or misleading, the appearance may be set aside by a Judge on the application of a claimant.

4. Defendants appearing through same legal practitioner

Where two or more defendants in the same action appear through the same legal practitioner, the memorandum of appearance shall include the names of all defendants so appearing.

5. Late appearance

(i) Where a defendant files a memorandum of appearance after the time prescribed in the originating process, he shall pay to the Court an additional fee of N50 (Fifty Naira) for each day of default. If the defendant files a memorandum of appearance out of time but within the time prescribed for filing his defence, he shall file his defence within that time.

(ii) Where service is to be effected by persons under Order 7 rule 1(1) and Order 7 rule 1(3) failure to serve the memorandum of appearance within the time prescribed in Rule 1 (3) of this Order shall attract a penalty of N50.00 for each day of default.

6. Intervener in probate matters

In probate matters, any person not named in the originating process intervene and appear in the matter on filing a motion supported by an affidavit showing his interest in the estate of the deceased.

7. Recovery of land

Any person not named as a defendant in an originating process for recovery of land may with leave of a Judge appear and defend, on filing a motion showing that he is in possession of the land either by himself or through his tenant

8. Landlord appearing

Any person appearing to defend an action for the recovery of land as landlord, in respect of property of which he is in possession only through his tenant, shall state in his appearance that he appears its landlord.

9. Person under legal disability appearing

A person under legal disability shall enter an appearance by his guardian.

10. Tenant

In this Order, the word "Tenant" includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise.

**Order 10 - Default Of Appearance**

Court rules:

1. Claim for liquidated demand

Where a writ of summons is endorsed for a liquidated money demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the claimant may have entered in his favour final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of six per cent per annum, to the date of the judgment and costs:

Provided that this rule shall not apply to an action by a money lender or an assignee for the recovery of money lent by a money lender, or to an action for the enforcement of any agreement or security relating to any such money.

2. Liquidated demand: several defendants

Where the writ of summons is endorsed for a liquidated money demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the claimant may have final judgment entered, as in the preceding rule, against those that have not appeared and may issue execution upon such judgment without prejudice to his right to proceed with the action against those who have appeared.

3. Recovery of land, etc.

(1) Where the action is for the recovery of land, with or without any other related claim, and no appearance is entered within the time limited for appearance, the claimant shall be at liberty to have judgment entered for him.

(2) Where an appearance is entered but the defence is limited to a part only, the claimant may have judgment entered for him for the undefended part of his claim, and the rest of the claim may be proceeded within the normal way.

4. Judgments for costs where satisfaction, etc., unnecessary

In any case to which rules 1, 2 and 3 apply, in which the defendant fails, or all the defendants, if more than one, fail to appear, hut in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary for the claimant to proceed with the action, he may, by leave of the Court or a Judge in Chambers to be obtained on summons in Chambers, have judgment entered for costs:

Provided that such summons shall be filed and shall be served in the manner in which service of the writ has been effected or in such other manner as the Court or a Judge in Chambers shall direct.

5. Default of appearance in actions not specially provided for

In all actions not specially provided for in this Order, if the defendant fails to enter appearance within the stipulated time, the claimant may apply for the case to be set down for hearing and upon such hearing, the Court may give any judgment that the claimant appears to be entitled to on the facts.

6. Setting aside of judgment

Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgment upon such terms as may be just.

7. Default of appearance to originating summons

Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the claimant or applicant may apply to the Court or a Judge in Chambers for an appointment for the hearing of such summons and upon a certificate that no appearance has been entered, the Court or Judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as it or he shall deem fit.

8. Default of appearance by infant or person of unsound mind.

Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not adjudged a

lunatic, the claimant shall before further proceeding with action against the defendant, apply to the Court or a Judge in Chambers for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the action:

Provided that no such order shall be made unless it appears that the application was, after the expiration of the time allowed for appearance and at least six clear days before the day named in such notice for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose case such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) serve upon or left at the dwelling-house of the father or guardian (if any) to such infant, unless the Court or Judge in Chambers at the time of hearing such application shall dispense with such last-mentioned service.

9. Leave in action by money-lender

(1) In an action brought by a money lender or an assignee for the recovery of money lent by a money-lender or the enforcement of any agreement or security relating to any such money, an application for leave to enter judgment in default of appearance shall be made by notice returnable not less than four clear days after service of the notice.

(2) The notice shall not be issued until the time limited for entering appearance has expired and a proper affidavit of service of the writ has been filed.

(3) The notice shall be in accordance with Form 11A in the Appendix with such variations as circumstances may require and s hall be served personally.

(4) At the hearing of the application, whether the defendant appears or not, the Court or Judge in Chambers may exercise the relevant powers of the Court under the Money-lenders Law.

Order 11 – Summary Judgment

Court rules:

1. Where claimant believes there is no defence

Where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the depositions of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and written brief in respect thereof.

2. Delivery of extra copies

A claimant shall deliver to the Registrar as many copies of all the processes and documents referred to in rule 1 of this Order as there are defendants.

3. Service

Service of all the processes and documents referred to in Rule 1 of this Order shall be effected in the manner provided under Order 7.

4. Where defendant intends to defend

Where a party served with the processes and documents referred to in rule 1 of this Order, intends to defend the suit he shall, not later than the time prescribed for defence, file his:

(a) statement of defence;

(b) depositions of his witnesses;

(c) exhibits to be used in his defence; and

(d) written brief in reply to the application for summary judgment.

5. Where defendant has good defence, or has no good defence or has good defence to part of the claim

(1) Where it appears to a Judge that a defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend.

(2) Where it appears to a Judge that the defendant has no good defence, the Judge may thereupon enter judgment for a claimant.

(3) Where it appears to a Judge that the defendant has a good defence to part of the claim but no defence to other parts of the claim, the Judge may thereupon enter judgment for that part of the claim to which there is no defence and grant leave to defend that party to which there is a defence.

6. Where there are several defendants

Where there are several defendants and it appears to a Judge that any of the defendants has a good defence and ought to be permitted to defend the claim and other defendants have no good defence and ought not to be permitted to defend, the former ma y be permitted to defend and the Judge shall enter judgment against the latter.

7. Oral submission on written brief

Where provision is made for written brief under these rules, each party shall be at liberty to advance before a Judge, oral submission to expatiate his written brief.

## Order 12 - Application For Account

1. Order for account

Where in an originating process, a claimant seeks an account under Order 4 rule 5 or where the claim involves taking an account, if the defendant either fails to appear, or after appearance, fails to satisfy a Judge that there is a preliminary question to be tried, the Judge shall, on application make an order for the proper accounts, with all necessary inquiries and directions.

2. Application how made

An application for account shall be supported by an affidavit filed on a claimant's behalf, stating concisely the grounds of his claim to an account.

The application may be made at any time after the time prescribed for defence.

3. Account may be taken by a Judge or Referee

Where an order is made for account under this Order, the account may be taken by a Judge or a Referee appointed by the Judge.

## Order 13 – Parties Generally

1. Persons claiming jointly or severally

All persons may be joined in one action as claimant in whom any right to relief is alleged to exist whether jointly or severally, and judgment may be given for such claimant as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

## Order 14 - Joinder Of Cause Of Action

Court rules:

1. All causes of action may be joined

Subject to the following rules of this Order, the claimant may unite in the same action several causes of action; but if it appears that they cannot be trials of any such causes of action or may make such order as may be necessary or expedient for the separate disposal thereof.

2. Recovery of land

(1) An action for recovery of land may be joined with an action for declaration of title, mesne profit or arrears of rent, damages for breach of any contract under which the land or any part thereof is held, or for any wrong or injury to the premises.

(2) An action for foreclosure or redemption may be joined with a claim for delivery of possession of the mortgaged property and a claim for

payment of principal money or interest secured by or any other relief in respect of the mortgage of or charge on such land.

3. Executor and Administrator

Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the claimant or defendant sues or is sued as executor or administrator.

4. Claims by Joint-claimants

Claims by claimant jointly may be joined with claims by them or any of them separately against the same defendant.

**Order 15 –Pleadings**

Court rules: I. Filing of Pleadings

(1) A statement of claim shall include the relief or remedy to which a claimant claims to be entitled.

(2) A defendant shall file his statement of defence, set-off counterclaim, if any, not later than 42 days after service on him of 1 he claimant's originating process and accompanying documents. A counter-claim shall have the same effect as a cross action, so as to enable the Court pronounce a final judgment in the same proceedings. A set-off must be specifically pleaded.

(3) A claimant shall within 14 days of service of the statement of defence and counter-claim if any, file his reply, if any, to such defence or defence to counter-claim:

Provided that where a defendant sets up a counter-claim, if a claimant or any other person named as party to such counter claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent proceeding, a judge may at any time order that such counter-claim be excluded.

2. Pleadings to state material facts and not evidence

Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relics fur his claim or defence, as the case may be, but not the evidence by which they are to be proved and shall, when necessary be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures. Pleadings shall be signed by a legal practitioner or by the party if he sues or defends in person.

3. Particulars to be given where necessary

(1) In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases, in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings.

(2) In an action for libel or slander, if the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

4. Further and better statement or particulars

An application for a further and better statement of the nature or the claim or defence or further and better particulars of any matter stated in any pleadings requiring particulars shall be made to a Judge at the trial. The Judge may grant such application upon such terms as may be just.

the pleadings of the opposite party, shall be taken as admitted except as against a person under legal disability.

(2) A general denial in any pleadings shall not operate as denial of anyV specific fact in the pleadings of the opposing party.

6. Conditions precedent

Each party shall specify distinctly in his pleadings, any condition precedent, the performance or occurrence of which is intended to be contested.

7. Defence, certain facts, surprise to be specifically pleaded

(1) All grounds of defence or reply which make an action not maintainable or if not raised will take the opposite party by surprise or will raise issues of facts not arising out of the proceedings to the pleadings, shall be specifically pleaded.

(2) Where a party raises any ground which makes a transaction void or voidable or such matters as fraud, Limitation Law, release, payment, performance, facts showing insufficiency in contract m illegality, either by any enactment or by common law, he shall specifically plead same.

8. Pleadings to be consistent

No pleadings shall raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

9. Joinder of Issues

A party may, by his pleadings, join issues upon the pleadings of the opposing party and such joinder of issues shall operate as a denial of every material allegation of fact in the pleadings upon which issue is joined except any fact which the party may be willing to admit.

10. Effect of documents to be stated

Wherever the contents of any documents arc material, it shall be sufficient in any pleadings to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material

11. Notice

Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred are material.

12. Implied contract or relationship

Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as fact, and to refer generally to such letters, conversation or circumstances without setting them out in details. If in such case, the person so pleading desires to rely, in the alternative, upon more contracts or relationship than one as to be implied from such circumstances, he may state the same in the alternative.

13. Presumption of Law

A party may not allege in any pleadings any matter or fact the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

14. Stated or settled account

In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars but in every case in which a statement or account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

15. Technical objection

No technical objection shall be raised to any pleading on the ground of any alleged want of form.

16. Striking out of pleadings

A Judge may, at the trial in any proceedings, order to be struck out or amended, any matter in any endorsement or pleadings which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action; and may in any such case, if the Judge shall deem fit, order costs of the application to be paid as between legal practitioner and client.

17. Defamation

(1) Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

(2) Where in an action for libel or slander, the defendant pleads that any of the words or matters complained of are fair comment o n a matter of public interest or were published upon a privileged occasion, the claimant shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

(3) Where in an action for libel or slander a defendant alleges that in so far as the words complained of consist of statement of fact, that are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the facts and matters he relies on in support or the allegation that the words are true.

18. Where pleadings disclose no reasonable cause of action

(1) The Judge, may at any stage of the proceedings, order to be struck out or amended any pleading or the endorsement or any writ in the action, or anything in any pleading or in the endorsement, on the ground that:

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

And may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case maybe.

(2) No evidence shall be admissible on application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petitions, as the case may be, were pleadings.

19. Close of pleadings

(1) Where pleadings subsequent to reply is not ordered, then, at the expiration of 7 days from the service of the defence or reply (if a reply has been filed) pleadings shall be deemed closed.

(2) Where pleadings subsequent to reply is ordered, and the party who has been ordered or given leave to file same, fails to do so within the period limited for that purpose, then; at the expiration of the period so limited, the pleadings shall be deemed closed: Provided that this rule shall not apply to a defence to counter-claim and unless the claimant files a defence to counter-claim, the statements of fact contained in such counter-claim shall at the expiration of 14 days from the service thereof or of such time (if any), as may by order be allowed for filing of a defence thereto be deemed to be admitted, but the Judge may, at any subsequent time give leave to the claimant to file a defence to the counterclaim.

**Order 16 – Statement Of Claim**

Court rules:

1. Statement of claim

(a) Every statement of claim, or counter-claim shall state specifically the relief claimed either singly or in the alternative and it shall not be necessary to ask for general or other relief, which may be given as a Judge may think just as if it had been asked for.

**Order 17 – Statement Of Defence And Counter-claim**

1. Statement of defence

The statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses andtheir written statements on oath.

2. Evasive denial

When a party in any pleadings denies an allegation of fact in the previous pleadings of the opposite party, he shall not do so evasively, but answer the point of substance.

3. Denial generally

(1) In an action for debt or liquidated money demand, a mere denial of the debt shall not be sufficient defence.

(2) In an action for money had and received a defence in denial must deny athe receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the claimant.

(3) In an action for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed.

(4) In an action upon a bill of exchange, promissory note or cheque, a defence in denial must deny some matter of fact, e.g., the drawing, making, endorsing, accepting, presenting or notice of dishonour of the bill or note.

4. Persons in representative capacity

If either party wishes to deny the right of any other party to claim as executor, or a trustee or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

5. Pleading to damages

No denial or defence shall be necessary as to damages claimed or their amount; they are deemed to be in issue in all cases, unless expressly admitted.

6. Set-off and counter-claim

Where any defendant seeks to rely upon any ground supporting a right of set-off or counter-claim, he shall in his defence state specifically that he does so by way of supporting a right of set off or counter-claim.

7. Title of counter-claim

Where a defendant by his defence sets up any counter-claim which raises questions between himself and the claimant along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such number of them as are parties to the action within the period which he is required to deliver it to the claimant.

8. Claim against persons not part of (Civil Form 12)

Where any such person as in rule7 of this Order is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counter-claim, and such service shall be regulated by the same rules as those governing the service of the originating process and every defence and counter-claim so served shall be endorsed in Form 12 with such modifications or variations as circumstances may require.

9. Appearance

Any person not already a party to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with an originating process to appear in an action.

10. Reply to counter-claim

Any person not already a party to the action, who is named in a defence as a party to a counter-claim thereby made, shall deliver a defence in a mode and manner prescribed under this order and the provisions of the order shall apply to such a person.

11. Discontinuance: the claimant's claim

If, in any case in which the defendant sets up a counter-claim, the action of the claimant is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with

12. Judgment balance

Where in an action, a set-off or counter-claim is established as a defence against the Claimant's claim, the Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

13. Ground of defence after action brought

(1) Any ground of defence which arises after the action has been filed, but before the defendant has delivered his defence and before the time limited for doing so has expired, may be raised by the defendant in his defence, either alone or together with other grounds of defence

(2) If after a defence has been delivered along with a set off or counter claim, any basis for answer or ground of defence arises to any such set-off or counter-claim respectively, it may be raised by the claimant in his reply (in the case of a set-off) or d fence to counter claim, either alone or together with any other ground of reply or defence to counter-claim.

14. Further defence or reply

Where any ground of defence arises after the defendant has delivered a defence, or after the time limited for his doing so has expired, the defendant may and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivery of a reply has expired, the claimant may, within 8 days after such ground of defence has arisen or at any subsequent time by leave of a Judge deliver

a further defence or further reply, as the case may be setting forth the same.

15. Concession to defendant (Civil Form 13)

Whenever any defendant in his defence or in any further defence pursuant to rule 14 of this Order alleges any ground of defence which has arisen after the commencement of the action, the claimant may concede to such defence (which concession may be in Form 13 with such modification as circumstances may require) and may thereupon obtain judgment up to the time of th e pleading or such defence, unless the Judge either before or after the deli very of such concession otherwise orders.

16. Defence to originating summons

A respondent to an originating summons shall file a counter- affidavit together with all the exhibits he intends to rely upon and a written address within 21 days after service of the originating summons.

## Order 18 – Reply

1. Filing of reply

Where the claimant desires to make a reply, he shall file it within 14 days from the service of the defence.

2. Reply to counter-claim

Where there is a counter-claim, a reply thereto is called a defence to counter-claim and shall be subject to the rules applicable to defences.

## Order 19 – Admissions

1. Notice of admission of facts

Any party to a proceedings may give notice by his pleadings or otherwise in writing, that he admits the truth of the whole facts or any part of the case of the other party.

2. Notice to admit document

(1) Either party may, not later than 7 days before trial by notice in writing filed and served, require any other party to admit any document and the party so served shall not later than 4 days after service give notice of admission or non-admission of the document, failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) When a party decides to challenge the authenticity of any document, he shall before trial give notice that he does not admit the document and requires it to be provided at the trial.

(3) Where a party gives notice of non-admission and the document is proved at the trial, the cost of proving the document, which shall not be less than a sum or five thousand naira, (5,000.00) shall be paid by the party who has challenged it, unless at the trial or he ring, the Judge shall certify that there were reasonable grounds for not admitting the authenticity of the document.

3. Notice to admit facts

(1) Either party may not later than 7 days before trial, by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non- admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (N5,000), shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

4. Judgment or Order upon admission of facts

The Judge may, on application, at trial or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

5. Cost of notice where documents are unnecessary

Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira (N'5,000) shall be borne by the party giving such notice.

**Order 19 – Admissions**

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Any party to a proceedings may give notice by his pleadings or otherwise in writing, that he admits the truth of the whole facts or any part of the case of the other party.

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3. Notice to admit facts

(1) Either party may not later than 7 days before trial, by notice in writing filed and served, require any other party to admit any specific fact or facts mentioned in the notice, and the party so served shall not later than 4 days after service give notice of admission or non- admission of the fact or facts failing which he shall be deemed to have admitted it unless a Judge otherwise orders.

(2) Where there is a refusal or neglect to admit the same within 4 days after service of such notice or within such further time as may be allowed by the Judge, the cost of proving such fact or facts which shall not be less than a sum of five thousand naira (N5,000), shall be paid by the party so refusing or neglecting whatever the result of the proceedings, unless the Judge certifies that the refusal to admit was reasonable or unless the Judge at any time otherwise orders or directs.

4. Judgment or Order upon admission of facts

The Judge may, on application, at trial or at any other stage of the proceedings where admissions of facts have been made, either on the pleadings or otherwise, make such orders or give such judgment as upon such admissions a party may be entitled to, without waiting for the determination of any other question between the parties.

5. Cost of notice where documents are unnecessary

Where a notice to admit or produce comprises documents that are not necessary, the costs occasioned thereby which shall not be less than five thousand naira (N'5,000) shall be borne by the party giving such notice.

**Order 20 - Default Of Pleadings**

1. Claim for debt or liquidated demand

If the claim is only for a debt or liquidated demand and the defend ant does not, within the time allowed for the purpose, file a defence, the claimant may, at the expiration of such time, apply for final judgment for the amount claimed with costs.

2. Several defendants: default of one

When in any such action as in rule 1 of this Order, there are several defendants, if one of them makes default as mentioned in rule I of this Order, the claimant may apply for final judgment against the defendant making default and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

3. Damages and detention of goods

If the claimant's claim be for pecuniary damages or for detention of goods with or without a claim for pecuniary dam ages only and the defendant or all the defendants, if more than one, make default as mentioned in rule 1of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants and the value of the goods and the damages, or the damages on l y as the case may be, shall be ascertained in any way which, the Judge may order.

4. Default of one or more defendants

When in any such action as in rule 3 or this Order, there are several defendants, if one or more of them make default as mentioned in rule 1 of this Order, the claimant may apply to a Judge for interlocutory judgment against the defendant or defendants so making default and proceed with his action against the others. In such case, the value and amount of damages against the defendant making default s hall be assessed at the trial of the action or issues therein against the other defendants, unless the judge shall otherwise order.

5. Debt or damages and detention of goods

Where the claim is for debt or liquidated demand and also for pecuniary damages or for detention of goods with or without a claim for pecuniary damages and includes a liquidated demand and any defendant makes default as mentioned in rule 1, the claimant may apply to a Judge for final judgment for the debt or liquidated demand, and may also apply for interlocutory judgment for the value of the goods and damages, or the

damages only as the case may be and proceed as mentioned in rules 3 and 4.

6. Recovery of land

In an action for the recovery of land, if the defendant makes default as mentioned in rule I, the claimant may apply for a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land with costs.

7. Claim for mesne profits, arrears or damages.

Where the claimant has endorsed a claim for mesne profits or arrears of rent in respect of the premises claimed, or any part of profits, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in rule 1, or if there be more than one defendant, some or one of the defendants make such default, the claimant may apply for final judgment against the defaulting defendant or defendants and proceed as mentioned in rules 3 and 4.

8. Setting aside judgment

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance to this Order:

Provided that the unanswered part consists of a separate cause action or is severable from the rest, as in the case of part of a debt or liquidated demand. That where there is a counter-claim, execution on any such judgment as above mentioned in respect of the claimant's claim shall not issue without leave of the Judge.

(9). Defendant in default

In all actions other than those in the preceding rules of this order, if the defendant makes default in filing a defence, the claimant may apply to a Judge for judgment and such judgment shall be given upon the statement of claim as the Judge shall consider the claimant to [be] entitled to.

10. One of several defendants in default

Where in any such action as mentioned in rule 9 of this Order, there are several defendants, if one of such defendants makes such default as aforesaid, the claimants may apply for judgment against the defendant so making default, and proceed against the other defendants.

11. Default of third party

In any case in which issues arise in a proceedings other than that between claimant and defend ant, if any party to any such issue makes default in filing any pleadings, the opposite party may apply to a Judge

for such judgment, if any, as upon the pleadings he ma y appear to be entitled to, and the Judge may order judgment to he entered accordingly or may make such other order as may he necessary to do justice between the parties.

12. Default of defence to counter-claim

A defendant who counter-claims against a claim and shall be treated for the purposes of rules 2 to 10, as if he were a claimant who had made a claim against a defend and accordingly, where the claimant or any other person against whom the counter-claim is made, fails to serve a defence to the counter-claim, rules 2 to 10 shall apply as if:

(a) the counter-claim were a statement of claim;

(b) the defence to the counter-claim a defence;

(c) the parties making the counter-claim and against whom it is made were claimants and defendants respectively; and

(d) references to the period fixed under these rules for service of the defence were references to the period so fixed for service of the defence to the counterclaim.

13. Setting aside judgment by default

Any judgment by default whether under this Order or under any Order of these rules shall be final and remain valid and may only be set aside upon application to the Judge on grounds of fraud, non service or lack of jurisdiction upon such terms as the Court may deem fit

Order 21 - Payment Into And Out Of Court:,

1. Payment into and out of Court

(1) Where after service in any proceedings for debt or damages, a defendant evinces an intention to pay money into Court in inspect of the proceedings, he shall notify the Chief Registrar, who will thereupon direct him to pay the money into an interest yielding account opened by the Chief Registrar in a commercial bank and he s hall file the teller for such payment with the Chief Registrar.

(2) Where a teller for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the claimant who may apply to a Judge for an order to withdraw the amount so paid.

(3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.

(4) The defendant may without leave give a written notice to the Registrar of an intention to increase the amount or any s um paid into Court.

(5) Where the money i s paid into court in satisfaction or one or more of several causes or action , the notice shall specify the cause or causes of action in respect or which payment is made and the sum paid in respect of such cause or action unless the Judge otherwise directs.

Civil Form 14

(6) The notice shall be in Form 14 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

(7) Where after service in any proceedings for debt or damages, a defendant evinces an intention to pay money into Court in inspect of the proceedings, he shall notify the Chief Registrar, who will thereupon direct him to pay the money into an interest yielding account opened by the Chief Registrar in a commercial bank and he s hall file the teller for such payment with the Chief Registrar.

(2) Where a teller for payment is filed with the Chief Registrar, he shall forthwith give notice of the payment to the claimant who may apply to a Judge for an order to withdraw the amount so paid.

(3) Where a defence of tender before action is set up, the sum of money alleged to have been tendered shall be brought into Court.

(4) The defendant may without leave give a written notice to the Registrar of an intention to increase the amount or any s um paid into Court.

(5) Where the money i s paid into court in satisfaction or one or more of several causes or action , the notice shall specify the cause or causes of action in respect or which payment is made and the sum paid in respect of such cause or action unless the Judge otherwise directs.

(6) Civil Form 14

The notice shall be in Form 14 with such modifications or variations as circumstances may require. The receipt of the notice shall be acknowledged in writing by the claimant within 3 days. The notice may be modified or withdrawn or delivered in an amended form by leave of a Judge upon such terms as may be just.

(7) Where money is paid into Court with denial of liability, the claimant may proceed with the action in respect of the claim and if he succeeds, the amount paid shall be applied so far as is necessary in satisfaction of the claim and the balance, if any, shall on the order

of a judge be repaid to the defendant. Where the defendant succeeds in respect of such claim, the whole amount paid into Court shall be repaid to him on the order of a Judge.

2. Claimant may take out money : (Civil Form 15)

(1) Where money is paid into Court under rule 1, the claimant may within 14 days of the receipt of the notice of payment into Court, or where more than one payment into Court has been made, within 14 days of the receipt of the notice of the last payment into Court, accept the whole sum or any one or more of the specific sum in satisfaction of the cause or causes of action to which the specified sum or sums relate, by giving notice to the defendant in Form 15 with such modifications or variations as circumstances may require and thereupon shall be entitled to receive payment of the accepted sum or sums in satisfaction as aforesaid.

(2) Payment shall be made to the claimant or on his written authority, to his legal practitioner and thereupon proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) If the claimant accepts money paid into Court in satisfaction of ills claim, or if he accepts a sum or sums paid in respect or one or more specified causes of action and gives notice that he abandons the other causes of action, he may after 4 days of payment out and unless a Judge otherwise orders, tax his costs incurred to the time of payment into Court, and 48 hours after taxation may sign judgment for his taxed costs.

(4) Where in an action for libel or slander, the claimant accepts money paid into Court, either party may apply by summons to a judge for leave for the parties or either of them to make a statement in open Court in terms approved by the Judge.

3. Money remaining in Court

If the whole of the money in Court is not taken out under rule 2, the money remaining in Court shall not be paid out except in satisfaction of the claim or specified cause or causes of action in respect of which it was paid in pursuance of an order of a Judge which may be made at any time before, at or after trial.

4. Several defendants

(1) Money may be paid into Court under rule 1 o f this Order by one or more of several defendants sued jointly, or in the alternative, upon notice to the other defendant or defendants.

Form16

(2) If the claimant elects within 14 days after receipt of notice of payment into Court to accept the sum or sums paid into Court, he shall give notice as in Form 16 with such modifications or variations as circumstances may require to each defendant and there upon all further proceedings in the action or in respect of the specified cause or causes of action (as the case may be) shall abate.

(3) The money shall not be paid out except in pursuance of an order of a Judge dealing with the whole cause or causes of action.

Civil Form15

(4) In an action for libel or slander against several defendants sued jointly, if any defendant pays money into Court, the claimant may within 14 days elect to accept the sum paid into Court in satisfaction of his claim against the defendant making the payment and shall give notice to all the defendants as in Form 15 with such modifications or variations as circumstances may require. The claimant may tax his costs against the defendant who has made such payment in accordance with Rule 2(3) of this Order and action shall abate against the defendant.

(5) The claimant may continue with the action against any other defendant but the sum paid into Court shall be set-off against any damages awarded to the claimant against the defendant or defendants against whom the action is continued.

5. Counter-claims

A person made a defendant to a counter-claim may pay money into Court in accordance with the foregoing rules, with necessary modification.

6. Persons under legal disability

(1) In any proceedings in which .money or damages is or are claimed by or on behalf of a person under legal disability suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, whether before, at or after the trial, shall as regards the claims of any such person, be valid without the approval of a Judge.

(2) No money (which expression for the purposes of this rule includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any such proceedings in respect of the claims of any such person under legal disability whether by judgment, settlement, compromise, payment into Court or otherwise, before, at or after the trial, shall be paid to the claimant or to the guardian of the claimant or to the claimant's legal practitioner unless a judge shall so direct.

(3) All monies so recovered or adjudged or ordered or a warded or agreed to be paid shall be dealt with as the Judge shall direct. The directions thus given may include any general or special directions that the Judge may deem fit to give, including directions on h o w the money is to be applied or dealt with and as to any payment to he made either directly or out of money paid into Court to the claimants or to the guardian in respect of monies paid or expenses incurred or for maintenance or otherwise for or on behalf of or for the benefit of the person under legal disability or otherwise or to the claimant's legal practitioner in respect of costs or of the difference between party and patty and legal practitioner and client costs.

7. Payment into and withdrawal of money from Court

Every application or notice for payment into or transfer out or Court shall be made on notice to the other side.

**Order 22 - Proceedings In Lieu Of Demurrer**

1. Demurrer abolished

No demurrer shall be allowed.

2. Points of law may be raised by pleadings

Order 22 - Proceedings In Lieu Of Demurrer

Any party shall be entitled to raise by his pleadings any point of law and any points so raised shall be disposed of by the Judge who tries the cause at or after the trial:

Provided that by consent of the parties, or by order of the Court or a judge on the application of either party, it may be set down for hearing and disposed of at any time before the trial.

3. Dismissal of action

If, in the opinion of the Court or a Judge; the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

4. Striking out pleadings where no reasonable cause of action is disclosed

The Court or a Judge may order any pleadings to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or Judge may order the

action to be stayed or dismissed, or judgment to be entered accordingly, as may be just

5. Declaratory judgment

No action or proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

Order 23 - Notice Of Discontinuance:,

1. Claimant may discontinue before defence

(1) The claimant may at any time before receipt of the defence or after the receipt thereof, before taking any other proceedings in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the defendants or withdraw any part or parts of his claim. He shall thereupon pay such defendant's costs of the action, or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

(2) A discontinuance or withdrawal as the case may be, shall not be a defence to any subsequent claim.

(3) Where a defence has been filed, the claimant may with the leave of a Judge discontinue the proceedings or any part thereof on such terms and conditions as the Judge may order.

(4) Where proceedings have been stayed or struck out upon a claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be heard on the same or substantially the same facts until the terms imposed on him by the Judge have been fully complied with.

(5) The Judge may in like manner and like discretion as to terms, upon the application of a defendant order the whole or any part of his alleged grounds of defence or counter-claims to be withdrawn or struck out. Withdrawal by consent When a cause is ready for trial, it may be withdraw n by either Claimant or defendant upon producing to the registrar, consent in writing signed by the parties and thereupon a Judge shall strike out the matter without the necessity of attendance of the parties or their legal practitioner.

**Order 24 – Amendment**

1. Amendment of originating process and pleadings

A party may amend his originating process and pleadings at any time before the settlement of issue and not more than twice during the trial

but before the close of the case, provided the Court may grant more than two amendments in exceptional circumstances.

2. Application

Application to amend may be made to a Judge, such application shall be supported by an exhibit of the proposed amendment and may be allowed upon such terms as to costs or otherwise as may be just.

3. Amendment of originating process

Where any originating process and or pleadings is to be amended, a list of any additional witness to be called together with his written statement on oath and a copy of any document to be relied upon consequent on such amendment, shall be filed with the application.

4. Failure to amend after order

If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 7 days from the date of the order, such party shall pay an additional fee ofN100.00 (one hundred naira) only for each day of default, without the need for another application for extension of time provided he files within fourteen days thereafter.

Filing and service of amended process

6. Whenever any originating process or pleadings is amended, a copy of the document as amended shall be filed in the Registry and additional copies served on all the parties to the action.

Date of order and amendment to be displayed

Whenever any endorsement or pleadings is amended, it shall be marked in the following manner

" Amended …… day of ……pursuant to Order of (name of Judge) dated the ……day of……."

7. Clerical mistakes and accidental omissions

A Judge may at any time correct clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission upon application, without an appeal being filed.

8. General power to amend

Subject to the provisions of rule 1 of this Order, a Judge may at any time and on such terms as to costs or otherwise as may be just, amend any defect or error in any proceedings.

Order 25 - Trial Conferences And Scheduling:

1. Period for settlement

(1) When a matter comes before the Court for the first time, the Judge shall in circumstances where it is appropriate, grant to the parties, time, not more than thirty days within which parties may explore possibilities for settlement of the dispute.

Order 26 - Discovery And Inspection:,

1. Discovery by Interrogatories

In any cause or matter, the claimant or defendant may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the end of it stating which of the interrogatories each person is required to answer. Interrogatories shall be delivered within 7 days of close of pleadings and shall form pa11of the proceedings of settlement of issues.

2. Civil Form 17

Interrogatories shall be in Form 17 with such modifications or variations as circumstances may require.

3. Corporation or Companies

If any party to a cause or matter is a limited or unlimited company, body corporate, firm, enterprise, friendly society, association or any other body or group of persons whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may deliver interrogatories to any member or officer of such patty.

4. Objection to interrogatories by answer

Any objection to answering anyone or more of several interrogatories on the ground that it is or they are scandalous or irrelevant may be taken by way of motion.

5. Affidavit in answer filing of

Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other time as the Judge may allow. Two copies of the affidavit in answer shall be supplied to the Registrar and a copy thereof served on the party that delivered the interrogatories.

6. Form of affidavit in answer or answer: Civil Form 18

An affidavit in answer to interrogatories shall be in Form 18 with such modifications or variations as circumstances may require.

7. Order to answer or answer further

If any person interrogated omits to answer or answers insufficiently, the Judge shall on application issue an order requiring him to answer or to answer further as the case may be.

8. Application for discovery of documents

(1) Any party may in writing, request any other party to any cause or matter to make discovery on oath of the documents that are or have been in his possession, custody, power or control, relating to any matter in question in the case. Request for discovery shall be served within 7 days of close of pleadings or within such period as the Court or Judge may direct and shall form part of the proceedings. The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the Judge may allow.

(2) Every affidavit in answer to a request for discovery of documents shall be accompanied by copies of documents referred to therein.

Civil Form 19

(3) The affidavit to be made by any person in answer to a request for discovery of documents shall specify which, if any, of the listed documents he objects to producing, stating the grounds of his objection, and it shall be in Form 19 with such modifications or variations as circumstances may require.

(4) On the hearing of the application, the Court or Judge in chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.

(5) Discovery shall not be ordered when and so far as the Court or Judge in chambers is of the opinion that it is not necessary either for disposing fairly of the action or for saving costs.

9. Verification of business books

(1) Where any document required to be attached to any process or produced under this or any other rule is a business book, a Judge may upon application, order a copy of any entry therein to be furnished and verified in any affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept.

(2) Notwithstanding that a copy has been supplied, a Judge may order inspection of the book from which the copy was made.

(3) The Judge may upon application whether or not an affidavit of document has been ordered or filed, make an order requiring any

party to state by affidavit whether any particular document or any class of documents is or has at any time been in his possession, custody, power or control, when he parted with the same and what has become of it.

10. Committal of party after service on him

An order for interrogatories or discovery or inspection made against any party if served on the party, shall be sufficient to found an application for committal of a party for disobedience to the order.

11. Liability of legal practitioner .

If the interrogatories or discovery or inspection i s served on the legal practitioner for the party but neglects without reasonable excuse to give notice to his client, he shall be liable to pay the cost occasioned thereby.

12. Using answer to interrogatories at trial

Any party may, at the trial of a cause, matter or issues, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided that the judge may look at the whole of the answers and order that any of them may be put in.

l3. Discovery against sheriff

In any action against or by a sheriff in respect of any matter connected with the execution of his office, a Judge may, on application of either party, order that the affidavit to be made in answer either to interrogatories or to any order for discovery be made by the officer concerned.

14. Order to apply to person under legal disability

This Order shall also apply to persons under legal disability and their Guardians

Order 27 - Issues, Inquiries, Accounts And Reference To Referees:,

1. Issues of facts

(1) In all proceedings, issues of facts in dispute shall be defined by each party and filed within 7 days after close of pleadings.

(2) If the parties differ on the issues, the trial Judge may settle the issues.

2. Reference to referee

In any legal proceedings, the Judge may at any time, order the whole cause or matter or any question or issue of facts arising therein, to be tried before a n official referee or officer of the Court, notwithstanding that it may appear that there is a special or other relief sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. Instructions to referee

In any case in which a matter is referred to a referee, the Court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties if necessary to attend upon the referee during the inquiry.

4. General Powers of referee

The referee may, subject to the order of the Judge, hold the inquiry at or adjourn it to any place which he may deem most expedient, and have any inspection or view which he may deem most expedient, for the disposal of the controversy before him. He shall, so far as practicable, proceed with the inquiry from day to day.

5. Evidence

(1) Subject to any order made by the Judge ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Judge in the same manner as such attendance may be enforced before the Court; and every such inquiry shall be conducted in the same manner or as nearly as circumstances will admit as trials before a Court.

(2) The referee shall have the same authority in the conduct of any inquiry as a Judge when presiding at any trial.

(3) Nothing in these rules shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise; but the Judge may, in respect of matters before a referee, make such order of attachment or commitment as he may consider necessary.

Report made in pursuance of reference under order

(1) The report made by a referee in pursuance of a reference under this Order shall be made to the Judge and notice thereof served on the parties to the reference. (2) A referee may by his rep01t submit any question arising the rein for the decision of the Judge or make a

special statement of facts from which the Judge may draw such inferences as he deems

(3) On the receipt of a referee's report, the Judge may:

(a) adopt the report in whole or in part;

(b) vary the report;

(c) require an explanation from him;

(d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee;

(e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred, may be made on the hearing by the Judge for the further consideration of the cause or matter, after giving not less than 4 days notice thereof and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference under this Order, a Judge orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the foregoing provisions of this rule shall have effect subject to any such directions.

7. Special directions as to mode of taking account

The Judge may order or direct an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account, the books of accounts in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of their contents, with liberty to the interested parties to object.

8. Accounts to be verified by affidavit, numbered and left in the registry Where any account is directed to be taken, the accounting party shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and left in the Registry.

(9). Mode of vouching accounts

Upon the taking of any account, the Judge may direct that the voucher be produced at the chambers of the accounting party's legal practitioner or at any other convenient place and that only such items as may be contested or surcharged shall be brought before the Judge.

10. Surcharge

Any party seeking to charge any accounting party beyond what he has by his account admitted to have received, shall give notice to the accounting party, stating so far as he is able, the amount sought to be charged with particulars.

11. Accounts and inquiries to be numbered: Civil Form 20

Where by any judgment or order, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that as far as may be, each distinct account and inquiry may be designated by a number and such judgment or order shall be in Form 20 with such modifications or variations as the circumstances of the case may require.

12. Just allowance In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

13. Expediting proceedings in case of undue delay

If it shall appear to the Judge that there i s any undue delay in the prosecution of any proceedings, the Judge may require the party having the conduct of the proceedings or any other party, to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof and as to the costs of the proceedings as the circumstances of the case may require, and for the purposes aforesaid any party may be directed to summon the person whose attendance is required and to conduct any proceedings and carry out any directions which may be given.

## Order 28 - Special Case

1. Special case by consent

At the trial, parties may concur in stating the questions of law arising in their case in the form of a special case for the opinion of the judge. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions. Upon the argument of such case, the Judge and the parties may refer to all the contents of such documents and the Judge may draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.

2. Special case by order before trial

If at the trial it appears to the Judge that there is in any cause or matter a question of law, which could be conveniently decided before any evidence is given or any question or issue of fact is tried, the Judge may make an order accordingly, and may raise such questions of law or direct them to be raised at the trial either by special case or in such other manner as the Judge may deem expedient, and all such further proceedings as the decision of such question of law may, render unnecessary, may thereupon be stayed.

3. Special case to be signed

Every special case agreed pursuant to rule I shall be signed by the several parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

4. Application to set down where a person under disability is a party

An application to set down a special case in any cause or matter to which a person under legal disability is a party shall be supported by sufficient evidence that the statements contained in such case, so far as the same affects the interest of such persons under legal disability are true.

5. Agreement to payment of money and cost

(1) The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by one of the parties to the other, either with or without costs as the case may be.

(2) The judgment of the Court may be entered for the sum so agreed or ascertained with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed on appeal.

6. Direction

A Judge may give direction as he may deem fit on any issue arising from the trial or special case upon the application of the parties or suo motu.

7. Application of order

This Order shall apply to every special case stated in a cause or matter and in any proceedings incidental thereto.

Order 29 - Proceedings At Trial:

1. Attendance by proxy

(1) In every cause or matter pending before the Court, in case it appears to the satisfaction of the Court that arty party who may not be represented by a legal practitioner is prevented by some g d or sufficient cause from attending the Court in person, the Court may in its discretion permit any master, servant, clerk or member of the family of such claimant or defendant, or officer of the claimant or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.

2. Non-appearance: both parties

When a cause on the Weekly Cause List has been called for hearing and neither party appears, the Judge shall, unless he sees good reason to the contrary, strike the cause out.

3. Default of appearance by defendant at trial

When a cause is called for hearing if the claimant appears and the defendant does not appear, the claimant may prove his claim, so far as the burden of proof lies upon him.

4. Default of appearance by claimant

When a cause is called for hearing, if the defendant appears and the plaintiff does not appear, the defendant, if he has no counter claim, shall be entitled to judgment dismissing the action, but i f he has a counter-claim, then he may prove such counter-claim, so far as the burden of proof lies upon him. Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may if it thinks fit, give judgment as if the claimant had appeared.

5. Judgment by default may be set aside on terms

(1) Where a cause is struck out under rule 2 of this Order, either party may apply that the cause be replaced on the cause list on such terms as the Judge may deem fit.

(2) Any judgment obtained where any party does not appear at the trial may be set aside by the Judge upon such terms as he may deem fit for good cause shown.

(3) An application tore-list a cause struck out or to set aside a judgment shall be made within 6 days after the order or judgment or such other longer period as the Judge may allow for good cause shown.

6. Adjournment of trial

(1) The Judge may, if he thinks it expedient for the interests of justice, postpone or adjourn a trial for such time and upon such terms, if any, as he may think fit, provided that such adjournments shall be

subject to the following guidelines or such longer period as the circumstances may dictate:

(a) an adjournment shall not be granted more than (5) times at the instance of a party to the action from the date of filing to the conclusion of the case.

(b) an adjournment shall not exceed 30 days at one instance.

(2) Or such longer period as the circumstances may dictate.

7. Times of commencement and termination of trial

The Registrar or other proper officer present at any trial or hearing, shall make a note of the times at which the trial or hearing commences and terminates respectively and the time actually occupied on each day it goes on for communication to the taxing officer if required.

8. Burden of proof by party to begin

The party on whom the burden of proof lies by the nature of the issues or questions between the parties shall begin.

9. Documentary evidence

Documentary evidence shall be put in and may be read or taken as read.

10. Additional witness

(1) A party who desires to call any witness not being witness whose deposition on oath accompanied his pleadings shall apply to the Judge for eave to call such witness.

(2) An application for leave in sub-rule 1above shall be accompanied by the deposition on oath of such witness.

11. Close of case of parties

(1) A party shall close his case when he has concluded his evidence.

Either the claimant or defendant may make oral application to have the case closed.

(2) Notwithstanding the provisions of sub-rule I above, the Judge may suo motu where he considers that either party fails to conclude his casewithin a reasonable time, close the case for the party.

12. Exhibits during trial

(1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action, and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in(or where more convenient, the witness by

whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

(2) The Registrar shall cause a list of all the exhibits in the action to be made.

(3) The list of exhibits when completed shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

(5) In this rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put Ill.

13. Written address by party beginning

When the party beginning has concluded his evidence, the Judge shall ask the other party if he intends to call evidence. If the other party does not intend to call evidence, the party beginning shall within 21 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 21 days file his own written address.

14. Written address by the other party

Where the other party calls evidence, he shall within 21 days after the close of evidence file a written address.

15. Written address of party beginning

Upon being served with other party's written address, the party beginning shall within 21 days file his own written address.

16. Right of reply

The party who files the first address shall have a right of reply on points of law only. The reply shall be filed within 7 days after service of the other party's address.

17. Custody of exhibit after trial

(1) An exhibit shall not be released after the trial to the party who has tendered it unless the period during which notice of appeal may be given has elapsed without such notice having been given, and then only if the trial Judge (or in his absence, another Judge) g rants leave to release such exhibit on being satisfied:

(a) that the exhibit will be kept duly marked and labelled and will be produced if required, at the hearing of an appeal (if any such appeal is lodged); or

(b) way prejudice any other party.

(2) After a notice of appeal has been filed, an exhibit produced at the trial shall not be released by the High Court unless leave to release such exhibit is granted by the Court of Appeal.

18. Office copy of list of exhibits

(1) Any party may apply for and on payment of the prescribed fee, obtain an office copy of the list and ce1tified true copies of exhibits.

(2) Where there is an appeal, a n office copy or the list of exhibits shall be included amongst the documents supplied for the purpose of the appeal.

19. Indolent prosecution

A Judge may, suo motu or on application strike out any proceedings not being prosecuted diligently

Order 30 - Filing Of Written Address:,

1. Application and final address

This Order shall apply to all applications and final addresses

2. Application

A written address shall be printed on good quality white opaque A4 paper size and set out in paragraphs numbered serially and shall contain:

Content of written address

(i) The claim or application on which the address is based;

(ii) A brief statement of the facts with reference to the exhibit attached to the application or tendered at the trial;

(iii) The issues arising from the evidence; and

(iv) A succinct statement of argument on each issue incorporating the purport of the authorities referred to together with full citation of each authority

3. Summation of address

All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all authorities referred to shall be submitted with the address. Where any unreported judgment is relied upon, the certified true copy shall be submitted along with the written address.

4. Oral argument

Oral argument of not more than twenty minutes may be allowed for each party.

**Order 41 – Interpleader**

1. When relief by interpleader granted

Relief by way of interpleader may be granted where the person seeking relief ("the applicant") is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be sued by two or more parties, the claimants making adverse claims thereto:

Order 42 - Computation Of Time:

1. Computation of time

Where by any written law or any special order made by the Court in the course of any proceedings, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceedings, and such time is not limited by hours, the following rules shall apply:

**Order 43 - Miscellaneous Provisions**

1. Sitting of the Court and Vacation

1. Days of sitting

Subject to the provisions of the High Court Law, the Court may at its discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.

**Order 44 - Arrest Of Absconding Defendant**

1. Application

The following rules shall apply to proceedings under Section 31 of the Law.

2. Defendant leaving Nigeria

If in any action where the defendant is about to leave Nigeria, the claimant may, either at the institution of the suit or at any time thereafter until after final judgment, apply by ex-parte motion to the Judge form order that the defendant do show cause why security should not be taken for his appearance to answer and satisfy any judgment that may be passed against him in the suit.

3. Warrant to arrest

(1) If the Court after making such investigation as he may consider necessary shall be of the opinion that there is probable cause for believing that the defendant is about to leave Nigeria and that by

reason thereof, the execution of any judgment which may be made against him is likely to be obstructed or delayed, the Judge shall issue a warrant as in Form 32 to bring the defendant before him, that he may show cause why he should not give good and sufficient bail for his appearance.

(2) Civil Form 32

The defendant shall be brought to Court within 2 days of the execution of the warrant.

4. Bail for appearance or satisfaction of the defendant fails to show cause, the Judge shall order him to give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed against him in the suit or to give bail for the satisfaction of such judgment, and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit with costs.

5. Deposit in lieu of bail

(1) Where a defendant offers to deposit a sum of money in lieu of bail for his appearance, sufficient to answer the claim against him , with costs of the suit, the Judge may accept such deposit and direct that same be paid into an interest yielding account in a bank.

(2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim against him, the Judge may accept such security and make such order as he may deem fit in the circumstance.

6. Committal in default

(1) If the defendant fails to furnish security or offer a sufficient deposit, the Judge may commit him to custody until the decision of the suit or if judgment has been given against the defendant until the execution of the judgment.

(2) Committal to custody under this rule shall not exceed a period of 6 months.

(3) The Judge, may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.

7. Cost of subsistence of person arrested

The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the claimants in the action in advance, and the amount so disbursed may be recovered by the claimants in the suit:

unless the Judge shall otherwise order. The Judge may release the person so imprisoned on failure by the claimants to pay the subsistence money, or in case of serious illness, order his removal to hospital.

Order 44 - Arrest Of Absconding Defendant:,

1. Application

The following rules shall apply to proceedings under Section 31 of the Law.

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3. Warrant to arrest

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5. Deposit in lieu of bail

(1) Where a defendant offers to deposit a sum of money in lieu of bail for his appearance, sufficient to answer the claim against him , with costs of the suit, the Judge may accept such deposit and direct that same be paid into an interest yielding account in a bank.

(2) Where a defendant offers security other than money in lieu of bail for his appearance, sufficient to answer the claim against him, the Judge may accept such security and make such order as he may deem fit in the circumstance.

6. Committal in default

(1) If the defendant fails to furnish security or offer a sufficient deposit the Judge may commit him to custody until the decision of the suit or if judgment has been given against the defendant until the execution of the judgment.

(2) Committal to custody under this rule shall not exceed a period of 6 months.

(3) The Judge, may at any time upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.

7. Cost of subsistence of person arrested

The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the claimants in the action in advance, and the amount so disbursed may be recovered by the claimants in the suit: unless the Judge shall otherwise order. The Judge may release the person so imprisoned on failure by the claimants to pay the subsistence money, or in case of serious illness, order his removal to hospital.

Order 45 - Proceedings In Forma Pauperis:,

1. Application

This Order shall apply to proceedings, in respect of which there is no statutory provision for legal aid.

2. Who may sue or defend in forma pauperis

A Judge may admit a person to sue or defend in forma pauperis if satisfied that his means do not permit him to employ legal representation in the prosecution of his case and that he has reasonable grounds for-

(1) A person seeking relief under this Order shall write an application to the Chief Judge accompanied by an affidavit, signed and sworn to by the applicant himself, stating that by reason of poverty, he is unable to afford the services of a legal practitioner.

(2} If in the opinion of the Chief Judge, the application is worthy of consideration, the Chief Judge shall appoint a legal practitioner to act for the applicant.

(3) Where a legal practitioner is so appointed, the applicant shall not discharge the legal practitioner except with the leave of the Chief Judge.

4. Fees and costs

Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as a Judge may deem fit and a person so admitted to sue or defend shall not, unless the Judge otherwise orders, be liable to pay or be entitled to receive any costs.

5. Procedure to be followed

(1) The legal practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant to the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whosoever, either in connection with his application or the action taken or defended thereunder, the order appointing the legal practitioner shall be revoked.

(3) If the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

6. Revocation of order, discontinuance, etc.

(1) The Chief Judge may, at any time, revoke the order granting the application and thereupon the applicant shall not be entitled to the benefit of this Order in any proceedings to which the application relates unless otherwise ordered.

(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

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(1) The legal practitioner shall not, except by leave of the Chief Judge, take or agree to take any payment whatsoever from the applicant or any other person connected with the applicant to the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay any money to any person whosoever, either in connection with his application or the action taken or defended thereunder, the order appointing the legal practitioner shall be revoked.

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(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of a Judge.

7. Payment to legal practitioner

The Judge may order payment to be made to the legal practitioner out of any money recovered by the applicant or may charge in favour of the legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

8. Duty of legal practitioner

Every order, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall he signed by his legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

9. Appeals

No person shall be permitted to appeal in forma pauperis except by leave of the trial or the Appellate Court and then only on grounds of law; but if so permitted, the provisions of this Order shall apply mutatis mutandis to all proceedings in the appeal.

Order 46 - Change Of Legal Practitioner:,

1. Legal practitioner to conduct cause or matter to final judgment

Every legal practitioner who shall be engaged in any cause or matter, shall be bound to conduct same on behalf of the claimant or defendant as the case may be, by or for whom he shall have been so engaged until final judgment, unless allowed for any special reason to cease acting therein.

2. Application for change of legal practitioner or withdrawal

An application for a change of legal practitioner or withdrawal may be made by the claimant or defendant or the legal practitioner as the case may be, not less than 3 clear days before he date fixed for hearing.

3. Service of application by legal practitioner

Where the application is made by a legal practitioner, it shall be served on all parties to the cause or matter and where applicable, also on the outgoing legal practitioner if he is not the applicant.

**Order 47 – Costs**

1. Security for costs by defendant

(1) Where on the application of the defendant to an action or other proceedings in the Court, it appears to the Court that:

(a) the claimant is ordinarily resident out of jurisdiction; or

(b) the claimant (not being a claimant who is suing in a representative capacity) is a nominal claimant who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or

(c) subject to sub-rule (2), the claimant's address is not s ta ted in the writ or other originating process or is incorrectly stated therein ; or

(d) the claimant has changed his address during the course or the proceedings with a view to evading the consequences or the Litigation then if, having regard to all the circumstances of the case, the Court thinks it just to close, it may order the claimant to give such security for the defendant 's cost s or the action or other proceedings as it thinks just

(2) The Court shall not require a claimant to give security by reason only of paragraph (c) of sub-rule (1) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing rule to a claimant and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of claimant or defendant, as the case may be, in the proceedings in question, including a proceedings on a counterclaim.

2. Manner of giving security

Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

Costs between Parties

3. Costs in discretion of Court

In every suit, the costs of the whole suit, and of each particular proceedings, therein, and the costs of every proceedings in the Court, shall be in the discretion of the Court as regards the person by whom they are to be paid.

4. Powers of Court

The Court shall not order the successful party in a suit to pay to the unsuccessful party, the costs of the whole suit, although the Court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceedings therein.

5. Costs out of funds or property

The Court may order any costs to be paid out of any fund or property to which a suit or proceedings relate.

6. Court to determine amount of costs

When the Court adjudges or orders any costs to be paid, the amount of such costs shall be, if practicable, summarily determined by the Court at the time of making the judgment or order named therein.

7. Principles to be observed in fixing costs

In fixing the amount of costs, the principle to be observed is that the party who is right is to be indemnified for the expenses to which he has been necessarily put in establishing his claim, defence or counter-claim, but the Court may take into account all the circumstances of the case.

8. Stay of proceedings till costs paid

Where the Court orders costs to be paid, or security to be given for costs by any party, the Court may if it thinks fit, order all proceedings by or on behalf of that party in the same suit or proceedings, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

9. Cost against counsel

(1) Where a cause or matter is delayed due to the fault of a counsel, the Court shall award costs as it m a y deem fit and any costs so awarded shall be paid by the counsel.

(2) A Court may order payment to be made to a counsel , assigned out of any money recovered by the applicant, or ma y charge in favour of the counsel, assigned on any property recovered by the applicant; such sum as circumstances ma y require.

10. Taxation of costs

When the Court deems it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon by taxation by the Court itself or may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.

11. Discretion of taxing master

Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of Court, to the skill, labour and responsibility involved.

12. Taxation

In taxation of costs between parties, nothing shall be allowed in respect of fees paid to the Court beyond what was necessary, having regard to the amount recovered on judgment.

13. Where more than one-sixth of amount of bill of costs deduced on taxation

If upon the taxation of any bill of cost, more than one-sixth is deduced from the amount claimed, the Court may either make no order as to the costs of the taxation or may order the party who filed the bill of costs to pay to the other party or parties the costs of taxation.

14. Costs in action which could have been taken in inferior Court

Where a claimant is successful in any action which might have been brought by him in an inferior tribunal, the Court may take into account, the smaller costs which would have been involved to the parties to the action, if it had been taken in such inferior tribunal and may, in its discretion, grant to the successful claimant, modified costs or no costs and may grant to any other party such extra costs as the Court is satisfied, such other party has incurred by reason of the action being taken in the Court instead of in the inferior tribunal, unless the Court is of opinion that the action was one which for some special reasons it was proper to bring in the Court

Order 48 - Applications And Proceedings In Chambers:,

1. Representation in chambers

In any proceedings before a Judge in chambers, any party may, if he so desires, be represented by a legal practitioner.

2. Matter to be disposed of in chambers

Unless the opposite party or his counsel objects, the Judge may on application, conduct any proceedings, except actual trial, in chambers and

may also on application, adjourn any such proceedings from Court to chambers and vice versa.

II. Proceedings Relating To Persons under Legal Disability

3. Evidence upon application for appointment of guardians and for maintenance

Upon application for the appointment of guardians of infants and allowance for maintenance, the evidence shall show:

(a) the ages of the infants;

(b) the nature and amount or the infants' fortunes and incomes; and

(c) what relations the infants have.

At any time during the proceedings under any judgment or order, the Judge may, if he deems fit, require a guardian to he appointed for any person under legal disability not adjudged a lunatic, who has been served with notice of such judgment or order.

III. Registering And Drawing Up Of Orders In Chambers Costs

4. Notes of proceedings in chambers

Notes shall be kept of all proceedings in the Judges' chambers with proper dates, so that all such proceedings in such cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

5. Drawing up any entry of orders made

Orders made in chambers shall, unless the Judge otherwise directs, be drawn up by the Registrar and signed by the Judge. Such orders shall be entered in the same manner as orders made in Court.

6. Costs

Subject to the provisions of the Law and of these Rules, the costs of, and incident all proceedings in chambers shall be at the discretion of the Judge,

7. Decisions given in chambers: how set aside or varied

(1) Where any party to proceedings in chambers does not intend to accept the decision of the Judge in chambers as final, he s hall forthwith request to have the summons adjourned into Court for argument. or such request is referred, the party may proceed by way or motion with notice in Court to discharge, set aside or vary the order made or the judgment given.

(2) The notice of motion shall be filed not later than 7 days after the drawing up of the order made in chambers unless the Court grants an extension of time on good and sufficient reasons being shown, and the motion shall be heard and determined by the Judge who has dealt with the matter in chambers unless this proves impossible or inconvenient owing to such Judge's death or retirement or prolonged absence from Edo State.

(3) This rule shall apply to decisions given by a Judge in chambers on appeal from the Chief Registrar under rule 4 of Order39.

Order 49 - Foreclosure And Redemption:

1. Originating summons for foreclosure

Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out any originating summons, for such relief of the nature or kind as may by the summons be specified, and as the circumstances of the case may require, that is:

(a) Payment of money secured by the mortgage or charge;

(b) Sales;

(c) Foreclosure;

(d) Delivery of possession, whether before or after foreclosure to the mortgagee or person entitled to the charge, by the mortgagor or person having the property subject to the charge, or by any other person in, or alleged to be in possession of the property;

(e) Redemption;

(f) Reconveyance; and

(g) Delivery of possession by the mortgagee.

2. Civil Forms 33, 34 and 35

Orders for payment and for possession shall be in Form 33, 34 and 35 of these Rules, with such variations as the circumstances of the case may require, and the like Forms shall be used under corresponding circumstances in actions for the relief commenced by writ.

3. Service and execution of judgment

The Judge may give any special directions concerning the execution of the judgment, or the service thereof upon persons not parties to the cause or matter, as he deems fit.

Order 50 - Summons To Proceed:,

1. Bringing in judgment, etc.

Every judgment or order directing accounts or inquiries to be taken or made, shall be brought to a Judge by the party entitled to prosecute same within 10 days after such judgment or order shall have been entered or filed, and in default thereof, any other party to the cause or matter shall be at liberty to bring in the same, and such patty shall have the prosecution of Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return or such summons the Judge, if satisfied by proper evidence, that a ll necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the:

(i) manner in which each of the accounts and inquiries is to be prosecuted;

(ii) evidence to be adduced in support thereof;

(iii) parties who are to attend on the several accounts and inquiries; and

(iv) time within which each proceedings is to be taken and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary.

3. Settling deed where parties differ

When by a judgment or order, a deed is directed to be settled by a Judge in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons, the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall deem fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party, a statement in writing of his objections, within 8 days after the delivery of such copy, and the proceedings s hall be adjourned until after the expiration of the said period of 8 days.

4. Where service of notice of judgment or order dispensed with

Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other notice of sufficient cause, the service of notice of the judgment or order upon any party cannot be made, the Judge may if he shall deem fit, order any substituted service or notice by advertisement or otherwise in lieu of such service.

5. Stoppage of proceedings where all necessary parties have not been served with notice of judgment or order If on the hearing of the summons to proceed, it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may he given for advertisement for creditors, and for leaving the accounts in chambers. Adjudication on creditors' claims and tile accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining notice or the parties to be served, until all necessary parties shall have been served and until directions shall have been given as to the parties who arc to attend the proceedings.

6. Documents, copies for use

Copies, abstracts, extracts of or from accounts, deeds or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed over to the other parties:

Provided that no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct.

11 Summons To Proceed Book

7. Entry in summons to proceed book

At the time any summons to proceed is obtained, an entry thereof shall be made in the summons book, stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

**Order 51 - Summary Proceedings For Possession Of Landed Property Occupied By Squatters Or Without The Owner's Consent**

1. Application of this Order

(1) This Order shall not apply where the person in occupation of land is:

(a) a tenant; or

(b) a tenant holding over after termination of his tenancy; or

**Order 52 - Stay Of Execution Pending Appeal To The Court Of Appeal**

1. Stay of execution pending appeal

Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit

setting forth the grounds upon which a stay of execution or of proceedings is sought.

Order 53 - Probate And Administration

GRANT OFPROBATE OR ADMINISTRATION IN GENERAL

1. Petition to be made to Probate Registn.tr

(1) Subject to the provisions of rules 39 and 40, when any person subject to the jurisdiction of the Court dies, all petitions for the granting of any letters of administration of the estate of the deceased person, with or without a Will attached, and all application s o n other matters connected therewith, shall be made to the Probate Registrar of the Court at Benin City.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the Will of the deceased or for any other purpose connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable, and report to the Chief Judge.

(3) No grant of administration with the Will annexed, s hall be issued within seven days or the death of the deceased; and no grant of administration (not with the Will annexed) shall be issued within fourteen days of such death .

2. Preservation of property

The Court shall, when the circumstances of the case appear to require forthwith on the death of a person , or as soon after, appoint and authorize an officer of the Court, or some other fit person , to take possession of his property within its jurisdiction , or put it under seal, and so keep it until it can be dealt with according to law.

3. Unauthorised persons intermeddling with property

If any person, other than the person named executor or administrator, or an officer of the Court or person authorised by the Court, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

4. Production of testamentary papers

(1) Any person having in his possession or under his control, any paper or writing of any person deceased, being or purpo1ting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court.

(2) If any person fails to do so for fourteen days after having had knowledge of the death of the deceased he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

5. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not order him to produce the paper and bring it into Court.

6. Examination respecting papers

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary, (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order that he may be examined in respect of same in court, or on interrogatories, and that he attends for that purpose, and after examination, that he produces the paper and brings it into Court.

7. Notice to executor to come in and prove

The Court may of its own motion, or on the application c)f any person claiming an interest under a Will, give notice to the executors (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or some or one of them, shall, within (21) twenty one clays after notice, come in and prove or renounce accordingly.

8. Liability of executor neglecting to apply for probate

If any person named executor in the Will of the deceased, takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may independently of any of her liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

9. Identity

The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court necessary or desirable, in regard to the identity of the deceased or of the applicant or in regard to the relationship of the applicant to the deceased, or in regard to any persons in existence with a right equal or prior to that of the applicant to the grant or probate or administration sought by the applicant , or in regard

(1) any other matter which may be considered by the Court relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Court may refuse the gran/ unless the applicant produces the required evidence on these points or any of them as required by the Court.

10. Court may refuse grant until all persons interested are given due notice

Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in regard to the application:

Provided that the Court may in its discretion refuse the grant unless and until all persons entitled to the grant In priority to the applicant, shall have expressly renounced their prior right.

ll. Value of property

Every applicant for a grant of letters of administration shall file in the Court, a true declaration of all personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the property in respect of which the grant is made;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

12. Answers required before grant

(1) In no case shall the Court issue letters of administration until all inquiries which the Court deems fit to institute have been answered to its satisfaction.

(2) The Court shall, however, afford as great a facility for the obtaining of letters of administration as is consistent with due regard to the prevention of error an fraud.

13. Notice to prohibit grant

A notice to prohibit a grant of administration may be tiled in the Court.

14. Effect of notice (1) The notice shall remain in force three months only from the day of filing, but it may be renewed from time to time.

(2) The notice s hall not affect a grant made on the clay on which the notice is filed.

(3) The person filing the notice s hall he warned in writing delivered at the place mentioned in the notice a s his address.

(4) Notices in the nature of citation shall be given in such manner as the Court directs.

15. Form of suits

Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

16. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the Court at Benin City, his own will, sealed up under his own seal and the seal of the Court.

17. Custody of Wills of which probate granted

(1) Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of same.

(2) A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the Regist1y.

18. Will not given out without order of court

(1) No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed.

(2) A certified transcript, under the seal of the Court of the probate or administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

19. Examination of Will as to its execution

(1) On receiving an application for administration with Wi II annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact, executed in accordance with those enactments.

20. Proof of execution where attestation clause is defective

(1) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact executed in accordance with those enactments.

(2) The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

21. Where Will was not executed according to law

If on perusal of the affidavit, it appears that the Will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

22. Evidence on failure or attesting witnesses

If both the subscribing witness are dead , or i r from other circumstances, such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will; hut if no s u affidavit can be obtained, proof shall be required or that fact, and or the handwriting of the deceased and of the subscribing witness and also of any circumstances raising a presumption in favour of the due execution of the Will.

23. Will of blind or illiterate testator

Where the testator is blind or illiterate, the Court shall not grant administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution, or that he had at the time knowledge

of its contents.

24. Interlineations, erasures, obliterations

(1) The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, if obliterations appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations arc in valid unless they existed in the Will at the time of its execution or unless, if mad e afterward s, they have been executed and attested in the mode required by the said enactments; or unless they have been made invalid by the by there- execution of the Will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the will (unless duly executed or recited in or other w i se identified by the attestation clause)., an affidavit in proof of their having existed in the Will before its execution, shall be filed.

(4) If so, satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely defaced, and can, on inspection of the Will , be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required .

25. Documents referred to in a Will: or annexed or attached

(1) Where a Will contains a reference to a n y doc u men t of such a nature as to raise the questions whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate;

and if it is not produced, a satisfactory account of its non-production shall be proved.

(2) A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(3) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some documents have been at some time annexed or attached thereto, a satisfactory account of them shall be prove, or the production of the document shall be required , and if it is not produced, a satisfactory account of its nonproduction shall be proved.

26. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court probate, does not appear, his right in respect of the executorship wholly ceases; and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

(2) Codicils

The provisions respecting Wills apply equally to codicils.

28. Viva voce examination of persons making affidavits

(1) In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit.

(2) The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

Administration (not with Will)

29. Form of administration not with Will annexed

(1) The Court in granting letters of administration, shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased 's death, and the value of the property to be covered by the administration.

30. Administration bond

(1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.

(2) The Court may, if it thinks fit, take one surety only.

(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased sworn, unless the Court, in any case, thinks it expedient to reduce the amount.

(4) The Court may also in any case, direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

31. Assignment of bond

The Probate Registrar may, on being satisfied that the condition of the bond has been broken , assign the same to some persons, and that person may thereupon sue on the bond in his own name as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

32. Administration summons

Any person claiming to be a creditor or legatee, or the next of -kin, or one of the next-of-kin of a deceased, may apply for and obtain a summons from the Court requiring the executor or administrator (as the case may be) of the deceased to attend before the Court, and show cause why an order for the administration of the Property of the deceased should not be made.

33. Order for administration

(1) On proof of service or the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court may if it thinks fit, make an order for the administration of the property or the deceased.

(2) The Court shall have discretionary power to make nr refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant same to such one or more of the claimants or classes of claimants, as the Court thinks fit.

(3) If the Court thinks fit, the carriage of the order may subsequently be given to such person, and on such terms, as the Court thinks fit.

34. Orders relating to property

On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order which may appear requisite to secure the proper collection, recovery for safe keeping and disposal or the property or any part thereof.

35. Administration may be granted to officer

In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased, or of its own motion, grant letters of administration to an officer of the Court, to a consular officer, or to a person in the service or the Government.

36. Officer to act under direction of court

(1) The officer or person so appointed, shall act under the direction of the Court, and shall be indemnified thereby.

(2) The Court shall require and compel him to file in the Court, his accounts of his administration at intervals not exceeding three months.

37. Court may appoint persons to be administration

Where a person has died intestate as to his personal estate or leaving a Will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person, be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be administrator of the personal estate of the deceased or of any part thereof. the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administrator may be limited as the Court shall think fit.

38. Remuneration of administrator

The Court may direct that any administrator, (with or without the Will annexed), shall receive out of the personal and real estate of the deceased, such reasonable remuneration as the Court shall think fi t, not exceeding a fee ofN50,000.00 (fifty thousand naira) and in addition thereto, a sum not exceeding five per centum-on the amount of the realised property, or when not converted into money, on the value of the property duly administered and accounted for by him:

Provided that where the Court shall be sati.1jied that by reason of exceptional circumstances, the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow, in respect of such property, a higher rate of remuneration.

Administration of Estate of Foreign Citizen

39. Securing and collection of estate

(1) Where any citizen or any country other than Nigeria, dies within the jurisdiction without leaving within the jurisdiction, a widow or next-of-kin, then, if any such person dies within a Government station or had his usual place of residence therein, the Magistrate having jurisdiction within such station, or if he does not die within a Government station, or had not his usual place of residence therein, then the Local Government Secretary in charge of the station in which he died, shall collect and secure all monies and other property belonging to the deceased, and shall then request the Secretary to the Government to inform the nearest consular officer

of such country, of the death of the deceased, and transmit to him a list of the money and property of the deceased.

(2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money and other property of the deceased, such Local Government Security may appoint any administrative officer attached to his local government or, with his consent, any magistrate or any administrative officer attached to any other Local Government to act in his place.

40. Application by consular officer or person authorised by him to administer estate

Application may be made to the Court by any such consular officer, or by any person authorised by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, and vary s u c h order when and so often as is expedient. Administration Generally

41. Accounts to be filed

(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Court so to do, file in Court the accounts of his administration, and shall thereafter such further periodic accounts as the Court may direct until the completion of the administration.

(2) Any such executor or administrator who files within any such period to file his accounts as aforesaid, shall be liable to such penalty not exceeding N1,000.00 (one thousand naira) as the Court may think fit to impose. Every such fine shall, on non-payment be enforceable by distress, and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) When an account is filed in Court under this rule, the Court shall scrutinise such account and if it appears to the Court that by reason of improper unvouched or unjustifiable entries or otherwise, such account is not a full and proper account, the Court may give written notice to the person filing the account, to remedy such defects as there may be within such time as the Court may seem reasonable for the purpose; and on failure to remedy such defects within such time, the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The Court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished .

(5) The Court may for good cause.: shown , extend the time for such filing of accounts.

(6) Any executor or administration who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(7) It is the duty of the Probate Registrar to bring to the notice of the Court, the fact that any executor or administrator has failed to file his accounts as required by this rule.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule, the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

42. Duties and powers to be performed and exercised by Probate Registrar

The duties imposed and powers conferred upon the Court by rules 5,6,7,9, 10, 11, 12, 14, 17, 18, 19,20,21,22,28,31,38,40 and 4( I), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court, subject to any directions which the Chief Judge may give, restricting or enlarging tills delegation to (he Probate Registrar of the duties and powers of the Court under this Order:

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to review any exercise by the Probate Registrar of the powers delegated to him. On such review, the Court shall have power to cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise, and make such order on the premise as the Court may seem just.

43. Court may refuse application

The Court may refuse to entertain any application under the List preceding rule, if it considers that there has been unreasonable delay by the applicant in making his application.

44. Grant to be signed by Probate Registrar

The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court

Order 54 - Probate (non-contentious) Procedure:

1. Production of testamentary papers

Any person having in his possession or under his control, any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court. If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding N50,000.00 (fifty thousand naira) as the Court, having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

2. Court may order production

Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession, or under the control or any person, the Court may in a summary way, whether a suit or proceedings respecting probate or administration is pending or not, order him to produce the paper and bring it into Court.

3. Examination respecting paper

Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceedings for probate or administration is pending or not, order that he may be examined in respect of same in Court, or on interrogatories, and that he attends for that purpose, and after examination that he produces the paper and brings it into Court.

4. Notice to executor to come in and prove

The Court may of its own motion, or on the application of any person claiming an interest under a Will, give notice to the executor (if any) therein named, to come in and prove the Will, or to renounce probate, and they, or one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.

5. Liability of executor to come in and prove

If any person named executor in the Will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be deemed guilty of a contempt of Court, and shall be liable to such fine, not exceeding N50,000.00 (fifty thousand naira), as the Court thinks fit to impose.

6. Petition to be made to Probate Registrar

(1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his Will and all applications on other matters connected with it, shall be made to the Probate Registrar of the Court at Benin City (2) In regard to any such application, the Chic!' .Judge shall have power to request the Court of any Judicial Division , to take measures and make such order as may appear necessary or expedient for the interim preservation or the property of the deceased Within such Judicial Division, for the discovery or preservation or the Will or the deceased or for any other purposes connected with the duties of the Court under this Order, and every Court shall carry out any such request as far as practicable and report to the Chief Judge.

7. Application for grants through legal practitioners

(1) A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate Registry.

(2) Every legal practitioner through whom an application for a grant is made, shall give the address of his place of business within jurisdiction.

8. Personal applications

(1) A personal applicant may apply for a grant otherwise than by post at the Probate Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:

(a) it becomes necessary to bring the matter before the Court on motion or by action.

(b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn.

(c) the Registrar otherwise directs.

(4) After a Will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to he prepared in the Registry, or may himself prepare such papers and lodge them unsworn.

(7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorised officer.

9. Duty of Registrar on receiving application for grant

(1) The Registrar shall not allow any grant to be issued until all inquiries which he may deem fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) No grant of probate or of administration with the Will annexed shall be issued within seven days of the death of the deceased.

10. Oath in support of grant

(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances or the case, which shall be contained in any affidavit sworn by the applicant and by such other persons as the Registrar may require.

(2) Unless otherwise directed by the registrar, the oath shall state where the deceased died domiciled.

11. Grant in additional name

Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath, the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

12. Marking of Wills

Every Will in respect of which an application for a grant is made, shall be marked by the signatures of the applicants and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, condition or date of execution of the Will:

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the Will, he may allow a photostat copy thereof to be marked or exhibited in lieu of the original document.

13. Engrossment for purposes of record

(1) Where the Registrar considers that in any particular case, a Photostat copy of the original Will would not be satisfactory for purposes of record, he may require an engrossment suitable for photostat reproduction to be lodged.

(2) Where a Will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the Will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the Will and, if it is one to which sub-rule (2) of this rule applies, it shall be made book wise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a Will, there shall be lodged a copy of the Will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

14. Evidence as to due execution of Will

(1) Where a Will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution or the Will, he shall before admitting it to proof require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph, the Registrar may, if he thinks fit, having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may think fit, to show that the signature on the Will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the Will.

(3) If the Registrar, after considering the evidence:

(a) is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly.

(b) is doubtful whether the Will was duly executed, he may refer the matter to the Court on motion.

15. Execution of Will of blind or illiterate testator

Before admitting to proof, a Will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the

testator having had knowledge of the contents of the Will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

16. Evidence as to terms, conditions and date of execution of Will

(1) Where there appears in a Will any obliteration, interlineations, or other alteration which is not authenticated in the manner prescribed by law or by there-execution of the Will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the Will was executed and shall give directions as to the form in which the Will is to be proved:

Provided that this sub-rule shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the Will, it appears to the Registrar that some other document has been attached to the Will, or if a Will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the Will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a Will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

17. Attempted revocation of Will.

Any appearance of attempted revocation of a Will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for, to the Registrar's satisfaction.

I8. Affidavit as to due execution, terms, etc, of Will

The Registrar may require an affidavit from any person he may think fit, for the purpose of satisfying himself as to any or the matters referred to in rules 15, 16, and 17 and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a Will, the deponent shall depose to the manner in which the Will was executed.

19. Wills of persons on military service and seamen

If it appears to the Registrar that there is prima facie evidence that a Will is one to which Section 9 of the Wills Act, 1837, or any provision of the equivalent enactment in force in the State applies, the Will may be admitted to proof, if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment, as the case may be.

20. Evidence of foreign law

Where evidence as to law of any country or territory outside the State is required on any application for a grant , the Registrar may accept an affidavit from any person whom, having regard to the particulars of his knowledge or experience give n in tile affidavit, he regards as suitably qualified to give expert evidence or the law in question.

21. Order of priority for grant where deceased left a Will

Where the deceased died after the commencement of this Order, the person or persons entitled t o a grant of probate or administration with the Will annexed, shall be determined in accordance with the following order of priority:

(1) The executor;

(2) Any residuary legatee or devisee holding in trust for any other person;

(3) Any residuary legatee or devisee for life;

(4) The ultimate residuary legatee or devisee, including one entitled on the happening of any contingency, or where the residue is not wholly disposed of by the Will, any person entitled to share in the residue not so disposed of, or the personal representative of any such person:

Provided that-

(a) unless the Registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest, s hall be preferred to one entitled on the happening of a contingency; and

(b) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 53) to any legatee or devisee entitled to, or to a share in the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the Will;

(5) Any specific legatee or devisee or any creditor or subject to sub-rule (3) of rule 44, the personal representative of any such person or, where the estate is not wholly disposed of by Will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;

(6) Any specific legatee or devisee entitled in the happening of any contingency, or any person having no interest under the Will of the

deceased who would have been entitled to a grant if the deceased had died wholly intestate.

22. Grant to attesting witnesses, etc.

Where a gift to any person fails by reason of th he fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the Will , without prejudice to his right to a grant in any other capacity.

23. Value of property

Every applicant for a grant of probate or letter of administration with the Will attached, shall file in the Court a true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on probate and such letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include-

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a state to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation; and

(b) any sum of money payable to an estate from a provident fund established under the provisions of any written law.

24. Answers required before grant

In no case, shall the Court issue probate or letters of administration with the Will attached until all inquiries which the Court deems fit to institute, have been answered to its satisfaction. The Court shall, however, afford as great, a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.

25. Notice to prohibit grant

A notice to prohibit a grant of probate or administration with the Will attached, may be filed in the Court.

26. Effect of notice

(1) The notice shall remain in force three months only from the clay of filling, but it may be renewed from time to time. The not i cc shall not affect a grant made on the day on which the notice is filed. The person filing the notice shall be warned in writing, delivered at the place mentioned in the notice as his address.

(2) Citations

Notices in the nature of citations shall be given in such manner as the Court directs.

27. Form of suits

Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

Custody of Wills

28. Testator may deposit Will

Any person may, in his lifetime, deposit for safe custody in the court at Benin City his own Will, sealed up under his own seal and the seal of the Court.

29. Custody of Wills of which probate is granted

Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the probate registry, in such manner as to secure at once, the due preservation and convenient inspection of same. A copy of every such Will, and of the probate or administration, shall be preserved in a book kept for the purpose in the registry.

30. Will not given out without order of Court

No original Will shall be delivered out for any purpose without the direction in writing of the Court where the Will is filed. A certified transcript, under the seal of the Court of the Probate or Administration with the Will annexed, may be obtained from the Court.

Probate or Administration with Will Annexed

31. Examination of Will as to its execution

(1) On receiving an application for probate or for administration with Will annexed, the Court shall inspect the Will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction , and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further If the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the Will to have been, in fact, executed in accordance with those enactments.

32. Proof of execution where attestation clause is defective

If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the Will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a...

33. Where Will not executed according to law

If on perusal of the affidavit it appears that the Will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

34. Evidence on failure of attesting witnesses

If both subscribing witnesses are dead, or if from other circumstances, such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had from other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the Will.

35. Will of blind or illiterate testator

Where the testator was blind or illiterate, the Court shall not g rant probate of the Will, or administration with the Will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the Will, that the Will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

36. Interlineations, erasures, obliterations

The Court, on being satisfied that the Will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it, and requiring to be accounted for. Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the Will at the time or its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments, or unless they have been made valid by the execution of the Will, or by the subsequent execution of some codicil thereto. Where interlineations, alterations, erasures or obliterations appear in the Will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the Will before its execution, shall be filed. If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, and can, on inspection of the Will, be ascertained, they shall form part of the probate. Where any words have been erased which might have been of importance, an affidavit shall be required.

37. Documents referred to in a Will

(1) Where a Will contains a reference to any document or such a nature as to raise a question whether it ought or ought not to form a constituent part of the Will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate and if it is not produced a satisfactory account or its non production shall be proved. A document cannot form part of a Will unless it was in existence at the time when the Will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the Will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account or them shall be proved, or the production or the document shall be required, and if not produced, a satisfactory account of its n o n production shall be proved.

38. Executor dying without proving or not appearing

Where a person appointed executor in a Will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go on and be committed as if that person had not been appointed executor.

39. Marking of Will or copy sworn to

(1) Every Will or copy of a Will to which an executor or an administrator with the Will annexed i s sworn, shall be marked by the executor or administrator and by the person before whom he i s sworn.

(2) Codicils

The provisions respecting Wills apply equally to codicils.

40. Viva voce examination of persons making affidavits

In every case here evidence is directed or allowed to be give n by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared if the Court thinks fit.

41. Right of assignee to a grant

(1) Where all the people entitled to the estate of the deceased under a Will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in the order of

priority for a grant of probate, the assignor or ir there are two or more assignors, the assignors with the highest priority, in the absence of a proving executor.

(2) Where there are two or more assignees, probate may he g ranted with the consent of the others to anyone or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the registry.

42. Joinder of administrator

In the absence of a proving executor:

(a) an application to join with a person entitled to a grant of administration with the Will attached, by a person in a lower degree shall, in default of renunciation by all persons entitled in priority to such last mentioned person, be made to the Registrar and shall be supported by an affidavit by the personal representative and such other evidence as the

Registrar may require.

(b) an application to join with a person entitled t o a grant of administration with the Will attached, by a person having the right thereto, shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require:

Provided that there may, without any such application, he joined with a person entitled to administration with the Will attached-

(a) on the renunciation of all other persons entitled to join in grant, any kin of the deceased having no beneficial interest in the estate;

(b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;

(c) a trust corporation.

43. Additional personal representatives

(1) An application to add a personal representative shall be made to the Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application, the Registrar may direct that a note shall be made on the original grant, of the addition of a further personal

representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

44. Grants where two or more persons entitled in same degree

(1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree, shall be brought by application before the Registrar.

(3) If an application under this rule is brought before the Registrar, he shall not allow any grant to be sealed until such application is fully disposed of.

(4) Unless the Registrar otherwise directs, probate or administration with the Will attached, shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

45. Exceptions to rules as to priority

(1) Nothing in rules 21, 42 or44 shall operate to prevent a grant being made to any person to whom a grant m:.ty, or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing sub-rules s hall not apply where the deceased died domiciled outside the State, except in a case to which the proviso to rule 47 applies.

46. Grants where two or more persons entitled in same degree

When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the Will attached, and has consented to such administration being granted to the person or persons who would be en titled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless it would be entitled to the whole of the estate, whatever its value may be.

47. Where the deceased died domiciled outside the State Where the deceased died domiciled outside the State, the Registrar may order that a grant be issued:

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(3) if there is no such person as is mentioned in sub-rule ( 1) or (2) of this rule or if in the opinion of the Registrar, the circumstances so require, to such person as the Registrar may direct;

(4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in sub-rule (1) or (2) of this rule or with any other persons:

Provided that without any such order as aforesaid:

(a) probate of any Will which is admissible to proof may be granted-

(i) if the Will is in English or in the local vernacular, to the executor named therein;

(ii) if the Will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the Will, to that person;

(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State.

48. Grant to attorneys

(1) Where a person entitled to a grant resides outside the State, a grant may be made to his lawfully constituted attorney, for his use and benefit, limited until such person shall obtain a grantor in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

49. Grants on behalf of infants

(1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall , subject to sub-rules (3) and (5) of this rule, be granted:

(a) to both parents of the infant jointly, or to an y guardian appointed by a Court of competent jurisdiction ; or (b) if there is no such guardian able and willing to act and the infant has attained the age of six teen years, to any next-of-kin nominated by the infant or, w here the infant is a married woman, to any such next-of- kin or to her husband, if nominated by her

(2) Any person nominated under paragraph (b) of the last foregoing sub rule, may represent any other infant whose next of-kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian, by order of a Court in default of, or jointly with, or to the exclusion of, any such person as is mentioned in sub-rule (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration with the Will attached for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under sub-rule (3) of this rule authorised to renounce by the Registrar.

50. Grants where infant is co-executor

(1) Where one of two or more executors i s an infant, pro bate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his

attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule 49 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefore.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. Grants in case of mental or physical incapacity

(1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity, incapable of managing his affairs, a grant for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be made:

(a) in the case of mental incapacity, to the person authorised by the

Court to apply for the grant; or

(b) where there is no person so authorised, or in the case of physical incapacity –

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased , to the person entitled to such (ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased to the person who would be en tilled to a grant in respect of his estate if he had died intestate; or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable, have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

52. Renunciation of probate and administration

(1) Renunciation of probate by an executor, shall not operate as renunciation of any right which he may have to grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other

capacity (3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar:

Provided that, only in exceptional circumstances, may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

53. Notice to State of intended application for grant

In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant, shall be given by the applicant to the Attorney-General, and the Registrar may direct that no grant shall be issued within a specified time after the notice has been given.

54. Guarantee

(1) The Registrar shall not require a guarantee a s a condition of making a grant except where it is proposed to make it:

(a) by virtue of sub-rule (5) of rule 21; to a creditor or the personal representative of a creditor, or to a person who has no immediate beneficial interest in the estate of the deceased, but may have such an interest in the event of an accretion to the estate;

(b) under rule 46; to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;

(c) under rule 48; to the attorney of a person entitled to a grant;

(d) under rule 49; for the use and benefit of a minor;

(e) under rule 51; for the use and benefit of a person who is by reason of mental or physical incapacity, incapable of managing his affairs;

(f) to an applicant who appears to the Registrar, to be resident elsewhere other than in the State; or

(g) except where the Registrar considers that there are special circumstances ma k in g it desirable to require a guarantee.

(2) Notwithstanding that it i s proposed to make a grant as aforesaid, a guarantee shall not be required , except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or trust corporation.

Civil Form 38

(3) Every guarantee entered into by a surety for the purposes of this Order, shall be in Form 38.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or any other person authorised by law to administer an oath.

(5) Unless the Registrar otherwise directs:

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed N50,000.00 (fifty thousand naira) or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall become a surety;

(d) the limit of the liability of the surety or sureties under a guarantee, shall be the gross amount of the estate, as sworn on the application for the grant;

(e) every surety, other than a corporation , shall justify his status by an affidavit of means (6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that, it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution and containing sufficient information as to the final position of the corporation to satisfy the Registrar, that its assets are sufficient to satisfy all claims which may he made against it under any guarantee which it has given or is likely to give.

55. Resealing

(1) An application for the resealing of probate or administration with the Will attached, granted by the Court of a place not within the State, shall be made by the person to whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application:

(a) an Inland Revenue affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct, and s hall be supported by an oath sworn by the person making the application.

(3) On an application for the rescaling or such a grant:

(a) the Registrar shall not require sureties except where it appears to him that , the grant is made to a person , or for a purpose

mentioned in paragraphs (a ) to(f) or sub rule ( I ) or rule 54, or except where he considers that there are special circumstances making it desirable to require sureties;

(b) sub-rule (4) r rule X and sub- rules (2), (4), (5) and (6) or rule 54 shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Form38.

Civil Form 39

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub rule (1) or (2) of rule 47 or to a person to whom a grant could be made under a proviso to that rule.

(5) No limited or temporary grant, shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing, shall include a copy of any Will to which the grant relates or shall be accompanied by a copy thereof, certified as correct by or under the authority of the Court by which the g rant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant, shall be sent to the Court by which it was resealed.

56. Amendment and revocation of grant

If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that, except in special circumstances, no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

57. Caveats

(1) Any person who wishes to ensure that no grant is sealed without notice to himself, may enter a caveat in the registry.

(2) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 40 in the appropriate book at the registry and obtaining an acknowledgment or entry from the proper officer, or by sending through the post, at his own risk, a notice in Form 38 to the registry in which he wishes the caveat to be entered.

Civil Form 40

(3) Where the caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form 40.

Civil Form 40

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered, and shall then cease to have effect without prejudice to the entry of a further caveat.

(5) The Registrar shall maintain an index of caveats entered in the Registry, and on receiving an application for a grant in the Regist1y, he shall cause the index to be searched, and shall notify the applicant in the event of a caveat having been entered against the sealing of a grant for which application has been made.

(6) The Registrar shall not allow any grant to he scaled if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveator may be warned by the issue from the Registry, of a warning in Form 41, at the instance of any person interested (in this rule deceased; and every warning or a copy thereof, shall be served on the caveator.

Civil Form 41

(8) A caveator who has not entered an appearance to a warning, may at any time withdraw his caveat, by giving notice at the registry and the caveat shall thereupon cease to have effect, and if he has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(9) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under sub-rule (11) of this rule, enter an appearance in the Registry by filing Form 42, and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning, a copy ofForm42 sealed with the seal of the Registry.

Civii Form 42

(10) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no

affidavit has been filed under sub-rule (11) of this rule, issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) If the time limited for appearance has expired, and the caveator has not entered an appearance, the person warning may file in the Registry, an affidavit showing that the warning was duly served and that he has not received a summons for directions under tl1c.last foregoing sub-rule, and thereupon the caveat s hall cease to have effect.

(12) Upon the commencement or a probate action, the Probate Registrar shall, in respect of each caveat then in force (other than a caveat entered by the claimant), give to the caveator, notice of the commencement of the action and, upon the subsequent entry o r a caveat at any time when the action is pending, shall likewise notify the caveator, of the existence of the action.

(13) Unless the Registrar otherwise directs:

(a) Any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to sub-rule (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application, any caveat entered by a party who had notice of the proceedings, shall cease to have effects;

(b) Any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement or a probate action;

(c) The commencement or a probate action s hall, whether or not any caveat has been entered operate to prevent the scaling or a grant until application for a grant is mad e by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application, any caveat entered by a patty who had notice of the action or by a caveator who was given notice under sub-rule (12) of this rule, shall cease to have effect.

(14) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator hose caveat has ceased to have effect under sub-rule (11) or (13) of this rule.

58. Citations

(1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation and such other information as the Registrar may require, shall be certified by an affidavit sworn to by

the person issuing the citation (in this Order called "the citor") or, if there be two or more citors, by one of them:

Provided that the Registrar may, in special circumstances, accept an affidavit sworn to by the citor's legal practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown affidavit, directs some other mode of service, which may include notice by advertisement (5) Every Will referred to in a citation, shall be lodged in the Registry before the citation is issued, except where the Will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day ofs11 C h service, or at any time thereafter if no application has been made by the citor under sub- rule (5) of rule 59 or sub- rule (2) or rule 60, to enter an appearance in the Registry, by filing Form 42 and making an entry in the appropriate book and shall forthwith thereafter serve the citor, a copy of Form 42 held with the seal of the Registry.

Civil Form 42

59. Citation to accept or refuse to take a grant

(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant, in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or ref use a grant, ma y be issued at the instance of the executors who have proved the Will or the executors of at least survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased, to show cause why he should not be ordered to take a grant, may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased .

(4) A person cited, who is willing to accept or take a grant, may apply ex-parte to the Registrar for an order for a grant, on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor, with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:

(a) in the case of a citation under sub-rule (1) of this rule, apply to the Registrar for an order for a grant to himself;

(b) in the case of a citation under sub-rule (2) of this rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved, has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under sub-rule (3) of this rule, apply to the Registrar by summons, (which shall be served on the person cited), for an order requiring such person to take a grant within a specified time or a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing sub-rule (5) shall be supported with an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under sub-rule (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may:

(a) in the case of a citation under sub-rule (1) of this rule, apply by summons to the Registrar, for an order for a grant to himself;

(b) in the case of a citation under sub-rule (2) of this rule, apply by summons to the Registrar, for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of subrule (5) of this rule;

(c) in the case of a citation under sub-rule (3) of this rule, apply by summons to the Registrar, for an order requiring the person cited, to take a grant within a specified time or for a g rant to himself or some other person specified in the summons and the summons shall be served on the person cited in each case.

60. Citation to propound a Will

(1) A citation to propound a Will, shall bed i reeled to the executors named in the Will and to all persons interested thereunder and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may:

(a) in the case where no person 'cited has entered an appearance, apply to the Registrar, for an order for a grant as if the Will were invalid;

(b) in the case of a citation under sub-rule (2) of rule 59, apply by summons to the Registrar, for an order striking out the appearance and for the endorsement on the grant , or such a note as is mentioned in paragraph ( b) or sub rule (5) of rule 59;

(c) in the case or a citation under sub- rule (3) of rule 59, apply by summon s to the Registrar, for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons, and the summons shall be served on the persons cited in each case.

61. Address for service

All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

62. Application for order to bring in a Will or to attend for examination

(1) An application for an order, requiring a person to bring in a Will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar, of a subpoena to bring in a Will shall be supported by an affidavit setting out the g rounds of the application, and if any person served with the subpoena denies that the Will is in his possession or control, he may file an affidavit to that effect.

63. Limited grants

An application for an order for a grant limited to part of an estate, may be made to the Registrar and shall be supported by an affidavit stating:

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant, have been cleared off.

64. Grants of administration ad colligenda bona

An application for an order, for grant of administration , ad colligenda bona, may be made to the Registrar, and shall be supported l1y an affidavit setting out the grounds of the application.

65. Application for leave to swear to death

An application for leave to swear to the death of a person in whose estate, a grant is sought, may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

66. Grants in respect of codicils and copies of Wills

(1) An application for an order, admitting to proof a codicil, or a Will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original Will is not available, may be made to the Registrar:

Provided that, where a Will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the Will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to:

(a) the due execution of the Will;

(b) its existence after t lie death of the testator; and

(c) the accuracy or the copy or other evidence of the contents or the Will;

together with any consent in writing to the application given by any person not under disability who would be prejudiced by the grant.

67. Grants durante absentia

An application for an order, for a grant of special administration where a personal representative is residing outside the State, shall be made to the Court, on motion.

68. Notice of election by surviving spouse to redeem life interest

Civil Form 43

(1) Where a surviving spouse who is the sole person al representative of the deceased is entitled to a life interest in part of the residuary estate, and elects to have the life interest redeemed, he may give written notice of the election to the Registrar, by filing a notice in Form 43 in the Registry

(2) A notice filed under this rule shall be noted on the grant an d the record which shall be open to inspection.

69. Issue of copies of original Wills and other documents

(1) Where copies are required of original Wills or other documents deposited under the provisions of any written law, such co pies may be photostat copies sealed with the seal of the registry and issued as office copies and, where such office copies are available, copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photostat copies of original Wills or other documents deposited as aforesaid, shall be examined against the documents of which they purport to be copies, if so required by the person demanding the copy, and in such case, the copy shall be certified under the hand of a Registrar, to be a true copy and may in addition be sealed with the seal of the Court.

70. Taxation of costs

(1) Every bill of costs, (other than a bill delivered b y a legal practitioner to his client which fail s to be t axed under the Legal Practitioners' Act), shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

(2) The party applying for taxation, shall file the bill and give notice to all other parties entitled to be heard on the taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

71. Power to require application to be made by summons or motion

The Registrar may require any application to be made by motion or by summons.

72. Exercise of powers of a Judge

All powers exercisable under this Order by a Judge in chambers, may be exercised by the Registrar.

73. Appeals from Registrars

(1) Any person aggrieved by a decision or requirement of the Registrar, may appeal by summons to a Judge.

(2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant, appeared or was represented before the Registrar from whose decision or requirement the appeal is brought, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person concerned.

74. Service of notice of motion and summons

(1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order, shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this Order or by any direction given under the last foregoing sub-rule, a notice of motion or summons is required to be served on any person, it shall be served not less than five days before the hearing of the motion or summons.

75. Notices, etc.

Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person, may be given or served by leaving it at, or by sending it by prepaid registered post to that person's address for service or if he has no address for service, his last known address.

76. Affidavits

Every affidavit used in non-contentious probate business shall satisfy the requirements of the Evidence Act on affidavits.

77. Time

The provisions of Order 43 shall apply to the computation, enlargement and abridgement of time under this Order.

78. Application to pending proceedings

Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceedings which is pending on the date on which these Rules come into operation, as well as to any proceedings commenced on or after that date:

Provided that, where the deceased died before tile commencement of these Rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

79. Contentious probate: form of suit

Suits respecting probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of ordinary civil claims.

80. Interpretation

(1) The Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires:

"Authorised officer" means any officer of a registry who is for the time being, authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"Gross value" in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"Oath" means the oath required by this Order to be sworn by every applicant for grant;

"Personal applicant" means a person other than a trust corporation, who seeks to obtain a grant without employing a legal practitioner and "personal application" has a corresponding meaning;

"Registrar" means the Probate Registrar, being the Chief Registrar of the High Court of the State;

"Registry or Probate Registry" means the Probate Registry at Benin City;

"Will" includes a codicil and any testamentary document or copy or reconstruction thereof.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment, shall be construed as a reference to that rule or enactment as a mended, ex tended or applied by any other rule or enactment.

Proceedings Generally

81. Probate actions

In probate actions, the originating process shall state whether the claimant claims as creditor, executor, administrator, beneficiary, next-of-kin or in any other capacity.

82. Service of writ of summons

In probate actions, service of writ of summons may, by leave of a Judge, be allowed out of Nigeria

83. Pleadings and further actions

In probate' actions, the party shall state with regard to every defence which is pleaded, what is the substance of the case on which It is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case i s set down for trial and, except by leave of a Judge, no evidence shall be given of any other instances at the trial.

84. Where claimant disputes defendant's interest

In probate actions, where the claimant disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

85. Notice of opposition to Will

In probate actions, the party opposing a Will may, with his defence, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of law and only intends to cross examine the witnesses produced in support of the Will, and he shall thereupon be at liberty to do so and shall not in any event be liable to pay the costs of the other side unless the Judge finds that there was no reasonable ground for opposing the Will.

86. Inquiry as to outstanding personal estate

Every judgment or order for a general account of the personal estate of a testator or intestatus, shall contain a direction for any inquiry as to what parts of such personal estate are outstanding or undisposed of, unless the Judge shall otherwise direct.

87. Discretion to order costs

Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Judge otherwise orders, be entitled to the costs or such proceedings in so far as they are not recovered from or paid by any other person out of the fund held by the trustee or person al representative or the mortgaged property, as the case may be, and the Judge may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, beneficiary, next-of- kin, heir-at-law of a deceased person, or as cestui

que trust under the trust of any deed or instrument, or as claiming by assignment or administration otherwise under any such creditor or other person as aforesaid, may take out an originating summons for such relief as listed hereunder as may be specified by the summons and as the circumstances of the case may require; that is, the determination without an administration of the estate or trust of any of the following questions or matters:

(a) Any question affecting the rights or interests of the person claiming to be creditor, beneficiary, next-of kin, or heir-at-law or cestui que trust;

(b) The ascertainment of any class of creditors, beneficiary, next-of-kin, or others;

(c) The furnishing of any particular accounts by the executors or administrators or trustees and the pouching, when necessary, of such account;

(e) The payment into Court, of any money in the hands of the executors or administrators or trustees; Directing the executors or administrators or trustees to do or abstain from doing any particular act, as executors or administrators or trustees;

(f) The approval of any sale, purchase, compromise, or other transaction;

(g) The determination of any question arising in the administration of the estate or trust.

89. Order for administration of estate of deceased and of trust

Any of the persons named in rule 90 of this Order, may in like manner, apply for and obtain an order for:

(a) the administration of the personal or real estate or the deceased;

(b) the administration of the trust;

(c) any act to be done or step to be taken, which the Judge could have ordered to be done or taken if any such administration order as aforesaid, had previously been made.

90. Persons to be served

The person to be served with the summons under rules 88 and 89 of this Order in the first instance, shall:

(a) where the summons is taken out by an executor or administrator or trustee-

(i) for the determination or any question under paragraph (a), (c), (I) or (g) or rule RX of this Order, the person or one or the persons whose rights or interest s are sought to be affected;

(ii) for the determination or any question under paragraph (b) or rule 88 of this Order, any member or alleged member of the class;

(iii) for the determination of any question under paragraph (c) of rule 88 or this Order, any person interested in taking such accounts;

(iv) for the determination of any question under paragraph (d) of rule 88 of this Order, an y person interested in taking such money;

(v) for relief under paragraph (b) of rule 89 of this Order, the residuary legatees, or next of-kin or some of them or the residuary devisees or heirs or some of them, as the case maybe;

(vi) for relief under paragraph (b) of rule 89 of this Order, the cestui que trust or some of them;

(vii) if there are more than one executor or administrator or trustee and they do not all concur in taking out the summons, those who do not concur;

(b) where the summons is taken out by any person other than the executors, administrators or trustees, the executors, administrators or trustees, or some of them must be served.

91. Judge not bound to order administration

It shall not be obligatory on the Judge to pronounce or make judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person if [the] questions between the parties can be properly determined without such judgment or order.

92. Order which may be made on application for administration or execution of trusts, where no account or insufficient accounts have been rendered

Upon an application for administration or execution of trusts by a creditor or beneficiary under a Will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the judge may, in addition to the powers already existing:

(a) order that the application shall stand over for a certain time, and that the executors, administrators or trustees in the meantime shall

render to the applicant, proper statement of their accounts, with an intimation that if this is not done, they may be made to pay the costs of the proceedings;

(b) when necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge.

93. Interference with discretion of trustee

The issue of a summons under rule 88 of this Order, shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought.

94. Application by summons

Any of the following applications may be made by summons:

(a) Appointment of new trustee and vesting order: An application for the appointment or a new trustee with or without a vesting or other consequential order;

(b) An application for a vesting order or other order consequential on the appointment of a new trustee where the appointment is made by o judge;

(c) Vesting order on sale, etc.

An application for vesting or other consequential order in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of an y land or stock, or the suing for or recovering any chose in action.

(d) Payment out of Court

An application relating to a fund paid into Court in any case coming within the provisions of this Order.

Order 55 - Appeal From Magistrate's Court, Etc.

1. Notice of appeal

Every appeal shall be brought by notice of appeal, which shall be lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

2. Contents, etc., of notice of appeal

Order 56 - Appeals To The High Court From Decisions Of Auditors

1. Application

This Order shall apply to any appeal to the Court from a decision of an auditor, made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

2. Method of appeal

Order 57 - Fees And Allowances

1. Fees

(1) Subject to the provision of any written law and the following Orders:

(a) The fees set out in the Second, Third and Fourth Schedules hereunder, shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those Schedules.

2nd, 3rd and 4th Schedules

(b) Allowances

The allowances set out in Part II of the Second Schedule shall be payable to the various categories of witnesses mentioned therein, by any person at whose instance they testify:

[Part II of 2nd Schedule]

Provided that a witness who testifies at the instance of the Court, acting on its own motion, shall be paid out of public revenue.

2. Regulations

The regulations set out in the Fourth Schedule shall be observed by all officers of Court concerned with the rendering of services, and /or collection of fees payable, under the provision of the foregoing Orders.

[4TH Schedule]

Fees and Allowances

1. Fees Appendix 1

(1) Subject to the provisions of any written law and of the foregoing Orders, the fees set out in Appendix 1 to these Rules, shall be payable by

(2) These fees are waived in respect of a party which is or represents a Government Ministry, non-Ministerial Departments, Federal, State and Local Government or any of their agencies.

Allowances: Appendix 2

(3) The allowances set out in Appendix 2 to these Rules, shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.

A witness who testifies at the instance of the Court, acting on its own motion, shall be paid out of public revenue.

2. Regulations Appendix 3

The regulations set out in Appendix 3 to these rule shall be observed by all officers of Court concerned with the rendering of services and/or collection of fees payable under the provisions of the foregoing Orders.

Miscellaneous Provisions

1. Order to be made

Subject to particular rules, the Court may in all causes and matters, make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.

2. Other procedure rules

The Chief Judge may modify or add to the list of rules set out in the Appendices to these Rules.

3. Recovery of Penalties and cost

All fines, forfeitures, pecuniary penalties and cost ordered to be paid, may be levied by distress, seizure and sale of both movable and immovable property of the person making default in payment.

4. Notice

In all cases in which the publication of any notice is required, the same may be made by advertisement in the Stale Gazette, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.

5. Filing

A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, the telephone and e-mail address of the legal practitioner filing, and whether filed by the claimant or defendant, and on being filed, the endorsement shall be initialled by the Registrar.

6. Fees: Appendix 4

The fees set out inAppendix4 to these Rule, may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.

7. Where no rules exist

Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.

1. Power of Chief Judge over new Rules

Whenever additional provisions are made to these Rules or any part thereof is amended or modified, the Chief Judge may issue directives for addition.

2. Publication of new Rules

Whenever the Chief Judge makes amendment or modification to these Rules, it shall be sufficient to publish same as supplemental provisions without the necessity of new body of Rules, except when necessary.

3. Chief Judge's powers to issue practice directions, etc.

The Chief Judge shall have the power to issue practice directions, protocols, directives and guidance towards the realisation of speedy, just and effective administration of justice.

4. Practice directions, etc., to be published

Such practice directions, protocols, directives and guidance, shall be published in the State Gazette and be given effect towards the realisation of the fundamental objective of these Rules.

Order 59 - Establishment Of Communications And Service Centre For e-filing

1. Power of the Chief Judge

The Chief Judge may issue directions to establish Communication and Service Centre for the purpose of achieving the fundamental objective of

2. Further rules thereof

The Chief Judge may make such further rules to guide the effective operation of the Communications and Service Centre for E-filing

3. Time for establishment

'The Chief Judge from time to time, may make necessary rules and issue appropriate practice directions for the establishment, upgrading and updating of the Communications and E-filing Service Centre."