

BERMUDA STATUTORY INSTRUMENT

SR&O 1/1970

MENTAL HEALTH (PATIENTS' PROPERTY) RULES 1970

*[made under section 60 of the Mental Health Act 1968 [title 11 item 36] and
brought into operation on 17 January 1970]*

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**PART I
PRELIMINARY**

Interpretation

- 1 (1) In these Rules, unless the context otherwise requires—
- "the Act" means the Mental Health Act 1968 [*title 11 item 36*];
 - "the court" means the Chief Justice or in his absence, a Puisne Judge, whether sitting in court or in chambers;
 - "Court Forms" means volume 26 of the second edition of Atkin's Court Forms, published in 1962 by Butterworths;
 - "Official Solicitor" means such person as the court may from time to time appoint to be the Official Solicitor for the purposes of these Rules;
 - "order" includes a certificate, direction or authority given by the court;
 - "patient" includes a person who is alleged to be, or who the court has reason to believe may be, incapable by reason of mental disorder of managing and administering his property and affairs;
 - "receiver" means a receiver appointed under section 54 of the Act;
 - "stock" includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by any instrument of transfer either alone or accompanied by other formalities, and "dividends" shall be construed accordingly;
 - "summons", except in rule 5, includes originating application.
- (2) Section 1 of the Act shall be applied to the interpretation of these Rules as it applies to the interpretation of the Act.
- (3) Where by these Rules any jurisdiction of the court is expressed to be exercisable in a summary manner, it may be exercised—
- (a) without issue of a summons;
 - (b) by the court of its own motion or at the instance or request of any person interested; and
 - (c) whether or not any proceedings have been commenced before the court with respect to the patient.

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Court forms to be used as a guide

2 The forms set out in Court Forms to which reference is made in these Rules shall be used as a guide to the forms to be used in Bermuda and shall be adapted for such use as far as may be necessary.

Computation of time

3 (1) *[omitted]*

(2) *[omitted]*

(3) Where the time so limited is a particular number of days not expressed to be clear days, it shall be reckoned exclusively of the first day and inclusively of the last day.

Power to enlarge or abridge time

4 The court may extend or abridge the time limited by these Rules or any order or direction of the court for doing any act or taking any proceeding, upon such terms as the court thinks fit and notwithstanding, in the case of an extension, that the time so limited has expired.

PART II MODE OF APPLICATION

Form of application

5 Except where these Rules otherwise provide, proceedings relating to a patient shall be commenced by originating application in Form 65 of Court Forms returnable in not less than seven clear days and every subsequent application relating to the patient shall be made in those proceedings by summons returnable in not less than two clear days unless the court is of opinion that the application can properly be dealt with in a summary manner.

Summary orders in small cases

6 Where it appears to the court that the property of a patient does not exceed \$1200.00 in value, the court may, if no originating application has been issued, make an order in a summary manner directing one of its officers or some other fit and proper person to deal with the said property, or any part thereof, in any manner authorised by the Act and specified in the order.

Contempt of court

7 Every application to the court relating to the attachment or committal of a person for contempt of court shall be made by motion at such time as may be fixed by the Registrar in consultation with the court.

Issue of summonses

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

(2) At the time of tendering the summons for sealing, the applicant shall leave a copy at the Registry.

Consolidation of proceedings

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

**PART III
PARTIES**

Respondents and persons entitled to attend

10 (1) The court may direct that all or any of the relatives of the patient or any other person who appears to the Court to be interested in the relief sought by a summons shall be made a respondent to or be given notice of the summons.

(2) The court may determine what persons are to be entitled to attend at any stage of the proceedings relating to a patient.

**Where no suitable person able and willing to make application;
direction by court**

11 Where in the opinion of the court an application ought to be made for the appointment or discharge of a receiver or for the exercise of any other power conferred on the court with respect to the property and affairs of a patient, and there appears to the court to be no other suitable person able and willing to make the application or the court for any other reason thinks fit, the court may direct that the application be made by an officer of the court or by the Official Solicitor.

Representation of patient by receiver

12 (1) Except as provided in rule 16, an application on behalf of a patient for whom a receiver has been appointed shall, unless the court otherwise directs, be made by the receiver in his own name.

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

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Representation of patient by Official Solicitor

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

Persons under disability

14 (1) In this rule, "persons under disability" means an infant or a patient for whom no receiver has been appointed.

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

(3) Where a person is to be appointed next friend or guardian ad litem of a person under disability in substitution for the person previously acting as next friend or guardian, the appointment shall be made by the court but, except as aforesaid, an order of the court appointing a next friend or guardian ad litem of a person under disability shall not be necessary.

(4) Before the name of any person is used in any proceedings as next friend or guardian ad litem of a person under disability there shall be filed—

- (a) a written consent of the first-mentioned person to act as next friend or guardian ad litem, as the case may be, of the person under disability in the proceedings, and
- (b) a certificate by the attorney acting for the person under disability certifying—
 - (i) that he knows or believes that the person to whom the certificate relates is an infant or patient giving (in the case of a patient) the grounds of his knowledge or belief, and
 - (ii) except where the person named in the certificate as next friend or guardian ad litem is the Official Solicitor, that the person so named has no interest in the proceedings adverse to that of the person under disability and that he is a proper person to act as next friend or guardian.

Representation of parties

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

(2) Where two or more parties having the same interest in relation to the matter to be determined attend any hearing of a summons by separate attorneys, they shall not be allowed more than one set of costs of that hearing unless the court certifies that the circumstances justify separate representation.

Application under section 52(1)(j) of Act

16 (1) An application under section 52 (1) (j) of the Act may be made by—

- (a) the receiver for the patient, or
- (b) the patient expressed to be acting by his receiver, or
- (c) any person who has made an application for the appointment of a receiver which has not yet been determined, or
- (d) any other person who, according to the practice of the Supreme Court in the exercise of its Chancery jurisdiction, would have been entitled to make the application.

(2) Where a receiver has been appointed for the patient, he shall be made a respondent to the application unless he or the patient expressed to be acting by him is the applicant or one of the applicants.

(3) Every person who would, according to the practice of the Supreme Court in the exercise of its Chancery jurisdiction, have been required to be served with a summons shall also be made a respondent to the application, so however that no person who is a patient shall be made a respondent unless until the court so directs.

Application for settlement of patient's property

17 (1) An application under section 52 (1) (d) of the Act for an order or the settlement of any property of a patient may be made by—

- (a) the receiver for the patient, or
- (b) any person who, under any known will of the patient or any codicil thereto or under his intestacy, may become entitled to any property of the patient or any interest therein, or
- (c) any person for whom the patient might be expected to provide if he were not mentally disordered:

Provided that the application shall be made by a person for whom the benefit of the proposed settlement would enure, unless in the opinion of the court there is

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sufficient reason for its being made by another of the persons aforesaid.

(2) Where a receiver has been appointed for the patient, the receiver shall, unless he is the applicant or one of the applicants, be made a respondent to the application, but except as aforesaid no person shall be made a respondent unless and until the court so directs.

PART IV SERVICE

Service of summons

18 Except where these Rules otherwise provide, or the court otherwise directs, every respondent to a summons shall be served with a copy of it at least two clear days before the return day.

Service not required where respondent consents

19 Unless the court otherwise directs, it shall not be necessary to serve a respondent to a summons who consents to the making of the order sought, if a consent signed by him and verified by an attorney is filed.

Mode of service

20 Except where these Rules otherwise provide, any document required by these Rules to be served on any person shall be served by delivering it to him personally or, if in any particular case or class of case the court so directs, by sending it to him at his last known address.

Service on attorney

21 Where an attorney for the person to be served with any document endorses on the document or a copy of it a statement that he accepts service on behalf of that person, the document shall be deemed to have been duly served on that person and to have been served on the date on which the endorsement was as made.

Substituted service

22 Where it appears to the Court that it is impracticable for any reason to serve a document in accordance with rule 20, the court may make an order for substituted service of the document by taking such steps as the court may direct to bring it to the notice of the person to be served.

Service on person under disability

23 (1) Unless the court otherwise directs, any document required by these Rules to be served on a person who is an infant or patient (in this rule referred to as a "person under disability") shall be served—

- (a) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient, on the receiver for him or, if there is no receiver for him, on the person with whom he resides or in whose care he is,

and must be served in the manner required by these Rules in respect to the document in question.

(2) Notwithstanding anything in paragraph (1), the court may order that any document which has been served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability,

(3) Nothing in this rule shall apply to a notice or order required by rule 24 or 39 to be served on a patient.

Service of application for appointment of receiver

24 (1) Where—

- (a) an originating application is made for the appointment of a receiver for a patient or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, or
- (b) the court proposes to make an order with respect to a patient's property in a summary manner under rule 6, the patient shall be served with a notice in Form 68 of Court Forms instead of a copy of the originating application, if any:

Provided that the court may dispense with service of the said notice if it is satisfied—

- (i) that the patient is incapable of understanding the notice, or
- (ii) that service of the notice would be injurious to the patient's health, or
- (iii) that for any other reason service ought to be dispensed with.

(2) Where service of the said notice has been dispensed with under the proviso to paragraph (1) and the patient is within Bermuda, a Court Commissioner shall, if so requested by the court, visit him and report to the court as to his condition and welfare.

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Affidavit as to service

25 Unless the court otherwise directs, an affidavit of service showing particularly where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with these Rules:

Provided that it shall not be necessary to file an affidavit of service—

- (a) of any document served by an officer of the court, or
- (b) of a notice served in accordance with paragraph (1) of rule 24 if it has been served by a medical practitioner and a certificate of service, signed by him and stating particularly when, where and how he effected service, is filed.

PART V EVIDENCE

Evidence generally

26 The court may accept and act upon any evidence notwithstanding that it would not be admissible in a civil cause or matter.

Evidence to be by affidavit

27 Except where these Rules otherwise provide, evidence in proceedings under these Rules shall be given by affidavit.

Court may accept unsworn evidence

28 Notwithstanding rule 27 the court may accept and act upon a statement of facts or such other evidence, whether oral or written, as the court considers sufficient, although not given on oath, and may give directions as to the manner in which the evidence in any proceedings is to be given.

Cross-examination of deponent

29 Any person who has made an affidavit for use in proceedings under these Rules may be ordered by the Court to attend for cross-examination.

Filing of affidavit

30 (1) Before an affidavit is used in any proceedings under these Rules it shall be filed, but in case of urgency the court may make an order on an affidavit before it is filed if the party tendering the affidavit undertakes to file it before the order is drawn up.

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

Use of evidence in subsequent proceedings

31 Except where the court otherwise directs, evidence which has been used in any proceedings relating to a patient may be used at any subsequent stage of those proceedings or in any other proceedings relating to the same patient or to another member of the patient's family.

Originating application for appointment of receiver; evidence to be filed

32 (1) On the issue of an originating application for the appointment of a receiver for a patient or for an order authorising any person to do any act or carry out any transaction on behalf of a patient without appointing him receiver, the applicant shall, unless the court otherwise directs, file an affidavit of kindred and fortune and a medical affidavit or, where the income of the patient does not exceed \$240.00 per annum or the capital value of the patient's estate does not exceed \$2400.00 a certificate of kindred and fortune and a medical certificate:

Provided that, where the applicant is the Official Solicitor, no affidavit or certificate of kindred and fortune shall be necessary if—

- (a) there is filed a certificate by the Official Solicitor that the patient is possessed of property and that the relief asked for is desirable in order to manage or protect that property, or
- (b) a report to the like effect is made under rule 65.

(2) In this rule, an "affidavit of kindred and fortune" means an affidavit giving particulars of the patient's relatives, property and affairs and of the circumstances giving rise to the application, and a "medical affidavit" means an affidavit containing medical evidence that the patient is incapable, by reason of mental disorder, of managing his property and affairs; and "certificate of kindred and fortune" and "medical certificate" shall be construed accordingly.

Statement of facts

33 Every statement of fact for use under rule 28 shall—

- (a) be drawn up in numbered paragraphs and set out the relevant facts clearly and concisely;
- (b) as far as is practicable comply with rule 30 as if it were an affidavit; and
- (c) be dated and signed by the person by whom it is made.

Evidence of patient's death or recovery

34 Where at any stage of proceedings relating to a patient the court has reason to believe that the patient has died or recovered, the court

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may require evidence of the death or recovery to be furnished by such party to the proceedings as the court thinks appropriate,

Consent of person to act as trustee

35 Where in any proceedings it is proposed to appoint a person to act as trustee, a written consent in Form 149 of Court Forms signed by him and verified by an attorney shall be evidence of his consent so to act but no such consent shall be required where the person to be appointed is an applicant in the proceedings.

Proof of amount due for maintenance

36 The amount due to the Board for the past maintenance of a patient in a hospital for the treatment of a mental disorder may, unless the court otherwise directs, be proved by the filing of an account certified under the hand of the Executive Director appointed under section 7 of the Bermuda Hospitals Board Act 1970 [*title 11 item 26*].

[Rule 36 amended by 1996:17 effective 8 July 1996; and by 1998 : 32 effective 13 July 1998]

PART VI HEARING OF PROCEEDINGS

Summons to be heard in chambers

37 Every summons shall be heard in chambers unless the court otherwise directs.

Reference of proceedings to Registrar

38 The court may refer to the Registrar any question arising in any proceedings before the court for the Registrar's enquiry and report.

PART VII RECEIVERS

Interim provision

39 (1) Where in the opinion of the court it is necessary to make immediate provision in relation to the property and affairs of a patient for any of the matters referred to in section 51 (1) of the Act, the court may in a summary manner—

- (a) by certificate direct or authorise any person named therein to do any act or carry out any transaction specified in the certificate; or
- (b) by order appoint a receiver "ad interim" for the patient and, subject to any direction given by the court, such appointment shall continue until further order.

(2) An order appointing a receiver "ad interim" shall, unless the court otherwise directs, be served upon the patient within such time as the order may specify.

(3) No appeal shall lie at the instance of the patient from any order of the court appointing a receiver "ad interim" for the patient except in accordance with the following provisions of this rule.

(4) Any patient who is aggrieved by such an order as is mentioned in paragraph (3) may apply by summons to the court to reconsider the order.

(5) No further evidence shall be filed in support of or in opposition to the summons without the leave of the court.

(6) On the hearing of the summons the court may either confirm or revoke its previous order or make or give any other order which may be appropriate.

Order without appointing a receiver

40 The court may, if it thinks fit, instead of appointing a receiver for a patient by order direct or authorize any person named in the order to deal with the patient's property, or any part thereof, in any manner authorized by the Act and specified in the order,

Accountability of person authorized

41 Any person directed or authorized to do any act or carry out any transaction under rule 39 or 40 shall render accounts to the court at such time and in such manner as the court may direct.

Remuneration of receiver

42 Where a receiver is appointed for a patient, the court may, during the receivership, allow the receiver remuneration for his services at such amount or at such rate as the court considers reasonable and proper, and any remuneration so allowed shall constitute a debt due to the receiver from the patient and his estate.

(2) No request by a receiver to have the sum payable for his remuneration fixed after the death or recovery of the patient shall be entertained unless the court has during the receivership directed that remuneration be allowed and the request is made within six years from the date of the receiver's discharge.

Appointment of receivers with survivorship

43 Where in the opinion of the court two or more persons ought to be appointed receivers for the same patient and one or more of them ought to continue to act after the death or discharge of any of the others, the court may when appointing them receivers direct that the

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receivership shall continue in favour of the surviving or continuing receiver or receivers.

PART VIII ENTRY AND ENFORCEMENT OF ORDERS

Sealing and filing of orders

44 Every order, certificate, direction or authority of the court which is down up shall, when entered, be sealed and filed.

Entry of order on originating application

45 (1) Where —

- (a) an order is made on an originating application appointing a receiver for a patient or directing or authorizing any act or to carry out any transaction on behalf of a patient without appointing him receiver, or
- (b) an order with respect to a patient's property is made in a summary manner under rule 6, the order shall not be entered until the expiration of seven clear days after service of Form 68 of Court Forms on the patient, unless such service is dispensed with.

(2) Nothing in paragraph (1) shall prevent the entry of an interim order for the protection of a patient's property or for the application of a patient's property for his benefit.

Enforcement of orders

46 Every writ of execution or other process for the enforcement of an order of the court shall be issued out of the Registry.

PART IX SUMMONSES AND ORDERS FOR ATTENDANCES OF WITNESSES AND OTHER PERSONS

Summoning of witnesses

47 (1) In any proceedings under these Rules, the court may allow or direct any party or the Official Solicitor to take out a witness summons in from 98 of Court Forms requiring the person named therein to attend before the court and give oral evidence or produce any document,

(2) An application by a party to be allowed to take out a witness summons shall be made by filing a statement giving—

- (a) the name and address of the party making the application and of his attorney, if any;
- (b) the name, address and occupation of the proposed witness;

- (c) particulars of any document which he is to be required to produce; and
- (d) the grounds upon which the application is made.

(3) A witness summons shall be served on the witness personally a reasonable time before the day fixed for his attendance and he shall be entitled to the like conduct money and payment for expenses and loss of time as if he had been summoned to attend the trial of an action in the Supreme Court.

(4) Where the Official Solicitor is required to take out a witness paragraph (1), the court may also direct him to conduct any carry out any other directions which the court may specify.

Undue delay

48 (1) If the court is dissatisfied with the conduct of any proceedings or the carrying out of any order or direction of the court, whether by reason of undue delay or otherwise, the court may require the party having the conduct of the proceedings, or any other person appearing to be responsible, to explain the delay or other cause of dissatisfaction, and may thereupon make such order for expediting the proceedings or otherwise as may be appropriate.

(2) For the purposes of paragraph (1), the court may direct any party or the Official Solicitor to take out any summons and to conduct any proceedings and carry out any direction which the court may specify; and the court may, if it thinks fit, appoint the Official Solicitor to act as attorney for the patient in the proceedings in the place of any attorney previously acting for him.

Order for examination of patient

49 In any proceedings relating to a patient, the court may make an order for the patient's attendance at such time and place as may be specified in the order for examination by the court, a Court Commissioner or any medical practitioner.

**PART X
AMENDMENT**

Amendment of summons

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

(2) The amendments may be effected by making in writing the necessary alterations of the summons, but if the amendments are so numerous or of such a nature or length that to make written alterations

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of the summons so as to give effect to them would make it difficult or inconvenient to read, a fresh summons, amended as authorized or directed, may be issued.

Clerical errors

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

Endorsement of amendment

52 Where a summons or order has been amended under rule 50 or 51, a note shall be placed on it showing the date on which it was amended and the alterations shall be initialled.

PART XI SECURITY

Receiver to give security

53 (1) Where an order is made appointing a person as receiver for a patient—

- (a) the person appointed shall, unless the court otherwise directs, give such security for the due performance of his duties as the court may approve and shall give it before acting as receiver unless the court allows it to be given subsequently; and
- (b) the order shall not be entered until the person appointed has given to the satisfaction of the court any security required to be given by him before acting.

(2) The court may from time to time vary any security required.

Manner of giving security

54 (1) Subject to any directions of the court, security may be given in any of the following ways or partly in one of those ways and partly in another, that is to say—

- (a) by a bond approved by the court and given by the person giving security and also by—
 - (i) an insurance company, group or underwriters or bank approved by the court, or
 - (ii) with the approval of the court, two personal sureties; or
- (b) by lodging in court a sufficient sum of money or stock; or
- (c) in such other manner as the court may approve.

(2) A person desiring to give security in whole or in part by lodging money or stock in court shall file a form of request in Form 79 of Court Forms and the court may thereupon give leave to make the lodgment and direct how any such money is to be invested and how any dividends are to be applied.

Forfeiture of security

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

Discharge of security where new security given

56 Where a receiver is authorised or directed to give new security and—

- (a) the new security has been completed, and
- (b) he has paid or secured to the satisfaction of the court any balance due from him,

the former security shall, unless the court otherwise directs, be discharged.

Maintenance of security by bond

57 Every person who has given a security by a bond shall, whenever his accounts are passed or the court so directs, satisfy the court—

- (a) that any premiums payable in respect of the bond have been duly paid, or
- (b) if the bond was given by personal sureties, that each surety is living and within the jurisdiction and has neither been adjudicated bankrupt nor compounded with his creditors,

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

**PART XII
ACCOUNTS**

Passing of accounts

58 (1) Every receiver shall annually, or at such other intervals as the court may direct, deliver his accounts to the court and attend at or within such time as the court may appoint to have the accounts taken and passed.

(2) On the passing of any accounts the court shall make all proper allowances out of the patient's estate, including an allowance in

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respect of the reasonable and proper costs of passing the accounts and of any other person owed to attend.

(3) The court may, if it thinks fit, direct that a receiver need not account under this rule or may dispense with the passing of any accounts at time at which they would otherwise require to be passed.

Application of balance due from receiver

59 The balance found due from a receiver on the passing of his accounts, or so much thereof as the court may direct shall—

- (a) be paid by the receiver into court to the credit of the proceedings and invested in such manner as the court may direct, or
- (b) be invested or otherwise dealt with by the receiver in such manner as the court may direct.

Default by receiver

60 Where a receiver fails to comply with any of the requirements of rule 58 or fails to pay into court or invest or otherwise deal with any money in accordance with any direction of the court, the court may disallow any remuneration which would otherwise be due to the receiver, and, if he has made default in paying into court or investing or otherwise dealing with any money, may charge him with interest thereon at the rate of \$12.00 per centum per annum, or such lower rate as the court may fix, for the period of his default.

Payment of maintenance and costs

61 Unless otherwise directed, any money ordered to be paid by a receiver for maintenance shall be paid out of income, and any costs ordered to be paid by a receiver may, when taxed or fixed, be paid out of any money coming into his hands, after providing for any maintenance and percentage.

Final accounts

62 (1) On the discharge of a receiver, or on the death or recovery of a patient for whom a receiver has been appointed, the court shall take and pass the accounts of the receiver from the foot of his last account or, if no account of his has previously been passed, from the date of his appointment, unless in the opinion of the court the taking and passing of such accounts may properly be dispensed with.

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

(3) If a balance is found due to a receiver or his estate, it shall be paid to him or his personal representatives, as the case may be, by the patient or out of the patient's estate.

(4) On payment of any balance found due from the receiver, or if no balance is found due from him or the passing of his accounts has been dispensed with under paragraph (1), the security of the receiver shall, unless the court otherwise directs, be discharged.

Accounting by other persons

63 The provisions of rules 58 to 62 shall apply, with such modifications as may be necessary or the court may direct, to any person required to render accounts under rule 41 as they apply to a receiver.

Passing of accounts by Registrar

64 The court may delegate to the Registrar the duty of taking and passing accounts under this Part, and such delegation may be general or limited to a particular case.

**PART XIII
INQUIRIES**

Inquiries as to desirability of appointing a receiver

65 (1) Where the court has reason to believe that a receiver should be appointed for a patient or that any other power conferred on the court should be exercised with respect to the property and affairs of a patient, the court may—

- (a) direct an officer of the court or the Official Solicitor to make inquiries and report to the court whether it is desirable in the interests of the patient that an application should be made for that purpose; or
- (b) direct a Medical Commissioner to visit the patient and report to the court on the capacity of the patient to manage and administer his property and affairs.

(2) On receiving any report pursuant to paragraph (1) the court may, if it thinks fit—

- (a) direct an application to be made pursuant to rule 11, or
- (b) if the report is by a Medical Commissioner and the court is satisfied that the patient is incapable, by reason of mental disorder, of managing and administering his property and affairs, make an order in a summary manner appointing a receiver or exercising any other power conferred on the court with respect to the patient's property and affairs.

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Inspection of patient's property

66 For the purpose of any proceedings relating to the property of a patient, the court may, if it thinks fit, inspect the property or appoint a fit and proper person to inspect the property, make any necessary inquiries and report to the court.

Inquiries as to prior dealings with patient's property

67 In any proceedings relating to a patient, the court may make or cause to be made such inquiries as it thinks fit as to any dealing with the patient's property before the commencement of the proceedings and as to the mental capacity of the patient at the time of such dealing.

Inquiries as to documents executed by patient

68 The court may make or cause to be made inquiries whether any person has in his possession or under his control or has any knowledge of any testamentary document executed by a patient and may direct that person to answer the inquiries on oath and to produce any such document which is in his possession or under his control and deal with it in such manner as the court may direct.

Other inquiries

69 The court may make or cause to be made any other enquiries which it may consider necessary or expedient for the proper discharge of any of its functions under the Act or these Rules.

PART XIV

CUSTODY AND DISPOSAL OF FUNDS AND OTHER PROPERTY

Inventory of property retained or deposited

70 Where under a direction of the court any furniture or effects of a patient are allowed to remain in the possession of, or deposited with, any person, that person shall, unless the court otherwise directs, sign and file an inventory of the furniture or effects and an undertaking not to part with them except on a direction of the court.

Stock and shares, securities in name of patient

71 Where any stock—

- (a) is standing in the name of a patient beneficially entitled thereto; or
- (b) is standing in the name of a receiver in trust for a patient, or as part of his property, and the receiver dies intestate, or himself becomes incapable by reason of mental disorder of acting as receiver, or is out of the jurisdiction of the court, or it is uncertain whether he is still alive, or he neglects or refuses to transfer the stock or to receive and pay over the dividends thereof as the court directs;

the court may order some proper person to transfer the stock into the name of the receiver or, as the case may be, a new receiver for the patient or into court or otherwise deal with it as the court may direct, and also to receive and pay over the dividends thereof in such manner as the court may direct.

(2) Where an order is made under paragraph (1) or under section 55 of the Act directing stock to be transferred into court, the person required to effect the transfer shall be—

(a) in the case of stock standing in the stock register kept by the Bank of England or any other bank or by the Crown Agents, some proper officer of the bank or the Crown Agents;

(b) in any other case, some proper officer of the company or other body whose stock is to be transferred;

and the said person shall, if so ordered, receive any sum accrued due before the transfer by way of dividend, bonus or periodical payment in respect of the stock and pay it into court to the general account of the patient or to a separate account or otherwise deal with it, according as the court may direct.

Disposal of property on patient's death or recovery

72 (1) On the death or recovery of a patient the court may order any money, securities or other property belonging to the patient, or forming part of his estate, or remaining under the control of, or held under the directions of, the court, to be paid, transferred, delivered or released to the person who appears to be entitled thereto.

(2) If no grant of representation has been taken out to the estate of a deceased patient and it appears to the court that the assets of the estate, after deduction of debts and funeral expenses, do not exceed \$240.00 in value, the court may, if it thinks fit, provide for payment of the funeral expenses out of any funds in court standing to the credit of the deceased, and order that any such funds, or the balance thereof, or any other property of the patient remaining under the control, or held under the directions, of the court, be paid, transferred, delivered or released either to the personal representative of the deceased when constituted or to the person who appears to be entitled to apply for a grant of administration to his estate.

(3) If no application for an order under paragraphs (1) or (2) is made within six months from the death of the patient, the court may direct that any money or securities which belonged to the patient when he died and were not already in court shall be transferred into court.

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**PART XV
SETTLEMENT AND APPROVAL OF DEEDS**

Conveyancing drafts to be submitted to Registrar

73 All mortgages, leases and other dispositions of a patient's land and such other deeds and documents relating to his estate as may be directed shall be submitted in draft to the Registrar for his approval.

Authentication by seal of Supreme Court

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

(2) Unless otherwise directed, no deed or other document shall be sealed for the purpose aforesaid unless—

- (a) it bears a certificate by the person tendering it that it is an exact copy of a draft approved by the Registrar, and
- (b) in the case of a deed or document containing a recital that any money has been lodged in court, a certificate of the Accountant-General is produced stating that the lodgment has been made.

**PART XVI
COPIES OF DOCUMENTS**

Copies of documents in court

75 (1) Subject to the payment of any fee prescribed by these Rules—

- (a) any party who has filed an affidavit or other document shall, unless the court otherwise directs be entitled, on request, to be supplied by the court with a copy of it;
- (b) the party having the conduct of any proceedings shall, unless the court otherwise directs, be entitled, on request, to be supplied by the court with a copy of any order, certificate, authority, direction or other document made, given or prepared by the court in the proceedings; and
- (c) any other person may, on request, be supplied by the court with a copy of any such document as is mentioned in subparagraph (a) or subparagraph (b) if the court is satisfied that he has good reason for requiring it and that it is not reasonably practicable for him to obtain it from the party entitled to bespeak a copy from the court.

(2) A copy of a document supplied under paragraph (1) shall, if so required, be marked as an office copy without extra charge.

**PART XVII
FEES**

Percentage fee

76 (1) A fee (hereinafter called "percentage") shall be payable at the rate of five per cent on the income of any patient from the date of the first order in the proceedings (other than an order relating to the patient exclusively in his capacity as a trustee) until their termination:

Provided that—

- (a) where the annual income appears not to be more than \$240.00, percentage shall be \$3.60 in respect of each completed year; and
- (b) where the annual income appears to be more than \$240.00 but less than \$360.00, percentage shall be payable at the rate of four per cent per annum of the estimated income.

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

Payment of percentage

77 (1) The court shall annually, or at such other intervals as may be convenient, issue a percentage certificate in respect of each patient.

(2) A percentage certificate shall state—

- (a) the amount of percentage payable at the date specified therein disregarding sums less than ten cents; and
- (b) the name of the person by whom payment is to be made.

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

(4) Where the court directs percentage to be paid by the Accountant-General wholly or partly out of funds in court, then, unless the court directs payment to be made out of capital, the Accountant-General shall appropriate out of the income arising from those funds a sum equal to the amount of percentage payable therefrom and place that sum to the credit of General Revenue.

(5) In every other case the person by whom percentage is payable shall, unless the court otherwise directs, make the payment out of the income of the patient or, if he is dead, out of his estate.

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Fees on documents

78 The fees specified in the Schedule shall be payable in respect of documents prepared by the court or filed in the course of proceedings relating to a patient.

Fees on taxation

79 (1) There shall be payable in respect of the taxation of a bill of costs—

- (a) where the amount allowed does not exceed \$12.00, a fee of sixty cents;
- (b) where the amount allowed exceeds \$12.00 but does not exceed \$240.00, a fee of twelve cents for every \$2.40 or part thereof allowed; and
- (c) where the amount allowed exceeds \$240.00, a fee of \$12.00 for the first \$240.00 and twelve cents for every \$4.80 or part thereof over \$240.00 allowed;

and such fees shall be paid before the signature by the Registrar of his certificate of taxation or allocatur.

(2) On the withdrawal of a bill of costs which has been lodged for taxation there shall be payable such fee (not exceeding the amount which would have been payable under paragraph (1) if the bill had been allowed in full) as appears to the Registrar to be fair and reasonable.

Postponement and remission of fees

80 The court may remit or postpone the payment of the whole or part of any fee where in the opinion of the court hardship might otherwise be caused to the patient or his dependants or the circumstances are otherwise exceptional.

Exemption from fees in certain cases

81 No fee shall be payable pursuant to rule 76, 78 or 79 in the case of any patient to whom a pension has been awarded in respect of mental disorder attributable to or aggravated by service in any of the armed forces of the Crown.

PART XVIII COSTS

Costs generally

82 (1) All costs incurred in relation to proceedings under these Rules shall be in the discretion of the court and the court may order them to be paid by the patient or charged on or paid out of his estate or paid by any other party or any person attending the proceedings.

(2) Every order made under paragraph (1) shall be enforceable in the same manner as an order as to costs made by the Supreme Court.

(3) An order that costs incurred during the lifetime of a patient be paid out of or charged on his estate may be made within six years after his death.

Order 62 of RSC 1985 to apply

83 Subject to these Rules, Order 62 of the Rules of the Supreme Court 1985 [*title 8 item 1(a)*] shall apply, with such modifications as may be necessary, to costs incurred in relation to proceedings under these Rules, and where such costs fall to be taxed, they shall be taxed by the Registrar.

Unnecessary costs not to be allowed

84 No receiver for a patient shall, unless authorized by the court, be entitled at the expense of the patient's estate to employ an attorney or other professional person to do any work not usually requiring professional assistance.

Costs of Official Solicitor

85 Any costs incurred by the Official Solicitor in relation to proceedings under these Rules or in carrying out any directions given by the court shall be paid by such party or such persons attending the proceedings or out of such funds as the court may direct.

Ascertainment of prior costs

86 Where in proceedings in relation to a patient a claim is made against his estate in respect of any costs alleged to have been incurred by him or on his behalf otherwise than in relation to the proceedings, the court may refer the claim to the Registrar so that the amount due to the claimant may be ascertained by him.

Transitional

87 [*omitted.*]

Commencement

88 [*omitted.*]

SCHEDULE

Part I

1 On issuing an originating application or on proceeding in a summary manner under rule 6—

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- (a) where the annual income appears not to exceed \$96.00, subject to a minimum fee of \$1.20: 10 per cent.
- (b) where the income appears to exceed \$96.00, subject to a minimum fee of \$9.60 and a maximum fee of \$120.00: 4 per cent.
- 2 On making an application for an order determining proceedings upon the recovery of the patient: \$1.20
- 3 On making any other application for an order: \$2.40 (Notes:
- (i) In this Part, "income" means the income which a patient's estate might be expected to yield if duly administered by the court.
 - (ii) Sums of less than twelve cents shall be disregarded in assessing the fees payable under this Part.
 - (iii) Any fee payable under this Part shall include the fees payable on two copies of any order made on the application, but shall not include any other fee payable under Part II.)

Part II

- 4 On an order: \$0.40
- 5 On a certificate under seal, other than a percentage certificate of the result of a taxation: \$1.20
- 6 On an authority or direction under seal (not being a direction to the Accountant-General) \$1.20
- 7 For a copy of such an authority or direction: \$0.60
- 8 For a copy of any document, other than an authority or direction for the first page: \$1.20
and for each additional page: \$0.60

(Note: Fees 4, 5 and 6 shall be payable notwithstanding the termination of the proceedings, provided that the document has previously been settled by the Court.)

[Amended by:

1971 : 82

1996 : 17

1998 : 32]