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[1971

SUPREME COURT ACT, 1935-1964.

MATRIMONIAL CAUSES ACT, 1959-1966 (COMMONWEALTH).

PURSUANT to the powers conferred by the Supreme Court Act, 1935-1964, the Matrimonial Causes Act, 1959-1966 (Commonwealth) and all other powers hereunto enabling, the Judges of the Supreme Court of Western Australia hereby make the following rules.

MATRIMONIAL CAUSES COSTS RULES, 1971.

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|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Citation and commencement. | 1. These rules may be cited as the Matrimonial Causes Costs Rules, 1971 and shall come into operation on the first day of July, 1971. |
| Interpretation. | 2. In these rules, unless the contrary intention appears—
“ancillary relief” means relief sought in proceedings of the kind mentioned in paragraph (c) of the definition of “matrimonial cause”;
“principal relief” means relief sought in proceedings of the kind mentioned in paragraph (a) of the definition of “matrimonial cause”;
“rule” means one of these rules;
“Schedule” means a schedule to these rules;
“taxing officer” means a registrar or such other officer as the Chief Justice may appoint to tax bills of costs;
“the Act” means the Matrimonial Causes Act 1959; and
words and expressions defined in section 5 of the Act or in rule 4 of the Matrimonial Causes Rules and used in these rules have the same respective meanings as in the Act or in the Matrimonial Causes Rules, as the case may be. |
| Cf. r. 5, M.C. Rules. | |
| Application of Supreme Court Rules. | 3. Rules 37, 39, 40, 41, 42, 44, 45, 46 and 54 to 59 (both inclusive) of Order 65 of The Rules of the Supreme Court, 1909, shall, so far as they are not inconsistent with these rules, the Act, or the Matrimonial Causes Rules, apply to and in relation to the taxation of costs under these rules. |

Scale of costs.

4. (1) Subject to these rules and to any special order, solicitors are entitled to charge and be allowed the fees set forth in the First Schedule in respect of the matters referred to therein and higher fees shall not be allowed.

(2) The scale of allowances contained in the First Schedule includes the costs of all work and services incidental or ancillary to the matters mentioned therein but does not include disbursements (other than counsel fees) necessarily and properly paid or incurred.

(3) Where the court awards costs to a party, the court may by the order direct the costs to be taxed or direct payment of a gross sum in lieu of taxed costs or may direct that the party recover a proportion only of the allowances prescribed by the First Schedule.

(4) At the request of a party who is entitled to the costs of a petition or cross-petition for principal relief, the court may make an order for fixed costs in accordance with the Second Schedule instead of ordering the costs to be taxed; but this subrule does not limit the power of the court under subrule (3) of this rule.

(5) Where the court is of opinion that by reason of unusual difficulty or complexity or for any other sufficient reason a special order should be made, the court may order that any allowance contained in the First Schedule be increased or may fix a higher limit within which costs are to be allowed.

(6) Where the work done does not justify the allowance of a fee according to the fee prescribed by the First Schedule or a fee equal to the minimum fee prescribed thereby, as the case may be, the court or judge may fix such fee as may be reasonable.

(7) Where an hourly rate is prescribed, the taxing officer may allow in respect of a period less than one hour such amount as may be reasonable.

(8) The court or taxing officer shall fix the sum proper to be charged for costs in any matter not covered by the First Schedule.

Costs of parties appearing by same solicitor.

5. (1) Parties who appear by the same solicitor, or are represented at the trial by the same counsel, shall be allowed one set of costs only unless the court otherwise orders.

(2) Where parties who appear by the same solicitor are represented at the trial by separate counsel, additional costs shall be allowed only if the court is satisfied that their interests are diverse, and that it is proper in the circumstances that additional costs be allowed.

Apportionment of costs.

6. (1) Where an order is made for the costs of a petition and cross-petition that have been heard together, or of consolidated suits, or where for any reason it becomes necessary for the costs of a suit to be apportioned, or where a party is entitled to receive the costs applicable to any part of the suit or matter, the court shall give such directions as may be necessary to ensure that the incidence of the litigation shall be equitable.

(2) Where any doubt or difficulty arises on the taxation of costs under an order of the kind mentioned in subrule (1) of this rule, there shall be deemed to be reserved in the order an authority to the taxing officer or any party to refer the matter to the court.

Orders under s. 86.

7. Unless the order otherwise provides, the costs of proceedings for an order under section 86 of the Act include any costs and disbursements necessarily incurred in giving effect to the order.

8. A husband to whom costs are awarded against a co-respondent or party cited may proceed to enforce his own costs (and the costs he is liable to pay his wife) notwithstanding that he has not paid costs for which he is liable to his wife; but a certificate of taxation shall not be issued except on an undertaking by the solicitor for the husband to pay the costs recovered into court.

Costs against
co-respondent.

9. (1) Subject to subrule (2) of this rule, the costs of applications to a registrar shall be reserved to the court; but the registrar may, if so requested by a party, make a recommendation to the court regarding the incidence of any such costs.

Costs of
applications
to a
registrar.

(2) Where a registrar makes an order for substituted service or dispensation with service of a petition or other pleadings, the costs of the application shall be costs in the cause unless the court otherwise orders.

10. (1) Bills of costs required to be taxed under these rules shall be taxed, allowed and certified by a taxing officer.

Taxation of
party and
party costs.

(2) A party filing a bill of costs for taxation shall lodge with the bill vouchers for the payment of all disbursements (other than court fees) included in the bill; and where the vouchers are numerous they shall be marked with the corresponding number in the bill.

(3) Notice of the time appointed for taxation shall be given to the party filing the bill and he shall give to the other parties entitled to be heard on the taxation at least two days' notice of the appointment and shall at the same time deliver to them a copy of the bill to be taxed.

(4) Notice of taxation shall not be necessary where the party ordered to pay costs does not have an address for service.

(5) A taxing officer may of his own motion refer any question arising in the course of a taxation for the direction of the court.

11. Subject to the provisions of the Legal Practitioners Act, 1893, permitting a solicitor to make a written agreement as to costs with his client, the fees and disbursements allowed under these rules shall apply both as between party and party, and solicitor and client; but where costs have been incurred which in the opinion of the taxing officer are not properly recoverable against the party liable under the decree to pay costs, but have nevertheless been properly incurred, or where costs have been incurred at the special request of the client, those costs shall be recoverable from the client, and the taxing officer is hereby authorized to fix such sum as he thinks reasonable to cover the additional costs.

Allowances
to apply
also
between
solicitor and
client.

12. (1) Subject to any special agreement in writing made between a solicitor and his client as to the remuneration payable to the solicitor, both the solicitor and the client shall have the right to have the solicitor's bill of costs taxed at any time within thirty days after delivery of the bill or within such extended time as may be allowed by the court or a registrar.

Taxation of
solicitor
and client
costs.

(2) Where a client gives notice in writing requiring taxation of a solicitor's bill of costs, the solicitor shall file the bill within fourteen days after service of the notice or within such extended time as may be allowed by the court or a registrar.

(3) Where a solicitor files a bill for taxation under this rule, he shall serve on the client at least seven days before the time appointed for the taxation notice of the appointment and a copy of the bill.

(4) Service under subrule (3) of this rule may be effected in the manner referred to in paragraph (d) of rule 60 of the Matrimonial Causes Rules.

(5) If there is no attendance by or on behalf of the client at the time appointed for the taxation, the taxing officer may proceed with the taxation upon being satisfied by affidavit that the bill of costs and notice of the taxation were served on the client in accordance with these rules.

(6) Where a client has requested a solicitor to submit his bill of costs as between solicitor and client for taxation under this rule, no costs shall be recoverable by the solicitor except such costs as may be allowed by the taxing officer on taxation.

(7) The costs of a taxation under this rule shall be in the discretion of the taxing officer who may add to them, or deduct from them, any sum payable by or to a party to the taxation.

Security
for costs.

13. (1) In a defended suit a party may apply to the court for an order that his costs be secured.

(2) The court shall consider the means of the parties, the *bona fides* of the applicant's case and any other relevant matters and may require such information and verification from the applicant as may be necessary.

(3) The granting of the application shall be in the discretion of the court.

(4) The amount to be secured may be fixed by the court without taxation of costs and the amount so fixed shall be the limit of the liability to give security.

(5) Unless the order otherwise provides, the party ordered to give security shall pay the amount of the security into court in cash or give security by a bond with two approved sureties in double the amount fixed, or may pay the amount partly in cash and enter into a bond for the balance.

(6) The amount for which security is given shall be applied in payment of the costs of the party in whose favour the order was made unless the court for good cause shall otherwise direct.

(7) When an order for security is made, further proceedings in the suit by the party ordered to give security shall be stayed until the order is complied with unless the court otherwise orders.

(8) Where security is given by a bond it shall be in accordance with the form in the Third Schedule with such variations as the circumstances may require.

Costs and
damages to
be paid into
court in
certain cases.

14. (1) Unless the court otherwise directs, an order for payment of costs or damages contained in a decree nisi for dissolution or nullity of marriage shall require the costs or damages to be paid into court and shall direct payment out of court to the party entitled thereto upon the decree being absolute.

(2) Subrule (1) of this rule does not require a decree nisi to direct payment into court of costs awarded to a party other than the party in whose favour the decree was made.

Application.

15. These rules shall apply to and in relation to suits under the Act that are commenced on or after the first day of July, 1971 and to applications for ancillary relief made on or after that date.

16. (1) The rules relating to the costs of proceedings under the Act published in the *Government Gazette* of 13th July, 1964 and the amendments to those rules published in the *Government Gazette* on 17th January, 1967 are revoked. Revocation.

(2) Except as provided by rule 15, the rules referred to in sub-rule (1) of this rule shall continue to apply to and in relation to proceedings pending in the court on the first day of July, 1971.

R.4(1).

FIRST SCHEDULE.

Item.	Allowance.
	\$
1. Petition for principal relief	60.00
2. Co-respondent or other additional party	15.00
3. Appointment of guardian <i>ad litem</i> (without order)	10.00
4. Where another party is an infant or person of unsound mind, <i>not exceeding</i>	25.00
5. Discretion statement or statement under rule 217A (to be allowed in party and party bill only if certified for)	15.00-30.00
6. Claims for ancillary relief included in petition or answer:	
(a) custody or access, <i>not exceeding</i>	30.00
(b) statement of particulars required by rule 41 (where no claim for custody or access), <i>not exceeding</i>	20.00
(c) maintenance, <i>not exceeding</i>	50.00
(d) settlement of property, <i>not exceeding</i>	50.00
(e) damages, <i>not exceeding</i>	30.00
7. Answer by respondent (where no claim for principal relief) or by co-respondent, or reply by party cited or person named, <i>not exceeding</i>	40.00
8. Answer claiming principal relief, <i>not exceeding</i>	60.00
9. Reply by petitioner, <i>not exceeding</i>	20.00
10. Pleading subsequent to reply (if certified for), <i>not exceeding</i>	20.00
11. Supplementary pleading (if certified for), <i>not exceeding</i>	40.00
12. Amendment of pleading before trial (if certified for), <i>not exceeding</i>	30.00
13. Address for service, including filing and serving (where no pleading filed)	10.00
14. Request for particulars (if certified for), <i>not exceeding</i>	50.00
15. Answer to request for particulars (if certified for), <i>not exceeding</i>	50.00

Item.	Allowance. \$
16. Obtaining discovery, including inspection	10.00-30.00
17. Giving discovery	15.00-50.00
18. (a) Application in chambers for ancillary relief, (if certified for), not exceeding	150.00
(b) Where referred into court, such amount as may be allowed under items 26 and 27.	
19. Application in chambers other than for ancillary relief (if certified for)	10.00-120.00
20. On an assessment by a registrar (rule 204)	15.00
21. Attending at a compulsory conference—for each hour, not exceeding	20.00
22. Application for certificate of means (discretionary where no certificate issues)	10.00
23. Attending on application for certificate of means and where the hearing time exceeds 1 hour, for each additional hour	20.00 15.00
24. Examination of witnesses prior to trial, including order therefor, not exceeding	40.00
and where the hearing time exceeds 1 hour, for each additional hour	15.00
25. Medical examination of one or both spouses in- cluding order	50.00-80.00
26. Getting up case for trial, including entry:	
(a) undefended, not exceeding	60.00
(b) defended	75.00-500.00
27. Trial (including counsel fee):	
(a) undefended, not exceeding	40.00
(b) defended	60.00-400.00
28. (a) Where proceedings, whether for principal or ancillary relief, are defended and continue be- yond one day of hearing or where the hearing of an appeal or intervention or other proceed- ing so continues, for each additional day, if certified for, a sum not exceeding	150.00
(b) Where less than a day is involved the addi- tional fee shall be such proportion of the daily fee as the taxing officer may allow.	
29. Attending on reserved decision in court	20.00
30. Extraction of a decree determining proceedings for principal relief:	
(a) With appointment or where conveyancing counsel attends, such amount may be allowed as the tax- ing officer thinks fit.	25.00
(b) Without appointment	15.00

Item.	Allowance. \$
31. Appeals:	
(a) against the decision of a registrar	35.00-100.00
(b) to the Full Court, including settling transcript	75.00-400.00
32. Intervention proceedings under Part VII of the Act: Such amounts as may be allowed under items 26 and 27.	
33. Determination of a matter stated by a registrar (rule 291)	25.00-50.00
34. Preparation, serving and filing of bill of costs and attending on taxation, <i>not exceeding</i>	30.00
35. Allowance for Perth agent	20.00-60.00
36. Enforcement of decrees:	
(a) Writ of attachment or writ of sequestration including application for leave, <i>not exceeding</i>	75.00
(b) Registration in the Supreme Court of a decree of another court having jurisdiction under the Act	25.00
(c) Enforcement by other means, such amount as may be allowed by the taxing officer.	
37. Service of process:	
(a) Service of petition	4.00
(b) Personal service of any other process	3.00
(c) Service by post (other than of a petition) or at an address for service	1.50
(d) If at a place more than two miles from the nearest place of business of the solicitor effecting service, a sum calculated according to the time occupied and fares paid out not exceeding the cost of service by the nearest Sheriff's officer	
(e) Where more than one attendance is necessary to effect service or to ground an application for substituted service, such further allowance may be made as the taxing officer thinks fit	
(f) One allowance only shall be made where two or more documents are or could have been served together	
(g) For service out of the jurisdiction, such allowance as the taxing officer thinks fit.	
38. Allowances to witnesses: Such amounts as may be prescribed from time to time by The Rules of the Supreme Court, 1909.	

Cf. order as to Supreme Court fees, 1948; items 166 *et seq.*

R.4(4).

SECOND SCHEDULE.

Item.	Allowance.
	\$
Petition or cross-petition for principal relief from original instructions until the decree nisi has become absolute, including applications in chambers and counsel fees, court fees and other disbursements	275.00
Where the solicitor for the party entitled to costs has necessarily engaged a Perth agent, the additional sum of	20.00

R.13(8).

THIRD SCHEDULE.

BOND FOR SECURING COSTS.

(Title.)

* Full names,
addresses
and
occupations
of principal
and sureties.

By this bond we *

are jointly and severally bound to

the Registrar of the Supreme

Court of Western Australia and his successors in office in the sum of dollars for the payment of which we bind ourselves and each of us and our executors and administrators.

Dated the day of 19 ..

The condition of this bond is that if the abovenamed

shall pay to the abovenamed

all such costs as shall be ordered in this suit to be paid by the abovenamed to the abovenamed and within fourteen days after the costs shall become due and payable then this bond shall be void and of no effect: otherwise it shall remain in full force and virtue.

Dated the 9th day of June, 1971.

L. W. JACKSON C.J.

J. E. VIRTUE S.P.J.

JOHN HALE J.

FRANCIS BURT J.

J. M. LAVAN J.

JOHN WICKHAM J.