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**JUSTICE**

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JM301\*

Local Courts Act 1904

**Local Court Amendment Rules (No. 4) 1998**

Made by the Governor in Executive Council.

**1. Citation**

These rules may be cited as the *Local Court Amendment Rules (No. 4) 1998*.

**2. Commencement**

These rules take effect one month after their publication in the *Government Gazette*.

**3. The rules amended**

The amendments in these rules are to the *Local Court Rules 1961*\*.

[\* Reprinted as at 26 February 1996.

For amendments to 6 November see 1997 Index to Legislation of Western Australia, Table 4, p. 168, and Gazette 28 August 1998.]

**4. Order 27 amended**

- (1) Order 27 is amended by inserting after rule 13 —

“

**13A. Court may impound documents**

A court hearing an examination under rule 13 of this Order may make an order impounding any documents produced at the examination.

”

- (2) Order 27 is amended by repealing rule 14 and inserting instead —

“

**14. Costs under rule 13**

- (1) A court hearing an application or examination under rule 13 of this Order may make such order as to costs as may be just, including an order for fixed costs.
- (2) Subrule (1) applies despite rules 6 and 7(2) of Order 37.

”

**5. Order 32A inserted**

After Order 32 the following Order is inserted —

“

**Order 32A — Practice and procedure relating to warrants under the *Fines, Penalties and Infringement Notices Enforcement Act 1994***

**1. Interpretation**

(1) In this Order —

“**Act**” means the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

“**claim**” means a claim under section 93 of the Act;

“**claimant**” means a person who makes a claim.

(2) The definitions in Part 7 of the Act apply to this Order.

**2. Examination in Aid of Seizure (Forms 185D and 185E)**

(1) An application by the Sheriff for an order under section 69(1) of the Act shall be made *ex parte* in the Form 185D and supported by an affidavit.

(2) An order under section 69(1) of the Act shall be in the Form 185E and shall be served personally on the person to be examined.

(3) Except as provided in this rule, the practice and procedure relating to an examination under section 69(1) of the Act shall be the same as the practice and procedure relating to an examination of a judgment debtor in aid of execution.

**3. Claims to Property Seized (Forms 185F and 185G)**

(1) If the Sheriff admits a claim the Sheriff shall give notice of that admission to the claimant and, except where section 82 of the Act applies, withdraw from possession of the property in respect of which the claim is made or the proceeds of the sale of that property.

(2) If the Sheriff does not admit a claim, the Sheriff shall apply for an interpleader summons under this rule to be issued to the claimant in the Form 185F.

(3) On the application of the Sheriff, the clerk shall issue an interpleader summons and forward the interpleader summons to the Sheriff.

(4) Upon receiving an interpleader summons under subrule (3), the Sheriff shall serve the summons on the claimant, or on the solicitor of any claimant who acts by a solicitor, in the time and mode directed by these rules for the service of a summons in a personal action.

- (5) If before the return day of the summons the claimant files notice withdrawing the claim, and at the same time gives notice of that withdrawal to the Sheriff, the property seized or the proceeds of sale of that property shall be dealt with and disposed of as if the claim had not been made.
- (6) The claimant shall, 5 clear days before the return day of an interpleader summons, leave at the office of the clerk 2 copies of the particulars of the claim in the Form 185G in the Appendix.
- (7) Subject to this rule and to section 94(3) of the Act, proceedings in respect of a claim shall proceed as if the claimant were the plaintiff in a personal action and the Sheriff the defendant in that action.

”.

#### 6. Appendix amended

Part I of the Appendix is amended by inserting after Form 185C —

“

#### **185D — Application for order for examination in aid of seizure under the *Fines, Penalties And Infringement Notices Enforcement Act 1994***

\_\_\_\_\_

In the Local Court of Western Australia, held at .....

\_\_\_\_\_

No. ....

Between

A.B. .... Sheriff of Western Australia,  
and

C.D. .... Offender.

I, [name], the Sheriff of Western Australia, apply for an order under section 69(1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* that [name] of [address] being the [Offender/a person having management of the body corporate that is the Offender]\* personally attend —

- (a) to be examined as to the existence and whereabouts and value of any property that may be seized under a warrant of execution issued against the Offender under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, including any debts due to the Offender; and
- (b) to produce all documents relevant to any such property.

Dated this ..... day of .....

.....  
Sheriff (or Solicitor)

Order granted/refused\*

Dated this ..... day of .....

.....  
Magistrate

[\* *Delete whichever does not apply.*]

**185E — Order for examination in aid of seizure under  
the *Fines, Penalties And Infringement Notices  
Enforcement Act 1994***

(Heading as in Form 185D)

1. On [date] a warrant of execution was issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to the Sheriff in respect of the Offender.
2. You, [name] of [address] are ordered to appear personally at the sittings of this Court to be held at [place] on [date] at [time] —
  - (a) to be examined as to the existence and whereabouts and value of any property that may be seized under the warrant of execution, including any debts due to the Offender; and
  - (b) to produce all documents relevant to any such property.
3. If you do not appear as required by this Order you may be dealt with under section 155 of the *Local Courts Act 1904*.

Dated this..... day of.....

.....  
Magistrate

**Amount outstanding**

Fine/amount forfeited		\$.....
Enforcement fees	+	\$.....
Sub-total	=	\$.....
Less any amount paid	—	\$.....
Amount outstanding	=	\$.....

To [name and address of person ordered to appear]

### 185F — Interpleader summons to a claimant of property

In the Local Court of Western Australia, held at.....

No. ....

Between

A.B. .... Sheriff of Western Australia,  
and

C.D. .... Offender.  
and

E.F. .... Claimant.

1. You, the Claimant, are summoned to appear at a Court to be held at [time] on [date] at [location] to support a claim made by you to certain property taken by the Sheriff pursuant to a warrant of execution issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* against the Offender.
2. You must, 5 clear days before the hearing date, leave at my office particulars of —
  - (a) your full name, address, and occupation;
  - (b) the property claimed by you; and
  - (c) the grounds of your claim,

and if you do not provide those particulars your claim will not be heard by the Court.

Dated this ..... day of .....

.....  
Clerk of the Court

To [name and address of Claimant]

### 185G — Particulars of claim under interpleader summons

(Heading as in Form 185F)

1. I, E.F., of [address and occupation], claim the following property: .....  
[or specified in an attached Schedule], taken by the Sheriff pursuant to a warrant of execution issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* against the Offender.

2. The grounds of my claim are as follows: .....  
[or specified in an attached Schedule].

Dated this ..... day of .....

.....  
E.F., Claimant

To the Sheriff.

\_\_\_\_\_”.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.