

Western Australia

## **Supreme Court (Mental Health) Rules 1965**

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## Supreme Court (Mental Health) Rules 1965

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**Schedule**

**Schedule.\***

**Notes**

**Compilation table**

Western Australia

SUPREME COURT ACT 1935 AND MENTAL HEALTH ACT 1962.

## **Supreme Court (Mental Health) Rules 1965**

## I — Preliminary

### 1. Citation

These rules may be cited as the *Supreme Court (Mental Health) Rules 1965*.

### 2. Interpretation

In these rules, unless the context otherwise requires —

“**Act**” means the *Mental Health Act 1962*;

“**accountant**” means the accountant of the Crown Law Department and any person for the time being acting in that position;

“**filed**” means filed in the Central Office;

“**Form**” means one of the forms in the Schedule to these rules;

“**incapable person**” includes a person who is alleged to be, or who the Court has reason to believe may be, incapable, by reason of mental illness, defect or infirmity, however occasioned, of managing his affairs;

“**manager**” includes an interim manager;

“**order**” includes a certificate, direction or authority under the seal of the Court;

“**Registrar**” means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935*, “Registrar of the Supreme Court”, and a reference to the Registrar or to a Registrar may include a reference to the Principal Registrar or a deputy Registrar;

“**rule**” means one of these rules;

“**seal**” means an official seal of the Court and

“**sealed**” shall be construed accordingly.

*[Rule 2 amended by Gazette 14 December 1979 p.3874.]*



**3. How to enlarge or abridge time**

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.

**4. Rules of the Supreme Court to apply**

The *Rules of the Supreme Court, 1971* and the general practice of the Court including the course of practice and procedure in Chambers, apply, so far as may be practicable, to proceedings to which these rules relate, but only to the extent that the Act or these rules do not otherwise provide.

**5. Titles**

Every application, notice of motion and summons and all notices, affidavits and other documents in any proceedings under the Act shall be entitled “In the Supreme Court”, “In the matter of the *Mental Health Act 1962*”, and “In the matter of.....” (the name of the person to whom the proceeding relates).

**6. Rules subject to variation by special order**

The provisions of these rules are subject to variation by special order, in any case, and apply only where no express direction is given by any special order concerning any of the matters provided for in these rules or only so far as any such direction does not extend.

## **II — Mode of application**

### **7. Commencement of proceedings**

- (1) Every originating application under the Act shall be made by way of originating summons which, in the case of an application under section 64 of the Act, shall be in accordance with Form 1.
- (2) Every application, other than an originating application and an application which the Court or a Registrar, considers may properly be dealt with in a summary manner, shall be made by way of summons, in accordance with Form 2.

*[Rule 7 amended by Gazette 14 December 1979 p.3874.]*

### **8. Certain proceedings to be heard by Judge**

Proceedings under sections 55, 75 or 76 or for the discharge of a manager by reason of his misconduct or default, and appeals from orders and decisions of Registrars shall be heard by a Judge in chambers.

*[Rule 8 inserted by Gazette 14 December 1979 p.3874.]*

### **9. Proceedings may be adjourned to open Court**

Any proceeding such as is mentioned in rule 8 may, if the Judge thinks fit, be adjourned from chambers into court and from court into chambers.

### **10. Hearing of proceedings**

- (1) Subject to sub-rules (2), (4) and (6) of this rule, all proceedings other than those required by the Act or these rules to be heard by a Judge, shall be heard and determined by the Master who may, in respect of every such proceeding, exercise any of the powers conferred on the Court or a Judge in relation thereto.
- (2) The Chief Justice may, from time to time, direct that any class of proceedings arising under the Act or these rules be heard and

- determined by a Judge, and may vary or revoke any such direction.
- (3) A matter that is authorised by or under these rules to be heard and determined by the Master shall not be brought before a Judge, except —
- (a) on a reference from the Master;
  - (b) on an appeal under rule 33; or
  - (c) by special leave of the Court or a Judge.
- (4) If a matter brought before the Master appears to him proper for the decision of a Judge, the Master may refer that matter to a Judge and the Judge may either dispose of the matter or refer it back to the Master with such directions as he thinks fit.
- (5) The Court may refer any proceedings before it or any question arising therein to a Registrar for inquiry and report.
- (6) Nothing contained in this rule affects any of the provisions of the Act or these rules that confer jurisdiction or powers on a Registrar or affects the operation of any order referring an inquiry or other matter to a Registrar or directing a Registrar to conduct an examination.
- (7) Where a matter is directed or authorized by the Act or these rules to be heard or determined by a Registrar, the provisions of these rules shall apply, in so far as they are relevant and with the necessary modifications, to and in relation to any such matter.

*[Rule 10 amended by Gazette 14 December 1979 p.3874.]*

## **11. Powers of Master in proceedings before him**

- (1) For the purpose of any proceedings required or authorised by the Act or these rules, or directed by a Judge, to be taken before him, the Master is empowered to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits and acknowledgments and to examine parties or witnesses, either upon interrogatories or *viva voce*.

- (2) A party or person who has been summoned to attend before the Master, as a witness or otherwise, shall appear and present himself at the time and place specified in the summons and then from day to day, unless excused by the Master.
- (3) If a person who has been summoned to attend before the Master fails to so attend, the Master may, on being satisfied that the summons has been duly served and that reasonable expenses have been paid or tendered to that person, bring the failure to the notice of a Judge who may, without any application being made to him, issue a warrant under his hand for the apprehension of that person.
- (4) A warrant so issued authorises the apprehension of the person and his being brought before the Master and his detention in custody for that purpose, until he is released by order of the Court.
- (5) The apprehension of a person under this rule does not relieve him from any liability incurred by him by reason of his failure to attend before the Master.

**12. Contumacious witness**

- (1) If a person appearing before the Master as a witness refuses to answer, or fails to answer to the satisfaction of the Master, any question that the Master puts, or allows to be put, to the person, the Master may report the refusal in a summary way to a Judge and, upon the report being made to the Judge, the person may be dealt with by him as if the question had been put to the person by the Judge and the person had refused to answer the question or had made to the Judge the answer to the question that he made to the Master, as the case may be.
- (2) A report of the Master under sub-rule (1) of this rule shall be in writing in accordance with Form 3, and shall state the question put to the witness and the answer, if any, to the question made by the witness, and may refer to any other evidence before the Master.

- (3) Where the Master decides to report to a Judge the refusal or failure of a witness to answer a question, the Master shall inform the witness, before the conclusion of the examination, of the day on which, and time and place at which, the report of the Master will be made to the Judge.

**13. Forms to be completed**

- (1) Where a form prescribed by these rules requires completion by the insertion of particulars or other matters referred to in the form or in any instructions relating thereto, those particulars or other matters are prescribed as the particulars or other matters required under the provisions of these rules for the purposes for which the form is prescribed.
- (2) A form prescribed by these rules shall be completed in accordance with such directions as are specified in the form or in any instruction relating thereto.

### **III — Parties**

**14. Relatives and other interested persons may be made parties**

- (1) The Court may direct that all or any of the relatives of an incapable person or any other person shall be made a defendant to, or be given notice of, the application or summons.
- (2) The Court may determine what persons are entitled to be heard at any stage of a proceeding relating to a patient or an incapable person.

**15. Power to direct application by Public Trustee**

Where in the opinion of the Court an application ought to be made —

- (a) for the appointment or discharge of a manager; or
- (b) for the exercise of any power conferred on the Court, with respect to the property and affairs of an incapable person,

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 the Public Trustee.

**16. Managers to represent incapable person**

- (1) An application on behalf of an incapable person shall, unless the Court otherwise directs, be made by the manager, in his own name.
- (2) Subject to any directions given by the Court, an incapable person may be represented by the manager on any summons to which the incapable person is a party.

**17. Representation of incapable person by Public Trustee**

Where, in any proceedings, the Court considers that the interests of an incapable person are not adequately represented by the

manager, the Court may direct the Public Trustee to represent the incapable person, either generally in, or for any particular purpose connected with, the proceedings, without however being required to appoint the Public Trustee to be manager or guardian *ad litem* for the incapable person.

**18. Representation of parties**

- (1) Where two or more parties to a summons are represented by the same solicitor, the Court may 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 solicitors or counsel, they shall not be allowed more than one set of costs in respect of that hearing, unless the Court certifies that the circumstances justify separate representation.

## **IV — Service**

**19. Service of summons generally**

Where service is necessary, an originating summons shall be served at least seven clear days, and any other summons shall be served at least two clear days, before the return day.

**20. No service where defendant consents**

Unless the Court otherwise directs, it shall not be necessary to serve a defendant to a summons who consents to the making of the order sought, if a consent signed by him and verified by a solicitor is filed.

**21. Mode of service**

A document required by the Act or these rules to be served on a person shall be served by delivering it to him personally or at his address for service (if any), but, where it appears to the Court that it is inexpedient or impracticable to serve a document in that manner, it may make an order for substituted service, in such manner as the order directs.

**22. Notice of application**

- (1) The notice of an application under section 64 of the Act to be given to an incapable person shall be in accordance with Form 4 and, unless the Court otherwise orders, shall be served not less than seven clear days before the day appointed for the hearing of the application.
- (2) Notwithstanding the provisions of subrule (1) of this rule, the Court may, in special circumstances, dispense with service of the notice therein mentioned, on such conditions, if any, as the Court thinks fit.



**23. Court may dispense with Summons**

The Court may dispense with any summons ordinarily taken out in the course of the proceedings before it, and require any party attending before it to take out a summons for a particular purpose or within a particular time, and may fix the time at which any particular summons shall be returnable before it, or at, or within which, any proceeding necessary or proper to be taken before it shall be taken, and may proceed *de die in diem* or adjourn the proceedings before it, as it thinks fit.

## V — Evidence

### 24. Evidence generally

The Court may accept and act upon any evidence, notwithstanding that it would not otherwise be admissible in a Court of Law.

### 25. Evidence to be by Affidavit

Except where these rules otherwise provide or the Court otherwise orders, evidence in proceedings under the Act or these rules shall be given by affidavit.

### 26. Power to accept unsworn evidence

- (1) Notwithstanding the provisions of rule 25 of these rules, 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.
- (2) Every statement of facts for use under this rule shall —
  - (a) be drawn up in numbered paragraphs and set out the relevant facts clearly and concisely;
  - (b) so far as is practicable, comply with the provisions of the *Rules of the Supreme Court, 1971* with regard to the filing and indorsement of an affidavit; and
  - (c) be dated and signed by the person by whom it is made.

*[Rule 26 amended by Gazette 14 December 1979 p.3874.]*

### 27. Use of evidence in subsequent proceedings

Except where the Court otherwise directs, evidence that has been used in any proceedings relating to an incapable person may be used at any subsequent stage of those proceedings or in any other proceedings relating to him or his family.

**28. Evidence to be filed on originating application**

- (1) The applicant shall file with an originating application under section 64 of the Act a medical affidavit and, unless the Court otherwise directs, an affidavit of particulars.
- (2) In addition to the production of the medical affidavit required under the provisions of sub-rule (1) of this rule, the Court may require the applicant to produce such further medical evidence, as to the capacity or incapacity of the incapable person to manage his affairs, as it may direct.
- (3) Where the applicant is the Public Trustee, no affidavit of particulars is necessary, if—
  - (a) the Public Trustee files a certificate that the incapable person 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 paragraph (a) of sub-rule (1) of rule 46.
- (4) In this rule “**an affidavit of particulars**” means an affidavit in accordance with Form 5, giving particulars of the incapable person’s relatives, property and affairs and of the circumstances giving rise to the application; and “**a medical affidavit**” means an affidavit in accordance with Form 6, containing evidence of a medical practitioner to the effect that a person is incapable, by reason of mental disorder or mental illness, defect or infirmity, of managing his property and affairs.

**29. Evidence of patient's death or recovery**

Where, at any stage of proceedings relating to an incapable person the Court or a Registrar has reason to believe that the incapable person has died or recovered, the Court or Registrar may require evidence of the death or recovery to be furnished by such party to the proceedings as the Court or Registrar thinks appropriate.

*[Rule 29 amended by Gazette 14 December 1979 p.3874.]*

**30. Order for examination of patients or incapable persons**

In any proceeding relating to an incapable person, the Court may make an order for that person's attendance, at such time and place as it may direct, for examination by a Registrar or by a medical practitioner.

*[Rule 30 amended by Gazette 14 December 1979 p.3874.]*

## VI — Managers

### 31. Interim provision for managing affairs of patient or incapable person

- (1) Where, in the opinion of the Court, it is necessary to make immediate provision in relation to the property and affairs of an incapable person, for any of the matters referred to in section 68 of the Act, the Court may in a summary manner, by order, —
  - (a) direct or authorise any person named therein to do any act or thing specified in the order; or
  - (b) appoint an interim manager for the estate of the incapable person and, subject to any direction given by the Court, such appointment shall continue until further order.
- (2) An order appointing an interim manager shall, unless the Court otherwise directs be served upon the incapable person, within such time as the order may specify, and the incapable person may, within such further time as the order may specify, apply to the Court for the reconsideration of the order.

*[Rule 31 amended by Gazette 14 December 1979 p.3874.]*

### 32. Appointment of managers with survivorship

Where in the opinion of the Court two or more persons have been, or ought to be, appointed managers for an incapable person 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 managers or at any time thereafter, direct that the managership shall continue in favour of the surviving or continuing manager or managers.

## **VII — Appeals**

### **33. Appeal from Master**

- (1) Subject to the provisions of rule 34, any person aggrieved by an order or decision of the Master may, within eight days from the date of the order or decision or within such further period as the Court may allow, appeal therefrom to a Judge.
- (2) An appeal shall be by notice, in accordance with Form 7, filed in the Central Office and, unless the Court otherwise orders, a copy of the notice shall be served upon every party at least three clear days before the day fixed by the notice for the hearing.
- (3) No further evidence shall be filed in support of, or in opposition to, the appeal, without the leave of the Judge.
- (4) An appeal from the decision of the Master does not operate as a stay of proceedings, unless so ordered by the Judge or the Master.

### **34. Appeal from an order not made on summons**

- (1) An appeal does not lie, in the first instance, from any order or decision of the Master that is not made or given on a summons, except in accordance with the provisions of this rule.
- (2) Any person who is aggrieved by such an order or decision as is mentioned in sub-rule (1) of this rule may apply by summons to the Master to reconsider the order or decision, but, in that event, no further evidence shall be filed in support of, or in opposition to, the summons, without the leave of the Master.
- (3) On the hearing of the summons the Master may either confirm or revoke his previous order or decision or make or give such other order or decision as he thinks fit.

- (4) Any person aggrieved by any order or decision made or given on the hearing of an application under this rule may appeal therefrom to a Judge in accordance with the provisions of rule 33.

## VIII — Security

### 35. Manager to give security

- (1) Where an order is made appointing a person other than the Public Trustee or a corporate trustee as manager for an incapable person, —
  - (a) the person appointed shall, unless the Court otherwise orders, before acting as manager, give security for the due performance of his duties; and
  - (b) unless otherwise ordered, the order shall not be sealed until the person appointed has given security to the satisfaction of a Registrar.
- (2) The Court may from time to time vary any required security.  
*[Rule 35 amended by Gazette 14 December 1979 p.3874.]*

### 36. Manner of giving security

- (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 a Registrar and given by the person giving security and also by —
    - (i) an insurance company or guarantee company, group of underwriters or bank approved by a Registrar; or
    - (ii) with the approval of a Registrar, two personal sureties; or
  - (b) by lodging in Court a sufficient sum of money or stock.
- (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 accordance with Form 8 and a Registrar may thereupon give leave to make the lodgement and direct how any such money is to be invested and how any interest is, or dividends are, to be applied.



- (3) A bond given under subparagraph (i) of paragraph (a) of sub-rule (1) of this rule shall be in accordance with Form 9 and a bond given under subparagraph (ii) of that paragraph shall be in accordance with Form 10.
- (4) A bond given under this rule shall be executed within the jurisdiction of the Court and shall, —
- (a) where executed by a natural person, be attested by a Commissioner or other person authorised to administer oaths for use in the Court; and
  - (b) where executed by a body corporate, be executed under the corporate seal of that body.

*[Rule 36 amended by Gazette 14 December 1979 p.3874.]*

**37. Appropriation of security lodged**

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

**38. Discharge of security where new security given**

Where a manager 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 or a Registrar any balance due from him,

the former security shall, unless the Court or a Registrar otherwise directs, be discharged, except in respect of any loss or damage occasioned by any act or default of the manager, in relation to his duties as manager, previously to the date on which the former security is discharged.

*[Rule 38 amended by Gazette 14 December 1979 p.3874.]*

**39. Maintenance of security by bond**

Every person who has given security by a bond shall, whenever his accounts are passed, or the Court or a Registrar so directs, satisfy the Court or Registrar, 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 or Registrar is not so satisfied, the Court or Registrar may require new security to be given or may give such other directions as the Court or Registrar thinks fit.

*[Rule 39 amended by Gazette 14 December 1979 p.3874.]*

## IX — Accounts

### 40. Passing of accounts

- (1) Every manager shall, half yearly or at such other intervals as the Court may direct, deliver his accounts, set out in accordance with Form 11 and, where the case so requires, Form 12 and verified by affidavit, to the Court and attend at, or within, such time as a Registrar may appoint to have the accounts taken and passed.
- (2) On the passing of any accounts, the Registrar shall make all proper allowances out of the incapable person's estate.
- (3) The Registrar may allow the reasonable and proper costs of the manager of passing the accounts, and of any other person permitted to attend, in whole or in part; and, where the manager is in default under these rules or in complying with any direction or order of the Court or a Registrar, may deprive him of the costs of passing his accounts or may order him to pay those costs, personally.
- (4) The Registrar's allowance of any account may be recorded by a report in accordance with Form 13.
- (5) The Court or a Registrar may direct that a manager need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise be required to be passed.
- (6) The provisions of this rule do not apply to a manager, being a corporate trustee, except on an order of the Court made under subsection (2) of section 73 of the Act, or to the Public Trustee.

*[Rule 40 amended by Gazette 14 December 1979 p.3875.]*

### 41. Application of balance due from manager

The balance found due from a manager on the passing of his accounts, or so much thereof as the Court or a Registrar may direct, shall —

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

*[Rule 41 amended by Gazette 14 December 1979 p.3875.]*

**42. Default by manager**

Where a manager fails to comply with any of the requirements of rule 40 or fails to pay into Court or invest or otherwise deal with any money in accordance with any direction of the Court or a Registrar, the Court or Registrar may disallow the remuneration (if any) that would otherwise be allowable to the manager and, where he has made default in paying into Court or investing or otherwise dealing with any money, may direct him to pay interest thereon at the rate of eight per centum per annum, or such lower rate as the Court or Registrar may fix, for the period of his default.

*[Rule 42 amended by Gazette 14 December 1979 p.3875.]*

**43. Payment of maintenance and costs**

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

**44. Final accounts**

- (1) On the discharge or death of a manager, or on the death or recovery of an incapable person for whom a manager has been appointed, a Registrar shall take and pass the accounts of the manager 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 or a Registrar, the taking and passing of such accounts may properly be dispensed with.

- (2) Where a balance is found due from the manager 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 or a Registrar may direct.
- (3) Where a balance is found due to the manager or his estate, it shall be paid to him or his personal representatives, as the case may be, by the incapable person or out of the incapable person's estate.
- (4) On payment of any balance found due from the manager, or if no balance is found due from him or the passing of his accounts has been dispensed with under sub-rule (1) of this rule, the security of the manager shall, unless the Court otherwise directs, be discharged, except in respect of any loss or damage occasioned by any act or default of the manager in relation to his duties as manager, previously to the date of passing his accounts.

*[Rule 44 amended by Gazette 14 December 1979 p.3875.]*

#### **45. Accounts of corporate trustees**

- (1) Every corporate trustee that is appointed the manager of the estate of an incapable person shall cause the accounts of that estate to be audited, for the purposes of section 73 of the Act, in respect of, and within three months after the conclusion of, every period of its administration ending on the 30th day of June, in any year, and within one month after it ceases to be the manager of the estate.
- (2) The fee payable to a corporate trustee, by any person inspecting its accounts, under the provisions of subsection (2) of section 73 of the Act, is an amount of \$1.

## X — Inquiries

### 46. Court may call for inquiries and reports

- (1) Where the Court has reason to believe that a manager should be appointed for the estate of an incapable person or that any other power conferred on the Court should be exercised with respect to the property and affairs of an incapable person, the Court may, on the application of any person or of its own motion, —
  - (a) direct the Public Trustee to make inquiries and report to the Court whether it is desirable, in the interests of the incapable person, that an application should be made for that purpose; or
  - (b) direct that the incapable person be medically examined and a report made to the Court on the capacity of the incapable person to manage and administer his property and affairs.
- (2) On receiving any report made under the provisions of sub-rule (1) of this rule, the Court may direct an application to be made under rule 15.

### 47. Inspection of patient's property

For the purpose of any proceedings relating to the property of an incapable person, the Court or a Registrar may inspect the property or may direct the Public Trustee to inspect the property, make any necessary inquiries and report to the Court or Registrar.

*[Rule 47 amended by Gazette 14 December 1979 p.3875.]*

### 48. Court may inquire into prior dealings with patient's property

In any proceedings relating to an incapable person, the Court or a Registrar may make, or cause to be made, such inquiries as it considers necessary as to any dealing with his property, before

the commencement of the proceedings, and as to his mental capacity, at the time of that dealing.

*[Rule 48 amended by Gazette 14 December 1979 p.3875.]*

**49. Court may inquire as to testamentary documents**

The Court or a Registrar may make, or cause to be made, inquiries as to whether any person has in his possession or under his control, or has any knowledge of, any testamentary document executed by an incapable person 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 or Registrar may direct.

**50. Other inquiries**

The Court or a Registrar may make or cause to be made any other inquiries that the Court or Registrar may consider necessary or expedient for the proper discharge of any of the functions of the Court or Registrar under the Act or these rules.

*[Rule 50 inserted by Gazette 14 December 1979 p.3875.]*

## **XI — Custody and disposal of fund and other property**

### **51. Statement of property retained or deposited**

Where, under a direction of the Court or a Registrar, any furniture or effects of an incapable person are allowed to remain in the possession of, or are deposited with, any person, that person shall, unless the Court or Registrar otherwise directs, sign and file a statement of the furniture or effects and an undertaking not to part with them, except by order of the Court or a Registrar.

*[Rule 51 amended by Gazette 14 December 1979 p.3875.]*

### **52. Transfer of stock under s.71 of the Act**

- (1) An application under subsection (2) of section 71 of the Act shall be served on the person by or with whom the stock is registered; and that person is entitled to be heard on the application.
- (2) An order made under subsection (2) of section 71 of the Act may direct some proper person to transfer the stock and may contain such further directions, to give effect to the order, as the Court thinks necessary or expedient.

### **53. Disposal of property on the death or recovery of an incapable person**

- (1) On the death or recovery of an incapable person, the Court or a Registrar may order any property belonging to the incapable person, 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 incapable person and it appears to the Court or a Registrar that the assets of the estate, after deduction of debts and funeral expenses, do not exceed \$400 in value, the Court or



Registrar may provide for payment of the funeral expenses out of any funds in Court or Registrar standing to the credit of the deceased, and order that any such funds, or the balance of them, or any other property of the incapable person 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 a person who appears to the Court or Registrar to be entitled to apply for a grant of representation to his estate.

- (3) If no application for an order under either sub-rules (1) or (2) of this rule is made within six months from the death of the incapable person, the Court or Registrar may direct that any money or securities that belonged to the incapable person when he died and were not already in Court be transferred into Court.

*[Rule 53 amended by Gazette 14 December 1979 p.3875.]*

## **XII — Settlement and approval of deeds**

### **54. Document to be settled by Court**

The Court may direct that any mortgage, lease or other disposition of an incapable person's land and any other deeds and documents relating to his estate be settled and approved by the Court or a Registrar.

*Rule 54 amended by Gazette 14 December 1979 p.3875.]*

### **55. Authentication by seal**

- (1) The seal of the Court on any deed or other document shall be evidence that it has been settled and approved by the Court or a Registrar.
- (2) Unless otherwise directed, no deed or other document shall be sealed, for the purpose mentioned in sub-rule (1) of this rule, unless —
  - (a) it bears a certificate by the person tendering it that it is an exact copy of a draft settled and approved by the Court or a Registrar; and
  - (b) where the deed or document contains a recital that any money has been lodged in Court, a certificate of the accountant is produced, stating that the lodgment has been made.

*[Rule 55 amended by Gazette 14 December 1979 p.3875.]*

### **XIII — Fees**

*[56 and 57. Deleted by Gazette 14 December 1979 p.3875.]*

## XIV — Costs

**58. Costs, generally**

All costs incurred in relation to proceedings under the Act or these rules are in the discretion of the Court and, in exercising that discretion, the Court may order any such costs to be paid by the incapable person or to be charged on, or paid out of, his estate.

**59. Cost of unnecessary employment of solicitor etc. not to be allowed**

A manager shall not, unless authorised by the Court or a Registrar, be entitled to employ a solicitor or other professional person, at the expense of the incapable person's estate, for any work not usually requiring professional assistance.

*[Rule 59 amended by Gazette 14 December 1979 p.3875.]*

**60. Costs of Public Trustee**

Any costs incurred by the Public Trustee in relation to proceedings under the Act or these rules or in carrying out any directions given by the Court or a Registrar shall be paid by such party to, or such person attending, the proceedings or out of such funds, as the Court or a Registrar may direct.

*[Rule 60 amended by Gazette 14 December 1979 p.3875.]*

**61. Ascertainment of prior costs**

Where, in proceedings under the Act or these rules, relating to an incapable person, a claim is made against his estate, in respect of costs (unrelated to those proceedings) that are alleged to have been incurred by him or on his behalf, the Court or a Registrar may refer the claim to the taxing officer so that the amount due to the claimant may be ascertained by the taxing officer or under his direction.

*[Rule 61 amended by Gazette 14 December 1979 p.3876.]*

## **XV — Revocation of previous rules and transitional provisions**

### **62. Interpretation**

In this Part, “**existing order**” means any order made under the *Lunacy Act 1903*, that is in force on the coming into operation of the Act.

### **63. Revocation**

The *Lunacy Rules 1905*, published in the *Government Gazette* on the 26th May, 1905, and amended from time to time are revoked.

### **64. Proceedings pending under revoked rules**

Notwithstanding the revocation provided by rule 63, any proceeding that is commenced and pending on the coming into operation of these rules may be continued and be concluded, as if that revocation had not been effected.

### **65. Existing orders to remain in force**

- (1) Any declaration made, or power conferred, by an existing order remains in force, until such time as the order is varied, rescinded or superseded.
- (2) An application for the variation, rescission or supersession of an existing order shall be made as prescribed by these rules.

### **66. Passing of accounts pursuant to existing orders**

- (1) Where an existing order makes provision for the passing of his accounts by a manager who is a natural person, that provision remains in force until varied or revoked, otherwise a manager appointed before the commencement of the Act shall pass his accounts in accordance with these rules.

- (2) Where an existing order makes provision for the passing of its accounts by a manager that is a corporate trustee, the manager shall pass its accounts from the foot of its last account or, if no account has previously been passed, from the date of its appointment, up to and including the day prior to that on which the Act comes into operation.

**67. Prior percentages and fees to apply in certain cases**

Where any accounts that ought to have been passed prior to the date of the coming into operation of the Act are passed after that date, the percentages and fees to be taken in respect of those accounts shall be those that applied prior to that date.

Schedule

Rule 7

Form 1

Originating Summons

IN THE SUPREME COURT } 19 No.
OF WESTERN AUSTRALIA }

IN THE MATTER of the Mental Health Act, 1962

— and —

IN THE MATTER of A.B.

LET all parties concerned attend the Judge in Chambers at the Supreme Court, Perth, on..... day the..... day of.....19..... at o'clock in the..... noon, on the hearing of an application on the part of (state full name of applicant followed by his address and description)

of

who is the (state relationship) .....of [or is not related to] the abovenamed (state name of incapable person) for —

- (1) a declaration that the said (incapable person) is incapable, by reason of mental illness, [mental defect or mental infirmity (as the case may require)], of managing his [her] affairs;
(2) the appointment of the applicant (or, if not the applicant, insert the full name address and description of the proposed manager and state his relationship to the incapable person or, if such be the case, that he is not related to the incapable person) [and] (here insert the name, address, description and relationship, if any, of the other proposed manager or of each of the other proposed managers, where more than one is required) or some other fit and proper person[s] as the manager [the joint managers] of the estate of the said (incapable person);
(3) an order authorising the Manager[s] to (here set out the powers and discretions sought to be reposed in the manager or managers); and
(4) such other consequential directions as may be found necessary or expedient.

Dated the ..... day of ..... ,19 .
Taken out by ..... of
Solicitor[s] for the applicant.

**Sch.**

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To (and to )





Sch.

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Rule 12.

Form 3

Report of Master where Witness Fails to Answer Questions Satisfactorily

[Heading as in Form 1]

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, ,  
at the hearing of an application by the \_\_\_\_\_ for an  
order \_\_\_\_\_ the following question was put by me  
[allowed by me to be put] to \_\_\_\_\_ : —

2. The witness refused to answer the question.

[The witness answered the question as follows: \_\_\_\_\_ ]

3. I thereupon named the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, ,  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at \_\_\_\_\_  
as the time and place at which the refusal to answer [the answer] would be  
reported to the Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .  
Master.

Rule 22.

Form 4

Notice of Originating Proceedings

[Heading as in Form I]

To *(Name of incapable person)*

1. You are informed that on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, the Court will inquire whether or not you are capable of managing your affairs and as to what steps should be taken in your interests to protect and manage your property and affairs if it is found that you are unable to do so [and whether *(state full name of proposed manager followed by his address and description)* of

or some other fit and proper person should be appointed to act as manager of your estate, under the directions of the Court].

2. If you wish to make any objection or observation by letter, the letter should be addressed as follows —

The Clerk-in-Charge,  
Supreme Court of Western Australia,  
Perth.

3. You may obtain copies of any documents relating to this proceeding, free of charge, on request from the undersigned.

4. Should you wish to be represented at the hearing, you may appoint a solicitor or counsel to attend on your behalf.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

.....  
.....

Signature and address of applicant's solicitor or of applicant if acting in person.

Sch.

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Rule 28.

Form 5

Affidavits of Particulars

[Heading as in Form 1]

I, (*full name, place of residence and description of deponent*), make oath and say, as follows:

1. I am a (*relationship, if any, and, if none, capacity in which deponent makes the affidavit*) of the abovenamed incapable person.
2. The incapable person —
  - (a) ordinarily lives at \_\_\_\_\_ and is living there at the date hereof [but since the \_\_\_\_\_ has been living at \_\_\_\_\_];
  - (b) prior to being incapacitated, was a (*occupation*); and
  - (c) is aged \_\_\_\_\_ years and is [married, unmarried, widowed].
3. The nearest relatives of the incapable person are (*names and addresses stating relationship to incapable person and, in the case of children, their ages*).
4. The incapable person has not been referred [was on the referred to the (*approved hospital*)], under the provisions of the Mental Health Act, 1962 [on the (*date*) \_\_\_\_\_ and was [not] admitted].
5. The affairs of the incapable person have not [have since the \_\_\_\_\_] been managed by the Public Trustee, under the *Public Trustee Act, 1941*.
6. The property belonging to the incapable person or in which the incapable person has any interest is specified in the Schedule hereto and, to the best of my knowledge and belief, the incapable person is not entitled to any other property or effects.
7. The income of the incapable person from all sources, after allowing for interest calculated on any uninvested cash and after deducting tax (if any) will amount to approximately \_\_\_\_\_ net, annually.
8. The incapable person is receiving a pension of \_\_\_\_\_ per fortnight [not receiving any pension], under the *Social Services Act, 1947*, of the Commonwealth.

9. The cost of the incapable person's maintenance [which has been paid up to \_\_\_\_\_] is \_\_\_\_\_, per week.
10. It will also be necessary to provide —
  - (a) the incapable person with extra comforts, pocket money and clothing amounting approximately to \_\_\_\_\_, per week;
  - (b) for the maintenance of the incapable person's wife [husband] amounting to \_\_\_\_\_, per week; and
  - (c) for the maintenance of \_\_\_\_\_ amounting to \_\_\_\_\_, per week, making with the incapable person's own maintenance, a total of \_\_\_\_\_, per week.
11. In view of the foregoing, the income of the incapable person will [not] be sufficient for all the purposes mentioned [but \_\_\_\_\_ is willing to make up the deficiency] [and it will be necessary that resort be made to the incapable person's capital].
12. The debts of the incapable person, other than money owing on mortgage, amount to \_\_\_\_\_, of which full particulars are set out in the Schedule. [The incapable person has no debts].
13. The incapable person has [not, so far as I am aware,] made a will [and it is believed to be in the custody of \_\_\_\_\_].
14. The incapable person has granted a power of attorney dated the \_\_\_\_\_ to [has not granted any power of attorney].
15. The appointment of (*full name*) \_\_\_\_\_ of \_\_\_\_\_ (*address and description*), aged \_\_\_\_\_ years, as manager of the incapable person's affairs is sought, he [she] being fully qualified to perform the duties of manager, by reason that he [she] (*here set out, in detail, such qualifications as the proposed manager may have that will ensure the proper management of the incapable person's affairs*).
16. As a reference of the fitness of \_\_\_\_\_ to be appointed manager, I submit the name of \_\_\_\_\_.
17. (*Set out a brief history of the incapable person, explaining the circumstances giving rise to the proceedings and giving such information as to the incapable person and the incapable person's relatives as may assist the Court. Further explanatory paragraphs should be added where the exercise of any additional powers conferred on the Court by Part VI of the Mental Health Act 1962, is sought or is expedient. Where the incapable person is living at home, details of the arrangements made, or proposed to be made, for the care of the incapable person and the management of the home should be added.*)

**Schedule.\***

PART I — ABSOLUTE PROPERTY

- (a) Cash  
*(Either at bank or elsewhere, giving the name and address of bank and stating whether on deposit or current account. Where any of the money is not standing in the name of the incapable person, solely, the fact must be stated and the full names of the person under whose control the money then is must be shown and an explanation of the circumstances given in the body of the affidavit.)*
- (b) Pensions, Annuities, Allowances and Life Policies.  
*(Showing the full details of the policies and premiums payable and, where surrender may be advisable, the surrender value. Pension numbers and the reference number of annuities, allowances, etc., must be given, where possible.)*
- (c) Land and House Property (including tenancies).  
*(Stating whether freehold, leasehold or mere tenancy, showing the terms, rates and taxes, tenants' names and rental, together with the particulars of any mortgage thereon stating the names of the mortgagees and the rate of interest; details of insurances should also be given.)*
- (d) Investments.  
*(Being a complete list of the incapable person's investments and, in the case of mortgages, showing the names of the mortgagors, the rate of interest and particulars of the property on which the mortgage is secured. Where any of the investments are in joint names, full particulars should be given and details should be furnished showing the incapable person's beneficial interest.)*

(e) Miscellaneous.

*(Showing items such as rights under covenants, the furniture and effects, jewellery, motor cars, stock-in-trade, fixtures and goodwill or other property not otherwise appearing in the Schedule. A copy of the latest accounts of any business carried on by the incapable person should accompany the application.)*

PART II — REVERSIONARY AND CONTINGENT INTERESTS,  
ETC.

*(Showing the name and age of the person upon whose death the incapable person will become entitled, together with details of the property and particulars of the will or settlement and the names of the trustees.)*

PART III — LIFE INTERESTS

*(Showing the date and nature of the instrument creating the trust, the trustees' names, the property subject to the trusts and, in the case of a voluntary settlement, whether it is revocable.)*

PART IV — DEBTS

*(Other than mortgages on the incapable person's property, those being shown in Part 1 (c), showing the names of the creditors and the nature of each debt.)*  
SWORN, etc.

*\* Every portion of the Schedule must be included, and a nil entry made where necessary.*

Sch.

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Rule 28.

Form 6

Medical Affidavit

[Heading as in Form 1.]

I, (*Full name and residential address*) a Legally Qualified Medical Practitioner make oath and say as follows: —

I am the medical attendant of the abovenamed [A.B.] who lives at  
and have so acted since

or

[I am the (*Superintendent or other office,*) of the (*hospital*) where the abovenamed [A.B.] has been a patient since \_\_\_\_\_].

2. I last examined the said [A.B.] on the \_\_\_\_\_ (*date*) and in my opinion he [she] is, by reason of mental illness [defect or infirmity] incapable of managing his [her] affairs.

3. I base my opinion on the following facts —

(*Deponent here to inscribe the facts by his own hand.*)

4. The following particulars regarding the incapable person are accurate to the best of my knowledge and belief, namely —

*(Set out (a) whether the incapable person is the patient of an approved hospital and, if so, whether an informal patient or detained; (b) duration of existing disorder; (c) any known previous history or family history of mental disorder, giving known details; (d) whether in any way dangerous to himself/herself or others; (e) whether the incapable person is capable of appreciating his/her surroundings; (f) whether capable of appreciating extra comforts and, if so, the recommended nature of these; (g) the incapable person's bodily health and prospects of life; and (h) prospects of recovery from the current disorder.)*

SWORN, etc.



Rule 38.

Form 7

Notice of Appeal from Order or Decision of Master —

[Heading as in Form 1]

TAKE NOTICE that \_\_\_\_\_ of \_\_\_\_\_  
will appeal to a Judge from the order [decision] of the Master made in this  
matter on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, *(add if part only*  
*is appealed from, "so far as it directs that \_\_\_\_\_")*

AND THAT he intends to ask that the said order [decision] be discharged  
[varied] and that it be ordered that *(set out any other relief sought)*.

The appeal will be heard by the Judge in Chambers at the Supreme Court, Perth,  
on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, or so soon thereafter as the  
appeal may be heard.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*(Signed)*

Solicitor for  
Address

To \_\_\_\_\_  
and to his Solicitors, Messrs. \_\_\_\_\_

Sch.

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Rule 36.

Form 8

Request for Leave to give Security by Lodgment in Court

[Heading as in Form 1.]

I, \_\_\_\_\_ of *(state address and description)*, manager for the abovenamed incapable person, request the leave of the Court to give my security of \_\_\_\_\_ *(state penal sum)* by lodging that sum *(or state the amount and description of stock)* in Court, and I agree that if I make any default in paying or accounting to the estate of the incapable person for any money or securities coming into my hands as manager or otherwise in the due performance of my duties as manager, of which default the Court shall be sole judge, the said security may forthwith be transferred to the incapable person's account or otherwise dealt with for his benefit as the Court may direct, provided that if I prove that the loss (including any costs) occasioned to the incapable person's estate by reason of my default amounts to a lesser sum, the balance of the security remaining after deducting that sum, or so much of the balance as shall not have been applied for the benefit of the incapable person, may be returned to me.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

*(Signed)*

To the Principal Registrar,  
Supreme Court.

Rule 36.

Form 9  
Manager's Bond with Guarantee Company as Surety  
[Heading as in Form 1.]

KNOW ALL MEN BY THESE PRESENTS THAT WE C.D.  
of (*address and description or occupation*) (hereinafter called "the Manager")  
and the [S.T. Guarantee Co. Ltd.] whose registered office is situate at  
(*address*) (hereinafter called "the Sureties") are bound and firmly obliged to our  
Sovereign Lady the Queen in the sum of  
dollars of good and lawful money (subject to reduction as hereinafter provided)  
to be paid to the same Lady the Queen Her heirs or successors to which  
payment well and truly to be made I the Manager for myself my heirs executors  
and administrators and WE the Sureties for ourselves and our successors do  
bind ourselves jointly and severally by these presents.

SEALED with the Seal of the Manager and also with the Common Seal of the  
Sureties this                      day of                      One thousand nine hundred  
and

THE CONDITION of the above written obligation is such that WHEREAS the  
Manager has been appointed Manager in the matter of the abovenamed A.B.  
(hereinafter called the "incapable person") and WHEREAS a Registrar of the  
Supreme Court has approved the Sureties as sureties for the due performance of  
the duties of the Manager as appears by the Seal of the Court impressed in the  
margin hereof.

IF THEREFORE the Manager shall duly account for the rents issues and profits  
of the real estate of the incapable person and also for his personal estate and the  
profits thereof which shall come to his possession and shall observe and  
perform every order and direction of the Court concerning the incapable person  
or his estate and concerning all such moneys as shall be found upon the taking  
and passing of the accounts delivered to the Court and shall be careful to see the  
houses and buildings of the incapable person to be well and sufficiently repaired  
and so kept and maintained and shall carefully preserve and keep all the deeds  
evidences and writings in the possession of the Manager touching the estate of  
the incapable person and shall in all things demean himself as a careful and  
faithful Manager of the estate of the incapable person then the said obligation to  
be void or else the same to stand remain and be in full force and virtue  
PROVIDED ALWAYS that the Court may by indorsement on these presents  
testified by the Seal of the Court reduce the said sum of

Sch.

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dollars to such reduced sum as may be necessary and upon such indorsement these presents shall as from the date thereof continue to be in full force and virtue as if such reduced sum had originally been contained in these presents instead of the said sum of \_\_\_\_\_ dollars PROVIDED ALWAYS that a certificate under the Seal of the Court that this Bond has become forfeited in the sum stated in such certificate shall be sufficient and conclusive evidence against the Manager and the Sureties of the truth of the contents of such certificate and that this Bond has become forfeited to the amount of the sum so stated and that such sum forms a valid and binding claim not only against the Manager but also against the Sureties PROVIDED ALWAYS AND IT IS FURTHER AGREED between the Manager and the Sureties that the Manager on being discharged from his office shall forthwith give notice to the Sureties.

PROVIDED ALWAYS that if the Manager shall not pay to the Sureties the annual premium upon this Bond within fifteen days of the due date thereof the Sureties may apply to the Court to be relieved from further liability as such Sureties as aforesaid.

|  |   |                                 |
|--|---|---------------------------------|
| SIGNED SEALED AND DELIVERED  | } | (Manager's signature)<br>[L.S.] |
| by the Manager in the presence of<br><i>(name address and description of witness)</i>                                    |   |                                 |
| THE SEAL OF THE SURETIES was<br>hereunto affixed in the presence of<br><i>(name) address and description of witness)</i> | } | (Seal of guarantee company.)    |

Rule 36.

Form 10

Manager's Bond with Personal Sureties

[Heading as in Form 1.]

KNOW ALL MEN BY THESE PRESENTS THAT WE \_\_\_\_\_ C.D.,  
of *(address and description or occupation)* (hereinafter called "the Manager")  
and [J.K.], of *(address and description or occupation)*, and [K.L.], of *(address  
and description or occupation)* (hereinafter called "the Sureties") are bound and  
firmly obliged to our Sovereign Lady, the Queen, in the sum of  
dollars of good and lawful money to be paid to the same Lady the Queen Her  
heirs and successors to which payment well and truly to be made we the  
Manager and the Sureties bind ourselves jointly and severally and our respective  
heirs executors and administrators by these presents.

SEALED with our seals this \_\_\_\_\_ day of \_\_\_\_\_ One  
thousand, nine hundred and \_\_\_\_\_ .

THE CONDITION of the above written obligation is such that WHEREAS the  
Manager has been appointed Manager in the matter of the abovenamed A.B.  
(hereinafter called "the incapable person") AND WHEREAS a Registrar of the  
Supreme Court has approved the Sureties as sureties for the due performance or  
the duties of the Manager as appears by the Seal of the Court impressed in the  
margin hereof.

IF THEREFORE the Manager shall duly account for the rents issues and profits  
of the real estate of the incapable person and also for his personal estate and the  
profits thereof which shall come to his possession and shall observe and  
perform every order and direction of the Court concerning the incapable person  
or his estate and concerning all such moneys as shall be found due upon the  
taking and passing of the accounts delivered to the Court and shall be careful to  
see the houses and buildings of the incapable person to be well and sufficiently  
repaired and so kept and maintained and shall carefully preserve and keep all  
the deeds evidences and writings in the possession of the Manager touching the  
estate of the incapable person and shall in all things demean himself as a careful  
and faithful Manager of the estate of the incapable person then the said  
obligation to be void or else the same to stand remain and be in full force and  
virtue PROVIDED ALWAYS that a certificate under the Seal of the Court that  
this Bond has become forfeit in the sum stated in such certificate shall be  
sufficient and conclusive evidence against the Manager and the Sureties of the  
truth of the contents of such certificate and that this Bond has become forfeited

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to the amount of the sum so stated that such sum forms a valid and binding claim not only against the Manager but also against the Sureties, PROVIDED ALWAYS AND IT IS FURTHER AGREED between the Manager and the Sureties that the Manager on being discharged from his office shall forthwith give notice in writing thereof to the Sureties.

|  |   |                                 |
|--|---|---------------------------------|
| SIGNED SEALED AND DELIVERED<br>by the Manager in the presence of<br><i>(name address and description of<br/>witness)</i>         | } | (Manager's signature)<br>[L.S.] |
| SIGNED SEALED AND DELIVERED<br>by the abovenamed J.K. in the<br>presence of <i>(name address and<br/>description of witness)</i> | } | (Surety's signature)<br>[L.S.]  |
| SIGNED SEALED AND DELIVERED<br>by the abovenamed K.L. in the<br>presence of <i>(name address and<br/>description of witness)</i> | } | (Surety's signature)<br>[L.S.]  |

INSTRUCTIONS RELATING TO PREPARATION OF ACCOUNTS  
OF MANAGERS.

(See Forms 11 and 12.)

RECEIPTS

(1) RENTS: If any rents are collected by an agent, being in the net amounts as received from the agent and lodge his accounts with this account. If any rents are collected by or outgoings on property paid by the manager, details should be shown on Form 12 and the totals brought into this account under "Receipts" or "Miscellaneous" respectively.

(2) ALL OTHER RECEIPTS:

- (a) Deal with each source of income separately and exhaust each before dealing with the next.
- (b) Keep income from free property separate from income from trust property **under separate subheadings** (stating, in the case of trust Income, the nature of the instrument creating the trust and the names of the trustees).
- (c) Show the period covered by each Item of income.

- (d) If no interest or dividend has been received in respect of a particular holding or source of Income, this fact must be stated at the foot of "Receipts".
- (e) Counterfoils of dividend and Interest warrants must be lodged with the account.

PAYMENTS

(3) MAINTENANCE OF PATIENT:

- (a) Set out each payment showing when paid and period covered.
- (b) Any medical fees, clothing, comforts, pocket money, etc., paid separately should then be dealt with.
- (c) If the patient is living in his own or a rented property the outgoings in respect thereof should follow under "Maintenance".

(4) MISCELLANEOUS: Income tax, solicitors' costs, bank charges, etc., should be included. **Maintenance items must not be entered under "Miscellaneous".**

GENERALLY

- (5) Accounts must be typewritten.
  - (6) All sums received and paid **during the accounting period** must be included even if they have not been paid into or from the Managership bank account in the same period. **No other receipts or payments may be included.**
  - (7) The actual date of any receipt or payment must appear in first column in the account form and all items must be numbered consecutively in the second column and the relative vouchers numbered to correspond.
  - (8) Unless the balance of the account agrees with the balance appearing in the Managership bank account the Reconciliation Statement must be completed.
  - (9) The Summary must be completed.
-

**Supreme Court (Mental Health) Rules 1965**

**Sch.**

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Rule 40.

Form 11  
[Heading as in Form 1]  
Statement of Account No.

|   |      |                             |
|---|------|-----------------------------|
| <u>BALANCE FROM PREVIOUS ACCOUNT (carry to Summary)</u> |      | <u>\$ c</u>                 |
| DATES   | No.  | RECEIPTS *                  |
|   |      | <u>\$ c</u>                 |
|   |      | Carry to Summary \$         |
| <hr/>   |      |                             |
| <u>PAYMENTS</u>   |      |                             |
| DATES   | No.  | I MAINTENANCE               |
|   |      | <u>\$ c</u>                 |
|   |      | Carry to Summary \$         |
|   |      | <u>\$ c</u>                 |
| II MISCELLANEOUS  |      | <u>\$ c</u>                 |
|   |      | Carry to Summary \$         |
| <hr/>   |      |                             |
| RECONCILIATION STATEMENT                                |      | SUMMARY.                    |
| Balance in Managership                                  | \$ c | Balance on Previous         |
| Bank Account  |      | Account                     |
| Cash in Manager's Hands                                 |      | Receipts                    |
|   |      | <u>                    </u> |
|   |      | Total Receipts \$           |
|   |      | <u>                    </u> |
| Cheque drawn and  |      | Maintenance                 |
| Unpresented   |      | Miscellaneous               |
|   |      | <u>                    </u> |
|   |      | Total Payments \$           |
|   |      | <u>                    </u> |
|   |      | Balance due from            |
|   |      | Manager                     |
|   |      | <u>                    </u> |

\*Details of rentals not collected by an agent must be set out, item by item, in Form 12.



Rule 40. Form No. 12. 19 No.

STATEMENT OF RENTS COLLECTED BY MANAGER.\*

| Address of Property | Tenant's Name | Rent Payable and Whether Weekly, Monthly, etc. | Arrears at Opening Day of Account \$ c | Total Rent Due (including arrears) \$ c | Rent Received \$ c | Arrears at Closing Date of Account \$ c | Remarks, e.g., Change of Tenant, Rent, Insurance, etc. (with dates) |
|---------------------|---------------|--|--|---|--------------------|---|---|
|                     |               |  |  |   |                    |   |   |

CARRY TO "RECEIPTS" ON MANAGER'S ACCOUNT FORM \$

STATEMENT OF EXPENDITURE ON PROPERTY PAID BY MANAGER

| Date | No. | Address of Property Concerned | Nature of Expenditure and to Whom Paid | \$ c |
|------|-----|-------------------------------|--|------|
|      |     |                               |  |      |

CARRY TOTAL TO "MISCELLANEOUS" ON MANAGER'S ACCOUNT FORM \$

\* This form should not be used where an agent collects the rents.

**Sch.**

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Rule 40

Form 13

Report of Registrar Passing Accounts of Manager

[Heading as in Form 1]

C.D., the Manager of the estate of A.B. the abovenamed incapable person, having brought in pursuant to Rule 40 of the *Supreme Court (Mental Health) Rules, 1965*, his accounts of the rents and profits of the said estate and of the disbursement in respect thereof for the period from the                      day of                      19                      to the                      day of

19                      , I have taken an account in the presence of                      and I find and report as follows: —

1. After taking into consideration the disallowances hereinafter mentioned, the sum of                      was found to be the balance due from the Manager on the passing of the said accounts, which balance the Manager has retained to meet coming expenditure (or as the case may be).
2. The Manager received out of the rents and profits of the said estate the sum of                      and from general receipts the sum of                      which sums, together with the balance carried forward from the last account, amount to the sum of                      .
3. The Manager properly disbursed from the said estate the sum of                      .
4. I have disallowed items                      and                      of the disbursements on the grounds that                      .
5. I allow the costs of the Manager of passing the said accounts at the sum of                      including disbursements, and direct that such costs be paid out of the said estate.

DATED the                      day of                      19                      .

REGISTRAR

(Note: *This Form may be varied and adapted as the circumstances require.*)

*[Schedule amended by Gazette 14 December 1979 p.3876.]*

**Notes**

<sup>1</sup> This is a compilation of the *Supreme Court (Mental Health) Rules 1965* and includes the amendments referred to in the following Table.

**Compilation table**

| <b>Citation</b>                                 | <b>Gazettal</b>           | <b>Commencement</b>      |
|---|---------------------------|--------------------------|
| <i>Supreme Court (Mental Health) Rules 1965</i> | 28 Sep 1965<br>p. 3373-99 | 14 Dec 1979<br>p. 3874-6 |