

PART 76

MATRIMONIAL PROCEEDINGS

Contents of this Part

Scope of this Part	Part 76.1
Definitions	Part 76.2
Application of other parts of these rules	Part 76.3
Commencement of proceedings	Part 76.4
Application for Dissolution of marriage prior to expiration of two years of marriage	Part 76.5
Applications for court orders	Part 76.6
Service	Part 76.7
Substituted Service	Part 76.8
Service out of the jurisdiction	Part 76.9
Acknowledgment of Service – service within the jurisdiction	Part 76.10
Response to claim	Part 76.11
Proceedings in default	Part 76.12
Trial of Issues	Part 76.13
General provisions relating to dissolution of marriage	Part 76.14
Rescission of decrees nisi	Part 76.15
Where petition is not pursued	Part 76.16
Transitional Provisions	Part 76.17
Forms	Part 76.18

Scope of this Part

- 76.1 This Part deals with proceedings for:
- (a) dissolution of marriage;
 - (b) nullity of marriage;
 - (c) presumption of death and dissolution of the marriage;
 - (d) custody, maintenance, education of and access to children;
 - (e) division of property; and
 - (f) all other matrimonial proceedings

Definitions

76.2 In this Part:

“answer” means the document setting out the response of a respondent to an application for a decree of dissolution of marriage, a decree of presumption of death and dissolution of the marriage or a

decree of nullity of marriage and includes a cross petition, and is to be read as being a defence, where any other Part of these rules applies.

“claimant”

includes a person who makes a claim in matrimonial proceedings.

“child of the family”

means a child of one party to the marriage who has been accepted as one of the family by the other party.

“matrimonial proceedings” means:

1. proceedings for dissolution of marriage;
2. proceedings for nullity of marriage;
3. proceedings for presumption of death and dissolution of marriage;
4. proceedings for custody, maintenance, education of and access to children;
5. proceedings for division of property; and
6. all other proceedings authorized by the Matrimonial Causes Act and any other Act which authorises the pursuit of a matrimonial cause.

[Note: “matrimonial cause” is defined in the Matrimonial Causes Act]

“party”

means a petitioner, a claimant, an applicant, a respondent, a defendant, an intervener or an attorney-at-law on record for a party unless any rule specifies or it is clear from the context that it relates to the client or to the attorney-at-law only.

“petition”

is the document by which all proceedings for dissolution of marriage, nullity of marriage and presumption of death and dissolution of the marriage are commenced and is a statement of case.

“petitioner”

means the party to a marriage who applies to the Court for a decree of dissolution of marriage, a decree of nullity of marriage or a decree of presumption of death and dissolution of the marriage and is to be regarded as being a claimant where any other Part of these rules applies

“relevant child”

means a child who is:

- (a) a child of both parties to the marriage in question; or
- (b) a child of one party to the marriage who has been accepted as one of the family by the other party,

and in paragraphs (a) and (b) of this definition “child” includes an adopted child and a child of a void marriage.

“respondent”

means the party to a marriage who defends or otherwise responds to the petitioner’s application for a decree of dissolution of marriage, a decree of nullity of marriage or a decree of presumption of death and dissolution of marriage including a party who cross petitions, and is to be regarded as being a defendant where any other Part of these rules applies.

“statement of case”

includes a petition, an answer or an answer and cross petition.

Application of other parts of these rules

76.3 (1) Subject to paragraph 2 the other provisions of these rules, with the necessary modifications, apply to matrimonial proceedings.

(2) The following provisions of these rules do not apply to matrimonial proceedings:

Part 3	Rule 3.10	Time Documents Forms except where specifically included in this Part
Part 7		Service of Court process out of the jurisdiction
Part 8	Rule 8.11	How to start proceedings Special requirements applying to claims for personal injuries
	Rule 8.12	Realtor claims
	Rule 8.13	Service of claim form
	Rule 8.14(2)(a)	Period for service of Admiralty claim form
Part 12		Default Judgments
Part 13		Setting aside or varying default judgments
Part 56		Administrative Law
Part 57		Habeas Corpus

Part 58	Bail Application
Part 59	Proceedings by and against the Crown
Part 60	Appeals to the Court
Part 61	Appeals to the Court by way of Case Stated
Part 66	Mortgage Claims
Part 68	Probate
Part 69	Defamation Claims
Part 70	Admiralty Claims
Part 71	Commercial Division
Part 73	Transitional provisions

Commencement of proceedings

- 76.4(1) Proceedings for dissolution of marriage, for nullity of marriage and for presumption of death and dissolution of the marriage must be commenced by petition in forms No. MP 1, MP 2 and MP 3, respectively.
- (2) A petition for dissolution of marriage must state:
- a) the names of the parties to the marriage, the place of the marriage and the marriage officer who performed the marriage;
 - b) the date and place of birth of each of the parties;
 - c) if the parties have lived as man and wife in the jurisdiction, the principal permanent address within the jurisdiction at which they lived;
 - d) where it is alleged that the Court has jurisdiction based on domicile, the country in which the petitioner and the respondent respectively are domiciled;
 - e) where it is alleged that the Court has jurisdiction based on residence, the places of residence and the date on which the same commenced, of the petitioner and respondent respectively throughout the previous period of one year ending with the date of presentation of the petition;
 - f) the occupation and residence of the petitioner and of the respondent at the time of the presentation of the petition;
 - g) whether there is any relevant child of the marriage and, if there is, the name and date of birth of each relevant child;
 - h) whether to the knowledge of the petitioner there is any child living at the date of the presentation of the petition, being the child of the petitioner or the child of the respondent born during the marriage as a result of the union by that party with a person outside of the marriage and, if so, the name, date of birth and address of the child, or so much of this information as is known;
 - i) if it be the case, that there is a dispute whether a child is a child of the family;
 - j) whether or not there are or have been any proceedings in any court in Jamaica or elsewhere with reference to the marriage or to any relevant child or between the petitioner and the respondent with reference to any property of either or both of them and, if so-

- (i) the nature of the proceedings
 - (ii) the date and effect of any decree or order
 - (iii) in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order;
 - k) if it be the case, that the marriage has broken down irretrievably;
 - l) the circumstances in which the marriage is alleged to have broken down irretrievably, including the date of separation; and
 - m) whether or not there is a reasonable likelihood of cohabitation being resumed.
- (3) A petition for a decree of nullity of marriage must state the matters set out in rule 76.4(2) (a) to (j) and the facts on which it is being alleged that the marriage should be annulled.
- (4) A petition for a decree of presumption of death and dissolution of marriage must state the matters set out in rule 76.4(2)(a) to (j) and:
- a) the last place at which the parties to the marriage cohabited;
 - b) the circumstances in which the parties ceased to cohabit;
 - c) the date when and place where the respondent was last seen or heard of;
 - d) the steps which have been taken to ascertain the location of the respondent;
 - e) the reason for suspecting that the respondent is deceased;
 - f) whether there are any surviving children of the respondent and whether it is likely that they or any of them are entitled to succeed to any part of or the whole of the respondent's estate, whether by reason of a will or on intestacy; and
 - g) the full details including the names, ages and addresses of all persons who have or are likely to have an interest in the respondent's estate.
- (5) A petition for a decree of dissolution of marriage, for a decree of nullity of marriage or for a decree of presumption of death and dissolution of the marriage may include a claim for maintenance, custody, education of or access to children, division of property and any other relief relating to matters concerning the marriage, the union between the parties or any relevant children.
- (6) In any case where the claim is for maintenance, custody, education of or access to children, the petition must contain a statement in general terms of the financial resources of both parties.
- (7) Where a petition for a decree of dissolution of marriage, for a decree of nullity of marriage or for a decree of presumption of death and dissolution of the marriage discloses that there are relevant children who are minors (or are under the age of twenty-one and are being educated in an institution of tertiary education), the petition must be accompanied by an affidavit signed by the petitioner.

- (8) The affidavit accompanying the petition must set out particulars of the arrangements for the care, maintenance, education and upbringing of any relevant child and must state whether any relevant child is suffering from any disability and the nature of such disability.
- (9) The affidavit accompanying the petition must be in form no. MP 4.
- (10) A petition must conclude with:
 - (a) a summary of the relief being claimed; and
 - (b) the names and addresses of the persons to be served, indicating if any of them is a person under disability.
- (11) A petition must be signed by the petitioner.
- (12) A petition is presented when it is filed in the registry.
 - (a) The petitioner must file the original and sufficient copies of the petition to facilitate service;
 - (b) Upon filing, the registry must give to the petition a number to distinguish it, seal as many copies of it as are required for service and certify them to be true copies;
 - (c) The original petition must be retained and recorded in the registry and the date on which it was filed and sealed must be recorded on it, signifying the date of the commencement of the proceedings.
- (13) Any document filed or issued out of the registry in connection with the same proceedings or any further proceedings connected with the same proceedings and parties, must have placed on it the distinguishing number allotted by the registry to the petition.
- (14) Every document commencing matrimonial proceedings must, upon being filed, have included on it a notice containing the information set out in the notes to the applicable form and, must contain a certificate of truth.
- (15) Nothing in these rules precludes the commencement of any matrimonial proceedings, other than proceedings for the dissolution of marriage, nullity of marriage and presumption of death and dissolution of marriage, by fixed date claim form.

(Rule 8.1(4)(f) indicates the procedure where an enactment specifies the originating process)

Application for Dissolution of marriage prior to expiration of two years of marriage

- 76.5(1) Permission to present a petition for dissolution of marriage before the expiration of two years from the date of marriage, must be sought by application supported by affidavit under part 11.
- (2) The affidavit accompanying the application under rule 76.5(1) must:
- (i) provide proof of the marriage;
 - (ii) set out the special circumstances that are relied upon to justify the hearing of the petition;
 - (iii) give particulars of any attempted reconciliation;
 - (iv) state whether there is any reasonable likelihood of a reconciliation;
 - (v) state whether there are any relevant children and, if so, give particulars of their names, dates of birth and the circumstances relating to their care, upbringing and maintenance, including their education; and
 - (vi) exhibit a copy of the proposed petition.
- (3) Within 14 days of being served with an application under rule 76.5(1) the respondent may file an affidavit in response and the applicant may reply to the respondent's affidavit within 7 days of being served with such affidavit.
- (4) No further affidavit may be filed without the permission of the court.
- (5) The application under rule 76.5(1) must be set down for hearing before a Judge in chambers who may make such order or give such direction as seems fit, having regard to all the circumstances.

Applications for court orders

- 76.6(1) Where in any petition or fixed date claim form a part of the relief claimed is custody, maintenance, education of or access to children or division of property, such relief may be granted upon an application for court orders.
- (2) It is the duty of the parties in all applications and responses, to set out in detail the facts and circumstances in support of or in opposition to the claim being made in the application.

[Note: Part 11 applies to all applications for court orders]

Service

- 76.7(1) Unless otherwise authorized by this Part, service of:
- (i) a petition for dissolution of marriage; or
 - (ii) a petition for nullity of marriage,
- must be effected personally upon the respondent.

- (2) A petition for a decree of presumption of death and dissolution of the marriage must be served on any person who has or is likely to have an interest in the respondent's estate and by two publications in consecutive weeks in a newspaper that is published in the place where the respondent was last known to reside.
- (3) If it is intended to pursue the application in default, an application for the court's order or directions in relation thereto, must be filed by the petitioner and served in the manner set out in paragraph 2.
- (4) A petitioner, applicant or claimant who intends to serve a document commencing proceedings may accompany the process server for the purpose of identifying the person to be served.
- (5) Service by a petitioner, applicant or claimant is not to be regarded as proper service.
- (6) Service is proved by an affidavit made by the person who served the document setting out:
 - (i) the document served.
 - (ii) where service is on an individual, the date time and place of service.
 - (iii) where service is on an individual, the means by which the person served was identified.
 - (iv) where service is by advertisement, the date or dates of the advertisement and the newspaper in which it was published and exhibiting same.
 - (v) where service is by fax or by any other means, full particulars of the service or the manner in which it is believed that notice of the proceedings or application is likely to have come to the party intended to be served.
 - (vi) such other information as is necessary to satisfy the court that the document served is likely to have come to the attention of the party intended to be served or that there has been compliance with an order giving permission to effect service by the method adopted.

Substituted Service

- 76.8 (1) An application for permission to substitute for personal service some other method of service within the jurisdiction may be made without notice.
- (2) An application for permission to substitute another form of service for personal service must be accompanied by an affidavit setting out:
 - (a) the reason for seeking to adopt a form of service other than personal service;

- (b) the attempts, if any, which have been made to effect personal service;
 - (c) if no attempts have been made to effect personal service, the reasons for declining to do so; and
 - (d) the reasons for believing that the proposed method of service is likely to cause the document to come to the attention of the person to be served;
- (3) On an application for permission to substitute another form of service for personal service within the jurisdiction the Court may permit the applicant to effect service by:
- (a) delivering the document to be served to a relative or other person connected to the party to be served, if satisfied that the document is reasonably likely to come to the attention to the party to be served;
 - (b) advertisement; or
 - (c) such other method as to the court is likely to bring the existence and nature of the proceedings to the attention of the party to be served.

Service out of the jurisdiction

- 76.9(1) A petition or fixed date claim form or other document in a matrimonial proceeding may be served out of the jurisdiction without permission.
- (2) The respondent or defendant in such proceedings must file an acknowledgement of service within the following periods after service of the petition or fixed date claim form:

place of service	time for acknowledgement of service
USA, Canada and Caribbean States	28 days
Europe (not including Russia)	42 days
Elsewhere	56 days

Acknowledgment of Service – service within the jurisdiction

- 76.10 A respondent or defendant served within the jurisdiction with a document commencing proceedings must file an Acknowledgment of Service in form No. MP 5 within 14 days of being served.

Response to claim

76.11(1) The respondent or defendant in any matrimonial proceeding may answer or defend the claim by filing and delivering to the petitioner, claimant or applicant:

- (i) an answer or an answer with cross petition in form No. MP 6, in response to a petition;
- (ii) an affidavit or affidavits, in response to the affidavit accompanying a fixed date claim form or any application for court orders; or
- (iii) a defence, where the question arising on a fixed date claim form and supporting affidavit is likely to involve a substantial dispute of fact.

(2) The time for filing any of the documents in paragraph (1) is within 28 days of being served with the document commencing the proceedings.

(3) Upon the expiration of the time limited for the filing of an acknowledgment of service or:

- (i) an answer in response to a petition;
- (ii) an affidavit or defence in response to a fixed date claim form; or
- (iii) an affidavit in response to an application for court order,

the petitioner, claimant or applicant, as the case may be, is at liberty to proceed in default against the party served.

Proceedings in default

76.12(1) The petitioner for a decree of dissolution of marriage may proceed in default by filing an application to dispense with a hearing in form No. MP 7 accompanied by affidavit evidence of:

- (i) the marriage;
- (ii) service of the petition;
- (iii) the failure to acknowledge service or file an answer;
- (iv) the fact that there are no relevant children of the marriage or, where there are children of the marriage, attesting to arrangements which have been made for their care, maintenance and upbringing sufficient to satisfy a Judge that in the circumstances the welfare of the relevant children is adequately protected;
- (v) the circumstances giving rise to the breakdown of the marriage;
- (vi) attempts at reconciliation without success; and

- (vii) service of the application on any party who has filed acknowledgement of service.
- (2) A proposed decree nisi in form No. MP 8 with all necessary modifications relating to the circumstances of the case, must be filed with the application.
- (3) The application to dispense with the hearing of the petition must be referred to a Judge who may consider the application on paper and may:
 - (a) dispense with the hearing of the petition;
 - (b) grant, defer or refuse the decree nisi;
 - (c) determine that a hearing, whether of the petition or any claim being pursued, is required and, if so, schedule such hearing ; or
 - (d) issue such directions for the future conduct of the proceedings as may seem fit.
- (4) Where the decree nisi is being granted the Judge must:
 - (a) certify that, having regard to the evidence on oath of the applicant, the arrangements for the maintenance, care and upbringing of any relevant children are satisfactory or are the best that may be devised in the circumstances; and
 - (b) make such order as to the custody, care, maintenance and upbringing of any relevant children as, in all the circumstances, may seem fit;
- (5) When granting a decree nisi, the Judge must sign the proposed decree filed in connection with the application to dispense with the hearing of the petition, after which the decree is to be sealed by the court and issued to the petitioner.
- (6) Where an application on a fixed date claim form or an application for court orders remains undefended, at the first hearing or any subsequent hearing, the Judge, if satisfied that the defendant or respondent has had due notice of the claim, may consider the application and make such order as seems fit, including an order giving directions for the future conduct of the proceedings.

Trial of Issues

- 76.13(1) In any case where an answer, defence or affidavit is filed in response to any document commencing proceedings, the registrar must schedule:
 - (a) a case management conference, where the response is in the form of an answer, an answer and cross petition or a defence; or

- (b) a date for the hearing, in the case of any other application.
- (2) Where any matrimonial proceeding is to be heard, a party may request of the registrar that the hearing be conducted at a sitting of the court other than in Kingston.
- (3) Every such request must be considered by the registrar having regard to:
 - (a) the address of the parties;
 - (b) the location of the attorneys-at-law having conduct of the proceedings on behalf of each party;
 - (c) the location of actual or potential witnesses;
 - (d) the facilities for trial of the issues at the suggested location;
 - (e) the date scheduled for hearing;
 - (f) the financial circumstances of either or both of the parties to the proceedings; and
 - (g) any other facts which in the opinion of the registrar ought properly to be considered.
- (4) With or without a request made pursuant to rule 76.12(2), the registrar may schedule the hearing of any matrimonial proceeding or issue in such proceedings to be held in any place where a circuit court is held.
- (5) Notice of the hearing at the scheduled place must be given to all other parties.

General provisions relating to dissolution of marriage

- 76.14(1) A marriage in respect of which a decree nisi is granted is not dissolved until a decree absolute has been granted by the Court.
- (2) A decree nisi for nullity of marriage must be in form No. MP 9.
- (3) A decree nisi for dissolution of marriage on any ground other than for nullity of marriage must be in form No. MP 8.
- (4) There must be a period of at least six (6) weeks between the grant of the decree nisi and the application for decree absolute, during which period, any person who shows by evidence to the satisfaction of the Court that there is reasonable grounds to believe that the decree nisi should not have been granted, may make application to have the decree nisi set aside.

- (5) Any person who intends to make an application under paragraph (4) must first file an acknowledgment of service.
- (6) The court may extend or abridge the time for the making of any application under paragraph (4), if it is satisfied that there is good reason for doing so.
- (7) Either party to the marriage may make application for a decree nisi to be made absolute.
- (8) An application to make a decree nisi absolute must be accompanied by affidavit evidence attesting to the following:
 - (a) whether after diligent search, there has been any application to set aside the grant of the decree nisi;
 - (b) whether there was at the date of the decree nisi and whether there is at the time of the application to make the decree nisi absolute, any relevant children;
 - (c) if there are relevant children who are over the age of eighteen but are under the age of twenty-one years, whether the said children or any of them are pursuing tertiary education;
 - (d) the arrangements for the maintenance, care and upbringing of the relevant children, if any, or otherwise as provided by Section 27(1)(b) of the Matrimonial Causes Act; and
 - (f) the reasons for any delay in excess of one year from the date of the decree nisi for the making of the application for decree absolute;
- (9) A proposed decree absolute in form No. MP 10 with all necessary modifications applicable to the circumstances of the case must be filed with the application to make a decree nisi absolute.
- (10) The application for a decree absolute must be referred to a Judge who may consider same on paper and may:
 - (a) grant or defer the granting of the decree absolute;
 - (b) refer the determination of any issue relating to the custody, care, maintenance and upbringing of any relevant child to be heard separately and give directions for the future conduct of such a hearing; or
 - (c) issue such directions for the future conduct of the proceedings as may seem fit.

- (11) Where the decree absolute is being granted the Judge must:
 - (a) certify that, having regard to the evidence on oath of the applicant, the arrangements for the maintenance, care and upbringing of the relevant children are satisfactory or are the best that may be devised in the circumstances; and
 - (b) make such order as to the custody, care, maintenance and upbringing of any relevant children as, in all the circumstances, may seem fit;
- (12) When granting the decree absolute, the Judge must sign the proposed decree filed in connection with the application, after which the decree is to be sealed by the Court and issued to the party who made the application.
- (13) The death of a party to a marriage after the grant of a decree nisi but before the grant of the decree absolute operates to finalise the dissolution of the marriage and, upon receiving satisfactory affidavit evidence of the fact of the death of the party, the registrar must endorse the records to that effect.

Rescission of decrees nisi

- 76.15(1) An application to rescind a decree nisi under section 18 of the Matrimonial Causes Act must be supported by affidavit evidence of the facts and circumstances upon which the Court is being asked to grant the order being sought.
 - (2) The application may be made by the parties to the marriage jointly, in which event service of notice of the application is not required.
 - (3) Where the application is being made by one party to the marriage, seven days notice of the application must be given by the applicant to the respondent.
 - (4) An application to rescind a decree nisi under section 19 of the Matrimonial Causes Act must be supported by affidavit setting out in detail the facts being relied upon in support of the application.
 - (5) Where, at the hearing of such an application, it appears that the question for decision is likely to involve a substantial dispute of fact, the court may make such order or give such directions for the future conduct of the proceedings as may seem fit.
 - (6) Any person who intends to make an application under section 19 of the Matrimonial Causes Act must first file an acknowledgment of service.

Where petition is not pursued

- 76.16 Where any petition for dissolution of marriage, nullity of marriage or presumption of death and dissolution of the marriage is not pursued for a period of one year, the registrar may refer same to a Judge who may make such order or give such directions relating to the proceedings as may be just.

Transitional Provisions

- 76.17(1) This Part applies to all matrimonial proceedings commenced on or after the 18th day of September 2006.
- (2) The Matrimonial Causes Rules, 1998 will continue to apply to all matrimonial proceedings commenced prior to September 18, 2006, until April 16 2007.
- (3) Subject to paragraph (4), as of April 16 2007, this Part applies to all matrimonial proceedings.
- (4) In exceptional circumstances the Matrimonial Proceedings Rules, 1998 may continue after April 16 2007 to apply to proceedings commenced prior to September 18, 2006 with the permission of a Judge.

Forms

- 76.18 The forms in Appendix 5 together with such other applicable practice forms as are provided for must be used in matrimonial proceedings with necessary modification.

