

FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT

No. 43

THURSDAY, 24th DECEMBER

2009

[LEGAL NOTICE NO. 102]

DOMESTIC VIOLENCE DECREE 2009 (Decree No. 33 of 2009)

Domestic Violence (Prescribed Forms) Rules 2009

FOLLOWING consultations with the Chief Magistrate and in exercise of the powers conferred upon me by Section 80 of the Domestic Violence Decree 2009, I make the following Rules—

Short Title and Commencement

1.—(1) These Rules may be cited as the Domestic Violence (Prescribed Forms) Rules 2009.

(2) These Rules commence on the date of commencement of the Domestic Violence Decree 2009.

Interpretation

2. In these Rules unless the context otherwise provides—

“document” means an application for a restraining order, affidavit or notice.

“registrar” means the registrar or deputy registrar of the Criminal Division.

“registry” means the criminal registry and includes an officer of the Criminal Division;

Application for restraining order

3.—(1) An application for an order of domestic violence restraining order must be in accordance with Form No. 1.

(2) The Court shall issue an interim domestic violence restraining order against the respondent in accordance with Form No. 2

(3) The Court shall issue a domestic violence restraining order against the respondent in accordance with Form No. 3.

Complaints Notice

4. The Complaints Notice must be in accordance with Form No. 4.

Legal Practitioners Information about service

5. Any legal practitioner who receives instructions to act for a person referred to in the Decree, must provide that person with the information provided under Form No. 6.

Requirements with respect to documents

6.—(1) For the purposes of this rule, “printed” includes—

(a) typewritten;

(b) machine printed; and

(c) reproduced by mechanical, electronic, photographic or other means.

(2) A document that is to be registered or filed must comply with sub rule (3) unless—

- (a) the nature of the document renders compliance impracticable;
- (b) the document is in accordance with a form that –
 - (i) is prescribed in these Rules; and
 - (ii) provides for the document to be set out in a manner that does not comply with subrule (3);
- (c) under these Rules, the document must comply with a different requirement;

(3) A document must—

- (a) be durable, white opaque paper of good quality, of the size known as ISO A4;
- (b) be legible and without erasures, blotting out or material disfigurement;
- (c) be—
 - (i) mechanically or electronically printed; or
 - (ii) if the document is a printed form made available by the court, completed by being hand – printed in ink;
- (d) have a margin at the left hand side of each page of not less than 30 millimetres;
- (e) have a space of not less than 6 millimetres between each line and the next;
- (f) be set out on only 1 side of the paper; and
- (g) have each page numbered.

Filing of documents

7.—(1) An application filed in, or in connection with, proceedings if—

- (a) it is delivered to the filing registry; or
- (b) with the leave of the court, it is delivered to a registry that is appropriate in the circumstances,

and the document is accepted for filing by the court.

(2) The registrar shall cause the date of filing to be marked on every document that is filed.

(3) Where a document has been filed, each copy of the document for service shall bear the seal of the court in which the document was filed.

(4) A reference in these Rules to the filing of a document or the taking of a step in proceedings by a person includes a reference to the filing of the document or the taking of the step on behalf of the person.

Refusal to accept form for filing

8.—(1) A registrar may refuse to accept a document for filing, if—

- (a) it is not in proper form in accordance with these Rules;
- (b) it is not executed in the way required by these Rules;

- (c) the document, on its face, appears to the registrar to be an abuse of process, frivolous, scandalous or vexatious, or
- (d) the document is filed in connection with pending proceedings in another court or another registry, and the registry is not the appropriate registry.

(2) If a registrar refuses to accept a document for filing, the person who sought to file the document may apply for the court for review of the registrar's decision.

(3) The registrar must accept the application for review of a decision not to accept a document for filing.

(4) An application under subrule (3) must be made *ex parte*, in the first instance.

Service on the other party

9. A document that is filed must be served on each other party to the proceedings as soon as practicable after filing.

Forms

10.—(1) In these Rules, a reference to a form by number is a reference to the form so numbered in the Schedule.

(2) Strict compliance with the forms in the Schedule is not required and substantial compliance is sufficient.

(3) Where a person referred to in a form in the Schedule is not represented by a lawyer, a reference in the form to the lawyer for the person shall be read as a reference to the person.

(4) A document that is prepared in accordance with the forms in the Schedule must be completed in accordance with any directions specified in the form, but the directions may be omitted from the document.

(5) The Chief Justice may authorise the use of appropriate computer software for the purpose of reproducing a form in the Schedule.

(6) A form that is prepared—

- (a) in accordance with a form in the Schedule; and
- (b) with the use of authorised computer software,

is taken to be completed in accordance with the form in the Schedule.

(7) Unless the contrary intention appears, a form pursuant to these Rules may be signed or given by a party or by the solicitor for the party.

(8) Where the lawyer for a party to proceedings is required or permitted to sign a form it shall be sufficient for that purpose if it is signed or given—

- (a) by a partner or agent of, or lawyer employed by, that lawyer;
- (b) where the lawyer for the party is employed in the Legal Aid Commission, any other lawyer employed in or by that Commission.

Filing a document by facsimile transmission

- 11.—(1) Any application to be filed may be lodged by facsimile transmission if—
- (a) the matter is urgent; and
 - (b) it is not practicable to lodge the document in the registry in any other way.
- (2) A document to be filed must not be lodged by facsimile transmission in any other circumstances without the leave of the court.
- (3) Unless the court otherwise directs, if a document is lodged by facsimile transmission it must be accompanied by a letter to the registrar signed by the unrepresented party or the party's legal representative, explaining—
- (a) the nature and immediacy of the harm that may result if the document is not lodged by facsimile transmission; and
 - (b) any other circumstances that justify lodging the document by facsimile transmission instead of lodging it in the registry.
- (4) If any form is lodged by facsimile transmission, the party filing the document must lodge the original document in the registry within 7 days after it was sent by facsimile transmission.

Form of affidavit

- 12.—(1) Unless the court otherwise orders, any evidence of service to be given must be given by affidavit.
- (2) An affidavit of service must be in accordance with Form No. 5.

Made this 1st day of December 2009.

A. H. GATES
Chief Justice