

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF SUPREME COURT RULES

Regulations 2003, No. 47

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 2003, No. 47*

Rules of Court under the *Supreme Court Act*

WE, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, in pursuance of section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 14 July 2003.

B. F. MARTIN CJ

D. N. ANGEL J

D. MILDREN J

S. G. THOMAS J

S. R. BAILEY J

T. J. RILEY J

Judges of the Supreme Court
of the Northern Territory of Australia

* Notified in the *Northern Territory Government Gazette* on 17 September 2003.

AMENDMENTS OF SUPREME COURT RULES

1. Service of other process by leave

Rule 7.06 of the Supreme Court Rules is amended by inserting after paragraph (b) the following:

"(ba) a notice under an Act;"

2. Repeal and substitution

Chapter 7 of the Supreme Court Rules is repealed and the following substituted:

"CHAPTER 7 – CRIMINAL PROPERTY FORFEITURE RULES

"ORDER 92 – FORFEITURE OF PROPERTY

"92.01 Interpretation

"In this Order –

'the Act' means –

- (a) the *Criminal Property Forfeiture Act*; and
- (b) where the context permits – the *Proceeds of Crime Act 2002* of the Commonwealth.

"92.02 Application

"(1) The rules in Chapter 1 apply to the practice and mode of procedure in relation to matters dealt with by this Chapter to the extent to which –

- (a) they are applicable to;
- (b) they are not expressly excluded by; or
- (c) they do not conflict with,

the rules in this Chapter.

"(2) The following rules and orders in Chapter 1 do not apply to a matter dealt with by this Chapter:

- (a) Order 4 (except for rule 4.02);
- (b) Order 10;
- (c) Order 13;

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- (d) Order 30;
- (e) Order 31;
- (f) Order 45;
- (g) Order 48.

"92.03 Application ex parte

"(1) An ex parte application is to be supported by an affidavit setting out the facts and circumstances on which the application is based.

"(2) The ex parte application is to be heard by a Judge who may make such order or declaration that the Judge thinks fit.

"92.04 Application on notice

"(1) If the party the subject of an application enters an appearance, the Registrar must list the matter for case flow management by a Judge and the Judge may make the orders he or she thinks fit in order to bring the matter to trial as expeditiously as possible.

"(2) If the party the subject of an application does not enter an appearance within 21 days of service of the application, the applicant may request the Registrar to list the matter for a hearing before a Judge, and if the Judge is satisfied –

- (a) of the matters set out in the affidavit; and
- (b) that service of the application and affidavit was properly effected on the party the subject of the application,

the Judge may make the order or declaration sought, or any other order or declaration that the Judge thinks fit in the circumstances.

"92.05 Application in relation to deceased person

"(1) If an application relates to a deceased person or to the property of a deceased person, notice of the application, together with a supporting affidavit, is to be served on the personal representative of the deceased person.

"(2) If there is no personal representative or the personal representative cannot be located, the applicant may seek directions from the Judge who is responsible for case flow management of the matter.

"92.06 Evidence by affidavit

"(1) Unless by leave of the Court, evidence in chief in a matter (not including an examination) under the Act is to be by affidavit.

Supreme Court Rules

"(2) Subrule (1) does not preclude the cross-examination or re-examination of a deponent on his or her affidavit.

"(3) Except as provided by the Act, when notice of an application is served on a party the notice is to be accompanied by a copy of all affidavit evidence in relation to the application.

"(4) The Judge may limit the scope of the evidence that is provided to a party if the Judge is satisfied that the protection of an ongoing investigation requires it, or for other good reason.

"92.07 Affidavit of service

"Whenever a notice under the Act or an application is served on a party who makes no appearance in the matter, the party serving the notice or application must file in the Court an affidavit of service.

"92.08 Discovery

"(1) Discovery of documents is only by order of the Judge and is limited to the matters disclosed in the application and the affidavit in support of the application.

"(2) The Judge may further limit the scope of discovery if the Judge is satisfied that the protection of an ongoing investigation requires it, or for other good reason.

"(3) Interrogatories are not available in a matter under the Act.

"92.09 Examination

"(1) An examination under the Act is to be conducted by the Master unless the Judge responsible for case flow management of the matter elects to conduct the examination himself or herself.

"(2) If the Judge makes an order for the examination of a person under the Act, the applicant in relation to the order is to serve a copy of the order on the person.

"(3) If the person to be examined fails to attend the examination, rule 66.06 applies.

"92.10 Secrecy provisions in relation to examinations and matters generally

"(1) A examination is to be conducted in closed court.

"(2) A file of a matter under the Act, and a transcript of an examination under the Act, is not to be publicly available for perusal and is to be prominently marked accordingly by the Registrar.

Supreme Court Rules

"(3) A person who wishes to inspect a file or transcript referred to in subrule (2) must apply in writing to the Registrar and the application must be approved by the Registrar before inspection is allowed.

"(4) The Registrar may allow a person to inspect a file or a part of a file or a transcript referred to in subrule (2) only if the Registrar is satisfied that disclosure of the information to the person would not, in the circumstances, result in a contravention of the Act.

"(5) An application form for access to a file is to be filed on the court file in relation to the matter, whether approved by the Registrar or refused.

"(6) If access is provided to a person, the file or transcript cannot be removed from the immediate vicinity of the registry and photocopying (or other methods of reproduction) of documents is not permitted, other than note-taking by hand.

"92.11 Damages

"When making an application for a restraining order under the Act, the applicant must give the usual undertaking as to damages unless the Court otherwise orders.

"92.12 Registration of interstate orders

"An interstate restraining order or interstate forfeiture order may be registered by filing a copy of the order, sealed by the court that made the order, in the Registry.

"92.13 Objection

"If an objection is filed to the restraint of property or an application is made for the release of forfeited property, the Registrar must give notice of the objection or application to the Solicitor for the Northern Territory or to the Australian Government Solicitor, as the case requires.

"92.14 Restraining order ceasing to have effect

"(1) If a restraining notice under the Act ceases to have effect, the applicant in relation to the order must, within 2 days after the order ceases to have effect, file in the Registry a notice that the order has ceased to have effect.

"(2) A notice filed in accordance with subrule (1) is to have the seal of the Court affixed by the Registrar and the person who filed the notice must, as soon as practicable, serve a copy of the notice on each person who was served with the restraining order.

Supreme Court Rules

"(3) A party who is affected by a restraining order may, if the restraining order has ceased to have effect, apply to the Court for an order to that effect.

"(4) The serving of a notice under subrule (2), or the making of an order under subrule (3), has no effect in relation to land that is subject to a restraining order until any relevant statutory restrictions notice in the land register is removed by the Registrar-General.

"92.15 Forms

"(1) An ex parte application is to be in the form of Form 92A.

"(2) An application on notice is to be in the form of Form 92B.

"(3) An application to inspect the court file or transcript of an examination is to be in the form of Form 92C."

Supreme Court Rules

3. Repeal and substitution

Forms 92A, 92B and 92C are repealed and the following substituted:

"FORM 92A

Rule 92.15(1)

20 No.

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

IN THE MATTER OF
the *Criminal Property
Forfeiture Act* and
IN THE MATTER of
CD,

BETWEEN

AB

Applicant

and

CD

Respondent

EX PARTE APPLICATION

The applicant applies for the following declaration(s) and/or order(s) against:

Dated: [e.g. 15 June 20 .]

[Signed]

Filed:

The Applicant's address for service is:

[The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.]

Supreme Court Rules

"FORM 92B

Rule 92.15(2)

20 No.

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

IN THE MATTER OF
the *Criminal Property
Forfeiture Act* and
IN THE MATTER of
CD,

BETWEEN

AB

Applicant

and

CD

Respondent

APPLICATION

TO: [*Respondent*]

TAKE NOTICE that the applicant applies for the following declaration(s) and/or order(s) against you:

Directions as to the hearing of this application will be given by the Court on [*date*] at [*time*].

Dated: [*e.g.* 15 June 20 .]

[*Signed*]

The Applicant's address for service is:

[*The form is to include, in a Schedule if necessary, details of any property in respect of which an order is sought.*]

If you intend to defend the proceeding, you must give notice of your intention by filing an appearance within 21 days of being served with this notice. You or your solicitor may file the appearance by filing a 'Notice of Appearance' in the Registry of the Supreme Court in the Supreme Court Building, State Square, Darwin, or, if this notice is issued by the Alice Springs Registry, in the Alice Springs Registry of the Supreme Court, Law Courts Building, Parsons Street, Alice Springs.

If you do not file an appearance within the proper time, the applicant may obtain an order or declaration against you without giving you any further notice.

Supreme Court Rules

"FORM 92C

Rule 92.15(3)

20 No.

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT

IN THE MATTER OF
the *Criminal Property
Forfeiture Act* and
IN THE MATTER of
CD,

APPLICATION TO INSPECT FILE

I, [*full name and address*] apply to
inspect the court file in the matter of [*name of party*]
under the *Criminal Property Forfeiture Act*.

I certify that my reason for this application is [*state grounds – e.g. I am a legal
practitioner retained to provide advice to in the matter*].

I acknowledge that the *Criminal Property Forfeiture Act* provides a penalty of
1 000 penalty units or 5 years imprisonment for a breach of the secrecy provisions
of the Act.

Signed

Dated: [*e.g. 15 June 20* .]

Application approved/not approved

Registrar

Date

