

NORTHERN TERRITORY OF AUSTRALIA

Regulations 1992, No. 74*

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*, hereby make the following Rules of Court.

Dated 14 December 1992.

AUSTIN ASCHE C.J.

W.J.F. KEARNEY J.

BRIAN MARTIN J.

D.N. ANGEL J.

D. MILDREN J.

Judges of the Supreme
Court of the Northern
Territory of Australia

AMENDMENTS OF THE SUPREME COURT RULES

1. JUDGMENT FOR RECOVERY OF DEBT, DAMAGES TO PROPERTY

Rule 21.03(3) of the Supreme Court Rules is amended by omitting all words after "assessment shall" and substituting ", unless the Court otherwise orders, be made by the Master in accordance with Order 51".

2. COSTS CONSEQUENCES OF FAILURE TO ACCEPT

Rule 26.08 of the Supreme Court Rules is amended -

- (a) by omitting from subrule (2) "a solicitor and client basis" and substituting "the indemnity basis"; and

* Notified in the *Northern Territory Government Gazette* on 13 January 1993.

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- (b) by omitting from subrule (3) and (4) "a party and party basis" (wherever occurring) and substituting "the standard basis".

3. ORDER FOR PARTICULAR DISCOVERY

Rule 29.08 of the Supreme Court Rules is amended by inserting before subrule (1) the following:

"(1A) This rule applies to all proceedings in the Court."

4. TIME FOR SERVICE

Rule 33.08(3) of the Supreme Court Rules is amended by omitting "7 days" and "3 days" and substituting in both places "42 days".

5. REPEAL AND SUBSTITUTION

Rule 33.11 of the Supreme Court Rules is repealed and the following substituted:

"33.11 MEDICAL REPORT ADMISSIBLE

"(1) This rule does not apply in the case of the trial of a proceeding before a Judge with a jury.

"(2) A medical report a copy of which was served under this Order is admissible as evidence of the opinion of the medical expert who gave the report and, where the medical expert's oral evidence of a fact upon which the opinion was based would be admissible, as evidence of that fact.

"(3) Subject to subrules (4), (5) and (6), a medical report may be used in evidence by the party who served a copy of the report or by a party on whom the copy was served.

"(4) If a medical report is tendered by the party who served a copy of the report pursuant to rule 33.08(1) or (2), that party shall cause the medical expert who gave the report to attend at the trial of the proceeding to be cross-examined if notice that such attendance is required is served on the party by any other party not later than 42 days before the commencement of the trial, and if the medical expert does not attend for cross-examination the Court may order that the medical report be not received in evidence.

"(5) Where a medical report is served later than 42 days before -

- (a) where the place of trial is Darwin - the commencement of the trial; or

- (b) where the place of trial is a place other than Darwin - the commencement of the sittings at that place during which the proceeding has been set down for trial,

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the medical expert who gave the report shall, unless the Court otherwise orders, attend for cross-examination at the trial, and if the medical expert does not attend for cross-examination the Court may order that the medical report be not received in evidence.

"(6) If a medical report is tendered by a party on whom a copy of the report was served -

- (a) that party shall cause the medical expert who gave the report to attend at the trial of the proceeding to be cross-examined, and if the medical expert does not attend the Court may order that the medical report be not received in evidence;
- (b) if the report is received in evidence and the medical expert is cross-examined by a party against whom the report is received, at the conclusion of the cross-examination the party who tendered the report may examine the expert as if by re-examination.

"33.12 NO EVIDENCE UNLESS DISCLOSED IN REPORT

"Except with the leave of the Court or by consent of the parties, a party shall not, except in cross-examination, adduce evidence from a medical expert on medical matters concerning the plaintiff unless that evidence is disclosed by a medical report served in accordance with this Order."

6. DEFINITIONS

Rule 44.01 of the Supreme Court Rules is amended by adding at the end the following:

"(2) In this Order 'evidence' means the substance of all of the material evidence to be given by the expert witness in evidence in chief if called as a witness for a party, including, where applicable, the facts, assumptions and reasoning on which the evidence to be given is based and any reports, works, learned writings or other information on which the expert witness has relied or intends to rely for the expression of his opinion."

7. APPLICATION

Rule 44.02 of the Supreme Court Rules is amended by omitting subrule (2) and substituting the following:

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"(2) In a proceeding in which the plaintiff claims damages for bodily injury, the evidence of a person as an expert witness, if not subject to Order 33, is subject to this Order."

8. SERVICE OF STATEMENT OF EXPERT EVIDENCE

Rule 44.03 of the Supreme Court Rules is amended -

- (a) by inserting in subrule (1)(a), after "Master", the words "or a Registrar";
- (b) by omitting from subrule (1)(b) "7 days" and substituting "one month";
- (c) by inserting after subrule (2) the following:

"(2A) In a proceeding in which the plaintiff claims damages in respect of death resulting from medical or the like treatment or advice given in respect of a physical or mental condition of the deceased, then, unless the Court otherwise orders, a party who is required to serve a statement under subrule (1) may exclude from the statement -

- (a) any expression of opinion on the question of liability; and
- (b) any statement in respect of a fact on which the opinion is based and which relates only to the question of liability."; and
- (d) by omitting from subrule (3) all words after "unless" and substituting "the evidence of the witness is contained in a statement served under this Order by the party".

9. SPECIAL PROCEDURE

Rule 45.05 of the Supreme Court Rules is amended -

- (a) by omitting from subclause (6) all words after "on application" and substituting "made to the Court in accordance with Form 45A"; and
- (b) by omitting subrule (7) and substituting the following:

"(7) On application to the Court under subrule (6), if the application is heard before the Master, the Master may, as appropriate -

- (a) where he has authority to give the judgment sought by the plaintiff, hear and determine the application;
- (b) by consent of the defendant, give the judgment;
- (c) refer the application to a Judge for hearing and determination; or

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- (d) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise."

10. MASTER MAY MAKE OR RECOMMEND ORDER

Rule 48.16 of the Supreme Court Rules is amended by omitting subrule (2).

11. CONSEQUENCE OF FAILURE TO ATTEND

Rule 48.22(1)(a) of the Supreme Court Rules is amended by omitting all words after "want of prosecution" and substituting the following:

"and striking out a defendant's -

- (i) appearance;
- (ii) defence; and/or
- (iii) counterclaim; or".

12. INTERPRETATION

Rule 48.33 of the Supreme Court Rules is amended by omitting from subrule (1) the definition of "Master" and substituting the following:

"'meeting' means a Status Assessment Meeting to which rule 48.19 refers or a review meeting to which rule 48.29 refers;"

13. NEW RULE

The Supreme Court Rules are amended by inserting after rule 48.33 the following:

"48.34 POWER OF REGISTRAR

"(1) In this rule, 'Master' does not include a Registrar.

"(2) Notwithstanding rule 48.01, a Registrar does not have the power to dismiss a proceeding for want of prosecution or to strike out a defendant's appearance, defence and/or counterclaim.

"(3) Where a meeting is convened by or held before a Registrar, he may give such directions for the conduct of the proceeding as he thinks fit and Order 34 (other than rule 34.02), with the necessary changes, applies to a direction so given.

"(4) A Registrar may, where a party fails to attend a meeting or conference convened or held before the Registrar, furnish to the Master a report signed by the Registrar as to the party's failure to attend the meeting or conference.

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"(5) On receiving a report under subrule (4), the Master may give to the party failing to attend the meeting referred to in the report notice of a date, time and place when and at which that party is to attend before him to show cause why -

- (a) if the party is a plaintiff - his claim should not be dismissed for want of prosecution; or
- (b) if the party is a defendant - his appearance, defence and/or counterclaim should not be struck out.

"(6) If the Master gives notice under subrule (5), he shall also give a copy of the notice to all other interested parties and those parties may attend and be heard at the meeting.

"(7) At the date, time and place fixed by notice in accordance with subrule (5) or at any adjourned date thereafter, the Master may, where the party failing to attend before the Registrar -

- (a) was the plaintiff - dismiss the plaintiff's claim for want of prosecution; or
- (b) was the defendant - strike out the defendant's appearance, defence and/or counterclaim.

"(8) Rules 48.20(3), (4) and (5), 48.21, 48.22(2) and 48.24, with the necessary changes, apply to and in relation to a notice or party referred to in this rule."

14. ABSENCE OF PARTY

Rule 49.02 of the Supreme Court Rules is amended -

- (a) by omitting from subrule (1)(b) "proceeding; or" and substituting "proceeding;";
- (b) by omitting subrule (1)(c) and substituting the following:
 - "(c) adjourn the trial; or
 - (d) where the party absent -
 - (i) is the plaintiff - dismiss the plaintiff's claim; or

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(ii) is the defendant -

(A) and the claim is one for which default judgment may be entered under these Rules - strike out the defendant's defence and enter judgment accordingly; or

(B) give summary relief where, in the Court's opinion, such relief may be or ought to be given."; and

(c) by inserting after subrule (1) the following:

"(1A) In exercising a power under subrule (1)(b) or (1)(d), the Court may direct that the proceeding continue before the Master and may make such orders as shall be necessary to give effect to that direction."

15. MODE OF ASSESSMENT

Rule 51.01 of the Supreme Court Rules is amended by omitting all words after "assessed shall", and substituting " , unless the Court otherwise orders, be assessed by the Master".

16. AUTHORITY

Rule 77.01 of the Supreme Court Rules is amended -

(a) by omitting from subrule (1)(a) "make an order; and" and substituting "make an order, including a judgment or order, in the exercise of the inherent jurisdiction of the Court;";

(b) by inserting after subrule (1)(b)(vi) the following:

"(via) the *Supreme Court Act*, section 16 (transfer of proceedings to Local Court);";

(c) by omitting from subrule (1)(b)(viii) "(order nisi where caveat lodged)." and substituting "(order nisi where caveat lodged); and";

(d) by adding at the end of subrule (1) the following:

"(c) hear and determine -

(i) an application under an Act for payment or transfer to a person of any money or securities in Court, including interest; or

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(ii) an application for or relating to the sale of property by auction or private contract, and for payment into court and investment of the purchase money.";

(e) by omitting from subrule (2)(a) "disability;" and substituting "disability; or";

(f) by omitting from subrule (2)(b) "parties; or" and substituting "parties."; and

(g) by omitting from subrule (2) paragraph (c).

17. LIMITATION ON AUTHORITY

Rule 77.02(4) of the Supreme Court Rules is amended by omitting paragraph (c) and substituting the following:

"(c) subject to paragraph (g), an application or proceeding for an injunction or other orders under section 69 of the Act, other than -

(i) the appointment of a receiver by way of equitable execution;

(ii) an injunction ancillary or incidental to equitable execution; or

(iii) an application made under rule 21.04(1) for judgment for an injunction;".

18. APPEAL

Rule 77.05 of the Supreme Court Rules is amended by adding at the end the following:

"(9) In this rule 'Master' includes a Registrar.".

19. REPEAL

Rule 77.06 of the Supreme Court Rules is repealed.

20. DEFINITIONS

Rule 82.01 of the Supreme Court Rules is amended by omitting the definition of "Registrar" and substituting the following:

"'Registrar' means -

(a) in Orders 83 and 84 - the Registrar of the Supreme Court;

(b) in Order 85 - the Registrar of the Supreme Court in his capacity as Registrar of the Court of Appeal; and

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(c) in Order 86 - the Registrar of the Court of Criminal Appeal constituted in accordance with section 407 of the Criminal Code,

and, in all cases, includes the Master;".

21. FURTHER AMENDMENTS

The Supreme Court Rules are further amended as provided for in the Schedule.

22. REPEAL OF RULES RELATING TO WITNESSES EXPENSES

The Rules of Court made under the repealed Act on 30 May, 1963 and notified in the *Northern Territory Government Gazette* on 12 June 1963 (Statutory Rules 1963, No. 77) are repealed.

SCHEDULE

Rule 21

AMENDMENTS OF RULES

Rule or Form	Amendment	
	omit	substitute
Rule 1.09 - definition of "Deputy Master"	the whole definition	
- definition of "Registry"	the whole definition	"'Registrar' includes the Master; 'Registry' means the Office of the Court at Darwin or Alice Springs;"
Rule 6.001	"Companies (Northern Territory) Code"	"Corporations Law"
Rule 6.06(1)(c) and (2)(c)(i)	"Companies (Northern Territory) Code"	"Corporations Law"
Rule 48.20(5)	"requested"	"required"
Rule 49.01(2)(b)	"plaintiff"	"defendant"

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Rule or Form	Amendment	
	omit	substitute
Rule 58.01 - definition of "Commercial Causes List"	"Deputy Master"	"Registrar"
Rule 63.40(3)(b)	"general"	
Rule 66.01 - definition of "judgment for the payment of money into court"	"Deputy Master"	"Registrar"
Rule 84.11(4) and (5)	"the Master or"	
Rule 87.01 - definition of "Registrar"	the whole definition	
Rule 87.02	"Master" and "Registrar" (wherever occurring)	"Registrar of the Supreme Court" and "Registrar of the Work Health Court" respectively
Rule 87.03(1) and (2)	"Master"	"Registrar of the Supreme Court"
Rule 87.04	"Registrar"	"Registrar of the Work Health Court"
Rule 89.08(1) and (2)	"Master"	"Registrar of the Supreme Court"
Rules 7.02(4), 7.10(a)(iv), 7.12(1)(a) and (3), 7.15, 28.01, 28.04(1) and (2), 28.05(2)(b), 36.05(3), 41.08(4) and (5), 41.13 (1)(a), 41.15(1) and (2), 41.16(a), 42.06(1) and (2), 42.09(2) and (5), 46.04(5), 46.05.1(2)(b)(i), 46.06, 48.01(1),	"Deputy Master" (wherever occurring)	"Registrar"

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Rule or Form	Amendment	
	omit	substitute
48.16(2), 48.33(2), 58.03(1), 58.04(2), 60.02(1) and (2), 60.03(1), (2) and (3), 60.06(1), (2), (3), (4), (6) and (7), 60.07, 64.12, 65.04(1)(a) and (b) and (2) 66.02(4), 68.04(3)(a), 72.11(1), 72.14(2) and (3), 73.11(3), 75.07(1) and (2), 80.02(1) and (2), 80.03(1), 80.05(1), (2) and (3), 81.05(2) and (4) and 81.06		
Rule 83.05(3), 83.17, 83.18(1), 84.26, 85.07(1) and (2), 85.14(6), 85.15(2) and 85.17(1)(b)	"Master" (wherever occurring)	"Register"
Rule 84.06(3)(c), 84.08, 84.09(3), 84.10(6) and (7)(b), 84.13(2), 84.23(7)(a) and 84.24	"Master or"	
Schedule Forms 5A to 54 (inclusive), 7A, 11A, 15A, 19A, 41B, 42A, 42B, 42C, 42D, 60A to 60L (inclusive), 68A to 68C (inclu- sive), 71B, 71C, 72J, 72K, 72L and 84D	"Deputy Master" and "DEPUTY MASTER" (wherever occurring)	"Registrar" and "REGISTRAR" respectively
Form 77A	the whole form	