

# The Court of the Seneschal Civil Rules, 2019

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# The Court of the Seneschal Civil Rules, 2019

THE COURT OF THE SENESCHAL, in exercise of the powers conferred upon it by sections 15 and 18 of the Reform (Sark) Law, 2008<sup>a</sup>, and of all other powers enabling it in that behalf, hereby orders:-

## PART I

### THE OVERRIDING OBJECTIVE

#### Statement and application of overriding objective.

1. (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.
  - (2) Dealing with cases justly includes, so far as is practicable -
    - (a) ensuring that the parties are on an equal footing,
    - (b) saving expense,
    - (c) dealing with the case in ways which are proportionate-
      - (i) to the amount of money involved,
      - (ii) to the importance of the case,

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<sup>a</sup> Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. IX of 2017; Ordinance Nos. II and VI of 2015; No. XI of 2017; No. XIII of 2018.

(iii) to the complexity of the issues, and

(iv) to the financial position of each party,

(d) ensuring that it is dealt with expeditiously and fairly,  
and

(e) allotting to it an appropriate share of the Court's  
resources, while taking into account the need to allot  
resources to other cases.

(3) The Court must seek to give effect to the overriding objective  
when it -

(a) exercises any power given to it by these Rules, or

(b) interprets any rule.

(4) The parties are required to help the Court to further the  
overriding objective.

## PART II

### SERVICE OF DOCUMENTS

#### Service on an individual.

2. (1) Subject to paragraph (2), service of a document on an  
individual shall be effected by the Prévôt -

- (a) where the individual is in Sark –
  - (i) personally, or
  - (ii) by leaving the document at the individual's usual or last-known residence in Sark,
- (b) where the individual is in Guernsey, by transmitting the document to the Sergeant for service in accordance with the provisions of Rule 2 of the Royal Court Civil Rules<sup>b</sup> ("the Guernsey Rules"), or
- (c) where the individual is in Alderney, by transmitting the document to the Alderney Greffier for service in accordance with the provisions of Rule 1 of the Court of Alderney Civil Rules, 2005 ("the Alderney Rules").

(2) Where –

- (a) in the action to which the document relates, or
- (b) in a document upon which the action is founded or which relates to the action or the subject-matter thereof (being a document to which the individual was party),

the individual has given an address for service, the Prévôt may effect service –

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<sup>b</sup> Order of the Royal Court No. IV of 2007; amended by No. II of 2008; No. IV of 2009.

- (i) where the address for service is in Sark, by leaving the document there, or
- (ii) where the address for service is in Guernsey or Alderney, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules, as the case may be.

**Service on a legal person or unincorporated body.**

3. (1) Subject to paragraph (3), service of a document on a legal person shall be effected by the Prévôt -

- (a) by leaving the document at any place of business in Sark of the legal person,
- (b) if the legal person has a registered office in Guernsey or Alderney, at that registered office, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules, as the case may be.

(2) Subject to paragraph (3), service of a document on an unincorporated body shall be effected by the Prévôt –

- (a) on any partner, member of the committee or other

governing body, or any manager, director or other similar officer, of the unincorporated body, in the same manner as if service were being effected on such person as an individual in accordance with Rule 2(1), or

- (b) by leaving the document at any place of business in Sark of the unincorporated body.

(3) Where –

- (a) in the action to which the document relates, or
- (b) in a document upon which the action is founded or which relates to the action or the subject-matter thereof (being a document to which the legal person or the unincorporated body to be served was a party),

the legal person or the unincorporated body, as the case may be, has given an address for service, the Prévôt may effect service –

- (i) where the address for service is in Sark, by leaving the document there, or
- (ii) where the address for service is in Guernsey or Alderney, by transmitting the document to the Sergeant for service in accordance with the Guernsey Rules, or to the Alderney Greffier for service in accordance with the Alderney Rules, as the case may be.

(4) For the avoidance of doubt, a document served on a partnership or firm may be served in the name of the partnership or firm and need not name each individual partner.

**Service on the Chief Pleas of Sark.**

4. Service of a document on the Chief Pleas of Sark or any Committee thereof may be effected by the Prévôt leaving the document at the offices of the Chief Pleas.

**Prévôt to state mode of service.**

5. The Prévôt, having effected service of a document in accordance with Rule 2, 3 or 4, or having attempted so to effect service, shall record the mode of service as follows –

- (a) in the case of service in accordance with Rule 2(1)(a)(i), 2(2)(a)(i), 3(1)(a), 3(3)(a)(i) or 4, with the letter "A",
- (b) in the case of service in accordance with Rule 2(1)(a)(ii), 2(2)(b)(i), 3(2)(b) or 3(3)(b)(i), where the Prévôt left the document at the address in question with a person who appeared to the Prévôt to be a reliable adult and who undertook to bring the document to the attention of the person to be served, with the letter "B",
- (c) in the case of service, in accordance with these Rules, in Guernsey or Alderney, by replicating the mode of service stated in respect of the document by the Sergeant or by the Alderney Greffier, as the case may

be, and

- (d) otherwise, with the letter "C".

**Effect of Prévôt's statement of service.**

6. A statement of service recorded under Rule 5 -

- (a) with the letter "A" or "B", shall enable the matter to proceed in all respects,

- (b) with the letter "C", shall enable the matter to be tabled, but nothing more unless, when the matter is tabled -

- (i) the party who was to be served appears in person or by an Advocate, or

- (ii) the Court is satisfied that the party who was to be served has notice of the document or that service of the document was good,

in either of which cases the matter may proceed in all respects.

**Substituted service within the jurisdiction.**

7. (1) Where service within the jurisdiction of a document in the manner required by these Rules would, but for the provisions of this Rule, be impracticable or would entail undue expense, the Court may make such order for substituted or other service, whether by notice, advertisement or otherwise, as it thinks just.

(2) A party applying for an order under paragraph (1) shall file an affidavit in support of the application, except where the application relates to a small claim in which case the applicant shall file a written statement in support of the application.

**Service out of the jurisdiction.**

8. (1) Without prejudice to the provisions of these Rules enabling service of a document in Guernsey or Alderney, the Court may give leave to effect service of a document out of the jurisdiction.

(2) The Court shall not make an order under paragraph (1) unless it is satisfied, by affidavit or otherwise, that the matter to which the document relates-

(a) is properly justiciable before the Court, and

(b) is a proper one for service out of the jurisdiction.

(3) An order of the Court under paragraph (1) shall state -

(a) the form, manner and time in which, and conditions subject to which, service is to be effected, and

(b) the minimum period which must elapse between the date of service and the date on which the matter may be tabled.

(4) Where the Court makes an order under paragraph (1), proof of

service in accordance with the order shall be by affidavit or, where service was effected by the Prévôt, by the statement of the Prévôt.

**Service in other manner permitted by law.**

9. The provisions of Rules 2 to 8 -

- (a) are in addition to, and not in derogation from, the provisions of any enactment or rule of court relating to the service of documents, and
- (b) do not apply where the Court orders service in some other manner.

PART III  
COMMENCEMENT OF PROCEEDINGS

**Cause to be tabled.**

10. (1) In every action a cause shall be tabled before the Court.

(2) The cause shall contain -

- (a) a statement of the material facts on which the plaintiff relies for the claim, but not the evidence by which those facts are to be proved,
- (b) a statement of the relief sought (including, where damages are claimed, details of the amount of such damages, so far as reasonably possible), and

- (c) except where the summons served on the defendant is signed by an Advocate, a statement of truth signed by the plaintiff.

**Summons to be served on defendant.**

**11.** (1) A plaintiff intending to table a cause shall give notice of the fact to the defendant by serving a summons on the defendant.

(2) The summons -

- (a) shall be served at least 2 clear days before the day of the tabling of the cause,
- (b) shall state the day and time appointed for the tabling of the cause,
- (c) shall contain, or have annexed to it, a copy of the cause, and
- (d) shall be signed by the plaintiff or by an Advocate on behalf of the plaintiff.

**Plaintiff's address for service.**

**12.** (1) The cause shall state the plaintiff's address for service.

(2) If at any time the Court is satisfied that service cannot be effected at the address for service given by the plaintiff it may, on the application supported by affidavit of any defendant to the action, order that the action be

dismissed.

(3) The Court may at any time order the plaintiff to give an address for service or to amend the address for service previously given.

(4) The plaintiff may at any time change the address for service given, but the change is not effective until written notice is given to the Greffier and to all other parties to the action.

(5) The plaintiff's address for service, subject to any amendment or change made to it under paragraphs (3) or (4), shall remain valid until the action is terminated (whether by final execution of the judgment or otherwise).

**Failure to appear.**

13. (1) If the plaintiff does not appear at the day and time appointed for the tabling of the cause, the Court may dismiss the action.

(2) If the defendant does not appear when the cause is tabled, the Court may, subject to the provisions of Rule 6, give judgment against the defendant.

**Defendant's intention to defend.**

14. (1) Where the cause is tabled and the defendant intimates the intention to defend the action, time starts to run accordingly for the purpose of these Rules.

(2) The Court may, at any time after the defendant has intimated the intention to defend the action, if it thinks fit –

(a) appoint a date for the final hearing of the action, or for

any interim hearing, or for any step in the proceedings,

- (b) direct that the action, or any part thereof, should be heard by the Court sitting in Guernsey, or
- (c) refer the action, or any part thereof, to a Lieutenant Seneschal, pursuant to section 8(3) of the Reform (Sark) Law, 2008.

**Defendant's address for service.**

15. (1) The defendant shall, on the first tabling of the cause, give an address for service.

(2) If the defendant does not comply with paragraph (1), the Court may give judgment against the defendant.

(3) If at any time the Court is satisfied that service cannot be effected at the address for service given by the defendant it may, on the application supported by affidavit of the plaintiff, give judgment against the defendant.

(4) The Court may at any time order the defendant to give an address for service or to amend an address for service previously given.

(5) The defendant may at any time change an address for service given in the action; but such change will only be effective once written notice of it is given to the Greffier and to all other parties to the action.

(6) The defendant's address for service, and any amendment or change validly made thereto under paragraph (4) or (5), shall remain valid until the

action is terminated (whether by final execution of the judgment or otherwise).

**Defences.**

16. (1) Subject to paragraph (2), the defendant shall table the defences to the action on such date, not earlier than 28 days after the tabling of the cause, as the Court shall order.

(2) The date on which defences must be tabled in respect of any action may be varied by the Court if it thinks fit -

- (a) upon application by the defendant, or
- (b) following agreement between the parties to the action.

**Judgment in default of defences.**

17. (1) Where the defendant does not table defences in accordance with Rule 16, the Court may give judgment against the defendant.

(2) Where the Court has given judgment in default of defences pursuant to paragraph (1), the Court may subsequently set aside such judgment, or vary its terms, where -

- (a) an Advocate has certified, or the Court is otherwise satisfied, that the defendant has a real prospect of successfully defending the action, or
- (b) it appears to the Court that there is some other good reason why the judgment should be set aside or varied or the defendant allowed to defend the action.

(3) When considering whether to set aside or vary a judgment in default of defences, the matters to which the Court must have regard include whether the application for the judgment to be set aside or varied has been made promptly.

(4) An application for a judgment in default of defences to be set aside or varied must be supported by affidavit evidence of the reasons for the application.

## PART IV

### SUMMARY JUDGMENT

#### Application of Part IV.

18. Part IV shall apply to -

- (a) any claim by a plaintiff against a defendant, and
- (b) any counterclaim by the defendant against the plaintiff,

and, unless the context otherwise requires, references to a plaintiff or a defendant shall include a party bringing or defending a claim in those proceedings.

#### Power to give summary judgment.

19. (1) Subject to paragraph (2), a party to an action may, at any time after the cause is tabled and the defendant intimates the intention to defend the action, apply to the Court for summary judgment against any other party on the whole of the claim or on a particular issue ("claim or issue").

(2) Where the application relates to a small claim, the provisions of Part V apply instead of this Part IV.

(3) The grounds of an application for summary judgment shall be that -

(a) the plaintiff has no real prospect of succeeding on the claim or issue, or

(b) the defendant has no real prospect of successfully defending the claim or issue,

and there is no other compelling reason why the claim or issue should be disposed of at trial.

**Notice of application for summary judgment.**

20. (1) A party intending to apply for summary judgment under Rule 19 shall give notice of such intention to all other parties to the action by service of a notice upon each of them.

(2) Such notice -

(a) shall be served at least 4 clear days before the date of the application,

(b) shall state the date and time appointed for the hearing of the application,

(c) shall be signed by the applicant or by an Advocate on

behalf of the applicant,

- (d) shall contain, or have annexed to it, a copy of the application and of the affidavit required under Rule 21, and
- (e) shall contain a statement of the effect of the application, if successful.

**Application to be supported by affidavit.**

21. An application for summary judgment shall be supported by an affidavit -

- (a) verifying the facts on which the claim or issue is based,
- (b) identifying concisely any point of law or provision in a document on which the applicant relies, and
- (c) stating the applicant's belief that on the evidence the respondent has no real prospect of succeeding on the claim or issue or, as the case may be, of successfully defending the claim or issue to which the application relates, and the reasons for such belief, and
- (c) stating that the applicant knows of no other reason why the claim or issue should be disposed of at a trial.

**Judgment of Court.**

22. On the hearing of an application under Rule 19, the Court may -

- (a) dismiss the application, or
- (b) give judgment on the whole of the claim or on one or more particular issues,

and may make any other order, including the stay of execution of any judgment and the attachment of conditions, as the Court thinks just.

**Respondent may show cause against application.**

23. (1) The respondent to an application made under Rule 19 may show cause against the application by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may order a respondent showing cause (or, where the respondent is a body corporate or a partnership or other unincorporated body, any director, partner, member of the committee or other similar governing body, manager or other similar officer thereof, or any person purporting to act in any such capacity) -

- (a) to produce any document and, if the Court considers it appropriate, to produce an affidavit in support thereof, and
- (b) if it appears to the Court that there are special circumstances making it desirable, to attend and be examined on oath.

**Further conduct of action.**

24. (1) Where an application for summary judgment (whether or not successful) has been made under Rule 19, the Court may make such order as to the further conduct of the action as it considers just.

(2) Where an application under Rule 19 is successful, the applicant may proceed with the claim or counterclaim, as the case may be, as respects the remainder thereof or against any other defendant thereto.

PART V  
SMALL CLAIMS

**Small claims.**

25. (1) Subject to paragraph (4), an action solely for the recovery of a fixed sum not exceeding £10,000 shall be known as a small claim.

(2) Notwithstanding the provisions of paragraph (1), an action solely for the recovery of a fixed sum exceeding £10,000 may, with the consent of all parties and with leave of the Court, be treated as a small claim for the purposes of these Rules and may be disposed of accordingly.

(3) The consent of a party given for the purposes of paragraph (2) is irrevocable except with the leave of the Court.

(4) At any time after commencement of an action for a small claim and before final judgment the Court may, having regard to the complexity of the issues and notwithstanding the size of the claim -

(a) order that the claim shall cease to be treated as a small

claim for the purposes of these Rules, and

- (b) make such order as the Court thinks fit with regard to the disposal of the claim in accordance with these Rules.

**Extent to which these Rules apply.**

26. (1) Subject to paragraph (2), the following provisions of these Rules do not apply to small claims –

- (a) Rule 59 (payment into court or offer to settle),
- (b) Rules 60 and 61 (interim payments),
- (c) Part X (disclosure and inspection).

(2) The Court may order –

- (a) that any of the provisions mentioned in paragraph (1) apply, or
- (b) that any other provisions of these Rules do not apply,

in any particular small claim as the Court thinks fit.

**Procedure for small claims.**

27. (1) Without prejudice to any other power of the Court to determine the procedure in any claim, the Court may adopt any method of proceeding at a hearing of a small claim that it considers to be fair and, without

limitation, the following rules of procedure shall apply.

(2) The Court may, if it considers it appropriate to do so in the interests of justice, dispense with the strict rules of evidence at a hearing (whether relating to written or oral evidence, or to hearsay, or otherwise).

(3) No expert may give evidence, whether written or oral, at a hearing without the permission of the Court.

(4) The Court need not, if it thinks fit, take evidence on oath.

(5) The Court may limit cross-examination.

(6) Hearings will be in open court unless the Court directs otherwise (having regard to any agreement between the parties or any application by either party for the matter to be heard in private).

(7) The Court may in particular -

(a) ask questions of any witness itself (whether on examination in chief or on cross-examination) before allowing any other person to do so,

(b) refuse to allow cross-examination of any witness until all the witnesses have given evidence in chief,

(c) limit cross-examination of a witness to a fixed time or to a particular subject or issue, or both.

**Attendance of parties at small claims hearings.**

28. (1) If a party who does not attend a final hearing -
- (a) has given the Court written notice at least 7 clear days before the date of the hearing that he or she will not attend, and
  - (b) has, in that notice, requested the Court to decide the claim in his or her absence,

the Court will take into account that party's statement of case and any other documents he or she has filed and may decide the claim on that basis.

- (2) If a plaintiff does not -
- (a) attend the hearing, or
  - (b) give written notice of the plaintiff's intention otherwise to proceed with the claim,

the Court may strike out the claim.

- (3) If -
- (a) a defendant does not -
    - (i) attend the hearing, or
    - (ii) give any written notice of the defendant's

intention to defend the claim, and

(b) the plaintiff either -

(i) does attend the hearing, or

(ii) gives the Court written notice of the plaintiff's intention to proceed,

the Court may decide the claim on the basis of the evidence of the plaintiff alone.

(4) If neither party attends or gives any written notice of that party's intentions, the Court may strike out the claim and any defence and counterclaim.

(5) The Court may, if all parties agree, deal with the claim without a hearing.

**Setting aside of small claims judgments.**

29. (1) A party -

(a) who was neither present nor represented at the final hearing of the claim, and

(b) who has not given written notice to the Court of intention to proceed or defend, as the case may be,

may apply to the Court for an order that a judgment under this Part shall be set aside and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this Rule must make the application within a period of 14 days after the day on which notice of the judgment was served.

(3) The Court may grant an application to set aside if, in the Court's opinion, the applicant -

(a) had a good reason for not attending or being represented at the hearing or giving written notice of the applicant's intentions, and

(b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside -

(a) the Court must fix a new hearing for the claim,

(b) the hearing may take place immediately after the hearing of the application to set the judgment aside, and

(c) the hearing may be dealt with by the Court which set aside the judgment.

#### **Costs in small claims.**

30. (1) In a small claim the Court may not order a party to pay a sum to another party in respect of that other party's costs except -

- (a) any fixed administrative costs reasonably attributable to issuing the claim,
  - (b) such further costs as the Court may otherwise order to be paid by a party who has behaved unreasonably, frivolously or vexatiously or who has otherwise abused the process of the Court.
- (2) The Court may also order a party to pay all or part of -
- (a) any court fees paid by another party,
  - (b) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing,
  - (c) a sum not exceeding any amount which may be specified by the Court in a practice direction for any loss of earnings by a party or witness due to attending a hearing or to staying away from work for the purpose of attending a hearing,
  - (d) the reasonable costs of an expert witness where the Court has given leave for that witness to give evidence,

and the provisions of this paragraph apply in respect of a small claim in substitution for the corresponding provisions of the Court of the Seneschal (Costs and Fees) Rules, 2015.

(3) The provisions of paragraph (1) also apply to any fee or reward for acting on behalf of a party to the proceedings charged by an Advocate.

(4) Notwithstanding the provisions of this Rule, the Court may not order a party to pay costs in a small claim which would exceed the costs which the Court could order that party to pay if the claim was not a small claim.

**Representation of parties in small claims.**

31. For the avoidance of doubt, a small claim may be presented by a party in person or by an Advocate acting on behalf of that person.

PART VI  
INTERPLEADER

**Interpleader relief.**

32. Where a person is under a liability in respect of a debt or in respect of any money or personality and is, or expects to be, sued for or in respect thereof by two or more persons making adverse claims thereto, the person under liability may apply to the Court for relief by way of interpleader.

**Procedure on interpleader application.**

33. (1) An interpleader application shall be commenced by summons and is without prejudice to the Court's powers under Rules 43 and 44.

(2) The summons -

(a) shall be served at least 3 clear days before the date

appointed for the hearing of the application,

- (b) shall state the date and time appointed for such hearing,
- (c) shall be signed by the party claiming interpleader relief or by an Advocate on behalf of such party,
- (d) shall contain or have annexed to it a copy of the application.

(3) An interpleader application must be supported by evidence that the applicant -

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into Court or to dispose of it as the Court may direct.

#### Hearing of interpleader claim.

34. (1) Where, on the hearing of an interpleader application, all the persons making adverse claims to the subject-matter in dispute ("the adverse claimants") appear, the Court may order -

- (a) that any adverse claimant be made a defendant in any

claim pending with respect to the subject-matter in dispute in substitution for, or in addition to, the applicant for interpleader relief, or

- (b) that an issue between the adverse claimants be stated and tried and may direct which of the adverse claimants is to be plaintiff and which defendant.

(2) Where -

- (a) all the adverse claimants consent, or any of them so requests, or
- (b) the question at issue between the adverse claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the adverse claimants and make an order accordingly on such terms as may be just.

(3) Where an adverse claimant, having been served with an interpleader summons, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the adverse claimant, and all persons claiming under the adverse claimant, forever barred from prosecuting the claim against the applicant for interpleader relief, but such an order shall not affect the rights of the adverse claimants as between themselves.

**Power to stay proceedings.**

35. Where a defendant in any action applies for interpleader relief under

this Part, the Court may, by order, stay all further proceedings in the action.

**Ancillary powers of Court on interpleader claim.**

36. (1) Subject to the preceding rules of this Part, the Court may, in or for the purposes of any interpleader proceedings, make such order as to costs or any other matter as it thinks just.

(2) The Court, on trial of an interpleader issue, may give such judgment or make such order to dispose of all questions arising in the interpleader proceedings as it thinks just.

(3) Where the claimant, having been served in an interpleader issue with a summons, does not appear at the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may dismiss the action.

(4) Where the claimant or any party so requests, the Court may summarily determine the issue.

PART VII  
COUNTERCLAIMS AND CONSOLIDATION ETC.

**Counterclaims.**

37. (1) A defendant may, in the defences tabled in the action, make a counterclaim against the plaintiff.

(2) The counterclaim shall have effect as a cross-action, enabling the Court to pronounce a final judgment in the action both on the plaintiff's claim and on the counterclaim.

(3) The counterclaim must, unless prepared by an Advocate, contain a statement of truth signed by the counterclaimant.

(4) The Court may order that a counterclaim be struck out or tried separately if satisfied that the subject-matter ought not to be disposed of by way of counterclaim but in an independent action.

(5) A counterclaim may be proceeded with notwithstanding that the plaintiff's claim is stayed, discontinued or dismissed, or that judgment is given for the plaintiff on the plaintiff's claim.

(6) The plaintiff shall table defences to the counterclaim on such date, not earlier than 28 days after the tabling of the defendant's defences, as the Court shall order.

(7) The date on which defences to a counterclaim must be tabled in respect of any action may be varied by the Court if it thinks fit -

(a) upon application by the plaintiff, or

(b) following agreement between the parties to the action.

(8) The defences to a counterclaim shall be signed by the plaintiff or by an Advocate on behalf of the plaintiff.

(9) Where the plaintiff does not table defences to the counterclaim in accordance with paragraph (6), the Court may give judgment against the plaintiff in respect of the counterclaim.

**Consolidation or severance of actions.**

38. (1) Where two or more actions or counterclaims are pending before the Court and it appears to the Court that -

- (a) some common question of law or fact arises in all of them,
- (b) the rights to relief being claimed are in respect of or arise out of the same transaction or arrangement or the same series of transactions or arrangements, or
- (c) for some other reason it is desirable to make an order under this Rule,

the Court may order the actions or counterclaims to be consolidated, or to be tried at the same time, or one immediately after the other, or that any of them shall be stayed until any other of them is determined.

(2) Where in the same action or counterclaim -

- (a) there are claims in respect of two or more causes of action or there are two or more plaintiffs or defendants, and
- (b) it appears to the Court that inconvenience, embarrassment or delay may result,

the Court may order that the action or counterclaim be severed and that there shall

be separate trials.

(3) An order under paragraph (2) may be made notwithstanding that the action or counterclaim has at some stage of the proceedings been consolidated under paragraph (1).

## PART VIII

### PARTIES TO PROCEEDINGS

#### Actions by or against minors etc.

39. (1) A minor or person under legal disability may not be a party to, intervene in, or make or resist any application in, any proceedings before the Court except through a parent (in the case of a minor), guardian or a person appointed for that purpose by the Court.

(2) Anything which in the ordinary course of any proceedings is required or authorised by these Rules to be done by a party to the proceedings shall or may, if the party is a minor or person under legal disability, be done by the parent or guardian, as the case may be, or by the person appointed for that purpose under paragraph (1).

#### Representative proceedings.

40. (1) Where more than one person has the same interest in a claim -

(a) the claim may be begun, or

(b) the Court may order that the claim be continued,

by or against one or more of such persons as representatives of any other persons who have the same interest.

(2) The Court may direct that a person may not act as a representative.

(3) Any party may apply to the Court for an order under paragraph (2).

(4) Unless the Court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this Rule -

- (a) is binding on all persons represented in the claim, but
- (b) may only be enforced by or against a person who is not a party to the claim with the permission of the Court.

(5) This Rule does not apply to a claim to which Rule 41 applies.

**Representation of interested persons who cannot be ascertained.**

**41.** (1) This Rule applies to actions concerning -

- (a) the estate of a deceased person,
- (b) property subject to a trust,
- (c) the meaning of a document, including an enactment.

(2) The Court may make an order appointing a person to

represent any other person or persons in the action where the person or persons to be represented -

- (a) are unborn,
- (b) cannot be found,
- (c) cannot easily be ascertained, or
- (d) are a class of persons who have the same interest in a claim and -
  - (i) one or more members of that class are within subparagraphs (a), (b) or (c), or
  - (ii) to appoint a representative would further the overriding objective.

(3) An application for an order under paragraph (2) -

- (a) may be made by -
  - (i) any person who seeks to be appointed under the order, or
  - (ii) any party to the action, and
- (b) may be made at any time before or after the action has started.

(4) Notice of an application for an order under paragraph (2), together with a copy of any affidavit evidence supporting the application, must be served on -

- (a) all parties to the action, if the action has started,
- (b) the person sought to be appointed, if that person is not the applicant or a party to the action, and
- (c) any other person as directed by the Court.

(5) The Court's approval is required to settle an action in which a party is acting as a representative under this Rule.

(6) The Court may approve a settlement where it is satisfied that the settlement is for the benefit of all represented persons.

(7) Unless the Court otherwise directs, any judgment or order given in an action in which a party is acting as a representative under this Rule -

- (a) is binding on all persons represented in the action, but
- (b) may only be enforced by or against a person who is not a party to the action with the leave of the Court.

**Representation of beneficiaries by trustees, etc.**

42. (1) An action may be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a

beneficial interest in the trust or estate ("the beneficiaries").

(2) Any judgment or order given or made in the action is binding on the beneficiaries unless the Court orders otherwise in the same or other proceedings.

**Third parties.**

43. (1) Where in any action the defendant claims -

- (a) against a person not a party to the action, any contribution or indemnity,
- (b) against any such person, any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) that any question or issue relating to or connected with the original subject-matter of the action should be determined not only between the plaintiff and the defendant, but also between either or both of them and a person not a party to the action,

the defendant may add that person as a third party by serving upon that person a summons in that behalf signed by the defendant or by an Advocate on behalf of the defendant.

(2) The Court may make such order as it thinks just in relation to the addition of the third party as to -

(a) the filing of pleadings,

(b) the delivery of affidavits,

(c) any other incidental matter.

(3) A third party added in accordance with this Rule shall be treated as a defendant sued in the ordinary way by the party serving the summons, and the provisions of these Rules shall apply accordingly.

(4) Where judgment (by default or otherwise) is pronounced against a third party, the judgment shall not affect the rights of the original parties to the action as between themselves.

(5) Where a third party is added, the Court may, at or after the trial of the action (or, if the action is decided otherwise than by trial, on an application by any party to the action), give such judgment as the nature of the case may require for the defendant against the third party or for the third party against the defendant.

(6) Where judgment is pronounced -

(a) against a defendant, and

(b) for the defendant against a third party,

the judgment against the third party shall not be executed without leave of the Court, whether or not the judgment against the defendant has been wholly or

partially satisfied.

- (7) Where in any action the defendant claims in the defences -
- (a) against a party already a party to the action, any contribution or remedy,
  - (b) against any such person, any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
  - (c) that any question or issue relating to or connected with the original subject-matter of the action should be determined, not only between the plaintiff and the defendant, but also between either or both of them and a person already a party to the action,

the Court may order that that person be added as a third party, and the provisions of paragraph (2) shall apply accordingly.

(8) Where a third party is added and makes such a claim as is mentioned in paragraph (1) or (7), this Rule shall apply as if that third party were a defendant.

(9) For the purposes of this Rule, "**third party**" shall mean any party to the action other than the plaintiff or defendant.

**Removal or adding of parties.**

44. (1) The Court may in any proceedings order that -
- (a) any person who has been improperly or unnecessarily made a party, or who has ceased to be a proper or necessary party, shall cease to be a party,
  - (b) any person -
    - (i) who ought to have been added as a party,
    - (ii) between whom and any party to the proceedings there exists a question or issue arising out of or relating to or connected with any relief or remedy claimed in the proceedings which, in the opinion of the Court, it would be just and convenient to determine as between that person and that party as well as between the parties to the proceedings,
- shall be added as a party.

(2) No person shall be added as a plaintiff without that person's consent.

PART IX  
CONDUCT OF PROCEEDINGS

**Case management by Court.**

45. (1) The Court shall actively manage cases.
- (2) The Court may, for the purposes of active case management, without limitation -
- (a) encourage the parties to co-operate with each other in the conduct of the proceedings,
  - (b) identify the issues at an early stage,
  - (c) decide promptly which issues need full investigation and trial and dispose summarily of the others,
  - (d) decide the order in which issues are to be resolved,
  - (e) encourage the parties to use any appropriate form of alternative dispute resolution and facilitate the use of such procedures,
  - (f) actively encourage and assist the parties to settle the whole or part of their case on terms that are fair to each party,
  - (g) set time limits or otherwise control the progress of the case,

- (h) consider whether the likely benefits of taking a particular step will justify the cost of taking that step,
- (i) deal with as many aspects of the case as is practicable on the same occasion,
- (j) deal with the case, or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court,
- (k) make appropriate use of technology,
- (l) give directions to ensure that the trial of the case proceeds quickly and efficiently, and
- (m) ensure that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application,

and the Court may, if it thinks fit -

- (i) hold a case management conference for the purpose of considering the management of the case,
- (ii) hold a pre-trial review at which the Court may give directions as to the conduct of the trial in

order to ensure the fair, expeditious and economic trial of the issues.

(3) Where the Court holds a case management conference, or a pre-trial review, the provisions of Rules 41 to 48 of the Royal Court Civil Rules, 2007 may apply if, and to the extent that, the Court thinks fit.

**General powers of the Court.**

**46.** (1) The Court has the powers set out in this Rule, subject to any provisions of these Rules to the contrary, in addition to any powers conferred on the Court by these Rules or any other enactment or by practice direction.

(2) The Court may -

- (a) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court, even if the application for an extension is made after the time for compliance has expired,
- (b) adjourn or bring forward a hearing,
- (c) stay the whole or part of any proceedings or judgment generally or until a specified date or event,
- (d) decide the order in which issues are to be tried,
- (e) dismiss or give judgment in an action after a decision on a preliminary issue,

- (f) exclude an issue from determination if, in the opinion of the Court, the determination of that issue is unnecessary in order to achieve substantive justice between the parties,
- (g) waive any requirement that evidence in support of any application be given by affidavit,
- (h) require the maker of an affidavit to attend Court for cross-examination or generally to give evidence in the proceedings,
- (i) require any party or party's Advocate to attend the Court,
- (j) deal with any matter in the absence of any party,
- (k) hold a hearing and receive evidence by telephone or other electronic means or by using any other method of direct oral communication: Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear one another and to identify one another so far as is practicable,
- (l) deal with a matter on written representations submitted by the parties instead of by oral representations,

- (m) direct that any evidence be given in written form,
- (n) where any two or more parties are represented by the same Advocate -
  - (i) direct that they be separately represented,
  - (ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged,
- (o) direct that notice of any proceedings or application be given to any person, and
- (p) take any other step or make any other order for the purpose of managing the case and ensuring the just resolution of the case.

(3) The Court may, if it considers it appropriate to do so in the interests of justice, apply any of the provisions of the Royal Court Civil Rules, 2007, to the extent that, and subject to any modifications, it thinks fit.

- (4) When the Court makes an order or gives a direction, it may -
  - (a) make the order or give the direction subject to conditions, and
  - (b) specify the consequence of failure to comply with the order, direction or a condition.

(5) The conditions which the Court may impose include (without limitation) -

- (a) requiring a party to pay costs or to give security for costs in accordance with these Rules or the Court of the Seneschal (Costs and Fees) Rules, 2015,
- (b) requiring a party to give any undertakings,
- (c) requiring a sum of money to be paid into court or as the Court may direct.

(6) Where a party pays money into court pursuant to an order under paragraph (4)(c), that money shall be security for any sum payable by that party to any other party in the proceedings, subject to the right of a defendant to treat all or part of any money paid into court as a payment in support of an offer to settle.

(7) In considering whether to make an order, the Court may take into account whether a party is prepared to give an undertaking.

(8) A power of the Court under these Rules to make an order -

- (a) may be made at any stage of the proceedings, and
- (b) includes a power to vary or revoke that order.

**Court's power to make an order of its own initiative.**

47. (1) Except where a rule or enactment provides otherwise, the Court may exercise its powers on an application or of its own initiative.
- (2) Where the Court proposes to make an order of its own initiative, it must, subject to paragraph (3), give any person likely to be affected a reasonable opportunity to make representations, whether orally, in writing, by telephone or by such other means as the Court considers appropriate.

(3) The Court may, if it thinks fit in the interests of justice, make an order of its own initiative without first giving any person likely to be affected a reasonable opportunity to make representations, provided that in such a case any such person may apply to the Court, within 7 days of the making of such order, for the order to be modified or discharged, having given at least 1 clear day's notice of such application to all other parties to the proceedings.

**Power to strike out a pleading.**

48. (1) In this rule, references to a pleading include references to part of a pleading.
- (2) The Court may strike out a pleading if it appears to the Court -
- (a) that the pleading discloses no reasonable grounds for bringing or defending an action,
- (b) that the pleading is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings, or

(c) that there has been a failure to comply with a rule, practice direction or court order.

(3) The Court may also order a pleading to be struck out for want of prosecution.

(4) Where the Court strikes out a pleading it may make any consequential order it considers appropriate.

(5) Where -

(a) the Court has struck out a plaintiff's pleading,

(b) the plaintiff has been ordered to pay costs to the defendant, and

(c) before the plaintiff pays those costs the plaintiff starts another action against the same defendant based on the same or substantially the same facts,

the Court may, on the application of the defendant, stay that other action until the costs of the first action have been paid.

(6) This rule is without prejudice to any other power of the Court to strike out a pleading.

**Unless orders.**

49. (1) Where a party has failed to comply with any of these Rules, or any court order in respect of which no sanction for non-compliance has been

imposed, any other party may apply to the Court for an unless order as defined in paragraph (6).

(2) An application under paragraph (1) may be made without notice but must be accompanied by -

(a) evidence on affidavit, or otherwise to the satisfaction of the Court, which -

(i) identifies the rule or order which has not been complied with,

(ii) states the nature of the breach, and

(iii) certifies that the other party is in default, and

(b) a draft order.

(3) The Court may -

(a) grant the application,

(b) seek the views of the other parties, or

(c) direct that a date be fixed for the purpose of considering the application.

(4) Where a date is fixed pursuant to paragraph (3)(c), the applicant must give not less than 7 clear days' notice of the date, time and place of

such application to all other parties.

(5) Where an unless order is made, the party in default shall be ordered to pay the costs of the application.

(6) In this Rule, an unless order is an order which identifies a breach, requires the party in default to remedy that breach within a specified period and specifies the consequences of failure to do so.

**Judgment without trial after striking out.**

50. (1) This Rule applies where the Court makes an order which includes a term that the pleading of a party be struck out if that party does not comply with the order.

(2) Where an order has been made striking out the whole of a party's pleading, any other party may apply for judgment with costs to be entered in that other party's favour.

(3) A party may apply for judgment under this Rule by filing a request for judgment, which request must -

(a) state that the order of the Court has not been complied with, and

(b) certify that, in consequence, the right to enter judgment has arisen.

(4) Where the party applying for judgment is the plaintiff and the claim is for -

- (a) a specified sum of money,
- (b) an amount of money to be decided by the Court,
- (c) delivery of goods, where the claim gives the defendant the alternative of paying their value, or
- (d) any combination of these remedies,

judgment shall be in accordance with the terms of the particulars of the claim together with any interest and costs after giving credit for any payment that may have been made.

(5) Where the party applying for judgment is the plaintiff and the claim is for some other remedy, the judgment shall be such as the Court considers to be appropriate.

**Application for judgment to be set aside.**

51. (1) A party against whom the Court has entered judgment under Rule 50 may apply to the Court to set it aside.

(2) An application under paragraph (1) must be made within 14 days after the order for judgment has been served on the party making the application.

(3) Where the right to enter judgment had not arisen at the time when judgment was entered, the Court must set the judgment aside.

(4) Where the application to set aside is made for any other reason, Rule 54 (relief from sanctions) applies.

**Correction of errors in judgments and orders.**

52. (1) The Court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

**Sanctions for failure to comply with order etc.**

53. (1) Wherever the Court makes an order or gives directions, the Court shall, whenever practicable, unless the Court considers it inappropriate to do so, specify the consequences of failure to comply.

(2) Where a party has failed to comply with -

(a) any of these Rules, or

(b) any such order or direction,

any sanction for non-compliance imposed by the rule, order or direction shall have effect unless the party in default applies for and obtains relief from the sanction.

(3) Where a rule, order or direction -

(a) requires a party to do something within a specified time, and

(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

**Relief from sanctions.**

54. (1) On an application for relief from any sanction imposed for a failure to comply with any rule, order or direction, the Court will consider all the circumstances, so as to enable it to deal justly with the application, including the need -

(a) for litigation to be conducted efficiently and at proportionate cost, and

(b) to enforce compliance with rules, orders and directions.

(2) An application for relief must be supported by affidavit evidence.

**Rectification of errors of procedure.**

55. Where there has been an error of procedure such as a failure to comply with a rule or practice direction -

(a) the error does not invalidate any step taken in the proceedings unless the Court so orders, and

(b) the Court may make an order to remedy the error.

**Amendment of pleadings.**

56. The pleadings of any party to an action may only be amended with

the consent of all other parties or by leave of the Court.

**Obtaining further information.**

57. (1) Subject to any rule of law to the contrary, the Court may at any time order any party to -

(a) clarify any matter which is in dispute in the proceedings, or

(b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in any pleadings.

(2) Where the Court makes an order under paragraph (1), the party against whom it is made must -

(a) file a response, and

(b) serve it on the other parties,

within the time specified by the Court.

(3) The Court may require a response to an order made under this rule to be supported by affidavit evidence.

**Discontinuance and withdrawal of actions.**

58. (1) No party may -

- (a) discontinue or withdraw an action, counterclaim or any claim therein, or
- (b) withdraw defences or any part thereof,

except with the consent of all other parties to the action or by leave of the Court.

(2) Subject to the terms of any order by which leave to discontinue or withdraw is granted, the fact that a party has discontinued or withdrawn an action, counterclaim or claim is not a defence to a subsequent action, counterclaim or claim.

(3) A party who discontinues an action, claim or counterclaim may not make another claim against the same defendant without the leave of the Court if -

- (a) that party discontinued the claim after the defences had been filed, and
- (b) the other claim is for the same or substantially the same cause of action.

(4) Where a party -

- (a) is liable to pay any costs in respect of an action,

counterclaim or claim which has been discontinued or withdrawn under paragraph (1), and

- (b) before payment of such costs, brings or makes an action, counterclaim or claim for the same or substantially the same cause of action,

the Court may order the action, counterclaim or claim to be stayed until the costs are paid.

**Payment into court or offer to settle.**

59. (1) A party to an action may at any time -

- (a) pay into court a sum of money in satisfaction of any claim made against that party in the action, or
- (b) offer to settle the whole or any part of any claim made by or against that party in the action by making an offer to settle.

(2) Where a party makes a payment into court under paragraph (1)(a), that party must -

- (a) notify in writing the other party or parties in respect of whose claim the payment is made, and
- (b) at the same time, lodge at the Greffe the sum of money

to be paid into Court.

(3) Where a party lodges a sum of money at the Greffe pursuant to paragraph (2), the Greffier shall -

(a) deposit the money with an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended<sup>c</sup>,

(b) within 7 days of the making of the deposit, give notice of that fact to the party making the payment and to every other party in respect of whose claim the payment was made.

(4) Where a party ("the offeror") makes an offer to settle pursuant to paragraph (1)(b), that party must -

(a) notify in writing every other party ("the offeree") to whom the offer is made, and

(b) at the same time, lodge at the Greffe a copy of the offer to settle.

(5) An offer to settle made pursuant to paragraph (1)(b) shall

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<sup>c</sup> Order in Council No. XIII of 1994; amended by Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; Nos. XIII and XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; G.S.I. No. 3 of 2000; No. 1 of 2008; Nos. 35 and 83 of 2010.

specify -

- (a) whether the offer relates to the whole of the claim or to part of it and, if so, to which part,
- (b) whether the offer takes account of any counterclaim,
- (c) whether the offer includes interest and, if so, how this has been calculated, and
- (d) whether the offer includes costs.

(6) The offeree may, within 14 days of an offer being made, request the offeror to clarify the offer and, if the offeror does not give the clarification requested within 14 days of receiving the request, or the offeree is still, having received the clarification requested, not satisfied either -

- (a) as to whether the offer constitutes an offer within the meaning of this Rule, or
- (b) as to the extent and scope of the offer,

the offeree may apply to the Court, by notice in writing to the Greffier requesting that the application be heard, by a judge of the Court not otherwise involved in the proceedings, for an order requiring the offeror to clarify the offer.

(7) No payment into Court or offer to settle may be withdrawn except with the consent of all parties to the action in respect of whose claim the payment into Court was made, or to whom the offer to settle was made.

(8) Unless the payment into Court or offer to settle is disclosed to the Court by the party who made the payment or offer, the fact of the payment or offer shall not be so disclosed until all questions of liability and of the amount of damages or indebtedness have been determined except with the consent of all parties to the action in respect of whose claim the payment into Court was made, or to whom the offer to settle was made.

(9) Where a party wishes to accept payment into Court or an offer to settle, that party must –

- (a) notify the party who made the payment into Court, or the offer to settle, in writing of the unconditional acceptance of the payment into Court or offer to settle, and
- (b) lodge at the Greffe a copy of the notice of acceptance.

(10) Where a payment into Court or offer to settle is accepted, the proceedings, or that part of the proceedings to which the payment into Court or offer to settle relates, shall be stayed with effect from the date when the notice of acceptance is lodged at the Greffe.

(11) In any proceedings in which a payment into Court or offer to settle has been made, the Court shall take the fact, date and acceptance or non-acceptance of such payment into Court or offer to settle into account when considering the question of costs.

**Power to order interim payments.**

60. (1) The Court may, at any time after a cause has been tabled, on the application of a plaintiff, order the payment ("interim payment") by a defendant on account of any damages, debt or other sum (except costs) which the defendant may be held liable to pay to or for the benefit of the plaintiff if a final judgment or order of the Court in the proceedings is given or made in favour of the plaintiff; and the plaintiff may make more than one application for an order for an interim payment.

(2) A plaintiff intending to apply for an order for an interim payment shall give notice of such intention to all other parties to the action by service of a notice upon each of them, which notice must –

- (a) be served not less than 4 clear days before the date of the application,
- (b) state the date and time appointed for the hearing of the application,
- (c) be signed by the plaintiff or by an Advocate on behalf of the plaintiff, and
- (d) contain, or have annexed to it, a copy of the application and an affidavit setting out the evidence relied upon in support of the application.

(3) The Court may make an order for an interim payment only if -

- (a) the defendant against whom the order is sought has

admitted liability to pay damages or some other sum of money to the plaintiff,

- (b) the plaintiff has obtained judgment against the defendant for damages to be assessed or for a sum of money (other than costs) to be assessed,
- (c) the Court is satisfied that, if the claim went to trial, the plaintiff would obtain judgment for a substantial amount of money (other than costs) against the defendant against whom the order is sought, whether or not there are other defendants to the claim, or
- (d) in a claim where there are two or more defendants, the Court is satisfied that, if the claim went to trial, the plaintiff would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (even if the Court cannot yet determine which), and the defendants each satisfy at least one of the following conditions -
  - (i) the defendant is insured in respect of the claim,  
or
  - (ii) the defendant is a public body.

- (4) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(5) The Court must take into account -

(a) contributory negligence, and

(b) any relevant set-off or counterclaim.

(6) The fact that a defendant has made an interim payment, whether voluntarily or under an order, shall not, unless the defendant agrees, be disclosed to the judge of the Court hearing the claim until all questions of liability and the amount of money to be awarded have been decided.

**Adjustment of interim payments.**

61. (1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the Court may make an order to adjust the interim order and, without limitation, may in particular -

(a) order all or part of the interim payment to be repaid,

(b) vary or discharge the order for the interim payment,

(c) subject to paragraph (2), order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

(2) The Court may make an order under paragraph (1)(c) only if -

(a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which that

defendant has made a claim against the other defendant for a contribution, indemnity or other remedy, and

- (b) where the claim or part thereof to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the Court could make an order for interim payment under Rule 60.

(3) The Court may make an order under this Rule without an application by any party if it makes the order when it disposes of the claim or any part of it.

(4) Where -

- (a) a defendant has made an interim payment, and
- (b) the amount of the payment is more than that defendant's total liability under the final judgment or order,

the Court may award that defendant interest on the overpaid amount from the date when the interim payment was made.

## PART X

### DISCLOSURE AND INSPECTION OF DOCUMENTS

#### General provisions.

62. (1) For the purposes of this Part -

- (a)     **"document"** means anything in which information of any description is recorded,
- (b)     **"copy"**, in relation to a document, means anything onto which information recorded in the document has been copied by whatever means and whether directly or indirectly,
- (c)     **"disclosure statement"** means a statement made under Rule 68(3), and
- (d)     a party discloses a document by stating that the document exists or has existed.

(2)     The provisions of this Part shall be without prejudice to the powers of the Court to order disclosure and inspection of documents in accordance with any other rule of court or enactment.

(3)     The provisions of this Part do not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

**Right of inspection of a disclosed document.**

**63.**    (1)     A party to whom a document has been disclosed has a right to inspect that document except where -

- (a)     the document is no longer in the control of the party who disclosed it,

- (b) the party disclosing the document has a right or duty to withhold inspection of it, or
- (c) paragraph (2) applies.

(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under standard disclosure, the party -

- (a) is not required to permit inspection of documents within a category or class, but
- (b) must state in the disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

**Disclosure limited to standard disclosure.**

**64.** (1) An order to give disclosure is an order to give standard disclosure unless the Court directs otherwise.

- (2) The Court may dispense with or limit standard disclosure.
- (3) The parties may agree in writing to dispense with or to limit standard disclosure.

- (4) Standard disclosure requires a party to disclose only -
  - (a) the documents on which the party relies, and

- (b) the documents which -
  - (i) adversely affect the party's own case,
  - (ii) adversely affect another party's case, or
  - (iii) support another party's case, and
- (c) the documents which the party is required to disclose by a relevant practice direction.

**Duty of search.**

65. (1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within Rule 64(4)(b) or (c).
- (2) The factors relevant in deciding the reasonableness of a search include the following -

- (a) the number of documents involved,
- (b) the nature and complexity of the proceedings,
- (c) the ease and expense of retrieval of any particular document, and
- (d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, the party must state this in the party's disclosure statement and identify the category or class of document.

**Duty of disclosure limited to documents which are or have been in a party's control.**

**66.** (1) A party's duty to disclose documents is limited to documents which are or have been in that party's control.

(2) For this purpose a document is or has been in a party's control if -

- (a) it is or was in the party's physical possession,
- (b) the party has or has had a right to possession of it, or
- (c) the party has or has had a right to inspect or take copies of it.

**Disclosure of copies.**

**67.** (1) A party need not disclose more than one copy of a document.

(2) A copy of a document that contains a modification, obliteration or other marking or feature -

- (a) on which a party intends to rely, or
- (b) which adversely affects the party's own case or another

party's case or supports another party's case,

shall be treated as a separate document.

**Procedure for standard disclosure.**

**68.** (1) In the case of standard disclosure, each party shall serve on every other party a list of documents identifying the documents in a convenient order and manner and as concisely as possible.

(2) The list referred to in paragraph (1) must indicate -

(a) those documents in respect of which the party claims a right or duty to withhold inspection, and

(b) those documents which are no longer in the control of that party, and what has happened to those documents.

(3) The list must include a disclosure statement -

(a) setting out the extent of the search that has been made to locate documents which the party is required to disclose,

(b) certifying that the party understands the duty to disclose documents, and

(c) certifying that to the best of the party's knowledge the party has carried out that duty.

(4) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also -

- (a) identify the person making the statement, and
- (b) explain why that person is considered an appropriate person to make the statement.

(5) The parties may agree in writing -

- (a) to disclose documents without making a list, and
- (b) to disclose documents without the disclosing party making a disclosure statement.

**Duty of disclosure continues during proceedings.**

69. Any duty of disclosure continues until the proceedings are concluded, and if documents to which that duty extends come to a party's notice at any time during the proceedings, the party must immediately notify every other party.

**Specific disclosure or inspection.**

70. (1) The Court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things -

- (a) disclose documents or classes of documents specified in the order,

- (b) carry out a search to the extent stated in the order,
- (c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in Rule 63(2).

**Disclosure in stages.**

71. The parties may agree in writing, or the Court may direct, that disclosure or inspection or both shall take place in stages.

**Documents referred to in pleadings etc.**

72. A party may inspect a document mentioned in -

- (a) any pleadings,
- (b) any witness statement,
- (c) an affidavit or statement of truth, or
- (d) any expert reports.

**Inspection and copying of documents.**

73. Where a party wishes to exercise a right to inspect a document -

- (a) that party must give the party who disclosed the document written notice of such wish,

- (b) the party who disclosed the document must permit inspection not more than 7 days after the date of receipt of such notice, and
- (c) the party exercising such right may request a copy of the document and, subject to an undertaking to pay reasonable copying costs, the party who disclosed the document must supply a copy not more than 7 days after the date on which the request was received.

**Disclosure of documents in respect of claims relating to personal injury or death.**

74. (1) On the application in accordance with this rule of a person who appears to the Court to be likely to be a party to subsequent proceedings in the Court in which a claim in respect of personal injuries to a person, or in respect of a person's death, is likely to be made, the Court may order a person who appears to the Court to be likely to be a party to the proceedings and to be likely to have or have had control of any documents which are relevant to an issue arising or likely to arise out of that claim -

- (a) to disclose whether those documents are in the person's control, and
- (b) to produce such of those documents as are in the person's control to the applicant or, on such conditions as may be specified in the order -
  - (i) to the applicant's Advocate,

- (ii) to the applicant's Advocate and any medical or other professional adviser of the applicant, or
- (iii) if the applicant is not represented by an Advocate, to any medical or other professional adviser of the applicant.

(2) The Court may make an order under paragraph (1) only where -

- (a) if proceedings had started, the respondent's duty by way of standard disclosure, set out in Rule 64(4), would extend to the documents or classes of documents of which the applicant seeks disclosure, and
- (b) disclosure before proceedings have started is desirable in order to-
  - (i) dispose fairly of the anticipated proceedings,
  - (ii) assist the dispute to be resolved without proceedings, or
  - (iii) save costs.

(3) An application for an order under paragraph (1) shall be instituted by summons served on the person against whom the order for disclosure is sought and on every party to the proceedings other than the applicant, and shall be supported by an affidavit which must -

- (a) state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in which a claim in respect of personal injuries or death is likely to be made,
- (b) specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading intended to be served in the proceedings -
  - (i) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries or death likely to be made in the proceedings, and
  - (ii) that the person against whom the order is sought is likely to have or have had control of those documents.

(4) On the application in accordance with this rule of a party to any proceedings in which a claim is made in respect of personal injuries to a person, or in respect of a person's death, the Court shall have power to order a person who is not a party to the proceedings and who appears to the Court to be likely to have or to have had control of any documents which are relevant to an issue arising out of the said claim -

- (a) to disclose whether those documents are in the person's

control, and

- (b) to produce such of those documents as are in the person's control to the applicant or, on such conditions as may be specified in the order -
  - (i) to the applicant's Advocate,
  - (ii) to the applicant's Advocate and any medical or other professional adviser of the applicant, or
  - (iii) if the applicant is not represented by an Advocate, to any medical or other professional adviser of the applicant.

(5) The Court may make an application under paragraph (4) only where -

- (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings, and
- (b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(6) An application under paragraph (4) shall be instituted by summons served on the person not a party to the proceedings against whom the order for disclosure is sought and on every party to the proceedings other than the

applicant, and shall be supported by an affidavit which -

- (a) shall specify or describe the documents in respect of which the order is sought, and
- (b) show, if practicable, by reference to any pleading served or intended to be served in the proceedings -
  - (i) that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries or death made or likely to be made in the proceedings, and
  - (ii) that the person against whom the order is sought is likely to have or to have had control of them.

(7) Where a summons is required to be served on any person under paragraphs (3) or (6), a copy of the supporting affidavit shall be served with the summons in each case.

(8) An order under paragraph (1) or (4) for the disclosure and production of documents -

- (a) may be conditional on the applicant giving security for the costs of the person against whom the order is made,
- (b) may be made on such other terms and conditions as the Court thinks just, and

(c) shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in the person's control, when the documents left that person's control and what has become of them.

(9) An order under paragraph (1) or (4) for the disclosure and production of documents may be varied or rescinded by the Court on the application of any person who was a party to the application pursuant to which the order was made.

(10) No person shall be compelled by an order under paragraph (1) or (4) for the disclosure and production of documents to produce any document which the person could not be compelled to produce -

(a) in the case of an order under paragraph (1), if the subsequent proceedings had already begun, or

(b) in the case of an order under paragraph (4), if the person had been served with a summons to produce the documents at the trial.

(11) Where the Court makes an order under paragraph (1) or (2) for the disclosure and production of documents, the provisions of this Part shall apply in all respects as if the party against whom the order is made were a party to the proceedings.

(12) This rule shall not limit any other power which the Court may have to order disclosure before proceedings start or against a person who is not a party to the proceedings.

**Claim to withhold inspection or disclosure of a document.**

75. (1) A person may apply, without notice, for an order permitting the person to withhold disclosure of a document on the ground that disclosure would damage the public interest.

(2) Unless the Court orders otherwise, an order of the Court under paragraph (1) –

(a) must not be served on any other person, and

(b) must not be open to inspection by any person.

(3) A person who wishes to claim a right or duty to withhold inspection of a document, or part of a document, must state in writing –

(a) that the person has such a right or duty, and

(b) the grounds on which the person claims that right or duty.

(4) The statement referred to in paragraph (3) must be made –

(a) in the list in which the document is disclosed, or

(b) if there is no list, to the person wishing to inspect the

document.

(5) A party may apply to the Court to decide whether a claim made under paragraph (3) should be upheld.

(6) For the purpose of deciding an application under paragraph (1) or paragraph (3), the Court may –

- (a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the Court, and
- (b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or paragraph (5) must be supported by evidence.

**Restriction on the use of a privileged document inspection of which has been inadvertently allowed.**

76. Where a party inadvertently allows a privileged document to be inspected, the party who had inspected the document may use it or its contents only with the leave of the Court.

**Consequence of failure to disclose documents or permit inspection.**

77. A party may not rely on any document which that party fails to disclose or in respect of which that party fails to permit inspection except with the leave of the Court.

**Subsequent use of disclosed documents.**

78. (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –

(a) the document has been read to or by the Court, or referred to, at a hearing which has been held in public,

(b) the Court gives leave, or

(c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The Court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the Court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made –

(a) by a party, or

(b) by any person to whom the document belongs.

PART XI

GENERAL PROVISIONS

**Mode of making application to Court.**

79. (1) Save as expressly provided by these Rules, a person intending

to apply to the Court for an order under these Rules shall serve notice of such intention on the respondent to the application –

- (a) at least 4 clear days before the day of the application,
- (b) stating the date and time appointed for the hearing of the application,
- (c) containing, or having annexed to it, a copy of the application,

and such notice shall be served by the applicant or by an Advocate on behalf of the applicant.

**Witness summonses.**

80. Every summons requiring the attendance of a witness in Court shall, unless the Court orders otherwise, be served by the Prévot on the witness personally at least 3 clear days before the day of the hearing.

**Affidavits.**

81. An affidavit for the purposes of these Rules shall be made –

- (a) in the Island of Sark, before the Seneschal or Deputy Seneschal, Lieutenant Seneschal, a Notary Public or an Advocate of 5 years' standing or more,
- (b) in the Island of Guernsey, Herm or Jethou, before the Bailiff, Deputy Bailiff or Lieutenant-Bailiff, a Judge of the Royal Court, a Jurat of the Royal Court, a Notary

Public or an Advocate of 5 years' standing or more,

- (c) in the Island of Alderney, before a Jurat of the Court of Alderney, a Notary Public or an Advocate of 5 years' standing or more,
- (d) in a place outside the Bailiwick -
  - (i) before a person empowered to administer oaths in that place, or
  - (ii) in accordance with the rules in force in that place governing the administration of oaths for any judicial or other legal purpose, or
  - (iii) where the deponent is serving in any of the regular armed forces of the Crown, before an officer holding a commission in any of those forces.

**Commencement of actions.**

82. (1) Subject to subsection (2), for the purposes of these Rules, an action commences when the summons is handed by the plaintiff to the Prévot.
- (2) Where the Court makes an order for substituted service within the jurisdiction pursuant to Rule 7, or for leave to effect service out of the jurisdiction pursuant to Rule 8, the action shall be deemed to have commenced when the application for such order is lodged at the Greffe.

**Interpretation.**

83. In these Rules –

"**address for service**" means an address at which any summons, notice or other document relating to the proceedings can validly be served on the party making the election,

"**Advocate**" means an Advocate of the Royal Court of Guernsey,

"**Alderney Greffier**" means the Greffier of the Court of Alderney,

"**Alderney Rules**": see Rule 2(1)(c),

"**clear day**" means a period of 24 hours ending at midnight and does not include any non-business day as defined by the Non-Business Days Order, 1993<sup>d</sup>,

"**claim or issue**": see Rule 19(1),

"**the Court**" means the Court of the Seneschal,

"**defendant**" includes any party defending any claim in any proceedings,

"**direction**" means any direction of the Court, including a practice direction,

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<sup>d</sup> Guernsey Statutory Instrument No. 28 of 1993.

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"Greffier"** means the Sark Greffier and includes the Deputy Greffier or an Assistant Deputy Greffier,

**"Guernsey Rules"**: see Rule 2(1)(b),

**"interpleader"** means relief sought under Part VI of these Rules by a person who is under a liability in respect of which two or more persons are making adverse claims,

**"judge of the Court"** means the Seneschal, Deputy Seneschal or a Lieutenant Seneschal,

**"jurisdiction"** means the jurisdiction of the Court,

**"minor"** means a person under the age of 18 years,

**"plaintiff"** includes a party bringing any claim in any proceedings,

**"Prévôt"** includes the Deputy Prévôt and an Assistant Deputy Prévôt,

**"Sergeant"** means Her Majesty's Sergeant in Guernsey and includes any of the Deputy or Assistant Sergeants,

**"small claim"** means a claim which falls within, or which is treated as falling within, Part V of these Rules,

**"statement of truth"** means a statement, signed by the person making

the statement, that the facts stated in the cause or counterclaim, as the case may be, are true to the best of that person's knowledge or belief,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

**Citation.**

84. These Rules may be cited as the Court of the Seneschal Civil Rules, 2019.

**Commencement and transitional provisions.**

85. (1) These Rules were made by the Court of the Seneschal on 27<sup>th</sup> September, 2019 and, having been approved by the Royal Court on 12<sup>th</sup> September, 2019 in accordance with section 15 of the Reform (Sark) Law, 2008, shall come into force on the 1<sup>st</sup> October, 2019.

(2) Subject to paragraph (3), these Rules shall apply to any action commenced on or after the said date.

(3) The Court may make such orders in respect of actions commenced before the said date as it thinks just.