

High Court of Andhra Pradesh Family Courts (Court) Rules, 2005

ANDHRA PRADESH

India

High Court of Andhra Pradesh Family Courts (Court) Rules, 2005

Rule

HIGH-COURT-OF-ANDHRA-PRADESH-FAMILY-COURTS-COURT-RULES of 2005

- Published on 6 April 2005
- Commenced on 6 April 2005
- [This is the version of this document from 6 April 2005.]
- [Note: The original publication document is not available and this content could not be verified.]

High Court of Andhra Pradesh Family Courts (Court) Rules, 2005 Published vide Notification No. Notification No. 2/SO/2005, Roc.No. 679/SO/2003, R.S. to Part 2 Extraordinary A.P. Gazette, dated 6.4.2005 Last Updated 14th September, 2019 Notification No. 2/SO/2005, Roc.No. 679/SO/2003. - In supersession of the Family Court Rules, 1995 made under Rule 21 of the Family Courts Act, 1984 by the High Court and in exercise of the powers conferred on the High Court under Section 21 of the Family Courts Act, 1984 and all enabling provisions in that behalf prescribes the following rules to regulate the proceedings of the Family Courts in the State of Andhra Pradesh.

1. (a) Short Title.

- These rules may be called the "High Court of Andhra Pradesh Family Courts (Court) Rules, 2005". (b) Commencement: - These rules shall come into force with effect from the date of publication of these rules in A.P. Gazette. (c) Application: - These rules shall apply to the Family Courts established in the State of Andhra Pradesh under Section 3 of the Family Courts Act, 1984.

2. Definitions.

- In these rules, unless the context otherwise requires: (a) 'Act' means the Family Courts Act, 1984. (b) 'Centre' means a counselling centre. (c) 'Counsellor' means a person referred to in Section 6 of the Act. (d) 'Court' means the Family Court established under Section 3 of the Act. (e) 'High Court' means the High Court of Andhra Pradesh. (f) 'Institution' means any institution or organization engaged in social welfare, registered and recognized by the Government or recognized by the High Court. (g) 'Petition' shall include an application under Chapter IX of the Criminal Procedure Code, 1973 unless the subject matter or context requires otherwise. (h) All other words and expressions

used but not defined in these rules shall have meaning respectively assigned to them in the retrospective Acts mentioned in Rule 5(d) as well as in the Code of Civil Procedure and Criminal Procedure Code.(i)'Service' means Higher Judicial Service of the State.(j)'Judge' includes Principal/Additional Judge and Judge of Family Court.

3. Working hours.

- The working hours and sittings of the Family Courts shall be as determined by the High Court in their application to the Civil Courts, except that the High Court shall fix in each calendar year the working hours and sittings of the Family Courts during vacations and holidays.

4. Place of sitting.

(a)The place or places where the Family Court shall sit shall be as specified by the High Court from time to time by an order in this regard.(b)The Judge can also hold sittings outside notified place in consultation with the parties to the proceeding after obtaining permission from the High Court.(c)Notwithstanding anything contained above, if in any particular case the Judge is of the opinion that it will tend to the general convenience of the parties or of the witnesses or for any other parties to hold its sittings at a place other than its ordinary place of its sittings but within its limits of territorial jurisdiction, the Judge may do so for reasons to be recorded in writing and prior notice to all parties and to such other persons as the Judge may consider necessary. The Judge shall intimate the High Court about such sittings soon after a decision is taken in this behalf.(d)The Family Court shall function on all days throughout the year except on authorized holidays as declared by the High Court.(e)The Subordinate Courts calendar shall be the calendar of the Family Court except that there will be no vacations.(f)The Judges may, for expedience, hold proceedings of the Court beyond the working hours as prescribed in this rule and even on holidays.(g)The Family Court shall hold its sitting in open or in camera as determined by it in each case, but shall hold the proceedings in camera if either party so desires.(h)No act of the Family Court shall be invalid by reason of holding or continuing its sitting at any place of its choice or on any holiday or outside normal working hours, when such sitting is informed to the parties in advance.(i)Normally the Family Court shall hold sitting in between 10.30 a.m. to 1.00 p.m. and 1.30 p.m. to 5.00 p.m., and the office shall work in between 10.00 a.m. to 5.00 p.m., except on Sundays and holidays declared by the High Court.

5. Institution of Proceedings.

(a)All proceedings instituted before a Family Court shall be by way of petition as per Form No. 1 appended to these rules which should be duly verified by the petitioner. Interlocutory application in the proceeding to be instituted or already instituted shall be filed in Form No. 2 after being duly verified by the applicant. The petition in Form No. 1 or the Interlocutory Application in Form No. 2 can be in any language falling in Schedule VIII to the Constitution. A translated copy shall be affixed whenever it was sent to different States.(b)There shall be fixed court fee in respect of any petition or any Interlocutory Application filed before the Family Court.(c)Whenever Court fee is prescribed under the provisions of rules of other Acts mentioned in clause (d) it shall be paid.(d)The application may be filed before Family Court as permitted under any law which also includes

provisions contained in the following laws viz.,(i)Chapter IX of the Criminal Procedure Code, 1973 (2 of 1974).(ii)Hindu Marriage Act, 1955 (25 of 1955).(iii)Maintenance under the Hindu Adoptions and Maintenance Act, 1956(78 of 1956).(iv)Guardianship of the person or custody of or access to any minor under the Hindu Minority and Guardianship Act, 1956 (32 of 1956).(v)Dowry Prohibition Act, 1961 (28 of 1961) for an order for injunction in circumstances arising out of marital relationship.(vi)Hindu Marriages (Validation of Proceedings) Act, 1960 (19 of 1960).(vii)Personal law applicable to Muslims including:(a)Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937).(b)Dissolution of Muslim Marriages Act, 1939 (8 of 1939).(c)Muslim Women (Protection of Rights on Divorce) Act, 1986(25 of 1986).(viii)Parsi Marriage and Divorce Act, 1936 (3 of 1936) which can be instituted or taken out before the Parsi District Matrimonial Courts constituted under Sections 18 and 20 of the said Act.(ix)Indian Christian Marriage Act, 1872 (15 of 1872).(x)Indian Divorce Act, 1945.(xi)Special Marriage Act, 1954 (43 of 1954).(xii)Child Marriage Restraint Act, 1929 (19 of 1929).(xiii)Anand Marriage Act, 1909 (7 of 1909).(xiv)Arya Marriage Validation Act, 1937 (19 of 1937).(xv)Foreign Marriage Act, 1969 (33 of 1969).(xvi)Suits or proceedings relating to Part B States Marriages Validating Act, 1952(1 of 1952).(xvii)Guardians and Wards Act, 1890 (8 of 1890).

6. Filing of Petition.

- A petition or any other application shall be filed with two copies signed by the parties along with as many copies to be sent to all the respondents by an officer designated for this purpose. One copy of such petition or application shall be forwarded by the designated officer of the Family Court to the Counsellor forthwith.

7. Notice to Respondent.

- Notice of the proceeding including interlocutory application, shall be issued in Form No. 3 appended to these rules along with a copy of the petition or the application as the case may be. In respect of matter under Chapter IX of the Criminal Procedure Code the summons to appear and answer shall be in Form No. 4. If any act prescribed in any form for issuing summons, notices shall be issued in the said form.

8. Name and address of the party or of the representative to be stated in every process.

- The name and address of a party or of the representative appearing or a party shall be stated in every notice, summons, witness summons, interim application, warrant and every process of the Court issued at the instance of such party or representative.

9. Notice, summons etc. how attested and signed.

- All Notices, Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the Court and shall be signed by the designated officer of the court.

10. Returnable date of notice summons.

- Unless otherwise ordered, the notice/summons shall be made returnable in three weeks after the date of the filing of the petition, if the respondent resides within the local limits of the Court and five weeks after the date of the filing of the petition if the respondent resides outside the said limits.

11. Mode of Service of notice, summons.

(a) The notice/summons shall be served in the manner prescribed in the Code of Civil Procedure, save and except in proceedings under Chapter IX of the Criminal Procedure Code where the provisions of that Code will apply. Along with the notice, summons a copy of the petition and exhibits/Documents annexed thereto shall be sent. (b) In addition to the normal process of service by the Court, the applicant will be at liberty to serve upon the respondent the notices/summons of the Court along with copy of the petition and exhibits/documents either through person or through other recognizable mode of sendee including registered post and shall file affidavit of service upon the respondent.

12. Proof of service of Summons.

- It has to be shown either by way of affidavit or application or other evidence that the notices/summons were served upon the respondents.

13. Substituted Service.

- In case of failure to serve by normal process, the Court, on an oral/written application of the applicant, may direct for serving upon the respondents by substituted mode i.e., through affixture, publication in the newspaper, etc. and applicant shall file affidavit stating as to the mode adopted for service of summons.

14. Copy of petition to be furnished to the respondent.

- The applicant shall furnish the complete copy with all exhibits to the respondents, who asks for the copy on the ground that he has not received the copy of the petition or that he has not received complete copy.

15.

The provisions under Order I of the Civil Procedure Code for addition of a necessary party or a proper party shall be applicable to a proceeding before the Family Court.

16. Appointment of Legal Aid and Amicus Curiae.

(a) Proceedings before the Court shall be taken up in the presence of the parties, and a legal practitioner on either side shall be allowed to appear only as amicus curiae, if the Court finds it necessary in the interest of justice. (b) (1) Appearance of Legal Practitioners or Advocates in the Family Court: - Notwithstanding anything contained in law, for the time being in force, no party to a suit or proceeding before a family court shall be entitled as of right to be represented by a Legal Practitioner or Advocate. Provided that if the Family considers it necessary in the interest of justice, it may seek assistance of a legal expert as amicus curiae. Explanation. - It does not preclude the family court from granting permission in the exercise of its discretion, where the circumstances justify, to a party to be represented by Legal Practitioner or Advocate. (2) Appointment of Amicus Curiae: - A Judge will maintain a panel of legal experts as Amicus Curiae. At least a panel of five Amicus Curiae will be maintained by each court. Panel of Amicus Curiae will be maintained out of legal experts and also from the retired Judges of local area who have expertise in the field. The Amicus Curiae shall be paid a fee by the State Governments in a case or proceeding which may be determined by the Court not exceeding Rs. 500/- per day. (3) Party entitled to free legal advice: - A party will be entitled to take legal advice at any stage of the proceedings before the Court. A party in indigent circumstances will be entitled to free legal aid and advice from the State Legal Services Authority in accordance rules made thereunder by the State. (4) Panel of Lawyers for free legal advice: - The Court shall maintain a panel of lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the lawyers from the said panel provided the lawyer is available and willing to accept the case.

17. Directions on the returnable date.

- On the returnable date of the notice, summons, the petition shall be placed for directions before the Judge of the Family Court. On that day, the designated counsellor shall attend the Court of the Judge giving directions. The Judge shall, in consultation with the counsellor, direct the parties to attend before a specified counsellor appointed for the purpose of counselling. The Judge shall fix a specified date by which counsellor shall file a memorandum setting out the outcome of the proceeding before him. On that day the Court will pass further order and directions, as it deems fit and proper.

18. Role of the Counsellor.

- The counsellor appointed to counsel the parties shall fix time and date of appointment. The parties shall be bound to attend the counsellor on the date and at the time so fixed. If either of the parties fails to attend the counsellor on the date and time so fixed, the counsellor may fix another date and shall communicate the same to the absentee party by registered post. In case of default by either of the parties on the adjourned date, the counsellor shall submit a report to the Court and on receipt of such report, the Court may proceed with the matter without prejudice to other powers of the Court to take action against the defaulting parties. The counsellor entrusted with any petition on appearance of the parties before her/him shall assist and advice the parties regarding the settlement of the subject matter of dispute and shall endeavour to help the parties in arriving at

conciliation. The counsellor may, in discharge of her/his duties visit the home of either of the parties and interview the relatives, friends and acquaintances of either of the parties. The counsellor in discharge of her/his duties may also seek such information as she/he deems fit from the employer of either of the parties and such requisition for information shall be made through the Court. The counsellor may take the assistance of any organization, institution or agency in discharge of her/his duties. The counsellor shall submit a report to the Court as and when called for to assist the Court in deciding the case on hand. The report may, inter alia contain the following points: (a) Living environment of the parties concerned. (b) Personalities. (c) Relationship. (d) Income and standard of living. (e) Educational status of the parties. (f) Status in society. (g) Counsellor's findings. The counsellor may also supervise the child/children if and when called upon by the Court.

19. Duties and Functions of a counsellor.

(1) The Counsellor shall perform such work and duties as may be entrusted by the Family Court. (2) Counsellor entrusted with any petition shall assist and advise the parties regarding the settlement of the subject matter of dispute between the parties or any party thereof. The counsellor shall also help the parties in arriving at reconciliation. (3) The Counsellor in the discharge of his duties shall be entitled to visit the homes of any of the parties. (4) The Counsellor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them. (5) The Counsellor in the discharge of his duties may seek such information as he may deem fit from the employer of any of the parties. (6) The Counsellor may in the discharge of his/her duties refer the parties to an expert in any other area such as psychiatry. Refer the parties to an expert only after taking permission from the concerned Court and after obtaining consent from the parties. (7) The Counsellor shall make an endeavour to uphold the family institution and avoid disruption. He shall conduct proceedings before sunset and make visits only before sunset. The wishes of the children shall be given paramount consideration for reconciliation. He shall use persuasive methods and shall not use misrepresentation of false promise or threats.

20. Confidentiality of Information.

- The information gathered by the Counsellor any statement made before the Counsellor, any notes or report prepared by the Counsellor shall be treated as confidential. Counsellor shall not be called upon to disclose the information statements, notes or report to any Court, except with the consent of both the parties and the extent mentioned in Rule 25. Such notes of report or statements or any material lying with the Counsellor shall be kept in sealed cover by the Counsellor and shall not form a part of evidence before the Court but form part of record. If the case is reported in the journals the information can be used for research or education after obtaining permission from the High Court.

21. Counsellor's right to supervise custody of children.

- The counsellor shall be entitled to supervise the placement of children in the custody of party and shall be entitled to pay surprise visits to the home where the child resides. In the event of the Counsellor coming to a conclusion that any alteration is required in the arrangement relating to custody of a child or children, the Counsellor shall make a report to the Court in that connection.

Thereupon, the Court may, after giving notice to the parties to appear before it, pass such orders in that connection as the Court may deem fit. Female children shall be entrusted to the female counsellor. During surprise visits, and during conducting proceeding, it shall be the endeavour of the counsellor to show utmost respect to the women and children and not intimidate them.

22. Counsellor not to give evidence.

- The counsellor shall not be permitted to give evidence in any Court in respect of the information, statements, notes or report referred to in Rule 23: Provided that the Counsellor shall submit to the Court a report relating to the home environment of the parties concerned their personalities and their relationship with the child or children in order to assist the Court in deciding the question of custody, guardianship of the child or children of the marriage: Provided further that the Counsellor shall submit to the Court a report relating to home environment income, standard of living of the party or parties concerned in order to assist the Court in determining the amount of maintenance or alimony to be granted to one of the parties.

23. Settlement before Counsellors.

- When the parties arrived at a settlement before the Counsellor relating to the dispute or any part thereof, such settlement shall be reduced in writing read over and explained to the parties and obtain thumb mark or signatures as the case may be, and countersigned by the Counsellor and shall be filed before the Court promptly.

24. Panel of Experts.

- The Family Court in consultation with the Counsellor or Counsellors may avail of the services of a medical and other such experts as may be required in a particular case. The expert so engaged shall be paid a fee of Rs. 200/- (Rupees Two Hundred only) per case and Rs. 50/- (Rupees Fifty only) as a daily allowances per day and actual expenses of travelling allowance by an order to be made in this behalf. The Family Court Judge shall be the sanctioning authority. For this purpose a reasonable amount may be placed at the disposal of each Family Court.

25. List of Institutions, Agenda, etc.

(1) The Family Court in consultation with the Counsellors shall prepare in the month of January of each year, a list of about ten Institutions, Organizations or Agencies working in the area of Family Welfare, Child Guidance, Employment or any other area that the Court may deem fit, in order to enable the Counsellor or parties to obtain the assistance of such institution, organization or agency and submit it to the High Court for approval. The list shall be valid till the approval of the next list by the High Court. (2) The Court may lay down the manner and the conditions for association of such Institutions, Organizations or Agencies. The association of such Social Welfare Agencies etc., may extend to their active participation in resurrecting family bond and its rehabilitation. (3) Such Institutions, Organizations or Agencies may also be entrusted with the duties of supervising guiding

and assisting the parties, even after the case is disposed of by the Court.

26. Efforts for arriving at settlement.

(1) Every Family Court shall maintain separate lists of: (a) Institutions and Organization ad in social welfare together with names and addresses of representatives of such institutions. (b) Persons professionally engaged in promoting the welfare of the family with their addresses; (c) Persons working in the field of social welfare with their addresses. Report from institution, organisation etc.- A Family Court may call for report as regards efforts made or to be made by the institution, organisation or persons referred to in Section 5 of the Act: Provided that where efforts for amicable settlement are continuing or are deferred, the Family Court may require the institution, organisation or person to submit before it an 'interim' report. Hearing of Petitions in Court

27. Adjournment by the Court.

- The date of hearing, so fixed shall not be adjourned by the Court unless there are circumstances justifying such adjournment and to meet the ends of justice. The Court shall record its reasons for adjourning a matter.

28. Memorandum of Evidence.

- The Court shall record only the substance of what the witness deposes and prepare a memorandum accordingly, which shall be read and explained to the witness and the memorandum of the said substance recorded by the Court shall be signed by the witness and the presiding officer of the Court and shall form part of the record. The evidence taken on affidavit, if any, shall also form part of the record of the Court. The judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision. If any particular mode of recording of evidence is prescribed under the special acts referred to in Rule 5(d) they shall be followed.

29.

The Court shall furnish to the parties to the proceedings before it a copy of the judgment certified to be a true copy free of cost.

30.

Appeal under Section 19(1) of the Act shall be in the manner of appeals against the original decree or order in a civil proceedings, but there shall be no court fee payable for the appeal. If any court fee is prescribed under various special Acts, they shall be paid in respect of the appeal.

31.

The rules framed under the Guardians and Wards Act, 1890 by the High Court shall be applicable in matters relating to Guardian and Wards Act, 1890 to the extent they are not inconsistent with the provisions of the Act or the Rules framed thereunder.

32. Application for Guardianship.

- All petitions for guardianship other than applications over which the High Court has jurisdiction, shall be filed before the Family Court.

33. Contents of the Application.

- Every petition for guardianship when it is a person other than the natural parent or natural guardian of the child shall be accompanied by a home study report of the person asking for such guardianship and his/her spouse, if any.

34.

In case of a child placed in guardianship the Court may, at any time direct the Counsellor attached to the Court to supervise the placement of the child and submit a report thereon to the Court in such manner as the Court may deem fit.

35.

A child study report of the child proposed to be taken in guardianship together with a photograph of the child should also be filed in all petitions for guardianship, as required under the Rules of the Rules framed under the Guardians and Wards Act, 1890. Such report shall be in Form No. V when the child is institutionalized (or Court committed). The report shall be countersigned by the petitioner.

36.

A proceeding before the Family Court shall not become invalid by reason only of non-compliance with any of the procedural requirements prescribed herein. Interim Applications

37. Interim Applications.

- All interim applications to the Court shall be separately numbered as 'Interim Application No.....'. In Petition No.....

38. Interim Application while matter is pending before Counsellor.

- An interim application may be made even while the matter is pending before a Counsellor.

39. Report from the Counsellor.

- The Court may ask the Counsellor to submit an interim report of the purposes of such an application before deciding an interim application. The Family Court Rules, relating to reports to be submitted by Counsellors, shall mutatis mutandis apply to interim reports also.

40. Officers.

- The District Judge shall appoint the staff and other ministerial officers as may be necessary for the administration of justice and due execution of all powers and authorities exercisable by a Family Court: Provided that the appointments of ministerial officers and ministerial staff shall be under the administration and disciplinary control of District Judge subject to any rules or restrictions as may be prescribed or imposed under the Act. The powers of postings and transfers of the staff shall vest with the District Judge concerned.

41.

The proceedings before the Court shall be heard and disposed of as expeditiously as possible, preferably within 3 months after failure of reconciliation attempt.

42. Control of High Court.

- Every Principal Judge, and Judge of Family Court shall be subordinate to the District Judge and under administrative and disciplinary control of the High Court.

43. Power of High Court to transfer Judges.

- Without prejudice to the administrative and disciplinary control of the High Court, such Court or a Judge thereof authorized under general or special order in this behalf by such Court, may where it is considered necessary or expedient so to do, transfer any Principal Judge, Additional Judge, Judges.

44. Power of High Court to issue directions.

- For carrying out the purposes of the Act and for ensuring the uniformity of practice to be observed by Family Courts and for expeditious disposal, the High Court from time to time, supervise and inspect the Family Courts and issue directions/circulars etc., to the Family Courts.

45.

The Family Courts may use such forms and containing such particulars as may be approved by the High Court or provided under the Civil Rules of Practice/Criminal Rules of Practice and Circular Orders as well as under the special Acts mentioned supra.

46. Powers to call for information etc.

- The High Court may require Family Courts to maintain such registers and records and containing such particulars as may be approved by the High Court and call for necessary information as and when required. The Family Court shall have permanent advance to the tune of Rs. 5,000/-. The amount payable to the counsellors and experts and to be spent towards refreshments shall be met out of the permanent advance sanctioned to the Judge of Family Court.

47.

in addition to the rules referred above, the other rules such as Civil rules of practice and Circular Orders. Criminal and Circular Orders and any other rules which are not in consistence with these rules shall also be applicable to the proceedings before the Family Court.

48.

In settlement of immovable properties, court fee or stamp duty whichever is payable shall be collected as per the A.P. Court Fee and Suits Valuation Act or any other enactment.