

The Maharashtra Family Courts Rules, 1987

MAHARASHTRA

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Rule THE-MAHARASHTRA-FAMILY-COURTS-RULES-1987 of 1987

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The Maharashtra Family Courts Rules, 1987Published vide Notification No. HMA-1685-1125 (149)-10No. HMA-1685-1125 (149)-X. - In exercise of the powers conferred by clauses (b), (c), (d) and (e) of sub-section (2) and sub-section (2) of section 23 read with sections 5 and 6 of the Family Courts Act, 1984 (66 of 1984), the Government of Maharashtra, after consultation with the High Court, hereby makes the following Rules, namely:-

1. Short title, commencement and application.

- (i) These Rules may be called the [Maharashtra Family Courts Rules, 1987] [These Rules were published in M. G. G., Part IV-B, dated 29th April 1987.].(ii)These Rules shall come into force on the 1st day of may 1987.(iii)These rules shall apply to the Family Courts, established in the State of Maharashtra, under section 3 of the Family Courts Act, 1984.

2. Definition.

- In these Rules, unless the context otherwise requires. -(a)"Act" means the Family Courts Act, 1984;(b)"Centre" means a Counselling Centre;(c)"Court" means the Family Court, established under section 3 of the Act;(d)"Principal Counsellor" means the Principal Counsellor appointed by the High Court; and includes Counsellor or Counsellors, as the case may be where Principal Counsellor is not appointed.

3.

[Deleted] [Rules 3 was deleted by G. N. L. and J. D., No. HMA-1687-619-(75)-X, dated 25th September 1987.]

4. Party entitled to legal advice.

- A party will be entitled to take legal advice at any stage of the proceedings either before the Counsellor or before the Court. A party in indigent circumstances will be entitled to free legal aid and advice.

5. 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.

6. Conditions of engagement.

- The terms and conditions of engagement of such a lawyer and the remuneration, if any, to be paid to him from the State Treasury will be as laid down in the Maharashtra State Legal Aid and Advice Scheme, 1979.

7. Circumstances entitling a party to legal aid.

- The circumstances under which such legal aid will be made available to a party will be as laid down by the High Court.

8. Legal Experts as "Amicus Curiae".

- If the Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae. For that purpose, the Court shall prepare a list of legal experts who are willing to assist the Court as amicus curiae and such legal experts shall be paid fees and expenses out of the revenue of the State Government as per the scale of fees and expenses fixed by the Government, from time to time by an order made in this behalf.

9. Counselling Centre.

- There shall be attached to the Family Court in each city, town or other area a Centre to be known as "The Counselling Centre of the Family Court at".

10. Composition.

- Each such centre may have a principal counsellor and shall have as many counsellor as may be determined by the High Court.

11. Different units of counselling centre.

- The counselling centre may be divided into different units and may be located in the Court premises and/or in such other place or places as the High Court may direct.

12. Appointment of Counsellors.

- Principal counsellor and other counsellor attached to the counselling centre shall be appointed by the High Court in consultation with one or more professionally qualified experts in family and child welfare, preferably working with a recognised institution of social science or social work.

13. Qualifications.

- Persons having a Master's Degree in social work with a minimum experience of 2 years in family counselling shall be eligible for appointment as counsellors.

14. Counsellor to fix time and date for counselling.

- The counsellor appointed to advise the parties shall fix the time and date of appointment. The parties shall be bound to attend the counsellor on the date and at the time so fixed.

15. Failure to attend counselling.

- If one of the parties fails to attend the counsellor on the date at the time so fixed, the counsellor may fix another date and time, and inform the absent party accordingly by registered post. If the said party does not attend the counselling centre on such adjourned date, the counsellor may make a report to the Court stating that one or both the parties have failed to attend the counselling centre. On such report being made, the Court may proceed with the matter without prejudice to other powers of the Court to take action against a defaulting party.

16. Functions of a Counsellor.

- 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 part thereof. The counsellor shall also help the parties in arriving at a reconciliation.

17. Home visits.

- The counsellor in the discharge of his duties shall be entitled to pay home visits to the homes of any of the parties.

18. Interviews.

- The counsellor in the discharge of his duties shall be entitled to interview relatives, friends and acquaintances of parties or any of them:

19. Information from employer.

- 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.

20. Reference to experts.

- The counsellor may refer the parties to an expert in any other area such as medicine or psychiatry.

21. Panel of experts.

- The Principal Judge of the Family Court in consultation with the principal counsellor shall prepare a panel of medical and other experts and such experts shall be paid fees and expenses (including travelling expenses) out of the revenues of the State Government as per the scale of fees and expenses fixed by the Government, from time to time, by an order made in this behalf.

22. List of institutions, agencies etc.

- The Principal Judge in consultation with the Principal Counsellor shall also prepare a list of institutions, organisations or agencies working in the area of family welfare, child guidance, employment or in any other area that he may deem fit, in order to enable a counsellor or parties to obtain the assistance of such an institution, organisation or agency and may also lay down the manner and the conditions for association of such institutions, organisations or agencies with a Family Court.

23. Assistants of other organisations etc.

- The Counsellor may take the assistance of such an organisation, institution or agency to the discharge of his duties.

24. Confidentiality of information.

(1) Information gathered by the counsellor, any statement made Confidential before the counsellor or any notes or report prepared by the counsellor shall be treated as confidential. The counsellor shall not be called upon to disclose this information, statements, notes or report to any Court except with the consent of both the parties. (2) Such notes or report or statement or any material lying with the counsellor shall be kept in sealed packets by the counsellor and shall not form a part of evidence before the Court. The same may, however, be used for the purpose of research or education with the

permission of the Principal Judge on condition that the identities of the parties involved shall be kept concealed.

25. Counsellor not to give evidence.

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

26. Report from the Counsellor.

- The Court may also request the counsellor to submit to it a report on any other subject in order to assist the Court in adjudicating upon the matter before it or any part thereof.

27. Supply of copies.

- A copy of the report submitted under rules 25 and 26 may be supplied to the parties on such request being made by the parties.

28. Parties right to make submission.

- The parties shall be entitled to make their submissions on the report.

29. Counsellor not to be cross-examined.

- The counsellor shall not be called upon to give evidence and shall not be cross-examined in any Court in respect of the report so made.

30. Submission of memorandum.

- Save as provided in these rules the counsellor shall submit a brief memorandum to the Court informing the Court of the outcome of the proceedings before him.

31. Settlement before Counsellor.

- When the parties arrive at a settlement before the counsellor relating to the dispute or any part thereof such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the counsellor. The Court shall pronounce a decree or order in terms thereof

unless the Court considers the terms of the settlement unconscionable or unlawful or contrary to public policy.

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

- The counsellor shall be entitled to supervise the placement of children in the custody of a 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.

33. Counsellor right to supervise reconciliation.

- The counsellor shall also be entitled to supervise, guide and assist the reconciled couples, even if the matter is no longer pending in Court.

34. Co-habitation in the course of reconciliation proceedings.

- Co-habitation between the parties in the course of conciliation proceedings before the counsellor or Court shall not be deemed to be a condonation of the matrimonial offence.[Guardianship] [Substituted for the words 'Guardianship and Adoption' by G. N., L. and J. D., No. HMA-1687-619-75-(X), dated 25th September 1988.]

35. Application for Guardianship.

- All applications for guardianship [* * *] [Substituted for the words 'Guardianship and Adoption' by G. N., L. and J. D., No. HMA-1687-619-75-(X), dated 25th September 1988.] other than applications over which the High Court has jurisdiction, shall be filed before the Family Courts.

36. Assistance of Social Welfare Agency.

- In deciding a guardianship [* * *] [Substituted for the words 'Guardianship and Adoption' by G. N., L. and J. D., No. HMA-1687-619-75-(X), dated 25th September 1988.] petition, the Court may take the assistance of a social welfare agency or agencies, for the scrutiny of the petition. The Court may also ask such an agency for its report thereon.

37. Fees.

- The Court may prescribe fees to be paid to the Said agency for its work. Notifications*No. CRC. 4792/508(52)-IX, dated 15th February, 1993. - In exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Family Courts Act, 1984 (66 of 1984) (hereinafter referred to as "the said Act"), and of all other powers enabling in this behalf, the Government of Maharashtra, in

consultation with the High Court of Judicature at Bombay, with effect from the 20th day of February 1993, hereby establishes a Family Court at Aurangabad, and specifies the local limits of the following area, namely :-(i)the area comprising the Municipal Corporation of the City of Aurangabad;(ii)the area under the jurisdiction of the City and Industrial Development Corporation, Aurangabad; and(iii)the area under the jurisdiction of the Aurangabad Cantonment Board;for the purpose of exercising jurisdiction and powers conferred on it by the said Act.* This Notification has been superseded by the following Notification.No. CRC. 4792/508(52)-IX, dated 17th May, 1997. - In exercise of the powers conferred by sub-section (2) of section 3 of the Family Courts Act, 1984 (66 of 1984) and of all other powers enabling it in this behalf in modification of the Government Notification, Law and Judiciary Department No. CRC. 4792/508(52)-IX, dated the 15th February, 1993, the Government of Maharashtra, in consultation with the High Court of Judicature at Bombay, with effect from the 17th day of May 1997, hereby increases the local limits of the area of the Jurisdiction of the Family Court, Aurangabad to the entire area of the Aurangabad District, to try and decide the cases covered by section 7 of the said Act.No. FCN. 1095-351-(65)-IX, dated 13th February, 1996. - In exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Family Courts Act, 1984 (66 of 1984) and of all other powers enabling in this behalf, the Government of Maharashtra, in consultation with the High Court of Judicature at Bombay, with effect from the 22nd February 1996, hereby establishes a Family Court at Nagpur and specifies the local limits of the following area, namely :-(i)the area comprising the Municipal Corporation of the City of Nagpur;(ii)the area under the jurisdiction of the Kamptee Cantonment Board;For the purpose of exercising the jurisdiction and powers conferred by the said Act.